

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2021

Pronounced on : 25.03.2021

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Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.S.No.170 of 2004  
& C.M.P.Nos.1629 & 4485 of 2021

1. Mrs.Theresa, (deceased),  
M.Vanathaiyan,  
alias Mrs. Theresa Michael,
2. Titus Vanathaian,
3. Ebiphania Mary,
4. Sagayaraj Vanathaian,

... Appellants

Appellants Nos.2 to 4 brought on record as LRs of the deceased sole appellant vide order of Court dated 16.02.2017 made in C.M.P.Nos.20583 to 20585 of 2016 in A.S.No.170 of 2004.

/versus/

1. Mrs.L.Rajalakshmi (died),
2. Mrs.L.Tarasundari, (deceased),
3. Mrs.L.Thirupurasundarai,
4. Mrs.L.Chandrapraba,
5. Mrs.L.Yohalakshmi,
6. N.Selvam (died)
7. Mrs.Padmavathy,
8. L.Dhanapal,
9. Mrs.S.D.Yamini,
10. Mr.D.Subash,

Respondents Nos.8 to 10 brought on record as LRs of the deceased R2 vide order of Court dated 17.07.2017 by RSMJ made in C.M.P.Nos.20586 to 20588 of 2016 in A.S.No.170 of 2004.

11. Mrs.Thulasi Bai,

Proposed 11<sup>th</sup> Respondent brought on record as LRs of the deceased 1<sup>st</sup> respondent vide order of Court dated 30.11.2020 made in C.M.P.Nos.4618, 4619 & 4620 of 2018 in A.S.No.170 of 2004.

12. Mrs.S.Saraswathi,
13. Mrs.S.Kalaiselvi,



14. Mr.S.Kalidasan,

... Respondents

Respondents Nos.12 to 14 brought on record as LR's of the deceased 6<sup>th</sup> respondent viz., N.Selvam vide order of Court dated 01.02.2021 made in C.M.P.Nos.953, 955 & 956 of 2021 in A.S.No.170 of 2014.

Prayer: First Appeal is filed under Section 96 Civil Procedure Code, against the judgment and decree made in O.S.No.2935 of 1998 dated 31.07.2003 on the file of III Additional Judge, City Civil Court, Madras.

|                        |                                               |
|------------------------|-----------------------------------------------|
| For Appellants         | : Mr.B.Raj Kishore                            |
| For R3 to R5, R9 & R10 | : Mr.R.Ganesan,                               |
| For R7                 | : Mr.P.V.S.Giridhar,<br>for M/s.Giridhar Sai. |
| For R11                | : Mrs.S.Shyamala,                             |
| For R8                 | : died memo recorded                          |
| For R12, R13 & R14     | : No appearance                               |

#### J U D G M E N T

The third defendant in the suit is the appellant herein.

2. The suit was filed by cancellation of the sale deeds in favour of the 3<sup>rd</sup> respondent/appellant herein and consequential relief of injunction restraining the defendants from alienating the suit property or putting up any construction in the suit property.

3. The Trial Court allowed the suit. Aggrieved by the Trial Court judgment and decree, the 3<sup>rd</sup> defendant is before this Court.

4. The brief facts of the case:-

On 27.04.1994, the plaintiffs and 2<sup>nd</sup> defendant Padmavathy entered into a sale agreement with the 1<sup>st</sup> defendant Selvam in respect of the suit property for a sum of Rs.5,00,000/-. They received Rs.6,000/- as advance and agreed to execute the sale deed in favour of Selvam or his nominees, on receipt of the balance consideration. 12 months time was fixed



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for completion of the transaction and by that time, the vendors agreed to clear the encumbrance and obtain income tax clearance certificate and furnish the title documents relating to the suit property. The parties agreed that if there is any delay or default on the part of the vendors, the purchaser will be entitled to enforce the agreement specifically against the vendors or he may opt for liquidated damages. Pre-estimated at Rs.50,000/- and return the advance money of Rs.6,000/- with 24% interest. If the purchaser opt out from contract and commit delay or default, the advance money will be forfeited. In the sale agreement, the execution of power of attorney in favour of 1<sup>st</sup> defendant/R.Selvam on the same day 27.04.1994 is mentioned. As per the power of attorney 1<sup>st</sup> defendant Selvam is authorised to mortgage sale and otherwise alienate the property in any manner on the basis of agency coupled with interest also mentioned. The power of attorney is irrevocable and will be in force till the transactions completed and property is fully developed. The purchaser shall complete the payment of consideration within time stipulated above or within such extended time, as it is necessary and required. The recitals in the sale agreement and in the power of attorney deed are supplementary to each other.

5. The Appellant herein/3<sup>rd</sup> defendant on 17.05.1995 had purchased 2140sq.ft from out of 6534sq.ft comprised under the power of attorney deed and on 18.05.1995 another 2145sq.ft of land from Selvam (as power agent of the plaintiffs) and Padmavathy (as power agent of her sister Thulasi Bai). The said two sale deeds are subject matter of the suit.

6. Case of the plaintiffs:-

The suit property belongs to their father Lakshmipathi Chettiar. On his death, they along with the 2<sup>nd</sup> defendant and one Thulasi Bai inherited it as legal heirs of Lakshmipathi Chettiar. Padmavathy/2<sup>nd</sup> defendant wanted to raise money to finance the education of her son in the BDS course at Annamalai University, Chidambaram, so she pressurized other family members to sell the family property which they have inherited from father R.Lakshmipathi Chettair. Due to the pressure of 2<sup>nd</sup> defendant, the plaintiffs agreed to sell the property for Rs.5,00,000/- and get their respective share in the sale price. Padamavathy arranged 1<sup>st</sup> defendant/Selvam and entered into a sale agreement on 27.04.1994 and on very same day, power of attorney deed was also executed in favour of 1<sup>st</sup> defendant/Selvam. Thereafter, there was no communication from the 2<sup>nd</sup> defendant/Padmavathy, except the receipt of Rs.6,000/- in total, as against the sale consideration of Rs.5,00,000/-, the plaintiffs have not received any money from the 1<sup>st</sup> defendant/Selvam. Believing the representation made by the 1<sup>st</sup> defendant, the original documents of the property were handed



over to the 1<sup>st</sup> defendant/Selvam. Thereafter, he failed and deliberately neglected to pay the balance sale consideration to the plaintiffs, despite making several request in person as well as through phone. The 2<sup>nd</sup> defendant/Padmavathy, also refused to co-operate and failed to give any satisfactory reason for the non-payment of sale consideration. Whenever enquiry was made with the 2<sup>nd</sup> defendant about the 1<sup>st</sup> defendant, she used to request time to contact the 1<sup>st</sup> defendant and came up with answer that 1<sup>st</sup> defendant has gone out of station. The plaintiffs become suspicion about the conduct of 1 & 2 defendants and when they approached the 2<sup>nd</sup> defendant, she demanded a sum of Rs.30,000/- from the 1<sup>st</sup> plaintiff and a sum of Rs.20,000/- each, from the rest of the plaintiffs, for settling the matter. Later, 2<sup>nd</sup> defendant/Padmavathy, shifted her residence and avoided visit or enquiry by the plaintiffs. Not satisfied with the replies given by the 1 & 2 defendants, the power of attorney deed executed in favour of 1<sup>st</sup> defendant was cancelled on 29.03.1996. Further, the paper publication in Tamil daily Dinakaran was issued on 04.05.1996 informing the general public regarding cancellation of the power of attorney executed in favour of the 1<sup>st</sup> defendant. Lawyer notice intimating cancellation of Power of Attorney was issued to the 1<sup>st</sup> defendant by registered post with acknowledgement due on 12.04.1996. In the said notice, the 1<sup>st</sup> defendant/Selvam was informed that the Power of Attorney executed in his favour, was revoked and he was asked to return all the original documents pertaining to the properties. Another lawyer notice was issued on behalf of the plaintiffs to 1 & 2 defendants on 24.04,1996. Though, the 2<sup>nd</sup> defendant received the notice but 1<sup>st</sup> defendant/Selvam, deliberately failed to receive notice.

7. Becoming suspicious about the conduct of the 1 and 2 defendants, the plaintiffs applied for encumbrance certificate for a period from 01.01.1994 to 28.07.1997 and to the shock and surprise, they found that the properties were dealt by the power agents without their permission. The agreement for sale entered by them with the 1<sup>st</sup> defendant expired on 26.04.1995 and thereafter, it has become invalid and unenforcible. The 1<sup>st</sup> defendant along with 2<sup>nd</sup> defendant had executed a sale deed in respect of portion of the suit property measuring 2150sq.ft in favour of 1<sup>st</sup> daughter Kalaiselvi on 27.04.1995 and got it registered. On the same day had executed another two sale deeds in favour of 1<sup>st</sup> defendant wife Saraswathi in respect of remaining extent of land i.e., 2145sq.ft each in the suit property. All the three sale deeds were later cancelled by a registered document by the 1<sup>st</sup> and 2<sup>nd</sup> defendants on 15.05.1995 for reason best known to the defendants 1 and 2. Thereafter, the impugned sale transaction in favour of the 3<sup>rd</sup> defendant came to be executed by 1<sup>st</sup> and 2<sup>nd</sup> defendants on 17.05.1995 and 18.05.1995. None of the transactions were informed to the



plaintiffs by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. Therefore, these transactions are illegal and invalid transactions. The transactions in favour of the 3<sup>rd</sup> defendant done after expiry of the period fixed in the sale agreement and the power of attorney become redundant. Therefore, the 1<sup>st</sup> and 2<sup>nd</sup> defendants have no right nor title over the suit property to alienate in favour the 3<sup>rd</sup> defendant. The illegal and invalid act of 1<sup>st</sup> and 2<sup>nd</sup> defendants will not bind the plaintiffs. The plaintiffs have specifically pleaded that the 3<sup>rd</sup> defendant is a sham nominal purchaser and had notice of the fact that no consideration was paid to the plaintiff by the 1<sup>st</sup> defendant. The agreement for sale had expired and power of attorney had become redundant and 1 and 2<sup>nd</sup> defendants have no power or authority to transfer and convey the suit properties. The 3<sup>rd</sup> defendant has no right or title over the said properties by virtue of the alleged sale deeds executed in her favour by the 1 & 2 defendants.

8. After issuing pre-suit notice, the suit has been laid for the following reliefs:-

"(a). For the cancellation of the two sale deeds being document No.1318 of 1995, dated 18.05.1995 in the Sub Registrar's Office, Anna Nagar, Chennai - 600 040 and document No.1855 of 1995, dated 17.05.1995 in the Sub Registrar's Office, Anna Nagar, Chennai - 600 040 both the sale deed documents being executed by the First and Second Defendants in favour of the Third Defendant and for direction to hand over possession of the property to the plaintiffs along with the original title deeds;

(b). Restraining the First and Second Defendants, their men, agents, representatives, legal heirs, servants, or nay other person claiming through the first and Second defendants, by an order of permanent injunction from alienating in any manner whatsoever the remaining extent of the suit property not covered by the two impugned sale deeds documents Nos.1318 of 1995 and 1855 of 1995 dated 18.05.1995 and 17.05.1995 and measuring an extent of 2.249 sq.ft inn Paimash No.899 T.S.No.127 Block No.4 to any third parties;

c). Restraining the third defendant, her men, agents, representatives, legal heirs, servants, or any other person claiming



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through the third defendant, by an order of permanent injunction from alienating in any manner whatsoever the portion of the suit property covered by the two impugned sale deeds document Nos.1318 of 1995 and 1855 of 1995 and 17.05.1995 in the office of the Sub Registrar, Anna Nagar, Chennai and measuring an extent of 2145sq.ft and 2140sq.ft respectively in paimash No.899, T.S.No.127, Block No.4 to any third parties;

d). Restraining the third defendant, her men, agents, representatives, legal heirs, servants, or any other person claiming through the third defendant, by an order of permanent injunction from putting up any construction or altering the nature of the land in any manner whatsoever in the portion of the suit property covered by the two impugned sale deed documents Nos.1318 of 1995 and 1855 of 1995 dated 18.05.1995 and 17.05.1995 in the Office of the Sub Registrar, Anna Nagar, Chennai and measuring an extent of 2145sq.ft and 2140sq.ft, respectively in Paimash No.899 T.S.No.127, Block No.4.

e). for the costs of the suit."

#### 9. Case of the 3<sup>rd</sup> defendant:-

The 1<sup>st</sup> and 2<sup>nd</sup> defendants remained absent and they were set ex parte. The 3<sup>rd</sup> defendant has filed written statement, wherein, she has pleaded that, she is not aware of the allegations made by the plaintiffs as against the defendants 1 & 2. Based on the registered general power of attorney executed by the plaintiffs and the 2<sup>nd</sup> defendant in favour of the 1<sup>st</sup> defendant and based on the power of attorney executed by Thulasi Bai in favour of the 2<sup>nd</sup> defendant, the property was purchased by the 3<sup>rd</sup> defendant for valuable consideration. The plaintiffs and 2<sup>nd</sup> defendant had given absolute power to the 1<sup>st</sup> defendant to negotiate the sale of the suit schedule property. Under the power of attorney deed, the 1<sup>st</sup> defendant is authorised to sign the agreement for sale, accept advance and convey title. Therefore, land measuring 2140sq.ft and 2145sq.ft was purchased under the sale deeds dated 17.05.1995 and 18.05.1995 much before the alleged revocation of general power of attorney by the plaintiffs.



10. Before issuance of pre-suit notice the respective husband of the plaintiffs met the 3<sup>rd</sup> defendant in person and threatened to cancel the sale deeds executed in her favour. Sensing trouble, the 3<sup>rd</sup> defendant filed caveat petition along with her husband in City Civil Court, Chennai against the plaintiffs. Based on the general power of attorney she purchased the property for valuable consideration her sale deeds cannot be questioned by the plaintiffs who duly authorised the 1<sup>st</sup> defendant to deal their property on their behalf. One of the principal namely Padmavathy is party to the sale deed and other sharer Thulasi Bai have no grievance. No malafide on the part of the 3<sup>rd</sup> defendant alleged. The right of the bonafide third party purchaser for valuable consideration, should be protected and cannot be denied or deprived for the fault or breach of the power agent.

11. The Trial Court based on this above pleadings, framed the following issues:-

(i). Whether the sale deeds executed by 1<sup>st</sup> & 2<sup>nd</sup> defendants in favour of the 3<sup>rd</sup> defendant in respect of the portion of the suit property on 17.05.1995 and 18.05.1995 are valid or not and whether it binds the plaintiffs?

(ii). Whether the 3<sup>rd</sup> defendant is a bonafide purchaser of the portions of the suit property under two sale deeds?

(iii). Whether the plaintiffs are entitled for possession of the suit property from the defendants?

(iv). Whether the plaintiffs are entitled to get back the remaining extent of suit land excluding the portion of the land sold under the impugned two sale deeds and whether the plaintiffs are entitled for permanent injunction against the defendants 1 & 2.

(v). What are reliefs the parties are entitled?

Additional Issues:-

Whether the plaintiffs are entitled for relief of permanent injunction restraining the 3<sup>rd</sup> defendant their legal heirs or representatives from alienating or creating



encumbrance or to put up construction over the suit property?

12. Before the Trial Court, 2<sup>nd</sup> plaintiff was examined as P.W.1. The husband of the 3<sup>rd</sup> defendant was examined as D.W.1. Ex.A.1 to Ex.A.18 were marked on behalf of the plaintiffs. The authorisation letter given by the 3<sup>rd</sup> defendant in favour D.W.1 was marked as Ex.B.1.

13. The Trial Court, on appreciating the evidence passed the decree in favour of plaintiff to the effect that cancelling the two sale deeds dated 17.05.1995 and 18.05.1995 marked as Ex.A.7 and Ex.A.8. Directed the 3<sup>rd</sup> defendant to handover the original title deed of the document to the plaintiffs. Injunction was granted in favour of the plaintiffs in respect of the remaining portion of land not covered under the said two sale deeds. The 3<sup>rd</sup> defendant, their men and agents were restrained from altering the physical features of the property covered under two impugned sale deeds. The 3<sup>rd</sup> defendant, their men and agents were restrained from alienating or creating charge over the property covered under their two sale deeds. The Trial Court also specifically held that judgment will not apply in respect of shares of 2<sup>nd</sup> defendant and Thulasi Bai.

14. Against the said judgment, the 3<sup>rd</sup> defendant has filed the present appeal. Pending appeal, the sole appellant died and her legal representatives are brought on record as appellants 2 to 4. Similarly, Rajalakshmi wife of Lakshmipathi, the 1<sup>st</sup> plaintiff/1<sup>st</sup> respondent and L.Tarasundari 2<sup>nd</sup> plaintiff/2<sup>nd</sup> respondent died pending appeal and their representatives were brought on record. Pending appeal, the appellants have filed application to receive additional documents which relates to mutation of revenue records, permission for building construction in the suit property and related documents.

#### 15. Grounds of Appeal:-

The judgment of the trial Court assailed by the 3<sup>rd</sup> defendant on specific ground that, she being the bonafide purchaser for valuable consideration from the power of agent was empower to sell the subject property. The judgment of the Trial Court cancelling the sale deeds in her favour is improper and against the settled preposition of law. The Trial Court failed to take into account that the plaintiffs and the 2<sup>nd</sup> defendant are wife and children of late Lakshmipathi. They inherited the property through Lakshmipathi. Due to inconvenience as stated in the power of attorney deed, the plaintiffs and the 2<sup>nd</sup> defendant appointed the 1<sup>st</sup> defendant/Selvam as their power agent. Yet another daughter of Lakshmipathi by name Thulasi Bai



subsequently appointed Padmavathy, the 2<sup>nd</sup> defendant as her power agent. The plaintiffs knowingly through her power agent Selvam/1<sup>st</sup> defendant and their sister 2<sup>nd</sup> defendant sold the property to the 3<sup>rd</sup> defendant for valuable consideration and after 10 months, the plaintiffs had alleged to have cancelled the power of attorney deed. The said deed of cancellation of power of attorney not produced before the Court. The Padmavathy, who is one of the principal along with plaintiffs is not a party to the cancellation deed. While so, the Trial Court failed note that the plaintiffs along with their sister 2<sup>nd</sup> defendant and another sister Thulasi Bai had duly executed the sale deeds Ex.A.7 and Ex.A.8 in favour of the 3<sup>rd</sup> defendant/appellant. The 2<sup>nd</sup> defendant remained exparte. Thulasi Bai not a party to the suit. The trial Court erred in accepting the pretentious plea of the plaintiffs against the appellants, who is the bonafide purchaser. Except the self-serving evidence of P.W.1, there is no evidence to show that their power agent cheated them and the appellant is not a bonafide purchaser for valuable consideration.

16. The Trial Court failed to appreciate the fact that the alleged cancellation of power of attorney on 29.03.1996 is much later to the execution of the sale deeds in favour of the appellants. When the pre-suit notice was issued to the appellants, the facts had been stated in the reply notice dated 14.09.1997. The trial Court has failed to consider the said reply notice.

17. The Learned Counsel appearing for the appellants would submit that, on the date of purchase of the properties under Ex.A.17 & Ex.A.18, the power of attorney executed by the plaintiff in favour of 1<sup>st</sup> defendant/Selvam and the power of attorney executed by Thulasi Bai in favour of 2<sup>nd</sup> defendant/Padmavathy, were in force. The said Padmavathy/2<sup>nd</sup> defendant is one of the principal along with the plaintiffs in the power of attorney document dated 27.04.1994. Having executed the power of attorney in favour of Selvam and one of their sister Padmavathy being a signatory to the sale deed, the suit has been filed by collusion in order to deprive their appellant who is the bonafide purchaser for value and after purchasing the property, she has applied for transfer of patta and got the name transfer and had also got permission for building construction in the vacant site purchased by her.

18. The Trial Court has not properly applied the law and principle of agency. If at all the plaintiffs agreed by the breach of agreement between them and Selvam/1<sup>st</sup> defendant in respect of the power given to him their remedy is for seeking rendition of account and recovery of money against Selvam, who acted as a power agent. Neither Padmavathy nor Thulasi Bai, who are also shares in the suit property have not come forward to



question the sale transaction. In fact, Padmavathy had actively participated in executing the sale deed as power of attorney of Thulasi Bai. Padmavathy alone with other plaintiffs have given power to Selvam in respect of her share. Thus, Padmavathy under dual capacity had signed the earlier sale deeds marked as Ex.A.1 to Ex.A.3. The cancellation deed marked as Ex.A.4 to Ex.A.7 and the sale deed in favour of appellants, which are marked as Ex.A.7 and Ex.A.8.

19. The Learned Counsel appearing for the appellant would submitted that the trial Court failed to see the collusion between the plaintiffs and the 2<sup>nd</sup> defendant and had erroneously allowed the suit. The notices Ex.A.9 and Ex.A.10 issued by the plaintiffs to defendants 1 and 2, wherein, they have admitted the enforceability of the sale of agreement and power of attorney executed in favour of the 1<sup>st</sup> defendant not considered by the Trial Court.

20. The Learned Counsel for the appellants also submitted that without challenging the transactions done by the defendants 1 and 2 under Ex.A.1 to Ex.A.6, mere cancellation of the sale deeds marked as Ex.A.7 and Ex.A.8 will not give any right to the plaintiffs. Therefore, the suit is bad for not seeking relief of declaring the transactions recorded under Ex.A.1 to Ex.A.6 as void. The Learned Counsel for the appellants pointing out this omission for not seeking declaration of the other transactions would expose the fact that this is a collusive suit by the plaintiff and the 2<sup>nd</sup> defendant in order to defeat the lawful right of the appellants.

21. The Learned Counsel appearing for the appellants would submit that the sale transaction was done by the plaintiffs through their duly appointed agent. The act of the agent bind on the principal. As per the power of attorney deed Ex.A.18, Selvam was appointed to file suit or suits in Courts of law in connection with recoveries, cancellations or any other matters arising out of the above sale transaction.

22. Clause (3) & (4) of Power of Attorney document empowers the agent to receive the sale consideration amounts and to issue proper receipts thereof in the name of the purchaser or purchasers and to do all other acts and things in the matter. And to execute necessary sale deed or deeds in favour of any purchaser or purchasers either in whole or part and to present the said document(s) after execution thereof on our behalf in the Registering Authority and appear before such authority and admit execution thereof and to other things and acts that may be necessary for registration of the said deed or deeds and receive the said deed and deliver the same to the purchaser or purchasers or authorise the delivery thereof to the purchaser or



purchasers on behalf of the principals. While so, based on this power of attorney Ex.A.18 and the power attorney deed executed by Thulasi Bai in favour of Padmavathy on 28.02.1995, the property was purchased for valuable consideration. The original title document is retained by the power agent for the reason that the remaining portion has yet to be sold. This cannot be a reason to term the purchaser as malafide purchaser.

23. Response by the respondent Counsel:-

Per contra, the Learned Counsel appearing for the respondents 3 to 5, 9 & 10, who are the plaintiffs and legal representatives of the plaintiffs 1 and 2 would submit that, the trial Court after proper appreciation of evidence and law, rightly held that the appellant herein is not a bonafide purchaser for value. The payment of consideration not been proved by the appellant. Her bonafide highly doubted since she admits she did not perused the encumbrance certificate and not enquired with the principal before purchasing the property. Not even a minimum care and precaution exercised by the appellant to prove she is the bonafide purchaser. She has not taken due caution before purchase, obviously for the reason that she had not purchased the property for value but only a name lender for the sham and nominal transactions. The earlier transactions in respect of the suit property within one month and unilateral cancellation of sale deeds Ex.A.1 to Ex.A.3 in suspicious circumstances would have deterred any bonafide purchasers. Strangely, the appellant herein within 2 days of the unilateral cancellation of the sale deeds Ex.A.1 to Ex.A.3 had purchased this property. Further, strangely, the 3<sup>rd</sup> defendant has not come before this Court to testify about her bonafideness. The 3<sup>rd</sup> defendant's husband had deposed before this Court and admits that the 3<sup>rd</sup> defendant is not the income tax assessee but only after purchasing the property, she has voluntarily disclosed the purchase of the property to the income tax department. The 3<sup>rd</sup> defendant has no independent source of income and mode of payment of the sale consideration not been proved. The plaintiffs appointed the defendants as a power agent under Ex.A.18 since the 2<sup>nd</sup> defendant was under urgent need of money to admit her son in B.D.S course in Annamalai University at Chidambaram. It was the 2<sup>nd</sup> defendant their sister introduced the 1<sup>st</sup> defendant and believing her words, they executed the power of attorney in favour of the 1<sup>st</sup> defendant. Later, there was no proper response from the 1<sup>st</sup> defendant and her sister 2<sup>nd</sup> defendant. Therefore, the general power of attorney Ex.A.18 executed in favour of the 1<sup>st</sup> defendant was cancelled. Immediately, same was intimated to the defendants 1 and 2. The 1<sup>st</sup> defendant was also informed that the sale agreement has come to an end after expiry of the 1 year period granted to him, for completion of the sale proceeds.



24. The Learned Counsel appearing for the contesting respondents submitted that, under Section 17 of Specific Relief Act, a contract to sell any immovable property cannot be specifically enforced against a person who have no title to the property. Similarly, under Section 19 of the Specific Relief Act, a relief against parties and persons claiming under them by subsequent title can be enforce except the transferee for value who has paid his money in good faith and without notice of the original contract.

25. Alleging that the appellant herein had notice about the dispute between the principal and the agent had got the property transferred in her name malafidely without paying the value. The transaction being a sham and nominal transaction and not being a bonafide purchaser, the trial Court has rightly cancelled the said sale deeds. Further, pointing out that the earlier sale by the 1<sup>st</sup> defendant to his daughter and his wife, later cancelling the same unilaterally and thereafter, transferring the property to the appellant within two days were all done immediately after the expiry of one year period of the sale agreement would clearly exposes the lack of bonafide on the part of the defendants.

26. In support of his submission, the Learned Counsel referring the interpretation of the phrase "a person said to have notice" under Section 3 of Transfer of property Act and the explanation given there under would draw inspiration to emphasis that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

27. Alleging cognizance to the fraud of the agent, the Learned Counsel submit that fraud vitiate all solemn act. He rely upon the following judgments to buttress his submissions.

(i). State of A.P and another -vs- T.Suryachandra Rao reported in (2005) 6 SCC 149.

(ii). Roshan Deen -vs- Preeti Lal reported in (2002) 1 SCC 100.

(iii). Shrisht Dhawan -vs- M/s.Shaw Brothers reported in (1992) 1 SCC 534.

(iv). Ram Preeti Yadav -vs- U.P.Board of High School and intermediate Education and others reported in (2003) 8 SCC 311.

(v). Ram Chandra Singh -vs- Savitri Devi and others reported in (2003) 8 SCC 319.

(vi). R.K.Mohammed Ubaidullah and others -vs- Hajee C.Abdul Wahab (D) by LRs and others reported in (2000) 6 SCC 402.



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(vii). The Municipality and Bhiwandi and Nizampur -vs- M/s.Kailash Sizing works reported in (1974) 2 SCC 596.

(viii). Bole Naidu -vs- N.Kothandarama Pillai and others reported in (1987) 100 LW 750.

(ix). Ram Niwas (dead) Through LRs -vs- Bano (Smt) and others reported in (2000) 6 SCC 685.

(x). Vimala Ammal -vs- C.Suseela and others reported in AIR 1991 Mad 209.

(xi). Veeramalai Vanniar (died) and others -vs- Thadikara Vanniar and others reported in 1967 SCC OnLine Mad 137.

28. The facts of the case in the judgments cited above are matters arising from Workman Compensation Act, Partition suit, Land Celling Act. There can be no two opinion that, Fraud will vitiate all solemn Act but fraud is not a matter for presumption but fact to be proved beyond doubt. Only if the fraud is proved, it will deprive the person of all advantages or benefits obtained thereby.

29. In S.P.Chengalvaraya Naidu -vs- Jayannath reported in 1994 (1) SCC 1, the Hon'ble Supreme Court has categorically held that, "Fraud avoids all judicial acts, ecclesiastical or temporal" and courts have time and again had emphasis that the Court will not allow a person to keep an advantage which he has obtained by fraud. As far as the knowledge and notice referred in this judgments cited above, it is about the knowledge regarding the person who is in possession of the property. The purchaser if really a bonafide purchaser will enquire the person in possession of the property to ascertain whether the vendor has alienable right.

30. In R.K.Mohammed Ubaidullah and others -vs- Hajee C.Abdul Wahab (D) by Lrs and others reported in 2000 (6) SCC 402, wherein, the matter arising from Specific Relief Act, the Hon'ble Supreme Court dealing Section 19(b) of the Specific Relief Act, 1963, which protects the bonafide purchaser in good faith for value without notice of the original contract, held that this protection is in the nature of exception to the general rule. Hence, the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. [Section 52](#) of the Penal Code emphasizes due care and attention in relation to the good faith.

31. The Learned Counsel appearing for the respondent No.7, who is the 2<sup>nd</sup> defendant in the suit and remained exparte



would submit that though the 2<sup>nd</sup> defendant has not participated in the trial, she as the power agent of her sister Thulasi Bai as well as one of the principal executed the power of attorney in favour of Selvam/1<sup>st</sup> defendant would submit that, assuming the power of attorney deed is valid, then once the agent had executed sale deed Ex.A.1 to Ex.A.3 in favour of daughter and wife of 27.04.1994, the power of attorney deed Ex.A.18 got terminated on completion of the purpose. Thereafter, neither the 1<sup>st</sup> defendant nor 2<sup>nd</sup> defendant have any right to unilateral cancel the sale deed under Ex.A.4 to Ex.A.6 and thereafter, enter into the sale deed with the appellant under Ex.A.7 & Ex.A.8. Therefore, on cumulative assessment of these transactions and the conduct of defendants, the sale deeds Ex.A.7 and Ex.A.8 are impugned in the suit and rightly cancelled by the trial Court has to be confirmed.

32. Further, the Learned Counsel for the respondents would submitted that, the sale deeds Ex.A.7 and Ex.A.8 though a registered document and presumption under Section 114 of Evidence Act, may be in favour of the appellants, the said presumption is rebuttable presumption and not a conclusive proof. The conduct of the parties would clearly establish that the transaction as found in Ex.A.7 and Ex.A.8 are not bonafide transactions.

33. The Learned Counsel appearing for the respondent/Thulasi Bai would submit that, she was not made a party in the suit filed by the plaintiffs but had been now impleaded as legal representatives of her mother the deceased 1<sup>st</sup> plaintiff. She believing her sister Padmavathy, who is the 2<sup>nd</sup> defendant had executed the power of attorney with bonafide intention that she will sell the property and give her portion of share but she has not given the share.

34. It is to be noted that the respondents Nos.7 and 11 through their counsel, support the case of the plaintiffs but remained absent before the Trial Court. Particularly, the 7<sup>th</sup> respondent/Padmavathy who is party to the sale deeds Ex.A.7 and Ex.A.8 had consciously stayed away from the proceedings though there was specific allegations made against by her mother and sisters. Further, Thulasi Bai, who is also one of the sharers in the suit property as legal heir of Lakshmipathi Chettair after giving power to her sister Padmavathi was not even made as a party in the suit by the plaintiff. The Trial Court, after taking note of these facts had observed that the judgment will not have any effect on the shares of Padmavathy and Tulasi Bai, who have not challenged the sale deeds Ex.A.7 and Ex.A.8 in favour of the appellant. Therefore, they can have no right which has enured to the other plaintiffs sharers under decree.



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35. Point for consideration:-

Whether the cancellation of sale deeds Ex.A.7 & Ex.A.8 holding that the 3<sup>rd</sup> defendant is not a bonafide purchaser is sustainable and will the plaintiffs entitled for the consequential relief by cancelling these two sale deeds without challenging the others transactions effected under Ex.A.1 to Ex.A.6?

36. In the instant case admittedly the suit property is a vacant land. The encumbrance certificate indicates transfer in favour of daughter and wife by the 1<sup>st</sup> defendant and subsequent cancellation citing the legal issues. Thereafter, the property is conveyed in favour of the appellant. The appellant herein is a third party purchaser. Whereas, the parties of the earlier transactions are family members of agent, agent and one of the title holder. The earlier sale deeds were later cancelled citing legal issues.

37. This is not the case where there is a prior agreement holder or the subject property is in occupation of the third party who has interest in the said property and challenging the later alienation. It is a case of a vacant site sold by power agent holding a valid power of attorney in his favour. Therefore, the plea of fraud against the defendants has to be proved by the plaintiffs with acceptable evidence. The non-possession of the original title deed explained by the appellants in the cross examination. The reason for not putting fence in the suit property has also been explained by the appellants. He has enquired about the encumbrance from the S.R.O Office and was negotiating with the power agent for a period of one month before registration. The sale consideration of Rs.1,66,000/- each cannot be doubted just because, the purchaser is not an income tax assessee at that point of time. It is not a very huge sale consideration. Further, the value of the property also not alleged to be under valued. Admittedly the plaintiffs have agreed to sell the property for Rs.5,00,000/- in respect of total extent of 6,500sq.ft. The sale deeds under challenge is to an extent of 4295sq.ft for which Rs.3,35,000/- has been paid. The plaintiffs through their own documents Ex.P.10 had sought for enhanced price of Rs.6,50,000/- instead of Rs.5,00,000/-. The letter Ex.P.10 is after 2 years of the earlier agreement and one year after the sale agreement. The plaintiffs feign ignorance of the transactions took place based on the power of attorney, executed by them on 27.04.1994 but their conduct does not support the said plea of ignorance. The plaintiffs plea trust on their sister (2<sup>nd</sup> defendant) but she had cheated them. If so, other sister Thulasi Bai also trusted the



second defendant and given power of attorney but had no grievance. How come strangely the plaintiffs, after two years of executing the power of attorney and after one year of alienating 2/3<sup>rd</sup> of the suit property to the appellants, drew suspicion and obtained encumbrance certificate and only thereafter came to know about the transaction is unbelievable. The plaintiffs have not come with clean hands but try to attribute fraud by the defendants, for which there is no evidence.

38. It is admitted fact that the suit property measuring about 6500sq.ft originally owned by one R.Lakshmipathi. The 1<sup>st</sup> plaintiff Rajalakshmi is wife of Lakshmipathi. The case of the plaintiffs is that Lakshmipathi died at Chennai on 19.09.1981 living behind his wife and six daughters. The 2<sup>nd</sup> defendant Padmavathy is one among his six daughters. The other daughter Thulasi Bai was not made a party in the suit filed by the plaintiffs and no acceptable reason or explanation given by the plaintiffs for not impleading her as a party, except to say that Thulasi Bai had executed the power of attorney in favour of 2<sup>nd</sup> defendant Padmavathy to deal with the suit property. Thus, out of 7 sharers of the suit property, 6 of them have joint together and given a power of attorney to one Selvam the 1<sup>st</sup> defendant to deal with the property including to sell it in part. Padmavathy has taken power of attorney from her sister Thulasi Bai. It is a specific case of the plaintiffs is that, they have no intention to sell the property but Padmavathy was in dire need of money to educate her son, therefore, they agreed to sell the property for a sum of Rs.5,00,000/- to Selvam and received Rs.6,000/- as advance on 27.04.1994. 12 months period was granted for Selvam/1<sup>st</sup> defendant, to complete the sale proceedings, subject to certain conditions like clearing mortgage, production of income tax clearance certificate by the vendors. The said agreement for sale deed is marked as Ex.P.17 dated 27.04.1994. On the very same day a power of attorney deed was also executed in favour of Selvam by the plaintiffs and the 2<sup>nd</sup> defendant. It is a clear case of the plaintiffs that for the sake of educating son of Padmavathy, they have jointly agreed to sell the property to Selvam for consideration of Rs.5,00,000/- and received advance of Rs.6,000/-. On the same day, they have also appointed Selvam as a power agent to deal with the property on their behalf. The power of attorney deed is marked as Ex.A.18 is referred in the recital of the sale agreement marked as Ex.A.17.

39. The specific case of the plaintiff is that the 1<sup>st</sup> defendant/Selvam had not purchased the property as per the sale agreement Ex.A.17 within one year period. The 1<sup>st</sup> & 2<sup>nd</sup> defendants delayed completing the sale agreement and rendition of accounts which cause suspicious. Therefore, notice was issued to 1<sup>st</sup> defendant through their lawyer vide notice dated 12.04.1996, on



behalf of the plaintiffs intimating him about the revocation of power of attorney granted in his favour and also the 1<sup>st</sup> defendant was called upon to handover the original sale deed of the suit property. Though, the power of attorney (Ex.A.18) was executed by (i). Rajalakshmi wife of Lakshmipathi, (ii). Tarasundari wife of Dhanapal, (iii). Thiruparasundari wife of Adhikesavan, (iv). Chandraprabu wife of L.Pundarikatchan, (v). Yogalakshmi wife of P.S.Bala Krishnan and (vi). Padmavathy wife of M.D.Ramanujam. The lawyer notice Ex.P.9 was caused only on behalf of the serial Nos.1 to 5 and not by Padmavathi. The plaintiffs has not filed the cancellation of power of attorney deed referred in the notice, to verify whether the cancellation was done by all the six principals or not.

40. Be it as it may, this notice intimating the cancellation of power of attorney whether served to the 1<sup>st</sup> defendant or not could not be ascertained since there is no acknowledgement for the receipt of the notice by Selvam. In any event, the said cancellation of power of attorney even if it is true, it was subsequent to the sale deeds Ex.A.7 (dated 17.05.1995) & Ex.A.8 dated (18.05.1995) executed by Selvam and Padmavathi in favour of the appellants. How the cancellation of power subsequent to transfer will bind the purchaser not explained. Further, the plaintiffs thereafter, on 24.04.1996 caused another lawyer notice (Ex.A.10) to the 1<sup>st</sup> defendant. In this notice, after referring the sale agreement dated 27.04.1994 which has expired on 26.04.1995, they state that after the time limited prescribed in the agreement lapsed, the plaintiffs approached the 1<sup>st</sup> defendant on 23.08.1995 and asked to pay the sale consideration of Rs.6,50,000/-. The amount which the 1<sup>st</sup> defendant agreed to pay and send letter of acceptance dated 21.09.1995. The said letter of acceptance also not marked. However, the plaintiffs admit that after the lapse of agreement period, they have come forward to sell the property to Selvam for consideration of Rs.6,50,000/- Therefore, they were called upon Selvam to pay a sum of Rs.6,44,000/- and get the sale deed executed or return the original document dated 16.07.1931. From these two exhibits namely Ex.A.9 and Ex.A.10 relied by the plaintiffs, it is crystal clear that the contention of the plaintiffs that the agreement entered with Selvam expired after the period of one year is not correct. The power of attorney executed in favour of Selvam becomes redundant is also factually not correct. Having admitted that they have entered into a sale agreement with Selvam and want to sell the property to Selvam for an enhanced price than what agreed earlier. It is very strange to accept the plea of the plaintiffs that after causing the notice marked as Ex.P.9 and Ex.P.10, then they applied encumbrance on 29.07.1997 and found that Selvam has already transferred the property fraudulently. Even assuming the plaintiffs case's as true by not submitting the accounts for the



sale transaction and not paying the agreed sale consideration to the principal, any fraud or breach can be attributed only against Selvam/1<sup>st</sup> defendant and the sisters of the plaintiff's Padmavathy, who is the 2<sup>nd</sup> defendant. The appellant herein, who is a third party purchaser stand on different footing. She is fortified with a registered power of attorney which was valid on the date of her purchase and a registered sale deed in her favour executed by the power agent. The sale consideration for the entire two grounds i.e., 1740sq.ft was fixed as Rs.5,00,000/- as per the sale agreement dated 27.04.1994. The plaintiffs, themselves agreed that, later the 1<sup>st</sup> defendant agreed to pay an enhanced amount of Rs.6,50,000/- and gave a undertaking letter on 21.09.1995 (document not produced). Whereas, the sale agreement shown under Ex.A.7 & Ex.A.8 are proportionate to the said value. Therefore, there is no reason to doubt the transaction under Ex.A.7 & Ex.A.8 as under value or sham and nominal.

41. The Learned Counsel for the respondents Nos.3 to 5, 9 & 10 would submit that there is no reason for the appellants to come and purchase the property five kilometre away from the place of his residence. They have not enquired the neighbourhood before purchase. They have not properly enquired the Registrar Office about the encumbrance and valid title. They have not enquired the principal before purchasing the property. The defendant has not produced the income tax records to show the financial capacity. The purchaser has not mounted the witness box to testify her bonafide. This Court put a question to itself, whether these reasons are sufficient to infer the appellants are not bonafide purchasers and for these reasons their purchase through Ex.A.7 & Ex.A.8 should be doubted and held void. The answer should be in negative.

42. Regarding the plea raised by the respondent counsel, the knowledge of the appellants about the encumbrance in the suit property. Relying upon proviso to the Explanation - III to the phrase, "a person is said to have notice", as interpreted under Section 3 of the Transfer of Property Act, it is suffice to say, the knowledge of revocation of cancellation made known to public by the respondent by way of paper publication in Tamil daily issue dated 04.05.1996. Whereas, the appellants had purchased the property on 17.05.1995 and 18.05.1995 almost a year prior to notice. Not a single reason stated by the plaintiffs why the registered power of attorney need to be suspected by any bonafide purchaser when it stood valid on the date of his purchaser and one among the principals sign along with the agent.

Explanation - III to Section (3) of Transfer of Property Act, 1882, reads as under:-



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### 3. Interpretation Clause.

.....  
"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from any enquiry or search which he ought to have made, or gross negligence, he would have known it."

Explanation - I.

.....  
Explanation - II

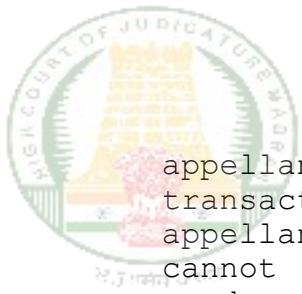
.....  
Explanation - III

A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

43. The plaintiffs no were pleaded or proved that on the date of Ex.A.7 and Ex.A.8, the power of attorney executed by them in favour of the 3<sup>rd</sup> defendant was defective and the purchaser the 3<sup>rd</sup> defendant had knowledge about it. Without plea and proof, a new case against the appellants is attempted to be build to justify the ill-conceived trial Court judgment.

44. The plaintiffs has to stand or fall on his own case and cannot pick holes in the case of the defendants. When the defendants are fortified by a valid registered documents, which say the plaintiffs had agreed to sale the property for a consideration of Rs.5,00,000/- and appointed 1<sup>st</sup> defendant as their power agent. One of the sister had joined the power agent and sold the property to the appellants herein. Padmavathy and another sister Thulasi Bai, who had given power of attorney to Padmavathy are silent spectators. They have not questioned the sale deeds. The challenge to the said sale deeds by the plaintiffs on 29.04.1998 after nearly 35 months is without any plausible reason for delay. Likewise, the earlier sale deeds Ex.A.1 to Ex.A.3 executed by Selvam and Padmavathy in favour of daughter and wife of 1<sup>st</sup> defendant was cancelled under Ex.A.4 to Ex.A.6. The person aggrieved by this cancellation can be Kalaiselvai and Saraswathi and not the plaintiffs. If plaintiffs are aggrieved by very sale under Ex.A.1 to Ex.A.3, then, the plaintiffs ought and might have challenged that transaction also before challenging the subsequent transaction in favour of the



appellants herein. Having failed to challenge the earlier transaction, the subsequent transaction in favour of the appellant which carry every semblance of bonafide transaction cannot be cancelled on the ground that 1<sup>st</sup> defendant failed to render accounts. The power of attorney granted in favour of the 1<sup>st</sup> defendant is revoked. If 1<sup>st</sup> and 2<sup>nd</sup> defendants have cheated the plaintiff then the remedy for the plaintiff is elsewhere. The cancellation of the sale deed Ex.A.7 & Ex.A.8 is not proper relief. If the 1<sup>st</sup> and 2<sup>nd</sup> defendants had committed breach of trust, for no fault, the 3<sup>rd</sup> defendants could be put to significance.

45. The Trial Court had miserably failed to understand the consequence of cancelling the duly executed sale deeds Ex.A.7 & Ex.A.8. It has failed to consider the inconsistency in case of the plaintiffs exposed in Ex.A.9, Ex.A.10 and the plaint. It is not the case of the plaintiffs that her sister Padmavathy, who made them to agree to sell the property through power of attorney was not paid any consideration. Padmavathy has not cancelled the Power of attorney granted in favour of Selvam. Strangely, the plaintiffs does not want to place the alleged cancellation of Power of attorney before this Court for proper appreciation. But the Trial Court has presumed that the power of attorney is cancelled and Ex.A.1 to Ex.A.3 sale deeds and Ex.A.4 to Ex.A.6 cancellation of sale deeds are all fraudulent act and consequentially Ex.A.7 and Ex.A.8 is also a sham and nominal document. It has failed to consider that Ex.A.1 to Ex.A.3 are between the family members of the plaintiffs and the family members of the 1<sup>st</sup> defendant. They have cancelled the said documents under Ex.A.4 to Ex.A.6. The purchaser of Ex.A.1 to Ex.A.3 which was nullified by Ex.A.4 to Ex.A.6 are not before this Court. Those transactions are not subject matter of the present suit. Ex.A.7 & Ex.A.8 which is the subject matter of the instant appeal is in favour of a third party purchaser unconnected to the plaintiff's family members and the 1<sup>st</sup> defendant family members. When the purchaser is represented by one of the title holder along with duly registered power of attorney document executed by all other sharers, there is no reason to suspect the right of the power agent to sell the property on behalf of his principal. The plaintiffs, if really, had any grievance as pleaded in the plaint then they should have not caused notice Ex.P.10 calling upon the Selvam to pay a sum of Rs.6,44,000/- towards the balance sale consideration and get the sale deed executed. This notice is dated 24.04.1996 after the expiry of one year period of the sale agreement dated 27.04.1994 and 11 months after completion of the sale deeds in favour of the appellants herein.

46. The plea that the agents duty gets terminated on completion of the work assigned is true under as per Section 201



of Indian Contract Act. If this Section is applied, on executing the sale deeds in favour of Kalaiselvi and Saraswathi under Ex.A.1 to Ex.A.3, the power of attorney given in the favour of the 1<sup>st</sup> defendant Selvam deemed to be terminated. However, the said transaction has been cancelled subsequently under Ex.A.4 to Ex.A.6. The plaintiffs contention is that sale was not informed to them by the principal as per Section 214 of the Contract Act.

47. For easy reference, the relevant Sections of the Indian Contract Act are extracted below:-

Section 214 of Indian Contract Act:-

214. Agent's duty to communicate with principal:- It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Section 201 of Indian Contract Act reads as below:-

201. Termination of agency:- An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Section 204 of the Indian Contract Act reads as below:-

204. Revocation where authority has been partly exercised:- The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency

48. In the present case, by cancellation of sale deeds Ex.A.1 to Ex.A.3, the power of attorney given in favour of 1<sup>st</sup> defendant continues since the property earlier sold to his own wife and daughter was cancelled. There was no difficulty faced by the agent and therefore, the 1<sup>st</sup> defendant has not communicated to the principals. Even if there is any failure on his part, this cannot be attributed to the 3<sup>rd</sup> defendant who is



the third party. The stoic silence on the part of the plaintiffs for more than 2 years after executing the power of attorney and their own sister being the party to all the subsequent transactions, the third party purchasers cannot be taken for ride. The grievance of the plaintiffs, if any, shall only be confined against the 1 & 2<sup>nd</sup> defendant and they cannot go further to the third party unless fraud and malafide proved.

49. It is a clear case of make belief story spun by the plaintiffs after due advice, claiming ignorance of events and trust on the agent. At the same time alleging fraud on their agent and the third party purchaser.

50. From the re-appreciation of the evidence, this Court finds that the Trial Court had considered the evidence lopsidedly and not on holistic manner. The fraud alleged by the plaintiff is only an afterthought. The conduct of the 2<sup>nd</sup> defendant, who is the sister of the plaintiffs Nos.2 to 5 belies the case of the plaintiffs. Having sold the property to the 3<sup>rd</sup> defendant a bonafide purchaser now they have all joined together to defeat the right enured on the plaintiff. Having conveniently stayed away from the proceedings before the trial Court, in the appeal, they sail together and try to nullify their own conduct by challenging the transaction in favour of the 3<sup>rd</sup> defendant. The plaintiff explicitly accept the transactions done by 1<sup>st</sup> and 2<sup>nd</sup> defendant under Ex.A.1 to Ex.A.6 i.e., Sale deeds and subsequent cancellation deed. While accepting those as genuine and not challenging those transactions, they cannot partially question the subsequent transaction in favour of the 3<sup>rd</sup> defendant. The said claim in the suit itself bristles with malafide. Since the trial Court has failed to consider the facts properly, the judgment and decree passed by the trial Court in O.S.No.2935 of 1998 is liable to be set aside. Accordingly, the Appeal Suit is Allowed, judgment and decree in O.S.No.2935 of 1998 is set aside. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar

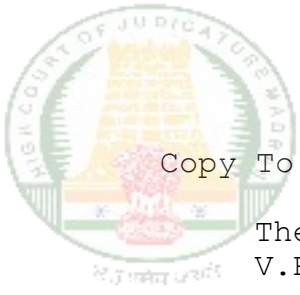
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Sub Assistant Registrar

bsm

To:

The III Additional Judge,  
City Civil Court, Madras.



Copy To:

The Section Officer,  
V.R.Section, High Court, Madras.

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+1cc to Mr.T.S. Rajmohan, Advocate, S.R.No.19647  
+2ccs to Mr.B.Raj Kishore, Advocate, S.R.No.19575  
+4ccs to M/s.R. Ganesan Advocate, S.R.No.19581 & 19580.  
+1cc to Mr.Giridhar, Advocate, S.R.No.19658.

A.S.No.170 of 2004  
& C.M.P.Nos.1629 & 4485 of 2021

RGN(CO)  
BE(29/07/2021)