



C.R.P.No.687 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.687 of 2022
and CMP.No.3498 of 2022

J.Sam David

... Petitioner

Vs

1.J.Jayapaul Mohan

2.The Sub Registrar

Avadi

Chennai - 600 054.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order and decreetal order passed in I.A.No.1088/2018 in O.S.No.127/2018, dated 24.11.2021 on the file of the learned District Munsiff Court, Ambattur.

For Petitioner : Mr.R.Raman Laal

For Respondents : Mr.T.S.Kani for R1

Dr.S.Suriya

Additional Government Pleader for R2



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ORDER

This civil revision petition arises against the order passed in I.A.No.1088/2018 in O.S.No.127/2018 on the file of District Munsif Court, Ambattur. The revision petitioner herein is the first defendant, and the first respondent herein is the plaintiff in the suit.

2. This case has a chequered history. The plaintiff and the first defendant are the brothers. The first defendant had purchased the suit schedule mentioned property in the year 2010 by SARFAESI sale. The first defendant appointed the plaintiff, as his Power of Attorney by way of Deed of General Power of Attorney in Doc. No.4574/2013, to deal with the suit property. The plaintiff, on the strength of Power of Attorney, had conducted the proceedings before DRT, DRAT, this Court as well as the Supreme Court of India, and represented the first defendant in all those litigations. To meet out the litigation expenses which had incurred to several lakhs of rupees, the plaintiff had mortgaged the suit property with a private lender, by depositing the original title deeds. It is the case of the plaintiff that having extracted the property from litigation, the first defendant had cunningly cancelled the



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General Power of Attorney by way of Deed of Revocation in

Doc.No.9307/2017. This apart, the first defendant had entered into an agreement of sale of the property with a third party, without redeeming the property from the mortgage debt. On coming to know the cancellation of General Power of Attorney, the suit was presented in O.S.No.127/2018 for a declaration that the cancellation of General Power of Attorney is null and void, and also for a permanent injunction restraining the first defendant or his agents from alienating the suit property. Pending the suit, the first defendant filed a petition under Order VII Rule 11(a) of CPC, to reject the plaint. That application came to be dismissed. Hence, the present revision.

3. Heard Mr.R.Raman Laal, learned counsel for the revision petitioner, Mr.T.S.Kani, learned counsel for the first respondent and Dr.S.Suriya, learned Additional Government Pleader for the second respondent.

4. The law of cancellation of Power of Attorney is found under Section 201 & 206 of the Indian Contract Act. As per this provision, an agency can be terminated by the principal by revoking the authority of the agent. When Section 201 is read with 206 of the Indian Contract Act, prior



to revocation of power, a notice has to be given to the power agent. It is not in dispute that prior to the Deed of Revocation of Power of Attorney was issued to the plaintiff, the first defendant had issued a notice. The only circumstances under which the Power of Attorney cannot be revoked is that when the power is coupled with interest.

5. This Court as well as the other High Courts have interpreted that, in order, for the Power of Attorney to be treated as power coupled with interest, the interest must be in the subject matter of the property namely, the suit schedule mentioned property. The plaintiff himself concedes that the first defendant is the owner of the property by virtue of the order of the Supreme Court. When the power is not coupled with interest, the principal at all times, is entitled to cancel the same.

6. It is not the business of the Court to rewrite the contract between the plaintiff and the first defendant. When the plaint itself does not state that the Power of Attorney has power coupled with interest, and when the provisions of the Indian Contract Act permits the principal to cancel the power, a suit for declaration filed to declare that the cancellation of Power of



Attorney in Doc.No.9307/2017 as null and void, is not maintainable.

Similarly, there cannot be an order of permanent injunction restraining the true owner from selling the property.

7. The appropriate remedy vital for the plaintiff / first respondent would be to file a suit for recovery of money that he had spent while acting as the Power of Attorney for the first defendant. When a suit for recovery of money is maintainable, the question of granting injunction does not arise. This is because where the amount can be quantified, an order of injunction does not flow. This is a settled position. Now, it is only a suit for damages that can come to the aid of the plaintiff/first respondent and that cannot be quantified by an order of declaration or otherwise by an order of injunction.

8. In the light of the above discussion, I do not find any cause of action in the suit. Accordingly, the plaint in O.S.No.127 of 2018 stands rejected for failing to disclose the cause of action. However, it is left open for the plaintiff / first respondent to present a suit for recovery of money, if he so desires.



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9. In the result, this civil revision petition is allowed and the order of the learned District Munsif, Ambattur, dated 24.11.2021 in I.A.No.1088/2018 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

29.04.2024

Index:Yes/No

Internet : Yes /No

Speaking order / Non-speaking orders

To:

1.The District Munsif
Ambattur.

2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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