IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 01.02.2022

JUDGMENT DELIVERED ON : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.647 and 912 of 2014

S.A.No.647 of 2014:

1.C.Selvan

2.S.Devimalar .. Appellants/Respondents 12 &13

Vs.

1.P.C.Ramasamy .. 1st respondent/ Appellant/Plaintiff

2.M.P.Nagarajan

3.K.P.Karunanidhi

4.S.Palanisamy

5.K.C.Palanisamy

6.K.P.Sakthivel

7.C.Prakash

8.K.Rajkumar .. Respondents 2 to 8/ Respondents 1 to7/Defendants 1 to 7

9.K.Mynavathi

10.C.Poornimadevi

11.D.Chandrasekaran

12.K.P.Krishnasamy(died) .. Respondents 9 to 12/
Respondents 8 to 11/Third parties

13.K.Sarathambal

14.P.Savitha .. Respondents 13& 14

[RR13 & 14 are impleaded as LRs of the deceased R12 vide Court order dated, 25.01.2022 made in CMP.846 of 2022 by TKRJ]

PRAYER : This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 04.02.2014 made in A.S.No.23 of 2013 on the file of the Principal District Judge, Erode, in reversing the judgment and decree dated 22.11.2012 made in O.S.No.134 of 2009 on the file of the Subordinate Judge, Perundurai.

For Appellants : Mr.S.Senthil
for Mr.R.Karthikeyan

For R1 : Mr.N.Manokaran

For R2, 9 to 11 : Mr.R.Sivakumar
for M/s.K.M.Vijayan Associates
For R4 : Mr.N.Somasundaar

For R3, R5 to R8 : Given up

Respondent No.12-died

S.A.No.912 of 2014:

1.M.P.Nagarajan .. 1st Appellant/1st Respondent/
1st Defendant

2.S.Palanisamy .. 2nd Appellant/3rd Respondent/
3rd Defendant

3.K.Mynavathi

4.C.Poornimadevi

5.D.Chandrasekaran

6.K.P.Krishnasamy(died) .. Appellants 3 to 6 /
Respondents 8 to 11

7.K.Sarathambal

8.P.Savitha .. Appellants 7 & 8

Vs.

1.P.C.Ramasamy .. 1st respondent/

Appellant/Plaintiff

2.K.P.Karunanidhi

3.K.C.Palanisamy

4.K.P.Sakthivel

5.C.Prakash .. Respondents 2 to 5/

Respondents 2 to 5/Defendants 2, 4 to 6

6.K.Rajkumar (died)

7.C.Selva

8.S.Devimalar .. Respondents 6 to 8

*[RR2 to 8 herein are formal parties, hence given up]

*[A7 & 8 are impleaded as LRs of the deceased
A6 vide Court order dated, 25.01.2022 made in
CMP.839 of 2022 by TKRJ]

PRAYER : This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 04.02.2014 made in A.S.No.23 of 2013 on the file of the Principal District Judge, Erode, in reversing the judgment and decree dated 22.11.2012 made in O.S.No.134 of 2009 on the file of the Subordinate Judge, Perundurai.

For Appellant Nos.1,3 to 5 and 7 &8	: R.Sivakumar for M/s.K.M.Vijayan Associates
For Appellant No.2	: Mr.N.Somasundaar
Appellant No.6	: died
For R1	: Mr.N.Manokaran
For RR 2 to 5, 7 & 8	: given up
Respondent No.6	: died

COMMON JUDGMENT

Defendants 1, 3 and 8 to 11 are the appellants in S.A.No.912 of 2014 while defendants 12 and 13 are appellants in S.A.No.647 of 2014.

2. For the sake of convenience, parties are referred to as per the litigative status in S.A.No.912 of 2014.

3(a). The first respondent P.C.Ramasamy (plaintiff/original owner), the first defendant M.P.Nagarajan [general power of attorney/in short

"GPA"] is the first appellant. The third defendant S.Palanisamy(purchaser) is the second appellant, [initially advocate E.K.Kumaresan filed vakalat and appeared and when the matter was about to be concluded for reserving the judgment] subsequently, Mr.Somasunsundaar filed separate vakalat for the said Palanisamy and made submissions separately.

3(b). The other appellants are the subsequent purchaser having purchased piece of lands comprised in the sale executed in favour of the third defendant under Ex.B4-the impugned sale deed in the suit.

4.The first respondent-original owner filed a suit to set aside the sale deed(Ex.A3), dated 05.07.2004 and to declare the first respondent/plaintiff as the absolute owner and also for injunction. The first defendant-GPA has filed a written statement and also with a clause of adoption of the written statement filed by the third defendant purchaser. The second defendant also filed a similar written statement with a clause-2 adopted the written statement filed by the D3. The third defendant has filed an elaborate written statement. By an order, dated 22.11.2012, the learned trial Judge/Sub Judge, Perundurai dismissed the suit in O.S.No.134 of 2009. Originally, it is filed before the Sub Court, Erode as O.S.No.192 of 2007 and on transfer, the case has been made over to the Sub Judge, Perundurai and he disposed it on 22.11.2012.

5. After dismissal of the suit as stated above, before filing of the appeal in A.S.No.23 of 2013 before the learned Principal District Judge, Erode, have purchased the suit property and after appeal taken on file, the respondents 8 to 13(subsequent purchaser) were impleaded in the appeal stage as per the orders made in I.A.Nos.187 of 2013 and 207 of 2013 on 22.08.2013. As per the Court records, the impleaded respondents 8 to 13 (subsequent purchaser) were asked to give an undertaking that they have to argue the matter on the basis of evidence already available on record and also passed the embargo of filing of additional written statement to lead the evidence and to file document, especially to establish their status as bonafide purchaser. By order, dated 04.02.2014, the learned Principal

District Judge, Erode, for the reasons recorded therein, has allowed the appeal filed by the first respondent/plaintiff(original owner) and decreed the suit and hence the above two second appeals as stated supra.

6. S.A.No.912 of 2014 was admitted on the following Substantial Questions of Law:

> *"1.Whether the judgment of the lower Appellate Court is correct in law in reversing the dismissal of the suit, only by relying upon the evidence of the Defendant's without considering the evidence of the plaintiff especially when the lower Appellate Court is a final Court of fact?*
>
> *2.Whether the judgment of the lower Appellate Court which has cast the burden of proof on the defendant is in accordance with law?*
>
> *3.Whether the lower Appellate Court has correctly construed the Ex.P1 Power of attorney deed*

dated 16.10.2002 keeping in mind the axiomatic principle in law that the document should be read as a whole and not in bits and pieces?"

7. S.A.No.647 of 2014 was admitted on the following Substantial Questions of Law:

"Has not the lower Appellate Court in finding that the value of suit property exceeds Rs.42,00,000/-, while the suit is valued under Section 40 of the Court Fees Act, on the value of instrument for Rs.2,00,000/- and declaring title, which ought to be on the market value as on the date of filing of the suit?"

8. Pending second appeal, they also filed C.M.P.No.15168 of 2016 to raise additional grounds of second appeal and the same is allowed and the following Substantial Questions of Law appears to have been framed:

"1.Whether the lower Appellate Court having

rendered a clear finding that the guideline value of the suit property is more than Rs.42,00,000/- from the endorsement made by the Sub-Registrar, Perundurai in Ex.A3, dated 05.07.2004, namely, the sale deed, was correct in allowing the appeal filed by the first respondent in A.S.No.23 of 2014 without deciding whether the suit has been properly valued for the purpose of Court fee and jurisdiction under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955?

2. Whether the lower Appellate Court erred in allowing the appeal without an issue being framed on the aspect of pecuniary jurisdiction when the lower Appellate Court itself was satisfied that the guideline value of the suit property is more than Rs.42,00,000/-?"

9. In substance, the substantial questions of law framed in

S.A.No.647 of 2014 is duly covered substantial questions of law framed in S.A.No.912 of 2014.

10. Learned Senior Advocate Mr.T.V.Ramanujam for the first defendant-Power-of-Attorney holder/first appellant would contend that (a) the lower Appellate Court was committed an error in framing point for consideration 1 and 2, which is not arising out of pleading or evidence let in therein, in short, the lower Appellate Court has taken up a new case, which is not projected before the trial Court.

(b).The finding of the lower Appellate Court that the second respondent/GPA has exceeded his agency, when it is not the case of the first respondent/original owner as per his pleadings and evidence.

(c).The unregistered sale agreement, dated 16.10.2002 is held to be out of the money transaction by the lower Appellate Court, when the document itself is not marked and available for consideration. In other words, the lower Appellate Court has given a finding regarding the unmarked, unregistered sale deed, dated 16.10.2002 which came into existence only out of money transaction, without a document being marked nor pleaded so in the plaint.

(d).The finding of the lower Appellate Court, as if, the respondent/plaintiff is in possession of the 1 acre of the subject matter of the property, especially, when the advocate commissioner was appointed five years after the sale transaction only collected the evidence, but not on the date of filing of the suit.

(e).The lower Appellate Court, without any pleadings or evidence of PW1, was committed an error in holding that the first defendant/GPA has exceeded his agency, when that is not the case of the first respondent/ original owner himself.

12. Mr.Jagadeesh, learned counsel for the subsequent purchaser could contend that,

(a) when it is a fact that the plaintiff himself has not made any pleadings regarding the excess of power by the first defendant/GPA, the finding rendered by the lower Appellate Court that the first appellant/ first defendant has exceeded the agency, is based on no pleadings.

(b). The Lower Appellate Court has mistook the case as it is the case of rendition of accounts by the principal against his agent. Without there being any pleadings or written statement, the lower Appellate Court has held that the subsequent purchaser are not bonafide purchaser. When the Court has put the embargo upon them as to not to file any written statement and not to adduce any evidence, and without pleadings and written statement regarding the nature of the transaction, the lower Appellate Court ought not have given a finding as to the nature and character of the sale deed in their favour. They have purchased the entire property by way of sale deeds after dismissal of the suit before filing of the appeal.

13. Learned counsel Mr.N.Manokaran, for the first respondent/plaintiff would contend that the finding rendered by the lower Appellate Court is just and proper and does not require any interference.

14. Learned counsel Mr.Somasundaar for the second appellant in S.A.No.912 of 2014 and the third defendant in S.A.No.647 of 2014 could contend that his client has contacted him over phone and subsequently, he entered appearance on the day when the arguments are about to be closed and judgment was about to be reserved. Due time and opportunity was given to him and he also filed counter in C.M.P.900 of 2022. It is a petition filed by the first respondent/plaintiff stating that during the Christmas Holidays and the Pongal Holidays(Maha Sankarandhi), the second appellant/third defendant(purchaser) approached him for a settlement at his house. During the said period, he had handed over certain official communication received from income tax department to pay a sum of Rs.91,21,560/- and penalty therefor and the grounds raised by the second appellant/third defendant before the income Tax authorities that the sale deed, which is the subject matter of this case is declared as sham and nominal and the finding of the lower Appellate Court has been referred to and hence seeking direction to produce the original document in this regard. In the counter affidavit, the new counsel has denied that his client-purchaser approached the first

respondent/plaintiff make payment for the income tax department regarding capital gain and penalty. However, the document filed by him is the correct document. He has filed before the income tax authority, Commissioner of Income Tax (Appeals), Salem District. Accordingly, the C.M.P.No.900 of 2022 was allowed. Two documents, viz., communication of the income tax department and the reply given by the appellant before the concerned appellate authority in the income tax department, have taken on file and marked as Ex.B series by the Registry.

15. Necessary facts for determination of the Substantial Questions of Law are as under:

1. On 07.04.1990, the suit property was allotted to the share of the plaintiff, P.C.Ramasamy in the family partition as A-schedule property (not disputed).
2. Under Ex.A1-power of attorney(=Ex.B3), dated 16.10.2002, the plaintiff executed a registered power of attorney deed in

the name of first defendant and on 16.10.2002, on the very same day, D1 had also obtained a sale agreement in the name of D2 (not marked) and under Ex.A2 = Ex.B4, dated 20.01.2003, D1 as a power agent executed a sale agreement in the name of D3.

3. On 05.07.2004 under Ex.A3, D1 being the power agent of the plaintiff executed a sale deed in the name of D3 for Rs.2,00,000/-. Ex.A3 sale deed is the subject matter in O.S.No.134 of 2009.

4. Under Ex.A4 dated 14.12.2006, D3 appointed D4 as his power agent and on 08.01.2007, under Ex.A5, D4 as the power agent of D3 executed a registered sale agreement in the name of D5 in respect of 50 cents. (Sale price was Rs.Rs.19,00,000/-)

5. On the same day, ie., on 08.01.2007, under Ex.A6=Ex.B5, D4 as the power agent of D3 executed a registered sale agreement in the name of D1 in respect of 50 cents. (Sale

price was Rs.Rs.19,00,000/-).

6. On 29.05.2007, the plaintiff filed O.S.No.134 of 2009 on the file of Sub Court, Perundurai for the following relief:

   a. setting aside the sale deed dated 05.07.2004 as the same is not true and genuine, not binding the plaintiff and unenforceable one and thereby declare that the plaintiff is the absolute owner of the suit properties.

   b. Restraining the defendants, their men, agents etc., from in any way and in any manner either trespassing into the suit properties or disturbing his peaceful possession and enjoyment of the plaintiff over the same by means of permanent injunction.

7. On 28.10.2020 under Ex.A37, pending suit, D3 cancelled the Power of Attorney deed (Ex.A4) executed in the name of D4 and on the same day, D3 cancelled the sale agreement (Ex.A6=Ex.B5) executed in the name of D1 under Ex.A36.

Again on the same day, D3 cancelled the sale agreement (Ex.A5) executed in the name of D5 under Ex.A38.

8. Under Ex.A39, dated 01.11.2020, pending suit, D3 executed a sale agreement in the name of D7.

9. Under Ex.A41 dated 18.08.2011, D6 cancelled the power of attorney deed dated 01.11.2010 executed in the name of D3.

10. On 22.12.2012, during the course of the trial, the plaintiff examined himself as PW1 besides examining PW2 to PW8 and also marked Ex.A1 to Ex.A41. 1st defendant has examined himself as DW1. Attestor in Ex.A1 to A3 was examined as DW2 besides marking Ex.B1 to Ex.B6. Commissioner's report and plan were marked as Ex.C1 to Ex.C3 and Exs.X1 to X7 were marked through PW4 to PW8. The lower Court records reveals that the suit was dismissed mainly on the following grounds:

(a) Plaintiff has neither given a police complaint nor issued a legal notice to the 1st defendant questioning the sale deed.

(b) Plaintiff has not proved his possession over the suit property through Ex.X1 to Ex.X7 since the suit property is a vacant site.

(c) Suit is barred by limitation.

(d) Appellants/D8 to D11 purchased the suit property under various sale deeds.

11. On 11.01.2013, appeal in A.S.No.23 of 2013 was filed before the District Court, Erode.

12. On 28.02.2013, pending appeal, the purchasers were impleaded in the appeal as the respondents 8 to 13 as per the order passed in I.A.Nos.187 and 207 of 2013. The Purchasers were impleaded on their undertaking that they will defend the appeal suit only on the basis of the evidence already available. D1 and D3 have filed S.A.No.912 of 2014 along with D8 to D11. Purchasers/D8 to D11 have filed

S.A.No.912 of 2014 and the purchasers/D12 and D13 have filed S.A.No.647 of 2014.

16. While the various stages of the facts of the case as above, the stand of the defendant is that the third defendant-purchaser filed a written statement. The first defendant General Power of Attorney filed a short written statement by adopting the written statement of D3 so is D2.

17. The plaintiff had examined himself as PW1 and also examined PW1 to PW8. Advocate commissioner was examined as CW1. DW1 and DW2 were examined. The first defendant/GPA of the plaintiff is DW1 and attestor of the document is DW2.

18. The plaintiff marked Ex.A1 to Ex.A14 and on the side of the defendants Ex.B1 to Ex.B6 and Ex.C1 to Ex.C3 and Ex.X1 to X7 were marked.

19. For the sake of clarity, the trial Court has held that the plaintiff as PW1 admitted the execution of the D3-power of attorney and the plea of the plaintiff be in possession is negative and power of attorney-Ex.B3 is binding on the plaintiff and Ex.B4-sale deed is executed by the power agent during the subsistence of the power and hence, the same is binding upon the 1st respondent/plaintiff, accordingly, dismissed the suit.

20. The summary of finding of the lower Appellate Court is that non-examination of the third defendant is fatal to the defendant case and the general power of attorney/first defendant has not obtained the consent of the plaintiff to execute Ex.A3-sale deed in favour of D3. Non-filing of the receipt for balance of sale consideration by the DW1 by power agent to Principal (plaintiff) has resulted in non-passing of balance of sale consideration and consequently held that Ex.B3-power of attorney and unmarked sale agreement in the name of the defendants 1 and 2 respectively, are executed only for a loan transaction and never intended to be a power of attorney. Based upon the unmarked entry found in Ex.A3, the

lower Appellate Court has held the stamp duty around Rs.3 lakhs (Rs.3,41,824/-) was paid and therefore, the guideline value could have been more and hence, doubted the sale deed. The subsequent sale deeds over the period, the property has changed hands for the higher rate, since a lesser rate shown in the sale deed, is of suspicious in nature. Further held that there is no proof of payment of balance of sale consideration for Ex.A1/Ex.B3 and hold that Ex.A1=Ex.B3-sale deed is void and relied upon the answers of DW1 and DW2 has held that the first defendant/appellant/power agent has exceeded his power in executing the impugned sale deed in favour of D3/2nd appellant and held that Ex.A1=Ex.B3-sale deed is void.

21. The above finding of the lower Appellate Court was subject to challenge by the power of attorney holder and purchaser, subsequent purchaser and another set of subsequent purchaser, who have purchased the property after dismissal of the suit, before filing of the appeal before the lower Appellate Court.

22. Considering the evidence adduced by the parties and the discussions made thereon by the trial Court and the lower Appellate Court and rival submissions made by the learned Senior Counsel T.V.Ramanujam, and learned counsel, viz., Mr.Somasundaar, Mr.N.Manokaran and Mr.Jagadeesh, the scope of the second appeal is now reduced into two,

(i) whether Ex.A1=Ex.B3-deed of general power of agent as projected by D1 or as an outcome of money transaction as projected by the first respondent/plaintiff is?

(ii) whether the first defendant/general power of attorney has exceeded his power and authority given under Ex.A1=Ex.B3 so as to unvalidate the sale effected by him under Ex.A2=Ex.B4 and other findings are discussed in supra.

Plea of Debtor and Creditor relationship vis-a-viz Principal and GPA:

23. The respondent/plaintiff (original owner) is examined as PW1. After going through the documents filed before the trial Court, the Ex.A1=Ex.B3 is a general power of attorney executed by the PW1-plaintiff

in favour of the DW1- first defendant. In the said general power of attorney deed, certain clauses in alleged unregistered sale agreement, dated 16.10.2002 has been referred to, with regard to the balance of sale consideration to be paid by the purchaser-DW3 and time limit prescribed therein. It is hereby made clear that the said unregistered sale agreement, dated 16.10.2002 is not at all marked by neither of the parties. The trial Court has made an observation as to why the unregistered sale agreement, dated 16.10.2002 was not marked before the Court. At the outset, it appears that the lower Appellate Court has rendered a finding that the unregistered sale agreement, dated 16.10.2002 is executed only in the money transaction without a document being marked before the Court, further, the same was not subjected to cross-examination by the other side. Such a procedure adopted by the lower Appellate Court is deprecated.

24. On perusal of the pleadings and the evidence of the PW1, the plaintiff as PW1 has deposed as follows "நானும் என் மனைவியும் வருமான வரி வைத்துள்ளோம். எனவே நான் வெளியில் வாங்கிய

கடன் தொகை அதை செலுத்திய விபரம் மற்றும் அதற்கான வரி செலுத்தியதற்கான விபரம் வருமான வரியில் காட்டப்பட்டுள்ளது. இந்த வழக்கில் நான் சொல்லப்பட்டுள்ள *16.10.2022* ரூபாய் கடனும் அதற்கு செலுத்திய *2* மாத வட்டியும் என்னுடைய வருமான வரி கணக்கில் காட்டியுள்ளேன்." An adverse inference has to drawn against the plaintiff, for not producing the best evidence and in fact there is no evidence at all to prove the alleged loan or discharge of the alleged loan. When the specific case of the plaintiff/1st respondent is that, he has discharged the principal as well as interest to the 1st defendant/1st appellant on 01.12.2006, no scrap of document has been produced by the plaintiff/1st respondent to prove the same, that itself would stand to show that all averments raised in the plaint were nothing but false. If really the power of attorney came to be executed as security for money transaction between the plaintiff/1st respondent and 1st defendant/1st appellant, the burden of proof of the factum of borrowing money was on the plaintiff and he has failed to discharge the burden by any acceptable evidence. If really the plaintiff/1st respondent has discharged the debt amount as averred in plaint, being a prudent man would have sent notice to the 1st defendant/respondent to cancel the power of attorney, dated 16.10.2002 and the failure on the part of the plaintiff/1st respondent to produce any document evidencing the discharge of debt and the factum of non-cancellation of power shows that the alleged power of attorney, dated 16.10.2002 was not as outcome of or as a result of money transaction between the plaintiff/1st respondent and 1st defendant/respondent.

25. In the absence of any such evidence being adduced before this Court, the fiduciary relationship as that of to the creditor and the debtor based on the evidence of PW3, not on the any positive and valid document and proof thereof by the plaintiff. Therefore, the finding rendered by the lower Appellate Court that existence the creditor and debtor relationship between PW1 and DW1 and Ex.A1= Ex.B3 and the unmarked unregistered document-sale agreement, dated 16.10.2002 is, only, out of money transaction is without any positive legal evidence and hence, in view of the admitted position as stated supra and the discussion in the preceding

paragraphs such a finding of the lower Appellate Court is liable to be vacated and the same shall stand vacated.

26(a). Whether DW1(GPA) has exceeded his authority given under Ex.A1=Ex.B3, the lower Appellate Court has rendered a finding that in the cross-examination of DW1(General power of attorney agent) he has admitted that under unmarked sale agreement, the property should be sold to the defendant No.2 only.

26(b). On perusal of Ex.A1-power deed, there is no such recital is found. Without there being any recital in the document, such suggestion has been made to the DW1 in the cross-examination. Admittedly, there is not even any pleadings or evidence by the plaintiff, PW1, in this regard. A snap answer has been obtained in the cross-examination of DW1. On a close scanning and scrutiny of the pleadings in the plaint, chief and cross-examination of PW1, there is no whisper as projected in, by way of suggestion to DW1 in the cross-examination assumes significance.

27. I have perused the recital in Ex.A1= Ex.B3. Besides, no such recital, is found. Ex.A1 assumes greater significance.

28. At this juncture, it remains to be stated that in the absence of any variation of the terms contained in Ex.A1, either in the pleading or in PW1's evidence, the suggestion itself is misleading and the layman has answered without knowing the contend, especially, that no such recital is found in the said document-Ex.A1 assumes significance.

28(a).In ***Jagadish Prasad Patel(dead) through Legal Representatives and another v. Shivnath and others*** reported in ***2019 (6) SCC 82*** the Hon'bl9e Apex Court has held that Section 58 of the Evidence Act, 1872, no doubt, postulates that things admitted need not be proved. However, the proviso to it gives full discretion to Court to require the facts admitted to be proved otherwise than by such admission.

29(a). Moreover, I also find that the power of attorney, dated 16.10.2002 (Ex.A1) contains a recital to the effect that every act of the Agent in furtherance of Suit property shall be deemed to be done on behalf of principal and ratified by the principal. While being so, the sale made by the 1st defendant/1st appellant as agent on behalf of the plaintiff/1st respondent in favour of the 3rd defendant has legal sanctity in the eye of law. Each authority given in one part of the instrument will not be cut down because there are ambiguous and uncertain expressions elsewhere, but the document should be read and considered as a whole for interpretation of particular words or direction.

29(b). Besides, non-cancellation of the power of attorney, dated 16.10.2002 (Ex.A1) and silence on the part of the plaintiff/1st respondent even after knowledge of the execution of registered sale deed, dated 05.07.2004 (Ex.A3) in favour of 3rd defendant/2nd appellant by 1st defendant/1st appellant amounts to implied ratification of the acts of the 1st defendant/1st appellant by the plaintiff/1st respondent.

30. For the reasons stated supra, in view of the specific recital in Ex.A1 that the power agent is empowered to sell the property in favour of anyone, either in part or in a separate sale deeds and in the absence of any recital that it should be only sold to D2, the lower Appellate Court has erroneously constructed the snap answer, which is discussed supra and rendered a finding by itself leading the evidence, accordingly, the said finding of the lower Appellate Court is liable to be vacated and the same shall stand vacated and this Court holds that the power executed by the PW1 in favour of the DW1 does not contain any such restriction upon DW1-general power of attorney holder and in the absence of any such recital, a snap answer cannot be a point of acceptance, more so, when no such plea has been raised in the pleadings or whispered in the PW1 witness.

30(a). In ***Abdul Muthalip v. M.Samsudeen, [2009 (4) LW 650]***, wherein this Court has held that when a party had executed power deed, while the same is in existence, an Agent can execute a sale deed in favour of any other person and that even an agent can purchase the property and the principal cannot repudiate it merely because it is for the agent's benefits.

31. Yet another point is that I find that in the absence of any pleadings viz., it is not the case of the 1st respondent/plaintiff that the agent has exceeded his authority, viz., the 1st appellant/1st defendant, the finding to this effect is based on no pleadings.

32(a). Both the counsel made rival submissions on the finding of the lower Appellate Court that Ex.A1-general power of attorney is a special power of attorney. It remains to be stated that the Ex.A1-power of attorney has registered at Bhavani not at Perundurai. While the suit property is situated at Perundurai as per power of attorney Act, such power deed can be registered in any one of the sub registrar office within the same district. Both the places, namely, Perunthurai-the place of the property and the Sub Registrar office at Bhavani falls in Erode District and hence, in view of the statutory provisions contained in General Power of Attorney Act enabling the parties and the Sub Registrar to register the power deed within the District. There cannot be any assumption or presumption as held by the lower Appellate Court. More so, DW1 has specifically stated that if the transaction is registered in Perundurai, people will come to know about his weakness in finance position and hence the power deed was executed at Bhavani also appears to be reasonable and found to have acceptance by this Court.

32(b). The terms of the agreement as could be seen from the recitals in Ex.A1, dated 16.10.2002 goes to show that the power agent is empowered to sell the land either pieces or as a whole; either to an individual or to multiple persons of their choice and hence, the finding of the lower Appellate Court that it is a special power only empowered to sell the land to the second defendant alone is not found in the document. What was not found in the document cannot be taken up for consideration for determination. In the absence of any recital to that effect in Ex.A1, I find that the lower Court has committed an error in observing so.

33. In view of the discussion in the preceding paragraphs, it is held that the first defendant is not a money lender, he is only a power agent. Since PW1 miserably failed to prove the alleged creditor-debtor relationship under the power deed, DW1 is a power agent of the PW1 as such, as per recitals, he is empowered to sell the property either as a whole or as a piece to either individual or multiple persons of his choice, in view of the recital contained in Ex.A1 therein. Accordingly, the plea of creditor and debtor, of PW1 is rejected and the plea of Principal and power agent of D1 is upheld.

Payment of sale consideration:(paid or not paid)

34. The trial Court has found that the plaintiff has not proved the non-payment of sale consideration. The lower Appellate Court has held that DW1 has not filed proof for payment of balance of sale consideration. In this regard, three things has to be kept in mind.

35. After going through the evidence of PW1 and DW1 and documents filed therein not filing of the necessary document, namely, agreement of sale said to have been entered between the plaintiff and the second defendant in simultaneous with that of Ex.A1, this Court finds that neither of the party has not rendering any assistance to the Court. After going through the chief and cross-examination of PW1, DW1 and DW2, I find that the evidence of PW1 is more of chaff and less of grains while that of the DW1 more of grains and less of chaff and had the document filed before the Court, this Court has to analyse whether, payment of balance sale consideration for Ex.B1-sale deed (executed by the first defendant as a power agent of the plaintiff to the third defendant.) is proved or not.

36. For the reasons discussed supra, the power document-Ex.A1 is held to be valid. Neither of the parties has not filed any deeds or document evidencing payment of sale price under Ex.A3 to the plaintiff. The third defendant-purchaser filed written statement, which was adopted by D1 and

D2 as stated supra, wherein it is stated that it is true that no receipt was obtained by the 1st defendant from the plaintiff, but the fact remains that the advance of Rs.1,00,000/- received by the 1st defendant was taken by the plaintiff immediately. Whereas, contrary to the above pleadings, DW1 has deposed that the sale price was paid to the plaintiff under a receipt. Excerpts from the evidence of DW1 would run thus:

> "..பி.சா.ஆ ஒப்பந்தம் போட்டு பத்து நாட்களுக்குள் 3ம் பிரதிவாதியிடம் வாங்கிய பணத்தை வாதியிடம் கொடுத்துவிட்டேன், மேற்படி பணம் சம்மந்தப்பட்ட கணக்கை நான் ஏற்கனவே சொன்ன கணக்கில் குறித்து வாதியிடம் கையெழுத்து வாங்கினேன். அதற்கு பெயர் ரசீது போட்டர்கள் என்று எனக்கு ஞாபகம் இல்லை.." .."3ம் பிரதிவாதியிடம் இருந்து வாங்கிய பணத்தையும் வாதியிடம் குடுத்து ரசீது வாங்கியுள்ளேன். அந்த ரசீதும் சாட்சி கையெழுத்து போட்டுள்ளார்கள். அந்த

ரசீதை உமாசங்கர் என்ற பத்திர எழுத்தர் தயார் செய்தார். அந்த ரசீதை பவானியில் வைத்து எழுதினேன். நான் பெருந்துறைக்கு வந்து பணத்தை கொடுத்து ரசீதை பெற்றேன். அந்த பணத்தை எந்த தேதியில் வாதிக்கு கொடுத்தேன் என்று ஞாபகம் இல்லை.." .."3ம் பிரதிவாதி தன் எதிர் உரையில் நான் வாதிக்கு பணத்தை கொடுத்துவிட்டு எந்தவிதமான ரசீதையும் பெற்றுக்கொள்ளவில்லை என்று சொல்லியது பற்றி எனக்கு தெரியாது."

37. At the risk of repetition, the lower Court has held that non-examination of D3 is fatal to the case of the defendant, since D1 is a power agent and D2 is the agreement holder, D3 is a stranger to the plaintiff and purchased a property from D1 and written statement has been filed by the DW1, namely, general power of attorney, who acted as a power agent of the plaintiff and completed the sale transaction. DW1 has filed a separate

written statement and also adopted the written statement of D3 and he is one of the party to the Ex.B4-sale deed and he is also competent to depose regarding the transaction taken place after he assumed the role of PW1 as authorised under Ex.A1=Ex.B3 assumes significance. As such, he is a competent witness to speak about the sale transaction touching upon Ex.B4-sale deed regarding payment and the execution of the sale deed, in the written statement filed by D3, it is mentioned that no receipt was obtained by the first defendant from the plaintiff to D1, as DW1 has admitted that he has received the receipt. After he handing over the sale consideration paid by D3 to the plaintiff, the plaintiff issued the receipt and he also received the receipt, however, he has not filed the receipt in the Court.

38. On the above factual back ground I am unable to affix a seal of approval to such finding for more than one reason, first and foremost, the lower Appellate Court has failed to taken the note of the fact that the written statement filed by D3 and adopted by D1. This is in connection with the sale transaction covered under Ex.B4. When DW1 is acted as a power agent of

the plaintiff, had executed the sale deed in favour of D3 and after receiving the balance of sale consideration, he has given the amount to the plaintiff, that is, his evidence. It was denied by the plaintiff in his evidence. In other words, regarding the payment of sale consideration by DW1-power agent to PW1-original owner, there is oral assertion by the parties against each other. The purchaser may or may not know whether the power agent has handed over the sale consideration to the principal. If the principal feels that the sale consideration was not paid by his power agent, namely, D1, he has to file a suit for rendition of accounts, admittedly the sale was executed in the year 2003, suit was filed in the year 2009.

39. Till the institution of the suit, the principal has not cancelled the power of attorney-Ex.B3 given in favour of the first defendant. It was his admission as PW1, till date, the power deed remains uncancelled. In the absence of any such action of cancellation of power deed or complaint to the police authorities regarding the misappropriation of fund, I find that the oral assertion by the plaintiff is unbelievable and unrealistic.

40. Further more, it is not a suit for rendition of accounts from the agent. Merely because the power agent has not paid the amount, the same may not be ground to setting aside the sale deed executed by power agent to third party, if at all he has to cancel, in the absence of any steps being taken for cancellation of Ex.B3-power deed and in the absence of any complaint to the police regarding alleged misappropriation of funds by him. I find that the version of PW1 is unworthy of consideration and has to be thrown out at the threshold.

41. When the written statement was filed by D3 adopted by D1 and D1 has entered witness box as DW1 to speak about the subjects touching upon the transaction covered under Ex.B4. On the above factual back ground, non-examination of D3 cannot be a ground to disbelieve the evidence of DW1. Hence, the so called finding by the lower Appellate Court, in the absence of any proof for payment of sale consideration to the principal, they disbelieved and doubted the sale consideration being passed

under the document. For the reasons discussed hereinabove, in view of the adoption of the written statement by D3 by DW1 besides he is also being power agent of the plaintiff is the competent and best person to depose regarding transaction. The evidence of DW1 is sufficient enough in view of the adoption of the written statement so also non-examination of third defendant cannot be put against the defendant since out of two people, who entered into sale consideration under Ex.B4, one of the persons had deposed and he made available and subject himself for the cross-examination and both the first defendant and third defendant are standing on the same footing by adopting the same written statement and hence, the finding of the lower Appellate Court is, with due respect to the lower Appellate Judge is misreading of evidence.

42. when there are more than one party to a document available on record, when one of the party is sailing on the same boat by adopting the written statement of other party of one another and if after filing the adoption memo. In the said circumstances, if any one of such stated

defendant enters the witness box that is sufficient to test their stand and non-examination of the other is not fatal in the above stated position. The contention of the learned Counsel Mr.N.Manokaran that the burden of proof under Section 111 of the Indian Evidence Act falls on the first defendant and relied upon the decision reported in **2004 (9) SCC 468** in the case of ***Krishna Mohan Kul v. Pratima Maity,*** this Court has taken note of the legal preposition pronounced by the Hon'ble Supreme Court for the reasons recorded therein, the said plea is based upon the alleged fiduciary relationship between the parties. In the preceding paragraphs, this Court has held that the alleged fiduciary relationship between the plaintiff and the defendants 1 and 2 was not established by the plaintiff. In view of the said finding that in the absence of any positive evidence to show the alleged fiduciary relationship Section 111 of the Indian Evidence Act cannot be acted upon nor be called upon to the in-aid of the plaintiff and hence, on the facts and circumstances of the case, the said decision is not applicable since the plaintiff has miserably failed to establish the plea of fiduciary relationship has been misused to obtain Ex.A1.

43. When the main plank for Section 111 of the Indian Evidence Act is not proved, I am of the considered view that the preposition of law pronounced by the Hon'ble Apex Court is not applicable to the facts and circumstances of the case. Hence, the evidence of DW1, who is connected with the document is sufficient, who is also adopted the written statement of D3 is sufficient and DW1 is competent witness to speak about the transaction in connection with the Ex.B4 on the strength of Ex.B3 and hence, consequently, non-examination of DW3 is not fatal. The scheme of the suit is for cancellation of sale deed executed by GPA by the Principal, in such a scheme of suit for declaration, relief of setting aside sale deed, by GPA in favour of third party, cannot be granted or plea of non-payment of balance of sale consideration arises. It is not suit for rendition of accounts.

Plea of suit property being sold for a song:

44(a). During the course of argument, Mr.T.V.Ramanujam, learned Senior Counsel has submitted that the suit is not only for mere setting aside the instrument to be valid under Section 40 of the Court Fees Act, but also includes of relief for declaration of title to be valid for the market value and hence, declaration sought for ought not to have been granted in a suit valid under Section 40 of the Court Fees Act. The finding is to the effect that the market value is higher, naturally oust the pecuniary jurisdiction of the trial Court, namely, Sub Judge, who does not have power to deal with the document more than Rs.5,00,000/- (at the relevant point of time) also found to have acceptance.

44(b). This Court has noticed that the lower Appellate Court has rendered the finding that the value of the property is more as compared to the sale consideration and the value of the property could have been more compared to the subsequent sale effected 3 to 4 years thereafter. It remains to be stated that during the year 2003 and 2004, the Real Estate is started grooming in the mofussil areas of the State of Tamilnadu and it has gone to blossoming stage only in the year 2007. Subsequent to the escalation of the price, due to the booming of the Real Estate business, cannot be a ground to say that the sale deed executed in the year 2003 sale consideration is low, without taking note of the escalation of period over the past 7 years. Besides the lower Appellate Court has relied upon entry in the sale deed, which is unmarked yet again.

45(a). But the lower Appellate Court has committed another mistake in relying upon the unmarked document without calling for the evidence of the parties, subject to the same in the cross-examination reliance cannot be placed upon the unmarked document in the civil proceedings. As stated supra subsequent to the suit sale deed-Ex.B4 in the year 2003, after 4 years there was escalation of price. Such an escalation of price could not be put against the sale deed that came to force in the year 2004.

45(b).It remains to be stated that for the reasons best known, the lower Appellate Court has not looked into the Ex.B1 and Ex.B2 marked document on the side of the defendant. On perusal of Ex.B1 and Ex.B2-sale deeds executed by the very same plaintiff by himself in his personal capacity. Besides the schedule of the property therein also goes to show that it is in the very neighbouring land piece of the suit survey number. In other words, in the total extent of 6 acre in the very same survey number, one acre of land is purchased under the suit sale deed-Ex.B4. With regard to the very piece of land of the very same survey number, very same plaintiff have sold on the very same sale consideration for various purpose under Ex.B1 and B2 assumes significance.

46. These vital part of the marked document was over-looked by the lower Appellate Court while considering the unmarked entry portion. A close perusal of Ex.B1 and B2 goes to show that two acres of land has been sold for Rs.4,00,000/- by the very same plaintiff executes by himself and the said land is, nothing but, situated in the very same survey number of the suit land and besides it is also in the abetting lands in to the suit property. In the absence of the explanation about the Ex.B1 and Ex.B2 by PW1, I find that the lower Appellate Court has focused upon the "unmarked document" and entry found in Ex.B4 to come to the conclusion that the sale consideration

under the suit sale deed is less while “marked documents” Ex.B1 and B2 clearly demonstrate that the same plaintiff has sold the piece of land in the very same survey number in the very same sale consideration even after 9 months of the Ex.B4-sale deed and hence in view of the marked documents- Ex.B1 to B2, namely, sale deeds executed by the plaintiff in the very same survey number, finding of the lower Appellate Court, based upon the unmarked entry in the Ex.B4 cannot be allowed to stand and the same is hereby vacated and therefore, I find that the finding of the lower Appellate Court that the sale consideration reflected in Ex.B4 is low without any acceptable document based upon the unmarked document.

47. On the contrary, DW1 has categorically demonstrated before the Court that at the relevant point of time, the very same plaintiff has sold a piece of land in the very same survey number for the very same sale consideration and even after 9 months, Ex.B3 was executed by the plaintiff though the very same entry transaction since the executor of the document being plaintiff in respect of very same survey number in the neighbourhood

and the said document has been executed personally by the plaintiff and not through power agent also lend support to the case of the plaintiff that the sale consideration as mentioned in Ex.B4 is just and proper found to acceptance by this Court for the reasons recorded in the preceding paragraphs.

Advocate Commissioner's report and possession:

48. Pending trial, the trial Court has appointed advocate commissioner and he has also filed a document and based upon the said advocate commissioner report, the lower Appellate Court has come to a finding that the first respondent/plaintiff is in possession of the suit property and therefore, disbelieved the sale deed. The suit sale deed-Ex.A1(=Ex.B3) was executed on 06.04.2004, three years later, the advocate commissioner has inspected the property and filed the report. The salient features of the report of the Advocate Commissioner is that in the total extent of 6 acres, there is some building and some school is running thereon. In this connection, the evidence of PW1 the cross-examination of PW1 assumes

significance.

"நான் மனு தாக்கல் செய்து நிர்வாக அலுவலர் பெருந்துறை டவுன் பஞ்சாயத்தில் இருந்து வரவழைக்கப்பட்ட வரைபடம் எக்ஸ் 6 வரிசை ஆகும். ஆனால் நான் கேட்ட வரைபடத்தை அனுப்பாமல் என் வீட்டிற்கான வரைபடத்தை அனுப்பியுள்ளார்கள். மேற்படி எக்ஸ் 6 வரிசையில் உள்ள <u>என்னிடம் காட்டப்படும் வரைபடத்தில் வீட்டிற்கு கிழக்கு புறம் காலி இடம் உள்ளது.</u> வா.சா.ஆ.24, 25 ஆகிய ஆவணங்களிலும் கதவு எண் 104 என்றுதான் குறிப்பிடப்பட்டுள்ளது. மேற்படி கதவு எண் 104 சொத்தின் எந்த பகுதியில் உள்ளது என்பதை காட்டப்படவில்லை. வா.சா.ஆ 27 முதல் 28 வரை உள்ள ஆவணங்களில் கதவு எண்கள் எதுவும் குறிப்பிடப்படவில்லை. வா.சா.ஆ.29 மற்றும் 30 ஆவணங்கள் கதவு எண் 16ஏ என குறிப்பிடப்பட்டுள்ளது. வா.சா.ஆ

31 வரிசையில் கண்ட தொலைபேசி பில்கள் கதவு 16ஏ க்கு குறிப்பிடப்பட்டுள்ளது. வா.சா.ஆ 32 மற்றும் 33 கதவு எண்கள் குறிப்பிடப்படவில்லை. வா.சா.ஆ.1 பொது அதிகார பத்திரத்தின் கதவு எண் 127ல் கடை தென்றல் வீட்டின் காம்பவுண்டிற்கும் கிழக்கு சுவற்றிற்கும் கிழக்கு என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரி."

49. Thus I find all the documents marked to prove alleged plaintiff possession are subsequent to filing of the suit. In fact some of the documents have been obtained a day prior to deposition of witnesses and he has admitted in the cross examination that with regard to the Door number mentioned in the receipts and the actual Door number in the revenue records, no records for correlating the Door number as stated by him in the receipt as filed and hence, I find that the said documents are subsequent to the institution of the suit. In the absence of any correlation to the effect that

the receipt belongs to and refers to the suit property, the same cannot be accepted in evidence regarding possession. It remains to be stated that as per the sale deed and as per the plaint schedule, the suit property shown as vacant cite. It is admitted by the DW1 that there is old building at the corner of the suit property, namely, one acre. From the evidence of the Advocate Commissioner-CW1, one acre of land is lying idle at the one corner and the other physical feature spoken to as by PW1 are found to be with reference to the other remaining 5 acres of the land in the very same area and this crucial and vital aspect has not been taken note by the lower Appellate Court while rendering the judgment and recording a finding on the possession.

50. In view of the answer elicited in the cross-examination of PW1 as to the physical feature compared with answer elicited by CW1. The physical features of the building and other buildings are situated in the other 5 acres of the land in the very same survey number initially belonged to the plaintiff. Except old and damaged small building in the corner, there is

nothing in the suit property and therefore, the finding rendered by the lower Appellate Court regarding the alleged physical position is not supported by the documents, however, in view of the discussions in the preceding paragraphs on the admission of PW1 and CW1, this Court has no hesitation to come to the conclusion that the plaintiff has failed to prove his possession of the suit property on the date of filing of the suit. Accordingly, this Court holds that the plaintiff is not in possession of the property.

51. The third defendant executed the following sale deeds in the name of the defendants 8 to 13:

Date/No. of the document	Document executed by	In favour of	Extent conveyed
Sale deed dated 20.12.2012/ Doc.No.5551/2012	S.Palanisamy (D3)	K.Mynavathi-R8 A.S.No.23 of 2013	18 ¼ cents
Sale deed dated 20.12.2012/ Doc.No.5552/2012	S.Palanisamy (D3)	C.Poornimadevi-R9 in A.S.No.23 of 2013 R9 is the wife of R10.	18 ¼ cents
Sale deed dated 20.12.2012/	S.Palanisamy (D3)	D.Chandrasekaran-R10 in A.S.No.23 of 2013	18 ¼ cents

Doc.No.25/2012		R10 is the husband of R9.	
Sale deed dated 20.12.2012/ Doc.No.377/2013	S.Palanisamy (D3)	K.P.Krishnasamy-R11 in A.S.No.23 of 2013.	18 ¼ cents
Sale deed dated 20.12.2012/ Doc.No.24/2012	S.Palanisamy (D3)	C.Selvan-R12 in A.S.No.23 of 2013 R12-husband of R13.	12 ½ cents
Sale deed dated 20.12.2012/ Doc.No.378/2013	S.Palanisamy (D3)	S.Devimalar-R13 in A.S.No.23 of 2013 R13-wife of R12.	12 ½ cents

52. As stated supra, defendants 3 to 6 and defendants 8 to 11 are not allowed to file written statement by imposing the embargo upon them. This Court finds it hard to see such an order when a party, who claims that he purchased the property after dismissal of the suit, but before filing of the appeal ought to have allowed to file additional statement of objection as to whether they are bonafide purchaser for valuable consideration or not by curtailing their right as bonafide purchaser for valuable consideration. It remains to be stated that without allowing the newly added defendant at the

appeal stage either to give statement of objection or their stand, the lower Appellate Court has rendered a finding that they are not bonafide purchaser for valuable consideration and hence such a finding is hereby vacated.

53. As stated supra, after completion of the arguments in both the second appeals, learned Advocate Mr.N.Somasundaar appeared through video conference and contended that his client S.Palanisamy, who is the fourth respondent in S.A.No.647 of 2014 and second appellant in S.A.No.912 of 2014 has given instruction to file change of vakalat and he was given due time for making his submission. The said Palanisamy is the purchaser. The sale deed in his favour executed by the GPA is questioned and challenged in this second appeal. The sum and substance of the submissions of the new counsel for the second appellant and fourth defendant is as under:

53(a) As per the instruction of his client, new counsel could submit that his client has not engaged any advocate before the Sub Court (Trial

Court), not filed any written statement, not engaged any advocate before the Lower Appellate Court (District Judge), not engaged any advocate in the High Court in the second appeal and not engaged any advocate for his appearance as a respondent in the other connected second appeal. He also disowned all the advocates appeared before the trial Court, lower Appellate Court and the High Court except the present counsel. He also disowned all the statement and affidavit filed before the trial Court. However, he has admitted that by an assessment order, newly marked document dated 11.12.2017 for non-payment of capital gains in respect of the sale deed executed by him in favour of the subsequent purchaser, who are appellant in one of the second appeals.

53(b). The Income Tax Department has initiated action for the computation of capital gain tax, interest thereon, penalty. In the said show cause notice, final order has been passed levying penalty. The gross capital gain tax is Rs.56,000/-, with interest it is Rs.91,21,560/-. The proceedings has been initiated as it is escaped the assessment under the Income Tax Act.

The summation of the submissions by the present counsel for the said appellant is during the Christmas Holidays and Maha Sankaranthi Holidays, he never met with the plaintiff/owner and never offered for settlement and never handed however the income tax receipts, over he admitted those documents mentioned by the respondent/plaintiff (land owner) before this Court in C.M.P.No.900 of 2022. Further submitted that the suit sale deed is sham and nominal so also his sale deed in favour of the other subsequent purchasers is also sham and nominal. Besides, he has disowned all the proceedings before the Sub Court and District Court and also the Advocate and Senior Advocate engaged in this matter, who had placed their arguments on the earlier hearing dates.

53(c).Now this Court has considered over the submissions and stand taken by the appellant are to be believed or not.

53(d). Admittedly, the appellant has sold the property after the dismissal of the suit by the trial Court and income Tax Authorities taken note of the sale and levied the capital gains for the profit gained by him by selling the land purchased under Ex.A1-sale deed, which is sale deed and calculated the capital gain, interest and penalty thereon and issued the show cause notice and finally passed the assessment order. In the said enquiry he has stated that he has not received any sale consideration towards the sale effected by him in favour of the six third parties, namely, the subsequent purchasers.

53(e). As could be seen from the assessment order newly marked Ex.A.50 and Ex.A51, the Income Tax officials are issued summons and all the six purchasers from him gave statement before the Income Tax authorities that they have paid the amount to him and after the disposal of the suit and before filing appeal before the District Judge and also stated that they did not receive the money back and further appeal is pending before this Court, namely this case. Based upon the statement given by the purchaser that they have paid the money under the respective sale deeds in their favour executed by the second appellant in S.A.No.912 of 2014 and the fourth respondent in S.A.No.647 of 2014, the Income Tax authorities have rejected his objection and levied the payment. He preferred an appeal before the Commissioner of Income Tax wherein he has stated the operative portion of the trial Court order, which is subject matter of this case.

53(f). It remains to be stated that till the Income Tax officials have initiated the capital gain proceedings, this appellant has not whispered anything against the subsequent purchasers or the GPA. After levy of the capital gain along with the interest and penalty, according to the plaintiff, he met the plaintiff and offered for a settlement and handed over the Income Tax order copies and capitals, which was partly denied by this defendant/respondent.

53(g).Be that as it may, after considering the entire submissions made by the new counsel, I find that the present version put forwarded by the fourth respondent in S.A.No.647 of 2014 is bereft of lack of truth and bonafide and hence lacks credence. As stated supra, until the capital gain proceedings are initiated under the Income Tax Act by the Income Tax authorities, he has not whispered anything against the suit sale deed, only when a huge penalty by way of capital gain was slapped upon him, he started playing foul. Besides he offered himself for settlement with the plaintiff and wanted to pay the penalty from the settlement amount claimed by him from the plaintiff thereby ditching the subsequent purchasers, namely, the appellants in S.A.No.647 of 2014 and co-appellants in S.A.No.912 of 2014.

53(h). It is seen from the Income Tax papers that in the enquiry conducted by the Commissioner of Income Tax, Salem, the purchaser have filed an affidavit that they have parted away with the money as mentioned in the sale deeds in their favour, which is executed by the fourth respondent herein. The finding has been rendered by him that the fourth respondent in S.A.No.647 of 2014 have received the sale consideration under the various sale deeds in favour of the appellant and hence they levied the capital gain tax along with the interest and penalty.

53(i). Hence, I find that the present stand taken by the fourth respondent (2nd appellant in S.A.No.912 of 2014) is nothing but ruse to pay the Income Tax dues which he failed to remit. It is nothing but a lame excuse invented for the evasion of Income Tax authorities and the proceedings and connected penalty proceedings and it is only a rouse in order to avoid and escape from the Income tax proceedings under the Revenue Act and hence I have no hesitation to come to the conclusion that such a stand has been taken by the fourth respondent was as to a whisk away from the revenue proceedings.

53(j). Accordingly, I hold that after selling the suit property to the purchasers, namely, the appellants in S.A.No.647 of 2014 and co-appellants in S.A.No.912 of 2014, he has taken such a stand only to escape the capital gain tax and other taxes and there is nothing bonafide in his such a plea besides he has already disowned all the advocates appeared for him before the trial Court, lower Appellate Court and the High Court including the

Senior Advocate, who made arguments for two days and also disowned the written statement filed before the trial Court.

53(k). Hence, in view of the discussion, I find that the same will not come to the rescue of the first respondent/plaintiff by changing the stand the fourth respondent in S.A.No.647 of 2014 stands exposed and hence the submissions made on his behalf by the new counsel, his stand hereby negative as the same lack credence and found to be tainted with malafide intention to cheat everyone by disowning everyone for the sake of avoidance of the capital gains under the Income Tax and hence all the submissions made on behalf of the said party stands negative.

54. In the above said circumstances, both the second appeals are allowed. The judgment and decree, dated 04.02.2014 made in A.S.No.23 of 2013 passed by the learned Principal District Judge, Erode, is set aside and the judgment and decree dated 22.11.2012 made in O.S.No.134 of 2009 passed by the learned Subordinate Judge, Perundurai, for the different

reasoning as stated supra is hereby confirmed and consequently, the suit in O.S.No.134 of 2009 stands dismissed. No Costs.

05.04.2022

Internet : Yes/No
Index : Yes/No
PJL

Note:
As per the order of this Court, dated 01.02.2022, made in CMP.Nos.16256of 2017, 15168 of 2016 and 900 of 2022 in S.A.Nos.647 and 912 of 2014, Ex.A42 to Ex.A49 [cancellation deed and subsequent sale deeds] and Ex.A50 and Ex.A51[Income Tax Assessment Order and appeal memorandum] are marked in the second appeals.

To

1. The Principal District Judge,
Erode.

2. The Subordinate Judge,
Perundurai.

3. The Section Officer,
V.R.Section,
High Court,
Madras.

<u>RMT.TEEKAA RAMAN,J.,</u>

PJL

Judgment in
S.A.Nos.647 and 912 of 2014

05.04.2022