



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) No.809 of 2020

and

C.M.P.(MD) No.5510 of 2020

V.Karuppasamy

.. Petitioner/
Petitioner/
1st Defendant

-vs-

1.G.Udaiyar
2.P.Nambiappan

.. Respondents/
Respondents/
Plaintiff, 2nd Defendant

Prayer :- Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order passed in I.A.No.2 of 2019 in O.S.No.526 of 2018 dated 19.03.2020 on the file of Principal District Munsif Court , Tirunelveli and order to receive the documents.

For Petitioner : Mr.T.Selvan

For R1 : Mr.P.Pethurajesh

For R2 : No Appearance

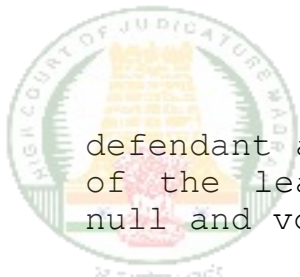
ORDER

(Heard through Video Conferencing)

Aggrieved by the order dated 19.03.2020, passed by the learned Principal District Munsif, Tirunelveli, dismissing the application to receive documents, viz., the unregistered powers of attorney dated 01.10.1998 and 15.10.1998, the 1st defendant is before this Court.

2.The brief facts are as follows:-

2.1.The 1st respondent/plaintiff had filed the suit in O.S.No.526 of 2018 on the file of the learned District Munsif, Tirunelveli, for declaring the decree obtained by the petitioner/1st



defendant against the 2nd defendant in O.S.No.57 of 2016 on the file of the learned District Munsif, Tirunelveli, dated 29.04.2016 as null and void.

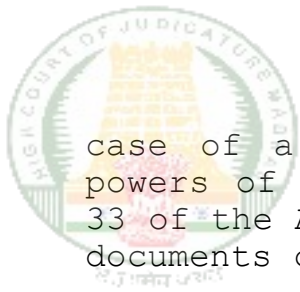
3. In the written statement filed by the petitioner, one of the defence raised is that he had purchased the property under a sale deed dated 10.01.2017, which was also admitted by the plaintiff. The 1st respondent has also taken out a defence that the Sale Deed in his favour, which has been filed as the first document along with the plaint, does not relate to the suit schedule property. The petitioner has filed a very detailed written statement and sought for dismissal of the suit. Thereafter, the petitioner had filed the impugned application in I.A.No.2 of 2019 for receiving copies of the powers of attorney executed by the original owners in the name of Power Agent one Sundaram dated 01.10.1998 and 15.10.1998. The petitioner would submit that the sale deed in his favour, that is, the sale deed dated 10.01.2017 has been executed by the Power Agent of the original owner on the strength of the Power of Attorney Deeds dated 01.10.1998 and 15.10.1998. Both these power deeds are unregistered documents. The petitioner had also contended in the affidavit that at the time of cross examination of these power deeds, the registration of the power deeds were not compulsory. Therefore, he sought to have these documents received as evidence on his side.

4. The only objection to this application was that the documents had to be compulsorily registered and being unregistered documents, the same cannot be received in evidence.

5. The learned Principal District Munsif, Tirunelveli, by the impugned order, dismissed the said application holding that the petitioner has not proved that the two power of attorney deeds, which are sought to be marked, did not require registration under the Registration Act and further, it is not a case that the documents were being marked for a collateral purpose. Challenging the said order, the revision petitioner is before this Court.

6. Learned counsel for the petitioner would submit that the petitioner has filed the application only for the purpose of proving the authenticity of the Sale Deed dated 10.01.2017. He would submit that in 1998, the registration of power of attorney was not compulsory. The Registration Department had thereafter made it mandatory and therefore, the observation of the learned Judge is totally misconceived.

7. Per contra, Mr. Pethu Rajesh, learned counsel appearing for the 1st respondent would contend that as per the provisions of Section 32 of Registration Act, document, which is registrable or optional, has to be presented only by the agent or the representative and in the



case of a power of attorney for the purpose of Section 32, the powers of attorney, which were recognisable are set out in Section 33 of the Act. He would submit that in the light of Section 32, the documents cannot be received in evidence.

8.Heard the learned counsel on either side and perused the records.

9.The powers of attorney are both executed in the year 1998. The compulsory registration of a power of attorney was introduced by the Tamil Nadu Act 29 of 2012 with effect from 01.12.2012 whereby, the instruments of power of attorney relating to immovable property other than those executed out side India has been listed as serial number (h) in Section 17(1) of the Registration Act. Therefore, the powers of attorney, which are sought to be filed as documents, were not compulsorily registrable documents on the date on which it were executed.

10.Coming to Section 32 of the Act, it deals with the persons who are authorised to present a document for registration. The document covered under the section are the one that are compulsorily registrable or which are optionally registrable. In the case of the power of attorney, subject matter of the impugned application, they have not been presented for registration. Therefore, Section 32 would not apply to this case.

11.Be that as it may, the application before this Court is only for receiving the documents in evidence. It is needless to state that even if the documents are received in evidence, the same are subject to proof and relevance. Therefore, this Civil Revision Petition is allowed and the order dated 19.03.2020 passed by the learned Principal District Munsif, Tirunelveli, in I.A.No.2 of 2019 is set aside and the powers of attorney dated 01.10.1998 and 15.10.1998 are directed to be received, which shall be subject to proof and relevance at the time of marking. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

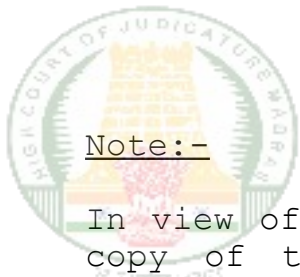
Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

abr



Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Principal District Munsif,
Tirunelveli.

Copy to:

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.PETHU RAJESH, Advocate (SR-412[F] dated 05/01/2022)
C.R.P. (PD) (MD) No.809 of 2020
Dated: 05.01.2022

MGJ(27.01.2022) 4P 5C