



C.R.P.(PD)No.1968 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.1968 of 2023

and

C.M.P.No.12426 of 2023

Arumugam (Died)

1.Krishnamoorthy

2.Elavarasan

3.Vibhishanan

4.Somanathan

5.Ranganathan

6.Sudagar

7.Ramachandran

8.Rajaraman

9.Narayanan

10.Iyappan



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11.Sagadevan

.. Petitioners

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Vs.

1.S.P.Muthukrishnan

2.The District Collector,
Villupuram – 605 602

3.The Revenue Divisional Officer,
Villupuram – 605 602

.. Respondents

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order, dated 10.11.2022, made in I.A.No.83 of 2022 in O.S.No.53 of 2022 on the file of the Principal District Munsif at Villupuram.

For Petitioners : Mr.V.Chandraprabu

For R1 : Ms.P.Kavitha Balakrishnan

R2 & R3 : Not Ready in Notice

ORDER

The present Civil Revision Petition arises against an order passed by the learned Principal District Munsif at Villupuram in I.A.No.83 of 2022 in O.S.No.53 of 2022 dated 10.11.2022.



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2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. O.S.No.53 of 2022 is a suit for declaration that the cancellation of Power of Attorney, dated 10.02.2022, is null and void and not binding on the plaintiff, and for a consequential relief declaring that the plaintiff is entitled to receive a compensation for the acquisition of the lands by the Railways, and for prohibitory injunction restraining defendant Nos.3 to 14 from receiving the compensation from the Government, and for costs.

4. The cause of action for the suit is that on 12.08.2002, defendant Nos.3 to 14 had executed a General Power of Attorney in favour of the plaintiff. The suit schedule mentioned properties and certain other properties are covered under the Power of Attorney. In exercise of the Power of Attorney, the plaintiff proceeds that the plaintiff had alienated vast extents of the properties on behalf of the principals who are defendant Nos.3 to 14. The remaining extent became the subject matter of the acquisition by the Railways.



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5. After the acquisition notification had been given, the plaintiff objected to the same on 12.11.2021 invoking the provision under the Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997. Since he staked the claim to the property, it is the plea of the plaintiff that the defendants proceeded to cancel the Power of Attorney.

6. The plaintiff would further plead that the properties, which are the subject matter of the acquisition, have been entirely paid for by him prior to the execution of the Power of Attorney. He would plead that having paid the entire sale consideration, practically he became the purchaser of the property, and therefore, the Power of Attorney is irrevocable. Since the power was revoked, treating that as a cause of action, the present suit came to be filed.

7. On service of summons, defendant Nos.3 to 14 took out an application for rejection of plaint.



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8. Their argument being that there is no cause of action for the suit, and the plaintiff is not entitled for the declaration as he seeks. After receipt of the counter from the respondent/plaintiff, the learned Principal District Munsif came to the conclusion that the matters that had been agitated by defendant Nos.3 to 14 require evidence. The learned Principal District Munsif found that the cause of action for the suit existed from a reading of the plaint and hence, he dismissed the petition, against which the present revision.

9. Heard Mr.V.Chandrababu, appearing on behalf of the petitioners and Ms.P.Kavitha Balakrishnan, appearing on behalf of the 1st respondent.

10. Mr.V.Chandrababu would vehemently contend that the reading of the Power of Attorney would show that it is not one coupled with interest. He would argue that the entire case is predicated on the fact that the plaintiff wants to receive the compensation from the department of Railways for acquisition of a certain land, whereas, the right to receive the compensation is not disclosed in the Power of Attorney.



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11. Finally, relying upon the judgment of Supreme Court in ***Church of Christ Charitable Trust & Educational Charitable Society vs. M/s.Ponniammam Educational Trust [(2012) 8 SCC 706]***, in particular, in Paragraph No.17, Mr.V.Chandraprabu would argue that no receipt much less a sale receipt has been produced by the plaintiff to substantiate his pleas in Paragraph Nos.5 and 6 of the plaint and therefore, the plaint should be rejected.

12. Ms.P.Kavitha Balakrishnan would reiterate the submissions made by her counter part before the trial Court. She would state that all these are matters for evidence and they cannot be the subject matter of rejection of plaint.

13. I have carefully considered the argument on either side and I have carefully perused the records available.

14. For the purpose of rejection of plaint, though it is too well settled yet, I have to reiterate for the purpose of this case, that the averments made in the plaint have to be taken to be true. If I were to take the averments



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made in the plaint to be true in terms of Paragraph Nos.5 and 6 of the plaint, it is the plea of the plaintiff that it is a power coupled with interest and therefore, it cannot be revoked unilaterally.

15. Out of the total extent of 1 acre and 29 cents, it is not in dispute that the plaintiff had alienated 80 cents and it was the remaining 49 cents which became the subject matter of acquisition by the Indian Railways. He had been served with the notice in terms of Section 7(5) of the Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997, and since, he objected to the same, the Power of Attorney was cancelled.

16. *Prima facie*, two issues arise out of this. If the argument of Mr.V.Chandraprabu has to be accepted the Power of Attorney must continue to subsist for the defendants to cancel. The Power of Attorney was granted for the entire extent of 1 acre and 29 cents and the entire extent had already gone out of the hands of defendant Nos.3 to 14 in favour of purchasers through the Power of Attorney, namely the plaintiff, and by virtue of acquisition by the Government. Therefore, the power itself had been exhausted by virtue of having been put into operation completely. If



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that is the situation, it did not require defendant Nos.3 to 14 to cancel the power.

17. This takes me to the cause of action in the suit, namely that on the cancellation of the Power of Attorney, by which the defendant Nos.3 to 14 wanted to prevent the plaintiff from receiving the compensation from the Indian Railways. Whether the power of attorney is one coupled with interest or it is a mere Power of Attorney would have to be gone into only at the time of trial. *Prima facie*, I see a cause of action for the suit to continue on the file.

18. Insofar as the argument that since the sale receipt or anything of that kind had not been produced by the plaintiff under Order VII Rule 14(1) of the Code of Civil Procedure, the plaint has to be rejected on that scope does not appeal to me.

19. A careful reading of ***Church of Christ Charitable Trust & Educational Charitable Society's*** judgment would show that it was a case of a suit for specific performance at the hands of the Power of Attorney



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agent. The claim of the plaintiff in that case itself was on the basis of the Power of Attorney. Yet he did not produce the Power of Attorney before the Court. It was under those circumstances that the Court came to the conclusion that the plaintiff having burked the document which he ought to have produced along with the plaint, he is not entitled to continue with the proceeding.

20. A perusal of the plaint reveals that the Power of Attorney has been filed as the plaint document No.1, and the cancellation deed has also been filed as document No.5. Therefore, I cannot apply the judgment in *Church of Christ Charitable Trust & Educational Charitable Society's* case to the facts of the present situation.

21. In any event, in terms of Order VII Rule 14(3) of the Code of Civil Procedure, if a document is not filed along with the plaint, it is always open to the plaintiff to seek the help of the Court and file it just before the trial or even during the course of trial. I cannot presume for the purpose of rejection of plaint that the plaintiff will not produce the document at all. In fact, if the plaintiff does not produce any documents to substantiate his plea



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that it is a power coupled with an interest, it will certainly go in favour of the civil revision petitioners/defendant Nos.3 to 14. But I am not inclined to reject the plaint on the ground that since the sale receipt had not been filed, the suit deserves rejection.

22. The learned Principal District Munsif having found the cause of action, and since I do not find the same to be arbitrary or capricious exercise of discretion, I am not inclined to interfere with the revision. Accordingly, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

09.07.2024

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The Principal District Munsif,
Villupuram

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and

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