



AS(MD).No.35 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 21.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

**AS(MD).No.35 of 2014 and
MP(MD).No.1 of 2014**

Baby Janakiraman

: Appellant / Plaintiff

Vs.

- 1.Vijayakumar
- 2.Lakshmi @ Jansi Rani
- 3.Ravishankar
- 4.Udayashankar
- 5.Suriyakumari
- 6.Shantha(died)
- 7.Jalaja
- 8.Murali

(8th respondent is brought on record
as LR of the deceased 6th respondent vide
Court order, dated 18.07.2022 made in
CMP(MD).Nos.7482, 7483 and 7485 of 2021
in AS(MD).No.35 of 2014) : Respondents/ Defendants

Prayer: Appeal suit is filed under Section 96 CPC to set aside the Judgment and decree, dated 30.09.2013 made in O.S.No.45 of 2007 on the file of the II Additional District Judge, Trichy.



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For Appellant : Mr. S. Srinivasa Raghavan

For R1 and R2 : Mr. P.Thiagarajan

JUDGMENT

Challenging the dismissal of suit filed by the plaintiff claiming partition, present appeal came to be filed by him.

2. The brief facts of the case is as follows:

The suit property was originally purchased by the father of the plaintiff viz., Veerappa Chettiyar vide sale deed, dated 27.12.1961. The said Veerappa Chettiyar had two wives viz., Jayalakshmi and Suriyakumari. The plaintiff and the defendants 6 and 7 are born through first wife of Veerappa Chettiyar and the 5th defendant is the second wife of Veerappa Chettiyar. The said Veerappa Chettiyar was aged about 90 years and he was managing Veerabadrawamy Temple. Since he is not in a position to manage the temple, he wanted to give the management to his son, instead of giving the management to some third parties, he requested the first defendant to prepare a power of attorney for the management of



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the temple. Taking advantage of the same, the first defendant took Veerappa Chettiyar to the Registrar office and created a another power of attorney, in respect of the immovable properties of Veerappa Chettiyar. Pursuant to the said power of attorney, properties have been transferred in the name of the defendants 2 to 4. Hence, it is the contention of the plaintiff that the sale deed is void one and the first defendant will not get any right to sell the property. Hence he sought for partition. The first defendant admitting the relationship, took a stand that originally the property was purchased by his father Veerappa Chettiyar on 29.12.1961. By way of registered partition deed between himself and his father, the properties were partitioned on 24.12.1975, in which “A” schedule property was allotted to Veerappa Chettiyar; “B” schedule property was allotted to the share of the first defendant. The said Veerappa Chettiyar executed two power of attorneys on 19.12.2003 in favour of the first defendant one is in respect of immovable properties and the other is in respect of the management of the temple. The first defendant executed a power of attorney on 08.10.2003 in favour of defendants 2 to 4 and paid the consideration to his father on 07.10.2003. Veerappa Chettiyar has married the 5th respondent at the age of 75 years and she has given maximum pin pricks and harassments to the said Veerappa Chettiyar and that he decided



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to sell the property to the first defendant and gave a power of attorney.

Hence, the aforesaid suit. The 6th and 7th defendants claimed 1/4th share in the suit property.

3. Based on the above pleadings, the trial Court has framed the following issues:

- 1. Whether plaintiff is entitled for the share in suit properties and for separate possession?*
- 2. Whether the three sale deeds executed by the 1st defendant, dated 08.10.2003 are valid or not?*
- 3. What other reliefs?*

4. On the side of the of plaintiff, the plaintiff was examined as PW.1 and on his side, Exs.A1 to A12 were marked as documents and on the side of the defendants, two witnesses were examined as DW.1 and DW.2 and the documents were marked as Exs.B1 to B8.

5. The trial Court, after considering the entire evidence, held that the plaintiff has not established the claim for partition and dismissed the



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suit. Aggrieved over the same, the present Appeal Suit has been filed.

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6. The learned counsel appearing for the appellant submits that the power of attorney deeds were executed only for the purpose of the management of the temple under the guise of said management, another power deed was executed in respect of immovable property. Therefore, any sale on the basis of the said power deed is void one in the eye of law. When he was alive, the said Veerappa Chettiyar cancelled the power of attorney on 24.08.2005 and filed the suit in O.S.No.1950 of 2005 against the first defendant. But, the trial Court has not appreciated the evidence properly.

7. The learned counsel appearing for the respondents 1 and 2 submits that Veerappa Chettiyar was very much alive at the time of the alleged transaction and he never questioned the transaction to cancel the power deed. Even after two years of execution of power of attorney, he himself had not filed any suit challenging the documents whereas he has filed simply a suit with a prayer not to evict him from the property in question except by due process of law. Wherein all the defendants wife, son and daughters were attesting witnesses in the documents. Hence, the



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trial Court has dismissed the suit.

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8. Now, the following points are arise for consideration:

(i) Whether the plaintiff has share in the suit properties to claim partition?

(ii) Whether the sale deed executed in favour of the defendants 2 to 4 is bad in law on the ground of power of attorney executed by Veerappa Chettiyar?

9. I have heard the learned counsel appearing on either side and perused the materials on record.

10. The main contention of the plaintiff is that a power of attorney was executed by his father while he was at the age of 90 years. The power of attorney that has been obtained under the guise of power of attorney for managing the temple. It is relevant to note that the plaintiff, in fact, failed to plead the fact that at the relevant point of time, the father was aged 90 years and he was not in a position to take rational decision.



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Except PW1, none of the other family members supported his case. In fact in the power deeds only daughters and principals wife were the attesting witnesses. In the absence of pleadings as to under influence and fraud and coercion mere oral submission is not suffice to substantiate the same. Mere pleadings that the said person is aged about 90 years will not absolve the person from establishing the plea of un-due influence. It is relevant to note that two power of attorneys have been executed by the plaintiff's father in favour of the first defendant, who is the brother of the plaintiff. The power of attorney deeds are registered one viz., Exs.A3 and A4. Ex.A3 is relating to the general power of attorney in respect of the property and Ex.A4 is the power of attorney in respect of management of the temple. The power of attorney was executed on 19.09.2003. In the above deeds, the other daughters of Veerappa Chettiar and his second wife were the attesting witnesses and they are also present while the execution of the documents in the Registrar Office. It is also to be noted that the power of attorney said to have been cancelled only on 24.08.2005 by the said Veerappa Chettiyar. Having cancelled the power of attorney, he has not challenged the transaction being principal. He has not raised any objection as to sale deeds executed based on power of attorney. Even in Ex.A11 cancellation deed he has not mentioned any reason for misuse of the



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deeds. He has simply cancelled the power of attorney. He has not even whispered that he has not received any consideration of accounts. Ex.B1 filed to show that he has received the sale consideration from the 1st defendant. This fact clearly show that all the transactions have been made by the said Veerappa Chettiyar and he was aware of the transaction and therefore, he has not questioned. It is also relevant to note that he has filed a suit in O.S.No.1950 of 2005, wherein, he has claimed the relief not to evict him from the suit properties except by due process of law. Even that suit he has not challenged the transaction. Therefore, when the principal has not questioned in the power of attorney by raising undue influence and forgery etc., after his death, his legal heirs cannot assail the document on the ground of un-due influence and forgery, particularly, when the principal himself has not raised such a plea during his life time.

11. Accordingly, this Court is of the view that when the transaction is not challenged by the principal and he has also received the sale consideration in respect of the properties and the title of the properties has already been transferred to the third parties, the plaintiff is not entitled to any claim in the share of the property. Accordingly, all the points are answered.



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12. Accordingly, this Appeal Suit is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
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To

1. The II Additional District Judge, Trichy.



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N. SATHISH KUMAR, J.,

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