



A.S.No.307 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE N.MALA

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1.Periammal
2.Chinnakannu
3.Kamalam

...Appellants

Vs.

1.Ramesh
2.Suresh
3.Geetha
4.Baggiam
5.Sudha
6.Sekar
7.P.Gunasekaran
8.Singaravelu

... Respondents

Prayer:- Appeal Suit filed under Section 96 C.P.C., against the judgment and decree dated 30.09.2010 made in O.S.No.150 of 2007 passed by the learned Additional District Judge, Fast Track Court No.2, Salem.

For Appellants	: Mr.M.Arun Kumar for M/s.Sampath Kumar Associates
For R1 to R5	: Mr.D.Thirumoorthy
For R6 & R7	: No appearance
For R8	: Mr.T.S.Vijaya Raghavan



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JUDGMENT

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[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

The unsuccessful plaintiffs in the suit in O.S.No.150 of 2007 on the file of the Additional District Judge, Fast Track Court No.2, Salem are the appellants in the above appeal.

2. The suit in O.S.No.150 of 2007 was filed by the plaintiffs for partition of their 3/5th share in all the suit properties.

3. It is the case of plaintiffs/appellants in the plaint, that the suit properties belonged to one Kaligounder who died about 15 years ago. It is admitted that the said Kaligounder died leaving behind his two sons, Ramasamy and Subramaniam, and three daughters namely the plaintiffs/appellants.

4. It is admitted in the plaint that the wife of Kaligounder predeceased him. Therefore it is stated that the plaintiffs as his legal heirs as daughters of Kaligounder are entitled to 3/5th shares since it is admitted that the suit properties are the absolute properties of Kaligounder. 1st defendant is the son of



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Ramasamy and 3rd defendant is his daughter. Wife of Ramasamy, predeceased him. It is stated that Subramaniam also died on 15.02.2007 leaving behind his son, the 2nd defendant, wife, the 4th defendant and a daughter who is impleaded as 5th defendant. 7th defendant is the son-in-law of 1st plaintiff. It is also stated that their brothers namely Ramasamy and Subramaniam along with the 1st plaintiff/1st appellant and others were running a Sago Factory in partnership with the name 'O.K.R. Sago Factory'. Though the O.K.R. Sago Factory was closed long back, it is stated that partners sustained a heavy loss in the business.

5. It is the further case of the appellants that the 7th defendant is the son-in-law of the 1st defendant. It is stated that the brothers of plaintiffs by name Ramasamy and Subramaniam borrowed a huge amount from a finance company belonging to the 6th defendant and the documents of title in respect of the suit properties were also handed over to the said finance company run by the 6th respondent. It is the case of plaintiffs that the 6th respondent besides taking signature of borrowers in blank pronotes, blank papers and blank stamp papers took an Agreement of Sale in respect of suit properties as a security for the loan on 20.10.1997.



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6. It is the case of the plaintiffs that the 6th respondent fabricated the Agreement of Sale in respect of the suit properties in the name of the 6th respondent who was also one of the partners of the finance company. The agreement dated 20.10.1997 was described as a fabricated document. It is admitted by the appellants that a subsequent agreement was also executed on 14.10.1999 extending the time for performance. It is further admitted that at the time of extending the time for performance by fresh Agreement of Sale, a Power of Attorney was executed by Ramasamy and Subramaniam, the plaintiffs and defendants 1 and 2 on the same date in favour of the 7th defendant. It is contended by the plaintiffs/appellants that the Power of Attorney was also intended only as security for the due discharge of the loans due to the 6th respondent. Stating that the plaintiffs had nothing to do with the loan obtained by the brothers of plaintiffs, but they were joined in the execution of the Power of Attorney document at the request of their brothers and also the 7th defendant the suit was filed.

7. It is the case of the appellants that defendants 1 to 7 have colluded together and executed a Sale Deed in respect of the entire suit property in



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favour of the 8th defendant on 18.09.2007 for the alleged consideration of Rs.8,28,000/-. It is admitted that the 3rd defendant is the daughter of Ramasamy and defendants 4 and 5 are the wife and daughter of one Subramaniam, the other brother of the plaintiffs. Though it is admitted that defendants 3 to 5 also executed a Power of Attorney Deed in favour of the 6th defendant, the Sale Deed in favour of the 8th defendant executed by the 7th defendant was questioned only on the ground that the two brothers of plaintiffs namely Ramasamy and Subramaniam died on 01.11.2003 and 15.02.2007 respectively, and that the Power of Attorney executed by the plaintiffs in favour of the 7th defendant also came to an end on the death of brothers of plaintiffs. It is contended that the Sale Deed executed by the 7th defendant in favour of the 8th defendant on 18.09.2007 on the strength of the Power of Attorney Deed dated 14.10.1999 executed by the plaintiffs and their two brothers in favour of the 7th defendant would be invalid as the Power of Attorney deed came to an end upon the death of their brothers on 01.11.2003 and 15.02.2007.

8. It was also contended by the appellants that the Power of Attorney Deed and the subsequent Sale Agreement extending the time was executed in favour of the 7th defendant only as security for the loan transaction and that



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there was no consideration for the agreement and there was no intention to sell the property. Though the Power of Attorney Deeds executed by defendants 3 to 5 who are also the legal heirs of the appellants' two brothers is admitted, the appellants contended that the Power of Attorney Deed and the subsequent Sale Deed is not valid in respect of appellants 3/5th shares in all the suit properties. Therefore after admitting the transactions through which the 8th defendant obtained title to the property, the suit for the partition of the appellants' 3/5th shares was prosecuted only on the ground that the Power of Attorney Deed, as well as the Sale Agreement, was executed as security for the loan transaction.

9. The Trial Court after framing specific issues held that the Sale Agreement dated 22.10.1997 and 14.10.1999, and the Power of Attorney Deed dated 14.10.1999 in favour of the 7th defendant are true and valid. It was further held that the sale in favour of the 8th defendant is binding on the plaintiffs and defendants 1 to 5 since the Power of Attorney Deed in favour of the 7th defendant is not cancelled and that the death of the plaintiffs' brothers will not invalidate the power in so far as it authorised the power agent to act as an agent of plaintiffs/appellants. One of the issues raised by the plaintiffs was whether the plaintiffs are in possession and enjoyment of the suit property to get a



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decree for injunction as against the 8th defendant. The Trial Court held that the plaintiffs are not in possession of the property. Therefore the suit in its entirety was dismissed by the Trial Court. Aggrieved by the same the above appeal is preferred by the plaintiffs.

10. The learned counsel appearing for the appellants submitted that the Sale Agreement as well the subsequent agreement for extension of time along with Power of Attorney Deed was executed only as security for loan transaction and the Trial Court has failed to consider all the issues. The learned counsel submitted that the 8th defendant who is the 8th respondent in the appeal did not choose to enter the box and that therefore the Court ought to have held that he is not a bona fide purchaser of the property. The learned counsel further submitted that the Power of Attorney Deed executed by the plaintiffs/appellants along with their brothers can not survive as two of their brothers died on 01.11.2003 and 15.02.2007 and that on the death of two of the joint owners the Power of Attorney Deed will come to an end. In other words, it is contended that the law is settled the Power of Attorney deed dies with the death of any one of the two principals. The learned counsel then submitted that the Sale Deed in favour of the 8th respondent was executed 8 years after the



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Agreement of Sale and that therefore the Sale Deed in favour of the 8th defendant is invalid and does not confer title in favour of the 8th defendant.

Therefore the points for consideration is whether the agreement, Power of Attorney Deed and the Sale Deed are sham and nominal and executed only as security for the loan transaction and whether the Power of Attorney Deed became invalid on the death of two of the co-executants.

11. The Trial Court has extensively considered the evidence and held that the two agreements dated 22.10.1997 and 14.10.1999 and the Power of Attorney Deed executed in favour of the 7th defendant are true and valid. When the execution of such agreement is not denied and the plaintiffs' plea that the agreements and the Power of Attorney Deed were executed without any intention to sell the suit property, the burden lies on them to prove the same by leading proper evidence. The contesting respondents had discharged their burden by proving the Sale Agreement, the Power of Attorney Deed and the subsequent Sale Deed in favour of the 8th defendant. In a plea that the document is invalid or sham and nominal, the plaintiffs are expected to come forward with the specific plea and prove it with sufficient documents and evidence as to the nature of transaction. It is admitted that substantial amount was advanced



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by the 6th defendant in connection with the business and all the children of

Kaligounder had agreed to execute the Sale Deed in favour of the 6th defendant.

The 1st Sale Agreement and the subsequent Agreement extending the time in the context of the Power of Attorney Deed would only help defendants 7 and 8 to establish the bona fides of the transaction. The execution of the documents is not an issue. The learned counsel submitted that the Power of Attorney Deed executed by the plaintiffs along with their brothers under Ex.A2 will come to an end with the death of two of the brothers of the appellants. A general Power of Attorney Deed does not come to an end by the death of one of the executants. The position is also dealt with by a Division Bench of this Court in the case of *Prema Sudhamani and Others Vs. D.Krishna Rao and Others* reported in **2009 (3) MLJ 539**. The Division Bench after referring to a few precedents has held that the general Power of Attorney Deed does not get terminated by death of one of the co-executants.

12. It is pertinent to mention that a previous judgment by this Court taking similar view in the case of *M.Ponnusami Pillai and Another Vs. Chidambaram Pillai and Others* reported in **(1918) 35 MLJ 294** has been considered by the Division Bench of this Court in **2009 (3) MLJ 539**. We find



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that the position is reiterated in several precedents and it is accepted that A Power of Attorney given to an agent by two members of a joint Hindu trading family is not terminated by the death of one of the executants.

13. In several cases, this aspect has been dealt with. When a Power of Attorney Deed is executed, it only gives only a limited right in favour of the agent to act on his behalf in respect of certain things and the right to act on behalf of principal has to be seen from the written instructions in the deed. In the present case, the Power of Attorney Deed under Ex.A2 confers absolute right in favour of the Power of Attorney Agent to deal with the property on behalf of his principals. The authority under the Power of Attorney Deed to act on behalf of others does not come to an end by the death of any one of the executants either as per the terms or by applying any law. No law extinguishes or terminates the Power of Attorney Deed executed by several persons on the death of one of the co-executants. In this case after the death of brothers of appellants, the other legal heirs defendants 3 to 5 have also executed a Power of Attorney Deed independently under Ex.A4. The findings of the Trial Court with regard to the validity of Power of Attorney Agent to represent plaintiffs and defendants 1 and 2 despite the death of one of the co-executants is based on



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binding precedents and hence no interference is warranted.

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14. As a result, this first appeal stands dismissed by confirming the judgment and decree dated 30.09.2010 made in O.S.No.150 of 2007 passed by the learned Additional District Judge, Fast Track Court No.2, Salem. No costs.

[SSSRJ] [NMJ]
16.11.2022

cda

To

- 1.The Additional District Judge,
Fast Track Court No.2, Salem.
- 2.The Section Officer, VR Records,
High Court, Chennai.



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AND

N.MALA, J.,

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