



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.11660 of 2021

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V.Nambi

... Petitioner

Vs.

1. The Sub-Registrar,
Valliyoor Sub-Registrar Office,
Tirunelveli District.
2. K.Murugan
S/o.Late.Kantha Konar,
Represented through his Power Agent,
V.Muthukrishnan,
S/o.Venkatachalam,
No.78, Krishna Bhavanam,
Luthiran Nagar,
North Valliyoor Village,
Radhapuram Taluk,
Tirunelveli District.
3. K.Selvi,
W/o.S.Krishnan,
Represented through his Power Agent,
V.Muthukrishnan,
S/o.Venkatachalam,
No.78, Krishna Bhavanam,
Luthiran Nagar,
North Valliyoor Village,
Radhapuram Taluk,
Tirunelveli District.
4. B.Pechiammal,
W/o.Balan,
Represented through his Power Agent,
V.Muthukrishnan,
S/o.Venkatachalam,
No.78, Krishna Bhavanam,
Luthiran Nagar,
North Valliyoor Village,
Radhapuram Taluk,
Tirunelveli District.



5. S.Velammal
W/o.Subramanian,
Represented through his Power Agent,
V.Muthukrishnan,
S/o.Venkatachalam,
No.78, Krishna Bhavanam,
Luthiran Nagar,
North Valliyoor Village,
Radhapuram Taluk,
Tirunelveli District.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in Refusal Check Slip dated 06.07.2021 and quash the same and consequently direct the first respondent to register the sale deed, dated 06.07.2021 presented by the petitioner for registration and release the same to the petitioner within the time fixed by this Court.

For Petitioner	: Mr.H.Arumugam
For R1	: Mr.R.Suresh Kumar Government Advocate
For R2 to R5	: Mr.Alwin Balan

ORDER

The subject matter of challenge in the present writ petition is refusal of Check slip issued by the first respondent, dated 06.07.2021, wherein, the first respondent has refused to entertain the sale deed on the ground that one of the co-owner, who had executed the power of attorney in favour of Mr.V.Muthukrishnan, had died and therefore, the entire power of attorney document becomes unenforceable.

2. The case of the petitioner is that the respondents 2 to 5 along with their mother Vellaiammal executed a registered power of attorney, dated 15.10.2008 in favour of the power agent V.Muthukrishnan. The petitioner entered into an agreement of sale with the power agent to purchase the property. In the meantime, the said Vellaiammal expired on 25.06.2014.

3. The respondents 2 to 5 represented by the power agent executed the sale deed, dated 05.07.2021 with respect to 4/5th share in the property, in favour of the petitioner. When this document was presented for registration, the first respondent refused to entertain the document on the ground that one of the co-owner had died and therefore, the power of attorney document itself ceases to exist. Aggrieved by the same, the present writ petition has been filed before this Court.



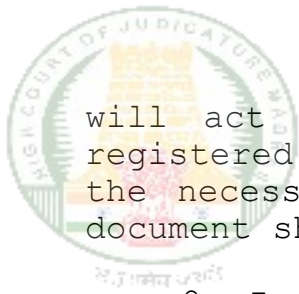
4. Heard Mr.H.Arumugam, learned counsel appearing for the petitioner, Mr.R.Suresh Kumar, learned Government Advocate appearing for the first respondent and Mr.Alwin Balan, learned counsel appearing for the respondents 2 to 5.

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5. This Court has carefully considered the submissions made on either side and the materials available on record. The learned counsel appearing on behalf of the respondents 2 to 5 submitted that on the death of the mother Vellaiammal, the respondents 2 to 5 will inherit her share also and they have become absolute owners of the property. The learned counsel appearing for the petitioner further submitted that the respondents 2 to 5 can now very well sell the property through the power agent and they can sell the entire property.

6. The first respondent has come to the conclusion that the power deed gets cancelled/terminated by virtue of the death of one of the executants of the document. The first respondent did not take into consideration the purport of Section 201 of the Contract Act. What a power of attorney document authorises will depend upon its terms and the purpose for which it was executed. In the present case, admittedly, the respondents 2 to 5 and their mother were joint owners of the property. In other words, each of them were entitled to 1/5th share in the property. Therefore, the power of attorney that was executed by them in favour of Mr.V.Muthukrishnan will confine to their 1/5th share in the property. Therefore, if one of the co-owner dies, the power of attorney document will cease to exist only with regard to the co-owner who died and it will be alive with regard to the other co-owners touching upon their share in the property. The power of attorney document will be operational with regard to 4/5th share in the property and the first respondent went wrong in rejecting the entire power of attorney as invalid on the ground of expiry of one of the co-owner. This position of law was also reiterated by the Division Bench of this Court in ***Prema Sudhamani and others vs. D.Krishna Rao and others*** reported in 2009 (3) MLJ 539. The Division Bench has categorically held that the power deed does not get terminated by virtue of the death of one of the executants.

7. In view of the above discussion, the impugned Refusal Check Slip issued by the first respondent requires interference of this Court and accordingly, the same is quashed. In view of the specific stand taken by the learned counsel appearing on behalf of the respondents 2 to 5, it will be open to the parties to present the sale deed with respect to the entire property provided that, the same will be accompanied with the death certificate of Vellaiammal and legal heirship certificate showing the respondents 2 to 5 as the legal heirs of Vellaimmal. On such production, the first respondent



will act upon the power of attorney and the sale deed can be registered for the entire property, if it is otherwise in order and the necessary stamp duty and registration charges are paid. The document shall be released immediately after the registration.

8. In the result, the writ petition is allowed with the above direction. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Sub-Registrar,
Valliyoor Sub-Registrar Office,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-22524[F] dated 14/07/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-22413[F] dated 14/07/2021)

**W.P. (MD) .No.11660 of 2021
13.07.2021**

RC (22.07.2021) 4P-4C