

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP (PD) No.3772 of 2018

and

CMP.No.21056 of 2018

Panner

... Petitioner

Vs.

R.Vilwanathan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 26.09.2018 passed in I.A.No.1187 of 2017 in O.S.No.102 of 2012, on the file of the Additional District Munsif, Tirupattur, by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Subbiah
Senior Counsel for
: M/s.Elizabeth Ravi

For Respondent : No Appearance

ORDER

This Civil Revision Petition is directed against the fair and decretal order passed in I.A.No.1187 of 2017 in O.S.No.102 of 2012 dated 26.09.2018 on the file of the Additional District Munsif, Tirupattur, thereby

dismissing the petition filed for rejection of plaint.

2. The petitioner is defendant and the respondent is the plaintiff. Originally, the said suit was filed for declaration to declare that the Power of Attorney deed dated 06.02.2008 executed by the respondent herein in favour of the petitioner as null and void. Thereafter, the respondent filed a petition for amendment in I.A.No.394 of 2015 and the same was allowed and accordingly amended the plaint to cancel the Power of Attorney deed dated 06.02.2008 executed in favour of the petitioner herein and the same was dismissed. Aggrieved by the same, the present Civil Revision Petition is filed.

3. Mr.S.Subbiah, learned Senior Counsel for the petitioner submitted that while pending this Civil Revision Petition, the petitioner filed an affidavit stating that the properties covered under the Power of Attorney dated 06.02.2008 are already sold out by him and the portion left out for common purpose such as street etc., to be gifted in favour of the Corporation. Further, it reveals that once the respondent issued notice dated 21.10.2010 for cancelling the Power of Attorney and the Power of Attorney dated 06.02.2008 was terminated, the petitioner has no authority to execute

any sale deed, on the strength of the Power of Attorney deed dated 06.02.2008. The relevant portion of the affidavit dated 25.01.2021 filed by the petitioner as follows:-

“6. I swear, confirm and declare that the properties covered under the General Power of Attorney dated 06.02.2008 had already been sold by me, and also by the respondent plaintiff himself, much prior to the date of the said suit.

7. Except the portion left out and reserved for the public street, the sale deeds had been executed, and what survives is only the execution of the gift deed in respect of the reserved road as per the layout.

8. In as much as, the purpose for which, the said General Power of Attorney dated 06.02.2008 came to be executed by the respondent/plaintiff in my favour had been served and fulfilled, nothing survives in the pending suit in O.S.No.102 of 2012, on the file of the Additional District Munsif of Tirupattur.

9. I also confirm, swear, declare and undertake that I will not in any manner execute any document or do any act in furtherance of the said Power of Attorney document dated 06.02.2008.”

4. The petitioner also declared that he will not in any manner execute any document or do any act in furtherance on the strength of the Power of Attorney dated 06.02.2008. Therefore, nothing survives in the suit and it is liable to be rejected.

5. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.1187 of 2017 in O.S.No.102 of 2012 dated 26.09.2018 is set aside. The plaint in O.S.No.102 of 2012 is rejected. It is made clear that the except the portion left out and reserved for the public streets, other properties were already sold out by the petitioner. Therefore, it is open to the respondent to deal with the remaining property, which is reserved for public streets by executing any gift deed in favour of the Municipalities/Corporation. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order
Index : Yes/No

Internet : Yes/No
kv

To

1. The District Munsif, Tirupattur.
2. The Section Officer,
V.R. Section, High Court of Madras.



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G.K.ILANTHIRAIYAN,J.

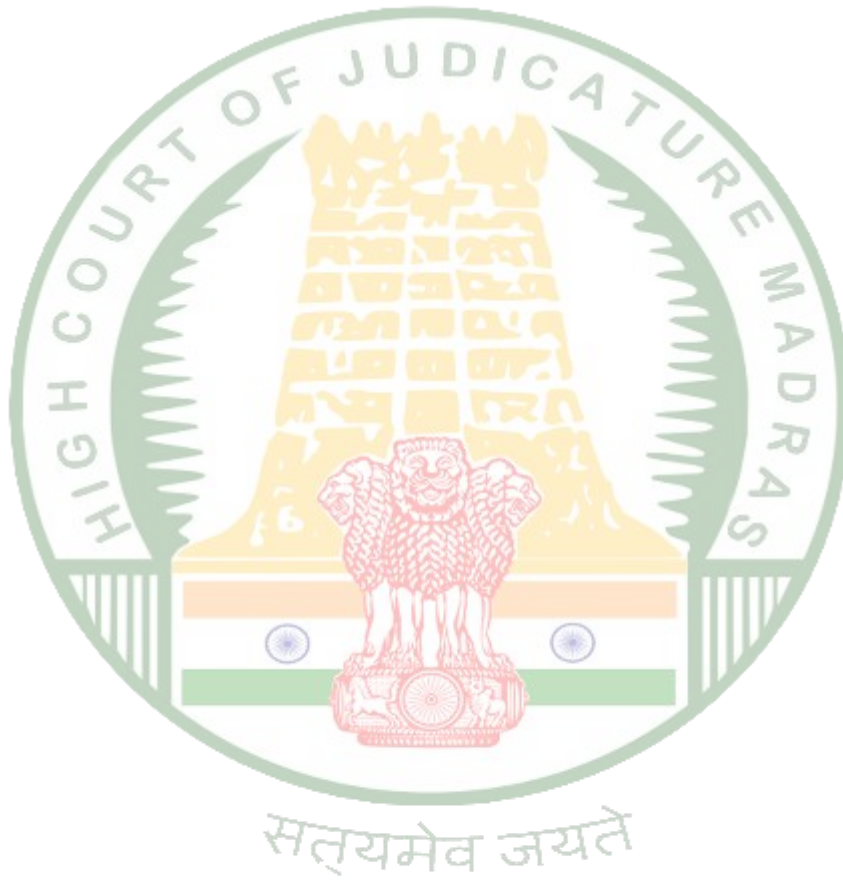
Kv



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