IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2022
PRONOUNCED ON : 15.03.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.594 of 2019,
C.M.P.Nos.4499 & 4502 of 2021
and
C.M.P.No.10015 of 2019

G.R.Thiyagasundara Mudaliar ...Appellant / 1st Respondent / Plaintiff

Vs.

1. M.Vanathi
...1st Respondent / Appellant / 1st Defendant

2. Indian Bank
Thiruvarur,
Represented by its Branch Manager,
Nethaji Road,
Thiruvaur Town & Taluk & Munsif.

3. Indian Oil Corporation Ltd.,
Trichy,
Represented by its Senior Divisional
Retail Sales Manager,
Triveni 3rd Floor,
B-35, Shastri Road, Thillai Road,
Trichy -17.
...2nd & 3rd Respondents / 2nd & 3rd Respondents / 2nd & 3rd Defendants

Prayer:- Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.36 of 2018 dated 18.02.2019, on the file of the learned Subordinate Judge, Thiruvarur reversing the judgment and decree in O.S.No.110 of 2016 dated 06.06.2018 on the file of the learned District Munsif, Thiruvarur.

For Appellants : Mr.C.Umashankar for
M/s.B.P.Vinoth

For Respondents : Mr.Satish parosaran for
M/s.R.Parthasarathy for R1
Mr.J.John Kingslin for R2
Mr.Mohammed Fayaz Ali for R3.

JUDGMENT

This Second Appeal is filed challenging the judgment and decree of the learned Subordinate Judge, Thiruvarur in A.S.No.36 of 2018 reversing the judgment and decree of the learned District Munsif in O.S.No.110 of 2016.

2.The appellant/plaintiff filed the suit for reliefs, as follows,

a)Declaring that the power of attorney deed dated 01.06.2012 registered as document No.140/12 on the file of the Sub Registrar, Tiruvarur is a document coupled with interest and irrevocable. Hence its revocation is void under law.

b)Granting the relief of permanent injunction restraining the defendants their men, agents and servants from causing any interference to the peaceful administration and management and maintenance of KVR Krishna agencies, Indian Oil Petroleum Corporation retail outlet at Kattur and the current account No.6040795018 with the 2nd defendant and in getting supply of petroleum products from the 3rd defendant in due course of the business.

c)Granting the relief of permanent injunction restraining the 1st defendant, her men, agents and servants from terminating the power of attorney deed dated 01.06.2012 registered as document No.140/2012 on the file of the Sub Registrar, Tiruvarur.

d)Directing the defendants to pay the cost of this suit.

3.The case of the appellant is that, he hails from a very noble and respectable and traditional family from Tiruvarur. He got experience in running retail petroleum products for more than 40 years and he was a dealer for Hindustan Petroleum Corporation till sometime back. He was running the business under the name and style of Krishna Agencies in 25E, Nethaji Road, Tiruvarur. He has been maintaining current account facility for his business in account No.449018804 with the second respondent till now. First respondent and her family belong to the same caste and community of the appellant and they were family friends for more than a century. Appellant came to know that third respondent is looking forward to grant a retail outlet at Kattur, under the female quota. Appellant's daughters are married and living with their husbands and he found it difficult to get dealership in their name. Appellant told them that he was in search of good place at Kattur for locating a retail outlet. First respondent's father R.Mohan proposed the idea of granting a lease of his land for establishing the retail outlet and it was decided to apply the dealership outlet in the name of the first respondent. Appellant with his rich experience and influence spent huge money and got dealership outlet in the name of the first respondent. He spent Rs.60 lakhs/- for providing infrastructure facilities and establish a model bunk at Kattur. First respondent and her father entered into a memorandum of understanding with the appellant and agreed to receive Rs.5000/- per month towards the rent for the land and Rs.5000/- to the first respondent for lending her name for securing the retail outlet. Appellant invested all the necessary amount and the petroleum outlet was named as KVR Krishna Agencies. Through a general power of attorney deed dated 01.06.2012, first respondent nominated, constituted and appointed the appellant as a lawful power of attorney to do all the necessary acts, deeds, things relating to the business. It was registered on 04.03.2012. Appellant opened a current account with the second respondent for the business of KVR Krishna Agencies in account No.6040795018. Appellant used to send SMS to the first respondent relating to the placing of orders with the third defendant and certain message will be forwarded by the first respondent to the third respondent for effecting the supplies. Appellant would send money to third respondent through RTGS from the account of KVR Krishna Agencies. Whatever the sales take place in KVR Krishna Agencies, proceeds will be deposited in the KVR Krishna Agencies account and then the amount will be transferred to the account of KVR Krishna Agencies. KVR Krishna Agencies is completely a brain child of the appellant coming out of his expenditure and investment and first respondent is only a name lender. The power of attorney deed dated 01.06.2012 is under law and fact coupled with interest to facilitate the appellant to get himself adjusted of the investments that he has made in the said business and therefore, it is irrevocable one. For a month, first respondent is trying to take advantage of the allotment of the dealership outlet in her name and she is planning to take over the administration. First respondent along with her father is planning to bring down the business to a grinding halt. She is planning to cancel the power of attorney deed dated 01.06.2012, which is irrevocable as being the power coupled with interest. Therefore, the suit for the aforesaid reliefs.

4.The case of the first respondent, in brief, is as follows, She is the proprietrix of KVR Krishna Agencies. She was appointed as dealer on the basis of her application to third respondent in 2012. There is a contract entered into to carry on business in petroleum products of IOCL and run diesel and petrol retail outlet. She has been carrying on the business continuously from then onwards. It is denied that appellant used his influence to get the dealership for the outlet with the Indian Oil Corporation (IOCL). First respondent applied for dealership on female quota and took blessings and guidance from the appellant. The allegation that first respondent is only a name lender is false. The allegations in the plaint shows that appellant raised the plea of benami which is prohibited by law. It is denied that appellant invested Rs.60 lakhs/- for developing infrastructure. Fund has been provided by IOCL and it is maintained by the first respondent. The allegations that appellant agreed to pay Rs.5000/- per month towards the rent for the land and Rs.5,000/- to the first respondent for lending her name are not correct. First respondent and her father approached the appellant for guidance and suggestions when the dealership was about to be awarded to the first respondent. Land for the petrol and diesel bunk has been taken on lease by the first respondent. Appellant was cordial and agreed to give guidance, help and suggestions in the matters of trade, business, finance, administration, bank operations, maintenance of accounts, registers, statutory requirements, etc. Appellant wanted the first respondent to execute a power of attorney as every now and then the first respondent's signature would be needed and for taking care of all the bank operations, maintenance of registers and accounts. First respondent was new to business and therefore, she inclined to give power of attorney to the appellant in absolute confidence. The method of the appellant depositing the sale proceeds in KVR Krishna Agencies account, to another account maintained in the name of Sri Krishna Agencies came to be known recently. It is understood that the appellant has been appropriating and siphoning the funds of the first respondent's business. Appellant has not disclosed the income and expenditure to the first respondent and he has not disclosed accounts. After the end of financial years 2012-2013, 2013-14 and 2014-15, when first respondent demanded the accounts, he used to avoid that. Appellant did not produce the books of accounts. Therefore, first respondent decided to revoke the authority and cancel the power by notice dated 28.09.2016. The allegation that power of attorney is coupled with interest is legally and factually wrong. There is no contract between the parties for any adjustment of any amount as pleaded in the plaint. After filing the suit, appellant on 05.10.2016 afternoon, disconnected the CCTV and pushed the first respondent from the chair and used criminal force on her. There is a clause in the contract with third respondent that first respondent has to conduct business on her own. The suit has no merits and not maintainable in law and is liable to be dismissed.

5.The case of the appellant in the reply statement is as follows:

Appellant never pleaded about benami transaction. The prayer is that the general power of attorney deed dated 01.06.2012 cannot be cancelled for the reason that it is coupled with interest. The denial by the first respondent that appellant spent Rs.60,00,000/- for developing infrastructure is not correct. First respondent was only a name lender. Appellant was alone taking care of the business. It is wrong to claim that appellant was acting as a power agent for the dealership.

6.The case of the second respondent is that the appellant was a dealer of Hindustan Petroleum Corporation Ltd., and selling petroleum products at Tiruvarur in the name and style of Krishna Agencies. He was maintaining an account in account No.449018804 with the second respondent. First respondent is a dealer of the third respondent and running a petroleum outlet at Kattur under the name and style of KVR Krishna Agencies. Appellant was the power agent of the first respondent and in that capacity he was permitted to operate the current account of the first respondent in account No.6040795018. First respondent cancelled the power granted to the appellant through a notice dated 28.09.2016. Thereafter, this respondent did not allow the appellant to operate the current account of KVR Krishna Agencies.

7.The case of the third respondent, in brief, is as follows:

First respondent is alone the dealer to do retail sale of oil in the name and style of KVR Krishna Agencies. As per the agreement entered into between the first respondent and third respondent, no power of attorney could be engaged by the dealer to deal with the business in any manner. The claim of the appellant that he is the power of attorney to the first respondent is nonest in law. The condition No.21 of the agreement prohibits any benami dealings or dealing with the power of attorney. Appellant had neither informed his status as power of attorney nor any connection with regard to oil distribution legally, to this respondent. There is no cause of action for the suit and it is liable to be dismissed with exemplary costs.

8.In the additional written statement filed by the first respondent, it is contended that appellant has not come to Court with clean hands for taking contradictory stand with regard to memorandum of understanding alleged to have been entered into between him and the first respondent. The claim that third respondent is liable to render uninterrupted supply of petroleum products is against the agreement.

9.On the basis of these pleadings, the following issues have been framed, by the trial Court,

i)Whether the prayer for declaration cannot be refused to the plaintiff for the reason that the power of attorney deed dated 01.06.2012 is coupled with interest?

ii)Whether the plaintiff is entitled for the relief of permanent injunction against the second defendant?

iii)Whether the plaintiff is entitled for the relief of permanent injunction against the first defendant?

iv)Whether the plaintiff has executed any agreement with the third defendant?

v)Whether the account No.6040795018 in the second defendant's bank can be operated after cancellation of general power of attorney cancelled by the plaintiff.

vi)To what relief, plaintiff is entitled?

10.During the course of trial, PW1 was examined and Ex.A1 to A25 were marked on the side of the plaintiff. DW1 was examined and Ex.B1 and B2 were marked on the side of the defendants.

11.On considering the oral and documentary evidence, the trial Court decreed the suit as prayed for. In appeal, first appellate Court reversed the finding of the Trial Court and dismissed the suit. Thus, the appellant is before this Court by way of the Second Appeal.

12.At the time of the admission of the Second Appeal the following substantial questions of law were framed:

i)Whether the judgment and decree of the Appellate Court reversing the well considered findings of the Trial Court on facts in correct?

ii)Whether the power of attorney executed in favour of the plaintiff by the first defendant is coupled with interest and can be cancelled?

iii)Whether the learned Subordinate Judge erred in finding that the plaintiff has pleaded and benami transaction and hence the suit is liable to be dismissed?

13.Learned counsel for the appellant submitted that the dealership for selling the petroleum products of Indian Oil Corporation Limited was secured in the name of the first respondent only on the initiative taken by the appellant using his rich experience and influence. He spent nearly Rs.60 lakhs/- for providing the necessary infrastructure facilities to start the petrol bunk. First respondent is only a name lender right from paying the deposit amount, developing infrastructure and everything was done by the appellant. Ex.A1 power of attorney deed was executed between the appellant and first respondent on 01.06.2012 to run, manage and administer the petroleum outlet in the name and style of KVR Krishna Agencies. This power of attorney deed is coupled with interest. Both the appellant and first respondent had signed in the power of attorney deed and therefore this power of attorney deed cannot be unilaterally cancelled by the first respondent. The terms of the power of attorney deed show that appellant was given absolute control over the administration, management of KVR Krishna Agencies and usual recital that, no consideration was paid is missing in Ex.A1, indicating that this power of attorney deed is an agency coupled with interest. Under Section 204 of Indian Contract Act, 1872 an agency coupled with interest cannot be terminated to the prejudice of the interest of the agent. A sum of Rs.1,50,000/- as security deposit was paid by the appellant as referred in Ex.A14 and Ex.A15 statement of accounts. License fee was paid by the appellant through Sri Krishna Agencies bank account. These documents are prior to Ex.A1. Appellant had alone spent money for getting license and developing infrastructure for the KVR Krishna Agencies petrol outlet. Appellant is not claiming any proprietary right or right on the basis of benami transaction. His only claim is that Ex.A1 power of attorney deed is an agency coupled with interest and it cannot be revoked unilaterally by the first respondent to the prejudice of the appellant. DW1 has admitted that appellant had made investment in developing infrastructure for KVR Krishna Agencies petrol outlet. First Appellate Court has not considered the documentary evidence produced by the appellant in the form of statement of accounts, bank records, income tax returns, Auditor's report to show that every money was spent by the appellant and he was in total control and management of KVR Krishna Agencies. After the disposal of the suit, possession of KVR Krishna Agencies was taken forcibly by the first respondent. Complaint was given before the Magistrate in this regard. First respondent has no right to take possession from the appellant. Even a trespasser is entitled to protect his possession, unless is evicted by due process of law. First Appellate Court has not considered the oral and documentary evidence and the legal position with regard to the claim of the appellant and wrongly dismissed the suit. Therefore, he prayed for setting aside the judgment of the First Appellate Court and for decreeing the suit by allowing this Second Appeal.

14.He relied on the judgment reported in CDJ 2001 MHC 947 S.V.Doraisamy Vs. T.Dayalan and 8 others for the proposition that an agency coupled with interest cannot be terminated to the prejudice of the agent.

19. As regards prima facie case, assuming that the plaintiff is no more than a power of attorney, as

against the owners, the contention has been raised on behalf of the plaintiff that it is an agency coupled with interest and hence cannot be revoked. The power of attorney had been executed in 1991. On 24.5.1993, the plaintiff hands over all the original parent title deeds, encumbrance certificates, decrees obtained in courts in 1990 and the series of power of attorney to Mr. Senthilnathan, Advocate, for opinion as to whether the defendants have good and marketable title to their respective properties. The advocate after going through the records had also given his opinion that the defendants have good marketable title to the properties. A perusal of the power of attorney shows that it is not a simple authorisation to carry out the work on payment of any remuneration or commission and for negotiating with third parties and to get things done before the various statutory authorities to have the lay out approved. It is something more than that. He is directed to meet all the expenses to carry out the lay out by drafting the plans and to get the approval from the 'government Departments, to advertise for the sale of the properties and to negotiate with third parties. There is no clause empowering the agent to collect the amounts, spent by him towards various items of expenditure. In fact the power of attorney is allowed to mortgage the property to raise money if needed for developing the properties. It is sufficient to point out that the nature of the power given to the agent shows that he is required to incur huge expenditure and to meet the expenses. He is also given the freedom to mortgage the property. In the plaint the plaintiff has positively asserted that the entire property had to be dumped with sand in order to level the property and that he had surveyed and fixed boundary stones and plotted out 59 plots, laid roads and named the plots as Sri Balaji Nagar Extension. He had also obtained approval for the road from Perungulathur Town Panchayat. Such detailed averments both in the plaint and in the affidavit in support of the petition are denied in the counter in a very causal manner by merely stating that the allegations are denied and expenses were borne by the respondents. If the expenses were borne by the respondents, there is no documentary evidence or receipt to show that they had paid the amounts. If the expenses were to be borne by the defendants themselves, then there was no need for a clause in the power of attorney, directing the agent himself to incur all the expenditure and if need be to mortgage the property to meet the expenses. Therefore, a prima facie case is made out to show that the agency was not a simple principal agency relationship for remuneration or commission but one coupled with interest as provided under Section 202 of the Indian Contract Act.

It is observed in CDJ 1968 SC 225 Loonkaran Sethiya Vs. State Bank of Jaipur & Others is that,

> 5.There is hardly any doubt that the power given by the appel- lant in favour of the Bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence ,of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for -valuable consideration and authority is given to effectuate a security -or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the Bank is irrevocable. It must be said in fairness to Shri Chagla -that he did not contest the finding of the High Court that the -power in question, was irrevocable.

15.He also relied on the following judgments reported in AIR 1968 SC 620 Lallu Yeshwant Singh (Dead) by his legal representative Vs. V.Rao Jagdish Singh and others, CDJ 1968 SC 225 Loonkaran Sethiya Vs. Bank of Jaipur & Others, CDJ 2001 MHC 947 S.V.Doraisamy Vs. Dayalan & Others, for the proposition that persons are not permitted to take forcible possession, they must obtain possession through Court. Even the owner of the property has to get back his possession only by resorting to due process of law. It is observed in AIR 1968 SC 620 Lallu Yeshwant Singh (Dead) by his legal representative Vs. V.Rao Jagdish Singh and others that,

> 10.In Midnapur Zamindary Company Limited v. Naresh Narayan Roy(1), the Privy Council observed:
>
> "In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court."
>
> 11.In K.K. Verma v. Naraindas C. Malkani(2), Chagla, C.J., stated that the law in India was essentially different from the law in England. He observed:

"Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy his possession is juridical and that possession is protected by statute. Under Section 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has 'been thrown out of possession cannot go to Court under s. 9 and claim possession against the true Owner."

12.In Yar Mohammad v. Lakshmi Das(3), the Full Bench of the Allahabad High Court observed:

"No question of title either of the plaintiff or of the defendant can be raised or gone into in that case (under Section 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the: best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession." The High Court further observed:

"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual' possession without having recourse to a court. No person can be allowed to become a judge in his own cause. As observed by Edge, C.J., in Wali Ahmed Khan v. Ayodhya Kundu, (1891) ILR 13 All 537 at page.556.

"The object of 'the section was to drive the person who wanted to eject a person into the proper court and to prevent them from going with a high hand and ejecting such persons."

Our attention was invited to the decision of the Calcutta 13.High Court in State of West Bengal v. Birendra Nath Basunia(2)* In that case the High Court refused to issue an order under Art 226 of the Constitution prohibiting the Government from forcibly taking possession of lands which had been validly resumed by Government. We are not concerned with that question here But we do not agree with the conclusion of the High Court that a lessor is entitled in India to use force to throw out his lessee.

14.In Hillaya Subbaya Hegde v. Narayanappa Timmaya(3) in was observed:

"No doubt, the true owner of property is entitled to retain possession, even though he has obtained it from a trespasser by force or other unlawful means: Lillu bin Raghushet v. Annaji Parashram(4) and Bandu v. Naba (5)."

We are unable to appreciate how this decision assists the respondent It was not a suit under s. 9 of the Specific Relief Act. 1n Lillu bin' Raghushet v. Annaji Parashram(4), it was recognised that "if there is a breach of the peace in at:tempting to take possession, that affords a ground for criminal prosecution, and the attempt is successful, for a summary suit also for a restoration to possession under section 9 of the Specific Relief Act 1 of 1877 -Dadabhai Narsidas v. The Sub-Collector of Broach", (1870) 7 Bom HC AC 82. In (1890) ILR 15 Bom 238 it was observed by Sargent, C.J., as follows:

"The Indian Legislature has, however, provided for the summary removal of any one who dispossesses another, whether peaceably or otherwise than by due course of law; but subject to such provision there is no reason for holding that the rightful owner so dispossessing the other is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. This would also appear to be the view taken by West, J., in Lillu v. Annaji(1)."

15.In our opinion, the law on this point has been correctly stated by the Privy Council, by Chagla, C.J., and by the Full Bench of the Allahabad High Court, in the cases cited above.

In the Judgment reported in AIR 1999 SC 1666 Prataprai N.Kothari Vs. John Braganza, it is observed that,

11.We have already extracted the summary of conclusions arrived at by the learned Single Judge of the High Court. That shows that his conclusions were vitiated by

> his view that the appellant had title and possession followed title. It is quite obvious that the learned Single Judge had not taken note of the principle of possessory title or the principle of law that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. It is also well settled that even the owner of the property can get back his possession only by resorting to due process of law.

16.In the judgment reported in AIR 1964 Jammu and Kashmir 99 Th.Milka Singh and others Vs. Th.Diana and others, it is observed that,

> 9.From a careful consideration of all the circumstances mentioned by us above, the following propositions emerge:--
>
> 1. That a suit for an injunction simplicities against a licensee whose license has been terminated is maintainable.
>
> 2. That Section 7 (iv) (d) of the Court Fees Act clearly applies to such a suit and the plaintiff is given an option of putting any valuation that he likes and the court-fee has to be paid on such valuation.
>
> 3. That where a licenser approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to an injunction. On the other hand, if the licenser causes huge delay the court may refuse the discretion to grant an injunction on the ground that the licenser had not been diligent and in that case, the licenser will have to bring a suit for possession which will be governed by Section 7(v) of the Court Fees Act.
>
> 10. Applying these principles to the facts of the present case, we find that the suit being merely a suit for injunction on the ground that the defendant was a licensee and his licence having been terminated, the suit for injunction is clearly maintainable and the valuation put by the plaintiff cannot be questioned by the court and the court fees paid by him on such valuation is correct and was wrongly interfered with by the Court below. The order of the court below holding that the suit for injunction was not maintainable and directing the plaintiff to amend his plaint so as to convert the suit into one for possession was legally erroneous and without jurisdiction.

17.In the Judgment reported in AIR 1977 Supreme Court 619, Ram Rattan and others Vs. State of Uttar Pradesh, it is observed that,

> A true owner has every right to dispossess or throw out a trespasser, while the trespasser is in the act or process of trespassing, and has not accomplished his possession, but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies available under the law, while it may not be possible to lay down a rule of universal application as to when the possession of a trespasser becomes complete and accomplished, yet, one of the tests is to find out who had grown the crop on the land in dispute.

18.Per contra, learned counsel for the first respondent submitted that the pleadings made in the plaint show that the appellant claims that he claims right in KVR Krishna Agencies on the basis that he is the real owner and first respondent is a benami. Ex.B1 dealership agreement between respondents 1 and 3 prohibits running of the petrol retail outlet through benami or power of attorney. Therefore, any power of attorney deed executed or agreement entered into between the appellant and first respondent contrary to the terms of agreement granting dealership to the first respondent is illegal and unenforceable. An illegal act cannot be recognized by the Court. Appellant was appointed as a power agent only to supervise the functioning of KVR Krishna Agencies. Since, he failed to produce accounts relating to the business, power of attorney deed was cancelled. The claim that appellant spent Rs.60 lakhs/- for securing the dealership in the name of the first respondent and for developing infrastructure are not proved by producing acceptable evidence. It is seen from the evidence of appellant that, he had diverted funds from KVR Krishna Agencies to his personal account in the name of Krishna Agencies. The alleged illegal dispossession is not a ground to be considered in this Second Appeal. Dealership was granted to the first respondent on her application. If Ex.A1 power of attorney is coupled with interest as claimed by the appellant, it is illegal on the face of Ex.B1 agreement between respondents 1 and 3. If it is not coupled with interest then first respondent can cancel it which was rightly done by the first respondent.

19.The learned counsel for the second respondent submitted that second respondent is formal party and has no connection whatsoever in the dispute between respondents 1 and 3 and the appellant. The learned counsel for the third respondent submitted that there is no privity of contract between the appellant and third respondent. It is clear from Ex.B1 that the retail dealership cannot be run either through benami or power of attorney. The fact that Ex.A1 was executed even before the execution of Ex.B1 shows that it is against the law. When there is no privity of contract between the appellant and third respondent, appellant cannot seek any relief against the third respondent especially the prayer to supply petroleum products.

20.In reply, learned counsel for the appellant submitted that appellant has not claimed any right on the basis of benami transaction and no property is claimed and therefore, there is no question of application of Section 4 of the Prohibition of Benami Transaction Act, 1988. It is held in C.R.P.(P.D).No.1333 of 2017 that a power of attorney coupled with interest cannot be unilaterally cancelled. The appellant was forcibly removed from the management of KVR Krishna Agencies and it can be rectified even in this Second Appeal.

21.Considered rival submissions and perused the records.

22.From the consideration of pleadings and evidence, it is clear that the license to run the retail outlet of third respondent Indian Oil Corporation was given to the first respondent through an agreement entered into between the respondents 1 and 3 on 08.06.2012. Appellant's case is that he was a dealer of Hindustan Petroleum Corporation and had experience in selling petroleum products. Subsequent to the closure of Hindustan Petroleum Corporation retail outlet run by him, he came to know that third respondent was looking forward to grant retail outlet at Kattur under female quota. Though, he has two daughters, he could not apply in their name for the reason that they are living with their husbands at different places. Therefore, he took all the initiatives right from making application, paying licence fee, developing infrastructure for getting license in the name of first respondent. In the said process, he spent about Rs.60 lakhs/-. His own pleadings clearly makes out that the retail outlet at Kattur was meant for only a female under female quota.

23.Ex.A1 power of attorney deed shows that this deed was executed on 01.06.2012 before execution of Ex.B1 agreement between the respondents 1 and 3. The terms of power of attorney deed show that appellant was given the entire control and management of KVR Krishna Agencies. He was authorized to do the day to day activities, engage employees, workmen, other professionals by any action or otherwise acquire or make contract for acquisition etc., operate any banking accounts, open and operate new banking account, borrow money from any bank or financial institutions by providing personal or property security of his own, to effect insurance and maintain and submit all books of accounts, to borrow funds at his risk, to institute and defend action suits, claims etc., and in general to do all other acts, deeds and things. The first respondent has undertaken to rectify and confirm the acts of appellant lawfully done in the exercise of his powers under Ex.A1. It is evident from this power of attorney deed, every conceivable right in running KVR Krishna Agencies was given to the appellant by the first respondent.

24.Evidence of DW1, first respondent shows that she is not aware of the day to day administration and the accounting transaction. When she was asked whether the amounts credited in KVR Krishna Agencies account would be transferred to Sri Krishna Agency, she replied that, she did not know about this accounting transaction. On the other hand, the documents produced by the appellant clearly shows that appellant was in complete control and management of KVR Krishna Agencies. Now the question is whether Ex.A1 power of attorney deed can be executed between the appellant and first respondent. If so, whether it can be cancelled.

25.Ex.B1 is the memorandum of agreement entered into between respondents 1 and 3 with regard to supply of oil dealership. As per this agreement, third respondent gave dealership to the first respondent to run dealership on behalf of the third respondent in Kattur at Tiruvarur District in the name and style of KVR Krishna Agencies. There are about 66 terms and conditions in this memorandum of agreement and we are concerned with clause No.21. This clause mandates that the dealer should himself take active part in the management and running of the dealership and personally supervise the same. The dealership shall not under any circumstances be carried through any other person, firm, or body, either as benami or through any power of attorney or otherwise. Contrary to this term, the appellant and first respondent had entered into Ex.A1 power of attorney deed giving absolute right to the appellant to run and manage the KVR Krishna Agencies as a power of attorney. Therefore, Ex.A1 power of attorney deed is illegal and cannot be enforced in law. That apart, the dealership at Kattur was earmarked for a woman under woman quota. Appellant using the name of the first respondent, apparently had taken initiative and got the dealership in the name of the first respondent. It is again an illegal act and cannot be recognized by the Court.

26.It is clearly pleaded in para No.5 of the plaint that, first respondent is only a name lender, meaning thereby, benami of the appellant. It is alleged in the reply statement that appellant is not claiming any claim of benami. From the evidence of appellant, it is clear that he claims that he is the real dealer and used the name of the first respondent for getting the dealership. It reinforces that his claim is only on the basis of benami transaction. Benami transaction is impermissible in law. Thus, this Court finds that appellant cannot, on the basis of Ex.A1, claim that it is an agency coupled with interest and therefore it is irrevocable.

27.It is apparent that both the appellant and first respondent had violated the terms and conditions of Ex.B1 memorandum of agreement entered into between the respondents 1 and 3. First respondent knowing the conditions in Ex.B1 allowed the appellant to manage and administer KVR Krishna Agencies contrary to the terms of the Ex.B1 agreement. She allowed her name to be used by the appellant for securing the dealership. She is an active collaborator in this process. Third respondent has to take appropriate action against the first respondent, for violating the conditions of Ex.B1 agreement and entering into Ex.A1 agreement with the appellant.

28.It is submitted by the learned counsel for the appellant that the appellant was forcibly dispossessed from the administration of KVR Krishna Agencies and to establish the same documents have been filed under Order XLI Rule 27. Perusal of the documents, especially the complaint dated 01.11.2016 to the superintendent of Police, Tiruvarur, shows that the appellant allege that the first respondent had illegally occupied the KVR Krishna Agency and doing business. It is reiterated in another complaint dated 07.11.2018 to the Superintendent of Police. Other complaints filed along with the petition relate to 2019. It appears that the alleged illegal occupation and running of business by the first respondent was not intimated to the First Appellate Court by filing appropriate application. The suit was disposed only on 06.06.2018. It is not known why the dispossession alleged in the complaint dated 01.11.2016 was not brought to the trial Court by moving an appropriate application. Having failed to act immediately against the alleged dispossession, it is not open to the appellant to agitate this matter in the Second Appeal with a request to receive additional evidence. First document had come into existence during the pendency of the suit and some other documents had came into existence during the pendency of appeal. Therefore, they cannot be received in Second Appeal as additional documents, especially when the appellant has no legal right to claim the reliefs prayed in the plaint. The facts and circumstances of this case definitely differ from the facts and circumstances of the judgments cited by the learned counsel for the appellant. Therefore, the judgments relied in support of the case of the appellant with regard to the agency coupled with interest, illegal dispossession are not applicable to the facts and circumstances of this case.

29.Thus, this Court finds that the First Appellate Court had rightly reversed the judgment of the Trial Court and dismissed the suit, among other grounds, on the ground that conduct of the business is against the provisions of benami Act for substantial questions of law number 1 and 3. Ex.A1 power of attorney deed is against the terms and conditions of Ex.B1 memorandum of agreement and therefore, it has no legal validity for substantial question of law number 2.

30.In fine, this Court, confirms the judgment of the first appellate Court dated 18.02.2019 in A.S.No.36 of 2018 on the file of the learned Subordinate Judge, Thiruvarur reversing the judgment and decree in O.S.No.110 of 2016 dated 06.06.2018 on the file of the learned District Munsif, Thiruvarur and dismisses this Second Appeal. No costs. Consequently, connected miscellaneous petitions stand closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Ep

To
1. The Subordinate Judge,
   Thiruvarur.

2. The District Munsif,
   Thiruvarur.

3. The Section Officer,
   VR Section, High Court of Madras.

+2ccs to M/s.R.Parthasarathy, Advocate, S.R.No.17323

S.A.No.594 of 2019
C.M.P.Nos.4499 & 4502 of 2021 and
C.M.P.No.10015 of 2019

SSD[co]
NSK/20/06/2022