

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2022

Pronounced on : 31.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**WP(MD)No.5710 of 2022
and**

WMP(MD)Nos.4557 & 4561 of 2022

A.R.Sachidhanandh S/o.Rajasekher
Power agent of Dr.S.Gurushankar
No.1/220, A-2, Srichakra Nagar,
Thirumohur Road,
Othakadai, Madurai – 625 107.

... Petitioner

v.

- 1.The Sub Registrar,
Othakadai, Madurai – 625 107.
- 2.The District Registrar / ADM,
Deputy Inspector General of Registration,
Madurai North Regn.Dist.
Madurai – 625 107.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in his check slip Va.No.4(1)/2021 dated 27.07.2021 to quash the same as illegal and consequently direct the first respondent to register the power of attorney for creation of mortgage dated 12.07.2021 (TP/ADJ/Othakadai/570783/2021) after collecting the stamp duty

payable in respect of the said document under Article 6 of Schedule - I to the Indian Stamp Act, 1899.

For Petitioner : Mr.K.Subramanian, Senior Counsel
for Mr.S.Venkatesh

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General assisted by
Mr.S.Shanmugavel,
Additional Government Pleader

ORDER

Heard the learned Senior Counsel for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents.

2.Dr.S.Gurushankar is the managing trustee of S.R.Trust which runs Meenakshi Mission Hospital & Research Center, Madurai. The said Trust entered into a Memorandum of Understanding with M/s.Sunmed Healthcare Pvt.Ltd on 27.04.2019. The trustee entered into a lease agreement dated 20.01.2020 with the said company. The lease agreement has been registered as Document Number.212 of 2020 on the file of Sub Registrar, Othakadai. When M/s.Sunmed Healthcare Pvt.Ltd approached HDFC Bank, Madurai seeking loan of Rs.40.00 crores for constructing a hospital, the bank issued sanction letter dated 26.07.2021 with a condition that Dr.S.Gurushankar

should offer security for the loan by way of equitable mortgage of the lands comprised in S.Nos.171/2A3B, 171/2A2B and 171/8A2 in Uthangudi Village, Madurai. Since Dr.S.Gurushankar was in New Zealand, he executed the power of attorney dated 12.07.2021 in favour of Shri.A.R.Sachidhanandh to deposit the original title deeds of the property mentioned in the schedule to create mortgage in favour of HDFC Bank and to carry out incidental acts.

3.Since the said power of attorney was executed outside the country, it had to be adjudicated by the jurisdictional registrar, namely, Sub Registrar, Othakadai. When the power of attorney was presented for adjudication of stamp duty, the registering authority declined to adjudicate and returned the same. Challenging the impugned check slip dated 27.07.2021 issued to that effect, the present writ petition came to be filed.

4.It is true that S.R.Trust had filed WP(MD)No.4658 of 2021 questioning the stand of the registering authority determining the deficit stamp duty and penalty payable in respect of the Memorandum of Understanding entered into between them and Sunmed Healthcare Pvt Ltd. The question is whether citing the pendency of the said dispute, the registering authority could have declined to adjudicate the petition-mentioned power of attorney.

5.The answer has to be in the negative. What was presented before the registering authority was a mere power of attorney. Under the said document, the principal empowered the agent to do all acts, deals, things and matters as may be required for creation of mortgage of the schedule mentioned property in favour of HDFC Bank. Section 2(21) of the Indian Stamp Act, 1899 defines "power of attorney" as follows :

"Power of attorney' includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it."

Article 48 which sets out the stamp duty payable on power of attorney is as follows :

"Power of Attorney as defined by section 2(21) not being a proxy-

*(a) when executed for the sole purpose of Five rupees
procuring the registration of one or more
documents in relation to a single
transaction or for admitting execution of
one or more such documents ;*

*(b) when authorising one person or more Fifteen rupees
to act in single transaction other than the
case mentioned in clause (a) ;*

(c) when authorising not more than five persons to act jointly and severally in more than one transaction or generally ; *One hundred rupees*

(d) when authorising more than five but not more than ten persons to act jointly and severally in more than one transaction or generally ; *One hundred and seventy five rupees*

(e) when given for consideration and authorising the attorney to sell any immovable property ; *The same duty as a Conveyance (No.23) for the market value equal to the amount of the consideration*

(f) in any other case *Twenty rupees for each person authorised.*

Note : - The term "registration" includes every operation incidental to registration under the Registration Act, 1908 (Central Act XVI of 1908).

Explanation.- For the purpose of this article, more persons than one when belonging to the same firm shall be deemed to be one person."

6.The Hon'ble Supreme Court in the decision reported in **(2012) 1 SCC 656 (Suraj Lamp & Industries (P) Ltd. vs. State of Haryana)** held as follows :

“20.A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property.

The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see [section 1A](#) and [section 2](#) of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. [In State of Rajasthan vs. Basant Nehata](#) - 2005 (12) SCC 77, this Court held :

"A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the [Contract Act](#) as also the [Powers-of-Attorney Act](#) is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with

interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee."

An attorney holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

The Hon'ble Full Bench of the Madras High Court (Madurai Bench) in the decision reported in **(2022) 7 MLJ 1 (Sasikala v. RDO)** held as follows :

43.We find that the scope of enquiry by the Registering Officer is broad. However, the remedies are also available to the aggrieved by virtue of specific provisions viz., Sections 71 to 76 of the Registration Act. Sections 34 and 35 are also relevant. It is useful to extract the Sections hereunder:

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, or their representatives, assigns or agents authorised 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; 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.

Section 35. Procedure on admission and denial of execution respectively.--(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or (b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the

execution, or (c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61 inclusive. (2) The registering officer may, 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 this Act, examine anyone present in his office. (3) (a) If any person by whom the document purports to be executed denies its execution, or (b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or (c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII: 1 [Provided further that the 2 [State Government] may, by notification in the 3 [Official Gazette], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

44. In this context, it is useful to refer to Rules 55 and 162 of the Rules, which are approved by the State Government under Section 69 of the Registration Act, 1908.

55.It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document: but he is bound to consider objections raised on any of the grounds stated below.-

- (a) that the parties appearing or about to appear before him are not the persons they profess to be;
- (b) that the document is forged;
- (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or
- (e) that the executing party is a minor or an idiot or a lunatic."

Rule 162 of the Registration Rules reads as follows:

"162. When registration is refused the reasons for refusal shall be at once recorded in Book 2. They will usually come under one or more of the heads mentioned below--

I. Section 19.--That the document is written in a language which the Registering Officer does not understand and which is not commonly used in the District, and that it is unaccompanied by a true translation and a true copy.

II. Section 20.--That it contains unattested interlineations, blanks, erasures or alterations which in the opinion of the Registering Officer require to be attested.

III. Section 21.--(1) to (3) and Section 22.--That the description of the property is insufficient to identify it or does not contain the information required by Rule 18.

IV. Section 21.--That the document is unaccompanied by a copy or copies of any map or plan which it contains.

V. Rule 32.--That the date of execution is not stated in the document or that the correct date is not ascertainable.

VI. Sections 23, 24, 25, 26, 72, 75 and 77.--That it is presented after the prescribed time.

VII. Sections 32, 33, 40 and 43.--That it is presented by a person who has no right to present it.

VIII. Section 34.--That the executing parties or their representatives, assigns, or agents have failed to appear within the prescribed time.

IX. Sections 34 and 43.--That the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

X. Sections 34 and 40.--That the Registering Officer is not satisfied as to the right of a person appearing as a representative, assign, or agent so to appear.

XI. Section 35.--That execution is denied by any person purporting to be an executing party or by his agent.

Note:-When a Registering Officer is satisfied that an executant is purposely keeping out of the day with a view to evade registration of a document or has gone to a distant place and is not likely to return to admit execution within the prescribed

time, registration may be refused the non-appearance being treated as tantamount to denial of execution.

XII. Section 35.--That the person purporting to have executed the document is a minor, an idiot or a lunatic.

Note:-When the executant of a document who is examined under a commission under Section 38 of the Act is reported by the Commissioner to be a minor, an idiot or a lunatic registration may be refused and it is not necessary that the Registering Officer should personally examine the executant to satisfy himself as to the existence of the disqualification.

XIII. Section 35.--That execution is denied by the representative or assign of a deceased person by whom the document purports to have been executed.

Note:-When some of the representatives of a deceased executant admit and others deny execution, the registration of the document shall be refused in toto, the persons interested being left to apply to the Registrar for an enquiry into the fact of execution.

XIV. Sections 35 and 41.--That the alleged death of a person by whom the document purports to have been executed has not been proved.

XV. Section 41.--That the Registering Officer is not satisfied as to the fact of execution in the case of a will or of an authority to adopt presented after the death of the testator or donor.

XVI. Sections 25, 34 and 80.--That prescribed fee or fine has not been paid.

XVII. Section 230(A) of the Income Tax Act, 1961 (Act 43 of 1961).--That the prescribed certificates from the Income Tax Officer has not been produced.

XVIII. Section 10 of the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (Act 58 of 1961).--That the declaration has not been filed by the transfer. XIX. Section 27 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Act 24 of 1978).--That the statement has not been filed by the transferor and transferee."

7.The provisions mentioned above lay down the stamp duty to be levied on the document and the circumstances in which registration can be refused. A mere look at the terms of the power of attorney indicate that it has not been given for consideration or authorizing the attorney to sell any immovable property. Article 48(e) of the Stamp Act can be invoked only if both the conditions mentioned therein are present. In this case, neither of the conditions are present. Therefore, the standard stamp duty set out in one of the other clauses in Article 48 alone can be levied. None of the circumstances which can enable the registering authority to refuse registration are present in this case.

8.The registering authority misdirected himself by referring to irrelevant aspects. That the subject matter of power of attorney is the subject matter

of a pending document ought not to have bothered the first respondent. That a substantial demand has been raised towards payment of deficit stamp duty was also not germane. That the principal of the power of attorney has filed WP(MD)No.4658 of 2021 challenging the demand of the department was also not relevant. Let me give an analogy without intending to disparage any class of officials. To a donkey carrying load, the value of the content does not matter. It can be a load of sand or a bag of diamonds. It is bothered only about the weight. A power of attorney is a document that authorises and empowers the agent to perform a particular act or acts. The nature and value of the act to be performed by the agent cannot be the concern of the registering authority unless it falls within the scope of Article 48(e) of Schedule-1 of the Indian Stamp Act, 1899. The case on hand does not fall within the scope of Article 48(e) of the Indian Stamp Act, 1899. If the agent has received consideration, then, the stamp duty will have to be levied on *ad valorem* basis. Otherwise, the standard stamp duty has to be levied.

9.The reasons set out in the impugned check slip are not referable to and cannot be justified with reference to any provision in the Stamp Act or the Registration Act or the Rules framed thereunder. I hold that the registering authority has arbitrarily declined to adjudicate and register the petition-mentioned power of attorney. The impugned check slip is quashed and the

petitioner is permitted to re-present the power of attorney before the first respondent who is directed to adjudicate the same as mentioned above and register the document and release it. The entire exercise shall be completed as expeditiously as possible.

10.The writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

31.03.2023

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To

- 1.The Sub Registrar,
Othakadai, Madurai – 625 107.
- 2.The District Registrar / ADM,
Deputy Inspector General of Registration,
Madurai North Regn.Dist.
Madurai – 625 107.

G.R.SWAMINATHAN, J.

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and
WMP(MD)Nos.4557 & 4561 of 2022**

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