



A.S(MD)Nos.292, 293 & 294/2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)Nos.292, 293 and 294 of 2008

and

M.P(MD)Nos.1, 1 and 1 of 2008

A.S(MD)No.292 of 2008:-

Kannan Raja

... Appellant

vs.

1)Baskara Doss

2)Ponnusamy

3)N.A.Pethu Raja

... Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 04.06.2008 made in O.S.No.55 of 2007 on the file of the Principal District Court, Theni.

For Appellant : Mr.M.Vallinayagam, Senior Counsel, for
Mr.D.Nallathambi

For R1 : Mr.V.Janakiramalu

For R3 : Mr.P.T.S.Narendravasan

A.S(MD)No.293 of 2008:-

Kannan Raja

... Appellant



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VS.

1)Baskara Doss
2)N.A.Pethu Raja

... Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 04.06.2008 made in O.S.No.56 of 2007 on the file of the Principal District Court, Theni.

For Appellant	: Mr.M.Vallinayagam, Senior Counsel, for Mr.D.Nallathambi
For R1	: Mr.V.Janakiramalu
For R2	: Mr.P.T.S.Narendravasan

A.S(MD)No.294 of 2008:-

Kannan Raja

... Appellant

VS.

1)N.A.Pethu Raja
2)Baskara Doss

... Respondents

Appeal Suit filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 04.06.2008 made in O.S.No.57 of 2007 on the file of the Principal District Court, Theni.

For Appellant	: Mr.M.Vallinayagam, Senior Counsel, for Mr.D.Nallathambi
For R1	: Mr.V.Janakiramalu
For R2	: Mr.P.T.S.Narendravasan



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COMMON JUDGMENT

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O.S.No.57/2007 was filed by one Kannan Raja as plaintiff for declaration and permanent injunction in respect of the suit property and to cancel the document dated 05.01.2006 created by the defendants. O.S.Nos.55 and 56/2007 were filed by one Baskara Doss as plaintiff for a permanent injunction in respect of the respective suit properties. After trial, the trial Court dismissed O.S.No.57/2007 and decreed the suits in O.S.Nos.55 and 56/2007 vide a common judgment and decree dated 04.06.2008. Challenging the same, Kannan Raja/plaintiff in O.S.No.57/2007 and 1st defendant in O.S.Nos.55 and 56/2007, as appellant has filed these three appeals.

2. Brief facts of the plaint in O.S.No.57/2007 are as follows:-

The 1st defendant herein/Pethuraja is the brother of the plaintiff Kannan Raja who are the sons of one Alagiri Raja and Devaki Ammal. Along with the the plaintiff and the 1st defendant, they have another son by name, Pappuraja and two daughters namely, Pathmavathi Ammal and Ramathilagam. There was a partition of family properties on 29.03.1970. While so, on 17.06.1977, father of



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the plaintiff Alagiri Raja died. Thereafter, the mother and sisters of the plaintiff executed a release deed dated 11.11.1977 in respect of the suit properties, as such, the plaintiff and his brother Pappuraja became the owners of the suit properties and enjoyed the suit properties jointly. Since both of them had to go outstation frequently for the purpose of work, they jointly executed a general power of attorney dated 16.04.1992 in favour of their brother/1st defendant/Pethuraja, to lease out the nanja land, to let the house property for rent and for mortgage and sale of the suit properties, if necessary. While so, there was a loss in their business and all the three persons entered into an agreement dated 24.11.1994 regarding settlement of loans. While so, Pappuraja died on 26.06.1995. Thereafter, there was a dispute between the heirs of Pappuraja and the plaintiff and 1st defendant. They entered into an agreement dated 27.11.1997, by which, the power of attorney given to the 1st defendant was cancelled. While so, the 1st defendant in collusion with the 2nd defendant created a forged sale deed dated 05.01.2006, as if he sold the suit property to the 2nd defendant, based on which, the 2nd defendant is disturbing the peaceful possession and enjoyment of the plaintiff. Hence, the suit.



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3. Brief facts of the written statement in O.S.No.57/2007 are as follows:-

The 1st defendant filed a written statement stating that only based on the power of attorney dated 16.04.1992, he sold the suit property to the 2nd defendant and handed over the sale amount to the plaintiff and handed over the possession of the suit property to the 2nd defendant. There was no cancellation of power of attorney as alleged. The plaintiff is not in possession of the suit property. Hence, the suit is liable to be dismissed. The 2nd defendant also filed a written statement, reiterating the above contentions raised by the 1st defendant. Apart from that, he averred that after the purchase of the suit property, he took steps for mutation of revenue records in his name. The 2nd defendant filed O.S.No.91/2006 against the plaintiff before the Principal District Court, Srivilliputhur, along with I.A.No.241/2006 and the said I.A was allowed. Hence, the present suit has to be dismissed.

4. Based on the above pleadings, the trial Court framed the following issues:-

1)Whether the suit property is in possession of the plaintiff?



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2)Whether the power of attorney executed in favour of the 1st defendant is valid or not?

3)whether the relief of declaration and permanent injunction can be granted to the plaintiff?

4)Whether the sale deed dated 05.01.2006 is not valid and liable to be set aside?

5)To what relief, the plaintiff is entitled to?

5. Brief facts of the plaint in O.S.No.55/2007 are as follows:-

The plaintiff herein/Baskara Doss would state that the suit property herein was purchased by him as per the sale deed dated 05.01.2006 executed by the 3rd defendant Pethuraja as power agent of the 1st defendant/Kannan Raja and his brother Pappuraja. Though the 1st defendant sent an advocate notice to the plaintiff herein, since the 3rd defendant informed him that he will take care of it, the plaintiff did not send any reply to the said notice. However, on 18.08.2006, the defendants 1 and 2 attempted to trespass into the suit property which was prevented by the plaintiff. Hence, the suit.



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6. Brief averments in the written statement in O.S.No. 55/2007 are as follows:-

The 1st defendant filed a written statement stating that the sale deed dated 05.01.2006 is not valid as per law as it is a fabricated document by the plaintiff and the 3rd defendant. As per the power of attorney dated 16.04.1992, the 3rd defendant had no power to sell the suit property and the said power of attorney itself was impliedly cancelled in 1997 under Ex.A7. Pursuant to the forged sale, the plaintiff disturbed the possession of the 1st defendant and therefore, the 1st defendant filed O.S.No.93/06 before the Sub Court, Srivilliputhur and it is pending. The alleged trespass on 18.08.2006 by the defendants 1 and 2 is denied as false. The 3rd defendant also filed a written statement, stating that he sold the suit property to the plaintiff herein as power agent of the 1st defendant and his brother Pappuraja and on the date of said sale, the power of attorney was in force. Hence, the suit is liable to be dismissed.

7. Based on the above pleadings, the trial Court framed the following issues:-

1)Whether the sale deed dated 05.01.2006 executed by the 3rd



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defendant as power agent of the 1st defendant is valid or not and whether it will bind the 1st defendant?

2)Whether the plaintiff is entitled to the relief of permanent injunction?

3)To what relief, the plaintiff is entitled to?

8. Brief facts of the plaint in O.S.No.56/2007 are as follows:-

The plaintiff herein/Baskara Doss would state that the suit property herein was purchased by him as per the sale deed dated 05.01.2006 executed by the 2nd defendant Pethuraja as power agent of the 1st defendant/Kannan Raja and his brother Pappuraja. Pursuant to the said purchase, the plaintiff is in possession of the suit property. While so, on 21.08.2006, the 1st defendant and his men attempted to trespass into the suit property which was prevented by the plaintiff. Hence, the suit.

9. Brief averments in the written statement in O.S.No. 56/2007 are as follows:-

The 1st defendant filed a written statement stating that the sale deed dated 05.01.2006 is not valid as per law as it is a fabricated



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document by the plaintiff and the 2nd defendant. As per the power of attorney dated 16.04.1992, the 2nd defendant had no power to sell the suit property and the said power of attorney was cancelled even on 27.11.1997 itself. The alleged trespass on 21.08.2006 by the 1st defendant is denied as false. Hence, the suit is liable to be dismissed.

10. Based on the above pleadings, the trial Court framed the following issues:-

1)Whether the sale deed dated 05.01.2006 executed by the 2nd defendant as power agent of the 1st defendant is valid or not?

2)Whether the plaintiff is entitled to the relief of permanent injunction?

3)To what relief, the plaintiff is entitled to?

11. In order to substantiate the case, on the side of the plaintiff, the plaintiff Kannan Raja was examined himself as PW1 and 30 documents were marked as Exs.A1 and A30. On the side of the defendants, two witnesses were examined as DW1 and DW2 and 12 documents were marked as Exs.B1 to B12.



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12. The trial Court, considering the pleadings, oral and documentary evidence, dismissed the suit in O.S.No.57/2007 and decreed the suits in O.S.Nos.55 and 56/2007 vide a common judgment and decrees dated 04.06.2008. Challenging the common judgment and decrees, the plaintiff Kannan Raja as appellant has filed these three appeals.

13. The learned Senior Counsel for the appellant in all these appeals would submit that the suit properties in all the three suits originally belonged to the appellant's father Alagiri Raja and all the joint family properties were subsequently divided between the appellant's brothers and they were running a business jointly and some of the properties derived from their maternal aunt. The learned Senior Counsel would further submit that the appellant and his brother Pappuraja executed a power of attorney in favour of their brother Pethuraja, who is the defendant Nos.1, 2 and 3 in O.S.Nos. 57, 56 and 55/2007 respectively, and the same was subsequently cancelled under Ex.A5 and Ex.A7 agreement dated 24.11.1994 and 27.11.1997 respectively. After the cancellation of the said power of attorney, the said Pethuraja had no power or authority to sell the



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suit properties and therefore, the sale deeds dated 05.01.2006 in all the suits are not valid and binding on the appellant herein. It is further submitted that Pappuraja died on 26.06.1995, prior to the sale and therefore, the power of attorney in favour of Pethuraja stood automatically terminated and consequently, the sale deeds dated 05.01.2006 executed by the power agent are null and void. He would further submit that the alleged power of attorney does not contain any description of properties and therefore, no right can be conferred on the power agent to sell the suit properties for and on behalf of the appellant. The power agent Pethuraja was not empowered under the power of attorney deed to receive the sale consideration and the sale deeds dated 05.01.2006 are not genuine and the same is vitiated by fraud and collusion.

14. The learned Senior Counsel would further submit that the alleged power of attorney deed was jointly executed by the appellant and his deceased brother Pappuraja in respect of their joint family property without any specification and the power agent Pethuraja is not entitled to dispose of the individual property of the appellant on the strength of the said power of attorney, which does not confer



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any right on the power agent to dispose of the individual property of the appellant. Further, the power of attorney deed has not given absolute power and it is only a qualified power empowering the power agent to sell the properties in the event of certain contingency and the power agent has not made out any contingency either in the pleadings or in the evidence and therefore, the alleged sale deeds dated 05.01.2006 are liable to be set aside, as the same were executed by fraud and collusion.

15. The learned Senior Counsel for the appellant would further submit that the alleged power of attorney was executed on 16.04.1992 and the sale deeds were executed by the power agent Pethuraja on 05.01.2006. In the meantime, there were so many developments in the family resulting in the agreement between the appellant as well as the heirs of the deceased brother Pappuraja over the joint family properties and the alleged power of attorney deed will have no effect in view of the implied revocation of power of attorney in 1997. The alleged sale transaction between the power agent and the plaintiff Baskara Doss is not bonafide one and it was made by the power agent to deprive the appellant of his right, title



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and interest over the suit properties. The said Baskara Doss is only a name lender and he was set up by the power agent Pethuraja to defeat the right of the appellant over the suit properties. There is a material contradiction between the evidence of DW1 and DW2 over the execution of the sale deed and therefore, the evidence of the defendants cannot be relied upon.

16. The learned counsel for the contesting respondent/Baskara Doss who is the purchaser and plaintiff in O.S.Nos.55 and 56/2007 would submit that the appellant and his brother Pappuraja executed a power of attorney in favour of their brother/Pethuraja on 16.04.1992 in respect of all the properties stand in their names. Though one of the principals died, the power of attorney was not cancelled and was in force. If at all any misunderstanding between the principals, they could have cancelled the power of attorney, but the appellant never cancelled the power of attorney. The appellant alleged to have cancelled the said power of attorney only on 08.03.2006 after the execution of the sale deeds on 05.01.2006 and therefore, the cancellation of the power of attorney after the execution of the sale deeds is not valid and bind



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the purchaser/Baskara Doss for a valuable consideration without any notice. Though the appellant has stated that he and his brother executed the power of attorney only in respect of all the joint family properties and joint family business and they have not executed the power of attorney for their individual properties, the power of attorney deed shows otherwise and the appellant himself admitted that since he himself and his deceased brother could not manage their properties and they used to go outstation frequently, in order to manage and maintain their properties, they executed the power of attorney in favour of one of their brothers namely, Pethuraja. Though the appellant stated that subsequently the said power of attorney was cancelled, as already stated, the said cancellation was only on 08.03.2006, after the execution of the sale deeds dated 05.01.2006. Thus, the trial Court considering the above, rightly dismissed the suit in O.S.No.57/2007 and decreed the suits in O.S.Nos.55 and 56/2007, which does not warrant interference by this Court.

17. Heard both sides and perused the records.



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18. It is not in dispute that originally the suit properties belonged to the father of the appellant Alagiri Raja and subsequently, his sons including the appellant, divided all the landed properties and they jointly run a business which means, except the joint business, other properties have been divided. Even they derived the suit properties which were obtained by them through a settlement deed from his maternal grandmother. However, the ownership of the suit properties is not in dispute. According to the appellant, while running the joint business, they borrowed money from various Nationalised Banks and financial institutions. Therefore, in order to settle the financial crisis, the appellant and one of his deceased brother Pappuraja executed the power of attorney in favour of Pethuraja regarding the joint family business alone. Other properties have been divided between the brothers as separate properties of the brothers. Therefore, the power of attorney does not cover the separate properties.

19. It is the case of the appellant that he and his brother executed the power of attorney to maintain the joint business. They



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entered into the agreements under Exs.A5 and A7 dated 24.11.1994 and 27.11.1997 respectively, which clearly implies that they cancelled the power of attorney and power of attorney had not been acted upon in 1997 itself. Therefore, subsequently, the power agent Pethuraja has no right to sell the individual property stands in the name of the appellant on 05.01.2006. When the power agent was acting against the interest of the appellant, immediately, the appellant cancelled the power deed on 08.03.2006.

20. Admittedly, the appellant and his brother gave a power of attorney in favour of Pethuraja and it is a general power of attorney. Though the appellant stated that it is not executed for dealing the separate property of the appellant, but on a reading of the recital in the power of attorney, it is not stated that the power of attorney was executed only to maintain the joint business. Admittedly, in this case, all the three brothers entered into a partition and they separated the entire properties. Therefore, the contention of the appellant is not acceptable. Further, the power of attorney executed on 16.04.1992 was cancelled on 08.03.2006, whereas, the power agent Pethuraja sold the suit properties on 05.01.2006. The



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cancellation of the power of attorney has been done after 14 years.

If at all the appellant and his brother were not in good terms, they could have very well cancelled the power of attorney before 05.01.2006. The appellant came to know that the power agent Pethuraja sold the suit properties to the plaintiff/Baskara Doss and the said purchaser Baskara Doss has taken possession of the suit properties. Knowing fully well of the above facts, the appellant cancelled the power of attorney only on 08.03.2006 and subsequently filed the suit in the year 2007 for declaration and permanent injunction.

21. When the appellant and his brother Pappuraja themselves admitted that they were moving frequently for outstation and therefore, they executed the power of attorney giving power to Pethuraja to manage their properties, it is clear that the appellant was not in possession of the suit properties, whereas the power agent/Pethuraja was in possession of the properties and in terms of the power of attorney, he executed the sale deeds dated 05.01.2006 in favour of the plaintiff/Baskara Doss and then the said Baskara Doss had taken possession of the suit properties. The appellant



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could not establish that before executing the sale deeds, the power of attorney was cancelled, as such, the said sale cannot be held to be invalid. Therefore, the trial Court dismissed the suit in O.S.No. 57/2007 filed by the appellant for declaration and permanent injunction. Since the sale acted upon and the power of attorney was cancelled only subsequently three months later, the trial Court refused to declare the sale deeds dated 05.01.2006 as null and void.

22. In these appeals, though the appellant stated that the power of attorney was cancelled in 1997 even prior to the execution of the sale deeds dated 05.01.2006, under Exs.A5 and A7 agreement, which is an implied cancellation, but however, he has not established that the power of attorney was cancelled in the manner known to law before the execution of the sale deeds dated 05.01.2006 and therefore, it is the burden of the appellant to establish his case and he cannot take advantage of the loopholes left by the defendants. Once the appellant filed the suit for declaration and permanent injunction and for cancellation of sale deed dated 05.01.2006, it is his duty to prove his case that he has got right in the suit properties and he is in possession of the suit properties.



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Whereas, in this case, admittedly, he and his brother Pappuraja executed the power of attorney and he failed to prove that the power of attorney was executed only with reference to the joint business alone. A reading of the power of attorney clearly shows that power has been given to deal with both individual property as well as common property. Even the evidence of DW2-one of the witnesses to the sale deed Ex.B4 dated 05.01.2006, clearly shows that he has clearly narrated that the power agent Pethuraja sold the properties for and on behalf of the appellant for a valuable consideration and handed over possession of the suit properties. Therefore, from the evidence of DW1 and DW2, it is established that the sale deeds were executed on 05.01.2006.

23. Though one of the contentions of the appellant is that one of the principals namely, Pappuraja died after the execution of the power of attorney and therefore, the power of attorney got terminated automatically on the date of death of Pappuraja, it is to be noted that the power of attorney would get lapsed and terminated automatically on the date of death as against the deceased principal alone and as against the alive principal namely,



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the appellant, it is still in force and it would not get terminated totally against the appellant also.

24. Therefore, on a reading of the plaint, oral and the documentary evidence, the appellant failed to establish his case and the trial Court has come to the conclusion that since the power of attorney was admitted by the appellant and the power agent Pethuraja sold the suit properties based on the power of attorney to the plaintiff/Baskara Doss and the sale deeds dated 05.01.2006 also got established by the purchaser/Baskara Doss, by examining himself as DW1 and also a witness to the sale deeds as DW2. The appellant has not proved that before execution of the sale deeds dated 05.01.2006, the power of attorney was cancelled. Therefore, the trial Court has rightly come to the conclusion that the appellant as a plaintiff, failed to establish his case, whereas, the respondents established that during the power of attorney was in force, the sale deeds were executed and pursuant to the said sale, the purchaser Baskara Doss is in possession of the suit properties and dismissed O.S.No.57/2007. There is no perversity in the said judgment warranting interference by this Court. Accordingly, A.S(MD)No.294 of 2008 is liable to be dismissed.



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25. As far as A.S(MD)Nos.292 and 293 of 2008 are concerned, the plaintiff/Baskara Doss claimed that he purchased the suit properties herein, from the power agent/Pethuraja, of the appellant and his brother Pappuraja, by sale deeds dated 05.01.2006 and was in possession of the respective suit properties. While so, the appellant and his men attempted to trespass into the respective suit properties. Hence, the purchaser Baskara Doss filed the above suits for permanent injunction against the appellant. The trial Court found that since the power of attorney was admitted by the appellant and the power agent Pethuraja sold the properties based on the said power of attorney to the plaintiff/Baskara Doss and the sale deeds dated 05.01.2006 also got established by the purchaser/Baskara Doss by examining himself as DW1 and also a witness to the sale deeds as DW2 and the appellant has not proved that before the execution of the sale deeds dated 05.01.2006, the power of attorney was cancelled. Therefore, the trial Court has rightly come to the conclusion that the appellant herein, as a plaintiff failed to establish his case, whereas, the respondents established that during the power of attorney was in force, the sale deeds were executed and pursuant to the said sale, the purchaser Baskara Doss



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is in possession of the respective suit properties and hence decreed the suits in O.S.Nos.55 and 56/2007.

26. The appellate Court being a fact finding Court, it has to re-appreciate the entire pleadings, oral and documentary evidence. On a careful perusal of the entire pleadings, oral and documentary evidence and also the common judgment and decrees of the trial Court in O.S.Nos.55, 56 and 57/2007 dated 04.06.2008, this Court does not find any perversity or good reason to interfere with the said common judgment.

27. In view of the above, all the three Appeal Suits are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes

06.07.2022

To

The Principal District Judge,
Theni.



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DATED : 06.07.2022