



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 17TH DAY OF SEPTEMBER, 2021

THE HON'BLE MR.JUSTICE N.SESHASAYEE

C.S.No.144 of 2010

1 M.R.Jayaprakash  
S/o.(late) S.Rajamani

2 R.Mohan Kumar  
S/o.(late)S.Rajamani

Both residing at Old No.11  
New No.10, Mettu Street  
Chennai-600 001.

..Plaintiffs

-VS-

1 N.Balasundaram  
S/o.Narasimhan  
No.23, Old No.9,  
Muzafer Zung bahadur Street  
Triplicane, Chennai-600 005.

2 K.Ravichandar  
S/o.Kannabiran  
No.6, "B" Block  
Pushpa Nagar 1st Street  
Nungambakkam,  
Chennai-600 034.

3 S.RAVI  
S/o.Seeralam  
No.1 Gandhi Street  
Janki Raman Colony,  
Chennai-600 106.

...Defendants



Civil Suit praying that this Hon'ble Court may pleased to pass a judgment and decree in their favour and against the defendants:-

a)for declaration of title in the suit property as described in the Schedule of the plaint upon setting aside the sale (Sale Deed dated 28.12.2006 executed by 2<sup>nd</sup> defendant in favour of the 3<sup>rd</sup> defendant and registered as Document No.2732 (2737) of 2006 in the office of the SRO Adyar) in favour of the 3<sup>rd</sup> defendant as is null and void;

b)for the costs of the suit

This suit having been heard on 16.08.2021 in the presence of Mr.S.Ratnasabapathy, advocate for the plaintiffs herein and Mr.G.Thangavel, advocate for the defendants 2 and 3 herein and the 1<sup>st</sup> defendant herein not appearing in person or by advocate and the said 1<sup>st</sup> defendant herein having been set exparte and upon reading the pleadings filed herein and other exhibits therein referred to and upon perusing by evidence adduced and having been stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and this Court having observed that the result is a writing on the wall, the plaintiff's fail and fail badly, they could not establish any circumstances which may tilt the needle of suspicion to dislodge the character of Ext.P-2,



It is ordered as follows:-

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That the suit in C.S.No.144 of 2010 be and is hereby dismissed.

2. That there shall be no costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,  
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE  
17<sup>th</sup> DAY OF SEPTEMBER 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the       day of       2021.

COURT OFFICER(O.S.)

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21.09.2021

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C.S.No.144 of 2010

ORDER

DATED: 17.09.2021

THE HON'BLE MR.JUSTICE  
N.SESHASAYE

FOR APPROVAL: 21.09.2021

APPROVED ON: 21.09.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16.08.2021

Judgment Pronounced on : 17.09.2021

CORAM : JUSTICE N.SESHASAYEE

C.S.No.144 of 2010

1.M.R.Jayaprakash  
2.R.Mohan Kumar

.... Plaintiffs

Vs

1.N.Balasundaram  
2.K.Ravichandar  
3.S.Ravi

.... Defendants

**Prayer :** Civil Suit filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of the Rules of the High Court of Judicature at Madras, 1956 praying to pass a judgment and decree :

(a) for declaration of title in the suit property as described in the Schedule of the plaint upon setting aside the sale (Sale Deed dated 28.12.2006 executed by the 2<sup>nd</sup> defendant in favour of the 3<sup>rd</sup> defendant and registered as Document No.2732 (2737) of 2006 in the Office of the SRO Adyar) in favour of the 3<sup>rd</sup> defendant as null and void;

(b) for the costs of the suit and



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For Plaintiffs : Mr.S.Ratasabapathy

For Defendants : D1 - Exparte  
Mr. G.Thangavel [D2 & D3]

### **JUDGMENT**

This suit is laid for declaration of title by setting aside the sale deed dated 28.12.2006, executed by the second defendant in favour of the third defendant as null and void.

#### **Pleadings**

##### **2. Plaintiff's case:**

- The case of the plaintiffs is that a site plus residential building in S.No.232/F of Kottivakkam Village belonged to them. While so, on 21.08.2006 the first plaintiff had borrowed a sum of Rs.3 lakhs from the first defendant. To secure the debts, the first defendant had obtained several signed cheques and also signed blank papers as well as the registered Power of Attorney executed by the plaintiffs in favour of the second defendant. This Power of Attorney is dated 20.09.2006.

- On the strength of the Power of Attorney, the second defendant had entered into a sale agreement with a certain Muralidharan on



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15.11.2006, which later came to be cancelled on 28.12.2006, and on the same day, another sale deed came to be executed by the second defendant in favour of the third defendant for a total sale consideration of Rs.36 lakhs. Subsequently, when the first plaintiff wanted to settle his debts to the first defendant, he was missing. Further, it is only from the subsequent enquiries in the Government records, the plaintiffs came to know about the aforesaid transactions alleged to have taken place between the defendants.

- Soon thereafter, the plaintiffs instituted a suit in O.S.No.90/2008 before the District Munsif Court, Alandur, for a decree of injunction against the defendants herein, but no interim order of injunction was granted in that case.
- The Power of Attorney in favour of the first defendant was executed only as a security and there was no intention between the parties that it be acted upon, and hence, the sale deed executed by the second defendant in favour of the third defendant on the strength of the aforesaid Power of Attorney is not binding on them.



defendant in favour of the third defendant on the strength of the aforesaid Power of Attorney.

**The Case of the Defendants:**

3. The first defendant in the suit remained exparte and the suit was defended essentially by the second and third defendants. In their written statement it is alleged:

- The Power of Attorney was validly executed, and it granted power to the second defendant to sell the property. It is on the strength of this power, the second defendant had executed the sale deed in favour of the third defendant on 28.12.2006. The entire sale consideration had been paid and the same had been made over to the plaintiff. The suit is now laid only for extracting more money from the defendants.
- So far as O.S.No.90/2008 goes, that suit was not maintainable as the plaintiffs prosecuted it despite the statement made before this Court that they would withdraw the suit. Indeed on 03.07.2013, O.S.No.90/2008 was dismissed by the Additional District Munsif, Alandur for non-prosecution. There is no cause of action in the suit, and the suit is not maintainable.



4.1 On the above pleadings, the following issues are framed.

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- (1) Whether the plaintiffs are entitled to a decree of declaration?*
- (2) Whether the plaintiffs are entitled to a decree of permanent injunction?*
- (3) Relief and cost.*

4.2 The issue which is material, and which ought to have been framed, but not framed is, on the intended purpose behind executing Ext.P-2, Power of Attorney: It was executed by the plaintiffs without any intention that it be acted upon. Parties however, have pleaded on it, and approached trial with absolute knowledge about what they were litigating. Hence this Court chooses to frame an additional issue Vide its powers under Order XIV Rule 5 CPC. And, since evidence has already been let in, framing an issue now will not prejudice the rights of the parties.

#### 4.3 Additional Issue:

*Whether the deed of Power of Attorney dated 20-09-2006, executed by the plaintiffs in favour of the second defendant was intended only to secure a debt.*

5. On the side of the plaintiffs, the first plaintiff was examined as PW1, and

he has produced Ext.P1 to Ext. P7, of which, the Power of Attorney is



marked as Ext.P-2, and the sale deed which the second defendant executed in favour of the third defendant is Ext.P5. On the side of the defendants, the second defendant was examined as DW1, and he produced no documents.

6. Opening the arguments, the learned counsel for the plaintiffs submitted:

- That there is a residential house in the suit property, but that was not covered by the Power of Attorney.
- Second aspect is about valuation: Whereas the sale consideration in Ext.P5, the sale deed executed by the second defendant as Power of Attorney under Ext.P-2 dated 28.12.2006 to the third defendant is Rs.36 lakhs. Barely a year later, on 21-01-2008, the third defendant had sold the property to a certain Sekar for Rs.80,00,000/-. This would indicate that the sale under Ext.P2 is not for the real value which is symptomatic of a fraudulent sale.
- Thirdly, the second defendant as DW1 has conceded that the plaintiffs did not know him prior to the execution of the Power of Attorney. It is inconceivable that a party would execute the Power of Attorney in favour of an utter stranger without receiving any consideration for so executing it. Further, DW1 in his counter filed



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before the Munsif Court in O.S.No.90/2006 has alleged that even prior to Ext.P-5 sale deed in favour of the third defendant, the entire sale consideration of Rs.36 lakhs was paid to the plaintiffs. Still he would say that on the date of sale deed, the plaintiffs were present before the Sub Registrar for receiving the balance sale consideration. This apparently brings the entire case of the defendants under a cloud of suspicion.

7. Per contra, the learned counsel for the defendants 2 and 3 would argue that:

- The plaintiffs have purchased only a vacant site. This would be evident from Ext.P-1 sale deed 21-03-2004, under which the plaintiff had purchased the property. And, it continued to remain as a vacant site even when Ext.P-2 Power of Attorney was executed. The building in the property came to be built by the third defendant only after he purchased the property under Ext.P-5. It is hence this building got reflected in the sale deed that the third defendant had executed in favour of Sekar on 21-01-2008. Ext.P6 – Encumbrance Certificate shows it. In this context P.W.1 in his testimony states evasively that he did not know if the third defednant had developed the propety after purchase.



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- So far as valuation goes, Ext.P-1 sale deed dated in 2004, in favour of the plaintiffs states that the sale consideration is Rs.12.0 lakhs. Ext.P-5 in December, 2006, which is about two years from Ext.P-1, quotes the sale consideration as Rs.36.0 lakhs. This is a quantum jump, and hence the price as quoted in Ext.P-5 is higher and represents a fair market price. And, these two sale deeds deal with a vacant site. When the third defendant executes a sale deed in favour of Sekar in January, 2008, the sale price increased to Rs.80.0 lakhs, and this includes the value of the building at Rs.20.0 lakhs.
- The suit was laid in 2010, but Ext.P-6 itself indicates that the 3<sup>rd</sup> defendant had already sold the property to a certain Sekar prior to the institution of the suit. Today, it is Sekar's right that would be affected by the decree, but he was not impleaded as a defendant. It is now well beyond the period of limitation to implead him. He also relied on the evidence of PW1.

**Additional Issue 1:**

8. The plaintiffs admit the execution of Ext.P-2 Power of Attorney but still

<https://hcservices.ecourts.gov.in/hcservices/>

pleads that it was not intended to be what it purports to be: That it was only



intended to be a security for a debt. The burden to disprove the character of

Ext.P-2 obviously is on the plaintiffs. This is how they have approached it:

- That the first plaintiff has borrowed a sum of Rs.3.0 lakhs from the first defendant.
- That both the plaintiffs who are joint owners of the suit property have executed Ext.P-2 in favour of the second defendant, somebody, who uptill then was a stranger to them, and about the improbability of granting a stranger the Power.
- Thirdly, the value difference.

9. Where a plaintiff attempts to disprove the nature of a document contrary to what it is, the same could be proved only by a set of circumstantial evidence, which is strong enough to preponderate the probability of the said case. This Court finds that the efforts of the plaintiffs to prove their case fall well short of the requirements:

- As concerning the borrowing, there is no proof that the first plaintiff was in dire financial difficulties at or about the time when Ext.P-2 was executed. This is the minimum that has to be proved.
- On valuation, the defendants have managed to explain that between



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escalation is threefolds – from Rs.12.0 lakhs to Rs.36.0 lakhs. And, the property was a vacant site. The plaintiffs would introduce the case of a building in the property, but they have done nothing to prove that they put up some construction in the site after they had purchased it under Ext.P-1. Not a piece of documentary evidence is produced.

- Thirdly, the second defendant in his testimony had deposed that he had made over Rs.36.0 lakhs, the sale consideration under Ext.P-5, to the plaintiff. This aspect was not adequately probed during the cross examination of D.W.1. The entire effort was to bring out certain inconsistencies between a previous statement of D.W.1 made in the affidavit filed by him before the District Munsiff Court, Alandur in O.S.90/2008, and the one made now before this Court, but that was not adequate to prove that the sale consideration under Ext.P-5 was not made over to the plaintiffs.

- To cap it all, the plaintiffs did not implead a certain Sekar to whom the third defendant had already sold the property even couple of years before the suit was laid. It is his title that would be affected by the outcome of the suit, and he was not a *pendente lite* purchaser. The



plaintiffs knew it, yet failed to implead him.

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**Issues 1 to 3**

10. The result is a writing on the wall. The plaintiffs fail and fail badly. They could not establish any circumstances which may tilt the needle of suspicion to dislodge the character of Ext.P-2.

11. In conclusion, the suit is dismissed. No costs.

Sd./-N.S.S.J.,  
17.09.2021

//Certified to be true copy//

Dated at Madras this the      day of      2021.

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