



S.A. No. 1136 of 2007

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 1136 of 2007

and

M.P.No. 1 of 2007

1. Subramaniyan
2. Kandasamy
3. Lakshmi Bala
4. Ramanathan
5. Balambal

... Appellants

Vs.

Rajendiran (died)

2. Arumugam
3. Pushpa
4. Elamaran
5. Brinda
6. Rani
7. Ponnu
8. Jayanthi
9. Vigneswari
10. Maheswari
11. Minor Kalaivani
12. Minor Priyadarshini
13. Minor Anand Natrajan



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Respondents 11 to 3 are minors
represented by their natural guardian
mother Maheswari.

14. R.Elumalai

15. Kannagi

16. R.Varadhan

17. R.Selvam

(Respondents 14 to 17 are brought on
record as legal representatives of
deceased 1st respondent vide court
order dated 26.10.2022 in C.M.P.
Nos. 15004, 15005 & 15006 of 2022)

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil
Procedure, praying to set aside the judgment and decree dated 24.04.2007
passed in A.S.No.73 of 2005 on the file of I Addl. Subordinate Judge,
Villupuram, reversing the judgment and decree dated 11.04.2005 passed in
O.S.No.136 of 2002 on the file of Addl. District Munsif Court, Villupuram.

For Appellants : Mr.P.Saravana Sowmiyan

For Respondents : Mrs.V.Srimathi
for R14 to R17

R1 – died

R2 – No appearance

R3 to R13 – Given up



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JUDGMENT

The appellants herein are the defendants 5,6,8, 10 and 14, in the suit in O.S.No. 136 of 2002 on the file of Addl. District Munsif, Villupuram, challenging the reversal finding of the first appellate court in A.S.No. 73 of 2005 on the file of I Addl. Subordinate Judge, Villupuram, preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the 1st respondent herein viz, Rajendiran filed a suit in O.S.No.136 of 2002 against defendants 1 to 14 on the file of District Munsif Court, Villupuram praying for declaration along with consequential injunction and to deliver the vacant possession of property. The 1st defendant remained exparte. The said suit was contested by the defendants 2, 4 to 9 and 13 to 18 and others remained exparte. Pending suit proceedings, the 12th defendant died and his legal heirs were impleaded. On considering the evidence of both sides, the learned trial judge dismissed the suit holding that the plaintiff is not entitled for the relief as prayed for,



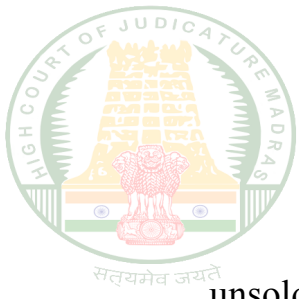
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besides his claim also been barred by limitation and necessary parties are also not impleaded. Since other legal heirs are not impleaded, the suit was dismissed. Against which, the plaintiff preferred an appeal in A.S.No.73 of 2005 before the I Addl. Sub-Court, Villupuram, wherein the first appellate judge has independently analysed entire evidence as well as facts and framed separate issues and finally held that the contesting defendants are not bonafide purchasers and already the power of attorney given to the 1st defendant was cancelled by the plaintiff, thereby the plaintiff is entitled for the claim as he prayed for. Accordingly, the appeal was allowed. Challenging the reversal findings of first appellate court, this defendant preferred this Second Appeal.

4. Brief facts of the case is as follows :-

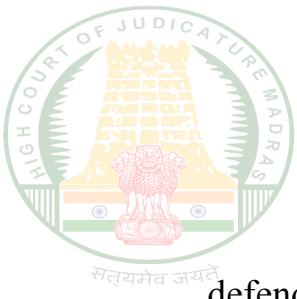
The plaintiff is the absolute owner of properties in Survey No.64/8, 64/15 and 64/18 along with other properties in Panampattu Village, Villupuram Taluk. He had also purchased 30 cents in Survey No.64/8 through sale deeds of the year 1974 and also purchased another 30 cents in Survey No.64/18 in the year 1979 from one Govindaraj Gounder, thereafter he enjoyed those properties as absolute owner. He made some of portions



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unsold and the remaining extent was vacant except suit item No.6. But, the first defendant colluded with other defendants created some documents like sale deeds with regard to suit schedule property in the name of defendants 2 to 4 as if he was a general power of attorney of this plaintiff to deal with immovable property concerned in the above survey numbers. He would submit that the 1st defendant was not given such a power to deal with the right and title over the suit property. The alleged power of attorney relied on by the 1st defendant dated 20.09.1990 said to have been executed by the plaintiff was not true and valid. Even otherwise, the said power of attorney was cancelled by this plaintiff by duly registering revocation deed executed by him on 03.01.1997. Thereafter, through notice dated 11.01.1991 it was duly informed to the 1st defendant. Furthermore, the validity of power of attorney and cancellation of power deed was confirmed through court by him in a suit in O.S.No.266 of 1993, wherein the 1st defendant filed the suit against this plaintiff and others. With the full knowledge of revocation deed, the 1st defendant created a sham and nominal sale deed in favour of 2nd defendant on 11.07.1991 in respect of item No.1 and 2, in favour of 4th defendant on 04.12.1991 with regard to item nos.3 and 4, in favour of 7th



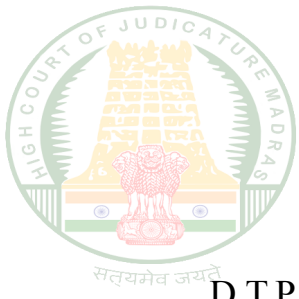
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defendant on 04.12.1991 in respect of item no.5, in favour of 9th defendant on 05.12.1991 with regard to item no.6, in favour of 11th defendant on 13.12.1992 with regard to item no.7, in favour of 12th defendant on 27.03.1995 with regard to item no.8, in favour of 13th defendant on 28.03.1995 with regard to item No.9. The other defendants have subsequently alienated from other defendants. Therefore, the plaintiff contended that after cancellation of revocation of power deed, the sham and nominal alienation in favour of defendants 2 to 14 are null and void, besides they are not bonafide purchasers. Except item no.6, the remaining items are vacant. The plaintiff is in possession and enjoyment of those properties. Having knowledge of these transactions, he issued a notice on 11.07.2002 to the defendants calling upon them to acknowledge his title, but none of them to comply the same nor sent any reply. Hence, the plaintiff come forward with the present suit.

5. The 2nd defendant filed a written statement stating that suit itself is barred by limitation for the reason that in the year 1990 itself the suit properties were approved comprising with layout with 7 house sites by the Director of Town and Country Planning vide his order in

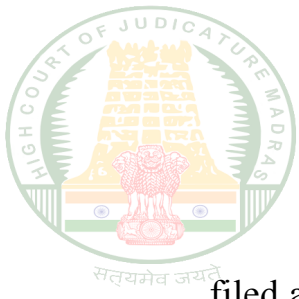
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D.T.P.No.1234/1990, dated 26.12.1990. A residential colony was formed in the name of “Raja Nagar” in the said approved layout. Several purchasers including defendants house site in the said layout have constructed houses. The plaintiff is fully aware of all those facts. Hence, the value of the suit properties was not correct. Therefore, the plaintiff with an ulterior motive in order to grab more money come forward with this false claim. Furthermore, they are the bonafide purchasers for value without notice of any encumbrance over the suit property. The defendants 4 and 7 purchased properties through power agent of plaintiff in the year 1991 itself and ever since they were in possession of the property. Now, the 7th defendant sold the property to 8th defendant through valid sale deed of the year 1999. 2nd defendant purchased the property on 11.07.1991 and the sale deed was acted upon, thereafter the 2nd defendant sold item nos.1 and 2 to the 3rd defendant. The 2nd and 3rd defendants claimed themselves as bonafide purchasers. The plaintiff was fully aware of all the sale transaction in favour of those defendants. The plaintiff is not in possession and enjoyment of suit properties. The suit is also not properly valued. The plaintiff came to know about the sale in favour of defendants in the year 1993 itself, but he

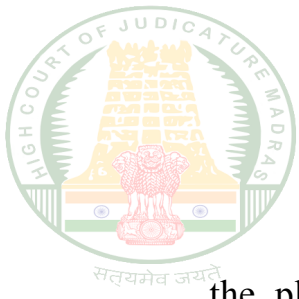


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filed a suit nearly about 10 years later as such is barred by limitation. They were not aware of the alleged cancellation of power of attorney and prayed to dismiss the suit as no merit.

6. By filing additional written statement, the defendants contended that the suit is bad for non-joinder of necessary parties. The other title holders are viz., Govindaraj and Dhanapal, but they were not added nor the plaintiff specifically mentioned how much extent, he is entitled in the suit properties.

7. Before the trial court, both parties adduced oral and documentary evidence. The trial judge has framed nearly about eight issues. Though the plaintiff denied that power of attorney in favour of 1st defendant is not true and valid, however he contended that subsequently he cancelled the said power of attorney and also intimated the same through notice to the 1st defendant at the earliest on 03.01.1991 that they have cancelled the alleged power of attorney dated 20.09.1990, but however he contended that the alleged power of attorney was cancelled by revocation deed dated 03.01.1991, thereby the 1st defendant sold the property to some of the defendants as if he is holding power of attorney of title holder. Therefore,



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the plaintiff issued a notice informing that the power of attorney was cancelled, but inspite of notice, the 1st defendant some portion of suit properties through power of attorney.

8. The learned trial judge has held that considering the facts and evidence, the execution of power of attorney and cancellation of power of attorney is an undisputed fact, but the other facts reveal that the entire suit survey numbers come under the form and part of layout of Rajendiran, but after the purchase made by the purchaser/defendants 2,4,7, 11 and 12, who purchased from the year 1991 onwards. Hence, they put up construction and with the knowledge of plaintiff sold the other property, which claimed in enjoyment of the plaintiff, but he has not raised any objections. Moreover the plaintiff himself admits that in the year 1992 when he enquired encumbrance, he came to know about the allegations made by the 1st defendant. So also in the year 1999 there was a suit filed between defendants and plaintiff in respect of power of attorney and cancellation of power of attorney, even thereafter, the plaintiff has not filed a suit. Even then the suit is dismissed from the date of knowledge of alleged alienation. Therefore, the suit is barred by limitation. Further he has also held that the

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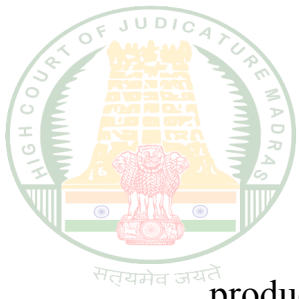
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alleged power of attorney as well as cancellation of power of attorney was executed at the Registration Office at Chennai but the properties are situated at Panampattu Village, Villupuram. On verification, the cancellation of power of attorney was not put to the knowledge of purchaser in the encumbrance, wherein they have got information from Villupuram registration office. Therefore, they are biased with cancellation of power of attorney and the bonafide purchasers have put up construction. Hence, the objections made by the contesting defendants is valid one. Therefore, the plaintiff is not entitled for any relief. Accordingly dismissed the suit.

9. The first appellate judge has analysed the evidence as well as facts and held that after cancellation of power of attorney by the plaintiff on 03.01.1991 a notice was issued on 11.01.1991 with registered acknowledgment to the 1st defendant. So, the 1st defendant was aware of cancellation of power of attorney, thereafter, he made alienation without knowledge of plaintiff. Hence, this alienation would not bind the plaintiff. Furthermore, the purchaser, who purchased the plots from the 1st defendant ought to have verified encumbrance properly. Some of the defendants not

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produced encumbrance certificate. So, they are not bonafide purchasers and this plaintiff is owner of property. So also, the findings of trial judge was set aside and the appeal was allowed and the suit was decreed as prayed for.

10. Challenging the said findings, the contesting defendants 5,6,8,10 and 14 have preferred this Second Appeal by raising following grounds:-

- (1) The lower appellate court failed to see that the plaintiff has admitted in the cross-examination that he had obtained and seen the encumbrance certificate after two years from the cancellation, which would confirm that the plaintiff had knowledge about the purchases made by the appellants or their vendors as the case may be.
- (2) The lower appellate court failed to see that under Ex.A26, the suit filed by the 1st defendant in O.S.No.266 of 1993 against the plaintiff and others to restrain the plaintiff from alienating the suit properties was dismissed and wherein the plaintiff had knowledge about the sale made by the 1st defendant.



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- (3) The lower appellate court grossly erred in holding that the suit is governed by Art.65 of Limitation Act and not by Art.58 of Limitation Act.
- (4) The lower appellate court failed to see that the plaintiff has not taken any effective legal steps in respect of the sale made by the 1st defendant to the appellants from 1993 till 2002.
- (5) The lower appellate court failed to see that as per the Evidence of D.W.7, the 1st defendant executed one sale deed in favour of D.W.7 in the capacity as power agent of plaintiff and another sale deed in favour of one Ramani as power agent of one Thambidurai along with the plaintiff on the same date.
- (6) The lower appellate court failed to see that the suit is not maintainable on the ground that the plaintiff has not sought for cancellation of the sale deed registered in favour of appellants.
- (7) The lower appellate court failed to see that the plaintiff has not filed any evidence to prove about the publication of



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notice of revocation of power of attorney to the general public.

- (8) The lower appellate court misconstrued the scope of Sec.208 of the Contract Act and failed to see that according to that section, the revocation of the power of attorney by the plaintiff would take effect against the appellants only after it is made known to the.
- (9) The lower appellate court failed to see that the cancellation of power of attorney is entered in Register Book NO.4 of the Registration Rules and it does not reflect in the encumbrance certificate.
- (10) The lower appellate court grossly erred in holding that the suit is maintainable and not bad in law for non-joinder of necessary parties.
- (11) The lower appellate court failed to see that the suit property is a joint family property of plaintiff and his deceased brother Periyannasamy. The legal heirs of the plaintiff's brother were not added as parties and the suit is bad in law.



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- (12) The lower appellate court failed to see that the plaintiff is not a sole title holder of the suit properties. The plaintiff has not correctly described the suit properties and also the share of plaintiff in the suit properties has not been defined specifically and in the absence of specific pleading of plaintiff's share in each of the plots, the suit would be very vague and ambiguous.
- (13) The lower appellate court grossly erred in holding that the decree passed in O.S.No.266 of 1993 will bind the appellants.
- (14) The lower appellate court failed to see that the plaintiff has not proved that the appellants purchased the suit properties by having knowledge of the cancellation of power of attorney.
- (15) The lower appellate court failed to see that the appellants are bonafide purchasers for valuable considerations without notice.



(16) The lower appellate court went wrong in accepting the evidences of the plaintiff and failed to appreciate the case of appellants in proper perspective.

11. Considering the facts and circumstances of the case as well as considering submissions of learned counsel for appellants, this Second Appeal was admitted on the following question of law :-

- (a) Whether the suit is maintainable when the plaintiff had not sought for cancellation of the sale deeds under Sec.31 of the Specific Relief Act, 1963?*
- (b) Whether the cancellation of the power of attorney by the plaintiff would take effect against the appellants only when it is made known to them under Sec.208 of the Contract Act, 1872?*
- (c) Whether Section 208 of the Contract Act overrides the provisions of the Registration Act when the appellants are bonafide purchasers for valuable consideration without notice of the cancellation of the power of attorney by the plaintiff?*



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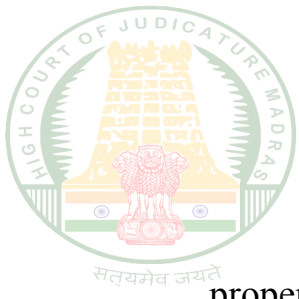
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12. The learned counsel for 1st respondent/plaintiff would submit that pending proceedings, plaintiff died and his legal heirs are impleaded. The learned counsel argues that the appellants are not bonafide purchasers and colluded with the 1st defendant, with the knowledge of cancellation of power of attorney, sham and nominal sale deeds executed in their favour. When the plaintiff came to know about all those fraudulent alienation, immediately he filed the suit. Therefore, the first appellate judge has rightly considered all the documents and held that the plaintiff is the owner of property, thereby decreed the suit by setting aside the findings of trial court, which needs no interference. So also, there is no substantial question of law involved for consideration of this Second Appeal. Hence, he prayed to dismiss the Second Appeal as no merit.

13. Heard and considered rival submissions made by learned counsel for appellants as well as respondents 14 to 17 and perused the materials available on record.

14. Considering both side submissions, the fact reveals that originally the plaintiff claimed himself as absolute owner of entire suit

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properties and contended that there was power of attorney stands in the name of 1st defendant dated 20.09.1990, though it is not true and valid, he cancelled the said power of attorney on 03.01.1991 and intimated the same through notice on 11.01.1991. Even though the plaintiff contended that power of attorney is not true and valid, he has not adduced any evidence to establish the same. However he cancelled the said power of attorney through revocation deed. Now, the point for consideration is “whether the alienation made by the 1st defendant in favour of contesting defendants/appellants herein is true and valid and bind the plaintiff?”.

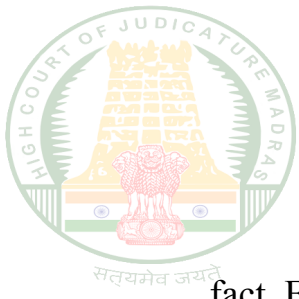
15. According to plaintiff, after the cancellation of power of attorney, he issued a notice to the 1st defendant informed about the same, however with the knowledge of cancellation of power of attorney, the 1st defendant created sham and nominal sale deed in favour of purchasers defendants 2 to 12, but the 1st defendant remained exparte. The purchasers of house sites in suit survey numbers contested the case by filing their written statement. According to them, in the encumbrance certificate, the alleged cancellation of power of attorney was not found. They were not aware of proceedings of O.S.No.266 of 1993 and the said suit was between plaintiff and the 1st



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defendant and they have not participated in the proceedings of the said suit nor the cancellation of power of attorney was published in proper manner. Therefore, they contended that the alleged cancellation of power of attorney would not bind them. The burden of proof casted on the plaintiff that after cancellation of power of attorney, he gave notice to the 1st defendant as well as to make aware of the public viz., third party with paper publication. Before the trial court, the plaintiff contended that he had affixed a notice board intimating that the power of attorney was cancelled, but the trial court on analysing the facts and pictures of the said notice board would reveals that those documents are invented for the purpose of case, originally it was not affixed in the year of 1990 immediately after the cancellation of power of attorney. Furthermore, the plaintiff has not produced any material evidence that he gave notice for the cancellation of power of attorney. Therefore, the plaintiff has failed to establish that the purchases made by defendants with the knowledge of cancellation of power of attorney as he alleged in the plaint. The power of attorney as well as cancellation of power of attorney was registered at Chennai, however the property was situated at Panampattu village, Villupuram is an undisputed



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fact. Furthermore, the 1st defendant remained exparte and he has not entered into witness box, only purchasers contested the case, who are third parties to the said power of attorney. Therefore, the plaintiff bound to prove that the purchasers was also put on notice about the cancellation of power deed.

Sec. 208 of Indian Contract Act reads as follows :-

“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.”

So, with regard to third party like bonafide purchasers herein, by relying said proposition, the learned first appellate judge has held that even though the buyer was not aware of revocation of cancellation of power of attorney, they must scrutinise all the encumbrance before they made purchase. Therefore, the contention of contesting defendants was not accepted by the first appellate court. But, as discussed above, the immovable suit properties were situated at Panampattu Village, Villupuram, but the power deed was cancelled at Chennai. Therefore, there is no proper reason assigned by the plaintiff for registering the power of attorney and cancellation of power of



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attorney at Chennai when the properties are situated at Panampattu Village, Villupuram, but no proper explanation was offered. At the time of purchase, some of the purchasers applied for encumbrance, but they have not found power of attorney in the encumbrance. Hence, as a bonafide purchasers, they have purchased the properties. Moreover, in the year 1991 itself, entire house site property was divided into house plots and DTCP plan was also approved. The plaintiff owned other properties adjacent to suit properties might have aware of all those facts, but not raised any objections even in the year 1993 and nearly about 10 years later, he come forward with the suit. Furthermore, there is a construction in the suit property, at that time, he has not raised any objections. Ignoring all these legal implications, the plaintiff come forward with the present suit as if he is aware of all the encumbrance only in the year 2002. But, during the trial, the plaintiff himself admits that even in the year 1992-1993 he is aware of alienation made by the 1st defendant. Further, he would contend that those alienations are sham and nominal and it would not bind on him. In such circumstances, he ought to have prayed for cancellation of sale deeds, but he failed. Therefore, the suit as such is not maintainable and the plaintiff not sought

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any relief for cancellation of sale deed as required under Sec.31 of Specific Relief Act. Accordingly, the question of law (1) is answered.

16. Furthermore, the first appellate judge has held that the alleged purchases made by the contesting defendants are not bind the plaintiff. Therefore, he is entitled to seek the relief of declaration within 12 years by relying the ratio laid down in the authority reported in ***AIR 2000 SC 1099*** in the case of ***State of Maharashtra vs. Pravin Jethalal Kamdar (dead) by LRs*** and also held that there is no necessity on the part of plaintiff to file the suit. As absolute owner, the plaintiff claiming that those sale deeds are sham and nominal and he was aware of alleged alienation by his own evidence from the year 1992 onwards, but he filed the suit 10 years later as such is clearly barred by limitation, because within three years from the date of knowledge about fraudulent alienation, the plaintiff ought to have filed the suit in time within three years as required under Art. 113 and 114 of Limitation Act. But the first appellate judge erred in holding that the plaintiff, who filed the suit within 12 years as such is erroneous one and liable to be set aside.



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17. Furthermore, as per Sec.208 of Indian Contract Act, which reads

as follows :-

“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.”

AS AGAINST THIRD PARTIES :- The fact that the agent is aware of the revocation of his authority will not effect third parties, who deal with him in ignorance of such revocation.”

In respect of third party purchase, there is no proof on the side of plaintiff that they were aware of cancellation of power of attorney, besides since they are third parties in respect of revocation of cancellation of power of attorney, as a principal, the plaintiff is bound to prove that they were also put notice about the cancellation of power of attorney, but there is no evidence on his side, however, the plaintiff has also not taken any steps against the 1st defendant to that effect. Therefore, the cancellation of power of attorney would not bind the contesting defendants, who are bonafide

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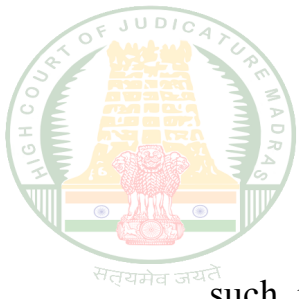


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purchasers, which was rightly concluded by the trial judge, but the first appellate judge erroneously held that without any evidence that they were also aware of cancellation of power of attorney as such is illegal and liable to be set aside. Accordingly, the question of law (2) is answered.

18. According to plaintiff, from the year 1991, he is aware of cancellation of power of attorney, but he has filed the suit in the year 2002, but no reason was assigned for inordinate delay nor proved the cancellation of power of attorney. Therefore, the said suit is not maintainable. The plaintiff alone got the property, but other two individuals are having right. Therefore, the trial court has rightly held that the suit is barred by non-joinder of proper parties, but it was not properly appreciated by the first appellate judge. Even in the year 1991, the suit property was converted into house site, but the properties were not properly described in the plaint schedule. After the purchase, some of the defendants put up construction and same was also not been properly described, to that effect the trial judge has rightly held that the plaintiff has not come to the court with correct information. Therefore the suit as such is not maintainable in law. But, the first appellate court erroneously granted the relief in favour of plaintiff as



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such is total misconception of law. Accordingly, this Second Appeal is allowed and the findings rendered by the first appellate judge in A.S.No.73 of 2005 is set aside and the findings rendered by the trial court in O.S.No.136 of 2002 is confirmed. Consequently, the suit is dismissed as no merit. No costs. Consequently, connected Miscellaneous Petition is closed.

24.06.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1. I Addl. Subordinate Judge, Villupuram.
2. Addl. District Munsif, Villupuram.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI, J.

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Pre-delivery judgment in
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