



A.S.Nos.375 and 376 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2024

PRONOUNCED ON : 08.04.2025

CORAM

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE R. KALAIMATHI**

A.S.Nos.375 and 376 of 2024
and
C.M.P.Nos.11329, 11330 and 11332 of 2024
and
C.M.P.Nos.11336, 11338 and 11340 of 2024

K.Vijayalakshmi

... Appellant/Plaintiff
in both A.S

-Vs-

G.Maluram Misser(Deceased)

1.Madhu Devi
2.M.Vinod Kumar
3.M.Inder Kumar
4.M.Om Prakash
5.Smt.Padma Sharma
6.Smt.Kusum Sharma
7.M.Bharath Kumar
8.M.Pramod Kumar

...Respondents/Defendants
in both A.S

PRAYER in A.S.No.375 of 2024: This Civil Miscellaneous Appeal is filed



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under Section 96 of the Code of Civil Procedure, 1908, to call for the records in judgment and decree dated 30.11.2023 passed in O.S.No.2190 of 2020 by the XXIII Additional City Civil Court at Chennai and set aside the judgment and decree in O.S.No.2190 of 2020.

PRAYER in A.S.No.376 of 2024: This Civil Miscellaneous Appeal is filed under Section 96 of the Code of Civil Procedure, 1908, to call for the records in judgment and decree of counter claim dated 30.11.2023 passed in O.S.No.2190 of 2020 by the XXIII Additional City Civil Court at Chennai and set aside the counter claim in O.S.No.2190 of 2020.

For Appellant : Mr.N.Baaskaran
in both AS
For R2 to R6 & R8 : Mr.Ramesh Kumar Chopra
in both AS
For R1 and R7
in both AS : Batta Due

COMMON JUDGMENT

(Judgment of the Court was made by Mrs.R.KALAIMATHI)

A.S.No.375 of 2024: The sole plaintiff herein has preferred the appeal against the judgment and decree dated 30.11.2023 passed in O.S.No.2190 of 2020 on the file of the XXIII Additional City Civil Court,



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Chennai.

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2. A.S.No.376 of 2024: The plaintiff has filed another appeal as against the judgment passed in the counter claim made by the defendants:-

(i) In view of the counter claim filed by the defendants, the plaintiff is directed to hand over the possession of the suit property to the plaintiff within two months from the date of the decree.

(ii) It is declared that registered sale agreement No. 1077 of 2009 dated 28.10.2009 on the file of the Sub-Registrar, Sowcarpet is null and void.

3. Parties are indicated as per their litigative status and ranking before the Trial Court.

4. According to the plaintiff, the second defendant represented herself that she is the power of attorney of Maluram Misser, the first defendant herein and he is the absolute owner of the house and the land



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situated at new Door No.8, Old No.15, Vaikunta Vathiyar Street, Sowcarpet, Chennai-600079, land measuring about 1308 Sq.ft. with the house built up thereon. On enquiry, the plaintiff came to know that the second defendant is the wife of the first defendant and she is a duly appointed power agent of the first defendant. The second defendant has got authorisation to deal with the property including the alienation of the suit property. The second defendant approached the plaintiff and offered to sell the property for a sale consideration of Rs.30 lakhs. Accepting the same, on 28.10.2009 the plaintiff entered into a registered agreement for sale with the second defendant as the power agent of the owner of the suit property for a sale consideration of Rs.30 lakhs. On the date of said agreement, the plaintiff paid a sum of Rs.5 lakhs as an advance for sale consideration and the second defendant has acknowledged the receipt of the same in the sale agreement. The plaintiff has agreed to pay the balance amount on installment basis. The second defendant received the following amounts on various dates and issued receipts dated 30.10.2009 for Rs.10 lakhs and for a further sum of Rs.10 lakhs in November 2009 and paid Rs.5 lakhs to the second defendant and the same was acknowledged on 28.01.2010. The



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plaintiff paid the entire sale consideration amount of Rs.30 lakhs to the second defendant within 3 months. As per the agreement of sale dated 28.10.2009, it was agreed upon that the plaintiff must vacate the tenants from the suit property.

5. Thereafter, the defendants requested some time for execution of sale deed in favour of the plaintiff under the pretext that they had to go to their native village and promised to execute the sale deed. But the plaintiff did not heed to the request of the defendants and asked them to execute the sale deed immediately. The plaintiff in order to safeguard her position sought for possession of the property. The defendants readily agreed and handed over the possession to the plaintiff. The second defendant had issued a letter dated 28.01.2010 to the plaintiff confirming the handing over the possession of property to the plaintiff. The plaintiff took steps and vacated some tenants from the suit property by paying compensation to the tenants. The plaintiff repeatedly requested the defendants to execute the sale deed in her favour. But the defendants failed and neglected to do so. The plaintiff is in peaceful possession and enjoyment of the suit property.



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6. It is further averred that the plaintiff reliably understands that the first defendant had hidden the second defendant somewhere and informing the plaintiff that the second defendant is missing. But the plaintiff insisted the first defendant to execute the sale deed in her favour. The plaintiff further states that in the meanwhile, the first defendant and his son along with his henchmen tried to trespass into the suit property and to dispossess the plaintiff from the suit property. The plaintiff with great difficulty prevented them from trespassing into the suit property. Immediately, she lodged a complaint before the Inspector of Police, C2 Elephant Gate Police Station and C.S.R number was given in C.S.R.No.49 of 2010 dated 25.07.2010. Upon the advice of the police, the plaintiff, left with no option, filed a suit in O.S.No.2190 of 2020 for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property except under due process of law and not to alienate the suit property to any third parties in O.S.No.7288 of 2010 on the file of the VIIIth Assistant City Civil Court, Chennai. She has also obtained permission under Order II Rule 2 of C.P.C., for filing a suit for specific performance and the order was granted



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in her favour.

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7. Further, on 26.07.2010, the plaintiff sent a legal notice through telegram to the defendants calling upon them to execute the sale deed in her favour. The defendants have given a reply on 27.07.2010 that the plaintiff has forged the sale agreement dated 28.07.2009 in respect of the suit schedule mentioned property.

8. On behalf of the first defendant, written statement/counter claim were filed and the details are given hereunder. The first defendant is the absolute owner of the suit property. Apart from denying the allegations made in the plaint, the first defendant submits that he had rented out the suit property to various tenants and he has been collecting the rents. Since the month of May 2010, the tenants are being threatened by the plaintiff from paying the rents to him. The first defendant did not execute any power of attorney deed in favour of his wife/the second defendant herein. The allegation of the plaintiff is that the first defendant had executed a registered deed of power of attorney dated 11.02.2009, in favour of his wife



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Madhu Devi, the second defendant herein. On the basis of the said power of attorney, the second defendant had entered into a registered sale agreement dated 28.10.2009. The alleged power of attorney deed is a forged one. The first defendant did not appear before the Sub-Registrar, Sowcarpet on 11.02.2009. The signature and thumb impression found in the alleged power of attorney deed would clearly prove beyond doubt that the first defendant did not execute the alleged power of attorney deed.

9. It has been further averred by the first defendant that any dealings made by the second defendant based on the alleged power of attorney deed is not valid and binding on the first defendant. It is the further defence of the first defendant that the second defendant had gone on pilgrimage to Haridhwar in the month of February 2010 and thereafter, she was not heard of at all. He gave a police complaint in the month of April 2010 before C2 Elephant Gate Police Station, Chennai, and a case was registered in Crime No.244 of 2010. She is not under the custody and control of the first defendant. Thereafter, the first defendant realized that the original title documents of the suit property were missing from his house. Thereafter,



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from the encumbrance certificate, he found out that the plaintiff has forged the sale agreement registered in her name. When the plaintiff approached the first defendant to purchase the suit property from him and he refused to sell the suit property to her. She had manipulated the documents and filed the present suit. The suit property is not in possession of the plaintiff. The payments said to have been made by the plaintiffs are denied by the first defendant. The first defendant is not a party to any of the suit documents and is not bound by the acts of the second defendant. The power of attorney deed is a forged one. The plaintiff herself being the trespasser has no right to let out any portion of the suit property to any third party.

10. The first defendant prayed to allow the counter claim; namely, to declare the Agreement dated 28.10.2009 registered as Document No.1077/2009 is sham and nominal, null and void; and to direct the plaintiff to deliver vacant possession of the suit property to the first defendant; and to order to pay a sum of Rs.10,000/- per month towards damages for the use and occupation from the date of counter claim till handing over possession and for costs.



11.The following issues were framed by the trial Court:-

(i)Whether the contention of the 1st defendant that he has not executed the registered power of attorney No.67/2009, dated 11.02.2009 in favour of the 2nd defendant is sustainable and true?

(ii)Whether the contention of the plaintiff that she has paid the entire sale consideration to the 2nd defendant is sustainable and true?

(iii)Whether the registered sale agreement No.1077/2009 dated 28.10.2009 allegedly entered into between the plaintiff and the second defendant is true and valid and binding upon the first defendant?

(iv)Whether the plaintiff has been ready and willing to perform her part of contract as claimed by her?

(v)Whether the first defendant is entitled for counter claim of recovery of possession of the suit property?

(vi)Whether the first defendant is entitled for damages from the plaintiff as prayed for?

(vii)To what relief if any, the plaintiff is entitled to?



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12. At trial, on the plaintiff's side, the plaintiff's husband has been examined as P.W.1 and 10 documents were marked. Copy of Power of Attorney Deed in Doc.No.67/2009 executed by the first defendant in favour of his wife/the second defendant dated 11.02.2009, is Ex.P1. Certified copy of power of attorney deed Doc.No.525/2009 dated 28.10.2009 executed by the plaintiff in favour of her husband Tr. Kannan is Ex.P.2. Registered agreement for sale dated 28.10.2009 executed by the second defendant in favour of the plaintiff is Ex.P.3. Ex.P.4 and Ex.P.5 are the certified copies of receipts issued by the second defendant in favour of plaintiff. On the defendants' side, three witnesses were examined and 17 documents have been marked.

13. Upon consideration of Oral and documentary evidence and after hearing the arguments advanced by both sides, the Trial Court held that the power of attorney deed- Ex.P.1 is a forged one and invalid document; the sale agreement is a valid and genuine document, but not enforceable for granting relief of specific performance. As the plaintiff has paid the



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entire sale consideration of Rs.30 lakhs to the first defendant, she is entitled to recover the said amount in the manner known to law. As regards the Counter Claim, the defendants No.2 to 9 being the legal heirs of the deceased first defendant, they are entitled to recover the possession of the suit property from the plaintiff and it was declared that registered sale agreement No.1077/2009 dated 28.10.2009 on the file of the Sub-Registrar, Sowcarpet as null and void.

14. The learned counsel for the appellant/plaintiff would strenuously argue that for missing of the second defendant, a complaint was lodged only in the month of April 2010 after a period of two months. He would further contend that the first respondent has stated in his complaint that the second respondent went missing, after she had informed the first respondent by phone that she had returned to Chennai by train. But in his written statement, the first respondent has stated that the second defendant/second respondent had gone on Pilgrimage to Haridhwar in the month of February 2010 and thereafter she was not heard off at all. The trial Court has incorrectly held that there is no illegality on the part of the



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respondents, despite not bringing the Finger Print Expert as a witness to enable the appellant to cross-examine him. It was incorrectly decided that the power of attorney deed is a forged document. The trial Court has arrived at an erroneous conclusion that the first defendant had not executed the power of attorney deed in favour of the second defendant, based on the evidence of D.W.1(first defendant) to the effect that he did not appear before the Sub-Registrar office Sowcarpet, Chennai.

15. The learned counsel for the appellant would further argue that if the document is a registered document, the presumption is that it is validly executed. Onus of proof lies on the person, who claims that the particular document is a forged one and he has to lead the evidence in order to rebut the same. It is his further argument that because of the presumption, burden lies on the defendants to prove that the power of attorney deed is a forged document and the first respondent did not prove the same by examining any witnesses connected to the power of attorney deed. The appellant had paid the entire sale consideration to the second respondent and second defendant had issued receipts, would go to show that the plaintiff did not forge any document or de-fraud the respondent. It is his



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further contention that the petition for cancellation of power of attorney was filed only by a third person Santhoshkumar, who is not a party to the power of attorney deed and the District Registrar(Admin), North Chennai, had wrongfully cancelled the registration of the document. No notice was issued to the plaintiff in this regard. The order passed by the District Registrar (Admin), North Chennai (first defendant), is *non est* in law.

16. The learned counsel would further contend that as per the terms and conditions of the sale agreement, the plaintiff issued a telegraphic notice dated 26.07.2010, in which, she had expressed her willingness to perform her part of contract and called upon the first and second respondents to execute the sale deed and 180 days was fixed for the performance of the agreement. The respondents as per their counter claim, towards the claim of damages of Rs.10,000/- per month for use and occupation of the suit property and in this regard, no evidence was adduced. After the entire payment was made by the plaintiff, the possession of the suit property was handed over to the plaintiff by the respondents. As per the letter dated 28.01.2010 given by the second



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respondent, the appellant moved heaven and earth to evict the tenants from the suit property and the plaintiff is in lawful possession of the suit property. Therefore, the respondent's contention that the appellant has usurped the suit property with the help of mercenary forces at her command is incorrect and prayed to allow the appeal.

17. To buttress his argument, the following judgments were referred to:-

(i)**Musheer Khan alias Badshah Khan and another Vs-State of Madhya Pradesh**, reported in AIR 2010 SC 762.

(ii)**Parappa and Others-Vs-Bhimappa and Another**, reported in 2008 SCC Online Kar 66.

(iii)**Prem Singh and Others-Vs-Birbal and Others**, reported in (2006) 5 Supreme Court Cases 353.

18. Per contra, the learned counsel for the respondents 2 to 6 and



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8/defendants 3 to 7 and 8 would *inter alia* contend that Ex.P.1- power of attorney deed is a forged document and the first defendant did not appear before the Office of the Sub-Registrar, Sowcarpet at all and no details were elicited through cross-examination of D.W.1 to prove that Ex.P.1 is a genuine document. That apart, Ex.P.1 was sent to the Government Forensic Department and a report viz., Ex.D.17, is marked to prove the fact that the disputed left thumb impression marked as Ex.D.1 and Ex.D.2 are not identical with the admitted thumb impression marked as Ex.P.1 and Ex.P.2 of G.Maluram Misser/D1). In view of the findings of the Handwriting Expert connected with Ex.D.17, it is proved that Ex.P.1 is a forged and fabricated document. As Ex.P.1 is not a valid document, the plaintiff cannot sought for any relief on the basis of Ex.P1 and Ex.P.3. He would further contend that as the burden to prove Ex.P.1 and Ex.P.3 are genuine documents, rests upon the plaintiff, but the plaintiff has miserably failed to prove the same.

19. It is his further contention that Ex.D5 is a receipt alleged to have been executed by one Mohanlal Sharma in favour of first defendant in and



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by which, a mortgage deed was executed by the first defendant is said to have been cancelled after receipt of an amount of Rs.15,000/- in respect of the suit schedule property. It is his further argument that the receipts viz., Ex.P4 and Ex.P5 on the face of it, are not genuine documents. Under these receipts, the payment as to the sale consideration have been shown as if the payment is made in cash which cannot be accepted legally. The second respondent was missing and the said fact was spoken about by D.W.1 and through Ex.D.9 to Ex.D.13. In order to grab the property, the plaintiff through her husband has filed vexatious suit and prayed for dismissal of the appeal.

20. The following points arise for consideration:-

(i)Whether the trial Court was incorrect in not granting the relief of specific performance as prayed for in the plaint though the plaintiff has paid the entire sale consideration within three months from the date of sale agreement?

(ii)Whether the trial Court was incorrect in



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granting the relief of recovery of possession of the suit property in favour of first defendant when the plaintiff has completed her part of the contract as Vendee?

(iii) Whether the appeal is to be allowed or not?

21. In the suit for Specific Performance, the basic principle of law is that in order to succeed and to enable the plaintiffs to get entitled to the relief of Specific Performance of contract, plaintiff must aver or prove that he is continuously ready and willing to perform his part of the contract, since the date of agreement till the date of hearing of the suit. Therefore, the burden lies on the plaintiffs to prove the fact. It is also interesting to note that it is really the evidence that has to be appreciated and it may be oral, documentary or circumstantial and which may also be the evidence coming out of the conduct of both the parties which have to be looked into.

22. P.W.1-Kannan, who is the Power Agent/husband of the plaintiff, has filed his proof affidavit in line with the details of plaint. During cross-examination of P.W.1, he would state that apart from the payment of part of



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sale consideration of Rs.5 lakhs at the time of execution of Ex.P.3 (sale agreement), the second defendant has acknowledged the receipt of the said amount by making an endorsement in the sale agreement. It is his further evidence that the second defendant received a sum of Rs.10 lakhs on 30.10.2009 and issued Receipt Ex.P.4. In November 2009, the second defendant received further sum of Rs.10 lakhs and issued Ex.A.5-Receipt. It is his further evidence that the plaintiff has paid a sum of Rs.5 lakhs on 28.01.2010 and the second defendant has acknowledged the same by issuing a letter dated 28.01.2010. When a suggestion was posed to him (P.W.1) that the power of attorney deed/Ex.A.1 has been cancelled, he has answered in negative.

23. It is the evidence of D.W.1 (first defendant/Maluram Misser) that he is the absolute owner of the suit property and he has denied the execution of Ex.P.1-General Power of Attorney, alleged to have been executed by him in favour of his wife and also Ex.P.3-agreement for sale said to have been executed by his Power agent/second defendant in favour of the plaintiff. He would further state that he has rented out the suit



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property to the tenants and in the month of May 2010, the tenants were being threatened by the plaintiff. He would state that Ex.P.1 is a forged document. It is his further evidence that his wife/second defendant, who went on pilgrimage to Haridhwar in the month of February 2010 was subsequently absconding. When a suggestion was posed to him that it is the story put-forth by the first defendant in order to succeed in the legal claim, he has answered in negative. He would also further state that after the incident of missing of his wife, his original title documents pertaining to the suit property were found missing from his house and only from going through the details of encumbrance certificate, he came to know that the plaintiff has created a registered agreement in his wife's name. He would also deny the fact that the receipt of Rs.5 lakhs on the date of Ex.P.1 and an amount of Rs.10 lakhs on 30.10.2009 and in November 2009, a sum of Rs.10,00,000/- and Rs.5 lakhs on the date of Ex.P.6, by the second defendant, who is none other than his wife. He would also state that he is not a party to the documents Ex.P.4 to Ex.P.6 and he is not bound by the acts of the second defendant, who has no authority to act on his behalf. Based on the forged document, the plaintiff is not entitled for the relief of



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specific performance.

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24. During his cross-examination, he would state that the plaintiff is not in possession of the suit property. When he was posed a question to the effect that he has made a counter claim to direct the plaintiff to deliver vacant possession of the suit property to the first defendant, he has answered that the plaintiff got the possession unlawfully. It is his further evidence that it is his wife/second defendant entered into an agreement for sale on 28.10.2009 with the plaintiff without his knowledge and consent. It is his evidence about the sale agreement-Ex.P.3, he came to know about the same through a broker and he enquired from the husband of the plaintiff.

25. It is pertinent to note that he did not take any steps as regards the agreement for sale/Ex.P.3 and he did not lodge any police complaint about the power of attorney deed - Ex.P.1 or to the Sub Registrar. When a suggestion was posed to him that it is not to correct that his wife is absconding and only for the purpose of protracting this case, was



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answered in negative.

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26. D.W.2 - Devdatt, S/o. Late Mohanlal Sharma, of Periyapalayam, Thiruvallur District, was examined as D.W.2, in order to explain the fact that Ex.D.5 receipts dated 30.01.2009 was not executed by his father Mohanlal Sharma, for the reason that his father died on 14.02.2003 itself and therefore, his father had no chance to appear before the Sub-Registrar Office on 30.09.2009 for executing Ex.D.5, for the mortgage entered between the first defendant Maluram Misser and his father Mohanlal Sharma (Ex.D.8 Encumbrance Certificate dated 24.04.2010).

27. Fourth defendant, who is the son of the first and second defendants herein has been examined as D.W.3. D.W.3 has traced out origin of title in respect of the suit property and specifically how the suit property came to the hands of his father through Court auction held in E.P.No.797 of 1973 before the 10th Assistant City Civil Court, Chennai. He has spoken about the connected litigation pending before the Civil Court in Chennai, in respect of the suit property which are totally not relevant to the



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present issue.

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28. Furthermore, D.W.3 has denied the execution of Ex.P.1, Ex.P.3 to Ex.P.5 by the first and second defendants viz., his father and mother. The plaintiff has forcibly taken possession of the suit property based on the forged agreement for sale (EX.P.3). During his cross-examination D.W.3, would reiterate the fact that Ex.P.1- deed is forged by the plaintiff.

29. It appears that the second defendant went for pilgrimage to Haridhwar along with her daughter-in-law Sweety and grandchildren. After three months, only on 05.05.2010, FIR was registered in respect of absconding of the second defendant, would go to show that it was only for the purpose of this case, such a belated complaint was lodged.

30. The registered power of attorney deed, dated 11.02.2009 executed by Maluram Misser (First defendant) in favour of his wife Madhu Devi (second defendant) in respect of the suit property is Ex.P.1.



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31. The plaintiff herein has filed the suit for the relief of specific performance of agreement dated 28.10.2009 entered between the plaintiff and the second respondent (general power of attorney of the first defendant) in respect of the suit property, and to execute the sale deed in favour of the plaintiff by the Court itself if the defendants failed to execute the sale deed.

32. The suit property is a building and plot, situated as given hereunder: New Door No.8, Old Door No.15, Vaikunta Vathiyar Street, Sowcarpet, Chennai-600 079, land measuring about 1308 sq.ft., along with a pan tile roof in ground floor measuring 600sq.ft., land comprised in R.S.No.7936, land situated at Muthiyalpet Village, (VOC Nagar Division), Fort – Tondiarpet Taluk, Chennai District, and land being bounded on the

North by	:	R.S.No.1746
South by	:	R.S.No.7935 and Ramanan Road,
East By	:	R.S.No.7947
West By	:	R.S.No.7937



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33. Ex.P.2 dated 28.10.2009 is the Certified Copy of General Power of Attorney deed executed by the plaintiff in favour of her husband M.Kannan. Ex.P.3 is the registered sale of agreement dated 28.10.2009 executed by the second defendant Madhu Devi as a power of attorney of the first defendant in favour of the plaintiff herein in respect of the suit property. Ex.P.4 is the certified copy of the receipt issued by the power of attorney Madhu Devi in favour of the plaintiff in respect of the receipt of Rs.10 lakhs towards part payment of the registered agreement of sale (Ex.P.3) dated 30.10.2009.

34. Ex.P.5 is the another receipt issued by the second defendant to the plaintiff during the month of November 2009. Ex.P.6 is the certified copy of stamped receipt issued by the power of attorney Madhu Devi (second defendant) in favour of the plaintiff dated 28.10.2009 to the effect that she received a sum of Rs.5 lakhs towards sale consideration. The said receipt also reiterates that she has received the entire sale consideration of Rs.30 lakhs as per Ex.P.3/Agreement dated 28.10.2009. It has also been mentioned that she had handed over the possession of the property to the



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plaintiff herein. Ex.P.8 is the telegraphic notice dated 26.07.2010 issued by the plaintiff to the first and second defendants. Ex.P.9 is the telegraphic reply notice issued by the defendants to the plaintiff's counsel dated 27.07.2010.

35. Ex.D.6 is the general power of attorney deed, dated 11.02.2009 executed by Maluram Misser (First defendant) in favour of his wife Madhu Devi (second defendant) in respect of the suit property. Ex.D.7 is the registered sale agreement dated 28.10.2009 executed by the second defendant Madhu Devi as a power of attorney of the first defendant in favour of the plaintiff herein in respect of the suit property. Ex.D.8 is the Encumbrance Certificate dated 24.04.2010 in respect of the suit property. Ex.D.14 is the telegraphic notice dated 26.07.2010 issued by the plaintiff to the first and second defendants. Ex.D.17 is the Report of Finger Print Expert dated 06.01.2016.

36. It is relevant to extract Section 114 of the Evidence Act, which is given hereunder:



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“The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

As per Section 114 of the Evidence Act, if the document is a registered document, it carries with it a presumption that it was validly executed and presumption also arises that the person having read the document properly and after understanding the contents and then only he had affixed his signature therein. As Ex.P.1 is the registered document there is a presumption that it is executed on the date mentioned on it as the date of execution.

37. As per Section 101 of the Evidence Act, one who pleads has to prove. The person whose interest it is to prove, he should adduce evidence to that effect. But, it has been pleaded by the first defendant that Ex.P.1 is a fraudulent deed. But, he did not take any steps towards proving the same. That apart, an application was taken out by the first defendant to



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send Ex.P.1 for obtaining finger print expert opinion and the expert opinion was received by the trial Court and it is marked as Ex.D.17.

38. As the execution of Ex.P.1, Power of Attorney Deed, by the first defendant is stoutly denied, presumption under Section 114 of the Act, comes into play. The presumption was not rebutted suitably in the manner known to law. More so, in such circumstances, it becomes the duty of the Court to compare the signature and to come to it's own conclusion. Then the Court has to take recourse under Section 73 of the Indian Evidence Act. Ex.P.1 is executed and registered on the same date viz., 11.02.2002. On the reverse of the first page of Ex.P.1, passport size photo of the first defendant is affixed and seal of sub Registrar Office, Sowcarpet is affixed also on the said photo. The first defendant has filed his written statement on 28.07.2011 before the trial Court. This Court compared the admitted signature found in the written statement of the first defendant with that of the disputed signature found in Ex.P.1 with bare eyes, the signatures found in the disputed document viz., Ex.P.1 tally with the signatures found in the written statement of first defendant. Therefore, the stand of the first defendant to the effect that Ex.P.1- General power of attorney deed is a



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rank forged one falls on the ground in toto and a strong presumption has arisen against him to the effect that he had appeared before the Sub-Registrar Office of Sowcarpet on 11.02.2002 and Ex.P.1 has been registered in Document No.67 of 2009 dated 11.02.2009. As regards Ex.P.3-sale agreement, the first defendant has taken a stand that as Ex.P.1-power of attorney deed is a forged one based on that, the second defendant entered into a registered sale agreement dated 28.01.2009 with the plaintiff, is not valid. P.W.1's has given evidence as to the execution of Ex.P.3 as he has attested in Ex.P.3.

39. The main defence of the first defendant is that he did not execute any power of attorney deed in favour of his wife Madhu Devi, second defendant herein and the power of attorney (Ex.P.1) is a rank forgery and any dealing done by the second defendant based on the alleged power of attorney are not valid and binding on the first defendant.

40. It has already been decided that when a plea of forgery is made by a party to the suit, it is for him to prove the same. But, the first defendant



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has not taken any steps towards the same and when the admitted signature of the first defendant found in Ex.P.1 was compared with his admitted signature found in his written statement, this Court has no hesitation to hold that the signature found in Ex.P.1 is that of the first defendant only. Therefore, in view of the aforesaid observations, this Court concludes that Ex.P.1 is a valid document. It is a general power of attorney deed. The power agent is given power to deal with the suit property.

41. It is not the case of the first defendant that the second defendant/ his wife has not executed Ex.P.3-agreement for sale and also Ex.P.4 to Ex.P.6. It has come on record through the evidence of P.W.1-Kannan, who is none other than the husband of the plaintiff that he is the power agent of his wife, based on the registered power of attorney executed by his wife on 28.10.2009 in Document No.525/09 on the file of the Sub-Registrar Office, Sowcarpet(Ex.P.2).

42. More so, P.W.1 would further state that the second defendant represented herself that she is the power agent of Maluram Misser/ first



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defendant, based on the power of attorney deed dated 11.02.2009 in Document No.67/09 on the file of the Sub-Registrar Office, Sowcarpet (Ex.P.1). The second defendant also represented that her husband, the first defendant is the absolute owner of the suit property. On enquiry, the first defendant also informed to the plaintiff that the second defendant is his wife and she is duly appointed as his power agent.

43. P.W.1 would further state that the second defendant approached the plaintiff to sell the suit property for a sale consideration of Rs.30,00,000/- with condition as it is,(with the tenants). The plaintiff entered into a registered agreement for sale dated 28.10.2009 (Ex.P.5) with the second defendant by making a payment of Rs.5,00,000/- towards advance sale consideration and the second defendant has acknowledged the receipt of the said amount in the sale agreement. As per the sale agreement, the second defendant received an amount of Rs.10 lakhs on 30.10.2009 and issued Ex.P.4-receipt and in November 2009 she has received another sum of Rs.10 lakhs and issued Ex.P.5-receipt on 28.01.2010. An amount of Rs.5 lakhs was paid to the second defendant on



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28.10.2010 and it was acknowledged by her by issuing a receipt Ex.P.6, as the second defendant sought for some time for execution of the sale in favour of the plaintiff. The defendants did not heed to the request of the plaintiff. The defendants were avoiding the execution of sale deed by stating one or other reasons. The plaintiff in order to safeguard her rights sought for the possession of the property and the defendants handed over the possession to the plaintiff. This is evidenced by the second defendant's letter/receipt dated 28.01.2009, confirming handing over the possession of the suit property to the plaintiff herein. At present, the plaintiff is in peaceful possession and enjoyment of the suit property.

44. In the meanwhile, the plaintiff was informed by the first defendant that the second defendant had gone on pilgrimage was found missing. But the plaintiff insisted the first defendant to execute the sale deed in her favour. Meanwhile, the first defendant tried to trespass into the suit property. With great difficulty, she prevented the first defendant and his men from trespassing into the suit property and lodged a complaint before the Elephant Gate Police Station and obtained CSR in C.S.R.No.49 of



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2010 on 25.07.2010 (Ex.P.7). The plaintiff also obtained permission under Order II Rule 2 of C.P.C., before the Civil Court, Chennai, for filing the suit. On 26.07.2010, the plaintiff sent a telegraphic legal notice (Ex.P.8) calling upon the first and second defendants to execute the sale deed in favour of the plaintiff. The defendants had sent a reply notice with untenable contents on 27.07.2010 (Ex.P.9) stating that the plaintiff has forged Ex.P.1-general power of attorney deed.

45. During the cross-examination, P.W.1 would state that he contacted the second defendant Madhu Devi regarding the purchase of the suit property and she told him that the first defendant is the owner of the property and he purchased the suit property in the Court auction and he has given power of attorney to the second defendant. When a suggestion was posed that Ex.P.1 was cancelled by the Registration Department on 25.06.2012, was answered in the negative by P.W.1.

46. The first defendant, who is examined as D.W.1 has spoken in line with his written statement filed by him. When a suggestion was posed



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to D.W.1 to the effect that the plaintiff was put in possession of the suit property in a lawful manner on the strength of the letter (Ex.P.6) given by his wife, was answered in negative. He has also denied the execution of power of attorney by him (Ex.P.1) in favour of his wife. It is pertinent to note that he has no quarrel or misunderstanding with his wife.

47. From the extensive cross-examination of D.W.1, it is deducible that he did not lodge a complaint to the effect that his wife executed Ex.P.3- sale agreement in order to cheat him. When a very pertinent question was posed to D.W.1 that he did not take any effort to cancel the power of attorney deed (Ex.P.1), the sale agreement (Ex.P.3) and receipts issued by his wife, he has answered that he has made a counter claim.

48. The relative of the first defendant one Devdatt has been examined as D.W.2. It is his evidence that the first defendant informed about the discharge of mortgage deed(Ex.P.5) dated 30.01.2009. But he would further state that his father, who is the author of Ex.P.5 died in the year 2003 itself. Maluram Misser had mortgaged the property to the father

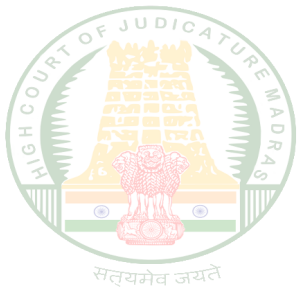


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of D.W.2. Till date the said Maluram Misser has not repaid the loan amount. When a suggestion was posed to him that there is a collusion between D.W.2 and the first defendant he has denied the same and these details are not mentioned in the written statement.

49. One of the son of Maluram Misser has examined himself as D.W.3, after having been impleaded as the legal representatives of the deceased Maluram Misser. D.W.3 would state that he did not take any steps to examine the staff of relevant Sub-Registrar Office. It is the stand of the defendants that the document pertaining to the suit property is missing and his answer with regard to the steps taken was he gave a public notice in a news paper.

50. There is no specific denial about the execution of Agreement for Sale/Ex.P.3 at all in the written statement. The general power of attorney deed Ex.P.1 is held to be a valid as per the testimony of P.W.1. More so, Ex.P.3 is a registered document, more specifically P.W.1 has attested in Ex.P.1 before the Sub-Registrar as witness.



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51. As regards the readiness and willingness on the part of the plaintiff is concerned, the time for performance is mentioned as 180 days in Ex.P.3- agreement for sale. But the total consideration of Rs.30 lakhs was paid in full on 28.10.2009 itself within three months from the date of sale agreement, would strongly indicate the fact that the plaintiff has been ready and willing to perform her part of contract. She has in fact within three months completed her part of contract. Through telegraphic notices-Ex.P.8 dated 26.07.2010 and Ex.P.9 telegraphic notice dated 27.07.2010, she has called upon the defendants to execute the sale deed. On the next date, the first defendant had sent a reply notice through his advocate to the counsel for the plaintiff denying the execution of sale agreement.

52. From a careful perusal of Ex.D.8 - Encumbrance certificate, it appears that the property was mortgaged for an amount of Rs.15,000/- by the first defendant in favour of Mohanlal Sharma and it was redeemed on 30.01.2009. It is pertinent to note that Ex.P.3- Sale agreement dated 28.10.2009 executed by Madhu Devi in the capacity of power agent in



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favour of the plaintiff and the sale consideration and the part payment details have also been mentioned in Ex.D.8 - Encumbrance Certificate. More specifically, Ex.P.1 and Ex.P.3 are the registered documents.

53. It is the contention of the first defendant that his wife/second defendant, who went on pilgrimage to Haridhwar in the month of February 2010 and thereafter she was absconding, after the date of Ex.P.6. From the cross-examination of D.W.3, it came to be known that the second defendant went to Haridhwar along with her daughter-in-law and grandchild. The fact that the complaint was lodged after a period of three months (Ex.D.9 and Ex.D.10) would go to show that these were created in order to cheat the plaintiff. D.W.2, Devdatt, who is the relative of the defendants, would state that Ex.D.5 pertains to the mortgage deed executed by the first defendant in favour of his father dated 30.01.2009, i.e., before the date of Ex.P.1-the General Power of Attorney Deed (executed by the first defendant in favour of his wife/second defendant dated 11.12.2009).



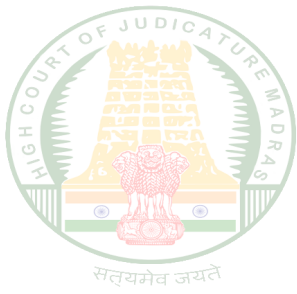
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54. On the other hand, D.W.2 would state that his father, one of the signatory to Ex.D.5 died in the year 2005 itself. These details are deducible from Ex.D.8- Encumbrance Certificate. Ex.B.5 is also registered before the Sub Registrar of Sowcarpet and the father of D.W.2 has signed in the receipt, in respect of the suit property. The defendants themselves filed the document Ex.D.5. Contrary to the same, in order to confuse the Court as well as the plaintiff, otherwise to the effect that D.W.2's father died in the year 2005 itself. Forgetting the fact that D.W.2's father has executed a deed of receipt on 30.01.2009, who appeared before the Sub-Registrar Office, Sowcarpet (Ex.D.5).

55. In view of the above said observations and discussions, we have no hesitation to conclude that the plaintiff having paid the entire sale consideration before the stipulated time has amply proved her case.

56. Having received the sale consideration in full, based on Ex.P.1 and Ex.P.3 documents (registered documents) and issued Ex.P.4 to Ex.P.6 receipts, the receipt of Rs.25 lakhs as a general power of attorney of the



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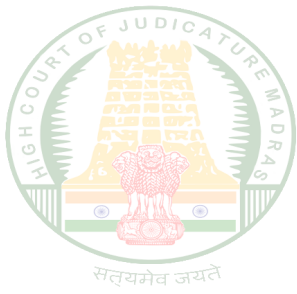
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first defendant, it should not lie in the mouth of the second respondent that Ex.P.1 is a forged one. Ex.P.1 general power of attorney deed is a valid document. Therefore, subsequent execution of Ex.P.3- agreement for sale dated 28.10.2009 executed by the second defendant and issuance of Ex.P.4 to Ex.P.6 by the second defendant are valid documents in the eye of law. Therefore, without any doubt, we conclude that the plaintiff is entitled for the relief of specific performance. As per Ex.P.6, the second defendant has also acknowledged the receipt of last Rs.5 lakhs from the plaintiff towards sale consideration and she has also acknowledged the entire sale consideration of Rs.30 lakhs, as per Ex.P.3 agreement and she would state in her receipt that she has handed over the physical possession of the suit property.

57.In the written statement/counter claim, the following reliefs are sought for:-

(a) To declare the agreement dated 28.10.2009.

Registered as Document No.in S.R.O, Sowcarpet as
sham and nominal, null and void.



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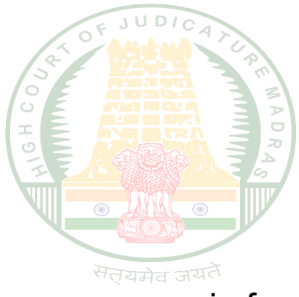


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(b) Direct the plaintiff to deliver vacant possession of the suit property to the first defendant / counter claimant.

(c) To pay a sum of Rs.10,000/- per month towards damages for use and occupation, from the date of counter claim, till handing over possession.

58. It is pellucid that on the date of Ex.P.6 viz., on 28.01.2009 the second defendant having received the entire sale consideration has handed over the possession of the property to the plaintiff herein and the possession of the suit property by the plaintiff can never be considered as illegal. Therefore, when the plaintiff has paid the entire sale consideration to the second defendant, who is the general power of attorney of the first defendant there is no question of delivering the possession of suit property to the defendants. The defendants are not entitled for damages for the use and occupation of the suit property. In view of the findings in the suit as mentioned supra, the defendants are not entitled for all the three prayers as mentioned supra. In such a view of the matter, the points are answered



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in favour of the plaintiff.

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59. In fine, the appeal in A.S.No.375 of 2024 preferred by the plaintiff Vijayalakshmi, for the relief of specific performance stands allowed. Time for execution of sale deed by directing the defendant Nos.2 to 8 to execute the sale agreement in favour of the plaintiff, three months from the date of receipt of a copy of this judgment. Failing which, on relevant petition, the trial Court shall execute the sale deed in favour of the plaintiff. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

60. In view of the aforesaid findings, the appeal in A.S.No.376 of 2024 preferred by the plaintiff stands allowed. In the result, the defendant Nos.2 to 8 are not entitled for the relief of recovery of possession of the suit property. (ii) The defendant Nos.2 to 8 are not entitled for the relief of declaration that the registered sale agreement No.1077 of 2009 dated 28.10.2009 on the file of the Sub-Registrar, Sowcarpet is null and void. There is no order as to costs. Consequently, connected miscellaneous



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petitions are closed.

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(J.N.B.J.,) (R.K.M.J.,)

08.04.2025

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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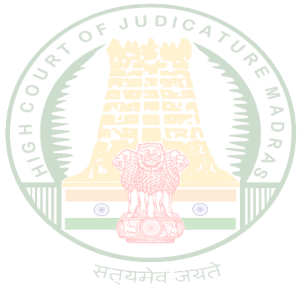
1. After pronouncing judgment, the learned counsel for the respondents made an oral application invoking Article 134A of the Constitution of India for issuance of Certificate under clause 133(1) of the Constitution of India for preferring appeal before the Supreme Court.

2. His request is considered. We are of the considered view that all the points are given due consideration and have carefully been addressed. Therefore, his oral application made in this regard is hereby declined.

(J.N.B.J.,) (R.K.M.J.,)

08.04.2025

Note: The Registry is directed to send a copy of this judgment to the Sub-Registrar, Sowcarpet, Chennai.



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A.S.Nos.375 and 376 of 2024

J.NISHA BANU,J.
and
R. KALAIMATHI,J.

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To
The XXIII Additional City Civil Court,
Chennai.

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08.04.2025