



C.S.No.120 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.06.2024

Judgment Pronounced on : 07.06.2024

CORAM : JUSTICE N.SESHASAYEE

C.S.No.120 of 2014

1.T.Vijayakumar

2.Sheela

Both represented by their Power Agent

Mr.A.Balaji, S/o. Mr.A.Jagannathan Rao ... Plaintiffs

Vs.

S.Gurusamy

...

Defendant

**Prayer :** Civil Suit filed under Order IV Rule 1 and Order XXIV of Original Side Rules read with Order VII Rule 1 of CPC., praying for a judgment and decree against the defendant :

- (a) for partition of the suit schedule property by metes and bounds and separate possession of the plaintiffs 1/2 share therein;
- (b) for costs of this suit and
- (c) for such other order or orders as this Court may deem fit in the facts and circumstances of the case.

For Plaintiffs : Mr.S.Elambharathi

For Defendant : Mr.V.Raghavachari, Senior Counsel  
for Mr.K.Nagarajan



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## **JUDGMENT**

The suit is laid for partitioning half share in the suit property. The case of the plaintiffs runs as below:

- The suit property originally belonged to certain Moulavan. He has died sometime in the early 1960s. He had two sons, namely Parasuraman and Nagappan. On 07.05.1981, both Parasuraman and Nagappan, along with their minor children, executed a Power of Attorney document, nominating, appointing and constituting certain Ramasamy, as their Power of Attorney Agent.
- Be that as it may, on 15.03.1986, Parasuraman died. Two years thereafter, on 04.11.1988, the Power of Attorney Agent earlier referred to, sold the suit property to one Natarajan. On 29.11.1993, the said Natarajan, on his part, has sold the property to one Pounammal, who on 19.08.2009, had settled the property in favour of her husband, namely the defendant herein.
- In the meantime, some 13 years after the demise of Parasuraman, both the heirs of Parasuraman and Nagappan, executed a Power of



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Attorney in favour of one Sambasivam, who on its strength sold the property vide sale deed dated 14.12.2007 in favour of the plaintiffs.

2. The plaintiffs, now claim that inasmuch as Ramasamy, the Power of Attorney Agent appointed on 07.05.1981, had sold the property to Natarajan after the demise of Parasuraman, the sale to the extent of 50% of the share is invalid and void.

3. The defendant essentially pleaded that the sale in favour of the plaintiffs is a sham and nominal one and the document was created essentially to defeat the right, title and interest of the defendant. None of the heirs of Parasuraman had executed any revocation deed, revoking the Power of Attorney dated 07.05.1981, at any time. The defendant further pleads that he has put up a residential house in the suit property and he along with his family are in physical possession of the same and that the plaintiffs' vendor, does not have any title to the property on the date of sale in favour of the plaintiffs. In the meantime, a certain Bakyavathi, wife of Parasuraman, had entered into a sale agreement with a third party and this had prompted the



defendant to file a criminal complaint against them, and that the said agreement later came to be cancelled. Any transaction entered into by the Power of Attorney Agent without the knowledge of the demise of one of the Principals, will not invalidate the transaction.

4. On the above pleadings, the following issues were framed:

*(i) Whether the registered sale deed dated 29.09.1993 executed by the power of attorney agent of Mr.R.P.Natarajan in favour of the wife of the defendant, is genuine, valid and bona fide?*

*(ii) Whether the demise of one of the previous owners would affect the sale of the property on 29.09.1993 executed in favour of the wife of the defendant by the power of attorney agent of Mr.R.P.Natarajan?*

*(iii) Whether the plaintiffs are entitled for preliminary decree as prayed for with costs?*

*(iv) To what other relief, the plaintiffs are entitled?*

5. The matter went to trial and during the trial, the first plaintiff was examined as PW1 and through whom, Exts.P1 to P13 were marked. On the



side of the defendant, he himself entered the box and examined as DW1 and has produced Exts.D1 to D22.

6. The learned counsel for the plaintiffs argued that with the demise of Parasuraman, his Power of Attorney Agent loses his power under the Power of Attorney by 50% and consequently, he cannot deal with the suit property, without any authority. Indeed, Ramasamy ceased to be an agent of Parasuraman on latter's demise. It might be true that Parasuraman's children were also parties to the said Power of Attorney, but they were minors on that date, and hence they were incompetent to contract. Hence the plaintiffs limit their claim to half share in the suit property. And the defendant has not pleaded adverse possession as an alternate line of defence to upset the case of the plaintiffs over the half share they claim.

7. Mr.V.Raghavachari, the learned senior counsel appearing for the defendant, made the following submissions:

- a) The case of the plaintiffs presupposes that the property in question is the personal property of Parasuraman and his brother Nagappan. If



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the property is a personal property, then on the demise of Parasuraman, Ext.P2 - Power of Attorney that he had executed could not survive beyond the lifetime of the principal, and this is the premise on which the plaintiffs have founded their cause of action. However, the context of Ext.P2 - Power of Attorney, and the power holder so nominated therein acting on it after the demise of Parasuraman, need to be understood in a slightly different context.

- b) The property in question originally belonged to certain Moulavan and on his demise in 1962, it had devolved on Parasuraman and Nagappan. It is not in dispute that Parasuraman and Nagappan along with their children had executed Ext.P2 - Power of Attorney, nominating certain Ramasamy as their power holder. What is significant here is that Parasuraman had three sons of whom his elder son Shanmugasundaram was a major at the time when Ext.P2 was executed and he joined his father Parasuraman in executing the same. The other children of Parasuraman and also the children of Nagappan were minors at the relevant point of time and they were represented by their respective fathers in Ext.P2. In the



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Power of Attorney in question, the property concerned is recited as an ancestral property in the hands of both Parasuraman and Nagappan.

This precisely was the reason why the children were also taken along with their respective fathers to join in the execution of Ext.P2 - Power of Attorney.

- c) It is true that Ramasamy, the power holder referred to above, had executed Ext.P4 - Sale Deed dated 04.11.1988 to defendant's vendor Natarajan some 2-1/2 years after the demise of Parasuraman. There is no case for the plaintiffs that the property had been divided as between Parasuraman and his brother Nagappan, which implies that on the demise of Parasuraman, Nagappan as the senior co-parcener would become the *karta* of the joint family, and hence the execution of the sale deed cannot be questioned notwithstanding the fact that Parasuraman had died by then. On the demise of Parasuraman, his elder son Shanmugasundaram, would automatically fill the shoes of Parasuraman, he being the senior most coparcener of his branch and since he was a signatory to Ext.P2 - Power of Attorney, his decision binds the other junior coparceners. Therefore, the basic premise on



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which the plaintiffs have found their cause of action is demonstrably weak and unacceptable in law.

- d) Finally, the Power of Attorney was executed by all the heirs of Parasuraman and Nagappan, some 11 years after the execution of the sale deed in favour of defendant's vendor vide Ext.P7, dated 26.02.1999 constituting certain Sambasivam as the attorney is nothing but an effort to grab the property from the defendant which the defendant had developed. The fact that the vacant site was converted into a residential building indicates that Shanmugasundaram and the plaintiffs have been put on notice of the development that had taken place and in spite of that, they have laid the suit only in 2014. The suit is, therefore, clearly barred by limitation.
- e) Shanmugasundaram, having been a party to Ext.P2 - Power of Attorney, cannot constitute another Power of Attorney for sale of the property without challenging Ext.P4-Sale Deed and restoring *status quo ante*.

In support of his contention, the learned senior counsel has relied on the



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decision of the Calcutta High Court in *Re Sital Prosad and others Vs Raja*

*Brijnarain Roy and another* [AIR 1917 Cal 436].

8. In response, the learned counsel for the plaintiff submits that none of the points argued by the learned senior counsel was ever pleaded by the defendant in his written statement and indeed noway it is pleaded that the suit property is the ancestral property in character and this is the theory that is now invented by the defendants for the purpose of the suit.

#### **Discussion and Decision :**

9. The objection to the contention of the plaintiffs submission made by the learned senior counsel of the defendant may first be addressed. If the submissions made on behalf of the defendant is closely analysed, it is easily decipherable that they are all legal issues that flow from one undisputed fact, namely the recital in Ext.P2 - Power of Attorney wherein the suit property is described as an ancestral property in the hands of Parasuraman and his brother Nagappan. So far as the rules of pleadings are concerned, parties are only required to plead the facts and not the legal implications of that



which flows from the facts.

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10. This now brings to focus the recital in Ext.P2 regarding the nature of the property. As already stated in the previous paragraph, the suit property is described as an ancestral property in the hands of the executants of Ext.P2. The issue is whether the sale of an ancestral property by the Power of Attorney Holder after the death of one of the principals will bind the estate of the deceased principal. On this, the ratio of the Calcutta High Court in ***Re Sital Prosad and others Vs Raja Brijnarain Roy and another.*** [AIR 1917 Cal 436] is apposite. And that was a case where three brothers have executed a Power of Attorney in favour of the fourth brother authorising him to obtain a loan on the security of their ancestral property. And their Power of Attorney had created successive mortgages, and two of the mortgages were created after the demise of two of the executants of the document. The question that came before the First Bench of Calcutta High Court was whether the mortgage created by the Power of Attorney will bind the share of the deceased principal – executants of the Power of Attorney. The First Bench has held, as long as it is not established that the unity of title to the



property that vested in the coparceners is proved to have been divided, the mortgage cannot be questioned.

11. This ratio in ***Re Sital Prosad case*** applies squarely to the facts of the present case. It is not a disputed fact or a fact which can never be disputed at any stage that the suit property was an ancestral piece of property in the hands of Parasuraman and his brother Nagappan. And it is not pleaded that this property was divided at any time among Parasuraman and Nagapannan, before the death of Parasuraman, which implies before the execution of Ext.P4 sale deed dated 04.11.1988. Therefore, Ext.P4 sale deed stands saved.

12. As rightly contended by the learned senior counsel for the defendant that neither Nagappan nor Shanmugasundaram, the senior most coparcener in the branch of Parasuraman, had ever chosen to challenge Ext.P4 sale deed at any time. Interestingly neither Shanmugasundaram is made as a party to the suit nor was he examined on the side of the plaintiffs. Secondly, even if the minor children of Parasuraman were to challenge Ext.P4 sale deed, they



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should have challenged it within three years immediately after they attained majority. Even this was not done.

13. After carefully evaluating the facts and evidence, this Court has little hesitation in holding that the suit cannot be sustained and hence, dismissed.

No costs.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order  
ds



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## **APPENDIX**

### **WEB COPY I. Witnesses :**

|                           |                                           |
|---------------------------|-------------------------------------------|
| <b><i>Plaintiff :</i></b> |                                           |
| PW1                       | T.Vijayakumar (1 <sup>st</sup> plaintiff) |
| <b><i>Defendant :</i></b> |                                           |
| DW1                       | S.Gurusamy (sole defendant)               |

### **II. Exhibits :**

|                            |            |                                                                                                                                                   |
|----------------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>Plaintiffs :</i></b> |            |                                                                                                                                                   |
| Ex.P1                      | 21.12.2009 | Photocopy of Encumbrance Certificate of property in S.No.303/1, Plot No.119 & 118 at Annai Indira Nagar, Velachery, from 01.01.1976 to 31.12.1985 |
| Ex.P2                      | 07.05.1981 | Photocopy of Power of Attorney executed in favour of Mr.S.Ramasamy by Mr.M.Parasuraman, Mr.P.Shanmugasundaram and minor children of Parasuraman   |
| Ex.P3                      |            | Photocopy of death certificate of Mr.M.Parasuraman                                                                                                |
| Ex.P4                      | 04.11.1988 | Certified copy of sale deed executed in favour of Natarajan by Mr.S.Ramasamy                                                                      |
| Ex.P5                      | 28.02.1992 | Photo copy of Power of Attorney executed in favour of Palaniammal                                                                                 |
| Ex.P6                      | 29.09.1993 | Certified copy of Sale Deed executed in favour of G.Pounambal by Natarajan                                                                        |
| Ex.P7                      | 26.02.1999 | Photocopy of Power of Attorney executed in favour of Sambasivan by the legal heirs of Parasuraman, Nagappan and his legal heirs.                  |
| Ex.P8                      | 13.02.2003 | Photocopy of judgment and decree in O.S.No.4888/2000                                                                                              |
| Ex.P9                      | 14.12.2007 | Original Sale Deed executed by the by the legal heirs of Parasuraman, Nagappan and his legal heirs in favour of the plaintiffs                    |
| Ex.P10                     | 14.12.2007 | Original Power of Attorney executed by the plaintiffs                                                                                             |



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| <b>Plaintiffs :</b> |            |                                                                                                  |
|---------------------|------------|--------------------------------------------------------------------------------------------------|
|                     |            | in favour of A.Balaji                                                                            |
| Ex.P11              | 19.08.2009 | Certified copy of Settlement Deed executed by G.Pounambal in favour of S.Gurusamy, the defendant |
| Ex.P12              | 10.03.2010 | Certified copy of FIR in Crime No.130/2010                                                       |
| Ext.P13             | 05.07.2011 | Certified copy of the order passed in Crl.OP.Nos.16352, 17377, 17378 & 17379 of 2011             |

| <b>Defendant :</b> |            |                                                                                                                                              |
|--------------------|------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Ex.D1              | 06.04.1992 | Certified copy of General Power of Attorney executed by the legal heirs of Nallagounder alias Palaniandi Gounder in favour of Mrs.Sathivathy |
| Ex.D2              | 29.09.1993 | Certified copy of Sale Deed executed by Natarajan in favour of G.Pounambal                                                                   |
| Ex.D3              | 31.10.2002 | Paper Publication in The New Indian Express, Chennai and in Tamil Daily 'Dinamalar'.                                                         |
| Ex.D4              | 01.11.2002 | Paper Publication in Tamil Daily 'Dinamalar'                                                                                                 |
| Ex.D5              | 14.01.2003 | Building Approval granted by Chennai Corporation to Mrs.G.Pounambal for new construction at Velacherry                                       |
| Ex.D6              | 06.01.2003 | Legal Notice issued to Pounammal by Mr.Sambasivan, Power of Attorney of legal heirs of Parasuraman and Nagappan                              |
| Ex.D7              | 19.02.2003 | Reply notice to the legal notice dated 06.01.2003                                                                                            |
| Ex.D8              | 30.04.2003 | Receipt for payment of EB charges for Rs.1,570/-                                                                                             |
| Ex.D9              | 02.05.2003 | Certified copy of CMWSSB Receipt issued to Mrs.Pounambal                                                                                     |
| Ex.D10             | 02.08.2004 | Receipt towards payment of Property Tax by Mrs.Pounambal                                                                                     |
| Ex.D11             | 08.01.2007 | Certified copy of Extract of Town Survey Land Register registered in the name of Mrs.Pounambal                                               |
| Ex.D12             | 15.02.2007 | Plan Approval to Mrs.G.Pounambal by Chennai Corporation.                                                                                     |
| Ex.D13             | 14.08.2007 | Receipt towards payment of Property Tax by                                                                                                   |



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| <b>Defendant :</b> |            |                                                                                                                                                   |
|--------------------|------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
|                    |            | Mrs.Pounambal                                                                                                                                     |
| Ex.D14             | 28.08.2007 | Original CMWSSB Receipt issued to Mrs.Pounambal                                                                                                   |
| Ex.D15             | 16.08.2008 | Certified copy of letter addressed to Assistant Commissioner of Police by Pounambal seeking cancellation of fraudulent sale deed dated 20.11.2006 |
| Ex.D16             | 07.10.2008 | Receipt towards payment of Property Tax by Mrs.Pounambal                                                                                          |
| Ex.D17             | 07.10.2008 | Original CMWSSB Receipt issued to Mrs.Pounambal                                                                                                   |
| Ex.D18             | 10.09.1993 | Photocopy of Encumbrance Certificate of property in S.No.303/1, Plot No.119 & 118 at Annai Indira Nagar, Velachery, from 01.01.1981 to 30.08.1993 |
| Ex.D19             | 11.06.2000 | Certified copy of Encumbrance Certificate of property in S.No.303/1, Plot No.119 & 118 at Annai Indira Nagar, Velachery                           |
| Ex.D20             | 27.11.2006 | Original copy of Encumbrance Certificate of property in S.No.303/1, Plot No.119 & 118 at Annai Indira Nagar, Velachery                            |
| Ex.D21             | 10.12.2008 | Original copy of Encumbrance Certificate of property in S.No.303/1, Plot No.119 & 118 at Annai Indira Nagar, Velachery                            |
| Ex.D22             | 28.11.2013 | Certified copy of Encumbrance Certificate of property in S.No.303/1, Plot No.119 & 118 at Annai Indira Nagar, Velachery.                          |

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Pre-delivery Judgment in  
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