



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.11.2024

PRONOUNCED ON : 29.11.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 26823 of 2015

And

M.P.No. 1 of 2015

1. K.Sivan
2. K.Chandran (deceased)
3. K.Halraj
4. Jayanthi
5. C.Anandh
6. Monisha ... Petitioners

[Respondent Nos. 4 to 6 impleaded by order dated 06.11.2024 in W.M.P.No. 35721 of 2023]

..Vs..

1. The Deputy Registrar of
Co-operative Societies
Udhagamandalam, Nilgiris District.
2. The Nilgiris District Teachers
Co-operative Thrift and Credit Society
Rep. By its Administrator,
Udhagamandalam, Nilgiri District.



3. Thiru. D.Sathyamoorthy

... Respondents

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PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the order passed by first respondent in Claim Petition No.1 of 2014 Sa.Pa dated 17.12.2014 quash the same consequently hold that the order of attachment in CAM.No. 6 of 2014 dated 25.04.2014 in S.No. 334/R.S.No. 672 measuring 22.56 acres, Melur Village, Coonoor, Nilgiri District is illegal.

For Petitioners :: Mr. M.S.Palanisamy

For 1st Respondent :: Mr. M.Muthusamy
Government AdvocateFor 2nd Respondent :: Mr. L.P.Shanmuga SundaramFor 3rd Respondent :: No appearance**ORDER**

The Writ Petition has been filed in the nature of a Certiorarified Mandamus calling for the records of the order of the first respondent / the Deputy Registrar of Co-operative Societies, Udthagamandalam, Nilgiris District in Claim Petition No. 1 of 2014 bearing No. Sa.Pa dated 17.12.2014 and quash the same and hold that the order of attachment in CAM No.6 of 2014 dated 25.04.2014 with respect to lands in S.No. 334/R.S.No. 672 measuring 22.56 acres in Melur Village, Coonoor in Nilgiris District as illegal.



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2. During the pendency of the Writ Petition, the second petitioner died and by order dated 06.11.2024 in W.M.P.No. 35721 of 2023, his legal representatives had been brought on record as 4th to 6th petitioners. The Writ Petition had been originally filed by three petitioners.

3. In the affidavit filed by the first petitioner on his behalf and on behalf of the second and third petitioners, who are his brothers, it had been stated that they were the absolute owners of the property measuring 22.56 acres in R.S.No. 672 Old S.No. 334 at Melur Village, Coonoor Taluk, Nilgiris District. It had been claimed that they had inherited from their father B.Kakka Gowder, land measuring 9.40 acres and the first petitioner also purchased another 9.40 acres under two sale deeds. The other members of the family had released their rights in favour of the petitioners for land measuring 3.76 acres.

4. It had been further stated that the petitioners had taken a decision to sell the entire land and therefore, they approached the third respondent D.Sathyamoorthy to assist them to sell the land. The petitioners then executed a registered General Power of Attorney on



01.09.2013 in favour of the third respondent. This power of attorney was registered as document No. 2099/2013 on 02.09.2013 before the Sub Registrar, Coonoor.

5. It had been further contended that the petitioners are not even members of the second respondent, the Nilgiris District Teachers Co-operative Thrift and Credit Society. However, an order of attachment of the said property had been passed by the first respondent by the impugned order. It had been stated that as per Section 182 of the Indian Contract Act, an agent is empowered to do acts for the principal. He does not become the owner of the lands. An execution of a power of attorney does not create any interest in the lands. It had therefore been contended that the order of attachment by the first respondent of the said lands is unlawful.

6. The petitioners then came to know in the second week of June 2014 that the third respondent had caused loss to the second respondent Society to an amount of Rs.1,83,76,045/-, and that the attachment was pursuant to an order passed under Section 87 of the Tamilnadu Co-operative Societies Act 1983 against the third respondent and others. It had also been stated that the petitioners filed a petition under Section 167 of the said Act, to raise the order of



attachment and had also placed reliance on Rule 135 of the Tamilnadu Co-operative Societies Rules. It was stated that the attachment was abinito void. It was under those circumstances that the Writ Petition has been filed.

7. A counter affidavit had been filed by the first respondent, the Deputy Registrar of Co-operative Societies at Udhagamandalam. The counter was also filed on behalf of the second respondent, the Nilgiris District Teachers Co-operative Thrift and Credit Society. In the counter affidavit, it had been stated that the third respondent was the Secretary of the second respondent. He had been entrusted with the finances and assets of the second respondent. There was an obligation to maintain the books of accounts. But however, it is alleged that the third respondent had misappropriated a sum of Rs.1.83 crores during the years 2011, 2012 and 2013.

8. It had been further stated that under Rule 149(7) of the Tamil Nadu Co-operative Societies Rules, 1988, an employee is prohibited from accepting any employment of work. It had therefore been contended that he had acted with mala fide intention in accepting to be the agent of the petitioners to sell their property. He cannot also indulge in brokerage or real estate business.



9. It had also been pointed out that the petitioners had executed an irrevocable power of attorney in favour of the third respondent. It had also been stated that notice under Section 81 of the Tamilnadu Co-operative Societies Act 1983 had been issued and proceedings had commenced before the statutory enquiry Officer. The third respondent however, did not appear for the enquiry. A report was then submitted. Thereafter, surcharge proceedings under Section 87 of the Act were initiated. Orders were also passed directing him to pay the amount misappropriated. Thereafter the order of attachment of the said property had been passed under Section 167 of the said Act read with Rule 140 of the Rules. It had been contended that even though the petitioners had granted a power of attorney, the third respondent is the ostensible owner over the lands. It had been further stated that the petitioners have a right of appeal under Section 152 of the Tamilnadu Co-operative Societies Act 1983. It had therefore been contended that the Writ Petition is also not maintainable. It had been finally stated that the Writ Petition should be dismissed.

10. Heard arguments advanced by Mr. M.S.Palanisamy, learned counsel for the petitioners and Mr.M.Muthusamy, learned Government Advocate for the first and second respondents.



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11. Mr. M.S.Palanisamy, learned counsel for the petitioners pointed out the facts of the case and stated that the petitioners were the absolute owners of the lands which were the subject matter of attachment by the first respondent. He pointed out that the petitioners were not members of the Society. They had not misappropriated any amount of the Society. They had given only a power of attorney to the third respondent to sell the property. The learned counsel stated that the property of the petitioners cannot be attached for any alleged misappropriation by the third respondent.

12. In this connection, the learned counsel for the petitioners relied on:-

(i) ***(2012) 1 SCC 656 [Suraj Lamp and Industries Private Limited Vs. State of Haryana and another]*** wherein paragraph Nos. 20, 21, 24 and 26 are as follows:-

“Scope of power of attorney

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 authorises 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 1-A 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 v. Basant Nahata [(2005) 12 SCC 77]* this Court held:
(SCC pp. 90 & 101, paras 13 & 52)

“13. 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



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power of attorney is, as is well known, a document of convenience.

52. 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.

24. *We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will*



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transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.

26. *We have merely drawn attention to and reiterated the well-settled legal position that SA/GPA/will transactions are not “transfers” or “sales” and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreements of sale. Nothing prevents the affected parties from getting registered deeds of conveyance to*



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complete their title. The said “SA/GPA/will transactions” may also be used to obtain specific performance or to defend possession under Section 53-A of the TP Act. If they are entered before this day, they may be relied upon to apply for regularisation of allotments/leases by development authorities. We make it clear that if the documents relating to “SA/GPA/will transactions” have been accepted/acted upon by DDA or other developmental authorities or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed, merely on account of this decision. ”

(ii) (2023) 7 SCC 361 [Ghanshyam Vs. Yogendra Rathi]

wherein paragraph Nos. 12, 14 and 15 are as follows:-

“12. It goes without saying that the power of attorney executed by the appellant-defendant is of no consequence as on the strength of said power of attorney, neither sale deed has been executed nor any action pursuant thereof has been taken by the power-of-attorney holder which may confer title upon the respondent-plaintiff. Non-execution of any document by the general power-of-attorney holder consequent to it renders the said general power of attorney useless.



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14. *In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognising these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and its registration so as to confer right and title in an immovable property of over Rs 100 in value. The decisions of the Delhi High Court in **Veer Bala Gulati v. MCD** [**Veer Bala Gulati v. MCD, 2003 SCC OnLine Del 345 : (2003) 104 DLT 787**] following the earlier decision of the Delhi High Court itself in **Asha M. Jain v. Canara Bank** [**Asha M. Jain v. Canara Bank, 2001 SCC OnLine Del 1157 : (2001) 94 DLT 841**] holding that the agreement to sell with payment of full consideration and possession along with irrevocable power of attorney and other ancillary documents is a transaction to sell even though there may not be a sale deed, are of no help to the respondent-plaintiff inasmuch as the view taken by the Delhi High Court is not in consonance with the legal*



position which emanates from the plain reading of Section 54 of the Transfer of Property Act, 1882.

15. *In this regard, reference may be had to two other decisions of the Delhi High Court in **Imtiaz Ali v. Nasim Ahmed [Imtiaz Ali v. Nasim Ahmed, 1986 SCC OnLine Del 269 : AIR 1987 Del 36]** and **G. Ram v. DDA [G. Ram v. DDA, 2002 SCC OnLine Del 405 : AIR 2003 Del 120]** which inter alia observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right, title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Registration Act, 1908. The decision of the Supreme Court in **Suraj Lamp & Industries (P) Ltd. v. State of Haryana [Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2009) 7 SCC 363 : (2009) 3 SCC (Civ) 126]** also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed. "*



13. Pointing out the proposition of law as laid down by the Hon'ble Supreme Court, the learned counsel stated that execution of a power of attorney will not create any right, title or interest over the property for the agent. The title still vests with the owner, in this case, the petitioners. It was therefore contended that the attachment order will necessarily have to be set aside by this Court. It had been contended that for the alleged acts of misappropriation of the third respondent, the property of the petitioners had been attached. The learned counsel therefore insisted that this Court should allow the Writ Petition.

14. Mr.M. Muthusamy, learned Government Advocate for the first and second respondents however denied and disputed each one of the contentions. According to the learned Government Advocate, the petitioners had executed an irrevocable power of attorney in favour of the third respondent. It was pointed out that the acts of misappropriation by the third respondent for a sum of Rs.1.83 crores took place in the years 2011, 2012 and 2013. This power of attorney had been executed by the petitioners on 02.09.2013. It had therefore been contended that the order of attachment had been passed only to secure the interest of the second respondent and that, the petitioners and the third respondent had been engaged in an unholy alliance to



ensure that the amounts misappropriated are not secured. It had been contended that the third respondent is a total stranger to the petitioners and no reason had been given as to why and how they had chosen the third respondent when he was the Secretary of the society and a paid the employee of the second respondent. It had therefore been contended that the Writ Petition should be dismissed.

15. I have carefully considered the arguments advanced and perused the materials available on records.

16. The Writ Petition has been originally filed by the three petitioners, who were all brothers. They claimed title over land measuring 22.56 acres in Melur Village, Coonoor Taluk in Nilgiris District. During the pendency of the Writ Petition, the second petitioner died and his legal representatives had been brought on record. The three writ petitioners / brothers had executed a power of attorney on 01.09.2013 in favour of the third respondent, a stranger to the family, to deal and sell the property. At that relevant point of time, the third respondent was the Secretary of the second respondent society. In the general power of attorney which had been registered as Document No.2099 of 2013 in the Office of the Sub Registrar, Coonoor, it had been stated that the third respondent was



granted power to negotiate sale, to receive advance amount and the balance sale consideration and to give receipts and discharges for the same and also to sign and execute sale deeds to convey the property to the prospective purchasers.

17. It had been very clearly stated by the Hon'ble Supreme Court that a power of attorney is not a document of sale and does not give any right, title or interest over the property.

18. In the instant case, the startling facts are that the third respondent is said to have misappropriated a sum of Rs.1.83 crores from the second respondent Society. He was appointed as power of attorney agent in the year 2013. It has to be noted that as Secretary of the second respondent and as an employee, who receives salary, he is prohibited by law and by the Rules and Regulations of the second respondent to conduct any business by which he could earn profit.

19. He had defined those statutory provisions and had accepted to act as power of attorney of the writ petitioners. The power of attorney is a registered document and is irrevocable. The statement made in the power of attorney that no consideration had been received have to be viewed with askance. Any irrevocable power of



attorney is based on consideration. The petitioners had given the third respondent absolute right to negotiate sale, to execute documents of sale and to receive the sale consideration. This act will have to be examined in conjunction with the fact that the third respondent had misappropriated a sum of Rs.1.83 crores in the previous years to the year when the power of attorney had been executed.

20. Proceedings were initiated under Section 81 of the Tamilnadu Co-operative Societies Act 1983. The third respondent had not appeared before the enquiry Officer. He had also not appeared when further proceedings and notices were issued under Section 87 of the said Act. It was thereafter that surcharge orders had been passed crystalising the amount due and payable at Rs.1.83 crores. He had also not filed any Appeal against that order. It is only natural since, the respondent had proceeded not against his property but against the property of the petitioners.

21. Section 167 of the Act provides for attachment of a property as security for the amount determined in an enquiry under Section 87 of the Act.



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22. Further, a perusal of the impugned order shows that when if aggrieved by an order refusing to raise attachment, a suit would lie. The petitioners had not exhausted that alternate remedy. The learned counsel for the petitioners had justified the institution of the Writ Petition by claiming that the order of attachment is void and illegal. According to him, the petitioners were owners of the property and had executed a power of attorney to sell the lands and for no other purposes.

23. However, the Court will also have to examine whether the circumstances surrounding the execution of the power of attorney document has been properly explained or could even be examined in a petition filed under Article 226 of the Constitution of India. That is a procedure which could be decided if a suit is filed or if an Appeal is filed under the Tamilnadu Co-operative Societies Act. In those proceedings, the parties would have the advantage of adducing evidence stating the circumstances under which the power of attorney was executed. There can be no quarrel over the fact that the third respondent cannot claim to be the title holder of the property. But even though it had been mentioned in the power of attorney document, no consideration had been passed still the fact that the



power was irrevocable leads one to an inference that consideration should have passed from the third respondent to the petitioners. The third respondent was Secretary of the second respondent Society. It is alleged that he had misappropriated a huge sum of Rs.1.83 crores from the second respondent Society. In the period proximate to such misappropriation, he had accepted to act as agent of the petitioners with respect to an extremely large trap of land 22.52 acres. This is an issue which cannot be brushed aside.

24. The only argument advanced is that the agent does not become the owner of the property. That is not in issue in this Writ Petition. It is the circumstances surrounding which the third respondent was picked and chosen by the petitioners and had accepted to be the Agent of the petitioners, is what is to be examined. The petitioners could have had explained all the circumstances surrounding the execution of the power of attorney if they had filed a suit as stated in the impugned order. They could have tendered evidence. They could have summoned the third respondent and examined him to state about the circumstances surrounding which he had agreed to act as their agent. The scope of the Writ Petition in an enquiry of similar nature is extremely narrow.

25. It is also to be noted that the third respondent had consciously taken a conscious decision not to participate in the



enquiry proceedings initiated under Section 81 of the Act and that therefore, order could be passed under Section 87 of the Act. Even before this Court, he had taken a conscious step not to appear, his name and address had been printed in the cause list. It is thus evident that he had deliberately avoided appearing before the Court. It is truly unfortunate that the property of the petitioners had been attached for the acts of misappropriation by the third respondent. The petitioners must however realise that when they had chosen him as their agent, they must have been aware of the fact that he was the Secretary of the second respondent Society and therefore, illegible act as their power of attorney agent. They had still appointed him as the power of attorney agent. They will have to stand or fall in accordance with his acts to misfeasances or misappropriation and the results thereof.

26. I am not inclined to interfere with the impugned order in this Writ Petition. The Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition stands closed. No costs.

29.11.2024

vsg
Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order



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To

1. The Deputy Registrar of
Co-operative Societies
Udhagamandalam, Nilgiris District.
2. The Nilgiris District Teachers
Co-operative Thrift and Credit Society
Rep. By its Administrator,
Udhagamandalam, Nilgiri District.



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C.V.KARTHIKEYAN, J.,

vsg

Pre-Delivery Order made in

W.P.No. 26823 of 2015

And

M.P.No. 1 of 2015

29.11.2024