

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2022
DELIVERED ON : 04.07.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S. KANNAMMAL

A.S.NO.468 OF 2013
AND
M.P.NO.1 OF 2013

Senthilkumar ...Appellant / 5th Defendant

Vs.

1.Subramanian
2.S.V.Sathichandran
3.S.V.Srinivasan
4.S.N.Srinivasan
5.N.Srithar

...Respondents / Plaintiff &
Defendants 1 to 4

[R2 to R5 already set ex parte in the
trial Court itself and hence notice to
them is not necessary]

Prayer : Appeal Suit filed under Order 41 Rule 1 r/w. Section 96
of the Code of Civil Procedure against the judgment and decree
passed in O.S.No.2 of 2005 dated 28.01.2013 on the file of the
Additional District Judge, Dharapuram.

For Appellant : Mr.N.Manoharan
for Mr.N.Ponraj

For R1 : Mr.B.Kumar
Senior Counsel
for Mr.R.Ashokan

R2 to R5 : ex parte

J U D G M E N T

The appeal has been filed against the judgment and decree,
dated 28.01.2013, passed by the learned Additional District
Judge, Dharapuram, in O.S.No.2 of 2005.

2. For the sake of convenience, the parties shall
hereinafter be referred to by their rank before the trial Court.

3. The case of the plaintiff is as follows :

- The defendants 1 to 4 are the original owners of the suit properties by virtue of registered Will dated 23.02.1967.
- The defendants 1 and 2 appointed the 5th defendant as their Power Agent to sell their property, vide registered Power of Attorney dated 19.04.2022.
- Likewise, the defendants 3 and 4 also appointed the 5th defendant as their Power Agent to sell their property, vide registered Power of Attorney dated 13.06.2002.
- The 5th defendant, in the capacity of Power Agent for the defendants 1 to 4, executed a sale agreement, dated 19.09.2002, with the plaintiff to sell the suit properties belonging to the defendants 1 to 4, for a sale consideration of Rs.5,50,000/-. The 5th defendant received an advance amount of Rs.3,00,000/- from the plaintiff on the same day towards the sale consideration.
- The balance sale consideration of Rs.2,50,000/- was agreed to be paid within a period of 30 months from the date of the agreement.
- The plaintiff was always been ready and willing to pay the balance sale consideration and get the sale deed executed in his favour, however, despite several personal meetings in this regard, the 5th defendant has been evading to perform his part of the contract dated 19.09.2002.
- Finally, on 27.01.2005, when the plaintiff approached the fifth defendant to receive the balance sale consideration and execute the sale deed, he refused to do the same. Therefore, the suit.

4. The defendants 1 to 4, who are the original owners of the suit properties, were set ex parte before the trial Court.

5. The 5th defendant, who is the Power Agent of the defendants 1 to 4, filed his written statement and took a stand as follows :

- The 5th defendant agrees the Power of Attorney documents, dated 19.04.2022 and 13.06.2002, executed by the defendants 1 to 4 in his favour to sell the suit properties.
- The plaintiff and his father are in the business of lending money to others. The 5th defendant approached the plaintiff for loan, but the plaintiff demanded title documents as security.
- Therefore, the 5th defendant gave the Power of Attorney documents to the plaintiff and obtained a loan of Rs.2,00,000/- from the plaintiff. At that time, he also executed two blank promissory notes as security for repayment of the loan. Thereafter, the 5th defendant had been regularly paying interest towards the said loan, however, the plaintiff had not given any acknowledgment for receipt of interest.

- At one point of time, since the 5th defendant was unable to pay the interest, the plaintiff threatened him that he would take illegal advantage out of the original Power of Attorney documents available with him and get back his money.
- Accordingly, the plaintiff, by forging the signature of the 5th defendant available in the promissory notes, has managed to create a fake sale agreement and has filed the suit.
- Only after receiving the notice in the suit, the 5th defendant came to know that the plaintiff has fabricated such a false document. But, the 5th defendant never intended to sell the suit properties to the plaintiff.
- The signatures found in the alleged sale agreement dated 19.09.2002 is not that of the 5th defendant and they have been forged by the plaintiff.
- The suit has been filed even before the expiry of the time stipulated in the alleged sale agreement, hence, the suit is pre-mature.
- Therefore, the suit is liable to be dismissed.

6. On the above pleadings, the trial Court framed the following issues:

1. "Whether the plaintiff is entitled for specific performance as prayed for ?
2. Whether the suit agreement is true and valid ?
Whether it was executed for loan transaction?
3. Whether the suit is pre-matured?
4. To what relief if any?"

7. On the side of the plaintiff, P.Ws.1 to 3 were examined and Exs.A1 to A3 were marked. On the side of the defendants, the 5th defendant examined himself as D.W.1 and no document was marked.

8. The trial Court, on considering the oral and documentary evidence on record, by judgment and decree dated 28.01.2013, came to a conclusion that the sale agreement, dated 19.09.2002 (Ex.A3), is a genuine document and thereby, decreed the suit in favour of the plaintiff.

9. Challenging the judgment and decree, dated 28.01.2013, passed by the trial Court, the 5th defendant has filed the above appeal before this Court.

10. Mr. N. Manoharan, learned counsel appearing for Mr. N. Ponraj, learned counsel for the appellant/5th defendant, made the following submissions before this Court :

- The suit agreement, dated 19.09.2002 (Ex.A3), is a forged and fabricated document.
- The plaintiff (P.W.1) and the scribe of Ex.A3 (P.W.2) have

admitted that the plaintiff is a financier.

- The plaintiff has not sent any pre-suit notice before institution of the suit.
- The plaintiff (P.W.1) himself has admitted that the signature of the 5th defendant varies in each page of Ex.A3.
- P.W.2 has admitted in his evidence that the advance amount was not paid in his presence.
- When the 5th defendant has categorically denied the agreement Ex.A3, the burden is on the plaintiff to prove that there exists an enforceable contract between them. In this regard, the learned counsel relied upon the judgment of this Court in M.Jayaprakash Narayanan v. Santhammal [2018 (1) CTC 701].
- It is settled position of law that, when the execution of an unregistered document put forth by the plaintiff is denied by the defendant, it is for the plaintiff who has propounded the document to prove it and not for the defendant to disprove the document. In this regard, he relied upon the judgment of the Hon'ble Supreme Court in Thiruvenga Pillai v. Navaneethammal and others [2008 (4) SCC 530].
- The plaintiff has miserably failed to prove his readiness and willingness to perform his part of the alleged contract. The trial Court has not rendered any finding on the readiness and willingness of the plaintiff. In this regard, the learned counsel relied upon the judgments of the Hon'ble Supreme Court in Padmakumari and others v. Dasayyan and others [2015 (8) SCC 695] and J.P.Builders & another v. A.Ramadas Rao & another [2011 (1) SCC 429].
- Since the 5th defendant has been arrayed in the capacity of Power Agent of the defendants 1 to 4, non-appearance of the defendants 1 to 4 would have no significance. Moreover, they have given power to the 5th defendant to deal with the properties as he likes as could be seen from Exs.A1 and A2.
- Relying on the judgment of the Hon'ble Supreme Court in Jayakantham and others v. Abaykumar [2017 (5) SCC 178], the learned counsel submitted that the relief of specific performance is not automatic and it is discretionary and in the present case on hand, the plaintiff has not proved the contract-Ex.A3 and hence, the suit is liable to be dismissed.

11.Per contra, Mr.B.Kumar, learned Senior Counsel appearing for Mr.R.Ashokan, learned counsel for the 1st respondent/plaintiff made the following submissions before this Court :

- The owners of the suit properties, viz., the defendants 1 to 4 appointed the 5th defendant as their Agent only for negotiating, entering into agreement for sale, execute, present the sale deeds before the Registration Office and

make necessary endorsement to complete the sale, however, they have not authorized the 5th defendant to file any suit or contest/defend any suit on their behalf.

- In the absence of any such specific power given to him by his Principals, the 5th defendant cannot conduct any suit or defend any suit or file any appeal and therefore, the appeal is not maintainable.
- Relying on the judgments of this Court in *Anantha Pillai v. Rathnasabapathy Mudaliar* [1968 (2) MLJ 574] and *P.Subbulakshmi v. K.P.Ramasamy* [2021 (1) CTC 522], the learned Senior Counsel submitted that Power of Attorney must be strictly construed as giving only such authority as they confer expressly or by implication and what it authorizes depends on terms and the purpose for which it is executed.
- Relying on the judgment of the Hon'ble Supreme Court in *Church of Christ Charitable Trust and Educational Charitable Society v. Ponnamman Educational Trust* [2012 (8) SCC 706], he submitted that a Power of Attorney has to be strictly construed and the Power Agent cannot use the Power of Attorney for his own benefit.
- The 5th defendant has no personal interest in the suit property and he is no way affected by the decree passed in the suit. The principals (defendants 1 to 4) themselves have accepted the decree and have not chosen to file any appeal.
- The 5th defendant is not an 'aggrieved person' by the decree passed in the suit. Only an aggrieved person can prefer an appeal. If at all the 5th defendant is aggrieved, he has to seek leave to file appeal demonstrating as to how he is aggrieved by the decree, however, the same has not been done in this case.
- By relying on the judgment of the Hon'ble Supreme Court in *State of Punjab (now Haryana) and others v. Amar Singh and another* [AIR 1974 SCC 994] and the judgment of the High Court of Kerala in *Govinda Menon v. Madhavan Nair and others* [AIR 1964 Ker 235], the learned Senior Counsel submitted that the appeal filed by the 5th defendant, who is not an aggrieved person, is not maintainable.
- There is no need to frame issue as to the readiness and willingness of the plaintiff, when there is no challenge to the same in the written statement nor any question put forth in that regard during the cross-examination of the plaintiff. In support of the said contention, the learned Senior Counsel relied on the judgments of this Court in *Periyannan v. Palanisamy* [2017 SCC Online Mad 12825] and *M.Mohammed Ismail v. K.P.Subbiah* [2015 (3) MWN (Civil) 78].
- The plaintiff need not wait for expiry of the time indicated in the sale agreement to file a suit for specific performance. There is no such provision in the Specific

Relief Act, 1963, requiring the plaintiff to wait for expiry of the time stipulated in the contract. In this regard, the learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court in M/s.Virgo Industries (Eng.) Pvt. Ltd. v. M/s.Venturetech Solutions P. Ltd. [2013 (1) SCC 625].

Therefore, the learned Senior Counsel submitted that the appeal is liable to be dismissed.

12.Heard the learned counsel on either side and also perused the entire materials available on record.

13.On the rival submissions made by the learned counsel on either side, the following points arise for consideration :

- i. Whether the appeal is maintainable ?
- ii. Whether the sale agreement (Ex.A3) is true and genuine ?
- iii. Whether the plaintiff is entitled to the relief of specific performance ?
- iv. To what relief, the plaintiff is entitled to ?

Point No.1 :

14.The suit has been filed by the plaintiff against the defendants 1 to 4, who are the original owners of the suit properties and the 5th defendant has been arrayed as a party to the suit in the capacity of Power Agent of the defendants 1 to 4.

15.The learned Senior Counsel appearing for the plaintiff contended that the 5th defendant has no power or locus standi to file any appeal, inasmuch as he has not been vested with such a specific power by his Principals. He contended that the 5th defendant was arrayed as a party to the suit only in the capacity of Power Agent of the defendants 1 to 4 and the Power of Attorney documents (Exs.A1 and A2) do not specifically grant any power to the 5th defendant to file any appeal, therefore, the appeal filed by the 5th defendant in his individual capacity, is not maintainable.

16.Per contra, the learned counsel for the 5th defendant contended that the plaintiff himself has arrayed the 5th defendant in the suit and has sought a prayer against the 5th defendant, which itself implies that the 5th defendant is vested with the authority to contest the suit on behalf of the Principals and therefore, the appeal is also maintainable. Moreover, the plaintiff, not having made a plea on the locus standi of the 5th defendant before the trial Court, is not entitled to make such a plea for the first time in the appeal proceedings.

17.The Power of Attorney documents (Exs.A1 and A2), on the strength of which, the 5th defendant has filed the present appeal, specifically reads that the Principals vest powers on the 5th defendant to perform the functions of negotiating, entering into agreement for sale or canceling the sale agreement and executing and presenting the sale deeds before the Registration Office and making necessary endorsement to complete the sale, however, there is no specific averment in the Power of Attorney documents granting power to the 5th defendant to contest suit or defend suit or file any case before the Court of Law in respect of the suit properties on behalf of the Principals.

18.In Syed Abdul Khader v. Rami Reddy and others [AIR 1979 SC 553], the Hon'ble Supreme Court has held "A Power of Attorney has to be strictly construed and what it authorises depends on its terms and the purpose for which it is executed."

19.In Anantha Pillai v. Rathnasabapathy Mudaliar (supra), this Court has held as follows :

"Some of the principles governing the construction of a power-of-attorney are : (1) the operative part of the deed is controlled by the recitals; (2) where an authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the performance of the particular acts; (3) the general words do not confer general powers but are limited to the purpose for which the authority is given and are construed as enlarging the special powers only when necessary for that purpose; (4) a power-of-attorney is construed so as to include all medium powers necessary for its effective execution. ... I must point out that there is no magic in the nomenclature of a power-of-attorney being a general power-of-attorney. The scope of the power has to be gathered from the language of the document."

20.In P.Subbulakshmi v. K.P.Ramasamy (supra), this Court has held as follows :

"18.2. If Ext.B-4 power of attorney is tested on the principles stated, it fails to convince this Court, that under it the defendant could have obtained any authority to defend any suit or action pertaining to the suit property on behalf of his principal Sonai. There is neither any express term; nor are there any terms from which it could be gathered by implication. Unfortunately, neither of the judgements delivered by the trial Court and the first appellate court make a pointed reference to this aspect. With the defendant proving to be incompetent to defend Sonai, the latter

retains his status as a necessary party to the suit, and hence the case instantly falls within the proviso to Sec.99 CPC. Surely, it is an anticlimax. When an act of the agent is beyond the authority granted to him by the principal, then such acts cannot bind the principal. Ex consequenti, the decrees passed by both the courts are vitiated and have become non est."

21. In the light of the above decisions, this Court is of the opinion that the 5th defendant has no power or authority to file an appeal in his individual capacity as against the decree passed in favour of the plaintiff. It is true that the plaintiff has arrayed the 5th defendant as a party to the suit, but on a reading of the plaint, it is seen that the suit has been filed mainly against the defendants 1 to 4, who are the original owners of the suit properties and the plaintiff has made it clear in the plaint that the 5th defendant has been arrayed as a party only in the capacity of Power Agent of the defendants 1 to 4. Therefore, it is clear that the 5th defendant has been arrayed only as a proper party to the suit. The prayer sought for in the plaint is for a decree to receive the balance sale consideration and execute the sale deed in favour of the plaintiff, either by the defendants 1 to 4 or by the 5th defendant. Hence, the suit prayer is also not targeted against the 5th defendant to manifest him as a necessary party to the suit. Therefore, arraying of the 5th defendant as a party to the suit by the plaintiff will not bar the plaintiff from taking a stand on the locus of the 5th defendant for the first time in the present appeal.

22. In V.N. Krishna Murthy and another v. Ravikumar and others [2020 (9) SCC 501], the Hon'ble Supreme Court has held as follows :

"15. Section 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls within the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the Appellate Court. Reference be made to the observation of this Court in Smt. Jatan Kumar Golcha Vs. Golcha Properties Private Ltd.:-

"It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment."

16. This Court in *State of Punjab & Ors. Vs. Amar Singh & Anr.* while dealing with the maintainability of appeal by a person who is not party to a suit has observed thus :-

"Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in *re Securities Insurance Co.*, [(1894) 2 Ch 410] have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it."

17. In *Baldev Singh Vs. Surinder Mohan Sharma and Ors.*, this Court held that an appeal under Section 96 of the Civil Procedure Code, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in paragraph 15 as under:-

"A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned."

18. In *A. Subash Babu Vs. State of A.P. and Anr.*, this Court held as under:-

"The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined that the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and extent of the prejudice or injuries suffered by him."

19. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been

adversely affected or jeopardized (vide Shanti Kumar R. Canji Vs. Home Insurance Co. of New York and State of Rajasthan & Ors. Vs. Union of India & Ors.).

20. In Srimathi K. Ponnalagu Ammani Vs. The State Of Madras represented by the Secretary to the Revenue Department, Madras and Ors., this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in following words:-

"Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."

21. Applying the above tests, we are of the considered opinion that appellants can neither be said to be aggrieved persons nor bound by the judgment and decree of the Trial Court in any manner. The relief claimed in the suit was cancellation of agreement to sell. On the other hand, the sale deeds which were the basis of the claim of the appellants were executed on the basis of General Power of Attorney, and had nothing to do with the agreement to sell which was subject matter of suit. The judgment and decree of the Trial Court is in no sense a judgment in rem and it is binding only as between the plaintiffs and defendants of the suit, and not upon the appellants."

23. From the judgment cited supra, it is clear that a party to the proceedings has a right to appeal and a person who is not a party to the proceedings can appeal only if he satisfies the Court that he is aggrieved by the judgment impugned and obtains leave of the Court. No doubt, in the present case on hand, the 5th defendant is a party to the suit, however, it is pertinent to note that he has not been arrayed as a defendant in his individual capacity, but only in the capacity of Power Agent of the defendants 1 to 4. Therefore, it is imperative on the 5th defendant to seek leave of this Court before filing the appeal against the judgment passed in the suit, but he has failed to do

so. Even if tested whether the 5th defendant can be granted leave, being a Power Agent of the defendants 1 to 4, the 5th defendant can in no way be aggrieved by the impugned judgment and decree, insofar as the defendants 1 to 4 are the only persons who are truly impacted by the impugned judgment and decree. When the defendants 1 to 4 have chosen to remain ex parte in the suit and have also not chosen to file any appeal even after a decree has been passed against them by the trial Court, the Power Agent, who has no power or authority to file any appeal even by virtue of the Power of Attorney relied upon by him, nor even aggrieved by the judgment and decree impugned herein, is not entitled to file any appeal against the judgment and decree of the trial Court and therefore, this Court finds that the appeal filed by the 5th defendant is not maintainable. Point No.1 is answered accordingly.

Point Nos.2 to 4 :

24.When the appeal fails on the ground of maintainability itself, Point Nos.2 to 4 need not be gone into in this appeal.

25.However, in view of the vehement rival submissions made before this Court with regard to the forgery of signature in the sale agreement (Ex.A3), this Court would like to make some observations on that aspect alone.

26.The learned counsel for the 5th defendant contended that the alleged signature of the 5th defendant noticeably varies from page to page in Ex.A3, which is apparent on the face of it, and that itself proves that the plaintiff has forged the signature of the 5th defendant. This Court, on examining Ex.A3, could see that the signature of the 5th defendant explicitly varies from page to page. However, in order to check the veracity of the said contention of the learned counsel, this Court examined the entire materials available on record, and it could be seen that the 5th defendant has signed in different forms in each and every document. For instance, the signatures of the 5th defendant found in the notice served on him in the injunction petition before the trial Court, the proof affidavit filed by him before the trial Court, the signature made during the cross-examination, are of different and even in a particular form of signature, there are apparent variations to a large extent from one page to another, which can be clearly noticed with naked eye. Very importantly, in the affidavit filed by the 5th defendant before the trial Court in the application to set aside the ex parte order passed against him, it can be seen that the 5th defendant has erased the earlier signature and signed over it. Therefore, it is clear that the 5th defendant has adopted the tactics of signing in different forms in different documents to gain advantage and to escape from the clutches of law.

Therefore, the contention of the learned counsel for the 5th defendant with regard to forgery of signature, has no legs to stand.

27. In the result, this appeal filed by the 5th defendant is not maintainable and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

mkn

To

The Additional District Judge,
Dharapuram.

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V.R. Section,	original records to the Court below,
High Court, Madras.	immediately

+1cc to Mr.N.Ponraj, Advocate Sr.No.42841

+1cc to Mr.R.Asokan, Advocate Sr.No.42456

A.S.No.468 of 2013

PA(CO)
RVM(29/07/2022)