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AS No.177 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-02-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

AS No. 177 of 2022

& CMP No.6482 of 2022

S.Aruchamy
S/o. Subbraraya Gounder, No.2/150(1),
Sri Sakthi Gardens, Malayampalayam Pirivu,
Ganapathypalayam Village, Palladam Taluk.
Tiruppur District.

Appellant(s)

Vs

1.L.Duraisamy
Son of Late Lakshmana Gounder,
No.7/248 G, Chennimalaipalayam,
Veerapandi Post, Tiruppur.
2. A.P. Palanisamy,
Son of Periyasamy,
No.2/112, V.Vaishnavi Park, Perumanallur,
Malaiyapalayam Road, Avinashi Taluk,
Tiruppur District.

Respondent(s)

Prayer: This Appeal Suit has been filed to set aside the judgment and decree dated 30.11.2021 passed in O.S.No.242 of 2015 on the file of the II Additional District and Sessions Judge at Tiruppur.



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For Appellant(s):

Mr.K.Myilsamy

For Respondent(s):

Mr.T.R.Rajagopalan, Senior Counsel for
Mrs.D.Chitra Maragatham
for R1

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ORDER

This Appeal Suit has been filed to set aside the judgment and decree dated 30.11.2021 passed in O.S.No.242 of 2015 on the file of the II Additional District and Sessions Judge at Tiruppur.

2. The defendants, who are unsuccessful before the Court below, are the appellants herein.

3.The parties are arrayed as per their respective rankings in the suit, before the trial Court.

4.The case of the plaintiff is that the first defendant is the owner of the suit property and he has executed a General Power of Attorney dated 17.07.2014, in favour of the second defendant for sale of the property. Pursuant to the said Power of Attorney dated 17.07.2014, the second defendant entered into an agreement for sale of suit property for a total sale



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consideration of Rs.11,00,000/- and the second defendant received a sum of Rs.9,00,000/- towards advance in cash. It is agreed between the parties that the balance sale consideration shall be paid within a period of 18 months from the date of agreement and get the sale deed executed. The plaintiff was always ready and willing to perform his part of contract while the defendants were evading to perform their contract despite the plaintiff approaching them several times.

5.While the matter stood thus, on 01.08.2015, the plaintiff received a notice from the second defendant stating that the said General Power of Attorney was cancelled by the first defendant on 08.06.2015. Thereafter, the plaintiff also verified the same from the Sub Registrar Office and immediately he has sent a reply notice to the defendants on 19.08.2015, directing both the defendants to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration of Rs.2,00,000/- on 24.08.2015 at the Sub-Registrar Office, Palladam. The plaintiff has waited at the Sub-Registrar Office, Palladam with cash on 24.08.2015 till evening. However, the defendants have not come to the Sub Registrar Office to execute the sale deed. The reply notice has been delivered to the 2nd



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defendant's advocate and returned with an endorsement as "no such person".

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6. After service of reply legal notice, the 2nd defendant contacted the plaintiff and informed that on the very next day of sale agreement itself, he had given the amount of Rs.9,00,000/- to the first defendant, which was also acknowledged by the first defendant, however, he cancelled the General Power of Attorney without his knowledge. According to the plaintiff, he is ready and willing to complete the agreement by paying remaining sale consideration and to get the sale deed executed, but the 1st defendant was trying to alienate the suit property to third parties. In such circumstances, the plaintiff was constrained to approach the Court below and filed the suit.

7. The case of the first defendant is that he never intended to sell the suit property while admitting that he has executed a General Power of Attorney in favour of the second defendant. But according to him, the said power of attorney was not executed to sell the suit property. It is his contention that he has borrowed a sum of Rs.9,00,000/- from the 2nd defendant, agreeing to repay the same with an interest @ 18% per annum. He has borrowed the said loan for construction of a house and paid interest



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for about six months also. But at no point of time, had he intended to sell the suit property at such low price of Rs.11,00,000/-. While so, in March 2015, the second defendant demanded interest @ 30% per annum and forced the first defendant to pay the above interest, failing which, to sell the suit property to him. Therefore, the first defendant has cancelled the General Power of Attorney on 08.06.2015 and issued a legal notice to the second defendant. According to the first defendant, the plaintiff and the second defendant are the close relatives and the plaintiff was one of the attestors and identification witness of General Power of Attorney and the Acceptance deed is a fabricated one.

8. According to the second defendant, the first defendant appointed him as Power Agent to deal with the suit property in the capacity of the Power Agent. The second defendant negotiated the sale in respect of the above said property and entered into a registered sale agreement dated 13.08.2024 and received a sum of Rs.9,00,000/- in cash as advance and the balance of Rs.2,00,000/- will be paid by the purchaser within 18 months. The next day i.e., on 14.08.2014, the second defendant handed over the cash of Rs.9,00,000/- to the first defendant and thereby, the first defendant



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executed the Acceptance Deed dated 14.08.2014. However, the first defendant has cancelled the General Power of Attorney on 08.06.2015, without even informing the 2nd defendant.

9. On the basis of the above pleadings, the following issues were framed:

- (i) Whether the sale agreement dated 13.08.2014, is true, valid, genuine and acted upon?
- (ii) Whether the plaintiff is ready and willing to perform the contract?
- (iii) To what relief, the parties are entitled?

10. On the side of the plaintiff, the plaintiff and two other witnesses have been examined as PWs.1 to 3 and Exs.A1 to A4 were marked. On the side of the defendants, the defendants have been examined as Dws.1 and DW2 and no exhibits were marked.

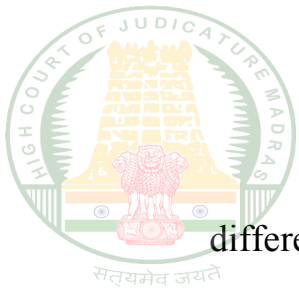
11. Based on evidence and the documents, the trial Court has decreed the suit. Challenging the same, the present Appeal came to be filed.



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WEB COPY 12. The learned counsel for the appellant/1st defendant would mainly submit that even though the General Power of Attorney was executed by the 1st defendant in favour of the 2nd defendant, the entire transaction that had taken place between the 2nd defendant and the plaintiff pertains only to a loan transaction and the 1st defendant never intended to sell the suit property. And it is a very clear case of loan transaction which can be probabilized by the very conduct of the parties. Therefore, merely because the registered document has been proved, it cannot be said that the plaintiff is automatically entitled to specific performance.

13. The learned counsel further submitted that the plaintiff has clearly admitted in his evidence that on the date of agreement itself, he was ready to pay the cash of Rs.11 lakhs and when such being the position, there was no need to extend the time by 18 months for getting the sale deed executed. That apart, to the General Power of Attorney, the plaintiff stood as one of the attesting witnesses. If really, the Power of Attorney was executed for the sale of the suit property, the plaintiff having been present at the Sub Registrar's Office with the money, there was no need whatsoever for a



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different transaction. He could have purchased the property for himself on the same day itself. These facts create a serious doubt to probabilise the loan transaction, further, it would prove the stand of the second defendant that the property has been purchased by the first defendant under Ex.A2 on 04.01.2013, wherein, he put up construction and it is highly improbable to contend that there was sale agreement to sell the constructed house for a sum of Rs.11 lakhs.

14. The learned Senior counsel for the first respondent/plaintiff would submit that the plea of loan transaction is taken in the defence by the 1st defendant, but it has not been established whereas, the 1st defendant himself admitted about the execution of the sale agreement Ex.A4. The sale agreement is in favour of the plaintiff, which was executed by the second defendant as Power Agent of the first defendant. That apart, the reason for cancellation of General Power of Attorney under Ex.A6 Cancellation deed, itself shows that the second defendant has not paid the advance amount as per the agreement. Therefore, the Power of Attorney has been cancelled. Here Ex.A8, the legal notice sent with regard to the cancellation agreement has not been disputed. When the document has been clearly established and



the plaintiff is ready and willing to pay the remaining balance sale consideration and the other document, particularly, the Bank pass book would establish that the plaintiff had deposited the amount and thereby, it is clearly proved that plaintiff was ready and willing to pay the balance sale consideration and merely because long period has been agreed in the agreement to pay the remaining sale consideration, it does not mean that the agreement is not intended for sale. It is the contention of the plaintiff that since a tenant was in the suit premises, such a long period for execution of the sale deed was agreed in the sale agreement.

15. In the light of the above submissions, now the following points arises for consideration, viz.,

- i) Whether the sale agreement Ex.A4 dated 13.08.2014, is not intended for the sale of the suit property, but executed towards a loan transaction between the 1st and 2nd defendants?
- ii) Whether the plaintiff is ready and willing to perform his part of contract?
- iii) To what are the other reliefs, the parties are



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entitled to?

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16. It is the specific case of the plaintiff that the first defendant has executed the General Power of Attorney deed Ex.A3 dated 17.07.2014 in favour of the second defendant only for the sale of the suit property. Pursuant to the said Power of Attorney, the sale agreement was executed in favour of the plaintiff on 13.08.2014, which is marked as Ex.A4. The factum of execution of General Power of Attorney on 17.07.2014 by the first defendant in favour of the second defendant is not disputed. Once the execution of the document is not disputed, now the first defendant cannot take a different stand now. The first defendant vehemently contended that the Ex.A3 General Power of Attorney deed is not intended for sale of the property. It is relevant to note that in Ex.A6, the cancellation of General Power of Attorney, the first defendant has mentioned the reason for cancellation of the General Power of Attorney, that since the second defendant has not paid any advance amount received by him under the sale agreement Ex.A4. The very recital under Ex.A6 makes it clear that the contention of the first defendant that the General Power of Attorney is not intended for sale of the property is an unacceptable one.



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WEB COPY 17. Further, in the cross examination, the first defendant has admitted that he was also aware of the sale agreement executed in favour of the plaintiff by the 2nd defendant. Therefore, once the party himself is aware of the nature of the document executed, the vague defence taken by the first defendant that there was money transaction, cannot be countenanced. Of course, the party may show that the document is intended for different purpose other than the document so executed, however, having taken a plea that there was a loan transaction between the 1st defendant and 2nd defendant and he never executed any such document for sale of property, later, admitting the nature of the very contract in the subsequent document viz., Ex.A6, the plea of loan transaction pleaded by the 1st defendant, would be nothing but falsity.

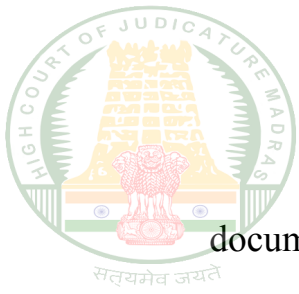
18. Yet another contention of the 1st defendant that the plaintiff having admitted having possessed Rs.15 lakhs on the date of the sale agreement, there was no necessity for him to fix the time limit of 18 months is concerned, it is relevant to note that the plaintiff has clearly stated in his evidence that 18 months period was agreed since the property was under the



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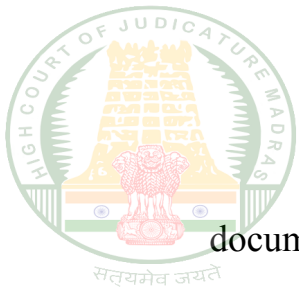
possession of a third party as a tenant and only for the purpose of evicting the tenant, 18 months time has been granted and the 1st defendant has also admitted in his evidence that he was residing at different address at the relevant point of time. This fact would clearly probabalise the case of the plaintiff that some third party is residing in the suit property at the relevant point of time and to evict him, 18 months time has been agreed to by the parties.

19. Yet another contention raised on behalf of the 1st defendant that for the execution of the General Power of Attorney, the plaintiff himself stood as one of the attesting witnesses and therefore, the very agreement is not valid, is concerned, when the party who executed the document, is admitting the execution, merely because one of the attesting witnesses to the said document, has become a party to the contract in the second document, that cannot be put against the party to contend that the document is not intended for the purpose for which it was executed i.e. for sale of the suit property, but for other purpose, i.e. for a loan transaction. On a careful perusal of the evidence of PW1, it reveals that he has admitted that while executing the General Power of Attorney, he has also understood all the contents of the



document. These facts would clearly indicate that the original document

Ex.A1 was intended only for sale of the suit property and this fact has also been indicated in the General Power of Attorney itself. As a result, the agreement for sale came to be executed later and in his entire evidence, the 1st defendant also admitted that he is aware of the execution of Ex.A4 sale agreement. That apart, in his own document viz., Ex.A6 cancellation deed, the 1st defendant has asserted that his Power of Attorney holder has not paid the advance amount received, hence, he cancelled the Power of Attorney. All these facts would clearly go to show that the plea of loan transaction taken by the 1st defendant has not been established. Further, it is to be noted that the plaintiff in his pleadings also stated that he is always ready and willing to perform his part of contract, whereas the first defendant has cancelled the Power of Attorney intentionally. The plaintiff has sent a notice requesting the first defendant to be present at the Sub-Registrar Office. However, that notice alone was returned for the reasons best known to the 1st defendant. Further, the evidence of PW1 that he was always ready and willing to perform his part of the contract was not even denied in the entire cross examination by the 1st defendant. He has averred in his evidence that he met the first defendant at many times and requested him to execute the



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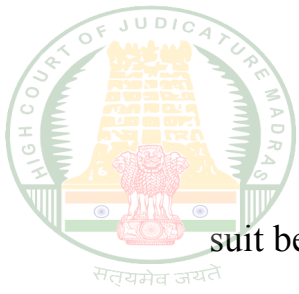
document. He is also having ready cash. However, the said evidence has not been rebutted in the cross examination. Therefore, merely because the substantial portion of the amount has been paid from the date of the agreement and the time is fixed for 18 months to pay the balance sale consideration of Rs.2 lakhs, it cannot be said that the document is not intended for sale, particularly, when the 1st defendant himself has admitted in his evidence that he has let out the subject property to the third party. The plaintiff has also clearly stated in his evidence that since the third party was in occupation of the subject property, 18 months time has been granted. These facts also cannot be ignored for having executed the document Ex.A1 and having taken a plea of loan transaction which has not been established and the plaintiff has also paid that substantial sale consideration and his evidence with regard to the ready and willingness is also not disputed. Therefore, the plaintiff is certainly entitled for the relief of specific performance and it has been clearly established that the plaintiff was able to pay the balance sale consideration. Exs.40 to 43 Original Pass Passbooks of the plaintiff have been filed to show that the plaintiff had sufficient amount to pay the balance sale consideration.



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20. Considering the above, this Court is of the view that the plaintiff has established that he is ready and willing to perform his part of contract having sufficient amount with him and the 2nd defendant has also admitted as regards receiving of Rs.9 lakhs towards sale consideration from the plaintiff. In such view of the matter, the plaintiff is certainly entitled to the relief of specific performance. Though, it is the contention of the learned counsel for the 1st defendant that the suit property would fetch more value and therefore, the agreement would not have been executed for such a minimum value, generally, there is always escalation in the value of the landed property at a later point of time.

21. However, the learned Senior counsel for the plaintiff would fairly submit that his client is now ready to pay a sum of Rs.3 lakhs extra. This Court is of the view that considering the nature of the house property measuring 900 sq.feet along with a vacant land of 1800 sq.feet, in the interest of justice, this Court feels it is appropriate to direct the plaintiff to pay the additional sum of Rs.10 lakhs to the 1st defendant within a period of three months. Accordingly, the plaintiff is directed to deposit another sum of Rs.10 lakhs inclusive of balance sale consideration, to the credit of the



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suit before trial Court within a period of three months.

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22. In the light of the above discussion, the points are answered in favour of the plaintiff. Subject to the above observation and direction, the the judgment and decree of the trial Court are confirmed and the Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.02.2025

Index : Yes/No
Speaking order: Yes/No
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To
The learned II Additional District and Sessions Judge
at Tiruppur.

N.SATHISH KUMAR, J



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