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CMSA No.19 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2023

PRONOUNCED ON : 25.07.2023

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMSA No.19 of 2023
and CMP No.2108 of 2023

Andrew Tennyson Abraham .. Judgment Debtor/Appellant/Defendant

Vs.

Daniel Sam
Rep. By his General
Power of Attorney
N.Durairaj

... Decree Holder/Respondent/Plaintiff

PRAYER: This Civil Miscellaneous Second Appeal is filed under Section 100 read with Section 104 (1)(i) of Civil Procedure Code, to set aside the order and decree dated 22.04.2022 made in CMA No.1 of 2022 on the file of the III Additional District & Sessions Judge, Tiruvallur @ Poonamallee confirming the Docket Order dated 10.11.2021 made in E.P.No.57 of 2010 in O.S.No.393 of 1989 on the file of Sub-ordinate Judge, Poonamallee.

For Appellant : Mr.D.Rajagopal

For Respondent : Mr.R.Ramanlaal



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JUDGMENT

Judgment Debtor/Defendant, is the appellant herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court in Original Suit.

3. This Civil Miscellaneous Second Appeal is filed against the order passed in CMA No.1 of 2022, confirming the order passed in EP No.57 of 2016, wherein the Execution Court/ learned Sub Ordinate Judge, Poonamallee has accepted the draft sale deed produced by the Decree holder/Plaintiff. Against the said order, the Judgment Debtor/Defendant has not preferred an appeal. However, on the memo filed as an objection for the draft sale deed vide docket order dated 10.11.2021, the life certificate filed by the Decree holder/Plaintiff/respondent was taken into consideration and objection regarding the power of attorney of the Decree holder/Plaintiff/respondent, filed by way of objection was rejected and as against the docket order on the memo/objection, he has preferred this appeal.



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4. The short facts that are necessary for determination of the

CMSA, are as follows:

(i) The case of the Plaintiff/respondent is that he filed suit for specific performance directing the Defendant/appellant, to execute and register the sale deed in favour of the Plaintiff-Daniel Sam and the suit was decreed in his favour and confirmed by the first appellate Court in A.S.No.93 of 2004 and confirmed in second appeal S.A.No.441 of 2007 and confirmed by the Hon'ble Supreme Court of India in Petition (s) for Special Leave to Appeal (c) No(s) 15815/2015 but the Defendant/appellant failed to execute the sale deed, hence seeks to execute the decree by directing the Defendant/appellant to execute the sale deed failing which seeks this Court to execute the sale deed in his favour.

(ii) The first objection by the Defendant/appellant is that the plaintiff/respondent-Daniel Sam is involved in Crime No.1267/1988 and is absconding for the past 25 years and his whereabouts are not known, therefore the EP is not maintainable. It is pertinent to note that the certified copy of FIR involved in the crime number referred by the plaintiff/respondent has been filed as Document Ex.B2 in the suit itself and



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only after perusal of all documents suit has been decreed, hence the defendant/appellant's objection that the plaintiff/respondent is involved in the Crime No.1267/1988 cannot be a ground to reject the plaintiff's claim to execute the sale deed.

(iii) (a) On the above stated situation, the defendant/appellant filed the objection stating that in the said execution petition, he filed an objection for taking a draft sale deed filed by the Plaintiff/respondent for the execution of the sale deed through Court. In the said objection, he has questioned the validity of the power of attorney and questioned the life certificate.

(b) The same was rejected by a docket order dated 10.11.2021. Aggrieved against the docket entry dated 10.11.2021, he has preferred the above CMA No.1 of 2022 before the learned III Additional District Judge, Thiruvallur at Poonamallee.

(c) The Plaintiff/respondent filed memo before the trial Court on 08.10.2021 in compliance with Order 21 Rule 34(2) of CPC. The



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Defendant/appellant raised objection pertaining to power of attorney before the execution court. Initially he also raised the very same plea before the trial Court while the trial of the suit. The trial Court recorded the finding that the objection pertaining to power of attorney, has been considered by the trial Court, appellate Court in the First as well as the Second appeals and in the SLP and hence, the same cannot be re-agitated by way of this memo and accordingly, closed the memo. Against the order of closure by the execution Court on 10.11.2021, the defendant/appellant has preferred the above said CMA.

(iv) The learned appellate Judge has observed that the memo filed by the Plaintiff/respondent is not in compliance with Order 21 Rule 34(2) of CPC, which mandates a trial court to serve the draft sale deed to the Defendant/appellant, so as to raise any objection if any.

(v) On perusal of the objection filed by the Defendant/appellant appellant herein, he did not raise the objection pertaining to the copy of the sale deed served on him. On the other hand, the Defendant/appellant had raised the same objection pertaining to validity of the power of attorney.



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Accordingly, I find that the execution Court has passed a speaking order in EP No.57 of 2016 in O.S.No.393 of 1989 on 06.03.2017 that the Plaintiff/respondent is entitled to get the sale deed executed. No appeal is filed against the said order.

(vi) The objection raised by the Defendant/appellant was considered by the trial Court in that order in detail. No order of execution was passed by the docket order dated 10.11.2021 and hence, the lower appellate Court has rightly come to the conclusion that it is not an appealable order as it is only a docket entry, whereby the memo filed by the Defendant/appellant is closed. Accordingly dismissed the CMA and hence, this CMSA by the Defendant/appellant.

5.(a) The Plaintiff/respondent has filed caveat in caveat No.2967 of 2022. At the time of admission, Mr.Ramanlal, learned counsel took notice on behalf of the plaintiff/respondent.

(b) By consent of both the parties the case was taken up for final disposal and they were asked to address the point that arises for



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consideration in CMSA i.e.,

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“Whether non production of the life certificate in the prescribed format will not vitiate the entire proceedings in view of the fact that when the production of life certificate was to ensure that the principal was alive as reported in judgments reported in 2016 (1)LW 462 and 2014(5) LW 911.”

The arguments on the above line has been taken note of.

6. Thereafter, Mr.Ramanlal learned counsel for the plaintiff/respondent sought the matter to be posted on 20th February 2023, so that the plaintiff who is now in UK can appear through video conferencing and also gave a letter to the Registry, High Court requesting for virtual hearing of CMSA for the hearing on 20.02.2023 at 2.15pm. Accordingly, the original Plaintiff/respondent-Daniel Sam, appeared through video conferencing on 20.02.2023 and it is recorded as follows

“Daniel Sam, original plaintiff, appeared through Video-conferencing and he has shown his identity card viz., Driving Licence issued by the British Government and undertook to send the copy of his Indian Passport, to show his identity.

2. The appellant/defendant viz., Andrew Tennyson Abraham, is present and he disputed the identity of the person appeared in the Video Conferencing TV i.e. Daniel Sam.



3. N.Durairaj, respondent [*General Power of Attorney of original plaintiff*], is present and he has given the xerox copy of his Aadhar Card to show that he is the power of attorney of the original Plaintiff viz., Daniel Sam and he identified the person appearing on video conferencing as Daniel Sam, as his Principal.

4. Mr.D.Rajagopal, learned counsel for the appellant/defendant would contend that his client appellant/defendant is the better person to identify and support the contention that the power deed alleged to have been executed by Daniel Sam is not by person and for want of life certificate to be annexed along with the power of attorney document deed, the same is invalid and also relying upon the decision reported in 2022 (3) CTC 754, he submitted that registering the power of attorney without life certificate is prohibited.

5. In reply, Mr.R.Ramanlaal, learned counsel for the respondent/plaintiff would contend that after institution of the suit, the plaintiff is a Chartered Accountant, on getting employment, he has moved over to UK and therefore, he has given the power of attorney to the present respondent viz., Durairaj and life certificate and necessary documents have been filed along with the power of attorney deed and the same has been endorsed by the Sub Registrar and also filed before the Court during the suit proceedings as well as before the execution proceedings.

6. Learned counsel for the respondent/plaintiff further submitted that the Life certificate was duly filed before the lower Courts and copies were also furnished to the appellant/defendant and hence, this non-identification of the plaintiff by the defendant is only an after thought resue to nullify the decree granted by the Hon'ble Supreme Court and further stated that the execution Court in EP No.57 of 2016 has executed the sale deed and the same was registered. The sale deed executed through the Court was registered before the competent Registrar on 24.03.2022 and



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therefore, the learned counsel submitted that the CMSA is infructuous in nature.”

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7. After hearing the rival submissions and also perusing the entire case records, I find that the original suit in OS No.393 of 1989 was filed by the Plaintiff/respondent for the specific performance of the suit sale agreement and the same was decreed. Appeal was confirmed by the first appellate Court in AS No.93 of 2004 and also confirmed in SA No.441 of 2007 and the Hon'ble Supreme Court has dismissed the appeal in SLP (C) No.15815/2015.

8. As the Defendant/appellant failed to execute the sale deed, the plaintiff/respondent has filed the above EP No.57 of 2016 and draft sale deed was filed before the execution court in compliance with Order 21 Rule 34(2) of CPC. As a part of the said compliance, copy of the draft sale deed was furnished to the counsel for the Defendant/appellant and he has filed a memo stating that the power of attorney is defective and life certificate issued cannot be taken on record. The said objection was over ruled by the execution Court.



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9. Admittedly, defendant/appellant has not filed any appeal against the order passed in the execution petition. However, the he has preferred to file CMA against the Docket order passed on 10.11.2021 on the memo, challenging the draft sale deed on the point of power of attorney and life certificate and the said CMA was dismissed.

10. As stated supra, on 20.02.2023, Daniel Sam appeared during the video conferencing, who is the Decree holder/Plaintiff/respondent. His power of attorney Durai Raj was also present in the open Court and the defendant/appellant Andrew Tennyson Abraham is also present. For the reasons best known, the defendant/appellant disputed the identity of the person appearing in the video conferencing viz., Daniel Sam/Decree holder/Plaintiff/respondent.

11 (a). Daniel Sam, has produced certificates of original passport issued by Government of India and subsequent passport issued by the British authorities and also produced Motor Vehicle licence issued by UK authorities and the life certificate is also filed before the executing Court.



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(b) This life certificate is annexed at page Nos.55 and 56 of the typed set of papers. The life certificate is in the format as required under Section 33 of the Registration Act. It was attested by one Dr.Sashikala Umapathy, MRCOG. In the Life Certificate for the purpose of Registration of Documents based on Power of Attorney, the photograph of Daniel Sam is affixed and he has signed in the presence of one Dr.Daniel Baskar Kannappan. The said doctor has also attested the same along with medical Registration No.6034842 and hence, I find that the life certificate issued by the above said Dr. Sashikala Umapathy, attested at the presence of another Dr.Daniel Baskar Kannappan, is in conformity with Section 33 of the Registration Act. The power of attorney filed by the plaintiff/respondent before the execution Court, is also annexed along with the caveat petition.

12. Mr.Ramanlal, learned counsel for the plaintiff/respondent, drew my attention to the general power of attorney executed by the plaintiff in favour of the present respondent, which was duly registered as Doc.No.22 of 1991 in Book No.4 of the concerned registrar.



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13. The point raised by the learned counsel is that the general power of attorney was given by the principal and as to whether the principal is alive on the date of filing of the execution proceedings, the life certificate as required by the registration department has been produced before the execution Court. The execution Court has rightly rejected the said plea. The principal of the General power of attorney deed is alive and he has also appeared before this Court through video conferencing as stated supra and hence, the prime objection raised by the defendant/appellant hereby stands negatived.

14. This Court is satisfied with the additional papers produced by Mr.Ramanlal, learned counsel on behalf of his client-Daniel Sam viz., copy of the original passport issued by Government of India to the plaintiff and the UK passport issued by the United Kingdom of Great Britain and Northern Ireland and also driving licence issued by the UK Driving Licence centre and the old passport issued by Government of India which has been cancelled on 31.05.1993, pursuant to British passport being issued.



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15. Hence, after going through the above documents along with power of attorney and the life certificate filed by the Plaintiff/respondent, the same are rightly accepted by the execution court, which does not warrant any interference.

16. The two decision relied on by the learned counsel for the defendant/appellant reported in **2016 (1) LW 462 [The Inspector General of Registration & Another Vs. J.Barathan]** and **2014 (5) LW 911 [M.Murugesan Vs. The Inspector General of Registration, Chennai]** are to the effect that the certificate issued by the Inspector General of Registration for insisting upon the life certificate under Section 34 of the Registration Act is only with the intention to protect the innocent purchaser from being taken for a ride by person dealing with properties as agents. Accordingly, the object of the circular is upheld by this Court and in view of the facts of this case, I find that the ingredients of the above two decisions has been duly complied with by the production of the above said documents and hence, I find that the docket order dated 10.11.2021 passed by the execution Court whereby objection memo filed by the appellant herein has been rejected and copy of the life certificate filed by the Decree



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holder/Plaintiff/respondent was taken into consideration, cannot be found fault with. Accordingly all the objection raised by the learned counsel for the defendant/appellant stands rejected.

17. In view of the above factual position, the above point that was required to be addressed by both the parties does not arise on the factual position and hence, the same is held against the defendant/appellant.

18. In this view of the matter, the CMSA is dismissed. No Costs. As stated supra, the execution Court has executed the sale deed and the same is hereby recorded. Consequently, the connected Civil Miscellaneous Petition is closed.

25.07.2023

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
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To

1. The III Additional District & Sessions Judge,
Tiruvallur @ Poonamallee.

2. The Sub-ordinate Judge,
Poonamallee.



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RMT.TEEKAA RAMAN,J.,

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Pre-delivery Judgment in
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