IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 28.04.2022	DELIVERED ON 18.10.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

S.A.No.817/2017 & CMP.No.20389/2017

Suchitra Devi .. Appellant / 2nd Defendant

vs.

1.Nagineni Sujathamma
2.Nagineni Saritha
3.Nagineni Suitha
4.Nagineni Udayakumar .. Respondents / Plaintiffs

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 21.07.2017 in AS.No.30/2013 passed by the learned Subordinate Judge, Kancheepuram, confirming the judgment and decree dated 21.12.2012 in OS.No.785/2008 passed by the learned District Munsiff cum Judicial Magistrate, Sriperumbudur.

For Appellant : Mr.R.Subramanian

For RR 1 to 4 : Mr.S.Subbiah, Senior counsel for Mr.S.Vijayakumar

JUDGMENT

(1)The 2nd defendant in the suit in OS.No.785/2008 is the appellant in the above Second Appeal.

(2)The respondents in the Second appeal are the wife and children of late Sri.Chengaiah Naidu.

(3)The respondents as plaintiffs, filed the suit in OS.No.785/2008 on the file of the learned District Munsiff cum Judicial Magistrate, Sriperumbudur, for declaration, declaring the fraudulent Power of Attorney Deed dated 06.09.1989 as null and void and not binding on the plaintiffs. The suit is also for a declaration that the Sale Deed dated 16.06.1990 registered on 10.10.1990 on the file of Sub Registrar of Assurances, Sriperumbudur, registered on the strength of fraudulent Power of Attorney Deed dated 06.09.1989 executed by the 1st defendant in favour of the 2nd defendant is null and void and for consequential permanent injunction restraining the defendants from in any manner encumbering or alienating the suit schedule property which is an extent of 5.60 acres situated in

Sriperumbudur Village in the registration District of Tiruvallur, detriment to the interest of the plaintiffs using the fraudulent Sale Deed dated 07.06.1990 registered on 10.10.1990 vide Doc.No.4943/1990.

(4)The case of plaintiffs/respondents in the plaint is as follows:

(5)The 1st plaintiff is the wife and plaintiffs 2 to 4 are the children of late Sri.Chengaiah Naidu who is a native of Rajampet in Andhra Pradesh. During his life time, he acquired the suit schedule property for a valuable consideration from the previous owner by a registered Sale Deed dated 13.04.1967. The 1st plaintiff's husband died at his native place in Andhra Pradesh leaving behind the plaintiffs as his surviving legal heirs. To the knowledge of the plaintiffs, the husband of the 1st plaintiff had not entered into any Agreement or executed any document in favour of any other person. Surprisingly, they came to know that the 1st defendant who was doing business as a land broker in and around Sriperumbudur, on coming to know about the death of the husband of the 1st plaintiff, has prepared a forged Power instrument in his favour as if the husband of the 1st plaintiff had executed and registered a Power of Attorney Deed dated 06.09.1989 in favour of the 1st defendant in respect of the suit property/

They also learnt that the 1st defendant, using the said fabricated Power instrument, sold the suit schedule property to the 2nd defendant who is none else than his daughter vide Sale Deed dated 07.06.1990 which was registered on 10.10.1990 after the death of the husband of the 1st plaintiff. Defendants 1 and 2 have created the Sale Deed fraudulently using the forged Power of Attorney Deed. The consideration shown in the Sale Deed is just Rs.1 Lakh which is a very meagre amount compared to the market value of the suit property on the said date. The plaintiffs came to know about the fraudulent transaction only when they applied for an Encumbrance Certificate on 12.09.2005. They also came to know that the Sale Deed which was executed on 07.06.1990 just a few days prior to the death of the 1st plaintiff's husband, was registered only on 10.10.1990 indicating that the Sale Deed has been prepared clandestinely to make it appear as though the Sale Deed was executed ten days prior to the death of the husband of the 1st plaintiff. The power dies with a person and therefore, the Sale Deed could not have been presented for registration after the death of the husband of the 1st plaintiff. The plaintiffs are in custody of the original title deeds pertaining to the suit property and that the sale is therefore, a fraudulent one intended to grab the land from the plaintiffs by playing fraud.

(6)The suit was contested by the 2nd defendant by filing a written statement and no written statement was filed by the 1st defendant who also died during pendency of the suit. In the written statement, the 2nd defendant contended that her father/1st defendant was appointed as the Power of Attorney Agent by late Chengaiah Naidu vide Doc.No.448/1989 to deal with the said suit property and that the Sale Deed executed by her father/1st defendant in her favour on the strength of the said Power of Attorney, is valid and binding on the plaintiffs. The 2nd defendant disputed the statement in the plaint that the plaintiffs are in possession and enjoyment of the property and contended that the 2nd defendant is in possession and enjoyment of the property after the sale. The 2nd defendant filed an additional written statement pleading adverse possession more specifically by stating that she is in possession of the property from the year 1990 and that her possession was open, hostile to the knowledge of the plaintiffs. It is also stated that she got patta in her name and that the revenue records like Adangal, Kists etc., were issued in her name by the revenue authorities.

(7)The Trial Court framed separate issues as to the truth and validity of the Power of Attorney Deed dated 06.09.1989 and the subsequent Sale Deed dated 07.06.1990. The Trial Court also framed an issue whether the 2nd defendant had prescribed title by adverse possession. The issue relating to possession was also framed by the Trial Court. The findings on other issues were not challenged nor pressed before Court.

(8)Before the Trial Court, the 1st plaintiff examined herself as PW1 and the 4th plaintiff was examined as PW2 and one Sheik Basha Vali @ Mohamed Ghouse was examined as PW3. On behalf of the appellants, Exs.A1 to A9 were marked. The 2nd defendant/appellant examined herself as DW1 and examined one Subbiah as DW2. On behalf of defendants, Exs.B1 to B6 were marked.

(9)The Trial Court examined the issue as to the truth and validity of the Power of Attorney Deed alleged to have been executed by the husband of the 1st plaintiff in favour of the 1st defendant. After examining the document Ex.B3 dated 06.09.1989, the Trial Court held that the burden lies on plaintiffs to prove the said Power of Attorney as fabricated or impersonated or forged. Since the plaintiffs who alleged fraud and forgery, have failed to establish their case, the Trial Court held that the plaintiffs are not entitled to the relief of declaration with regard to the Power of Attorney Deed. However, the Trial Court found that late Chengaiah Naidu / 1st plaintiff 's husband did not give any power to the 1st defendant to sell away the suit property as a whole to any third party as the Power of Attorney only authorised the power agent to obtain permission to form a layout and to sell the approved plots to third parties and nothing more. Further, the Trial Court also examined the validity of the Sale Deed. On the admitted facts. Though the Sale Deed executed by the 1st defendant in favour of the 2nd defendant was on 07.06.1990, it was presented for registration only on 26.09.1990 and it was registered subsequently on 10.10.1990. Since it is admitted that Chengaiah Naidu died on 16.06.1990, the Trial Court found that the Sale Deed which was presented for registration after the death of the principal, namely, Chengaiah Naidu and registered subsequently, is invalid and it would not create any right in favour of the transferee. Relying upon the judgment of this Court reported in ***1987 [1] MLJ 248 [Sekar Mudaliar V. Shajathi***

Bi], the Trial Court held that the 1st defendant exceeded his power while executing the document – Ex.A5 in favour of the appellant herein, particularly after the death of the principal. The 2nd defendant/appellant raised an issue regarding limitation by stating that the suit ought to have been filed within three years from the date of the Sale Deed and that the suit which was filed on 05.07.2006, is barred by limitation. The said issue was also considered by the Trial Court and held that the plaintiffs came to know about the Power of Attorney Deed and the Sale Deed only when they applied for an Encumbrance Certificate and that therefore, the suit filed on 05.07.2006 is well in time. After finding that the Sale Deed was registered only after the death of the principal, the Trial Court described the sale transaction as a nullity so as to bind the plaintiffs in any manner. Therefore, the Trial Court while declining to grant the relief of declaration as to the nullity of the Power of Attorney Deed, granted a decree declaring the Sale Deed dated 07.06.1990 as null and void and not binding on the plaintiffs.

(10)As regards the plea of adverse possession, the Trial Court found that the revenue documents came into existence long after the suit was filed and that the 2nd defendant/appellant has failed to prove her continuous possession from the date of Sale Deed. The Trial Court accepting the principle that possession follows title, found that the suit property is a vacant land and held that the plaintiffs who have established their title, should be presumed to be in possession of the suit property.

(11)Aggrieved by the judgment and decree of the Trial Court, the appellant/2nd defendant preferred an appeal in AS.No.30/2013 on the file of the Sub Court, Kancheepuram. The Lower Appellate Court also fell in line with the Trial Court on every issue and held that the Sale Deed executed by the 1st defendant in favour of the appellant is null and void as the Sale Deed dated 07.06.1990 though was executed prior to the death of Chengaiah Naidu, registered on 10.10.1990, after the death of Chengaiah Naidu. The Lower Appellate Court also found that the Power of Attorney dies with the principal on 16.06.1990 and that the document of sale cannot be presented for registration by the Power of Attorney holder. The argument that the Sale Deed executed by the 1st defendant in exercise of his power under the Power of Attorney Deed, without the knowledge of the death of principal is binding on the legal heirs of the principal as the alienation was made by the Power of Attorney agent in good faith, was rejected by the Lower Appellate Court. The plea of adverse possession was also rejected by the Lower Appellate Court holding that the suit property is a vacant site which is not physically enjoyed by anyone. The Lower Appellate Court also followed the principle "possession follows title" by holding that the plaintiffs who are the legal heirs of the original owner, shall be considered to be in possession as against everyone who are unable to establish their title. The Lower Appellate Court also rejected the contention of the appellant as regards possession after considering the documents filed by both sides. The Appeal suit was again dismissed by the Lower Appellate Court deciding all the issues against the appellant. Aggrieved by the same, the above Second Appeal is preferred by the 2nd defendant.

(12)The Second Appeal was admitted on the following substantial questions of law:-

> *(a) Whether in law are not the Courts below wrong in entertaining a lis after a decade and more, overlooking the mandate of Section 3 of the*

Limitation Act, since under Section 27 of Limitation Act any title/right of the owner gets extinguished if the suit is not filed within the statutory period of limitation?

(b) *Are not the Courts below wrong in failing to see that Article 58 of the Limitation Act provides 3 years time for seeking any declaration and the starting point is from the date on which right to sue first accrues?*

(c) *Whether in law have not the Courts below failed to see that under Section 3 of Power of Attorney Act, the act done by the power of Attorney in good faith is valid, if at the time of performing the act, the death of principal was not known to him and in the instant case,when the power of attorney has been declared to be valid, Section 3 automatically applies?*

(d) *Whether in law are not the Courts below wrong in construing Section 201 and 208 of Contract Act, which clearly mandate that unless the act of revocation is made known to the agent, the acts performed by him under the power of attorney are valid and the 3rd parties are not affected by* *the same and that in the instant case, it is not the case of the plaintiff that they intimated the death of principal to the power agent nor even a presuit notice was issued?*

(e) Have not the Courts below overlooked that under Section 54 of the Transfer of Property Act, once a document is registered, the title passes and the person has to question the same by seeking declaration of title or setting aside the document?

(13)This Court finds that the following facts are not in dispute:-

a) The Trial Court has held that the registered Power of Attorney Deed stated to have been executed by the husband of the 1st plaintiff late Sri.Chengaiah Naidu, in favour of the 1st defendant on 06.09.1989 is not proved to be fraudulent or fabricated or by playing fraud or impersonation.

b) The recitals of the Power of Attorney Deed does not confer the Power of Attorney Agent, namely, the 1st defendant to sell the property as a whole but permit the Power of Attorney agent to get approval to form a layout and to sell the property by plots after obtaining approval for the layout.

c) The Power of Attorney does not authorise the power agent to present the document for registration.

d) The principal namely the husband of the 1st plaintiff died on 16.06.1990 long before the Sale Deed under Ex.A5 was presented for registration.

e) The Sale Deed under Ex.A5 was executed by the 1st defendant in favour of the 2nd defendant on 07.06.1990. The Sale Deed was presented for registration on 26.09.1990. On 10.10.1990, the Sale Deed was registered.

f) The plaintiffs obtained the Encumbrance Certificate on 12.09.2005. The suit in OS.No.785/2008 was filed on 05.07.2006.

(14)The Power of Attorney Deed is marked as Ex.A3. The terms of Ex.A3 as extracted by the Trial Court clearly indicates that the principal does not authorise the power agent to sell the property as a whole. The appellant's father was authorised to apply for layout approval from the Director of Town and Country Planning after forming a layout. The Power of

Attorney was to enable the appellant's father to execute a Gift Deed in respect of lands covered by roads and to pay necessary charges. The appellant's father was also authorised to sign the petitions for getting layout approval. Though the appellant's father was authorised to sell the plots after development and getting approval for the layout, the power of attorney does not authorise the agent to present the Sale Deed for registration.

(15)In the present context, it is relevant to refer the judgment of this Court in the case of ***Sekar Mudaliar's case*** reported in ***1987 [1] MLJ 248 [cited supra]***. Going by the facts of this case, a Settlement Deed which was executed before the death of principal but presented for registration by the Power Agent after the death of settlor was held to be invalid and it would not operate to convey title in favour of settlor after the death of the settlees with reference to immovable properties dealt with therein. It is useful to refer to the following paragraphs of the said judgment which are extracted below:-

"4. It would be necessary to notice some of

the relevant provisions of the Indian Registration Act. Section 32 enumerates the persons, who are entitled to present documents for registration. By Clause (a), the person who executes the document or claims under the same or a person who claims under a decree or order, are enabled to present those documents for registration. The representative or assign of such person is enabled under Section 32(b) to present the document. However, Section 32(c) provides for the presentation of the documents by the agent of such person, representative or assign duly authorised by a power of attorney executed and authenticated. Section 33 provides for the recognition of powers of attorney for purposes of Section 32. Section 34 provides for an enquiry before registration by the registering officer and under Section 3(c) the registering officer can satisfy himself about the right of the representative of a person appearing to so appear and present the document. That section also prohibits the registration of documents unless the persons executing such documents or their representatives, assigns or agents appear before the registering officer within, the time allowed for presentation under Sections 23, 24, 25, *and 26 of the Registration Act. Section 35(1)(a) provides for the registration for a document, if all the persons executing a document, appear personally before the registering Officer and personally known to him or if he is otherwise satisfied that they are the persons they represent themselves to be and if they all admit the execution. Provision is also made under Section 35(1)(c) for a case when the executant of a document is dead and his representative or assign appears before the registering Officer and admits the execution of the document by the deceased. Section 35(2) empowers the registering Officer to examine any person in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be or for any other purpose contemplated by the Act. The question of the validity of presentation for registration after the death of the executant by the power of attorney agent, whose power had also come to an end by the death of the principal, has to be decided with reference to the aforesaid provisions. If the presentation for registration was ab initio defective, in that it did not conform to the requirements of the provisions of the Indian*

Registration Act in that regard, then, such initial defect in presentation for registration affected the jurisdiction of the registering officer' to effect the registration of the document. For, in a case where the document is presented for registration by a power of attorney agent not empowered to do so under the terms of the power or a document is presented by a person, who has no authority whatever to do so, or when it is so presented by a person who is| incompetent to present the document for registration in terms of Section 32(c) of the Indian Registration Act, there is an initial defect in the presentation, as the requirements of Section 32(c) of the Indian Registration Act are not complied with. Only in the event of a proper presentation of a document for registration, the registering Officer is enjoined to further proceed with the subsequent steps for the purposes of registration of the document so presented. In other words, if there is an initial want of jurisdiction in the registering authority by the presentation of a document by a person not authorised to so present it for registration, the circumstance that the registration has been done by the registering *authority, would not validate the document presented for registration by a person not authorised by the provisions of the Indian Registration Act. Indeed, that it is so, has been clearly laid down by several decisions. In Mujibunnissa v. Abdul Rahim and Abdul Aziz (1901) 28 I.A. 15 : 11 M.L.J. 58 : I.L.R. 23 All 233, the Privy Council considered the scope of Sections 32 and 34 of the Indian Registration Act III of 1877 with reference to a situation similar to the one in the present case. In that case, 'the presentation for registration of a deed of endowment executed by a Munshi was done by his power of attorney agent, after his death. Considering the question of the validity of the registration of the deed, the privy Council pointed out that it is perfectly plain not merely from the general law, but from the terms of Section 32 itself, that after the man's death, the only attorney who would have any locus standi would have been the attorney of the representative or assign of the deceased and that the power and jurisdiction of the Registrar. comes into play only when it is presented by a person having direct relation to the deed and as the deed was presented by a volunteer, the registration* *was invalid and inoperative and that the presentation by a person not legally entitled to present a deed for registration cannot also be countenanced as a defect in procedure falling under Section 87 of the Indian Registration Act. In Khalil-Ud-Din-Ahmed v. Bansi Bibi (1913) I.L.R. 35 A11. 34 (F.B.), a Full bench of the Allahabad High Court has laid down that where a document is presented for registration by a person not duly authorised to present it according to law applicable to the registration made upon the admission of the executant before an officer, who had no jurisdiction to accept the document for registration, is likewise invalid. In that case, a mortgage deed executed by the wife was presented for registration by the husband and in considering the question whether the document was properly presented for registration in accordance with the provisions of the Indian Registration Act the Full Bench pointed out at page 40 as follows:*

It seems to me that the presentation by Muiz-Ud-Din-Ahmed was a complete nullity. He had no authority whatever to present the document for registration and in my opinion that question is completely covered by *the ruling of their Lordships of the Privy Council in the case of Mujib Unnissa v. Abdul Rahim (1901) I.L.R. 23 All. 233 (P.C.) : (280 I.A. 15.*

Banerji, J., in the course of his judgment observed as follows:

...The document was not presented for registration by a person haying a direct relation to the deed and the subsequent was before an Officer, who had no jurisdiction to accept the document for registration. Therefore, there was no presentation to a Sub Registrar having jurisdiction and. the registration of the document must, according to the ruling of the Privy Council, be held to be invalid.

Again in Jambu Prasad v. Muhammad Aftab Ali Khan (1915) A.I.R. 1914 P.C. 16 : 42 I.A. 22 : 28 M.L.J. 577 : I.L.R. 37 All. 49 : (1915) 2 L.W. 277 (P.C.) the Privy Council was concerned with the validity of the registration of two mortgage deeds dated 2nd July, 1882 and 10th August, 1886. The mortgage deed of 2nd July, 1882 was presented for registration on 11th July, 1882 on behalf of the executor by one Natthu Mal, who held a power of attorney, but which did not empower him to present the document for registration.

The mortgagors admitted before the Sub Registrar the execution and received in his presence the mortgage amount and thereafter the Sub Registrar registered the mortgage deed. The other mortgage deed dated 10th August, 1886 was presented for registration by one Ilahi Baksh on behalf of the mortgagee, who held a power of attorney, which however could not empower him to present the document for registration There was also defect in the authentication of the power in his favour. The mortgagors admitted before the Sub Registrar the execution and the redemption of the mortgage deed and also acknowledged the receipt of the mortgage money and thereupon, the mortgage deed was registered. Based on these documents, two suits were instituted, one on 20th May, 1909 on the mortgage deed, dated 10th August, 1886 and the other on 16th March, 1910 on the mortgage deed, dated 2nd July, 1882 and another mortgage deed of 25th October, 1892 which were dismissed on the ground that the mortgage deeds had not been validity registered and could not affect the immovable properties and that they were also barred by time. On appeal, the High Court dismissed the appeal arising *from the suit instituted on 20th May, 1909 on the mortgage of the year 1886 and also dismissed the appeal arising out of the suit of the year 1910, in so far as it related to the mortgage deed, dated 25th October, 1882. Before the Privy Council, a contention was raised that it can be presumed that the mortgage deed had been presented for registration by the mortgagors, who had executed the document and who attended before the Sub Registrar. The Privy Council held that the mortgagors attended the office of the Sub Registrar to admit the execution and not for presenting them for registration and that the documents had been presented by the agents, who did not have the power to present the documents for registration and consequently, the registering officer did have the indispensable foundation of authority to register the documents. Referring to Mujibunnissa v. Abdul Rahim I.L.R.(1901) A11. 233 : 288415 the Privy Council pointed out that the principle in that decision would apply to that case as well and that the principle is that a Registrar or a Sub Registrar has no jurisdiction to register a document, unless he is moved to do so by a person who has executed or claims* *under it or by the representative or assign duly authorised by a power of attorney executed and authenticated in manner prescribed in Section 33 of that Act. It was also further pointed out that the executants of a deed attending the Registrar or a Sub Registrar merely for the purpose of admitting the execution, cannot be treated for the purposes of Section 32 of Act III of 1877, as presenting the deed for registration and their assent to the registration will not be sufficient to give the Registrar jurisdiction. The object of Sections 32, 33, 34 and 35 of Act III of 1877 was pointed out to be to make it difficult for persons to commit frauds by means of registration under the Act. The Privy Council further pointed out the duty of the courts in this connection and stated that Courts ought not to allow the imperative provisions of the Act to be defeated when as in that case, it was proved that an agent who presented a document for registration had not been duly authorised in a manner prescribed by the Act to present it. In Dottie Karan v. Lachmi Prasad MANU/PR/0077/1930, the validity for presentation of a document for regulation by a power of attorney* *agent, the power in whose favour contained an alteration in the date, came to be considered. The Privy Council pointed out that the date in the power of attorney was altered and the registration of the mortgage was not effected in accordance with the provisions of the Registration Act and that the deed was not properly registered, not being presented for registration by an authorised agent. It was also further laid down that such a defect was not one merely of procedure, but one of jurisdiction in the registering officer. Abdul Samad v. Majitan Bibi MANU/WB/0114/1961 : AIR 1961 Cal 540. considered the validity of the presentation of a document for registration by a power agent, the power in whose favour was defective, as it was not exceed and authenticated as provided for by Section 33(1)(c) of the Registration Act (sic)*

arose for consideration. It was laid down that the presentation of the document for registration was made by a person who could not do so under law and tire registration of the document upon such presentation, is invalid and does not pass title.

5. As against the principle enunciated in the *aforesaid decisions, reliance was placed by the Learned Counsel for the appellant upon Maunglu Gale v. U Po Hlaing A.I.R. 1934 Rang. 104. In that case, the question raised related to the validity of a deed of gift and sale executed by an agent. The transactions were challenged on the ground that prior to the presentation of the documents for registration, the authority of the agent had been cancelled by the principal. Applying Section 208 of the Indian Contract Act, it was held that there was no communication of the revocation of the authority and that the Sub Registrar had also no knowledge of the revocation of the authority and therefore, the transactions would be valid. In my view, the principle of this decision is inapplicable on the facts of the present case. For, it is clearly admitted by D.W. 9, the erstwhile power of attorney agent of the principal that his authority had come to an end even at the time when the document Ex. B3 was presented for registration. In other words, by suppressing the death of the settlor and the consequent termination of his authority as agent, D.W. 9 had made it appear that he was a person competent to present the document for registration as per the* *power of attorney of the principal, despite his death and had thereby fraudulently procured the registration in violation of Section 32(c) of the Registration Act. Further, the decision has not taken into consideration the provisions of the Indian Registration Act, already referred to and the jurisdiction of the Sub Registrar to proceed with the registration of the document only in the event of a proper presentation thereof according to the provisions of the Indian Registration Act. Section 208 of the Contract Act relied upon in that decision is applicable only with reference to the acts, which are ordinarily done by the agent in the course of his authority as such, but when the statute under Section 32(c) enjoins that even at the time of presentation of document, a person must fulfil a particular character as an agent and he does not fulfil that character, then the very presentation for registration is defective and cannot be cured by the subsequent registration and this would be so irrespective of Section 208 of the Contract Act. Under these circumstances, the decision relied on by the Learned Counsel for the appellants cannot at all be applied to the facts of this case.*

6. Under Section 87 of the Indian Registration Act nothing done in good faith pursuant to this Act, by any registering officer shall be invalid merely by reason of any defect in his appointment or procedure. It has earlier been pointed out how in this case the defect is one, which pertains to the jurisdiction of the Registrar to effect the registration of the documents. In Ma Pwa May v. S.R.M.M.A. Chettiar Firm (1929) : A.I.R. 1929 P.C. 279 : 58 M.L.J. 5956 I.A. 379 : 30 L.W. 481 ; the Privy Council dealt with the scope of S.87 of the Registration Act and held that it is important to distinguish between defects in procedure of the registration and lack of jurisdiction. Illustrating a case of lack of jurisdiction, the Privy Council pointed out that such a case would include persons not entitled to present documents for registration presenting them, and stated that Section 87 will be inoperative in such a case. As seen earlier, the presentation for registration of the settlement deed under Ex.B3 by a person, who was no better than an utter stranger, cannot be considered to be a case of mere defect in procedure, but would affect the jurisdiction of the registering authority to register the *document, as the provisions of the Indian Registration Act do not permit registration of documents presented by all and sundry, who are not empowered to present the documents according to its provisions. In this view, the defect in this case regarding registration cannot be merely treated or brushed aside as an error in procedure, but it would be substantial defect affecting jurisdiction of the registering authority. Under those circumstances, the conclusion of the courts below that the registration of Ex. B3 would be invalid cannot be taken exception to. The first contention of the Learned Counsel for the appellants has therefore to be rejected."*

(16)The Hon'ble Supreme Court in a recent judgment in the case of ***Mrs.Uma Devi Nambiar Vs. Thamarasseri Roamn Catholic Diocese repby its Procuration Devssia's son Rev.Father Joseph Kappil*** reported in ***2022 Live Law [SC] 338,*** considered the validity of the Sale Deed which was executed through the Power of Attorney agent. It was found that the agent was not authorised to sell the property. It was held by the Hon'ble Supreme Court that to constitute a valid power to sell the property of principal, the document of power should expressly authorise the agent [1] to execute the Sale Deed [2] to present it for registration and [3] to admit execution before the registering authority. It is useful to refer to following paragraphs of the said judgment:-

> *"8. As could be seen from the judgments of the trial Court and the High Court, the deed of general Power of Attorney executed by the Appellant in favour of her sister on 21.07.1971, did not specifically contain any power of sale. Therefore, the trial Court as well as the High Court held in no uncertain terms that the Appellant's sister was not competent to sell the property to the predecessor-in-interest of the Respondent. However, the learned Counsel appearing for the Respondent argued, (i) that while construing a document, all punctuation marks should be given due weightage; (ii) that the deed of Power of Attorney was drafted by a doyen of the Bar; (iii) that Clause 22 of the deed of Power of Attorney conferred upon the agent, the power to execute and register all documents; (iv) that the power to execute a document and present the same for registration, should be understood to mean the power to execute documents requiring registration in the light of*

Section 49 of the Registration Act, 1908; and (v) that, therefore, a bonafide purchaser like the Respondent should not be made to suffer.

9. But we do not agree with the above submissions of the learned Counsel for the Respondent. It remains a plain and simple fact that the deed of Power of Attorney executed by the Appellant on 21.07.1971 in favour of her sister contained provisions empowering the agent: (i) to grant leases under Clause 15; (ii) to make borrowals if and when necessary with or without security, and to execute and if necessary, register all documents in connection therewith, under Clause 20; and (iii) to sign in her own name, documents for and on behalf of the Appellant and present them for registration, under Clause 22. But there was no Clause in the deed authorizing and empowering the agent to sell the property. The argument that the deed was drafted by a doyen of the Bar, is an argument not in favour of the Respondent. This is for the reason that the draftsman has chosen to include, (i) an express power to lease out the property; and (ii) an express power to execute any document offering the property as security for any *borrowal, but not an express power to sell the property. Therefore, the draftsman appears to have had clear instructions and he carried out those instructions faithfully. The power to sell is not to be inferred from a document of Power of Attorney. The trial Court as well as the High Court were ad idem on the finding that the document did not confer any power of sale.*

....

16. The learned Counsel for Respondent relied upon the decision of this Court in Delhi Development Authority v. Durga Chand Kaushish MANU/SC/0329/1973 : (1973) 2 SCC 825, in support of his argument about the Rule of interpretation to be adopted while construing Exhibit A-1, the deed of general Power of Attorney. He also relied upon the judgment of this Court in Syed Abdul Khader v. Rami Reddy and Ors. MANU/SC/0329/1978 : (1979) 2 SCC 601 for driving home the question as to how the deed of Power of Attorney should be construed.

17. We do not know how the ratio laid down in the aforesaid decisions could be applied to the advantage of the Respondent. As a matter of plain and *simple fact, Exhibit A-1, deed of Power of Attorney did not contain a Clause authorizing the agent to sell the property though it contained two express provisions, one for leasing out the property and another for executing necessary documents if a security had to be offered for any borrowal made by the agent. Therefore, by convoluted logic, punctuation marks cannot be made to convey a power of sale. Even the very decision relied upon by the learned Counsel for the Respondent, makes it clear that ordinarily a Power of Attorney is to be construed strictly by the Court. Neither Ramanatha Aiyar's Law Lexicon nor Section 49 of the Registration Act can amplify or magnify the clauses contained in the deed of Power of Attorney.*

18. As held by this Court in Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust MANU/SC/0515/2012 : (2012) 8 SCC 706 the document should expressly authorize the agent, (i) to execute a sale deed; (ii) to present it for registration; and (iii) to admit execution before the Registering Authority.

19. It is a fundamental principle of the law *of transfer of property that "no one can confer a better title than what he himself has" (Nemo dat quod non habet). The Appellant's sister did not have the power to sell the property to the vendors of the Respondent. Therefore, the vendors of the Respondent could not have derived any valid title to the property. If the vendors of the Respondent themselves did not have any title, they had nothing to convey to the Respondent, except perhaps the litigation."*

(17)As it was pointed out by the learned Senior counsel appearing for the respondents/plaintiffs, the Power of Attorney Deed executed by the 1st plaintiff's husband do not authorise the 1st defendant to sell the suit property as a whole. In the instant case, it is not pleaded by the 2nd defendant that the Power of Attorney Deed was executed pursuant to an Agreement of Sale. In other words, it is not the case of the appellant / 2nd defendant that the Power of Attorney Deed executed by the 1st defendant in favour of the 2nd defendant was coupled with interest. In such circumstances, it is surprising to note that the 2nd defendant/appellant/daughter of the 1st defendant – Power of Attorney agent claim title to the property on the basis of the sale which was registered after the death of the principal ignoring the legal obligation of the power agent to account to the principal. It is also surprising to note that a valuable property near Chennai [5.60 acres] has been sold by the Power of Attorney agent in favour of his daughter for a sum of Rs.1 lakh. It is not the case of the 1st defendant that the amount that was shown as sale consideration was paid to the principal or his legal heirs at any point of time. Having regard to the peculiar facts and circumstances of the case and the specific denial of execution of the Power of Attorney Deed, the Trial Court ought not to have put the burden on the plaintiffs/respondents to prove that the Power of Attorney Deed was fraudulently created. Admittedly, no one was examined to prove the execution and genuineness of the document – Ex.B3 dated 06.09.1989. This Court is not inclined to go further in view of the fact that the respondents have not challenged the decree of the Trial Court insofar as it relates to refusing to grant the declaratory relief sought for by the plaintiffs in relation to the Power of Attorney Deed.

(18)Admittedly, the Power of Attorney Deed authorises the Power Agent to develop the land by forming the layout, to get approval for the layout on behalf of plaintiffs/respondents and then to sell the property as plots. Therefore, the Power of Attorney does not authorise the 1st defendant to present the Sale Deed for registration or to admit execution before the Registrar.

(19)It is also admitted that the document was presented for registration after the death of principal namely the husband of the 1st plaintiff. The registration of the document was on 10.10.1990, nearly four months after the death of the 1st plaintiff's husband/principal.

(20)This Court has independently considered the provisions of the Registration Act. It is to be seen that the Hon'ble Supreme Court in a recent judgment in ***Assets Reconstruction Company [India] Limited Vs. S.P.Velayutham and Others*** reported in ***2022 SCC Online 544*** has also considered the valid presentation of a document of conveyance through Power of Attorney Agent having regard to the provisions of the Registration Act. The Hon'ble Supreme Court has held as follows:-

> *"**25.**Section 34 of the Act contains provisions regarding the enquiry to be undertaken by the Registering Officer before registration. Section 34, in its application in the State of Tamilnadu, as*

amended by Tamilnadu Amendment Act 28 of 2000, reads as follows:

34 . Enquiry before registration by registering officer.--(1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document (and in the case of document for sale of property, the persons claiming under that document)1, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation Under Sections 23, 24, 25 and 26:

***Provided** that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable Under Section 25, the document may be registered.*

(2) Appearances Under Sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon--

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document (or they are claiming under the document)1; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to Sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this Section applies to copies of decrees or orders.

***26**. Sub-section (3) of Section 34 imposes three obligations upon the Registering Officer. These obligations are:*

(i) To enquire whether or not such document was executed by the person by whom it is claimed to have been executed; (ii) To satisfy himself as to the identity of the person appearing before him and claiming to

have executed the document;

(iii) To satisfy himself about the right of any person appearing as a representative, assign or agent, to so appear;

27.*We may note that Section 32[c], 34[1] and 34[3][c] use the expressions 'agent', 'representative' and 'assign'. Though in common parlance, we understand the power of attorney agent of a person to be the representative of the principal, the words "agent" and "representative" are used in Sections 32[c] and 34[3][c] to mean different persons. The word "representative" is defined in Section 2[10] of the Registration Act "to include the guardian of a minor and the committee or other legal curator of a lunatic or idiot". The words "agent" and "assign" are not defined in the Act. Therefore, we may justifiably borrow the definition of the expression "agent" from Section 182 of the Indian Contract Act, 1872, which defines an "agent" "to mean a person employed to do any act for another or to represent another in dealings with third person".*

28.*Keeping the above definitions in mind, if we go back to Section 32[c] it could be seen that* *whenever the agent of, [i]the executant ; [ii]the claimant ; [iii] a representative ; or [iv] an assign, presents a document for registration,*

(1) he should have been authorised by PoA and

(2) such PoA should have been executed and authenticated in the manner provided in Clauses [a], [b] or [c] of sub-section [1] of Section 33. The requirements of registration depends upon the State amendments.

29.*What is covered by Section 32[c] read with Section 33[1] is something different from what is covered by Section 34[3]. While section 32[c] read with Section 33[1] speaks about the entitlement of the person to present a document for registration, section 34[3] speaks about the enquiry to be conducted and the satisfaction to be arrived at by the Registering Officer. Section 34[3][c] imposes an obligation on the Registering Officer to satisfy himself about the right of a person appearing as a representative, assign or agent. This prescription has to be read with Rule 46 of the Tamilnadu Rules.*

....

34*. In the case on hand, the sale deed dated*

05.07.2007 executed by the father S.P.Velayutham, in favour of his son Amar, contained a specific recital to the effect that the owners of the property had appointed S.P. Velayutham, as their Power of Attorney, by a deed dated 23.08.2006 to sell the property. But far from authorising the power agent to sell the property, Clause 7 of the registered deed of PoA dated 23.08.2006, on the basis of which the sale deed was executed, actually contained an express prohibition from creating any encumbrance on the property. Clause 7 of the registered PoA dated 23.08.2006 reads as follows:

(7) To negotiate with any third party/s claimant/s including broker/s take the Banks and other financial institutions claimant/s if any in the Schedule mentioned properties and to settle such claims and on, this behalf our attorney is empowered to do all acts, deeds and things. To enter upon the Schedule mentioned properties for the survey of, the same. The power agent herein appointed shall have no power to encumber the Schedule mentioned properties for the survey of the same. The power agent herein appointed shall have no

power to encumber the Schedule mentioned properties without the written consent of us.

***35**. Apart from the fact that Clause 7 extracted above expressly prohibited the power to encumber, there was also no stipulation authorising S.P. Velayutham to appear before any Registering Officer for the purpose of sale, as an agent. Though Clause 5 authorised the agent to appear before the Registrar and to admit execution, the same was specifically in relation to the execution of gift deeds in favour of municipalities, corporations or other authorities, for the purpose of development of the layout, formation of the roads etc. Similarly, Clause 6 of the deed of PoA also contained a limited power to appear before the Sub-Registrar, but the same was also restricted to certain things mentioned in Clause 6 itself.*

36. Interestingly, the contesting Respondents relied upon another unregistered deed of PoA dated 07.06.2007, which contained a power to sell. Despite this document being dated 07.06.2007 and despite the date of execution of the sale deed being 05.07.2007, there was no reference to this PoA in the sale deed.

This deed of PoA has surfaced much later and the fraudulent nature of this deed of PoA is patently visible, in view of certain recitals contained therein. The relevant recitals contained in the un-registered PoA dated 07.06.2007 reads as follows:

...AND WHEREAS, under the said General Power of Attorney Deed though we have intended to confer power including to sell the Schedule mentioned properties under clauses of the said General Power of Attorney Deed, by inadvertence and over sight the said Clause relating to power to sell the Schedule mentioned properties was omitted to be included therein;

AND WHEREAS, now our Agent Mr. S.P. Velayutham has found the said mistake and requested for execution of additional and supplemental General Power of Attorney Deed 'empowering him to sell the Schedule mentioned properties' and to receive the sale consideration therefor. In continuation of the earlier General Power of Attorney Deed dated 23.08.2006 referred to above;

AND WHEREAS, we as the Principals under the General Power of Attorney Deed dated 23.08.2006 are *satisfied with, the mistake pointed out by our Agent and*

'accordingly we also agreed' to execute this General Power of Attorney Deed and as such we are appointing Mr. S.P. Velayutham, son of Sabapathy, Hindu; aged about 50 years, residing at No. 5, Sabari, Street, Madipakkam, Chennai-600091 as out General Power of Attorney to do the following acts; deeds and things relating to the properties detailed in the Schedule hereunder...

The above recitals contain a totally false statement to the effect, (i) that a power of sale was intended to be conferred under the original PoA, but it was omitted due to inadvertence and oversight; and (ii) that after the mistake was pointed out, the Principals decided to execute the additional document. These recitals are manifestly false and are contrary to Clause 7 of the registered PoA dated 23.08.2006. In any case, this PoA dated 07.06.2007 was not what was produced or relied upon at the time of registration of the sale deed dated 05.07.2007.

37.*Therefore, if the Registering Officer had verified the recitals contained in the registered deed* *of PoA dated 23.08.2006, to see if the power agent had the power to do what he did, he would have refused the registration of the document. Rule 46 of the Tamilnadu Registration Rules ordains what the Registering Officer is obliged to do, (i) when a document is presented for registration under a special PoA; and (ii) when a document is presented for registration under a general PoA. It was the failure on the part of the Registering Officer to do what he is required to do, that convinced the learned Single Judge to invoke the writ jurisdiction. But the Division Bench overturned the decision of the learned Judge on the ground that the writ court ought to have relegated the parties to the civil court."*

(21)From the admitted facts and the judgments of the Hon'ble Supreme Court as well as the judgment of this Court above referred to, this Court has no hesitation to hold that the Sale Deed which was presented after the death of the principal is void and invalid and it would not operate to convey the title in favour of the appellant with reference to the suit property.

(22)As regards questions of law [a] and [b] on the plea of limitation, the

Courts below have rendered a specific finding as to the knowledge of the respondents/plaintiffs about the Sale Deed dated 07.06.1990. It is to be noted that the respondents came with the specific case that they came to know about the Power of Attorney Deed and the Sale Deed only when they applied for Encumbrance Certificate in June 2005. In the written statement, the defendants have not pleaded that the plaintiffs/respondents knew the execution of the Sale Deed earlier. It was therefore, the 2nd defendant/appellant came forward with the specific plea of adverse possession in the additional written statement filed by her. There is no dispute with regard to the legal implication of Sections 3 and 27 of the Limitation Act. However, the cause of action for the suit arose in this case only when the respondents / plaintiffs came to know about the Sale Deed. In the said circumstances, there is no substance in the questions of law [a] and [b].

(23)The 3rd question of law is again misleading, ignoring the facts admitted. It is well settled that the power dies with the person and therefore, the Power of Attorney agent does not have the power to represent the principal any time after his death. In this case, the principal died on

16.06.1990 and the document of sale was presented for registration on 26.09.1990. However, the Sale Deed came into existence just few days prior to the death of the principal, i.e., on 07.06.1990. It is to be seen that the Sale Deed was registered on 10.10.1990, after four months. The sequence of facts admitted also indicates that the Sale Deed has been fraudulently executed by the Power of Attorney agent in favour of his daughter/appellant/2nd defendant for a paltry sum of Rs.1 lakh. This Court is unable to consider the appellant as a bona fide purchaser and the transaction as a bona fide one and therefore, there is no question of considering the act done by the Power of Attorney agent as one in good faith. The appellant has colluded with her father to grab the property of the respondents/plaintiffs by playing fraud. Therefore, quite contrary to the terms of the Power of Attorney Deed, the 1st defendant/father of the appellant after knowing the death of the 1st plaintiff's husband / principal hurriedly executed the Sale Deed in favour of the appellant with a clear intention to defraud the plaintiffs/respondents and thereby to deprive of their legitimate rights. The 1st defendant remained exparte and he did not file a written statement even though he died long after the institution of the suit. This Court, having regard to the relationship between the 1st defendant and the 2nd defendant, has no hesitation to hold that the entire transaction is fraudulent. Since fraud vitiates every solemn transaction, the appellant cannot be granted any relief.

(24)The 4th question of law framed by this Court is again unsustainable having regard to the admitted facts. Here, there is no revocation by an act of principal or anyone claiming under him. It is well settled that the Power of Attorney dies with the principal. It cannot be expected that the principal should intimate the agent.

(25)Since Sections 201 and 208 of the Indian Contract Act, 1872, are referred to in the grounds of Appeal, it is useful to refer to the said provisions which are extracted below:-

> ***Section 201: Termination of agency.—****An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.*

> ***Section 208. When termination of agent's authority takes effect as to agent, and as to third persons.—*** *The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.*

(26)When the Power of Attorney Deed is executed, the agency is deemed to continue in the absence of anything that would prove termination of agency on one or other grounds mentioned in Section 201 of the Indian Contract Act. The death of the principal or agent also leads to termination of agency by operation of law and not by act of parties.

(27)The object of Section 208 of the Contract Act is to protect the interest of a third party where the termination of agency is by revocation. However, by the death of principal, the power ceases to exist and an act of an agent of a dead person cannot be approved as the agent has no power to represent a dead person. In other words, a dead person cannot be a party to a contract. This aspect of the case has been reiterated in several cases and the submission of the learned counsel for the appellant/2nd defendant relying upon Sections 201 and 208 of the Indian Contract Act, has no substance. Further, under Section 32[c] of the Registration Act, every document to be registered under this Act, has to be presented for registration by an agent duly authorised by Power of Attorney executed and authenticated. When the Power of Attorney in this case did not authorise the agent to present the document for registration, Section 208 of the Contract Act has no application.

(28)The learned counsel for the appellant then relied upon Section 54 of the Transfer of Property Act and contended that once a document is registered, the title passes and the person has to question the same by seeking a declaration of title and for setting aside the document. In this case, the right to declare the nullity of a Sale Deed which was presented for registration after the death, is upheld by the Courts below. The relief granted has the effect of setting aside the document. Therefore, the plea of the appellant relying upon Section 54 of the Transfer of Property Act has no substance.

(29)The Hon'ble Supreme Court of India in the case in ***Kewal Krishnan Vs. Rajesh Kumar and Others*** reported in ***2021 [3] MWN [Civil] 825***, had occasion to consider a similar case after referring to Section 54 of the Transfer of Property Act. Two Sale Deeds executed through the Power of Attorney agent was challenged by the principal. It was admitted that two Sale Deeds were executed by the Power of Attorney with a nominal sum in favour of his minor sons. The Hon'ble Supreme Court held that the Sale Deeds in favour of his wife and two minor sons, who have no earning capacity, are void and no legal right would be conferred upon the wife and children of the Power of Attorney holder. The following paragraphs of the said judgment are relevant and hence extracted:-

> *"16. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the Respondents. It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time of his wife and minor*

sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half share of the Appellant in the suit properties. In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the Appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10th April 1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the Appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings. Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the Respondents on 16th November 2021 have no *relevance at all.*

17. *As no title was transferred under the said sale deeds, the Appellant continues to have undivided half share in the suit properties. That is how the District Court passed the decree holding that the Appellant is entitled to joint possession of the suit properties along with Sudarshan Kumar. Therefore, for the reasons recorded above, by setting aside the impugned judgment and order of the High Court, the decree passed by the District Court deserves to be restored."*

(30)The learned counsel for the appellant did not argue any other issue. As pointed out earlier, the substantial questions of law framed at the time of admission, are answered against the appellant and hence, this Court finds no merits in the Second Appeal.

(31)Accordingly, the Second Appeal stands **dismissed with cost.** Consequently, connected miscellaneous petition is closed.

18.10.2022

AP
Index : Yes / No

Internet : Yes

To

1.The Subordinate Judge
Kancheepuram.
2.The District Munsiff cum Judicial Magistrate,
Sriperumbudur .
3.The Section Officer
VR Section, High Court
Chennai.

S.S.SUNDAR, J.

AP

Judgment made in
S.A.No.817/2017

18.10.2022