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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

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THE HONOURABLE MS.JUSTICE P.T. ASHA

A.S.NOS.46 & 91 OF 2013

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M.P.NOS.1 & 2 OF 2013

A.S.No.46 of 2013:

Rajkumar Selvanathan

...Appellant / Defendant

Vs.

Murugan

...Respondent / Plaintiff

Prayer : Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 31.07.2012 passed by the learned Second Additional District Judge, Puducherry in O.S.No.100 of 2010.

A.S.No.91 of 2013:

1.De Canaga Marie Noel Jean

2.Motcha Marie Pushpam

...Appellants / Plaintiffs

Vs.

1.Paramanandam

2.Murugan

...Respondents / Defendants

Prayer : Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 31.07.2012 passed by the learned Second Additional District Judge, Puducherry in O.S.No.126 of 2008.

For Appellants : Mr.C.A.Diwakar

For Respondents : Mr.A.R.L.Sundaresan
Senior Counsel
for M/s.A.L.Ganthimathi



COMMON JUDGMENT

The plaintiffs in a suit O.S.No.126 of 2008 and the defendant in the suit O.S.No.100 of 2010 are the appellants before this Court in both the appeals A.S.Nos.46 and 91 of 2013 challenging the respective suits. Since the facts relevant for disposing of both the appeals are one and the same a common Judgement is being pronounced in the said appeals.

2. The parties are referred to in the same array as in the suit O.S.No.126 of 2008 and the defendant in the suit O.S.No.100 of 2010 is referred to by his name.

3. The subject matter of both the suits is the following property:

“புதுவை ரிடி. உழவர்கரை சப். ரிடி. உழவர்கரை முனிசிபாலிட்டி, கிராம நெ.38, சாரம் ரெவின்யு, கிராமம், தட்டோட்டு களவாபேட் உட்பகுதியில் க.நெ.1411, ரீ.ச.நெ.138/4ல் அடங்கிய கி.மே. வடபுறம் 80 அடி, தென்புறம் 100 அடி, தெ.வ. கீழ்ப்புறம் 48 அடி, மேல்புறம் 45 அடி, பரப்பளவுள்ள 4185 ச.அடி. அளவுள்ள மனையம் மற்றும் அதிலடங்கிய நாட்டு ஒடு போட்ட கல்வீடும்.

இதற்கு சக்குபந்தி பதிதாக விடப்பட்ட வீதிக்கு கிழக்கு, ரீ.ச.நெ.138-ல் அடங்கிய நிலத்திற்கு மேற்கு, தெற்கு, சீனுவாச செட்டியார் அவர்களுக்கு சொந்தமான 45, 46, 47 கொண்ட மனைகளுக்கு வடக்கு.

4. The case of the plaintiffs is that under a Power of Attorney dated 08.05.1982 they had appointed the 1st defendant to manage all the properties that were existing in the name of the plaintiffs 1 and 2, which included the power of alienation by way of sale, mortgage etc,. Thereafter, the plaintiffs had purchased the suit property under a registered sale deed dated 19.11.1982. Further, the case of the plaintiffs is that when they had returned to India in the year 1992 from France, where they were employed, they were not satisfied with the conduct of the 1st defendant, as a result of which they had revoked the Power of Attorney dated 08.05.1982 under a cancellation deed dated 10.11.1992.

5. After the revocation of the power, the plaintiffs had executed a fresh Power of Attorney dated 23.11.1992 in favour of the 1st defendant authorizing him to manage a different property which were scheduled in the power deed. The plaintiffs had clearly mentioned in this power deed that the 1st defendant would not have any rights of alienation. Therefore, the 1st defendant was very much aware about revocation of the earlier Power of Attorney under the cancellation deed dated 10.11.1992.

6. The plaintiffs had thereafter left for France and the 1st defendant was taking care of the residential house and its



appurtenants as before. It is their case that he had access to all their personal rooms and misusing the said confidence and trust placed on him he had removed the original title deeds from the possession of the plaintiffs. It appears that the 1st and 2nd defendants had colluded to create the sale deed dated 08.06.1995 in favour of the 2nd defendant. The sale has been effected after the revocation of the original Power of Attorney dated 08.05.1982. The plaintiffs would submit that therefore the sale deed is void and non-est in law and not binding on them.

7. The 1st plaintiff had retired and had returned to Puducherry along with his wife, the 2nd plaintiff and they had settled down in Puducherry. Since they were unable to manage the property themselves they had appointed one Rajakumar Selvanathan as their power agent by a deed of Power dated 17.03.2008. The power agent has been in possession and enjoyment of the suit property and was looking after the same.

8. It is also the contention of the plaintiffs that though the 2nd defendant had purchased the property in the year 1995 he had not taken possession of the property and had neither taken steps to mutate the revenue records in his name. While so, when the Rajakumar Selvanathan, the power agent had visited the suit property to develop the same by removing the bushes and leveling the uneven ground he was prevented from doing so by the 2nd defendant and it was only then that they had come to know about the purchase of the property by the 2nd defendant i.e., on 07.07.2008 for the first time they learned about the purchase of the property by the 2nd defendant.

9. The plaintiffs would submit that the 1st defendant has alienated the property in favour of the 2nd defendant when he no longer had an authority to do so. He was also aware about the cancellation of the Power of Attorney dated 08.05.1982 when the second Power of Attorney dated 23.11.1992 had been executed in his favour. The plaintiffs would submit that the sale deed dated 08.06.1995 has been created collusively by the defendants 1 and 2 and therefore they had come forward with the suit O.S.No.126 of 2008 on the file of the II Additional District Judge, Puducherry for the following reliefs:

“(a)Declaring that the plaintiffs no.1 and 2 are the absolute owners of the suit property;

(b)Declaring that the sale deed dated 08.06.1995 registered as document No.1824/1995 executed by the defendant no.1 in favour of the defendant no.2 is void and non-est in law and is not binding on the plaintiffs no.1 and 2 herein;

Permanent injunction restraining the defendants no.1 and 2 herein, their assignees transferees, men, and agents from disturbing the peaceful possession and



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enjoyment of the suit property by the plaintiffs no.1 and 2 herein;

(c) Direct the defendant no.2 herein to return the original sale deed dated 19.11.1982 bearing document No.1254/1982 executed by Tvl.P.Vedhachalam and M.Pandurangan in favour of the plaintiff no.2 herein to the plaintiffs.

10. The 2nd defendant had filed a written statement inter alia denying the allegations contained in the plaint. The 2nd defendant had categorically denied the fact that the revocation of the Power of Attorney dated 08.05.1982 was informed to the 1st defendant in the manner known to law. Further, the 2nd defendant had denied the contention of the plaintiffs that the earlier Power of Attorney dated 08.05.1982 was superseded by the subsequent Power of Attorney dated 23.11.1992. The allegation that the original title deeds had been removed superstitiously was also denied.

11. The 2nd defendant would contend that the 1st defendant was duly authorised to alienate the properties belonging to the plaintiffs and accordingly had executed the sale deed dated 08.06.1995 in favour of the 2nd defendant. He had denied any collusion between him and the 1st defendant and had contended that he is only a bonafide purchaser for value.

12. The 2nd defendant would further submit that on 07.07.2008 the said Dr.Rajakumar Selvanathan had attempted to trespass into the suit property constraining the 2nd defendant to approach the local Police Station, who however failed to take cognizance of the complaint, which constrained the 2nd defendant to file the suit O.S.No.100 of 2010 against the said Dr.Rajakumar Selvanathan, the power agent holder of the plaintiffs for a permanent injunction.

13. The 2nd defendant would submit that the present suit has been filed during the subsistence of the suit O.S.No.100 of 2010 filed by him. Further, he would contend that the sale in his favour has been acted upon since all the original documents had been handed over to him and therefore suit lacks substance and has to be dismissed.

14. After the power agent had attempted to enter the suit property to develop the same, the 2nd defendant had filed a suit O.S.No.1000 of 2008 on the file of the III Additional District Court, Puducherry which was later transferred to the file of the II Additional District Court, Puducherry and re-numbered as O.S.No.100 of 2010 for a bare injunction and restraining the said Rajakumar Selvanathan from interfering with their peaceful possession and enjoyment of the suit property. The contents of



this plaint is nothing but a repeat of the written statement filed by the 2nd defendant in the suit O.S.No.126 of 2008.

15. The suits had been tried separately. The learned II Additional District Judge, Puducherry, before whom both the suits were pending had framed the following issues:

Issues framed in O.S.No.126 of 2008:

- (i) Whether the suit is maintainable?
- (ii) Whether there is any valid cause of action in the suit?
- (iii) Whether the plaintiffs are entitled for declaration of title?
- (iv) Whether the sale deed dated 8.6.1995 is valid under law?
- (v) Whether the plaintiffs are entitled for permanent injunction against the defendants No.1 and 2?
- (vi) Whether the plaintiffs are entitled for Judgement and Decree as prayed for?
- (vii) To what other relief the plaintiffs are entitled for?

Issues framed in O.S.No.100 of 2010:

- (i) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
- (ii) To what other relief the parties are entitled?

16. The 2nd plaintiff had adduced evidence as P.W.1, the 1st plaintiff as P.W.2 and the said Dr.Rajakumar Selvanathan, the power agent as P.W.3. Ex.A.1 to Ex.A.17 were marked on the side of the plaintiffs. The 2nd defendant had examined himself as D.W.1 and marked Ex.B.1 to Ex.B.4 in suit O.S.No.126 of 2008.

17. As regards the suit O.S.No.100 of 2010, the plaintiff therein had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.11. Dr.Rajakumar Selvanathan had examined himself as D.W.1 and marked Ex.B.1 and Ex.B.3.

18. The learned Judge on considering the evidence on record dismissed the suit O.S.No.126 of 2008 and decreed the suit O.S.No.100 of 2010.

19. Challenging the said Judgement and Decree the plaintiffs in O.S.No.126 of 2008 and the defendant in O.S.No.100 of 2010 Rajakumar Selvanathan are before this Court. The points that arise for consideration in the above First Appeals are as follows:

- (a) Whether the plaintiffs have given notice of the cancellation of the power deed dated 08.05.1982 (Ex.A.2) to the 1st defendant?
- (b) Whether the 2nd defendant is a bonafide purchaser for value?
- (c) Whether the plaintiffs are in possession and enjoyment of the property?



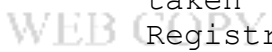
20. Heard Mr.C.A.Diwakar, learned counsel appearing on behalf of the appellants. The contention of the learned counsel is that under Ex.A.5 the original power of Attorney, Ex.A.2 had been canceled though there was no formal notice of cancellation. However, by executing Ex.A.5 power once again in favour of the 1st defendant, the 1st defendant had come to learn about the cancellation of the power in his favour. Despite such knowledge, he has proceeded to execute Ex.A.6, sale deed in favour of the 2nd defendant.

21. The learned counsel would further argue that though the 2nd defendant had purchased the property as early as in the year 1995, he has not chosen to take possession of the same either by constructing thereon or by mutating the revenue records in his name. On the contrary, the plaintiffs continued to be in possession of the property. He would further submit that they had come to know about the sale in favour of the 2nd defendant only when attempts were made to clear the suit property off the bushes and level it so as to make it habitable. It is his categorical case that a reading of the Power deed, Ex.A.2 = Ex.B.2 dated 08.05.1982 would clearly demonstrate that it does not cover the suit property. The recitals therein would clearly show that the permission to sell was given only in respect of the property then in existence, which is evident from the recitals which is extracted herein below:

"To sell without our permission and consent for proper and adequate consideration any part of our property to receive the price there of and to grant receipt or affectual discharge for the same and to execute and sign and get registered the sale deeds and other deeds necessary to complete the sale."

22. The learned counsel would therefore contend that the use of the word "property" would clearly denote that it related only to properties which were then in existence and not the property that was to be acquired later. Admittedly, the learned counsel would submit that the suit property had been purchased nearly 9 months after the execution of Ex.A.2, Power of Attorney and therefore by no stretch of imagination can it be stated that Ex.A.2 also covers the suit property purchased under Ex.A.3 on 19.11.1982.

23. The learned counsel would further submit that the execution of the second Power of Attorney, Ex.A.5 would impliedly keep the 1st defendant informed about the cancellation of the earlier power and would constitute the knowledge as contemplated under Section 208 of the Indian Contract Act. He would submit that the 2nd defendant who had purchased the property from the power agent had failed to do his due diligence since the power given in the favour of the 1st defendant was in



24. The learned counsel would submit that no steps have been taken by the 2nd defendant to peruse the records at the Registrar's Office, Puducherry, to verify as to whether Ex.A.2 power was still in force or whether it had been canceled. Had such an inspection been undertaken, the 2nd defendant would have come to know about the cancellation. The fact that such an inspection had not been done only highlights the collusion between the 1st defendant and the 2nd defendant. Further, the fact that the 2nd defendant had not taken any steps to take possession of the property (which was vacant) till the year 2008 only highlights the fact that the sale deeds were sham and nominal documents and not acted upon.

“தாவா சொத்திற்கு Canaga Marie Neel Jean and Motcha Marie Pushpam ஆகிய இருவரும் உரிமையாளர்கள் என்றால் சரிதான்”

27. The learned counsel would submit that when the sale deed was executed in favour of the 2nd defendant, the plaintiffs were very much available at Puducherry. Despite this, the 2nd defendant has not chosen to approach them to verify as to whether the power agent still had the authority to execute the sale.

28. Per contra, Mr.A.R.L.Sundaresan, learned senior counsel appearing on behalf of the 2nd defendant would submit that the arguments put forward by the learned counsel for the plaintiffs that the 2nd defendant had not enquired with them about the right of the power agent to execute the sale despite they being available in India is nothing but an afterthought. He would contend that even as per the pleadings of the plaintiffs they had stated that they had come down to India only in the year 2003 which is clear from a reading of paragraph no.5 of the plaint. Therefore, the contention of the plaintiffs' counsel



that the 2nd defendant had not cross checked with the plaintiffs when he had purchased the property is absolutely peurile.

29. The learned senior counsel would submit that the cancellation of the power of attorney has not been properly communicated to the power agent as envisaged under Section 208 of the Indian Contract Act. He would further argue that termination of the agent's authority comes into effect against the agent when he comes to know about it and against the third parties before it becomes known to them. He would argue that in the instant case there has been no manifest or overt attempt to publicise the termination of the authority of the 1st defendant either in the form of public notice or by any other mode. The 2nd defendant being a third party has been led to believe that the Power of Attorney granted to the 1st defendant subsisted since he had not only produced the original Power of Attorney but also the entire documents of title pertaining to the suit property from his custody.

30. The learned senior counsel would further submit that although the plaintiffs would contend that they had canceled Power of Attorney dated 08.05.1982, since the power agent was acting to the detriment of the principals, they have within a few days of the cancellation of the earlier deed executed a fresh power of attorney in favour of the very same power agent. This would clearly disprove the statement of the plaintiff that the power agent was acting against his interest. Further, Ex.A.4 cancellation deed, does not make any mention about the reasons for cancellation as stated at plaint. On the contrary, the cancellation deed would only state that since the plaintiffs have moved back to India and they would like to manage their properties by themselves.

31. The learned senior counsel would therefore submit that in the absence of the notice of revocation both to the power agent as well as third parties there is no valid cancellation and therefore the subsequent sale deed executed by the power agent in favour of the 2nd defendant was valid and binding on the plaintiffs. The production of the original title deeds from the possession of the 2nd defendant is yet another reason for disbelieving the case of the plaintiffs. He would therefore submit that the well reasoned Judgement and Decree of the Trial Court be confirmed.

32. He would also rely on the Judgement and Decree of the Karnataka High Court reported in AIR 2001 KAR 141 - R.L.Pinto and another Vs. F.F.Menzes and another, in support of his argument that where the general Power of Attorney is granted, the right given to the power agent to deal with the property would include not only the property in existence but properties



that are to be acquired in future, till such time as the power is canceled in the manner known to law. In the said Judgement the learned Judge has held as follows:

"11. In the case the general power of attorney relating to movable or immovable properties, the power of attorney constituted will have the necessary legal power to represent the principal and negotiate with the properties of the principal which existed and belonged to the principal as on the date of the power of attorney and any property acquired by the principal subsequent thereto until the power of attorney ceases or is revoked. However in case of special power of attorney, the authority to represent and act on behalf of the principal is limited to the extent mentioned by the terms of the deed, whereas in general power of attorney, no such limitations can be read into the document. As long the general power of attorney legally continues to subsist validly, the power of attorney will have all the necessary authority to deal with all the properties belonging to the principal without a distinction between the property owned and acquired by the principal prior to the power of attorney and subsequent thereto for empowering the power of attorney to deal with them."

33. The learned senior counsel would also submit that the parties have not filed any revenue documents since the suit property is a vacant property. Therefore, once the title of the 2nd defendant is upheld, possession would follow title and therefore his possession has to be amply protected. Therefore, the decree for injunction granted by the II Additional District Judge, in O.S.No.100 of 2010 shall be confirmed.

34. The learned senior counsel would also submit that the reason for not impleading the plaintiffs in the suit O.S.No.100 of 2010 was on account of the fact that the suit was one for bare injunction and the same had to be filed against the person who was interfering with the peaceful possession and enjoyment of the plaintiff and in the instant case it was Dr.Rajakumar Selvanathan, who was interfering with the possession and the suit had to be filed only against him.

Discussion:

35. The main bone of contention between the parties is whether a proper notice informing the power agent about the cancellation of the power deed had been communicated. The plaintiff would concede that no formal notice has been issued. However, the contention of the plaintiffs is that though the notice has not been issued, the power agent was aware about the



cancellation since a fresh power of attorney, Ex.A.5 has been given to him. This impliedly indicates that the earlier power of attorney had been canceled. The said contention is refuted by the 2nd defendant.

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36. A perusal of Ex.A.5, Power of Attorney dated 23.11.1992, which has been executed after the cancellation deed, Ex.A.4 does not give any indication that the said document had been brought to the notice of the 1st defendant, the power agent. The 1st defendant, power agent is not a party to the said document and therefore unless the plaintiffs specifically shows proof that when this power had been entrusted to the 1st defendant, he was put on notice of the cancellation of the earlier power, knowledge of the same cannot be imputed to the 1st defendant. Ex.A.4 cancellation deed, therefore, admittedly, has not been communicated to the 1st defendant. Section 206 of the Indian Contract Act stipulates that reasonable notice of revocation or renunciation has to be given to the agent. The revocation or renunciation may be expressed or it can be implied in the conduct of the principal or the agent respectively as contained in Section 207.

37. Section 208 of the Indian Contract Act provides that the termination of the authority of agent takes effect only when it becomes known to the agent and in so far as the third parties are concerned before it becomes known to them. In the instant case, the revocation / cancellation has been effected on 10.11.1992. The reason given for the revocation is that the principals would themselves act upon the terms given into general Power of Attorney earlier executed. This was followed by another Power of Attorney executed on 23.11.1992 with reference to a different property. After the execution of Ex.A.5 there has been no other communication between the plaintiffs and the 1st defendant, whereby, the cancellation and the subsequent power being granted to the 1st defendant has been made known to him.

38. Further, the plaintiffs on the cancellation of the Power of Attorney has not taken steps to get back the documents. Even in the plaint, the plaintiffs does not state as to how the 1st defendant had been informed about the revocation of the power of attorney. In fact, a reading of the plaint would indicate that the plaintiffs impute an implied knowledge upon the 1st defendant about the cancellation. Therefore, the first point for consideration is answered against the plaintiffs.

39. Once it is seen that the notice of cancellation has not been made known to the 1st defendant then the sale deed executed by him in favour of the 2nd defendant under Ex.A.6 is done only on the basis of the power granted to him by the plaintiffs and



therefore the execution of the same is valid. Further, the document of title have been handed over to the 2nd defendant by the 1st defendant which is yet another proof of the 1st defendant having the requisite authority to alienate the property.

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40. Therefore, in the absence of the notice of cancellation of the power by the plaintiffs, the power agent continues to hold the authority to act as per terms of the agreement and therefore the sale deed, Ex.A.6 is a validly executed document. A perusal of Ex.A.2 = Ex.B.2 would clearly indicate that the said deed is a general Power of Attorney in which power has been granted to the power agent to sell any part of the property belonging to the principals. Therefore, any property acquired during the subsistence of the Power of Attorney would admittedly come within the authority of the power agent.

41. Therefore, the suit property purchased subsequently, i.e., within 9 months from the execution of the Ex.A.2, would also come within the administration and management of the power agent, the 1st defendant as per terms and conditions in Ex.A.2. One of the conditions is to sell the property of the principals i.e., plaintiffs.

42. The Judgement and Decree of the Karnataka High Court reported in AIR 2001 KAR 141 - R.L.Pinto and another Vs. F.F.Menzes and another, clearly applies to the facts of the present case. Therefore, taking into consideration the fact that the revocation has not been informed to the power agent, the 1st defendant, the original documents of title having been handed over by the power agent to the 2nd defendant on the date of the execution of the Ex.A.6 the 2nd defendant is a bonafide purchaser for value. The second point for consideration is answered in favour of the 2nd defendant.

43. The property in question is admittedly a vacant site and both the parties have not filed any revenue document in support of their plea of being in possession. The plaintiffs in their plaint would submit as follows:

"The Power of Attorney was in possession and enjoyment of the suit property and was looking after the suit property."

44. Therefore, it is their contention that the power agent is in possession since 2008. Be that as it may, once this Court has held that the sale deed in favour of the 2nd defendant is validly executed the right and title of the 2nd defendant to the property has been upheld. Being a vacant property title follows possession. Therefore, it is held that the 2nd defendant is in possession of the suit property.



45. Therefore, on a conspectus of the above, I do not find any merits in the First Appeals and consequently the two Appeals are dismissed. Consequently, connected Miscellaneous Petitions are also closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

The II Additional District Judge,
Puducherry.

+1cc to Mr.C.A.Diwakar, Advocate SR.No.51220

+1cc to Mr.K.Prabhakaran, Advocate SR.No.51008

+1cc to M/s.AL.Ganthimathi, Advocate SR.No.51232

A.S.Nos.46 & 91 of 2013

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