



C.R.P.(PD) No.1200 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM : JUSTICE N.SESHASAYEE

C.R.P.(PD) No.1200 of 2021  
and CMP.No.9251 of 2021

1.J.Rajasekaran  
2.R.Alice Thabitha

... Petitioners / Petitioners /  
Defendants 9 & 10

Vs.

1.Uma @ Govindammal  
2.K.Mallika

... Respondents / Respondents /  
Plaintiffs

**Prayer :** Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 22.02.2021 made in I.A.No.3 of 2019 in O.S.No.102 of 2019 on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee, with costs.

For Petitioners : Mr.Jeremiah Gregory John  
For Respondents : Mr.K.Harikrishnan



C.R.P.(PD) No.1200 of 2021

**ORDER**

The 9<sup>th</sup> and 10<sup>th</sup> defendant in O.S.No.102/2019 on the file of III Additional District and Sessions Court, Tiruvallur @ Poonamallee, have come before this Court, challenging the order in I.A.No.03/2019, dismissing their application to reject the plaint.

2. The learned counsel for the revision petitioners introduced the controversy as below :

- The suit property originally belonged to a certain Kumarasamy, the father of the plaintiffs/respondents herein, and that on 19.09.1982, he had entered into an agreement with John, the father of 9<sup>th</sup> defendant / 1<sup>st</sup> revision petitioner, for sale of the suit property. To enforce the said sale, John had instituted O.S.No.158/1983 before Sub Court, Chengalpattu, for specific performance, which subsequently was transferred to Sub Court, Poonamallee and renumbered as O.S.No.104/1984, and that came to be decreed on 07.11.1986.
- Challenging which, Kumarasamy preferred A.S.No.567/1987 before this Court, and on 07.03.1993, that came to be dismissed.



C.R.P.(PD) No.1200 of 2021

Pending first appeal, John died, and consequently his widow Jayamary and his son, the 9<sup>th</sup> defendant in the present suit came to be impleaded.

- Thereafter, the heirs of John laid an execution petition in E.P.No.108/1993, for obtaining sale of the property. Pending E.P, the parties however compromised the matter, by which Kumarasamy executed a General Power of Attorney in favour of Jayamary (the widow of John) on 29.01.1998, and the execution petition came to be closed.
- On the strength of that Power of Attorney, the property came to be sold to third parties. These sale deeds are now in challenge in the present suit, which is laid in 2019, by the daughters of Kumarasamy.
- While so, Kumarasamy died on 26.08.2002. When he was alive, Jayamary as Power of Attorney of Kumarasamy executed two sale deeds one on 29.01.1998, and the other on 27.01.1999. After the demise of Kumarasamy, on the strength of the same Power of Attorney, she had executed three sale deeds in 2004, one sale deed in 2007, and an another sale deed in 2011.



WEB COPY



C.R.P.(PD) No.1200 of 2021

- The property covered in the sale agreement which John has obtained from Kumarasamy includes the properties in Survey Nos.282, 286/3, 286/10, 144/2 and 286/8. Jayamary however appeared to have dealt with the property in Survey No.144/1.

3. The plaintiffs would now contend that :

- Turning to E.P.No.108/1993 which John had filed, and subsequent to its closure, some of the other heirs other than the 9th defendant and Jayamary had come up with E.P.No.62/2005, which was laid against the 9th defendant and that came to be dismissed on 05.02.2018.
- Contending that when E.P.No.62/2005 was dismissed, the property would revert back to the family of Kumarasamy or the heirs of Kumarasamy.
- The heirs of Kumarasamy has laid the present suit.
- In such circumstances, the 9th defendant has taken out an application for rejecting the plaint on the grounds that :
  - ➔ Suppression of material facts leading to abuse of judicial process.



WEB COPY



C.R.P.(PD) No.1200 of 2021

- Limitation.
- Non-disclosure of cause of action.

4.1 Mr.Jeremiah, the learned counsel appearing for the revision petitioners submitted that earlier some of the heirs of Kumarasamy had laid O.S.No.244/2005 before the Additional District Munsif Court, Poonamallee, for bare injunction against Jayamary and Rajasekaran, the 9th defendant in the present suit, and others. In that suit, Jayamary and the 9<sup>th</sup> defendant herein have contested the suit, and rested the defence on the Power of Attorney executed by Kumarasamy in favour of Jayamary on 29.01.1998. Indeed, the Power of Attorney itself came to be registered as Ex.B3, and the Court acted on that, as could be seen in paragraph No.31 of its judgment dated 22.04.2008, and this decree became final. There was yet another suit, which the plaintiffs in the present suit and others have filed is O.S.No.678/2006 before the Additional District Munsif, Poonamallee, for bare injunction. In this, the 9th defendant herein was arrayed as second defendant. Even in this suit, the 9th defendant has filed the Power of Attorney referred to above, which came to be marked as Ex.B2. Yet another time the plaintiffs were unsuccessful, and the suit came



C.R.P.(PD) No.1200 of 2021

to be dismissed and the decree has become final.

WEB COPY

4.2 The learned counsel argued that in the present suit, no reference is made to neither of the two decrees passed in O.S.No.245/2005 and O.S.No.678/2006 .

4.3 The learned counsel would further argue that when once the sales were made by Jayamary on the strength of the Power of Attorney executed by Kumarasamy, and if at all it has to be challenged, it should have been challenged at the earliest point of time. But here the suit is laid after several years, not only after the execution of sale deeds by Jayamary, but also after the expiry of limitation prescribed therefor.

4.4 Thirdly, the cause of action is founded on the dismissal of E.P.No.62/2005. This execution petition was filed by some of the heirs of John against the 9th defendant. When this execution petition was dismissed, it cannot give any cause of action to Kumarasamy.

5. The learned counsel for the respondents would argue that :



C.R.P.(PD) No.1200 of 2021

WEB COPY

- (a) Of the few sale deeds that Jayamary had executed as the Power of Attorney of Kumarasamy, only two may be valid, because they were executed before the demise of Kumarasamy and the rest of the sale deeds cannot have any legitimacy in law, since on the date they executed, Kumarasamy, the principal had already died.
- (b) And three of such sale deeds which Jayamary had executed in favour of the 9th defendant, who in turn had sold the property to third parties through his Power of Attorney. When the 9th defendant himself cannot derive any title under the sale deeds executed by Jayamary after the demise of Kumarasamy, the principal, those sale deeds necessary are invalid.
- (c) While the Power of Attorney document does not deal with Survey No.144/1, Jayamary generously included this survey number when she sold the properties.
- (d) When E.P.No.62/2005 was dismissed on 05.02.2018, the property would revert back to the family of Kumarasamy, who is now dead.
- (e) In the suit, the 9th and 10<sup>th</sup> defendants, the revision petitioners herein have already filed their written statement on 28.10.2021,



C.R.P.(PD) No.1200 of 2021

and issues too have been framed. Hence, the revision has literally become infructuous.

WEB COPY

6. In response, the counsel for the revision petitioners submitted that E.P.No.62/2005 and its dismissal may have to be understood in the context, John had instituted a suit for specific performance, obtained a decree, and laid an execution petition in E.P.No.30 of 1987. His widow Jayamary got impleaded in his place, and Jayamary and Kumarasamy arrived at a certain understanding, by which Kumarasamy has executed the Power of Attorney referred to earlier, and the execution petition laid by John also came to be closed alongside. Few years later, the other heirs of John and Jayamary came to file E.P.No.62/2005 for protecting certain issues vis-a-vis, the 9<sup>th</sup> defendant / revision petitioner herein, and when that came to be dismissed, the benefit would go to the 9<sup>th</sup> defendant and not the plaintiffs.

7. After carefully weighing the rival submissions, this Court finds that :

- (a) There is considerable merit in the core contention of the counsel for the plaintiffs/respondents herein, that when once Kumarasamy had passed away, Jayamary, his agent did not have any right to



WEB COPY



C.R.P.(PD) No.1200 of 2021

deal with the property covered by the Power of Attorney. But the merit ends right there. Here is a situation where the plaintiffs herein have either on their own or along with others have laid atleast two suits in O.S.No.244/2005 and O.S.No.678/2006, to which reference has already been made above. In both the suits, Rajasekaran, the first revision petitioner was arrayed as second defendant, and he has pleaded about the Power of Attorney executed by Kumarasamy, and also about his own title. This came to be considered by the trial Court and acting upon which, the trial Court dismissed both the suits. The date of filing of written statement in O.S.No.244/2005 by the 9<sup>th</sup> defendant is the earliest date, the plaintiffs ought to have known what they are up against, but they did not act. Then, this was followed by another litigation in O.S.No.678/2006, wherein the present revision petitioner is the second defendant, has taken up almost identical plea, and this came to be dismissed on 31.03.2011. In this suit, not only the Power of Attorney was marked on the side of the defendants, but a copy of the judgment in O.S.No.244/2005 also came to be marked. Even now, the plaintiffs remain immobile



WEB COPY



C.R.P.(PD) No.1200 of 2021

and they waited for another eight years to file the present suit, not for declaration of title, or recovery of possession, but for cancellation of several sale deeds and for partition. The limitation for cancellation of documents in all such circumstances would start is three years, and even if the date of knowledge has to be reckoned, as already indicated, it has to be reckoned from the time when the 9<sup>th</sup> defendant presented his written statement in O.S.No.244/2005. This had happened any time before 22.04.2008, the date on which O.S.No.244/2005 came to be dismissed. In fine, the suit is terribly barred for the prayers that are sought. If it were to be considered even as a case for possession, still the relief would be badly hit by limitation today.

- (b) The next point involved is inclusion of Survey No.144/1. Admittedly, this survey number is not included in the Power of Attorney executed by Kumarasamy in favour of Jayamary. Obviously Jayamary would not have title to deal with the property on the strength of Power of Attorney. But here, the learned counsel for the revision petitioner would submit that in the earlier suits, it has been found that the property covered in S.No.144/1 is



WEB COPY



C.R.P.(PD) No.1200 of 2021

an Eri Poromboke or a Water body, and the plaintiffs cannot claim right of partition over the same. If at all, the better title holder is the Government and not the plaintiffs.

(c) Turning to the allegation of cause of action for filing the suit is concerned, the plaintiffs have rested the cause of action on the dismissal of E.P.No.62/2005. This E.P is between the children of John, and it is no way concerned with the plaintiffs. The plaintiffs can hardly derive any benefit out of the existence or pendency or dismissal of the said E.P., since their right does not flow from the petitioners in E.P.No.62/2005. It may also be added here that this Court witnessed that the plaintiff has not even been fair to the Court in not pleading O.S.No.244/2005 and O.S.No.678/2006, in the plaint. This is not only something that need to be deprecated, but taken alongside the alleged cause of action constitutes an abuse of judicial process.

8. On the aforesaid three scores, the present suit cannot survive. However, there is one contention pertaining to Survey No.144/1. It is contended that this property is stated to be an Eri Poromboke, yet in the earlier round of



C.R.P.(PD) No.1200 of 2021

litigations, the Revenue Officials were not a party. This property is also a subject matter in dispute in O.S.No.678/2006, wherein the Revenue Officials came to be examined and who had deposed before the Court that it is an Eri Poromboke and that unless the plaintiffs show pre-existing title to S.No.144/1, they cannot sustain the suit.

9. The learned counsel for the plaintiffs/respondents submitted that Kumarasamy was issued with patta in Survey No.144/1. Therefore, if at all any triable issue should arise, it is only with regard to Survey No.144/1, and not with others. Therefore, this revision is **partly allowed** and the suit as concerning all the survey numbers except Survey No.144/1, needs to be struck off. No costs. Consequently, connected miscellaneous petition is closed.

06.04.2022

ds

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

To:

The III Additional District and Sessions Judge,  
Tiruvallur at Poonamallee.



WEB COPY



C.R.P.(PD) No.1200 of 2021

N.SESHASAYEE.J.,

ds

C.R.P.(PD) No.1200 of 2021

06.04.2022