



A.S(MD)No.91 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON	11.07.2024
PRONOUNCED ON	29.07.2024

CORAM :

JUSTICE N.SESHASAYEE

and

JUSTICE P.VADAMALAI

A.S(MD)No.91 of 2021

and

C.M.P(MD)No.3272 of 2021

1.RM.Sethu

2.M.Mohamed Mansur

...Appellants/Plaintiffs

Vs

1.Herbert Sundaram

2.Solomon Wilfred Jayakumar

3.K.Athmanathan

(Respondents 1 and 2 are represented by
their power of attorney agent,
K.Athmanathan, the third respondent)

... Respondents/Defendants

PRAYER: Appeal filed under Section 96 of the Civil Procedure Code,
against the fair and decretal order of the First Additional District Judge,



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Tiruchirapalli, dated 13.12.2019 made in I.A.No.375 of 2017 in
O.S.No.111 of 2017.

For Appellant No.1 : Mr.K.S.Vamsidhar
For Appellant No.2 : Mr.R.Aravindan
For Respondents : Mrs.T.Banumathy

JUDGMENT

(Judgment was delivered by **N.SESHASAYEE., J**)

This appeal is preferred challenging a decree rejecting the suit under Order 7 Rule 11 (a) & (d) of C.P.C. The parties would be referred to by their rank before the trial Court.

2.1. The admitted position is that the suit property belongs to the first defendant ever since he was a minor. He has since become a citizen of Malaysia. According to the plaintiffs, on 30.12.1998, the first defendant had executed a Power of Attorney in Malaysia in favour of a certain Masilamani, and on the strength of the said Power of Attorney, the plaintiffs had purchased the suit property under a sale deed, dated 13.07.2006. At the relevant time when the plaintiffs purchased the property, it was under the occupation of certain Ashok Kumar and the plaintiffs has obtained possession from Ashok Kumar. Notwithstanding



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the fact that the aforesaid sale in favour of the plaintiffs, on 24.03.2010, the first defendant executed a settlement deed pertaining to the suit property in favour of the second defendant, and the second defendant in turn executed a Power of Attorney in favour of the third defendant. Once the plaintiffs had come to know that the first defendant was still dealing with the suit property despite the sale in their favour, they chose to institute a suit for declaration of their title over the suit property.

2.2. Before launching the present litigation, the plaintiffs tried to establish that the Power of Attorney in favour of Masilamani was genuine at least thrice before the Malaccan Court at Malaysia. The details thereof are:

- a) A suit in 22NCVC-201/2015. The plaintiffs withdrew that suit on 03.07.2015.
- b) 22NCVC-39-08/2015. On 27.04.2016, they withdrew this suit as well. This time, the Court slapped cost on them. However, it granted leave to the plaintiffs to institute a fresh suit.
- c) Lastly, they filed a suit in 22NCVC-53-10/2016. In this suit, the trial had commenced before the Malaccan Court. When the trial was in its advance stage, the plaintiffs herein moved the Malaysian Court for withdrawal of the civil suit as well. Vide order dated



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20.06.2017, the Court allowed it too but slapped a higher cost on the appellants this time and it did not grant any relief to the plaintiffs to institute any fresh suit on the cause of action.

2.3. Before the third suit the plaintiff had laid before the Malaccan Court was allowed to be withdrawn by the said Court, to be precise, on 15.06.2017, the plaintiffs had laid the present suit for declaration of his title. It may be added that earlier, the plaintiffs had laid O.S.No.52 of 2012 for damages for the malicious prosecution against the State and also the defendants herein. On 09.02.2018, that suit came to be dismissed for default.

3. It is in this setting, the defendants took out an application for rejection of plaint in I.A.No.375 of 2017 and the trial Court held that the present suit cannot be sustained in law since according to it, the plaintiffs cannot challenge a Power of Attorney executed in Malaysia before Indian Court. This decree of the trial Court is now under challenge in this appeal.

4. The learned counsel for the appellants submitted that establishing issuance of the two Power of Attorneys involved in this case is a matter



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for evidence. After all a suit for declaration of plaintiffs' title to a property falls within the territorial jurisdiction of the trial Court, and the same cannot be agitated before the Malaysian Court. And whether the Power of Attorney which Masilamani is said to have obtained from the first defendant is genuine is essentially a matter for proof and that will decide whether the first defendant continued to have any right over the suit property for him to deal with subsequent to the purchase made by the plaintiffs. So far as the suits laid before the Malaysian Court are concerned, they are mere a declaration that the Power of Attorney is genuine and the same is still away from establishing his title to the suit property.

5. Per contra, the learned counsel for the defendants/respondents submitted that the plaintiffs are engaged in the course of abuse of process and have been laying suit after suit for establishing the genuineness of the Power of Attorney in favour of Masilamani before the Malaysian Court and every time, they withdrew the case. Indeed, they did not even let the Malaysian Court to decide the very suit when they could have easily obtained a final verdict in the matter. When the evidence was substantially before the Malaysian Court, the plaintiffs still chose not to



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prosecute it. Indeed, they had evaluated a dubious idea of instituting the present suit and withdrew the last of his three suits filed before the Malaysian Court.

6. Rival contentions are carefully weighed. This Court has little hesitation in holding that the trial court was in egregious error in rejecting the suit on the ground that a power of attorney executed in Indian Court cannot be challenged in Indian Court. What the trial court has overlooked is that the principal prayer in the suit is for declaring the plaintiff's title to suit property, proving the genuineness of the Power of Attorney which the first defendant is alleged to have executed in favour of Masilamani would only be an issue. If Registration Act, 1908, is consulted under Sec.33, it does permit the use of Power of Attorney executed abroad. The issue before the Court then would be whether the power of attorney used by Masilamani in India was executed by the first defendant. The finding on this issue might be critical to the relief sought, but it still will not affect the jurisdiction of the civil court to take cognizance of the dispute for evaluating if the plaintiffs are entitled to the relief sought.



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7. The suit as framed does disclose a cause of action and the trial court has inherent jurisdiction take cognizance of the dispute, and there is no law that bars the trial court from deciding the dispute. It should be underscored that the so far as the suit laid by the plaintiff in Malaysian court is concerned, the cause of action for those suits are different from the one before the trial court, in the sense what was the principal prayer before that court is now reduced to a mere issue. And, not one suit is decided to consider even the application of Sec.13 CPC.

8. In conclusion this court holds that this appeal is allowed, and order passed in I.A. 375 of 2017 in O.S.111 of 2017, dated 13.12.2019, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.)

(P.V.M., J.)

29.07.2024

Index : Yes / No
Neutral Citation : Yes / No
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- To,
- 1.The First Additional District Judge,
Tiruchirapalli.
 - 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

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PRE-DELIVERY JUDGMENT MADE IN
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and
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29.07.2024