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C.R.P.(PD) No.674 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.674 of 2022
and CMP.No.3449 of 2022

Jeeva @ Jeeva John

... Petitioners / Petitioner / Plaintiff

Vs.

1.K.Rajalakshmi

2.V.Dhandapani

3.Santha

4.Thenmozhi

5.The Sub Registrar

Having office at Padappai

Kancheepuram District

6.The District Collector

Kancheepuram

Having office at Kancheepuram.

... Respondents / Respondents /
Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 12.11.2021 in I.A.No.780 of 2019 in O.S.No.71 of 2014 on the file of the District Munsif, Tambaram and consequently allow the I.A.No.780 of 2019.



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For Petitioner : Mr.M.Thangadurai

ORDER

The plaintiff who has lost his application for appointing a Commission for local inspection in I.A.No.780 of 2019 in O.S.No.71 of 2014 on the file of the District Munsif, Tambaram, has approached this Court in this revision.

2. The factual background of this case are as follows :

- According to the plaintiff, he has obtained a loan of Rs.30,00,000/- from a certain Kamaraj, that to secure the said loan, Kamaraj demanded an execution of mortgage deed pertaining to the property along with a General Power of Attorney.
- The plaintiff claims he has discharged his loan to the said Kamaraj. But before Kamaraj could return the original deeds, he passed away. Thereafter, the plaintiff approached the first defendant and obtained a receipt to that effect. The original title deed however was not handed over to the plaintiff by the heirs of Kamaraj, as they could not lay their hands on it.



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- Subsequently, some of the defendants came to dispossess the plaintiff, claiming that they have purchased the suit property from Kamaraj, on the strength of a General Power of Attorney that the plaintiff had executed in favour of Kamaraj at the time he availed the mortgage-loan.
- Hence, the plaintiff laid the suit for challenging the General Power of Attorney and also the sale deed that Kamaraj had executed in favour of the defendants 2 and 3 on the strength of it.
- The suit has gone to trial and it is in its concluding stage. At this stage, the plaintiff has taken out this application for local inspection and to file a report on the physical features of the property.
- This was dismissed by the trial Court and now it is under challenge in this revision

3. Here it is pertinent to note, argued the learned counsel for the plaintiff, that the mortgage money had been paid and the heirs of Kamaraj had even received it and issued a receipt. But Kamaraj had misused the General Power of Attorney and sold the property even when he was alive. This is



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puzzling because at the time when Kamaraj sold the property, the mortgage was still subsisting. If only the intention behind executing the General Power of Attorney is to use it as such, then it does not explain need for the execution of the mortgage deed. Here, there are two incongruencies :

- (a) On the date when the mortgagee used the General Power of Attorney he has not adjusted this mortgage money due from the mortgagor / the executor of the Power of Attorney against the outstanding mortgage-money.
- (b) If the plaintiff has actually authorised Kamaraj to deal with the property on the General Power of Attorney, then nothing prevented Kamaraj from intimating the plaintiff about he selling the property to third parties. And if it has happened, then it is easier for him to adjust the mortgage money, but everything has happened behind the back. Believing bonafide that the mortgage money was still due to be paid, the plaintiff had paid it to the heirs of Kamaraj.

4. The relief sought in the suit is for a declaration concerning the General Power of Attorney dated 28.12.2007, and also for a declaration that the sale



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deed dated 17.07.2008 executed on its strength is void, for some allied reliefs. The decision in the case, given its scope and nature, depends essentially on the quality of oral and documentary evidence. It may not have anything to do with the existence of a building, or otherwise in the property.

5. There is considerable merit in the arguments of the learned counsel for the petitioner, but the learned counsel is making this argument at a wrong Court. These are the arguments he needs to advance before the trial Court, and this Court is concerned only with the merit of the reasoning of the learned trial Judge in dismissing the application for appointing the Commission.

6. The learned counsel for the revision petitioner submitted that during the pendency of this civil revision petition, the trial Court has closed the plaintiff's side arguments. The trial Court is directed to grant the plaintiff an opportunity of being heard. After all, the Court cannot assume an disciplinarian attitude, and may not err on the rule of fairness.



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7. With the above observation, this civil revision is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

10.03.2022

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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Note : Issue order copy on 15.03.2022

To:

- 1.The District Munsif,
Tambaram.
- 2.The Sub Registrar
Having office at Padappai
Kancheepuram District
- 3.The District Collector
Kancheepuram



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N.SESHASAYEE.J.,

ds

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