



A.S.No.283 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2025

DELIVERED ON : 29.04.2025

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

A.S.No.283 of 2018 and

C.M.P.No.6349 of 2018

R.Krishnasamy

... Appellant

Vs.

1.N.Thulasiammal
2.V.Thulasiammal
3.S.Ananthi
4.R.Rangasamy
5.R.Krishnamurthy
6.R.Muruges
7.Navaneetha
8.C.Rathinavel

... Respondents

(Respondents 7 and 8 impleaded as per order of this Court dated 26.07.2024 made in C.M.P.No.1690 of 2019 in A.S.No.283 of 2018)

Prayer : First Appeal filed under Section 96 C.P.C., read with Order XLI Rule 1 CPC against the decree and judgment dated 07.08.2017 in O.S.No.443 of 2013 on the file of the V Additional District Court, Coimbatore.

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For Appellant : Mr.T.R.Rajagopalan, Senior Counsel
Assisted by Mr.K.Govi Ganesan
For RR1, 2 and 4 to 6 : Mr.K.S.Karthikraja
For R3 : Mr.N.Nithianandam

JUDGMENT

The appellant is the plaintiff. He filed the suit in O.S.No.443 of 2013 before the V Additional District Court, Coimbatore, for specific performance of contract.

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff in a nutshell is as follows :

3.1. The defendants 1, 2 and 4 are the children of one late Ramasamy Gounder. The suit property as described in the plaint schedule absolutely belonged to Ramasamy Gounder through a registered settlement deed dated 03.06.1967 executed by his father Sellappa



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Gounder. Ramasamy Gounder died intestate and the defendants 1 and 2 (daughters) and the fourth defendant (son) became entitled to 1/3rd share each.

3.2. On 19.03.2008, the defendants 1 and 2 executed a registered General Power of Attorney authorizing the third defendant to sell their 2/3rd share which is shown as the suit property. Accordingly the third defendant entered in a written agreement of sale dated 27.10.2012 (Ex.A1) with the plaintiff for the sale of the suit property for a total sale consideration of Rs.24,00,000/-. The plaintiff paid a sum of Rs.15,00,000/- towards advance and part payment of the sale price. The time fixed for performance of contract was nine months. The plaintiff was always ready and willing to perform his part of the contract and get the sale deed executed in his favour. However, the defendants 1 to 3 started evading.

3.3. Therefore, the plaintiff issued a legal notice dated 12.07.2013 (Ex.A3) to the defendants 1 to 3 to execute the sale deed as per the agreement (Ex.A1) after receiving the balance sale consideration. While the third defendant did not issue any reply, the defendants 1 and 2



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WEB COPY sent their respective reply notices dated 12.08.2013 (Ex.A4) and 10.08.2013 (Ex.A5).

3.4. The first defendant in her reply notice had alleged that the third defendant and her husband coerced her to execute the Power of Attorney and therefore the same was cancelled on 01.08.2013 (Ex.A15). The second defendant in her reply dated 10.08.2013 (Ex.A5) had averred that she has been cheated and coerced by the third defendant and that the Power of Attorney dated 19.03.2008 (Ex.A2) executed by her and her sister was cancelled on 01.08.2013.

3.5. According to the plaintiff, all the allegations contained in the reply notices are false to the knowledge of the defendants 1 and 2. The plaintiff was always ready and willing to perform his part of the contract and therefore, he is forced to file the present suit. The defendants 4 to 6, had created a partition deed dated 18.06.2008 (Ex.A6) in and by which the properties of late Ramasamy Gounder were allotted to the defendants 4 to 6 (defendants 5 and 6 are the sons of the fourth defendant) leaving the defendants 1 and 2. In fact, the defendants 1 and 2 were questioning their brother (fourth defendant) in this regard.



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Subsequently, the defendants 1 and 2 had executed a Consent deed dated 13.05.2013 (Ex.A7) ratifying the earlier partition deed (Ex.A6). This has been done by the defendants 1 and 2 only to get over the sale agreement in favour of the plaintiff. Hence, the suit.

4. The suit was resisted by the defendants 1 and 2 on the following grounds :

- i. The third defendant is a ward member in Karumathampatti Panchayat and she obtained the signatures of the defendants 1 and 2 in blank papers under the pretext of getting old age pension for them from the Government.
- ii. The defendants 1 and 2 are illiterates and they went to Registrar Office and signed on a stamp paper. They did not know the contents of the said document and did not have any intention of selling the suit property.
- iii. The market value of the property is more then Rs.5,00,00,000/- and the sale price is very much lower than that.



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- iv. The identity of the purchaser, the place of sale negotiation were not disclosed by the third defendant to the defendants 1 and 2.
- v. Therefore, they cancelled the Power of Attorney dated 19.03.2008 (Ex.A2) on 01.08.2013.
- vi. One Mr.A.Chinnasamy, Advocate issued a notice to the defendants 4 to 6 for partition of the properties of late Ramasamy Gounder on 01.06.2012 without getting any instructions from the defendants 1 and 2. A suit in O.S.No.10/2013 before the V Additional District Court, Coimbatore, for partition was filed by the second defendant without her knowledge against the defendants 4 to 6.
- vii. Thereafter, the defendants 1 and 2 changed their counsel and executed a registered Consent deed dated 13.05.2013 (Ex.A7) in favour of the defendants 4 to 6.
- viii. Consequently, the suit in O.S.No.10/2013 was dismissed as withdrawn.
- ix. There was no need for the defendants 1 and 2 to execute a Power of Attorney in favour of the third defendant.



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x. The plaintiff, in order to grab the suit property, has filed the present suit for specific performance.

5. The written statement of the third defendant :

- i. The defendants 1 and 2 approached the third defendant during 2008 and informed her they want to sell their 2/3rd share in their father's property.
- ii. They also executed a registered General Power of Attorney on 19.03.2008 (Ex.A2) authorizing the third defendant to sell the property. The General Power of Attorney was attested by the husband of the second defendant.
- iii. Since the market value of the suit property increased manifold the defendants 1 and 2 instructed the third defendant to sell the suit property for not less than Rs.20,00,000/-. They also stated that they are in need of money for their family expenses.
- iv. The third defendant, therefore, entered into a sale agreement dated 27.10.2012 (Ex.A1) with the plaintiff fixing the sale consideration as Rs.24,00,000/-.



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- v. The plaintiff paid a sum of Rs.15,00,000/- on the date of sale agreement and it was handed over to the defendants 1 and 2 on the same day. The time for completing the contract was nine months.
- vi. When the plaintiff insisted the defendants 1 to 3 to complete the transaction, the defendants 1 and 2 demanded more money than what was specified in the sale agreement (Ex.A1). Therefore, the plaintiff after waiting for some time issued a legal notice to the defendants 1 to 3.
- vii. The defendants 1 and 2 did not come forward to execute the sale deed in favour of the plaintiff and on the contrary had falsely alleged in their reply that they signed certain papers in the Registrar's office to get old age pension.
- viii. The very fact that the husband of the second defendant signed as an attester to the Power of Attorney shows that the Power of Attorney was executed by the defendants 1 and 2 with their full knowledge and consent.
- ix. Now it appears that the defendants 1, 2 and 4 to 6 have joined together in order to defraud the plaintiff.



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6. The written statement filed by the fifth defendant and adopted by the defendants 4 to 6

- i. The suit property belonged to Ramasamy Gounder through a registered settlement deed dated 03.06.1967. He died intestate leaving behind his wife Ramathal and the defendants 1, 2 and 4 as his legal heirs.
- ii. The defendants 4 to 6 and Ramathal entered into a registered partition deed dated 18.06.2008 (Ex.A6) and they are in possession and enjoyment of their respective shares.
- iii. The second defendant filed a suit in O.S.No.10/2013 before the V Additional District Court, Coimbatore, which ended in a compromise.
- iv. A registered consent deed was executed by the defendants 1 and 2 in favour of the fourth defendant thereby ratifying the partition deed dated 18.06.2008 (Ex.A6).
- v. The sale agreement is not a registered document.



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- vi. The plaintiff has filed the suit suppressing the existence of the earlier partition deed dated 18.06.2008 (Ex.A6).
- vii. It is totally false to contend that the defendants 1 and 2 had colluded with the defendants 4 to 6 in order to get away from the sale agreement.
- viii. As is seen from the averments of the defendants 1 and 2 in their written statements, the defendants 1 and 2 did not receive Rs.15,00,000/- towards sale consideration.
- ix. The defendants 4 to 6 were not aware of the General Power of Attorney and the sale agreement.
- x. Therefore, the suit is liable to be dismissed with costs.

7. On the basis of the above pleadings the trial court framed the following issues :

- "i. Whether the defendants 4 to 6 are necessary parties to the suit ?*
- ii. Whether the plaintiff is entitled for the relief of sepcific performance when the defendants 4 to 6 had not executed the sale*



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iii. Whether the Power of Attorney executed by the defendants 1 and 2 in favour of the third defendant is true and valid ?

iv. Whether the sale agreement between the plaintiff and the third defendant is true and valid ?

v. Whether the plaintiff is entitled for the relief as prayed for by him ?

vi. To what relief, the plaintiff is entitled ?"

8. In the trial court, the plaintiff examined himself and marked Ex.A1 to Ex.A16. The first defendant examined himself and marked Ex.B1 to Ex.B7.

9. The learned trial court judge, on considering the evidence on record, dismissed the suit filed by the plaintiff, vide his decree and judgment dated 07.08.2017, on the following grounds:

- i. Though the defendants 1 and 2 had contended that the General Power of Attorney dated 19.03.2008 (Ex.A2) was executed by



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them under threat and coercion the same has not been proved by them.

- ii. The defendants 1 and 2 had in fact executed the General Power of Attorney with full knowledge on 19.03.2008 and it was cancelled only on 01.08.2013.
- iii. The third defendant is empowered to deal with the suit property as per the General Power of Attorney.
- iv. However, the plaintiff has not proved the genuineness of the sale agreement dated 27.10.2012 (Ex.A1).
- v. The stamp paper has been purchased from a place which is 100 kilometers away from the place of sale agreement.
- vi. The plaintiff has not seen the encumbrance certificate before entering into the contract of sale (Ex.A1).
- vii. The plaintiff has not also proved his financial capacity.
- viii. The income tax returns filed by him does not reflect the payment of Rs.15,00,000/-.
- ix. There was a partition in the family during 2008 and it was ratified in the year 2013 by the defendants 1 and 2 .



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x. Hence the plaintiff is not entitled to any relief as sought for by him.

10. Heard Mr.T.R.Rajagopalan, learned Senior Counsel assisted by Mr.K.Govi Ganesan, learned counsel for the appellant, Mr.K.S.Karthikraja, learned counsel for the respondents 1, 2 and 4 to 6 and Mr.N.Nithianandam, learned counsel for the third respondent.

11. The points that arises for consideration in the present appeal are

- i. whether the General Power of Attorney dated 19.03.2008 (Ex.A2) was executed by the defendants 1 and 2 under threat and coercion?
- ii. whether the sale agreement (Ex.A1) is true and valid ?
- iii. whether the plaintiff is entitled for specific performance of contract ?



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12. It is an admitted fact that the suit property originally belonged to late Ramasamy Gounder, the father of the defendants 1, 2 and 4 through a registered settlement deed dated 03.06.1967. Ramasamy Gounder died intestate and his wife Ramathal also is no more. Since the properties in the hands of Ramasamy Gounder are his absolute properties, they devolved upon the defendants 1, 2 and 4 as per Section 8 of the Hindu Succession Act. However, it is the case of the defendants that a partition deed dated 18.06.2008 (Ex.A6) was executed between the defendants 4 to 6 and late Ramathal. The defendants 1 and 2 were not given any share in the properties of their father late Ramasamy Gounder and they were not parties to the partition deed (Ex.A6).

13. The case of the third defendant is that the defendants 1 and 2 approached her as she was a ward member and expressed their desire to sell their 2/3rd share in the properties of late Ramasamy Gounder and also executed a registered General Power of Attorney dated 19.03.2008 (Ex.A2). Both the defendants have in their written statement contended that that the General Power of Attorney was executed under threat and



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coercion. They have also stated that their signatures were obtained in the Registrar's office by the third defendant for the purpose of getting old age pension.

14. It is pertinent to point out that the General Power of Attorney dated 19.03.2008 is a registered instrument. The second defendant's husband had signed the document as an attesting witness. It is settled law that a person of full age and understanding cannot be heard to say that he / she signed a document without knowing the contents thereon. If a person signs a document without knowing the contents, he / she has to face the consequences.

15. In the instant case, the defendants 1 and 2 have taken two different stances. One is that the General Power of Attorney was obtained under threat and coercion and another that they signed a document in the Registrar's Office as the third defendant, a ward member, had promised to get them old age pension. As already observed, the second defendant's husband accompanied the defendants 1



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and 2 to the Sub-Registrar Office. For getting an old age pension, normally a person would go to Collector's office and not to a Sub-Registrar Office. It is also not known as to why the defendants 1 and 2 did not give a police complaint against the third defendant till date. No notice was issued to the third defendant in this regard. In the circumstances, it has to be held that the General Power of Attorney in a true and valid document. The trial Court also had given such a finding. The third defendant and the plaintiff had entered into an unregistered agreement of sale based on the General Power of Attorney. The suit property (2/3rd share of the defendants 1 and 2) was agreed to be sold in favour of the plaintiff for a total sale consideration of Rs.24,00,000/- out of which a sum of Rs.15,00,000/- was paid by the plaintiff on the date of sale agreement. According to the third defendant, this amount was handed over to the defendants 1 and 2. The time fixed for performance of contract was nine months. The case of the plaintiff is that he was always ready and willing to perform his part of the contract. In fact, he issued the legal notice to the defendants 1 to 3 on 12.07.2013 (Ex.A3) which is very well within the period of nine months stipulated in the

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Sale Agreement dated 27.10.2012. The plaintiff in order to prove his financial capacity has filed his Income Tax Returns for the Assessment years 2012 - 2014 (Ex.A8 and Ex.A9). He is also doing Cable T.V. business as is seen from Ex.A12 and Ex.A13. Apart from this, he owns properties as is seen from Patta (Ex.A13 and Ex.A14). However, the trial Court has held that the plaintiff has not proved his financial capacity to purchase the suit property.

16. Mr.T.R.Rajagopalan, learned Senior Counsel assisted by Mr.K.Govi Ganesan, appearing for the appellant relied upon the decision in *Sukhbir Singh and ors. vs. Brij pal Singh and ors. reported in AIR 1996 Supreme Court 2510* and contended that Law is not in doubt and is not a condition that the plaintiff should have ready cash with him and that it is sufficient for him to establish that he had the capacity to pay the sale consideration. His specific contention is that the appellant / plaintiff in the instant case had filed the Income Tax Returns to show that he is an Income Tax Assessee. He has also filed document to show that he is running a business and also owns properties. In the circumstances, the



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observation of the trial Court that the plaintiff did not have financial capacity to purchase the suit property is wrong. There is force in the contention of the learned Senior Counsel.

17. The trial Court has also doubted the genuineness of the sale agreement on the flimsy ground that 20 Rupees Stamp Paper was purchased from a place which is 100 kilometers away from the place where it is executed. A Stamp paper can be purchased from any place. In the instant case, the plaintiff is a business man and he could have purchased the stamp paper from elsewhere.

18. Another ground on which the suit was dismissed by the trial Court was that the plaintiff had entered into an agreement of sale (Ex.A1) even without verifying the Registered Partition deed, dated 18.06.2008 (Ex.A6). It is pertinent to point out that the suit property is absolutely owned by the father of the defendants 1, 2 and 4. The defendants 1 and 2 would get 2/3rd share in his properties. The Partition deed, dated 18.06.2008 was entered into between the defendants 4 to 6



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and Ramathal, wife of Ramasamy Gounder and the same would not bind the defendants 1 and 2. In fact, the second defendant filed a suit in O.S.No.10/2013 before the V Additional District Court, Coimbatore seeking partition of her father's property. Subsequently, the suit was withdrawn and a Consent deed dated 13.05.2013 (Ex.A7) was executed by the defendants 1 and 2 in favour of the defendants 3 to 6 and Ramathal. In the Consent deed, it is mentioned that no amount was received by the defendants 1 and 2 for executing the same. There is also a mention in the Consent deed about the cancellation of the General Power of Attorney (Ex.A2) executed in favour of the third defendant. However, it is not stated that the General Power of Attorney was executed under threat and coercion. The second defendant has gone to the extent of stating that a counsel without getting instructions issued a legal notice to the defendants 4 to 6 seeking partition and also filed the suit in O.S.No.10/2013 on her behalf. This is totally unbelievable. It is pertinent to point out that till date no complaint was given by her against the said counsel. This reflects the conduct of the defendants 1 and 2.



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19. Mr.T.R.Rajagopalan, learned Senior Counsel contended that the Consent deed itself is created only for the purpose of avoiding the sale agreement in favour of the plaintiff. This argument is not without any substance. In fact in the reply notice, dated 12.08.2013 (Ex.A4), the first defendant had stated that she does not know the plaintiff. On the contrary, the second defendant in her reply notice dated 10.08.2013 (Ex.A5) has averred that the third defendant and the plaintiff coerced her to sign the General Power of Attorney, dated 19.03.2008 (Ex.A2). It is also to be pointed out that the General Power of Attorney was cancelled only on 01.08.2013 (Ex.A15). This is three months post execution of the sale agreement.

20. The contention of the defendants 1 and 2 that the sale price is far below the market value has not been substantiated. In fact, the property was reportedly sold in favour of the defendants 5 and 6. A copy of the said sale deed has not been filed by the defendants. The execution of the sale agreement in favour of the plaintiff is admitted by the third defendant, the Power of Attorney holder. When the Trial Court has come



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to a conclusion that the General Power of Attorney is a valid document, it ought not to have given a finding that the sale agreement is doubtful merely based on the fact that the Stamp Paper was purchased from a place which is 100 kilometers away. This is a very flimsy reason. The sale agreement was executed during the subsistence of the General Power of Attorney. Moreover, there is no specific denial by the defendants 1 and 2 in their written statement that they did not receive the part payment of Rs.15,00,000/-. The trial Court had given a finding that said payment of Rs.15,00,000/- is not reflected in the Income Tax Returns. This is totally wrong especially when the plaintiff claimed that he paid the amount in cash and the defendants 1 and 2 did not specifically deny the receipt of Rs.15,00,000/- in their Written statement. Moreover, the plaintiff had paid more than 60% of the sale consideration and also issued the legal notice within the time stipulated in the Sale Agreement. It appears that the first and second defendants pre-empted any move by the fourth defendant to have the entire property to himself. The result was execution of General Power of Attorney in favour of the third defendant. The fourth defendant on his side kept the defendants 1 and 2



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out of the partition deed dated 18.06.2008 (Ex.A6). However, later the defendants 1 and 2 did a volte face by joining with the fourth defendant claiming that the Power of Attorney itself was obtained from them under threat and coercion. Interestingly, both the defendants 1 and 2 not only claimed that O.S.No.10/2013 was filed in their names without their knowledge and also gave a Consent deed thereby ratifying the earlier partition deed dated 18.06.2008. However, the fact that the defendants 1 and 2 have not denied the receipt of Rs.15,00,000/- out of the sale consideration of Rs.24,00,000/- clearly shows that the Power of Attorney and the subsequent sale agreement are all genuine and it is only their integrity which is eroded. The Consent deed furnished by the defendants 1 and 2 mentions that there was no consideration received by them for their 2/3rd share in the property defies logic.

21. In the decision in ***C.S.Venkatesh Vs. A.S.C.Murthy (dead) by legal representatives and Ors.*** reported in ***(2020) 3 SCC 280*** relied upon by the learned Senior counsel for the appellant it has been held thus:



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WEB COPY 16. *The words “ready and willing” imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.”*

22. In the present case, the plaintiff has proved that he is an Income Tax Assessee and that he was always ready and willing to perform his part of the contract. On the contrary, the defendants 1 and 2 in order to avoid the agreement of sale, had colluded with the defendants 4 to 6 and had created a Consent deed. In view of all these reasons



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23. In the result,

- i. the First Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. the decree and judgment dated 07.08.2017 in O.S.No.443 of 2013 on the file of the V Additional District Court, Coimbatore, is setaside.
- iii. the suit in O.S.No.443 of 2013 on the file of the V Additional District Court, Coimbatore, is decreed as prayed for with costs.

29.04.2025

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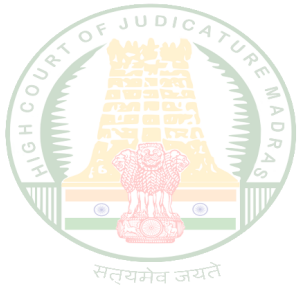


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To

1. The V Additional District Court, Coimbatore.
2. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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Pre-Delivery Judgment in
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