IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2024

PRONOUNCED ON : 23.05.2024

CORAM:

THE HON`BLE MR.JUSTICE A.A.NAKKIRAN

C.S. No. 519 of 2016 & C.S. No. 204 of 2020

C.S. No. 519 of 2016:

1. S.M.Mariyam aysha Umma
2. S.M.D.Mohamed Abdul Khader ....Plaintiffs

..Vs..

1. Ashok Kumar
2. R.Baskaran
3. V.Natarajan
4. Sanjay Singhi
5. Sukesh Singhi ....Defendants

C.S. No. 204 of 2020:

1. Sanjay Singhi
2. Sukesh singhi .....Plaintiffs

Vs

1. S.M.Mariyam aysha Umma
2. S.M.D.Mohamed Abdul Khader
3. V.Natarajan
4. R.Baskaran .....Defendants

Prayer in C.S. No.519 of 2016: Plaint filed under order VII rule 1 C.P.C and order IV rule 1 of O.S. rules

(a). Of declaration, declaring that the sale deed bearing document No. 586 of 2015 dated 24.11.2015 executed by the second defendant in favour of the third defendant and registered in the office of the Joint Sub Registrar-I, North Chennai, Chennai, in respect of the A schedule suit property is fraudulent, null and void and not valid and consequently canceling it;

b). Of declaration, declaring that the sale deed bearing document No. 80 of 2016 dated 10.2.2016 executed by the third defendant in favour of the fourth and fifth defendant and registered in the office of the Joint Sub Registrar-I, North Chennai, Chennai in respect of the A schedule suit property A is fraudulent, null and void and not valid and consequently canceling it;

c. Of mandatory injunction, directing the defendants to return to the plaintiffs the "schedule B" mentioned documents forthwith;

d. Of mandatory injunction, directing the defendants to return to the plaintiffs the "schedule C" mentioned documents forthwith;

e. Of permanent injunction, restraining the defendants, their men, agents and anyone claiming through them from interfering with the plaintiffs' peaceful possession and enjoyment of the suit A schedule property;

<u>Prayer in C.S. No.204 of 2020:</u>

Plaint filed under order VII rule 1 & 2 of C.P.C R/W order IV rule 1 of O.S. Rules;

a). To declare the document of cancellation of Power of attorney dated 29-10-2015 registered as document No.1246 of 15 in the S.R.O. Sowcarpet, as null and void and not binding on the suit property any way to affect the transaction in favour of 3rd defendant and

b). To grant the permanent injunction to restrain the defendant or their men or the person claiming through them from any way interfering in the right, title, ownership and peaceful possession of the plaintiff over the suit schedule property.

For Plaintiffs: Mr. A.Mohammed Ismail
For Defendants:Mr.V. Manohar for D4 & D5
: No Appearance for D1 to D3
(in C.S. No.519 of 2016)

For Plaintiffs :Mr. V. Manohar
For Defendants : Mr. A.Mohammed Ismail for D1 and D2
: No appearance for D3 and D4
(in C.S. No.204 of 2020)

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COMMON JUDGMENT

The both suits have been filed seeking the relief as stated above.

2. Since the above suits have been filed on similar set of facts, submission being common, common Trial was conducted and both suits are disposed of by means of this Common Judgment. For the sake of convenience, parties to the litigation have been referred to hereunder as arrayed in C.S. No.519 of 2016.

3.The case of the Plaintiffs in C.S. No.519 of 2016/defendants in C.S. No.204 of 2020, as set out, in the plaint and Written Statement respectively, is as follows:-

(a).The first plaintiff is the mother of the second plaintiff. The first plaintiff is the homemaker and an illiterate pardanasin Muslim woman. The 2nd plaintiff is a trustee of a public trust by name "Mohammed Sathak

Trust" which runs 18 educational institutions including an engineering college. The plaintiffs belong to a traditionally rich family and the plaintiffs 1 and 2 have been getting rental income of around Rs.3,00,000/-(Rupees three lakhs) per month from their properties. They also have other income. Thus, the incomes they receive from the properties they own are more than sufficient to meet their expenses. They had no necessity at all to dispose any of their properties.

ii. The plaintiffs further submit that the suit property originally belonged to the father of the second plaintiff who had purchased it by a registered sale deed dated 31.7.1967 and he had passed away on 19.3.2004 leaving behind the plaintiffs as the legal heirs. From then, the plaintiffs are its absolute owners and have been in possession and enjoyment of the same. It is a non-residential property and is under the occupation of the tenants who have been paying rent to the plaintiffs. They had also effected mutation of Government and Municipal Corporation records in their name. The present market value of the said property is around Rs.5,00,00,000/-(Rupees five crores only).

(iii). The plaintiffs further submit that the first plaintiff and her husband late S.M. Dastagir did not have child for a long time. Only after more than 18 years of their marital life, they begot the second plaintiff along with another child as twin child and the second child passed away at a later point of time. The 2nd plaintiff had born as a premature baby. The 1st plaintiff belongs to a very rich family, who own several properties. The father of the 2nd plaintiff, till his demise in the year 2004 was a trustee of Mohammed Sathak Trust. On his demise, the 2nd plaintiff has been appointed as a trustee in his place. Because of their status and wealth and because of the fact that the 2nd plaintiff is the only son, the 1st plaintiff and her husband took much care of the 2nd plaintiff and did not permit him to face the world independently. The 2nd plaintiff is not doing any business or profession and lived only with the rental income and in managing his household works, he is guided by his relatives. In these circumstances, he got married with on 22.12.2014.

(iv).It is further submitted that about six months prior to his marriage, the 2nd plaintiff met one Javvad, who was known to him for about three years. Both the plaintiffs and Javvad belong to Keelakarai in Ramanathapuram District. Javvad told the 2nd plaintiff that the 2nd plaintiff was not having independent business and so, he was not enjoying full respect among his relatives. He suggested to the 2nd plaintiff to commence a business and earn money which would only give him respect from the bride's family. Javvad had also promised to help the 2nd plaintiff in the business and earn lucrative return for his investments. Javvad suggested to the 2nd plaintiff that they had to import air conditioner and television set etc. and sell them locally which would yield lucrative returns in short time. The 2nd plaintiff did not smell the bad intention of Javvad and he began to imagine about his future business and profit.

(v).It is further submitted that within a month thereafter, Javvad had taken the 2nd plaintiff to Kancheepuram and showed him a mall and told the 2nd plaintiff that they could take a shop in that mall for rent for doing the business planned by them. Later, he took the 2nd plaintiff to a shop in Purasawakkam, Chennai and showed the 2nd plaintiff a big footwear shop and told him that if they do business in imported chappal and Rolex watches, they could get easy profit and had insisted the 2nd plaintiff to part with Rs.50,00,000/-(Rupees fifty lakhs) to him so as to commence the business. When the 2nd plaintiff was hesitating over the matter, javvad had repeatedly insisted plaintiff, he had already made business commitment to others and also made all arrangements to commence the business.

(vi). Yielding to the pressure of Javvad, the 2nd plaintiff had pledged the jewels of his mother, the 1st plaintiff herein with private financiers including Muthoot finance, raised a sum of Rs.27,00,000/- (Rupees twenty seven lakhs), and handed over the said amount to the accompanying Javvad. For pledging the jewels, the 2nd plaintiff had also taken a diamond necklace that belongs to the 1st plaintiff. It was valued around Rs. 10,00,000/-(Rupees ten lakhs). The financier did not accept the diamond necklace as a pledge. At that time, Javvad took that necklace alongwith him deceitfully and it is still with him.

(vii). The plaintiffs further submit that, on receiving money, Javvad had been regularly in touch with the 2nd plaintiff. But, at a later stage, he began to avoid communication with the 2nd plaintiff. Later, in two months, he had also completely stopped communication with the 2nd plaintiff. When the 2nd plaintiff had brought the matter to the notice of one Halwath, son of Anash Alimsha who is also from Keelakarai, the said Halwath had stated that if the second plaintiff does T-shirt business, he could immediately redeem the jewels and to start the business, immediately, a sum of Rs. 14,00,000/-(Rupees Fourteen lakhs only) would be needed. He introduced the 2nd plaintiff to two people by name Hathi Ahmed and Syed Ibrahim. Believing the version of Halwath, the 2nd plaintiff, again pledged some other jewels of his mother in Indus Ind bank for a sum of Rs.5,00,000/-(Rupees five lakhs only), withdrew a further sum of Rs.9,00,000/-(Rupees Nine lakhs only) from his bank account and paid a total sum of Rs. 14,00,000/-(Rupees Fourteen lakhs) to Syed Ibrahim, who promised him that the business would be commenced shortly in Ramanathapuram.

(viii). Thereafter, Syed Ibrahim contacted the 2nd plaintiff many times and after two months, Hathi Ahmed had called the 2nd plaintiff and informed that the business ran into losses. Since the efforts of the 2nd plaintiff to contact the said persons went in vain, he had gone to Ramanathapuram and searched for them. When the 2nd plaintiff had come to know that the above said persons were staying in a Hotel near Ramanathapuram Bus Stand, he went to that Hotel and found Hathi Ahmed and Syed Ibrahim in a room. In the same hotel, he also found Javvad in another room. On seeing the 2nd plaintiff, Javvad, avoided the 2nd plaintiff and went out of the hotel. When the 2nd plaintiff demanded Hathi Ahmed and Syed Ibrahim to return his money so that he could redeem the jewels, they had taken the 2nd plaintiff to the first defendant and informed the 2nd plaintiff that they could get some loan from the first defendant and with that money, they could start another business so that they could recover from the earlier losses.

(xi). The plaintiffs further submit that in the month of August, 2015, Hathi Ahmed had called the 2nd plaintiff over phone, requesting him to come to meet the first defendant, who was staying in a hotel at Kenneth Lane, Egmore, Chennai, so that the 2nd plaintiff could get money from the first defendant. Believing the said version, the 2nd plaintiff took along with him the original documents pertaining to the suit property and met the defendant. At that time, Hathi Ahmed and Syed Ibrahim were also present. They had introduced the 2nd plaintiff to the 1st defendant. When the 2nd plaintiff had requested the first defendant to give him a loan of Rs.40 lakhs, the first defendant said that he would give only Rs.30 lakhs. At that time, the 1st defendant had collected the original documents from the 2nd plaintiff and handed over him the already brought money of Rs.30,00,000/-(Rupees thirty lakhs only) to the 2nd plaintiff. Even Syed Ibrahim had taken away the whole money from the hands of the 2nd plaintiff in the presence of the first defendant by saying that they were going to do business by importing cell phones and laptops from Hongkong so that they could get double the profit.

(x). After 1 1/2 months from then, the 2nd plaintiff enquired with Hathi Ahmed and Syed Ibrahim about the business for which, they had replied that they had made advance payment at Hongkong and Malaysia from out of the amount given by the 2nd plaintiff. In the meantime, the first defendant started pressurizing the 2nd plaintiff to repay the amount given by him and on one day, the first defendant again called the 2nd plaintiff and informed him that the 1st defendant was informed by Hathi Ahmed that their business went in losses. When the 2nd plaintiff contacted Hathi Ahmed and Syed Ibrahim and informed about the statement of the 1st defendant and his demand for return of the amount paid by him, they replied that they would speak to the 1st defendant.

(xi). Thereafter, the 1st defendant tried to intimidate the 2nd plaintiff by saying that he would abduct the 2nd plaintiff and his mother, the

1st plaintiff herein and also chap the 1st plaintiff and with that intimidation, he demanded the 2nd plaintiff to repay the money. On one day, the 1st defendant threatened the 2nd plaintiff to immediately come to a hotel, where he was staying under a threat of injury to the 1st plaintiff and also abducting her. The 2nd plaintiff is much affectionate to his mother and could not tolerate any injury to her. Further, the 1st plaintiff is an illiterate and learnt to put her signature only after her marriage.

(xii).Fearing evil consequences to the plaintiffs 1 and 2, and also on the seduction of Hathi Ahmed and Syed Ibrahim, the 2nd plaintiff took Nungambakkam, Chennai and met the 1st defendant. At that time, the 2nd plaintiff had mistakenly took the schedule C mentioned document also alongwith him. At that time, Hathi Ahmed and Syed Ibrahim told him that they would arrange loan from a Bank to settle the amount received from the 1st defendant. On hearing the same, the 1st defendant told him that he would lend money and with that promise, collected those original title deeds which are mentioned in Schedule B and C from the 2nd plaintiff. The Schedule C mentioned document is still in the hands of the 1st defendant. The plaintiffs understand that the schedule B mentioned documents are available in the hands of the defendants 4 and 5. But, as promised, the 1st defendant did not lend any money to the 2nd plaintiff. Even in the act of collecting the sum of Rs.30,00,000/-(Rupees thirty lakhs) by Hathi Ahmed and Syed Ibrahim in the presence of the 1st defendant, all the three had acted in unison and the 2nd plaintiff is also not sure of the actual amount paid by the 1st defendant. The payment of money was just a scene enacted by all the three for the purpose of collecting the title deeds of the Second properties from the 1st plaintiff and grabbing the properties.

(xiii). In these circumstances, on 22.7.2015, the 1st defendant had threatened the 2nd plaintiff by phone and asked him to come to the Royapettah along with his mother/the 1st plaintiff herein and not to bring anyother person, lest to face the evil consequences. Because of the fear created in the mind of the 2nd plaintiff, on 22.7.2015. he took his mother, the 1st plaintiff herein, who is a pardanasin lady and on reaching Royapettah, the 1st defendant along with his men under threat, coercion and force, took the plaintiffs to the office of the Joint Sub Registrar-II, Thousand Lights, Chennai and got the signatures of the plaintiffs in some already prepared documents. They did not permit the plaintiffs to consult or contact any other persons also. Further, at that time, the first defendant had brought a knife to the Registrar office and kept it in his pant pocket. Hence, the plaintiffs were fully under fear of danger to their life and limbs at that time. The Sub Registrar, who had registered the documents also failed to ascertain the consent of the plaintiffs for the purpose of registration of the documents. It seems that, he was improperly influenced beforehand by the 1st defendant and his men and only because of that illegal influence exerted on the Sub Registrar by the 1st defendant and his men, without explaining the contents of the document and without ascertaining their consent, the signatures of the plaintiffs were obtained in some documents and they were registered. After the above said illegal and coercive way of registration of those documents, the 1st defendant left the plaintiffs with a stern warning that they should not disclose it to anyone. In those circumstances, the plaintiffs had reached their house. But, they are still in possession and enjoyment of the schedule mentioned property.

(xiv). After few days, they had disclosed the details of the events to the father-in-Law of the 2nd plaintiff herein, who, through his friends enquired with the officials of the Sub Registrar. After much efforts, he found out that the documents so executed and registered were sale deeds in respect of the house situated in Josier Street in Nungambakkam, Chennai and a power of attorney in respect of the suit property which is situated in Lingi Chetty Street, Chennai. He had also collected the details of those documents. Only at that time, the plaintiffs 1 and 2 understood the nature and details of the documents executed by them. In respect of the sale deed executed for the house situated in Josier Street in Nungambakkam, Chennai, the plaintiffs are taking separate legal action to protect their interest. On hearing the events from the mouth of the plaintiffs, entire relatives had got infuriated and decided that the 2nd plaintiff should not hold any properties in his name. So, they had decided to settle the properties in the name of the wife of the 2nd plaintiff. They also decided to take preventive steps so that the properties could be protected. A report was lodged with Nungambakkam police station in which brief events were narrated which was acknowledged by CSR 604/2015 dated 11.1.2015. Further, the abovestated power of attorney was canceled by a deed of cancellation dated 29.10.2015 which was registered as document No. 926 of 2015 in the office of the Joint Sub

Registrar-II, Thousand Lights, Chennai. Immediately after its registration, a public notice was also issued in Malai Sudar and News Today newspapers on 16.11.2015 informing the general public about the cancellation of the power of attorney which authorized the 2nd defendant either to convey, sell or in any other manner to deal with the property absolutely. They had no idea or necessity at all to execute the Power of Attorney to anyone much less to the 2nd defendant to maintain the suit property or to deal with the property in any manner he likes while the plaintiffs belong to a traditional rich family and a part of the Mohamed Sathak Trust which runs 18 educational institutions and they have many staffs to maintain all their properties. Further, the plaintiffs have sufficient income to meet all their luxurious livings and they had no necessity at all to sell any part of their properties. The design of the first defendant is evident from the fact that on the same day, in the same registration office, he had got two properties worth about 20,00,00,000 (Twenty crores only) to his control by two different documents and nothing as stated therein was paid to the plaintiffs. Further, the 2nd defendant is a man hailing from Ramanathapuram District, which is about 600 KM away from Chennai where the suit property is situated. When the plaintiffs are the permanent residents of Chennai and the suit schedule property is located within Chennai city, there is no reason for them to execute a Power of Attorney to a person, that too from a person hailing from very long distance to the property i.e. from Ramanathapuram District to maintain the property. The 2nd defendant was not all known to the plaintiffs earlier and there was no necessity at all to execute the power of attorney to a stranger. Hundreds of relatives of the plaintiffs are living in Chennai and they had no necessity at all to choose a stranger.

(xv). Further, the plaintiffs are already having a driver, who has been with them for 25 years and he has been assisting the plaintiffs in all their matters and the 2nd plaintiff is also married and his father-in- law is settled in Chennai assisting the 2nd plaintiff in maintaining his properties. The plaintiffs belong to a wealthy family running number of educational institutions and their monthly income is more than Rs.5 lakhs, which is more than sufficient for them to maintain their family and they are not having any necessity to execute the Power of Attorney in favour of anyone.

(xvi). The plaintiffs further submit that by exerting coercion upon the will of the 2nd plaintiff, the 1st defendant had forced the presence of the plaintiffs in the office of the Joint Sub Registrar-II, Thousand Lights office, Chennai and the Sub Registrar had also, intentionally, without ascertaining the consent of the plaintiffs had registered the document, which was prepared by the 1st defendant in favour of the 2nd defendant. Even at the time of registration of the said power of attorney, the contents or the effect of the document were not at all explained by anyone to the plaintiffs herein. Because of the fear created by the 1st defendant and his men including one Mr.A.K.Alias Naina Mohamed from Keelakarai, the plaintiffs were keeping mum and had signed in whatever the papers they were shown. But, the signature of the 2nd plaintiff as available in the last sheet of the power of attorney is a forged one and not of the 2nd plaintiff.

(xvii). Further, the 1st defendant had also possessed a knife in his pocket and before entering the premises of the office of the Joint Sub Registrar-II, Thousand Lights, Chennai, he threatened the plaintiffs with dire consequences, by showing the knife. It made them to keep mum. After the said power was canceled and the same was duly intimated by the publication of the public notice, the defendants 1 and 2 had conspired together and had executed a sale deed in favour of the 3rd defendant, who is the friend of the

1st defendant, on 24.11.2015, conveying the suit schedule property for a sum of Rs. 1,60,00,000/-(Rupees one crore sixty lakhs only). In fact, the sale was not at all intended to be acted upon and no consideration as stated in the sale deed was ever paid. The 3rd defendant is only a name lender in the design of the 1st defendant in creating a document to grab the property of the plaintiffs.

(xviii). Further, as per the instructions of the Government of Tamil Nadu, in case of power of attorney, if the same is sought to be utilised after one month from the date of its execution, a certificate in the prescribed form from the Government doctor has to be produced at the time of registration. The Life Certificate should bear the photograph and signature/thumb impression of the person who executed the Power of Attorney. In the present case, one Dr. Mohammed Raffi has issued the said Life Certificate for the plaintiffs, by affixing his seal and signature. But, this Life Certificate is bereft of any of the required details about the plaintiffs. The columns regarding the name and address for whom they were issued are blank and the signature of the person for whom it is issued is also forged and they are not of the plaintiffs. The Sub Registrar had, in collusion with the defendants 1 and 2 had simply permitted the registration of the said sale deed. Within the next three months, the 3rd defendant, in turn, had executed a sale deed on 10.2.2016, which was registered on 3.3.2016 in favour of the defendants 4 and 5 for a sale consideration of Rs.3,00,00,00/-(Rupees three crores only).

(xix). The plaintiffs further submit that the Power of Attorney got executed by the 1st defendant from the plaintiffs in favour of the 2nd defendant on 22.7.2015, was canceled on 29.10.2015, by way of a registered Deed of Cancellation, which was registered as Document No. 1246 of 2015, in the office of the Joint Sub Registrar-II, Thousand Lights, Chennai. However, the 2nd defendant had, with the active support and connivance with the 1st defendant and the registering authorities, was able to register a deed of sale in favour of the 3rd defendant, another benami of the 1st defendant, for a throw away price of Rs. 1,60,00,000/-(Rupee one crore sixty lacs) and the third defendant, who is also only a name lender to the illegal transaction of the 1st defendant, had sold away the property to defendants 4 and 5 within a period of three months i.e. on 10.2.2016 (registered on 3.3.2016) for a sum of Rs.300,00,000/-(Rupee Three crores), almost double the price at which the 3rd defendant purchased the property from the 2nd defendant. Further, the Power of Attorney dated 22.7.2015 with the help of which the sale deed dated 24.11.2015, bearing Document No.586 of 2015 was sought to be executed, was not at all in existence on 24.11.2015 because of its cancellation and public notice in that regard was also issued. In these circumstances, the SRO, North Chennai should have refused to register the sale deed on 24.11.2015. But, the SRO had deliberately entertained and registered the sale deed dated 24.11.2015. Because of the non-existence of the power on the part of the 2nd defendant, the sale in favour of the 3rd defendant was not at all valid. Further, the utilisation of the said Power of Attorney by the 2nd defendant is also fraudulent and the said sale deed is also a creation of the document and the consideration mentioned in the sale deed also did not, in fact, passed on to the vendor. After getting the sale deed registered in the name of the 3rd defendant herein, within the next three months, the same 1st defendant had found out a third party buyer who are the defendants 4 and 5 herein and on receiving a sum of Rs.3,00,00,000/- (Rupee Three crores only), the 3rd defendant had executed a further sale deed in favour of the defendants 4 and 5, on 10.2.2016 and registered in the office of SRO, Thousand Lights. But, even after the said registration of two sale deeds, the plaintiffs alone are in possession and enjoyment of the suit schedule property and enjoying the rental income, as usual. As the sale deed in favour of the 3rd defendant is not at all valid, the further sale in favour of the 4th and 5th defendants dated 10.2.2016 by way of document No.80 of 2016 on the file of the Joint Sub-Registrar-1, North Chennai is also null and void. In these circumstances, though the plaintiffs are in uninterrupted possession and enjoyment of the suit schedule property, since the fraudulent creation of sale deeds by the defendants 1 to 3, have created a cloud on their title, the plaintiffs have come forward to file this suit before this Hon'ble Court, seeking to declare those documents as null and void and fraudulent. Further, at the time of handing over the documents to the 1st defendant, the 2nd defendant had also mistakenly took the title deed in respect of the property in 3/4, Sterling Road, Chennai which was executed in favour of the 1st plaintiff. Now, it is also in the hands of the 1st defendant and he is bound to return that document to the plaintiffs. Further, the defendants 4 and 5 are to return the original title deeds in respect of the suit property to the plaintiffs since their possession is also not valid and the plaintiffs are the owners of the suit property. In these circumstances, though the plaintiffs are in uninterrupted possession and enjoyment of the suit schedule property, since the fraudulent creation of sale deeds by the defendants 1 to 3, has created a cloud, the plaintiffs have come forward to file this suit before this Honourable Court, seeking to declare the fraudulent sale deeds executed by the 2nd defendant in favour of the 3rd defendant and the 3rd defendant in favour of the defendants 4 and 5 as null and void. Thus, the plaintiffs seek the relief as prayed for by dismissing the suit in C.S. No.204 of 2020 filed by the defendants 4 and 5.

3. The case of the Plaintiffs in C.S. No.204 of 2020/defendants 4 and 5 in C.S. No.519 of 2016, as set out, in the plaint and Written Statement respectively, is as follows:-

(i) The said power of attorney dated:22-07-2015 was executed based on the consideration of Rs.1,60,00,000/- (One Crore Sixty Lakhs only) received towards the agreed transaction with 3rd defendant herein. As the said amounts were paid on various occasions through the intermediary Mr.Basker, the 4th defendant herein on behalf of Mr.V.Natarajan as evidenced in the recital of the sale deed dated:24-11-2015 and as per the acknowledgment receipt issued executed by the defendants 1 and 2 on 23-07-2015. Thereby the authority entrusted and the obligation towards the said Power of Attorney dated:22-07-2015 was duly complied with and fulfilled as the entire amount collected towards the committed transaction in favour of the 3rd defendant seems to have been paid to the defendants 1 and 2 under the said document. The said discharge of the legal obligation by the power agent by paying the sum of Rs.1,60,00,000/-(One Crore Sixty lakhs only) through the 4th defendant as evidenced by the receipt dated:23-07-2015 issued by defendants 1 and 2 herein, thereafter either the principal or the Power agent have any authority to revoke the said authority or to disown the same for any reasons. Under the said circumstances the reciprocal obligation to execute the sale deed in favour of the purchaser become immense irrespective of the conduct of the parties concerned with the same. Since the Sale Deed dated:24-11-2015 was executed by the Power Agent Mr.R.Baskaran in consequence to the fulfilled commitment there was clear and unassailable flow of title vest with the purchaser [3d defendant herein] under the said transaction. Consequently, the purchase made by the plaintiffs is based on such lawful transaction and assumed the legal right in all respect including the possession. Based on the right, title and interest passed on to plaintiff, they have also taken over possession, effected necessary mutations in the Revenue records and the transfer of name change was done in the property tax and in other amenities appended to the property. Subsequent to the said sale in favour of the plaintiffs, the revenue records and enjoyment of the same were recognized in their favour by following the procedures. Since then, the plaintiffs are in possession and uninterrupted enjoyment of the same. While so, the defendants 1 and 2 herein in a disguised approach and pre-determined commission of fraud had approached this Hon'ble court on false equations and submission had brought out the suit in C.S.No.519 of 2016 suppressing the above said transactions. The defendants 1 and 2 have malafidely rushed to the court by filing a suit in C.S.No. 519/2016 against the plaintiffs and others defendants herein alleging all false facts and praying inter-alia for declaration that sale deeds of the plaintiffs and also that of their vendor are all null and void. The plaintiffs are not in privy to any of the alleged averments stated in that suit except to the limited extent with respect to their sale deed. However, a mere perusal of the averments of the plaint in that suit draws parallel to a comedy drama where on one hand they state that they are getting enough monthly rental income of around 3 lakhs per month from their properties, apart from other incomes, on the other hand the further alleged averments stated show the desperate attempt made by S.M.D.Mohamed Abdul Khader, the 2nd defendant herein to earn money from business. They have stated how the said S.M.D.Mohamed Abdul Khader, the 2nd defendant herein have been cheated by one after another and other alleged foolish acts done by him, which can only be expected in future films. The highlight of the filmy styled averments is where they have state that they were taken to the Sub-Registrar office at knife point and they had executed the documents for which admittedly no action taken at any point of time. The plaintiffs will file appropriate written statement in that suit and contest the same on merits.

ii. The said power of attorney Dated:22-07-2015 got it transformed to the document of title coupled with irrevocable authority to entrust and vests the lawful right in favour of them. In the interregnum in the course of time till the conveyance completed the question of revoking power entrusted through the said valid document not only impermissible and same cannot have legal support, hence the said alleged unilateral cancellation of Power of attorney Dated:29-10-2015 without any prior or posterior notice or knowledge to the party though it is registered as document No.1246/15 does not have legality attached to bind or operate under the law to divest the earlier authority vested already. The said Power of attorney Dated:22-07-2015 was acted upon and enforced as there was receipt of total consideration and more so admittedly the said amount received by the defendants 1 and 2 was not returned to the party before such exercise was done. Hence the conduct of defendants 1 and 2 have no legal support of any nature to stand in the way of valid transaction indulged in between 3rd and 4th defendant herein and in consequence to the same the sale executed in favour of the plaintiffs by 3rd defendant is an absolute one and binding on every one in all respect and the possession handed over to us in pursuance to the same is permanent in nature with absolute empowerment as there was lawful transactions.

iii. Though the cancellation of Power of attorney Dated:29-10-2015 is not binding on them as per in law, the subsequent entries in encumbrance has been created cloud over the absolute right of the plaintiffs over the property. Hence the necessity arise to declare the document of cancellation of Power of attorney Dated:29-10-2015 is not valid in law and not binding as the same has been done against the established principles as envisaged in the Indian Contract Act. It has come to light in recent past in anonymity that defendants 1 and 2 are attempting to re-sell the property which was already parted with. On enquiry, it reveals that they had acted in high handed manner after receiving the full consideration under the transaction and unilaterally canceled Power of attorney granted to the 4th defendant without any prior or later notice about the same in a clandestine manner with an intention to deceive the subsequent buyers. Having received the full consideration of whooping sum of Rupees One crore and Sixty Lakhs towards the transaction, they have no manner of right of interest or reservation to cancel the Power of attorney dated 22-07-2015 without involving the purchaser and/or Power of attorney, that to by usurping amount collected towards the execution of same. As the plaintiffs have now ultimately become owner of the said property with absolute possession, none of the defendants have any right to put up rival claim or manner of right to deal with the same or to interfere in peaceful possession and enjoyment of the same by them. They have issued a legal notice dated 12.08.2016 to all the defendants, specifically calling upon the defendants 1 and 2 herein to withdraw the cancellation of the POA in the manner known to law, but having received the same, they have not taken any steps, but had issued an evasive false reply. Thus, the plaintiffs seek the releif as prayed for by dismissing the suit in C.S. No.519 of 2016 filed by the defendants 1 and 2.

4.On the pleadings of the parties, the following issues were framed in both suits:-

Issues Framed in C.S.519 of 2016:

1) Whether the plaintiffs have the authority to revoke the Power of Attorney dated 22.07.2015?

2) Has the third defendant paid the entire sale consideration on 22.07.2015?

3) Was not the sale dated 24.11.2015 executed by the second defendant in favour of the third defendant valid?

4) Was not the sale deed dated 10.02.2016 executed by the third defendant in favour of the defendants 4 and 5 valid?

5) To what relief the plaintiffs are entitled to?

6) What is the order as to costs?

Issues Framed in C.S.204 of 2020:

1. Whether cancellation of power of Attorney dated 29.10.2015 is valid?

2. Are the plaintiffs entitled to any permanent injunction?

3. To what relief the plaintiffs are entitled to?

4. What is the order as to costs?

5. To substantiate the respective contentions, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P8 were marked on the side of the plaintiffs. D.W.1 was examined and Ex.D1 to Ex.D14 were marked on the side of the defendants.

6.Heard both sides and perused the material available on records.

7.The learned counsel for the plaintiffs submits that Power of Attorney got executed by the 1st defendant from the plaintiffs in favour of the 2nd defendant on 22.7.2015, was canceled on 29.10.2015, by way of a registered Deed of Cancellation, which was registered as Document No. 1246 of 2015, in the office of the Joint Sub Registrar-II, Thousand Lights, Chennai. However, the 2nd defendant had, with the active support and connivance with the 1st defendant and the registering authorities, was able to register a deed of sale in favour of the 3rd defendant, another benami of the 1st defendant, for a throw away price of Rs. 1,60,00,000/-(Rupee one crore sixty lacs) and the 3rd defendant, who is also only a name lender to the illegal transaction of the 1st defendant, had sold away the property to defendants 4 and 5 within a period of three months i.e. on 10.2.2016 (registered on 3.3.2016) for a sum of Rs.300,00,000/-(Rupee Three crores), almost double the price at which the 3rd defendant purchased the property from the 2nd defendant.

8.It has been further submitted by the learned counsel for the plaintiffs that the Power of Attorney dated 22.7.2015 with the help of which the sale deed dated 24.11.2015, bearing Document No.586 of 2015 was sought to be executed, was not at all in existence on 24.11.2015 because of its cancellation and public notice in that regard was also issued. In these circumstances, the SRO, North Chennai should have refused to register the sale deed on 24.11.2015. But, the SRO had deliberately entertained and registered the sale deed dated 24.11.2015. Because of the non-existence of the power on the part of the 2nd defendant, the sale in favour of the 3rd defendant was not at all valid. Further, the utilisation of the said Power of Attorney by the 2nd defendant is also fraudulent and the said sale deed is also a creation of the document and the consideration mentioned in the sale deed also did not, in fact, passed on to the vendor. After getting the sale deed registered in the name of the 3rd defendant herein, within the next three months, the same 1st defendant had found out a third party buyer who are the defendants 4 and 5 herein and on receiving a sum of Rs.3,00,00,000/- (Rupee Three crores only), the 3rd defendant had executed a further sale deed in favour of the defendants 4 and 5, on 10.2.2016 and registered in the office of SRO, Thousand Lights. But, even after the said registration of two sale deeds, the plaintiffs alone are in possession and enjoyment of the suit schedule property and enjoying the rental income, as usual. As the sale deed in favour of the 3rd defendant is not at all valid, the further sale in favour of the 4th and 5th defendants dated 10.2.2016 by way of document No.80 of 2016 on the file of the Joint Sub-Registrar-1, North Chennai is also null and void. In these circumstances, though the plaintiffs are in uninterrupted possession and enjoyment of the suit schedule property, since the fraudulent creation of sale deeds by the defendants 1 to 3, have created a cloud on their title, the plaintiffs seeks to declare the fraudulent sale deeds executed by the 2nd defendant in favour of the 3rd defendant and the 3rd defendant in favour of the defendants 4 and 5 as null and void. Thus, he seeks the relief as prayed for by dismissing the suit in C.S. No.204 of 2020 filed by the defendants 4 and 5.

9.The learned counsel for the defendants 4 and 5 submits that the said power of attorney dated:22-07-2015 was executed based on the consideration of Rs.1,60,00,000/- (One Crore Sixty Lakhs only) received towards the agreed transaction with 3rd defendant herein. As the said amounts were paid on various occasions through the intermediary Mr.Basker, the 2nd defendant herein on behalf of Mr.V.Natarajan as evidenced in the recital of the sale deed dated:24-11-2015 and as per the acknowledgment receipt issued executed by the plaintiffs 1 and 2 on 23-07-2015. The said discharge of the legal obligation by the power agent by paying the sum of Rs.1,60,00,000/-(One Crore Sixty lakhs only) through the 2nd defendant as evidenced by the receipt dated:23-07-2015 issued by plaintiffs 1 and 2 herein, thereafter either the principal or the Power agent have any authority to revoke the said authority or to disown the same for any reasons.

10. It has been further submitted by the learned counsel for the defendants 4 and 5 that the purchase made by the defendants is based on such lawful transaction and assumed the legal right in all respect including the possession. Based on the right, title and interest passed on to defendants, they have also taken over possession, effected necessary mutations in the Revenue records and the transfer of name change was done in the property tax and in other amenities appended to the property. Subsequent to the said sale in favour of the defendants, the revenue records and enjoyment of the same were recognized in their favour by following the procedures. Since then, the defendants are in possession and uninterrupted enjoyment of the

same. While so, suppressing the above said transactions, the plaintiffs 1 and 2 have malafidely rushed to the court by filing a suit in C.S.No. 519/2016 against the defendants and others defendants herein alleging all false facts and praying inter-alia for declaration that sale deeds of the plaintiffs and also that of their vendor are all null and void.

11. The learned counsel for the defendants 4 and 5 further submits that the said Power of attorney Dated:22-07-2015 was acted upon and enforced as there was receipt of total consideration and more so admittedly the said amount received by the plaintiffs 1 and 2 was not returned to the party before such exercise was done. Hence the conduct of plaintiffs 1 and 2 have no legal support of any nature to stand in the way of valid transaction indulged in between 2nd and 3rd defendants herein and in consequence to the same the sale executed in favour of the defendants by 3rd defendant is an absolute one and binding on every one in all respect and the possession handed over to us in pursuance to the same is permanent in nature with absolute empowerment as there was lawful transactions.

12. It has been further submitted by the learned counsel for the defendants 4 and 5 that though the cancellation of Power of attorney Dated:29-10-2015 is not binding on them as per in law, the subsequent entries in encumbrance has been created cloud over the absolute right of the plaintiffs over the property. Hence the necessity arise to declare the document of cancellation of Power of attorney Dated:29-10-2015 is not valid in law and not binding as the same has been done against the established principles as envisaged in the Indian Contract Act. Further, the plaintiffs had acted in high handed manner after receiving the full consideration under the transaction and unilaterally canceled Power of attorney granted to the 2nd defendant without any prior or later notice about the same in a clandestine manner with an intention to deceive the subsequent buyers. As the defendants 4 and 5 have now ultimately become owner of the said property with absolute possession, none of the plaintiffs have any right to put up rival claim or manner of right to deal with the same or to interfere in peaceful possession and enjoyment of the same by them. They have issued a legal notice dated 12.08.2016 to the plaintiffs 1 and 2 herein to withdraw the cancellation of the POA in the manner known to law, but

having received the same, they have not taken any steps, but had issued an evasive false reply. Thus, he seeks the releif as prayed for in C.S. No.204 of 2020 by dismissing the suit in C.S. No.519 of 2016 filed by the plaintiffs.

13.On perusal of the records, the Defendants 4 and 5 raises the plea of sections 202, 206 and 208 of the Indian Contract Act and contends that there was no notice to the power agent before its cancellation and the cancellation is not valid. But, these provisions do not say anything about the notice to the power agent either prior to its cancellation or thereafter. Section 208 of the Indian Contract Act speaks only about the knowledge of cancelation to the agent which reads as follows:

> *"When termination of agent's authority takes effect as to agent, and as to third persons. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them".*

14.Further, the Power of Attorney itself reads that it was not given for consideration. As per Section 201 of Contract Act, the principal can revoke the power at his will. There is no restriction on the principal in the matter of cancellation of power of attorney executed by him. Even though it has been stated by the defendants to have paid sale receipt to the plaintiffs, they have not filed any documents to prove the same alongwith written statement. Further, while the 1st sale deed was said to have executed for consideration of Rs.1,60,00,000/- in favour of the 3rd defendant, after three month, the 2nd sale deed was said to have executed for consideration of Rs.3,00,00,000/- in favour the defendants 4 and 5 which creates suspicious transaction between the defendants. Further, even though the defendants 4 and 5 states in the Written statement that they have paid only Rs.1,60,00,000/- to the 3rd defendant, but the sale deed was executed for consideration of Rs.3,00,00,000/-. However, they have not produced any oral and documentary evidence to prove that they have paid a sum of Rs.1,60,00,000/- to the 3rd defendant. While making such huge payment for execution of the sale deed, TDS amount has not been deducted on the entire transaction amount by the defendants. Under such suspicious circumstances, this Court cannot come to the conclusion whether the sale amount of

Rs.1,60,00,000/- was paid to the 3rd defendant or not. Further, only the defendants 4 and 5 have contested the suit and other defendants have not contested the suit putting forth their submissions to prove their case.

Issue Nos.1 and 2 in C.S. No.519 of 2016 and in C.S. No.204 of 2020:

15. Even though the plaintiffs have not issued notice to the 2nd defendant for having canceled the said Power of Attorney, they have effected paper publications both Tamil and English local newspapers as per Section 102 of the Indian Evidence Act. The cancellation of Power of attorney dated 22.07.2015 executed by the plaintiff in C.S. No.519 of 2016 is proved and valid. Hence, issue No.1 in C.S. No.519 of 2016 is answered in favour of the plaintiffs and in C.S. No.204 of 2020, the issue No.1 is answered against the plaintiffs. The 3rd defendant has not proved for having paid the entire sale consideration to the 2nd defendant on 22.07.2015 by way of oral and documentary evidence, the Issue No.2 in C.S. No.519 of 2016 is answered in favour of the plaintiffs. Since the Issue No.1 is answered against the plaintiffs in C.S. No.204 of 2020, they are not entitled to seek any permanent injunction on the suit property. Hence, Issue No.2 is answered against them.

Issue Nos.3 and 4 in C.S. No.519 of 2016:

16.Once the cancellation of Power of Attorney dated 22.07.2015, is considered as valid, the Sale Deeds dated 24.11.2015 and 10.02.2016 executed by the 2nd defendant and 3rd defendant are invalid. Accordingly Issue Nos.3 and 4 are answered in favour of the plaintiff.

Issue Nos.5 in C.S. No.519 of 2016 and Issue Nos.3 in C.S. No.204 of 2020:

17. The plaintiffs in C.S. No.519 of 2016 have proved the valid cancellation of Power of Attorney dated 29.10.2015, they are entitled to get releif as prayed for. Accordingly, Issue No.5 in C.S. No.519 of 2016 is answered in favour of the plaintiffs and Issue No.3 in C.S. 204 of 2020 is answered against the plaintiffs.

18. In the result, the C.S. No.519 of 2016 is partly decreed and C.S. No.204 of 2020 is dismissed as there is no merit. No costs.

23.05.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking

Lbm

Witnesses examined on the side of the plaintiff and defendant:-

P.W.1. - Abdul Khader
P.W.2. - Sabik Rahman
D.W.1. - Sanjay Singhi

Exhibits produced on the side of the plaintiffs and Defendants:-

S.No.	Exhibits	Description of Documents	Date
1.	EX.P1	POA by the Plaintiffs to the 2nd defendant	22.07.2015
2.	EX.P2	Cancellation of POA	29.10.2015
3.	EX.P3	Publication in Malaisudar	16.11.2015
4.	EX.P4	Publication in News Today	16.11.2015
5.	EX.P5	Sale Deed by 2nd defendant to 3rd defendant	24.11.2015
6.	EX.P6	Sale Deed by 3rd defendant to 4th and 5th defendant	10.02.2016
7.	EX.P7	FIR in Cr.No.638/2016 (Nungambakkam)	02.07.2016
8.	EX.P8	CSR 251/2016	03.07.2016
9.	EX.D1	PW1 Signature in Power of Attorney	22.07.2015
10.	EX.D2	PW1's Mother signature in POA	22.07.2015
11.	EX.D3	PW1 Signature in cancellation of POA	29.10.2015
12.	EX.D4	PW1's Mother signature in cancellation of POA	29.10.2015
13.	EX.D5	PW1 signature in sale receipt	23.07.2015

S.No.	Exhibits	Description of Documents	Date
14.	EX.D6	PW1's Mother signature in Sale Receipt	23.07.2015
15.	EX.D7	Power of attorney (Same as EX.P1)	22.07.2015
16.	EX.D8	Sale Receipt	23.07.2015
17.	EX.D9	Order for name transfer for property tax	05.05.2016
18.	EX.D10	Patta (PLR)	---
19.	EX.D11	Property Tax Receipt	11.08.2016
20.	EX.D12	Encumbarance Certificate - 1986 - 2016	---
21.	EX.D13	Notice issued by the Plaintiffs	12.08.2016
22.	EX.D14	Reply Notice by the Defendants	20.09.2016

23.05.2024

A.A. NAKKIRAN, J,

Lbm

C.S. No. 519 of 2016
& C.S. No. 204 of 2020

23.05.2024