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S.A.No.1119 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

S.A.No.1119 of 2021

and

CMP.No.21466 of 2021

Sampath

... Appellant

/Vs./

1.Kothandaraman

2.Kandan

3.C.Umapathy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure read with Order XLI Rule 1 of CPC, to set aside the Judgment and Decree in A.S.No.1 of 2018, on the file of the Subordinate Court, Madurantakam, dated 11.12.2020, confirming the Judgement and Decree of the Trial Court in O.S.No.227 of 2011, on the file of the District Munsif Court, Maduranatakam, dated 06.12.2017.

For Appellant : Mr.C.Jagadish

For Respondents : Mr.K.V.Babu

* * * * *



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J U D G M E N T

WEB COPY This Second Appeal is filed to set aside the Judgment and Decree in A.S.No.1 of 2018, on the file of the Subordinate Court, Madurantakam, dated 11.12.2020, confirming the Judgement and Decree of the Trial Court in O.S.No.227 of 2011, on the file of the District Munsif Court, Maduranatakam, dated 06.12.2017.

2.The plaintiff in the suit is the appellant in the second appeal.

3.The parties in the second appeal will be referred to as per their litigative rank in the trial Court.

4.The plaintiff filed the suit for declaration of his title to the suit properties, permanent injunction and to set aside the sale deeds of the defendants.

5.The plaintiff's case is that the suit properties originally belonged to one Lakshmiammal. She executed a power of attorney in favour of the 1st defendant on 07.03.2007. Later as the 1st defendant was acting against the interest of the principal, Lakshmiammal, she cancelled the power of attorney. Thereafter she executed another power of attorney in favour of the vendor of the plaintiff on 09.04.2007. The vendor



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of the plaintiff sold the suit property in favour of the plaintiff and ever since the plaintiff is in possession and enjoyment of the suit properties. Whiles, the 1st defendant after cancellation of the power in his favour executed a sale deed in favour of the 2nd defendant and the 2nd defendant in turn sold the property to the 3rd defendant. The plaintiff states that he purchased the property after the cancellation of the power of attorney of the 1st defendant and before the sale of property in favour of the 2nd defendant. Hence plaintiff claims that his sale being the prior sale, he is entitled to the reliefs claimed in the suit. As the defendants tried to disturb the plaintiff's peaceful possession and enjoyment of the suit properties, the plaintiff was constrained to file the suit.

6. The third defendant filed the written statement for himself and the defendants 1 and 2. The defendants on the other hand admit that the suit property originally belonged to Lakshmiammal. The defendants state that the said Lakshmiammal executed a Registered power of attorney in favour of the 1st defendant on 07.03.2007 and in pursuance to it, the 1st defendant sold the suit property to the 2nd defendant on 12.04.2007, who in turn sold it to the 3rd defendant on 18.03.2009. The defendants state that on the same day of execution of the power of attorney, the 1st defendant identified the 2nd defendant for sale of the property and the entire sale consideration of



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Rs.31,000/- was also paid by the 2nd defendant to Lakshmiammal who in turn acknowledged the receipt of the sale consideration by issuing a receipt in favour of the 1st defendant. The defendant further state that the 1st defendant was not put on notice of the cancellation of the power of attorney by Lakshmiammal and without knowledge of the unilateral cancellation he executed the sale deed in favour of the 2nd defendant on 12.04.2007 and the 2nd defendant in turn sold the suit property on 12.04.2007 to the 3rd defendant. The defendants state that though the sale in favour of the plaintiff was prior in time, the sale deed was not valid as the power of attorney in favour of the 1st defendant was not cancelled in a manner known to law. The defendants therefore state that the plaintiff was not entitled to the reliefs claimed in the suit.

7.The plaintiff examined himself and one other witness as PW1 and PW2. The plaintiff marked Ex.A1 to Ex.A5. The defendants marked Ex.B1 to Ex.B17 and examined themselves as DW1 to DW3. The trial Court after framing appropriate issues and on appreciation of the entire evidence on record dismissed the suit. Aggrieved by the Judgment and decree of the trial Court, the plaintiff preferred the appeal. The first appellate Court by a well considered and detailed judgment dismissed the appeal. The plaintiff therefore filed the present second appeal.



8.At the time of admission this Court framed the following substantial questions of law.

“i.Whether the Courts below are right in law in dismissing the suit holding that Ex.B5 power of attorney is one coupled with interest contrary to the recitals in Ex.B5 power of attorney and without properly appreciating the provisions of Section 91 and 92 of Indian Evidence Act, 1872?

ii.Whether the Courts below have properly appreciated the provisions of Sections 201 and 203 of the Indian Contract Act, 1872, particularly when Ex.B5 power of attorney is not one coupled with interest?”

9.The learned counsel submitted that the findings of the Courts below that as the power of attorney in favour of the 1st defendant was coupled with interest and so the unilateral cancellation of the power of attorney without following the procedure under Section 202 of the Contract Act was invalid was erroneous. The learned counsel further submitted that the Courts below failed to note that the recitals in the power of attorney did not speak of any interest in favour of the 1st defendant and therefore Section 202 did not apply. The learned counsel submitted that the reliance



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placed on Ex.B11 and Ex.B12 receipts to support the claim that the power of attorney was coupled with interest was erroneous because to find out if the power of attorney was coupled with interest the document alone could be looked into. The learned counsel further submitted that as the power of attorney was not coupled with interest the cancellation of the power of attorney by Lakshmiammal without notice would be valid. As the plaintiff purchased the property from power of attorney appointed by Lakshmiammal after cancellation of the prior power of attorney, the sale of the plaintiff being prior in time was valid and hence the Courts below erred in non-suiting the plaintiff.

10.The learned counsel for the respondent submitted that the registered power of attorney in favour of the 1st defendant was executed on 07.03.2007 and on the same day, the 2nd defendant as the prospective purchaser of the property paid the entire sale consideration to Lakshmiammal and in acknowledgment of the same she issued the receipt, Ex.B11 and Ex.B12 in favour of the power of attorney. The registered power of attorney and the receipt formed a single transaction and hence the Courts below rightly held that the power of attorney was coupled with interest and therefore the cancellation of the power by Lakshmiammal without notice of cancellation to the 1st defendant was invalid. The learned counsel further submitted that the Courts below



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as fact finding Court's had concurrently found on facts that the unilateral cancellation of the registered power of attorney (Ex.A1) by Lakshmiammal was invalid and therefore this Court sitting in second appeal should not interfere with the same.

11.I have heard both the learned counsels and I have perused the materials placed on record.

12.Both the substantial questions of law are taken together as they are inter related.

13.That the suit property belonged to Lakshmiammal is not disputed. It is also not disputed that Lakshmiammal executed a registered power of Attorney in favour of the 1st defendant in respect of the suit properties on 07.03.2007 under Ex.B5. It is further undisputed that Lakshmiammal cancelled the registered power of attorney on 09.04.2007 and executed a fresh registered power of attorney on 09.04.2007 in favour of one Ramalingam and the said Ramalingam sold the suit property to the plaintiff. It is also an admitted fact that the sale of the suit property in favour of the 2nd defendant by the 1st defendant was after the cancellation of the Power and the sale in favour of the plaintiff.



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14.The question is whether the power of attorney in favour of the first defendant was not coupled with the interest and if so, the unilateral cancellation by Lakshmiammal was valid.

15.The learned counsel for the appellant contended that as the power of attorney was not coupled with interest no notice was necessary. Let us examine from facts if the power of attorney was coupled with interest. On 07.03.2007 the registered power of attorney was executed. On the same day, the 2nd defendant was identified by the 1st defendant as the prospective purchaser and the 2nd defendant paid the entire sale consideration of Rs.31,000/- to Lakshmiammal, who in turn not only issued a receipt acknowledging the receipt of the amount but also handed over the original title deed and possession of the properties to the defendant's. It is pertinent to note here the admission of the plaintiff that the original documents were not handed over to him at the time of sale in his favour. The appellant's counsel contends that as the document, the power of attorney does not recite that it is coupled with interest, Ex.B4 (receipt issued by Lakshmiammal for receipt of sale consideration from DW2) cannot be relied on to show that it was coupled with interest. In other words it is the contention of the learned counsel that to construe the power of attorney as coupled



with interest, the interest ought to be reflected in the document itself.

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16. In the present case the power of attorney and the receipt Ex.B4 were coeval documents. On the same day the entire sale consideration was paid by DW2 to Lakshmiammal and she also handed over the original documents (i.e.) Ex.B5 & Ex.B6 to the 1st defendant. Merely because the interest was not recited in the power deed itself it cannot be said that the power was without interest. What is necessary is the creation of interest and not mere recitation of the same in the document. In my view, parting of possession, handing over of the original documents and receipt for payment of the entire sale consideration are coeval transactions and so the power of attorney was one coupled with interest.

17. In this regard, the Judgment of this Court reported in 2014 1 CTC 447 can be usefully referred to. In the said case like in the present case, the power of attorney did not recite that the power was coupled with interest but the Court relying on the facts that the entire sale consideration was paid, possession was handed over and also original title deeds were given held that the power should be construed as one coupled with interest. As stated above, the subsequent events were coeval transactions and therefore the inevitable conclusion in the present case also is that the power is one coupled with interest. Hence the contention of the appellant is



unacceptable.

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18.The next question is whether Lakshmiammal could have cancelled the power of Attorney executed in favour of the first defendant unilaterally. As this Court has taken a view that the power of attorney is one couple with interest, Section 202 of the Indian Contract Act will come into play and so there cannot be a termination of power without notice. The plaintiff contends that the oral notice of termination was given by Lakshmiammal to the first defendant and therefore there was no unilateral cancellation of the power. In the present case except the *ipsi dixit* of the plaintiff there is absolutely no evidence to substantiate the plaintiff's contention that Lakshmiammal gave oral notice of termination of the power of attorney. The Courts below have rightly held that Lakshmiammal ought to have been examined by the plaintiff as she was the best person to speak of the oral notice to the 1st defendant. The Court's below hence rightly drew adverse inference against the plaintiff for with holding the best evidence, moreso, when the defendants produced Ex.B4, Ex.B5 and Ex.B6. The plaintiff has not given any plausible reason for not examining Lakshmiammal. In my view therefore the Courts below were right in drawing adverse inference against the plaintiff. Had Lakshmiammal been examined she would have thrown light on various facts like oral notice of cancellation of power in favour



of 1st defendant, the receipt of entire sale consideration, handing over of possession and original documents. The learned counsel for the appellant tried to over come the hurdle by contending that even the defendants could have summoned Lakshmiammal. I am afraid, the said contention cannot be accepted because the plaintiff having approached the Court for declaration of his title, it is for the plaintiff to establish his case.

19.The Courts below have returned a factual finding on the basis of the evidence on record against the plaintiff and in the absence of compelling reasons, I do not propose to interfere with the concurrent findings of the Courts below. Hence, the findings are not disturbed.

20.Assuming that the power was not coupled with interest, the provisions of Section 207 and 208 Contract Act relating to renunciation and revocation of agency and as to when the renunciation and revocation takes effect as against the agent and third party has to be looked into. From Section 207 of the Contract Act, it is seen that the revocation of power could be either express or implied and from Section 208, it is seen that termination of power becomes effective only when it is communicated to the agent and as regards third party only when the third party gets knowledge of



termination/cancellation. From the said provisions it is seen that power can be cancelled either expressly or impliedly, but the manner of revocation should be clear and unequivocal to the parties affected by the revocation that the agent's Authority was withdrawn. Therefore the plaintiff ought to have proved that he not only communicated the revocation of power to the agent but also that the third parties had knowledge of revocation of the Authority. The plaintiff in the present case has failed to prove the same.

21.The Hon'ble Supreme Court in the latest Judgment in the case of ***Thankammal George Vs. Lily Thomas and another*** reported in ***2024 SCC Online 1673***, while interpreting the provisions of Section 207 and 208 of the Contract Act, in paragraph No.21 of the said Judgment held as follows:

“21.In the absence of a particular mode suggested for revocation of the authority of an agent, the manner adopted by the principal to revoke the authority of the agent must be one which clearly and unequivocally communicates to the parties i.e., to be affected by such revocation, that the agent’s authority has been withdrawn. In the framework of Sections 207 and 208 of the Act, the revocation/renunciation of authority may be made by



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express words or may be implied from the words and conduct of the principal, viz., which is inconsistent with the continuance of the agency. This is one facet of renunciation or revocation of authority of an agent; the other facet is governed by Section 208 of the Act. Section 208 provides for the effective time and date of termination of the agent's authority and third parties. From a plain reading, Section 208 infers and gives effect to revocation upon the twin conditions being satisfied, (i) communication to the agent and (ii) knowledge to a third party i.e., one who deals with or is likely to deal with the agent. Then, the revocation of authority becomes known to the agent and the said third parties. In other words, an idea in the mind of the principal to revoke cannot be construed as implied revocation or renunciation of agency. There ought to be an act or conduct of the principal which implies that the agency is revoked or withdrawn. If the revocation is expressed, such as by publication in newspapers, public notice or advertisement, communication to the agent etc., the parties who deal with the agent have a reasonable opportunity to know the revocation of agency by the principal.



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Two stages of revocation are, firstly, one dealing with the agent, and secondly, one which applies to the third parties. For attracting the consequence of revocation to either of the situations, the revocation of the agent's authority is made by the principal in a manner that clearly implies that the principal has withdrawn the authority to act on his or her behalf by the agent. Followed by knowledge to third parties,"

22. In the light of the above discussions, the substantial questions of law are answered against the appellant. Therefore the Second Appeal stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

03.07.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

1. The Subordinate Court,
Madurantakam.

2. The District Munsif Court,



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Maduranatakam.

3. The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.MALA, J.

ah

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