



Comp.A.Nos.301 & 302 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	30.09.2022
Order pronounced on	23.01.2023

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Comp. A.Nos. 301 & 302 of 2021
in
Comp. A.Nos. 579 to 584 of 2013
in
Company Petition No.57 of 1998

- 1.Smt. Madhamma
- 2.Smt.Thonna Muniamma
- 3.Shri. Narayanappa

... Applicants
(in both applications)

vs.

- 1.The Official Liquidator,
High Court, Madras
As Provisional Liquidator of
M/s.Maxworth Orchards (India) Limited,
No.29, Rajaji Salai, Chennai- 600 001.

- 2.Mrs. Nagasaila Suresh
Administrator of M/s.Maxworth Orchards (India) Limited
(In Liquidation)
New No.14/1, Old No.38/1,
Akbarabad Second Street,
Kodambakkam, Chennai – 600 001.

- 3.R.Dinesh
- 4.Mr.Varadappa

... Respondents
(in both applications)



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PRAYER IN C.A.Nos.301 & 302 of 2021: This Application is filed under Order XIV, Rule 8 of O.S. Rules 1956 r/w Rule 9 & 11(b) of the Company Rules, 1959 praying to set aside/cancel the sale dated 07.08.2017 vide Document No.3023 of 2017 at SRO, Soolagiri, Krishnagiri District, executed by the first respondent, in his capacity as the provisional liquidator of the M/s.Maxworth Orchards India Limited, the respondent in the company petition, in favour of the third respondent, in so far as the properties measuring an extent of 3.5445 acres in Survey Nos.157/2B and 0.2594 acres in Survey No.157/2A, totally 3.80 acres, in Seluvandoddi Village, Hosur Taluk, Krishnagiri District, being the item Nos.25 and 26 of the schedule thereof based on the order dated 16.12.2013 passed by this Court in CA.No.579 to 584 of 2013 in CP.No.57 of 1998.

Applicants	:	Mr.R.Selvakumar Mr.M.Marudhachalam
Respondents	:	Mr.Pamarthi Sridhar Official Liquidator for R1 Mrs.Nagasaila Suresh for Administrator for R-2

COMMON ORDER

These applications are presented by applicants claiming title to lands ad-measuring 3.5445 acres in Survey No.157/2B and 0.2594 acres in



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Survey No.157/2A, at Seluvandoddi Village, Hosur Taluk, Krishnagiri District.

2. In Company Application No.301 of 2021, the applicant seeks to set aside or cancel the sale deed dated 07.08.2017 bearing Document No.3023 of 2017 pertaining to the lands measuring an extent of 3.5445 acres in Survey No.157/2B and 0.2594 acres in Survey No.157/2A at Seluvandoddi Village, Hosur Taluk, Krishnagiri District. In Company Application No.302 of 2021, an interim injunction restraining the third Respondent from disturbing the applicant's peaceful possession and enjoyment of the properties is prayed for.

3. Oral submissions on behalf of the applicants were addressed by Mr.R.Selvakumar, learned counsel, and by Mrs.Nagasaila Suresh, learned Administrator, and Mr. Pamarthi Sridhar, Official Liquidator.

4. Learned counsel for the applicant submitted that the applicants trace their title from their father, Mr.Varadappa Naidu, son of Munusamy Naidu, who acquired the disputed aggregate extent of 3.80 acres by way of a



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Release Deed (Document No.1761 of 1978) dated 14.06.1978. He submitted that Mr.Varadappa Naidu was in possession of the property till his death on 15.08.1994.

5. Learned counsel next contended that the applicants' deceased father did not execute the General Power of Attorney (GPA) dated 17.02.1995, Document No.85/1995 (the GPA) in favour of V.Varadappa, an employee of the company in liquidation (the Company). According to him, the GPA was executed after his father's death by impersonating him. Learned counsel also relied upon the pattas, kist receipts and village accounts in respect of the lands and asserted that the revenue records stand mutated in the names of the second and third applicants and they have been paying public dues since then. He further submitted that the applicants' father had physical possession of not only the disputed properties, but also the title documents of the properties. He stated that neither the applicants' father nor the applicants sold or alienated or encumbered the disputed property. It is, therefore, asserted that the sale of the disputed property under Document No.3023 of 2017 executed by the Official Liquidator on 07.08.2017 to the third respondent No.3 is illegal and void *ab-initio*.



6. In response thereto, the Official Liquidator (OL) filed a report dated 06.01.2022. In the said report, it was asserted that the Company acquired about 110 acres in Seluvandoddi and Karikallupalli villages (Max-Nerigam Project) under seven registered general powers of attorney in favour of V.Varadappa from the original land owners. As per records, in Survey Nos.157/2A and 157/2B of Seluvandoddi village, the Company acquired extents of 0.2594 and 3.5445 acres, respectively, through the GPA in favour of its ex-employee, Mr.Varadappa, from the land owners, 1)Betappa Naidu, 2)Mallappa Naidu and 3)Varadappa.

7. The OL further submitted in his report that the land owners who executed the release deed in favour of the applicants' father, Varadappa, were also parties to another general power of attorney, Document No. 86 of 1995, which was also executed in favour of V.Varadappa, in respect of another parcel of land forming part of the Max-Nerigam Project, on the same day with the same set of witnesses. In addition, he submitted that the second and third applicants were present on 17/02/1995 at the office of the Soolagiri Sub-Registrar and executed GPA, Document No.86 of 1995, which proves their knowledge of the transactions. He further contended



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that the Company acted in good faith and paid full consideration and took possession of the entire land.

8. The OL also pointed out that pursuant to orders dated 26.03.2013 and 30.08.2013, respectively, in C.A.579 to 584 of 2013 and C.A.No.908 of 2012 , bids were invited from intending purchasers by publication of a sale notice in the newspapers, Dinamani & New Indian Express, on 01.12.2013. The auction sale was conducted on 16.12.2013 and two bidders participated. Out of the bidders, Mr.Dinesh, the third respondent, was declared as the successful bidder. Upon payment of the full consideration, this Court confirmed the auction sale pertaining to the lands in Max-Nerigam.

9. The OL invited the attention of the Court to the fact that the present applications were filed in October 2021 after a delay of 7 years and 10 months and, hence, were liable to be dismissed on the ground of delay. It was further contended that the third respondent is the present owner of the land and the applicants should work out their remedy in the appropriate jurisdictional forum.



10. In the objections filed by the applicants to the report of the OL, they contended that the sale was effected by the OL only on 07.08.2017 and the applicants came to know of these proceedings only when the third respondent entered the premises in December 2019. The applicants denied the statement in the report that the second and third applicants were present for the execution of GPA Document No.86 of 1995. *Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656* was cited to contend that any sale through a GPA is not valid.

11. The learned Administrator produced the GPA documents mentioned in the OL's report and submitted that these lands are lands of the Company and that the auction sale process was valid.

12. Although notice was served on the third respondent, Mr. Dinesh, and the fourth respondent, Mr.Varadappa, as recorded by order dated 04.02.2022, there was no representation for the said respondents. Therefore, the matter is proceeded with in their absence.



13. The primary question that warrants examination in view of the contentions of the contesting parties is whether the sale deed dated 07.08.2017, which was executed by the OL in favour of the third respondent, and registered as Document No.3023 of 2017, by the SRO, Soolagiri, Krishnagiri District, is liable to be set aside at the instance of the applicants herein.

14. The main plank on which the above conveyance is assailed by the applicants is the purported death certificate dated 10.10.2020 of their father, Mr.Varadappa, son of Munisamy. The said death certificate was issued on 10.10.2020 by the Registrar, Birth and Death, Nerigam Village Panchayat. The death certificate specifies the date of death as 15.08.1994. Since the date of execution and registration of the GPA (i.e. 17.02.1995) is subsequent thereto, the applicants contend that the GPA was executed by impersonating the applicants' father. In order to determine whether the applicants' contention merits acceptance, the impugned GPA, the impugned death certificate and the sale deed dated 07.08.2017 should be examined closely.



15. The GPA was purportedly executed on 16.02.1995 by Betappa Naidu, son of Mallappa Naidu, Mallappa Naidu, son of Kandappa Naidu, and Varadhappa, son of Munisamy Naidu, to and in favour of V.Varadappa, son of Varadappa. It is stated in the GPA that all the three executants were residing at Chennasandiram Village, Nerigam Panchayat, Hosur Taluk, Dharmapuri District. It is further stated therein that the three executants are the sole and absolute owners of the property described in the schedule. The said schedule contains the description of five items of property in S.Nos.198/2, 197/2, 197/1, 157/2B and 157/2A of an aggregate extent of about 12.82 acres. The document was presented for registration on 20.02.1995 before Mr.C.Parthasarathy, Sub Registrar, Hosur, and registered on 22.02.1995 as Document No.85 of 1995 in Book 4. The document records that the witnesses were C.V.Venkatasamy, son of Varadhappa Gowdu and G. Srinivasulu, son of Govindappa Eluvapalli. It also records that the executants were identified by E.M. Venkataiah, son of Margamappa Eluvapalli and Chandraiah, son of Varadappa Gowdu. Since it is a registered document, it may be presumed that the procedure prescribed in Part VI of the Registration Act, 1908 was complied with, particularly the requirements



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of Section 34(3)(b) thereof with regard to satisfaction as to the identity of the executants.

16. The sale deed dated 07.08.2017 was executed by the OL in favour of the successful auction purchaser, Mr.R.Dinesh, for a total sale consideration of Rs.86 lakhs. 41 items of property, as per the description in the schedule to the sale deed, were conveyed under the sale deed. In the recitals, it is stated that the Company acquired about 110.5883 acres in Karikallupalli and Seluvandoddi Villages in Hosur Taluk through powers of attorney in favour of the former employees of the Company, V.Varadappa and K. Balasubramanian. After acquiring 110.5883 acres, it is stated that 63 acres were conveyed by the Company through the agents under the general powers of attorney to customers. Therefore, the sale deed is in respect of the remaining extent of about 47.58 acres. The recitals draw reference to about 13 powers of attorney. Out of these 13 powers of attorney, one is the GPA. The relevant recital dealing with the GPA refers to lands in S.Nos.198/2, 197/1, 197/2, 157/2B and 157/2A. The corresponding items in the schedule thereto are item nos.25, 26, 39 and 40. The aggregate extent is 8.2746 acres.



17. The applicants rely on a copy of a registered release deed in Telugu. The translated version indicates that the release is in favour of Varadappa Naidu, son of Munisamy Naidu, and pertains to 1.54 hectares, which is equivalent to 3.804 acres, in S.No.157/2 Sennasanthiram Village, Hosur Taluk. Even assuming that S.No.157/2 was later sub-divided as S.No.157/1 and 2, the rival claim of the applicants is confined to 2 out of 41 items of property conveyed under the sale deed.

18. In the above larger context, it should be noticed that the applicants did not array the other two executants of the GPA, namely, Betappa Naidu and Mallappa Naidu as parties to these applications. Likewise, neither the attesting witnesses nor the SRO are arrayed as parties. As discussed earlier, the only ground on which the GPA is assailed is the alleged earlier death of one of the executants. The purported death certificate was issued on 10.10.2020 in respect of an alleged death on 15.08.1994. The applicants have not produced the doctor's certificate specifying the date of death or the certificate from the burial ground or crematorium in such regard. Instead, an undated communication addressed by the third applicant to the Tahsildar, Soolagiri Taluk, is on record. By this



communication, the third applicant asserts that the death of his father was not registered. Indeed, a certificate to such effect was obtained and annexed to this letter. The death certificate specifying the date of death as 15.08.1994 was issued in these facts and circumstances about 26 years after the alleged date of death. Section 13(3) of the Registration of Births and Deaths Act, 1969(the Registration of Births and Deaths Act) is extracted below:

"(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee."

As per Section 13(3) of the Registration of Births and Deaths Act, any death not registered within one year of its occurrence shall be registered only on an order by a Magistrate of the first class or a Presidency Magistrate. The applicants have not obtained the death certificate by complying with the requirements of Section 13(3). The death certificate, particularly the date of death specified therein, does not inspire confidence and cannot be accepted in these facts and circumstances.



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19. Thus, a sale deed under which about 47.58 acres (under 41 items) were conveyed to the third respondent for Rs.86 lakhs is assailed on the ground that about 3.804 acres in S.No.157/2 of land was released in favour of the applicants' father and that he died before the date of alleged execution of the GPA. For reasons set out in the preceding paragraph, the death certificate, which is relied upon by the applicants, is not in consonance with the requirements of the Registration of Births and Deaths Act. The applicants have approached this Court about 27 years after the GPA was registered and about five years after the sale deed was executed. Upon considering all these aspects, these applications are liable to be dismissed.

20. For reasons set out above, Company Application Nos. 301 and 302 of 2021 are dismissed.

23.01.2023

Index : Yes
Internet : Yes
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SENTHILKUMAR RAMAMOORTHY, J.

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