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A.S.Nos.217 and 218 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.Nos.217 & 218 of 2014

and

M.P.Nos.1 & 1 of 2014

Radhakrishna Naidu

... Appellant
in A.S.No.217 of 2014

Vatsala

... Appellant
in A.S.No.218 of 2014

Vs.

Vatsala

... Respondent
in A.S.No.217 of 2014

Radhakrishna Naidu

... Respondent
in A.S.No.218 of 2014

Common Prayer : Appeal Suits in A.S.Nos.217 and 218 of 2014 filed under Order 41 Rule 1 r/w. Section 96 of Code of Civil Procedure and Section 96 of Code of Civil Procedure respectively against the judgment and decree dated 31.10.2013 in O.S.No.26 of 2012 on the file of the Principal District Court, Cuddalore.

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For Appellant : Mrs.R.Meenal
in A.S.No.217 of 2014
: Mr.R.Gururaj
in A.S.No.218 of 2014
For Respondent : Mr.R.Gururaj
in A.S.No.217 of 2014
: Mrs.R.Meenal
in A.S.No.218 of 2014

COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

These two appeals arise out of the same judgment and decree in O.S.No.26 of 2012 on the file of the Principal District Court, Cuddalore, and hence, disposed of by this common judgment.

2.The defendant in the suit in O.S.No.26 of 2012 is the appellant in A.S.No.217 of 2014 and the plaintiff in the suit is the appellant in A.S.No.218 of 2014.



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WEB COPY 3. Brief facts that are necessary for the disposal of these appeals are as follows :

The suit properties are agricultural lands, described in Item Nos.1 and 2 in the plaint schedule. The 1st item is an agricultural land measuring an extent of 1.77 Acres in New Survey No.89/1 in Thanur Village, Cuddalore Taluk and the 2nd item is also an agricultural land measuring an extent of 1.15 Acres in New Survey No.90/2 in the same Village.

4. It is admitted that the suit properties were purchased by one Mr.Gopal Naidu, the father of the plaintiff. The properties were acquired by the said Mr.Gopal Naidu by virtue of two registered sale deeds dated 07.05.1949 and 19.10.1950. Mr.Gopal Naidu died intestate in the year 1986, leaving behind the plaintiff in the suit and her mother.

5. It is the case of the plaintiff that the plaintiff and her husband were looking after the lands and that there was no one in the family after the death of the plaintiff's husband in 1990. Hence, it stated that the plaintiff



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and her mother, on good faith, executed a Power of Attorney Deed in favour of the defendant's brother, by name Sampath, on 15.10.1990, to look after the suit properties. It is stated that the defendant and the Power Agent are the sons of plaintiff's paternal aunt by name Ramanujam and that defendant's brother, the Power of Attorney Agent, volunteered to help the plaintiff in cultivation. The Power of Attorney Deed is a General Power of Attorney including the power of alienation of properties. It is contended by the plaintiff that the properties were not meant to be sold by the Power of Attorney Agent and the Power Agent also did not alienate the properties for more than 18 years.

6.However, the plaintiff, suspecting some foul play, revoked the Power of Attorney given to the Agent by way of a Revocation Deed dated 21.01.2008. It is the specific case of the plaintiff that the cancellation of the Power of Attorney was by a registered instrument and that the said cancellation was also informed to the Power of Attorney Agent. Despite the fact that the original Power of Attorney Deed, dated 15.10.1990, was executed by the plaintiff and her mother, the revocation of power was done



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by the plaintiff alone and it is stated by the plaintiff that her mother could not move around and therefore, she was unable to come to the Registrar's Office.

7.After the cancellation of the Power of Attorney Deed by the plaintiff under the Revocation Deed dated 21.01.2008, the Power Agent executed a sale deed on 10.06.2008 in favour of the defendant. The plaintiff described the transaction as a fraudulent and collusive one to defeat the rights of the plaintiff and her mother. The plaintiff also contended that she was never informed about the sale deed and she was not aware of the sale deed executed by the Power of Attorney Agent in favour of the defendant. Stating that the plaintiff came to know about the sale in favour of the defendant during August, 2011, the plaintiff came forward with the suit for declaring plaintiff's title to the suit properties and for recovery of possession of the suit properties. Alternatively, the plaintiff prayed for a preliminary decree for partition of her one half share in the suit properties and for consequential reliefs.



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8. Even before the filing of the suit, the Power of Attorney Agent died.

The plaintiff's mother also died before filing of the suit.

9. The suit was contested by the defendant on the ground that the Power of Attorney Agent, in exercise of his power given under the Power of Attorney Deed, entered into an agreement of sale on 20.12.2007, agreeing to sell the suit property for a sum of Rs.1,00,000/-. It was further stated by the defendant that a sum of Rs.30,000/- was paid as advance and balance amount was paid subsequently and the sale deed was executed on 10.06.2008 by the Power of Attorney Agent after receiving the entire sale consideration. It is contended by the defendant that the Power of Attorney Agent paid the consideration for the sale promptly to the plaintiff and her mother in his presence. The defendant then contended that the cancellation of Power of Attorney Deed was never informed to the defendant. In other words, it is contended that the cancellation of Power of Attorney without due notice to the defendant is not valid and therefore, the sale deed executed by the Power of Attorney Agent of the plaintiff and her mother in favour of the defendant is binding on the plaintiff.



WEB COPY 10.The trial Court after recording the pleadings, framed the following issues :

- i. Whether the power deed dated 15.10.1990 had been cancelled by a deed of revocation dt.21.01.2008 ?
- ii. Whether the said Sampath had no notice of the cancellation of the power deed ?
- iii. Whether the sale made by Sampath in favour of the defendant on 10.06.2008 is valid and binding upon the plaintiff ?
- iv. Whether the plaintiff is entitled for the declaration of title over the suit properties ?
- v. Whether the plaintiff is entitled for $\frac{1}{2}$ share in the suit properties as alternatively prayed for ?
- vi. To what any relief the plaintiff is entitled ?

11.Before the trial Court, the plaintiff examined herself as P.W.1 and marked Exs.A1 to A7. The defendant examined himself as D.W.1 and marked Exs.B1 and B2.



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12. The trial Court, after considering the evidence, found that the cancellation of Power of Attorney Deed, dated 15.10.1990, by a Deed of Revocation dated 21.01.2008 is valid only in respect of the plaintiff's share of suit properties. The trial Court then found that no notice is necessary before cancellation of Power of Attorney Deed in view of the relationship between the plaintiff and the defendant. On perusal of the records, the trial Court came to the conclusion that the Power of Attorney Deed was cancelled and revocation of Power of Attorney was registered and therefore, the registration would also constitute a valid notice. In view of the findings of the trial Court on Issue Nos.1 and 2, the trial Court held that the sale deed executed by the Power of Attorney Agent in favour of the defendant on 10.06.2008 is valid and binding upon the plaintiff only in respect of half share of plaintiff's mother and the same is not valid and binding on the plaintiff as regards the other half share in the suit properties. The trial Court went further to hold that the sale deed executed by the Power of Attorney Agent of plaintiff and her mother in favour of the defendant is not a *bona fide* transaction. The case of the defendant that there was a sale agreement



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between the defendant and his brother, the Power of Attorney of the plaintiff and her mother, is not proved. Since the defendant has produced only a photocopy of the sale agreement, the trial Court did not agree with the genuineness of the sale agreement stated to have been executed between the Power of Attorney Agent of the plaintiff and the defendant. Even though the trial Court agreed with the plaintiff that the transaction, namely the sale deed executed by the Power of Attorney Agent in favour of the defendant, is tainted with several irregularities, in view of the fact that the plaintiff has not taken sufficient steps for revocation of Power of Attorney Deed executed by the plaintiff's mother and for other reasons assigned, the trial Court refused to grant the decree for declaration of title in respect of entire properties. Therefore, the alternative relief of partition and possession of half share of the suit properties alone was granted.

13. Aggrieved by the judgment and decree of the trial Court, the plaintiff has preferred the appeal in A.S.No.218 of 2014 and the defendant has preferred the appeal in A.S.No.217 of 2014.



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14.Learned counsel appearing for the defendant, who is the appellant in A.S.No.217 of 2014, submitted that the trial Court failed to see that the plaintiff failed to prove her case that the Power of Attorney Deed was cancelled after issuing proper notice to the Power Agent. The learned counsel then submitted that the plaintiff ought to have filed the suit praying for a declaratory relief to cancel the sale deed executed by Power of Attorney Agent in favour of the defendant. In the absence of a prayer to cancel the sale deed, the learned counsel contended that the relief of partition cannot be granted. The learned counsel then pointed out that the suit was filed only in the year 2012, even though the cancellation of power was in 2008 and the sale deed was also executed in June, 2008. Since the plaintiff kept quiet for nearly 18 years after executing the Power of Attorney Deed in favour of the defendant's brother and waited for 4 years to file the suit after the execution of the sale deed, the learned counsel stated that the suit is not maintainable and is also barred by limitation.



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15. On the contrary, learned counsel appearing for the plaintiff, who is the appellant in A.S.No.218 of 2014, submitted that the transaction, namely the sale deed, is a fraudulent document executed by the defendant's brother in favour of the defendant for no consideration. The learned counsel then pointed out that the Power of Attorney Agent and the defendant have colluded together and played fraud to defeat the rights of the plaintiff. The Court below ought to have held that the Power of Attorney Deed as well the sale deed as a whole is invalid. Since the plaintiff is the only heir of her mother, it is contended that the plaintiff is entitled to declaration of her title to the suit properties and for recovery of possession.

16. Considering the pleadings, evidence and arguments on both sides, the following points arise for consideration before this Court in this appeal :

- i. Whether the Power of Attorney Deed, dated 15.10.1990, had been cancelled by a Deed of Revocation, dated 21.01.2008, in the manner known to law ? or, whether the cancellation of Power of Attorney Deed by a document of revocation dated



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21.01.2008 would invalidate the sale in favour of defendant in respect of plaintiff's half share ?

- ii. Whether the Power of Attorney Agent had notice of the cancellation of Power of Attorney Deed before executing the sale deed dated 10.06.2008 ?
- iii. Whether the sale deed executed by the Power of Attorney Agent in favour of the defendant on 10.06.2008 is a fraudulent document and the plaintiff can get declaration of her title ignoring the sale deed, even without asking for a declaration that the sale deed is liable to be cancelled for any valid reason ?
- iv. Whether the plaintiff is entitled to the decree for declaration of title to the suit properties ?
- v. Whether the plaintiff is entitled to the alternative relief for partition of her one half share in the suit properties ?

17.This Court, after hearing at length the arguments of learned counsel on either side, has seen that the following facts are not in dispute. The suit properties are the absolute properties of the plaintiff's father, by



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name Mr.Gopal Naidu, who purchased the properties under two documents of sale in the years 1949 and 1950. After the death of plaintiff's father, the suit properties became absolute properties of the plaintiff and her mother, who died in the year 2010 before the filing the suit. A registered General Power of Attorney Deed was executed by the plaintiff and her mother in favour of the brother of the defendant. The defendant and his brother are none other than the sons of paternal aunt of the plaintiff. The Power of Attorney Deed, though was executed by plaintiff and her mother, was cancelled by the plaintiff alone by a Revocation Deed dated 21.01.2008 which was duly registered. After the revocation of Power of Attorney Deed by the plaintiff in January, 2008, a sale deed was executed by the Power of Attorney Agent of the plaintiff and his mother in favour of the defendant on 10.06.2008.

18.The question raised by the plaintiff is whether the Power of Attorney Deed will continue to be in force despite the cancellation of Power of Attorney by the plaintiff six months prior to the sale deed that was executed by the Power of Attorney Agent in favour of the 1st defendant.



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Merely because the plaintiff did not issue any notice before cancellation of Power of Attorney Deed, whether it can be said that the cancellation of Power of Attorney Deed in January, 2008, is invalid and therefore, the Power of Attorney Agent had the power to execute the sale deed in favour of the defendant in respect of the suit properties.

19.The power can be terminated by Principal by revoking his authority as per Section 201 of Contract Act. When the power is coupled with interest, it cannot be terminated to the prejudice of such interest. In the present case, it is not the case of defendant that the Power Agent was having any interest. Therefore, the Principal can revoke the authority at any time. Such revocation can either be by notice or can also be implied by conduct. Section 206 of the Indian Contract Act, 1872, contemplates issuance of reasonable notice before such revocation or renunciation to avoid a claim for damages. In the present case, the Power of Attorney is a General Power of Attorney authorising the Agent not only to administer the property but also to alienate the property. The case of the plaintiff is that the power was only to administer the property and not to deal with the property without the



consent of the plaintiff or her mother. There was no act of alienation from 1992 to 2008 for more than 18 years. However, the Power of Attorney Deed was cancelled under Ex.A4 dated 21.01.2008. After cancellation, the sale deed has been executed by the Power of Attorney Agent in favour of the defendant on 10.06.2008. Therefore, the execution of sale deed by the Power of Attorney Agent in favour of the defendant raises a *bona fide* suspicion as regards its genuineness. The parties are close relatives. The defendant and the Power of Attorney Agent of plaintiff are brothers. Though the sale deed under Ex.A5 refers to a sale agreement and passing of consideration which was endorsed in the agreement that was said to have been executed by the Power of Attorney Agent in favour of the defendant, the original agreement is not produced before the Court. The said agreement, if it is real, would show not only the fact that the Power of Attorney Agent executed the sale deed pursuant to the *bona fide* agreement, but also the fact that the entire consideration by the Power of Attorney Agent had been promptly paid to the plaintiff and her mother. Absolutely, no explanation is given by the defendant why the original agreement was not produced before the Court. This creates not only a suspicion but also



destroys the case of the defendant, especially, when the Court is expected to draw adverse inference against the defendant for not producing the best evidence that would prove his case.

20.In the present case, the plaintiff has not let in any direct evidence to prove that the revocation of Power of Attorney Deed was after prior notice to the Power of Attorney Agent. However, a specific plea is raised by the plaintiff that the Power of Attorney Agent had notice of the cancellation of power. The Power of Attorney Agent was no more when the suit was filed. The plaintiff has also given evidence to the effect that the cancellation of power was after informing the Power of Attorney Agent. Having regard to the nature of relationship between the parties and the fact that the Power of Attorney Deed was cancelled by the Revocation Deed under Ex.A4 and the said Revocation Deed is also registered, this Court is of the view that the cancellation of power is known to the Agent when he executed the sale deed under Ex.A5 in June, 2008. Anyone who is purchasing the property would certainly apply for Encumbrance Certificate. Had the defendant applied for Encumbrance Certificate as a prudent



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purchaser, he would have come to know that the Power of Attorney Deed in favour of his brother had been cancelled even in January, 2008 itself. The registration of sale deed after cancellation of power is fraudulent and cannot bind the plaintiff. The defendant has not examined any independent witness to prove his case regarding the *bona fides* of the transaction.

21.In this case, admittedly, the power is not coupled with interest and the power of Power of Attorney Agent was only doing cultivation of the property on behalf of the plaintiff and her mother. Therefore, though the case of the plaintiff appears to be true, in the absence of any direct evidence to establish any foul play in the execution of Power of Attorney Deed in favour of the defendant's brother, this Court is unable to rest its decision on the ground that the Power of Attorney Deed is suspicious or on the ground that Power of Attorney Agent had no right to deal with the property under Ex.A3.

22.It is admitted that the plaintiff had cancelled the Power of Attorney Deed and this Court has already held that the cancellation had already been



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informed to the Power of Attorney Agent. Having accepted the case of the plaintiff as regards cancellation of the power, the document of sale, dated 10.06.2008, is not valid and binding on the plaintiff's share. Since the plaintiff, as a legal heir of her father, is entitled to one half share and the sale deed executed by the Power of Attorney Agent in respect of one half share is held to be invalid, the plaintiff is entitled to partition of one half share in the suit properties. Points (i), (ii) and (iv) are decided in favour of plaintiff. Therefore, the appeal filed by the defendant is liable to be dismissed.

23.Further, the trial Court has found that the plaintiff has not brought her mother to the Registrar's Office to cancel the Power of Attorney Deed executed by the plaintiff's mother. When the Power of Attorney Deed in favour of the Agent is valid insofar as it relates to the share of the plaintiff's mother, the alienation or the sale deed under Ex.A5 in respect of the share of plaintiff's mother cannot be unilaterally invalidated or ignored/avoided by the plaintiff unless there is a specific prayer regarding cancellation of the document of sale deed on the ground of fraud or on any valid ground. Since



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this Court has already held the validity of the Power of Attorney Deed executed by the plaintiff's mother, the trial Court is right in refusing to grant declaratory relief in respect of the entire properties and the plaintiff is therefore, entitled only to the decree for partition as granted by the trial Court. Therefore, the appeal filed by the plaintiff is also liable to be dismissed.

24.In view of the conclusions reached above, both the appeals are liable to be dismissed and accordingly, dismissed, confirming the judgment and decree of the trial Court. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (A.A.N., J.)
14.12.2022

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Index : Yes / No



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S.S. SUNDAR, J.
and
A.A.NAKKIRAN, J.

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To

- 1.The Principal District Judge,
Cuddalore.
- 2.The Section Officer,
VR Section, High Court,
Chennai.

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