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S.A. No.1099 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024

DELIVERED ON :05.04.2024

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

S.A. No.1099 of 2014
and M.P.No.1 of 2014

- 1.Brinda
- 2.Velayudham (died)
- 3.Ganesh
- 4.Venkatesan

(Appellants 3 and 4 are brought on record as
LRs of the deceased 2nd appellant vide order
of the Court dated 24.01.2024 made in CMP
No.14618 of 2018 in SA No.1099 of 2014)

.... Appellants

Versus

- 1.Selvam
- Rajammal (deceased)
- 2.Vimala
- 3.Mrs.Vasantha
- 4.M.Radhakrishnan
- 5.Manohari

... Respondents

(Cause Title amended vide order of
Court dated 17.09.2014 made in MP
No.1/2012 in SA.SR.No.96385/2012)



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Second Appeal filed under Section 100 of the Civil Procedure code, against the decree and judgment passed in A.S. No.5 of 2011 dated 16.08.2012 on the file of Subordinate Court, Kanchipuram, confirming the judgment and decree dated 30.04.2010 in O.S.No.246 of 2008 on the file of District Munsif Cum Judicial Magistrate, Sriperumbudur.

For Appellants	: Mr.V.Raghavachari
For Respondents	: Mr.S.Parthasarathy Senior Counsel for Mr.J.Srinivasa Mohan For R.1 Mrs.Chitra Sampath Senior Counsel for Mr.T.S.Baskaran For RR.2 to 5

JUDGMENT

This Second Appeal is filed challenging the concurrent findings of the Courts below.

2. The unsuccessful plaintiffs, in a suit for declaration, recovery of possession and injunction are the appellants herein. The parties are described as per their litigative status before the trial court.



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3. The material facts that are necessary for deciding the above Second Appeal are as follows:-

4. The plaintiffs are the parents of one Nithyanandam, who died on 25.07.1998 in a motor accident. The first defendant is the son of the second defendant and brother of the third defendant. The said Nithyanandam was originally owning the suit property and he had appointed the first defendant as Power Agent on 31.12.1997. According to the plaintiffs, the power of attorney came to an end with the demise of their son, Nithyanandam. However, the first defendant prepared a sale deed and presented the same for registration on 31.07.1998 after the demise of Nithyanandam and also knowing fully well that Nithyanandam was not alive on that date. The defendants 2 and 3, who had purchased the property through the first defendant, would not get any title to the suit property.

5. Pending the suit, the plaint was amended to include the relief of recovery of possession of the Schedule “A” and Schedule “B” mentioned properties. The suit was therefore filed to declare the sale deeds dated



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20.07.1998 in favour of the defendants 2 and 3 as null and void and not binding on the plaintiffs and also to declare that the plaintiffs are the owners of Schedule “A” and Schedule “B” mentioned properties and for recovery of possession of Schedule “A” and Schedule “B” mentioned properties from the defendants and for consequential relief of injunction to restrain the defendants from interfering with the plaintiffs peaceful possession and enjoyment of the suit properties.

6. The first defendant filed a written statement, which is adopted by the defendants 2 and 3. According to the first defendant, the ownership of the properties, at the hands of Nithyanandam, was admitted. The power of attorney, executed in favour of the first defendant, is also admitted. However, according to the first defendant, Nithyanandam had entered into an agreement with the first defendant to sell Schedule “A” and Schedule “B” properties for a total sale consideration of Rs.82,400/- and on the same day, he had appointed the first defendant as power of attorney agent i.e., on 31.12.1997. Further, the first defendant claims that he had paid the entire sale consideration of Rs.82,400/- to Nithyanandam and only because of the same,



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the said factum of payment of entire sale consideration, Nithyanandam has executed a power of attorney in favour of the first defendant. Thus, according to the first defendant, the said power of attorney was one coupled with interest and therefore, even if the said Nithyanandam was no more, the power of attorney would survive. According to the first defendant, the sale in favour of the defendants 2 and 3 was valid and cannot be called in question by the parents of Nithyanandam, who himself had executed the power of attorney only after receiving the entire sale consideration from the first defendant.

7. According to the first defendant, the power of attorney agent viz., himself, he received Rs.20,000/- from the second defendant on 20.04.1998 and Rs.60,000/- on 18.07.1998 from the second defendant and Rs.2,400/- from the third defendant on 20.07.1998 and in furtherance thereof, he had executed two sale deeds in favour of the defendants 2 and 3. According to the first defendant, the defendants 2 and 3 are in possession of the suit property in their own right and the parents cannot maintain the suit and hence, the suit was sought to be dismissed.



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8. The trial Court held that the sale deed was executed on 20.07.1998, on which date, the Nithyanandam was alive and had admittedly executed a power of attorney in favour of the first defendant and therefore, the registration of the sale deeds, subsequent to the demise of Nithyanandam, would not invalidate the sale deeds and proceeded to dismiss the suit.

9. The first Appellate Court concurring with the findings of the trial Court and also holding that the sale agreement and the receipts would form part of the power of attorney, the power of attorney was one coupled with interest, found no merit in the appeal and dismissed the same.

10. Aggrieved by the concurrent findings rendered by the Courts below, the plaintiffs are before this Court by way of present Second Appeal.

11. On 21.01.2015, the Second Appeal was admitted by this Court on the following substantial question of law:-



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a) Whether Ex.B.1 could be construed as an agency coupled with interest, when no right in the subject matter of the property is created under that document?

b) Whether the courts below are justified in overlooking the evidence of D.W.1, when he had clearly admitted that on 31.12.1997, the power of attorney was executed and registered, and based on such registration Ex.B.2 and Ex.B.3 were written and in reality the document under Ex.B.1 was registered only on 12.03.1998?

c) Whether the Courts below ought not to have appreciated that the power of attorney lapses with the death of the principal as per Section 201 of the Indian Contract Act, 1872?

d) Whether the courts below ought not to have appreciated that the date of registration of the sale under Ex.B.4 and Ex.B.5 are on 31.07.1998, subsequent to the death of Nithyanandan on 25.07.1998 and merely



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because the document is ante-dated, it would not confer any legal right upon the purchasers, namely, defendants 2 and 3?

e) Whether the courts below are right in relying and recognizing Ex.B.2 failing to note that an agent cannot be a purchaser himself, and the principle of selling unto oneself is legally untenable?

f) Whether the Courts below are right in shifting the burden of proof on the appellant to disprove Ex.B.2 and B.3 when the onus lies upon the defendants to prove those documents?

g) Whether the findings of the Courts below are not present, in as much as it had not appreciated the facts of the case incisively?

12. I have heard Mr.V.Raghavachari, learned Senior Counsel for the appellants and Mr.S.Parthasarathy, learned Senior Counsel appearing for Mr.J.Srinivasa Mohan, counsel for the first respondent and Mrs.Chitra Sampath, learned Senior Counsel appearing for Mr.T.S.Baskaran, counsel



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for the respondents 2 to 5. I have also gone through the pleadings, oral and documentary evidence adduced by the parties which have been filed by way of typed sets and also the judgments of the trial Court as well as the first appellate Court.

13. The learned Senior counsel appearing for the appellants, Mr.V.Raghavachari would submit that fraud has been played by the first defendant by creating a receipt and also sale deeds, as if they were executed even during the life time of the plaintiffs' son Nithyanandam. However, the sale deeds were admittedly presented for registration after the demise of Nithyanandam and when the general power of attorney was not a power of attorney coupled with interest, it would not survive after the demise of Nithyanandam. Therefore, both the sale deeds in favour of the defendants 2 and 3 were invalid in the eye of law.

14. The learned Senior Counsel for the appellants would take me through the covenants in the power of attorney, alleged agreement of sale, alleged receipt and the two sale deeds that have been registered on



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31.07.1998. Learned Senior Counsel would also invite my attention to the oral evidence adduced by the parties and contend that the defendants' witnesses cannot plead ignorance of the demise of Nithyanandam and only for knocking of the valuable property, belonging to the appellants, they have feigned ignorance and have chosen to give false evidence before the Court.

15. Learned Senior Counsel for the appellants would also state that when the agreement and receipt were not admitted by the plaintiffs, the burden is on the defendants to establish the same. Unfortunately, the Courts below have wrongly cast the burden on the plaintiffs and non-suited them to the suit reliefs.

16. Learned Senior Counsel would also invite my attention to the discrepancy in the signature of Nithyanandam in the admitted document viz., power of attorney and the alleged receipt and the agreement of sale and requested me to exercise power available under Section 73 of Indian Evidence Act, 1872 to compare the signatures and in order to do substantial justice to the parties.



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17. Learned Senior Counsel would also contend that the defendants 2 and 3, who are said to have purchased the suit properties, by way of two registered sale deeds, have not entered the witness box and therefore, adverse inference would have to be drawn against them. Learned Senior Counsel would further submit that passing of sale consideration has not at all been proved and hence, the sale deeds in favour of the defendants 2 and 3 were hit by Section 54 of Transfer of Property Act, 1882. Learned Senior Counsel would also submit that the witnesses, who were examined on the side of the defendants, were only stock witnesses and their evidence was wholly undesirable and cannot be believed by the Court.

18. In support of his submissions, learned Senior Counsel for the appellants placed reliance on *Mutharasu Thevar vs Mayandi Thevar and Others*, reported in *AIR 1968 Madras 333*, where, this Court held that the principle of Section 202 of Indian Contract Act would apply only to cases where authority is given for the purpose of being a security or a part of the security and not to cases where the interest of the donee arises afterwards and



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in which case there is no authority coupled with interest, but an independent authority and an interest subsequently arising.

19. Learned Senior Counsel also placed reliance on *Amutha and Others vs M.Chakravarthy and Others* reported in (2011 (6) CTC 650), where this Court, referring to Section 209 of Indian Contract Act, held that the agent is bound to take reasonable steps for the preservation of interest entrusted to him by the principal.

20. Learned Senior Counsel also placed reliance on *S.Subramanian vs R.Dayananthan (C.R.P(PD)No.1842 of 2012 dated 11.01.2013)*, reported in 2013 (2) MLJ 668, where this Court held that in terms of Section 202 of Indian Contract Act, agency coupled with interest cannot be terminated to the breach of such interest and the agency must have an interest in the property which forms the subject matter of the agency and only in such cases, the agency becomes agency coupled with interest and would become irrevocable. However, when the power of attorney executed in favour of the agent empowering him to deal with the property in any manner he likes, then no



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interest in the subject matter of the agency would be given to the agent and the agency could become one coupled with interest. This Court also held that even entering into an agreement before termination of agency would also not amount to an interest accrued under the agency and therefore, the power of attorney would only be a simple power of attorney and not one coupled with interest in order to invoke Section 202 of Indian Contracts Act.

21. Learned Senior Counsel also placed reliance on *P.V.S.Krishnamurthy Pillai and another vs P.V.S.Sundaramurthy Pillai and another*, reported in *1932 Law Weekly Vol. 35 p.592*, where the Division Bench of this Court held that the power of attorney cannot be said to be irrevocable and as a general rule, it would be treated as revoked by the insolvency of the principal.

22. Learned Senior Counsel also placed reliance on *Thiruvengadam Pillai vs Navaneethammal and another*, reported in *[(2008) 4 SCC 530]*, wherein, the Hon'ble Supreme Court has held that the Court can compare the disputed handwriting/signature with the admitted handwriting/signature,



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without the assistance of any expert, though it may be hazardous and risky, but, there is no bar to a court to compare the same and record an opinion or finding on such comparison.

23. The learned Senior Counsel also placed reliance on ***S.Ranganathan vs Kavari Ammal and 3 others***, reported in **1987 (100) LW 702**, where this Court held that the burden of proof would be on the person who claims under the documents especially when the adversary party was not a party to the documents.

24. Learned Senior Counsel would therefore, pray for the Second Appeal being allowed.

25. Per contra, Mr.S.Parthasarathy, learned Senior Counsel appearing for the first respondent would contend that the core question involved in the Second Appeal is as to whether the power of attorney is coupled with interest or not. According to the learned Senior Counsel, the sale deed was admittedly executed on 20.07.1998, on which date, the principal viz., Nithyanandam was



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very much alive and the power of attorney has not been disowned by the plaintiffs. The power of attorney would be valid and binding and consequently, the sale deeds executed during the life time of Nithyanandam would also have to be consequently held to be valid and binding on the plaintiffs. Learned Senior Counsel would also invite my attention to Section 202 of Indian Contract Act, 1872 and he would contend that the power of attorney was coupled with consideration and merely because the power of attorney did not speak about the payment of consideration, when the two other documents viz., the sale agreement as well as the receipt which were also on the same date as the power of attorney spoke about the payment of entire sale consideration to Nithyanandam, the said documents would have to be read into power of attorney and therefore, the power of attorney will have to be treated as one coupled with interest.

26. Learned Senior Counsel would also state that in order to prove execution, one of the attesting witnesses has been examined and thereafter, the burden shifted to the plaintiffs. Admittedly, according to the learned Senior Counsel, the plaintiffs have not taken any follow up steps to compare



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the signatures in the agreement of sale and the admitted signature of Nithyanandam by obtaining a report from the Forensic Department and when both the courts have concurrently appreciated the evidence available on record, this Court would be slow in interfering with the concurrent findings rendered by the courts below.

27. Learned Senior Counsel would also submit that even if there is no agreement of sale at all, even then, when the sale deed recites about the consideration and the power of attorney had been acted upon, then there is no necessity to disbelieve the evidence adduced by the defendants. Further learned Senior Counsel would also contend that the fact that original documents of title, has been with the defendants, would also corroborate the version of the defendants that the entire sale consideration was paid and therefore, the plea of the sale agreement having been executed cannot be disbelieved.

28. Learned Senior Counsel would also state that there is no evidence of trespass into the suit property and admittedly, not even a police complaint



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has been given by the plaintiffs and pending suit, they have merely chosen to amend the plaint, seeking the relief for recovery of possession. Learned Senior Counsel would also invite my attention to the terms of general power of attorney where the agent was permitted to enter into the possession of the property for the purposes of conducting survey and developing the property.

29. Mr.S.Parthasarathy, learned Senior Counsel appearing for the first respondent would place reliance on the decision of this Court in the case of *M.Karuppannan and others vs Mariyammal and others*, reported in *[(2019) (2) CTC 525]*, where, this Court, following the decision of the Division Bench of this Court in the case of *Inspector General of Registration and another vs J.Barathan*, reported in *2016 (1) CTC 369(DB)*, applied Section 202 of the Indian Contracts Act, 1872 and held that the Agency coupled with interest does not terminate with the death of the principal.

30. Learned Senior Counsel would also state that the facts of the case



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before this Court in the case of ***M.Karuppannan and others vs Mariyammal and others***, reported in ***[(2019) (2) CTC 525]*** would squarely apply to the facts of the present case and therefore, no interference is warranted and prayed for dismissal of the Second Appeal.

31. Learned Senior Counsel would also place reliance on the decision of the Hon'ble Supreme Court in the case of ***Kanwar Raj Singh (d) through LRs vs GEJO.(D) through LRs and others***, reported in ***2024 Live Law (SC) 4***, where the Hon'ble Supreme Court held that a registered sale deed would operate from the date of execution when entire sale consideration is paid, placing reliance on Section 47 of Registration Act.

32. Supporting and supplementing the submissions of Mr.S.Parthasarathy, the learned Senior Counsel, Mrs.Chitra Sampath, learned Senior Counsel appearing for the respondents 2 to 5, would additionally contend that when the plaintiffs have not challenged any of the findings rendered by the trial court with regard to the validity of the power of attorney and the sale deed, it would not be open to the plaintiffs to agitate the



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correctness of the findings of the first appellate court before this Court, in Second Appeal. She also contends that the power of attorney is one coupled with interest and she would invite my attention to the receipt dated 31.12.1997 as well as the sale agreement dated 31.12.1997 and contend that the sale agreement contemplated the execution and registration of power of attorney and also handing over possession of the suit property, having received the entire sale consideration from the first defendant.

33. Learned Senior Counsel would also state that this is a case where Section 202 of Indian Contract Act, 1872 would stand attracted and the demise of Nithyanandam will not in any way affect or invalidate the sale deeds in favour of the defendants 2 and 3. Learned Senior Counsel would place reliance on the decision of this Court in *Selvam and another vs Official Liquidator and another*, reported in *2023 SCC Online Mad 920*, where, this Court held that an Agency coupled with interest cannot be revoked or terminated without the express consent of the agent and that the interest of the agent in the agency may be inferred from the language of the document creating the agency or from the course of relationship/dealing



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between the parties and that the general power of attorney had to be read along with the sale agreement and receipts before the Court and if read cumulatively, it would lead to the conclusion that the Company had paid full consideration and therefore acquired interest in the property forming the subject matter of the general power of attorney and held that the general power of attorney was coupled with interest. Learned Senior Counsel would therefore pray for dismissal of the second appeal.

34. I have carefully considered the rival submissions advanced by the learned Senior counsels on either side. The following dates would assume significance:

<i>S.No</i>	<i>Date</i>	<i>Event</i>
1	31.12.1997	Nithyanandam executed power of attorney in favour of the first defendant (Ex.A.1) - Admitted
2	20.07.1998	The sale deeds executed by the first defendant in favour of the defendants 2 and 3 respectively as power agent of Nithyanandam. (Ex.A3 and Ex.A.4 = Ex.B.4 and Ex.B.5) – Admitted . (Though the plaintiffs dispute the validity of the said sale deeds)
3	25.07.1998	Nithyanandam died (Death Certificate-Ex.A.2) – Admitted
4	31.12.1997	Ex.B.2 alleged receipt of Rs.82,400/- by Nithyanandam from the first defendant - Denied
5	31.12.1997	The sale agreement (Ex.B.3) executed by Nithyanandam in favour of first defendant – Denied .



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35. Keeping the above dates in mind, it is seen that the son of the plaintiffs, Nithyanandam, who had owned the suit properties, appointed the first defendant, as his power agent to deal with the suit properties, including by way of sale. Some of the relevant clauses of power of attorney are extracted hereunder for ready reference:

“1.a) To take physical possession of the property.

b) To develop the property.

...

2.a) To negotiate and conclude sale undivided share of land and construction there upon in the property with any person and to receive sale consideration and render proper accounts.

3.a) Execute sale deed or sale deeds relating to the property in favour of the person or persons who agreed to purchase the property or in favour of any person nominated by such buyers.

”

c) Present the sale deed or sale deeds executed by him before the Sub-Registrar of assurances, having



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jurisdiction and to admit registration of sale before him and to execute all documents acknowledgements and sign the forms to complete registration.

....

e) Deliver vacant possession of the property to the purchaser and to sign and execute all letters or consent addressed to various authorities.

Power Agent should maintain proper accounts and vouchers and render the same. No consideration is received for power.

36. Thus, it can be seen that Nithyanandam had empowered the power agent to take physical possession of the property for the purposes of developing the same and also empowered him to get lay out approved and dispose of the suit property as undivided shares of land, with or without construction. The power of attorney deed makes it clear that the power agent has to render proper accounts to the plaintiffs. It is also clear that the power agent has been permitted to execute sale deeds and present sale deeds for registration and also deliver vacant possession of the property to the



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purchaser. Besides the above powers conferred, the following clause is admittedly found in the power of attorney “ Power Agent should maintain proper accounts and vouchers and render the same. No consideration is received for power “.

37. Thus, on a reading of the power of attorney, it is clear on the face of it that the power of attorney is not one coupled with interest, since there is no monetary consideration for the execution of the power of attorney. However, the learned Senior Counsel appearing for the first respondent Mr.S.Parthasarathy, as well as Mrs.Chitra Sampath, learned Senior Counsel appearing for the respondents 2 to 5 had invited my attention to the other two documents executed on the same day viz., Exs.B.1 and B.2, which are the sale agreement and receipt. Both are said to be executed on the same day as that of power of attorney viz., 31.12.1997.

38. On a perusal of the agreement, I find that the agreement mentions that apart from the said agreement, the principal viz., Nithyanandam is registering a general power of attorney in favour of the first defendant on the



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very same day. The agreement also mentions that in view of having received the entire sale consideration from the power agent, Nithyanandam had handed over possession of the suit property to the first defendant. The agreement of sale also mentions that the title document in original has been handed over by Nithyanandam to the first defendant and that Nithyanandam would not revoke the power of attorney under any circumstances.

39. In the receipt Ex.B.2 also dated 31.12.1997, Nithyanandam is alleged to have acknowledged the receipt of Rs.82,400/-, being the total sale consideration and also the fact that the agreement of sale has already been entered into along with the power of attorney. The said receipt is witnessed by one person. However, the said witness to the receipt has not been examined on the side of the defendants.

40. D.W.2 one Iyyappan, who has been examined is only a witness to the sale deeds dated 20.07.1998, which were registered on 31.07.1998. The first plaintiff was examined as P.W.1. She has categorically denied the alleged agreement of sale and receipt executed by Nithyanandam and also the



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factum of possession being handed over to the first defendant. The plaintiffs have asserted that on the said date, possession continued to be with the plaintiffs' son and only pending suit, the defendants have trespassed into the suit property, necessitating the plaintiffs to amend the plaint.

41. In the light of the above factual position, the burden is certainly on the defendants to show that the power of attorney is coupled with consideration. Section 202 of the Indian Contracts Act, 1872 is extracted hereunder for ready reference:-

“ Termination of Agency where agent has an interest in subject matter:-

Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest”.

42. No doubt, the power of attorney executed on 31.12.1997 in Ex.A.1 specifically states that there is no consideration for execution of the power of attorney. However, if there are more than one document which can be said to



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be form part of a single transaction on the same day, then, those can also be read as part and parcel of power of attorney to find out if the power of attorney was coupled with consideration or not. The other two documents which are projected on the side of the defendants are the agreement of sale and the receipt for having paid the entire sale consideration of Rs.82,400/-. Both the agreement of sale as well as the receipt are stoutly denied by the plaintiffs. In such circumstances, the defendants ought to have examined atleast the witness, who had signed the receipt or atleast one of the two witnesses to the agreement of sale, to establish the truth and genuineness of the receipt and the agreement of sale.

43. In fact, I am able to see that the second attesting witness to the agreement of sale dated 31.12.1997 in Ex.B.3 is the witness to the receipt dated 31.12.1997 in Ex.B.2. Admittedly, the said witness has not been examined on the side of the defendants.

44. In order to ascertain whether the power of attorney is coupled with consideration, I have also perused the sale deeds in Exs.A.3 and A.4 =



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Ex.B.4 and B.5. The sale deed in favour of the second defendant is dated 20.07.1998. However, the sale deed has been presented for registration only on 31.07.1998, by which date, Nithyanandam had already died. Similarly, the sale deed in favour of the third defendant is also dated 20.07.1998 and it has also been presented on 31.07.1998. Both the sale deeds have been presented by the power agent, K.Selvam, representing Nithyanandam, one executed in favour of the second defendant for a consideration of Rs.80,000/- which is said to have been paid on two dates viz., Rs.20,000/- on 20.04.1998 and Rs.60,000/- on 18.07.1998. Similarly, the sale deed dated 20.07.1998 in favour of the third defendant is for a sale consideration of Rs.2,400/- which is said to have been paid on 20.04.1998. Both the sale deeds are executed only by the power agent viz., the first defendant. Admittedly, there is no mention of the fact that the principal viz., Nithyanandam had died prior to the registration of the sale deed. There is absolutely no reason stated as to why the sale deeds which were executed on 20.07.1998, by which date the entire sale consideration had already been paid, according to the first defendant, were not presented for registration on the said date itself.



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45. Thus, it clearly goes to show that the defendants were well aware of the fact that Nithyanandam had died on 25.07.1998 and in order to create a valid sale deed, the sale deeds have been dated 20.07.1998 and suppressing the factum of death of Nithyanandam, they have been presented the same for registration only on 31.07.1998. If the defendants are able to establish the factum of payment of the entire sale consideration to Nithyanandam, then, following the ratio laid down by this Court in *Selvam and another vs Official Liquidator and another* reported in *2023 SCC Online Mad 920*, it may be possible to hold that the power of attorney had to be read along with agreement of sale and the receipt dated 31.12.1997 and consequently it would have to be treated as power of attorney coupled with interest, which would not terminate with the death of Nithyanandam/the principal. However, despite denying the genuineness of the agreement of sale and receipt by the plaintiffs, the defendants have not established the genuineness of the said said agreement or receipt. There is also a cloud of suspicion surrounding the execution of these documents. If really on 31.12.1997, Nithyanandam had executed and registered the power of attorney in favour of the first defendant, had the first defendant actually paid the entire sale consideration, there was



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no necessity for postponing the execution and registration of the sale deed in favour of the first defendant.

46. There is no reason to state as to why despite acknowledging payment of entire sale consideration on the very same day under the agreement of sale as well as the receipt, instead of sale deed, a power of attorney alone came to be registered. More curiously, though the agreement of sale mentions that power of attorney is being executed and registered on the same day, admittedly the power of attorney was not registered on 31.12.1997, but, it came to be registered much later date i.e., on 12.03.1998 only.

47. The burden was certainly on the defendants to establish the genuineness of Exs.B.2 and B.3 viz., the receipt and the sale agreement, execution of which have been denied by the plaintiffs. However, none of the two witnesses to the agreement of sale has been examined and the only witness in Ex.B.2 receipt has also not been examined. Further, on a comparison of the signature of Nithyanandam in the admitted documents



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viz., the general power of attorney and with the disputed receipt and sale agreement, it is visible even to the naked eye that the signature of Nithyanandam, as found in the admitted and also registered power of attorney deed that the signature found in the receipt as well as in the agreement of sale are clearly not the signature of Nithyanandam as found in the general power of attorney. Beginning with the initial of Nithyanandam “V” and ending with the last letter “m” in the name, I can see that the signature is clearly different in both the receipt Ex.B.2 as well as the agreement of sale Ex.B.3. In any event, the defendants have not discharged their burden of establishing the said disputed documents in Exs.B.2 and B.3. Unfortunately, the Courts below have wrongly cast the burden on the plaintiffs to establish that Exs.B.2 and B.3 were not true and genuine documents and the approach of the courts below is clearly erroneous and perverse.

48. Therefore, in view of the documents viz., Exs.B.2 and B.3, not being proved by the defendants in the manner known to law, they cannot be said to form part of the registered power of attorney/Ex.A.1 in order to treat



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Ex.A.1 general power of attorney as one coupled with interest, more so, when the general power of attorney specifically states that no consideration is received for execution of the power of attorney.

49. Though the learned Senior Counsel on either side would take me through oral evidence let in by the parties with regard to the knowledge or otherwise of the defendants regarding the death of Nithyanandam, who is neighbour of the defendants, I do not find it necessary to even dwell into great detail with regard to these factual aspects, having already come to a conclusion that the general power of attorney is not one coupled with interest. Once the general power of attorney is not a document, which is coupled with interest, it will terminate with the death of the principal viz., Nithyanandam.

50. However, in the present case, the sale deeds are executed on 20.07.1998, on which date, admittedly, Nithyanandam was alive. The evidence of D.W.1 and D.W.2 is perused in this regard. D.W.1 states that the defendants 2 and 3, to whom, he has conveyed the suit properties as power agent of Nithyanandam, are none else than his mother and sister respectively.



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He also admitted that the plaintiffs' mother's house and his house are adjacent houses in the village. He has also stated that the power of attorney was registered on 31.12.1997. Admittedly, this is a false statement because the power of attorney is admittedly executed only on 31.12.1997, but registered much later i.e., on 12.03.1998. He has also stated that one of the witnesses to the agreement of sale viz., Iyyappan is his brother's son. D.W.1 has also admitted that the original title documents were not handed over to him as mentioned in the power of attorney and he has not been able to deny the suggestion that the original documents are only with the first plaintiff. He has also further stated that the plaintiffs and Nithyanandam are related to him.

51. D.W.2 states that he has attested the sale deed dated 20.07.1998. D.W.2 also admits that he is a brother to the first defendant and he has been taking care of the case on behalf of the defendants. He has also stated that he knew about the execution of the power of attorney on 31.12.1997 and he claims to have been present at that time. However, he pleaded ignorance when a question was put to him in the cross examination as to where the power of attorney was registered on the said date. However, he has added



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that it was registered at the Sub Registrar's Office, Padappai, but, he did not sign as a witness in the power of attorney. He has further stated that Nithyanandam came to the house of the first defendant to give money and that he was present at that time and Exs.B.2 and B.3 were kept ready and at about 4.00 p.m, he has signed as a witness. He has also stated that on 31.12.1997 at 4.00 p.m, power of attorney was registered. He has further stated that the sale deeds were prepared on 31.07.1998 and registered at the office of Sub Registrar, Padappai. However, he retraces his statement and state that the document was registered on 20.07.1998. The evidence of D.W.2 does not inspire confidence of the Court. In fact, he admits that the sale deeds, to which, he was one of the witnesses, was prepared only on 31.07.1998. Admittedly, on 31.07.1998, Nithyanandam was not alive and therefore, the evidence of D.W.2 clearly points to the fact that the sale deeds were actually prepared only after the demise of Nithyanandam and in order to get over the death of Nithyanandam and give effect to the power, the sale deeds have been dated as 20.07.1998. Unfortunately, the courts below have not adverted their attention to this material evidence available on record, in the form of evidence of D.W.2, the witness to the two registered sale deeds.



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The ratio laid down in the case of *M.Karuppannan and others vs Mariyammal and others* reported in *[(2019) (2) CTC 525]* would not apply to the facts of the present case, since the defendants have not established passing of consideration in order to treat the general power of attorney as one coupled with consideration. In the facts of the present case, Section 202 of the Indian Contract Act, 1872 will not come into play since both Exs.B.2 and B.3 have not been proved by the defendants and consequently it cannot be said that the general power of attorney would survive the demise of the principal Nithyanandam and would not get terminated. Consequently, sale deeds executed by the power agent/first defendant in favour of his own mother and sister is clearly clouded with suspicion and they are not valid sale deeds and by playing fraud upon the owners of the property, the defendants have brought about the sale deeds by forging the signatures of the of principal, Nithyanandam in a sale agreement dated 31.12.1997 in Ex.B.3 as well as receipt Ex.B.2, also dated 31.12.1997.

52. For the foregoing reasons, all the substantial questions of law are answered in favour of the appellant.



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53. In the result, the judgment and decree of the courts below are set aside and the Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
sr

To

1. The Subordinate Court, Kancheepuram
2. The District Munsif cum Magistrate Court, Sripermubudur
3. The V.R.Section, High Court, Chennai.



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P.B.BALAJI,J.

sr

Pre-Delivery Judgment
in S.A.No.1099 of 2014

05.04.2024