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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	17.04.2024
Order pronounced on	15.11.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Comp.A. Nos.55, 89, 90, 129, 130, 131, 132, 133 & 134 of 2022

in

C.P.No.57 of 1998

Comp.A.No.55 of 2022

S.Nandagopal

... Applicant /
Proposed
Respondent

-VS-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

2.Mrs.Nagasaila Suresh,
Advocate, Administrator of
M/s.Maxworth Orchards (India) Ltd.

... Respondents

Comp.A.No.89 of 2022

Jebalatha

... Applicant

-VS-

1.The Official Liquidator,



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High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

2.Mrs.Nagasaila Suresh,
Advocate, Administrator of
M/s.Maxworth Orchards (India) Ltd.
Old No.38/1, New No.14/1, Akbarabad
Second Respondent, Kodambakkam,
Chennai-600 024.

3.ICICI Bank, Veerapandiya Pattanam Branch
Rep. By its Branch Manager,
Tuticorin
(Third respondent impleaded as per order
dated 19.07.2023 in C.A.No.309/2023)

... Respondents

Comp.A.No.90 of 2022

A.Kirubakaran

... Applicant

-vs-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

2.Mrs.Nagasaila Suresh,
Advocate, Administrator of
M/s.Maxworth Orchards (India) Ltd.
Old No.38/1, New No.14/1, Akbarabad
Second Street, Kodambakkam,
Chennai-600 024.

... Respondents



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Comp.A.No.129 of 2022

Jebalatha

... Applicant /
3rd Party

-VS-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

... Respondent/
Applicant

2.Mrs.Nagasaila Suresh,
Advocate, Administrator of
M/s.Maxworth Orchards (India) Ltd.
Old No.38/1, New No.14/1, Akbarabad
Second Street, Kodambakkam,
Chennai-600 024.

... Respondent

Comp.A.No.130 of 2022

Jebalatha

... Applicant/
3rd Party

-VS-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

... Respondent/
Applicant

2.Mrs.Nagasaila Suresh,



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Advocate, Administrator of
M/s.Maxworth Orchards (India) Ltd.
Old No.38/1, New No.14/1, Akbarabad
Second Street, Kodambakkam,
Chennai-600 024.

... Respondents

Comp.A.No.131 of 2022

S.Nandagopal

... Applicant /
Proposed
Respondent

-VS-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

... Respondent/
Applicant

Comp.A.No.132 of 2022

S.Nandagopal

... Applicant /
Proposed
Respondent

-VS-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

... Respondent/
Applicant

2.Mrs.Nagasaila Suresh,
Advocate, Administrator of



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M/s.Maxworth Orchards (India) Ltd.
Old No.38/1, New No.14/1, Akbarabad
Second Street, Kodambakkam,
Chennai-600 024.

... Respondent

Comp.A.No.133 of 2022

A.Kirubakaran

... Applicant /
3rd Party

-VS-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,
High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

... Respondent/
Applicant

2.Mrs.Nagasaila Suresh,
Advocate, Administrator of
M/s.Maxworth Orchards (India) Ltd.
Old No.38/1, New No.14/1, Akbarabad
Second Street, Kodambakkam,
Chennai-600 024.

... Respondent

Comp.A.No.134 of 2022

A.Kirubakaran

... Applicant/
3rd Party

-VS-

1.The Official Liquidator,
High Court, Madras.
As Provisional Liquidator of
Maxworth Orchards (India) Limited,



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High court, Corporate Bhavan, 2nd Floor,
No.29, Rajaji Salai, Chennai-600 001.
(In Provisional Liquidation)

... Respondent/
Applicant

2.Mrs.Nagasaila Suresh,
Advocate, Administrator of
M/s.Maxworth Orchards (India) Ltd.
Old No.38/1, New No.14/1, Akbarabad
Second Street, Kodambakkam,
Chennai-600 024.

... Respondent

Prayer in Comp.A.No.55 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9, 11(b) and 12 of the Companies (Court) Rules, 1959 praying that the court may be pleased to implead the applicant as a proposed respondent in C.A.No.297 of 2021 in C.P.No.57 of 1998.

Prayer in Comp.A.No.89 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9, 11(b) and 12 of the Companies (Court) Rules, 1959 praying that the court may be pleased to implead the applicant as a proposed respondent in C.A.No.297 of 2021 in C.P.No.57 of 1998.

Prayer in Comp.A.No.90 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9, 11(b) and 12 of the Companies (Court) Rules, 1959 praying that the court may be pleased to implead the applicant as a proposed respondent in



C.A.No.297 of 2021 in C.P.No.57 of 1998.

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Prayer in Comp.A.No.129 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 10, 11(b) and 12(16) of the Companies (Court) Rules, 1959 praying that the court may be pleased to set aside the order dated 26.11.2021 passed in C.A.No.297 of 2021 in C.P.No.57 of 1998, on the file of this Court, insofar as the lands to an extent of 5 acres and 2 cents in Survey No.270/4, and to an extent of 5 acres in Survey No.274/1, to an extent of 5 acres and 9 cents situated in R.S.No.273/1, to an extent of 5 acres and 7 cents in R.S.No.273/2, to an extent of 3 acres and 2 cents corresponding to 1.22.0 Hectares in R.S.No.281/5 all situated in Nazarath Village, Eral Taluk, Tuticorin District, belong to the applicant are concerned.

Prayer in Comp.A.No.130 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9 and 11(b) of the Companies (Court) Rules, 1959 praying that the court may be pleased to stay all further sale proceedings pursuant to the order dated 26.11.2021 passed in C.A.No.297 of 2021 in C.P.No.57 of 1998, on the file of this Court, insofar as the lands to an extent of 5 acres and 2 cents in Survey No.270/4, and to an extent of 5 acres in Survey



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No.271/1, to an extent of 5 acres and 9 cents in R.S.No.273/1, to an extent of 5 acres and 7 cents in R.S.No.273/2, and to an extent of 3 acres and 2 cents corresponding to 1.22.0 Hectares in R.S.No.281/5, all situated in Nazareth Village, Eral Taluk, Tuticurin District, belong to the applicant are concerned.

Prayer in Comp.A.No.131 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9 and 11(b) of the Companies (Court) Rules, 1959 praying that the court may be pleased to set aside the order dated 26.11.2021 passed in C.A.No.297 of 2021 in C.P.No.57 of 1998, on the file of this Court, insofar as the lands to an extent of 01.82.00 Hectares in Survey No.92/1 and to an extent of 01.53.50 Hectares in Survey No.92/3 both situated in Ezhuvaraimukki Village, Sathankulam Taluk, Tuticorin District, belonging to the applicant are concerned.

Prayer in Comp.A.No.132 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9 and 11(b) of the Companies (Court) Rules, 1959 praying that the court may be pleased to stay all further sale proceedings pursuant to the order dated 26.11.2021 passed in C.A.No.297 of 2021 in C.P.No.57 of 1998,



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on the file of this Court, insofar as the lands to an extent of 01.82.00 Hectares in Survey No.92/1 and to an extent of 01.53.50 Hectares in Survey No.92/3 both situated in Ezhuvaraimukki Village, Sathankulam Taluk, Tuticorin District, belonging to the applicant are concerned.

Prayer in Comp.A.No.133 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 10, 11(b) and 12(16) of the Companies (Court) Rules, 1959 praying that the court may be pleased to set aside the order dated 26.11.2021 passed in C.A.No.297 of 2021 in C.P.No.57 of 1998, on the file of this Court, insofar as the land to an extent of 1.21.5 Hectares corresponding to 3 acres in R.S.No.278/2 included in Patta No.474, situated in Nazareth Village, Eral Taluk, Tuticorin District, belonging to the applicant are concerned.

Prayer in Comp.A.No.134 of 2022: This Application is filed under Order XIV rule 8 of O.S. rules read with Rules 9 and 11(b) of the Companies (Court) Rules, 1959 praying that the court may be pleased to stay all further sale proceedings pursuant to the order dated 26.11.2021 passed in C.A.No.297 of 2021 in C.P.No.57 of 1998, on the file of this Court, insofar as the land to an extent of 1.21.5



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Hectares corresponding to 3 acres in R.S.No.218/2 included in Patta No.474, situated in Nazareth Village, Eral Taluk, Tuticorin District, belonging to the applicant are concerned.

In all Applications:

For Applicant : Mr.Subbiah, Senior Advocate
for M/s. Elizabeth Ravi & P.Raja

For Respondents : Mr. H.Karthik Seshadri
Assisted by Mrs.Nagasaila Suresh
Administrator
Ms.Ambili, B,
Deputy Official Liquidator
M/s.Shivakumar & Suresh
(ICICI Bank)

ORDER

Background

C.A.Nos. 55, 89 and 90 of 2022 were filed to implead S.Nandagopal, A.Kirubakaran and Jebalatha as parties to C.A.No.297 of 2021, i.e. an application for sale of the immovable assets described in the schedule thereto. Being proceedings *in rem*, such applications are unnecessary. The other applications (C.A.Nos. 129 to 134 of 2022) were filed by S.Nandagopal, A.Kirubakaran and Jebalatha seeking to set aside the order dated 26.11.2021 in C.A.No.297 of 2021 in



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C.P.No.57 of 1998 insofar as the lands described in the respective Judge's summons are concerned, and to stay all further sale proceedings pursuant to the aforesaid order in respect of the above mentioned lands pending disposal of the applications to set aside the sale.

2. S.Nandagopal traces title to an extent of 01.82.00 hectares in S.No.92/1 in Ezhuvaraimukki Village, Sathankulam Taluk, Tuticorin District from one Perumal Thevar, son of Veerasangili Thevar. Similarly, as regards an extent of 01.53.50 hectares in S.No.92/3 in the same village, he traces title from the said Perumal Thevar. According to him, the said Perumal Thevar sold the said properties under six sale deeds bearing Document Nos.567 to 572 of 1991 to Vijayakumari, Vijayakumar, R. Selvadasan and Packiyarani.

3. Subsequently, the aforementioned owners of the two parcels executed a general power of attorney in favour of one M.Muthuraman under general power of attorney document dated 22.08.1994, which was registered as document No.30 of 1994 on the file of the Sub Registrar Office, Nazareth (GPA dated 22.08.1994).



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According to S.Nandagopal, acting as agent of the owners, M.Muthuraman had executed a sale deed dated 08.09.2004, which was registered as document No.795 of 2004 on the file of the Sub Registrar Office, Nazareth, in his favour and also put him in peaceful possession and enjoyment of the said property. Thereafter, the revenue records were transferred in his name and a revenue patta was issued by the Deputy Tahsildar, Sathankulam, in his favour.

4. Jebalatha, wife of Kirubakaran, asserts title over an extent of 5 acres 2 cents in S.No.270/4; an extent of 5 acres in S.No.274/1; an extent of 5 acres and 9 cents in S.No.273/1; an extent of 5 acres and 7 cents in R.S.No.273/2; and an extent of 3 acres 2 cents corresponding to 1.22.0 hectares in R.S.No.281/5, all situated in Nazareth Village, Eral Taluk, Tuticorin District. According to Jebalatha, the lands situated in S.No.270/4 and 274/1 originally belonged to one Madasamy Thevar. After his lifetime, his son, Prof.M.Kasirajan,



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inherited the property. The said M.Kasirajan executed a general power of attorney dated 28.09.1995 and registered as document No.226 of 1995 on the file of the Sub Registrar, Nazareth, to and in favour of M.Muthuraman. The said Muthuraman executed a sale deed dated 22.02.2008, which was registered as document No.242 of 2008 on the file of the Sub Registrar, Nazareth, in favour of A.Kirubakaran, the husband of Jebalatha. Thereafter, A.Kirubakaran executed a settlement deed dated 15.10.2010 in favour of Jebalatha, which was registered as document No.2214 of 2010 on the file of the Sub Registrar, Nazareth and put Jebalatha in physical possession and enjoyment of the property.

5. As regards the land bearing S.No.273/1 and 273/2, she relies upon a general power of attorney dated 07.06.1991, registered as document No.268/1991, and executed by D. Daniel Sundaraj in favour of M.Muthuraman. She also relies upon a general power of attorney dated 27.09.1991, registered as document No.269/1995, and executed by D. Daniel Sundaraj and S.John Chandraraj in favour of M.Muthuraman. According to her, the said M.Muthuraman, on behalf of his principals, sold their undivided 2/3rd share in favour of



Jebalatha's husband, A.Kirubakaran, under a sale deed dated 12.04.2007, which was registered as document No.397 of 2007 on the file of the Sub Registrar, Nazareth. As for the remaining 1/3rd share in the lands, Prof. D. Daniel Sundaraj, executed a sale deed dated 22.02.2008, registered as document No.243/2008 on the file of the Sub Registrar, Nazareth in favour of Jebalatha's husband. As regards these lands also, Jebalatha states that her husband, A.Kirubakaran, executed a settlement deed dated 15.12.2010 in her favour; registered the same as document No.2214/2020, on the file of the Sub Registrar, Nazareth; and put her in physical possession and enjoyment of the property. She has also stated that the revenue records were mutated in her favour under patta Nos.3676 and 1954. Jebalatha further stated that she had executed a mortgage deed dated 29.06.2018 in favour of the ICICI Bank as security for a loan raised by her. Jebalatha also asserts title over an extent of 3 acres and 2 cents in R.S.No.281 of 2005 through a sale deed dated 25.01.2011, which is said to be executed by the assignee of the said lands, A.Kanagaraj, through his power of attorney, A.Kirubakaran, to Jebalatha.



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6. A.Kirubakaran asserts title over 1.21.5 hectares corresponding to about 3 acres, in R.S.No.278/2, Nazareth Village, Eral Taluk, Tuticorin District. Title in respect thereof is traced to one Johnson, son of Samuel. Kirubakaran asserts that the said Johnson executed a sale deed dated 28.09.1994 registered as document No.875 of 1994 on the file of the Sub Registrar, Nazareth in favour of one R.Savitha Devi, wife of Ramakrishnan. The said Savitha Devi executed a general power of attorney dated 22.01.1996, registered as document No.9 of 1996 on the file of the Sub Registrar, Tiruchendur in favour of M.Muthuraman. The said R.Savitha Devi, through her power of attorney, M.Muthuraman, executed a sale deed dated 13.04.2007, which was registered as document No.478 of 2007 on the file of the Sub Registrar, Nazareth, to and in favour of Kirubakaran.

7. In effect, all three applicants assert title and ownership under sale deeds executed in their favour, or, in the case of Jebalatha in her husband's favour, by M.Muthuraman, acting purportedly as agent of the respective principals.



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8. The company in provisional liquidation (the Company) filed a common counter affidavit through learned Administrator on behalf of the Official Liquidator. In the common counter affidavit, the Company asserts that it acquired about 206.835 acres of land in Nazareth and Ezhuvaraimooki Villages by paying full consideration to the original land owners, and that 43 registered powers of attorney were executed in favour of M.Muthuraman in relation thereto. It is further stated that the Company took possession of these lands, conducted a revenue survey, plotted the lands into 1 acre, $\frac{1}{2}$ acre and $\frac{1}{4}$ acre plots and created infrastructure for the Max-Sattankulam Project. The Administrator further states that sale deeds in respect of lands acquired by the Company were thereafter executed in favour of 159 customers. Out of these, M.Muthuraman had executed sale deeds in favour of more than 100 customers in the Maxworth-Sathankulam Project. Consequently, it is stated that only the remaining land was brought for sale by the Official Liquidator and such auction was conducted on 11.01.2022 and 20.01.2022.

9. The Administrator has further stated that the original parent sale deeds bearing document Nos.567 to 571 of 1991, under which



S.Nandagopal asserts title, are available in the Administrator's office.

The original GPA dated 22.08.1994 (Document No.30 of 1994) and the execution of power by M.Muthuraman in favour of A.Arul (Document No.125 of 1996) are also available in the Administrator's office. As regards lands claimed by Kirubakaran, it is stated that the agent, Muthuraman, executed sale deeds in favour of the Company's customers for about 2.6226 acres under Document Nos. 214/1996, 216/1996, 411/1996, 588/1996, 649/1996 and 671/1996. By relying on the encumbrance certificate, it is also stated that these conveyances are reflected therein. Thus, the Administrator asserts that only 0.3274 acres of unsold land was available, whereas a fraudulent sale deed for 3 acres was obtained by Kirubakaran. With regard to Jebalatha, by relying on the encumbrance certificate, the Administrator stated that the agent, Muthuraman, executed sale deeds in favour of the Company's customers for about 2.57 acres in Survey No.274/1 under Document Nos. 616/1996, 617/1996, 654/1996, 672/1996, 747/1996, 748/1996 and 749/1996. It is further stated that an order of injunction restraining M.Muthuraman from dealing with these properties was obtained on 23.03.2007 in C.A.No.577 of 2007.



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10. Since Jebalatha had stated in her affidavit that the lands were mortgaged to ICICI Bank as security for a loan availed of by her, notice was issued to ICICI Bank and ICICI Bank was heard through counsel.

Counsel and their contentions

11. Oral arguments on behalf of the three applicants were advanced by Mr.Subbiah, learned senior counsel, assisted by Ms.Elizabeth Ravi. Oral arguments on behalf of the Company were advanced by Mr.Karthik Seshadri, learned counsel, assisted by learned Administrator. Arguments on behalf of the ICICI Bank were advanced by Mr. Balamurugan of M/s Shivakumar and Suresh.

12. The first contention of Mr.Subbiah was that all three applicants assert title under registered sale deeds executed in their favour by M.Muthuraman, acting as agent for the respective land owner. Pursuant thereto, the revenue records were mutated in favour of the respective applicant. By contrast, learned senior counsel



pointed out that the Company asserts title under registered powers of attorney. By relying on the judgment of the Hon'ble Supreme Court in *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*, (2009) 7 SCC 363 and (2012) 1 SCC 656 (*Suraj Lamp I and II*, respectively), learned senior counsel contended that title to property cannot be conveyed under a power of attorney. Since the Company asserts title entirely on the basis of powers of attorney, he contended that the Company is not entitled to bring the properties for sale. His second contention was that even an agreement of sale or contract of sale does not create interest or title in immovable property. In support of this proposition, he relied on the judgment of the Hon'ble Supreme Court in *Narandas Karsondas v. S.A.Kamtam*, (1977) 3 SCC 247. The third contention was that even the powers of attorney are in favour of M.Muthuraman and not in favour of the Company. By also pointing out that there is no reference to the Company in the powers of attorney, he submits that the Company cannot rely on the powers of attorney. In support of this proposition, he relied on the judgment in *M.Natarajan (Died) and others v. Sengoda Gounder*, 2022 (5) CTC 922.



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13. In response, Mr.Karthik Seshadri contended that Nandagopal claims title under sale deeds executed in the year 2004 by Muthuraman acting as a power of attorney. He then pointed out that the original GPA dated 22.8.1994 (Document No.30 of 1994) and the parent documents are in the custody of the Administrator. By pointing out that receipts were issued by the original land owners acknowledging receipt of Rs.3.5 lakhs as consideration for the purchase of towards purchase of 25.37 acres of patta land and 13.43 acres of Boodhan lands, he also submitted that the parent documents bearing document Nos.567 to 572/1991 are in the custody of the Administrator. As regards Kirubakaran, he pointed out that the claim is in respect of three acres in S.No.278/2 and that, except for a small extent, this land has already been conveyed to the customers.

14. As regards Jebalatha, he submitted that the sale deeds on which reliance is placed were executed in favour of A.Kirubakaran. He further submitted that the encumbrance certificates disclose execution of several sale deeds in favour of customers of the Company by Muthuraman. After also pointing out that the settlement deed was executed by Kirubakaran in favour of Jebalatha



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was in the year 2010, he submitted that all these conveyances are subsequent to the commencement of winding up and, consequently, void.

15. By way of rejoinder, Mr.Subbiah, learned senior counsel, submitted that the parent documents are with the Company only as regards Nandagopal. By relying on paragraphs 39 to 43 of the rejoinder, he stated that original sale deeds were not handed over by the vendors to Nandagopal. He further contended that possession of the original title deeds *per se* does not confer title. By referring to the power of attorney, he pointed out that the power of attorney requires the agent to maintain and provide accounts. Therefore, he contended that it is not a power coupled with interest and that the Company cannot claim ownership. Consequently, he contended that the original owners were entitled to and duly conveyed property to and in favour of the applicants. As regards the order of injunction, he contended that such order is not reflected in the encumbrance certificate. In conclusion, he submitted that section 4 of The Prohibition of Benami Property Transactions Act, 1988, constitutes a



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bar to the claim made by the Company inasmuch as title is being asserted over property which does not stand in its name.

16. ICICI Bank (the Bank) filed a counter affidavit and an additional counter affidavit. In the said documents, the Bank asserted that M.Kirubakaran and his wife approached the Bank seeking a Kisan Credit Card loan and that the Bank sanctioned a sum of Rs.1,50,00,000/-. As security for the said loan, the Bank stated that the borrowers mortgaged their properties as security by depositing the title deeds. It is also stated that such memorandum of deposit of title deeds was registered as document No.702 of 2018 in the Sub Registrar's Office, Nazareth. Consequently, the Bank asserts that it has the first charge over the properties and that a sum of Rs.1,46,64,999.50 is outstanding as on 06.12.2023. In the additional counter affidavit, the Bank states that five documents were deposited by the borrowers under the memorandum of deposit of title deeds. Learned counsel for the Bank relied upon the counter affidavit and additional counter affidavit and contended that the said land should not be sold by the Company in view of the first charge in favour of the Bank.



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Discussion, analysis and conclusions

17. Each applicant claims title under sale deeds executed by the respective owners acting through M.Muthuraman as their agent. The Company also asserts title under powers of attorney executed in favour of Muthuraman. In *Suraj Lamp II*, the Supreme Court carved out an exception for *bona fide* and genuine transactions involving the execution of a power of attorney in favour of *inter alia* a developer. Paragraph 27 of the said judgment is as follows:

“27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment



buildings and in that behalf execute an agreement of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding "SA/GPA/will transactions" are not intended to apply to such bona fide/genuine transactions."

Whether this case falls within the above exception warrants consideration. The other aspects to be examined are whether the conveyances in favour of the respective applicants were subsequent to the commencement of winding up and whether such conveyances were prior to order dated 23.03.2007 restraining the agent, Muthuraman, from selling or encumbering the properties and, if not, the implications thereof.

Claim made by Nandagopal:

18. As discussed earlier, Nandagopal traces title to the relevant property under sale deeds executed by Perumal Thevar in favour of Vijayakumar (2 sale deeds), Packiyarani (2 sale deeds), Selvadasan (1



sale deed) and Vijayakumari (1 sale deed). All these sale deeds were executed on 21.08.1991. The four owners thereafter executed a power of attorney in favour of Muthuraman on 22.08.1994. Nandagopal claims title under a sale deed dated 08.09.2004, which was executed through Muthuraman in his favour. In support of the ownership claim, Nandagopal has placed on record photocopies of the sale deeds executed by Perumal Thevar, a photocopy of the power of attorney in favour of Muthuraman and the original sale deed in his favour.

19. The Company relied on the original parent documents executed by Perumal Thevar and asserted that all the original parent documents are in its custody. In addition, the Company has placed on record a receipt executed by P.Muthuramalingam, who is said to be the father of the agent, Muthuraman, acknowledging receipt of a sum of Rs.3,50,000/- towards purchase of 25.37 acres of patta land and 13.43 acres of Boodhan lands. In addition, an affidavit executed by P.Muthuramalingam has also been placed on record. Such affidavit records that the consideration for the total extent of 38.80 acres was disbursed to the land owners. The affidavit is



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countersigned by R.Selvadasan, S.Vijayakumari, T.Vijayakumar and V.Packiyarani, the persons who executed the power of attorney in favour of Muthuraman. The Company also has custody of the consent letters executed by the children of Perumal Thevar.

20. From the above narration, it follows that there is evidence that consideration was paid through Mr.P.Muthuramalingam to the four land owners, who had executed a power of attorney in favour of Muthuraman. In the power of attorney, Muthuraman is described as the son of Muthuramalingam. Significantly, as discussed above, the affidavit of Muthuramalingam has been countersigned by the four land owners since such affidavit records that the land owners received consideration. Therefore, credibility should be attached to the said document. In this regard, it is also pertinent to notice that the original parent documents bearing document Nos.567, 568, 569, 570, 571 and 572 of 1991 are in the custody of the Company. When the following facts are considered cumulatively: possession of original parent documents and original power of attorney in favour of Muthuraman by the Company; and the receipt and affidavit of Muthuramalingam, there is sufficient basis to conclude that the land



is an asset of the Company and that this case falls within the scope of the exception carved out in *Suraj Lamp II*. Therefore, it becomes necessary to consider whether the dispositions in favour of Nandagopal and the other applicants were subsequent to the commencement of winding-up and the implications thereof.

21. The winding up of the Company commenced on or about 24.02.1998. Sub-section (2) of Section 536 of the Companies Act, 1956 (CA 1956) prescribes as under:

“(2) In the case of a winding up by the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.”

Thus, any disposition of the property of the Company after the commencement of winding up is void unless the Court directs otherwise. The sale deed in favour of Nandagopal was executed on 08.09.2004, which is about six years subsequent to the commencement of winding up. In the face of the documents evidencing payment of consideration to the land owners



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contemporaneously with the execution of the power of attorney, the applicant/Nandagopal has failed to make out a case that his purchase is *bona fide* and, consequently, for the validation of the sale deed executed on 08.09.2004. When these facts and circumstances are considered holistically, the conclusion that follows is that the conveyance in favour of Nandagopal and the mutation of revenue records on such basis are void and liable to be declared as such.

Claim made by Jebalatha:

22. Jebalatha traces title through powers of attorney executed separately by K.Kanagaraj, D.Daniel Sundarraj, D.Daniel Sundaraj and S.John Chandran, and K.Kasirajan in favour of Muthuraman. These powers of attorney appear to have been executed on different dates between 1994 - 1995. Jebalatha relies upon subsequent sale deeds executed by Muthuraman, as agent, in favour of her husband, A.Kirubakaran, on 12.04.2007 and 22.02.2008. She also relies upon general power of attorney dated 30.12.2010, which was executed by A.Kanagaraj in favour of Kirubakaran, settlement deed dated 15.10.2010, which was executed by Kirubakaran in favour of



WEB COPY Kirubakaran.

Jebalatha, and sale deed dated 25.01.2011 in favour of Jebalatha by Kirubakaran.

23. As regards Jebalatha, it is pertinent to notice that the agent, Muthuraman, had conveyed an aggregate extent of 2.57 acres in S.No.274/1 in favour of the Company's customers under Document Nos. 616/1996, 617/1996, 654/1996, 672/1996, 747/1996, 748/1996 and 749/1996. The encumbrance certificate reflects these conveyances. It is also significant to notice that the sale deed executed by Muthuraman, the agent, in favour of A.Kirubakaran was subsequent to order dated 23.03.2007 restraining Muthuraman from executing sale deeds or creating encumbrances in respect of the property by using powers of attorney in his favour. Such order was issued in an application to which Muthuraman was a party. In effect, the conveyances executed by Muthuraman in April, 2007 and February, 2008 were in contravention of the order of interim injunction issued by this Court.

24. The implications of effecting conveyances in contravention of a Court order were examined by me in the context of applications



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filed by claimants over immovable properties of the Company at Nangaimozhi village. In those applications also, the Company, acting through the agent, had earlier conveyed title to small parcels of land to customers and, thereafter, conveyed the land to the applicants in the teeth of an order of interim injunction restraining alienation. In relevant part, it was held therein (*Ebrahim Mohamed Kulam and others v. The Official Liquidator and another*, 2023:MHC:3885) as under:

“ 19. With regard to the effect of a conveyance in the teeth of an order of court, it is instructive to refer to Jehal Tanti and Ors. v. Nageshwar Singh (dead), 2013 SCC OnLine SC 374, where, in relevant part, it was held as under:

“We may also notice Section 23 of the Contract Act, 1872, which lays down that:

“23. What considerations and objects are lawful, and what not.-- The consideration or object of an agreement is lawful, unless --

it is forbidden by law; or

is of nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or



involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy."

In each of these cases, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent 1 in the teeth of the order of injunction passed by the trial court, the same appears to be unlawful."

Hence, the sale deeds executed by the GPA holder, D.Sankaran, in favour of the predecessors-in-interest of the applicants contravene Section 23 of the Contract Act and are, therefore, void."

The subsequent settlement and sale deeds are also vitiated because title was derived by the executant, Kirubakaran, on the basis of sale deeds executed by Muthuraman in violation of the Court order. Therefore, the conveyances in favour of Jebalatha are void for the following reasons: she purchased some lands that had been previously conveyed under registered sale deeds to the Company's customers; the purchases were subsequent to the commencement of



winding up; and the conveyances in her favour were executed in contravention of an order of this Court.

Claim made by Kirubakaran:

25. Kirubakaran traces title from a sale deed dated 28.09.1994, which was executed by S.Johnson in favour of R. Savithadevi. The said Savithadevi executed a power of attorney dated 22.01.1996 in favour of Muthuraman. The Administrator has asserted that sale deeds were executed by Muthuraman in favour of the Company's customers for 2.6226 acres (out of the aggregate extent of 3 acres) under Document Nos. 214/1996, 216/1996, 411/1996, 588/1996, 649/1996 and 671/1996. The encumbrance certificate supports this assertion and could have been easily verified by Kirubakaran. Purportedly on the basis of such power of attorney, Muthuraman executed a sale deed dated 13.04.2007 in favour of A.Kirubakaran. As in the case of Jebalatha, the sale deed dated 13.04.2007 was executed subsequent to the order dated 23.03.2007 restraining Muthuraman from dealing with the property. Thus, Kirubakaran's claim is vitiated because he purchased lands that had been previously conveyed under registered sale deeds to the Company's



customers after the commencement of winding up and because the conveyance was executed in his favour in contravention of an order of this Court.

26. The final aspect to be considered is the applicability of the The Prohibition of Benami Property Transactions Act, 1988. On this issue, the Division Bench of this Court held that section 4 of the enactment does not apply to the claim of the Company by holding as under in paragraphs 18 and 22 of *Maxworth Orchards India Limited v. B. Ravi Babu*, MANU/TN/4702/2023:

“18. In order to apply the plea of Benami, there has to be a sale/a conveyance. Title must pass from the existing owner to another person who is a benamidar for the other. The transaction in the present case required 3 persons namely, the vendor, the benamidar/ostensible owner and the actual owner. The effect of the Benami Act, is that the relationship between the ostensible owner & the real owner is snapped. In this case, as pointed out by the Learned Judge in his order of reference, there is no transfer at all. On receipt of monies, the owner executes a Power of Attorney in favour of the employees of the Company. The transfer in favour of the customers is done by the employee



as a Power of Attorney agent of the original owner. Therefore, the question of benami does not arise here. It is at best "a Power of Attorney Sale" which we shall address later.

22. This concludes that the relationship between the Power of Attorney and his principal is fiduciary. As seen from above, the relationship between the owner & the purchaser is also one such. Fiduciary capacity existing in both the transactions, even if the Benami Act were to apply, it falls within the exemptions contemplated under the Act."

27. For reasons aforesaid, the reliefs requested by Nandagopal, Jebalatha and Kirubakaran are liable to be and are hereby rejected. It is, nonetheless, open to the respective applicant to make claims against the respective vendor(s). As regards the Bank, its rights as a mortgagee are entirely dependent on the title of the mortgagor over the mortgaged asset. As a corollary to the rejection of the mortgagor's claim, the mortgagee's claim stands rejected. This is, however, without prejudice to the claims, if any, of the Bank against the borrower or guarantor.



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28. In light of the above discussions, these applications are disposed of without any order as to costs by holding that the conveyances in favour of the applicants are void and, consequently, the mutations made in the revenue records in their favour are also invalid. As a corollary, the Official Liquidator is directed to take necessary steps to rectify the records.

15.11.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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SENTHILKUMAR RAMAMOORTHY J.

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Pre-delivery order made in
Comp.A.Nos.55, 89, 90, 129, 130, 131, 132, 133 & 134 of 2022
in
C.P.No.57 of 1998

15.11.2024