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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2025

PRONOUNCED ON : 10.10.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.No.677 of 2014
and M.P.No.1 of 2014

M.N.Sarojini Ammal (deceased)

1.M.N.Jeyaraj

2.M.N.Elangovan

3.M.N.Mani

4.A.M.Kalaivani

5.A.R.Santhanalakshmi

... Appellants

VS.

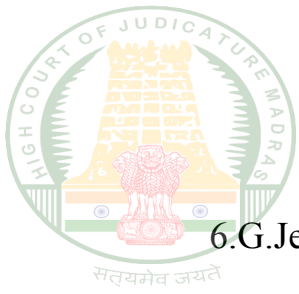
1.B.Subash Chandran

2.K.S.Balaraman

3.E.Kanagasundari

4.K.Venkatraman (Died)

5.M.Murugan



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6.G.Jeyaram Sankar

7.S.Bharathi

8.V.Sankaran

9.The Sub Registrar, Konur,
Chennai.

10.V.Vasanth

... Respondents

*(R10 brought on record as LR of the deceased 4th Respondent
viz., (K.Venkataraman) vide Court order dated 23.03.2022 made
in CMP.No.3864 of 2022 in AS.No.677 of 2014)*

PRAYER: First Appeal is filed under Section 96 and Order 41 Rule 1 of Code of Civil Procedure, 1908, to set aside the judgment and decree in O.S.No.259 of 2008 on the file of the III Additional District Court, Thiruvallur at Poonamallee, dated 11.03.2014.

For Appellants : Mr.V.Raghavachari
Senior Advocate
for M/s.V.Srimathi

For R1 to R3,
R5 to R7 and R10 : Mr.Govi Ganesan

For R9 : Mr.M.Murali
Government Advocate

For R4 : Died

For R8 : Set Exparte



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JUDGMENT

WEB COPY The defendants 2 to 5 and 8, who suffered a decree for partition and injunction have preferred this appeal to set aside the judgment and decree passed by the III Additional District Court, Thiruvallur at Poonamallee in O.S.No.259 of 2008, dated 11.03.2014.

2. The respondents 1 to 7 have filed a suit for partition against the appellants and respondents 8 and 9 seeking partition of their share of 2602 sq.ft., of land out of total extent of 7104 sq.ft., in the suit property. They have also sought for a permanent injunction restraining the appellants from constructing in the suit property. The suit was decreed as prayed for. Aggrieved by the same, the above mentioned defendants have filed this appeal. Pending appeal, the 4th respondent passed away and his wife was brought on record as 10th respondent.

3.(i) According to the respondents 1 to 7/plaintiffs, the suit property originally belongs to the appellants herein. They entered into a Joint Venture Agreement dated 28.10.2002 with the 8th respondent/6th defendant for development of the suit property. As per the Joint Venture Agreement,



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the 8th respondent/6th defendant has to build flats in the suit property and 47% of the built up area has to be given to the appellants/original owners of the site. The remaining built up area has to be given to the 8th respondent for sale. The appellants also executed a Power of Attorney in favour of 8th respondent authorising him to sell the proportionate undivided share in the suit property in favour of prospective purchasers.

3.(ii) Pursuant to the said Power Deed, the 1st respondent purchased 567 sq.ft., of suit property from the appellants represented by their Power Agent/8th respondent under a registered Sale Deed dated 31.10.2002. The 2nd respondent purchased 105 sq.ft., of suit property under a registered Sale Deed dated 26.11.2002. The 3rd respondent purchased 450 sq.ft., of suit property under a registered Sale Deed dated 16.04.2003. The 4th respondent purchased 195 sq.ft., of suit property under a registered Sale Deed dated 19.06.2003. The 5th respondent purchased 320 sq.ft., of suit property under a registered Sale Deed dated 23.06.2004. The 6th respondent purchased 562 sq.ft., of suit property under a registered Sale Deed dated 09.12.2002 and the 7th respondent purchased 403 sq.ft., of suit property under a registered Sale Deed dated 21.11.2003.



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3.(iii) It was further claimed by the respondents 1 to 7/plaintiffs that though the 8th respondent had collected major part of the construction cost from them, failed to commence the construction work. It was also claimed that the appellants colluded with 8th respondent and revoked his Power Deed. Since the respondents 1 to 7 purchased the undivided share in the suit property prior to the revocation, issued a notice on 02.05.2007 calling upon the appellants to divide the suit property and allot the portion of the extent purchased by respondents 1 to 7. Though the appellants received the notice, there was no reply by them. It was also alleged that the appellants attempted to enter into New Building Agreement with third parties and also attempted to give fresh power to a third party and hence, the present suit was filed seeking relief of partition and permanent injunction from restraining the appellants from putting up any construction in the suit property till the same is divided by metes and bounds.

4. The 8th respondent/6th defendant remained *exparte* and the suit was contested only by the appellants.



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5.(i) The 1st appellant/2nd defendant filed a written statement and the same was adopted by the defendants 1, 3 to 5. According to the appellants/defendants 2 to 5 and 8, the suit property belonged to them and 8th respondent/6th defendant had no right or share over the same. It was also alleged that the respondents 1 to 7 and 8th respondent were colluded together to grab the suit properties from the appellants. The Joint Venture Agreement between the appellants and the 8th respondent dated 28.10.2002 was admitted. The appellants denied the truth, validity and genuineness of Sale Deeds in favour of respondents 1 to 7 executed by 8th respondent. The appellants also stated that the Power of Attorney executed in favour of 8th respondent was cancelled as early as 22.06.2005 and the same was also intimated to the respondents 1 to 7 by legal notice dated 24.06.2005.

5.(ii) According to the appellants, they entered into a Joint Flat Promotion Agreement with 8th respondent on 28.10.2002, whereunder he was given 15 months time to complete the construction. The appellants received a sum of Rs.3,00,000/- only from the 8th respondent as advance. The execution of the Power Deed in favour of 8th respondent dated 31.10.2002 was admitted by the appellants. However, it was claimed that 8th



respondent failed to act in accordance with recitals of the Power Deed. It was also stated that 8th respondent had received a sum of Rs.2,00,000/- on 31.10.2002 from the appellants for the purpose of getting approval of the plot and documentation charges. It is the specific case of the appellants that the 8th respondent never started any construction as per the Joint Venture Agreement and after lapse of the time stipulated under the Agreement during June 2005, the appellants cancelled the Power Deed executed in favour of 8th respondent and intimated the same to him by notice dated 24.06.2005. It was also stated that the respondents 1 to 7 failed to peruse all the records pertaining to the suit property and the only remedy available to them was to recover the money from the 8th respondent. Thus, resisting the plea of partition, the appellants sought for dismissal of the suit.

6. Based on the pleadings of the parties, the Trial Court framed the following issues and additional issue:-

- 1) வழக்குச்சொத்தில் 2602 சதுர அடி வாதிகளுக்கு பாகப்பிரிவினையில் கிடைக்கத்தக்கதா?
- 2) வாதிகள் கோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
- 3) வாதிகளுக்கு வேறு என்ன பரிகாரம் கிடைக்கத்தக்கது?

Additional Issue:- வாதிகள் செலுத்தியுள்ள நீதிமன்ற கட்டணம் சரியானதா?



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7. On behalf of the respondents 1 to 7/plaintiffs, the 1st plaintiff was examined as PW.1 and 21 documents were marked on their side as Exs.A1 to A21. On behalf of the appellants/defendants 2 to 5 and 8, 2nd defendant was examined as DW.1 and 19 documents were marked on their side as Exs.B1 to B19.

8. On appreciation of evidence available on record, The Trial Court granted the decree for partition as well as injunction as prayed for and aggrieved by the same, the defendants 2 to 5 and 8 have come by way of this appeal.

9. The learned Senior Counsel appearing for the appellants would submit that there was a collusion between the respondents 1 to 7 and 8th respondent to grab the suit property of the appellants and hence, the Sale Deeds in favour of the respondents 1 to 7 executed by the 8th respondent were vitiated by fraud. He further submitted that consideration for the sale is development of the property and the 8th respondent having failed to develop the property, the sale of the suit property is invalid. The learned Senior Counsel further submitted that in order to prove the Sale Deeds executed in



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favour of respondents 1 to 7, only the 1st plaintiff/1st respondent had entered the box and therefore, the Sale Deeds in favour of other respondents have not been properly proved. The learned Senior Counsel further submitted that Power Deed executed by the appellants shall be read along with Clause 7 of the Construction Agreement and hence, Developer can only sell the constructed area and he is not entitled to sell the vacant site. The learned Senior Counsel further submitted that the contract between the appellants and 8th respondent was contingent on construction of building in the suit property and if that obligation is not fulfilled, the agreement between them automatically gets vitiated. It is also submitted that the respondents 1 to 7/plaintiffs failed to seek any relief for construction of the flat against 8th respondent, therefore, the collusion between them stands proved. In support of his contention, he relied on the following judgments:-

- (i) ***P.Shanthi @ Shanthi Bai and 5 others vs. D.Dhinakaran and another*** (C.S.No.652 of 2016, dated 15.10.2020).
- (ii) ***Shanti Devi (Since Deceased) through LRs. Goran vs. Jagan Devi and others*** reported in ***2025 INSC 1105***.
- (iii) ***Bhatori vs. Ram Piari*** reported in ***(1996) 11 SCC 655***.
- (iv) ***P.C.Kandasamy vs. A.Seerangasamy and another*** reported in ***2018 SCC OnLine Mad 13172***.

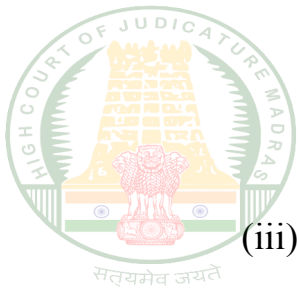


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10. The learned counsel appearing for the respondents 1 to 3, 5 to 7 and 10 (4th respondent died pending appeal and his Legal Representative was brought on record as 10th respondent) would submit that there is no allegation of collusion between the respondents 1 to 7 and 10 on the one hand and 8th respondent on the other hand in the pre-suit notice issued by the appellants and therefore, the allegation of collusion is only an after thought. The learned counsel by drawing the attention of this Court to Section 204 of Indian Contract Act, 1872, would submit that the subsequent cancellation of Power Deed by the appellants would not affect the validity of the Sale Deed in favour of respondents 1 to 7, when the power was in force. He also submitted that after cancellation of power deed by the appellants, the possibility of 8th respondent constructing the flat in the suit property became impossible and therefore, the respondents 1 to 7 refrained from seeking any relief for construction of flat in the suit property as against the 8th respondent. In support of his contention, the learned counsel relied on the following judgments:-

(i) ***V.Ravikumar vs. S.Kumar*** reported in ***2025 SCC Online SC 513***.

(ii) ***Phool Kumar vs. Shyam Singh and others*** reported in ***2023 SCC OnLine All 3074***.



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(iii) *Sant Ram Nagina Ram vs. Daya Rum Nagina Ra* reported in *AIR 1961 PUNJAB 528*.

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11. Based on the pleadings of the parties and the submission made by the learned counsel appearing for either side, the following points are arising for consideration in this appeal:-

- (i) Whether the respondents 1 to 7, 10/plaintiffs acquired good title over the 2602 sq.ft., out of 7104 sq.ft., of suit property?
- (ii) Whether the respondents 1 to 7 and 10/plaintiffs are entitled to preliminary decree for partition as prayed for?
- (iii) Whether the judgment and decree passed by the Trial Court is sustainable?

Discussion on Point No.1:-

12. It is not in dispute that the original owner of the suit property namely the appellants executed a General Power of Attorney in favour of 8th respondent. The copy of the said Power Deed is marked as Ex.A3. The

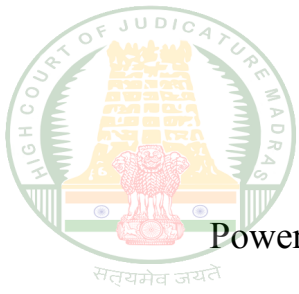


execution of Power Deed has been clearly admitted by the appellants. A

perusal of Ex.A3 would indicate that the appellants granted power to 8th respondent to sell 3281 sq.ft., out of total extent of 7104 sq.ft., available in the suit property. Clauses 1 to 5 in Ex.A3 reads as follows:-

- “1. To sell 3281 sft. out of 7104 sft. undivided share in the Schedule property either wholly or divide or undivided parts thereof.*
- 2. To receive advances, sale consideration, rents and admit & acknowledge the receipt of the same.*
- 3. To execute Deed/s of sale either in one or in various undivided share in respect of the **SCHEDULE** mentioned property.*
- 4. To present and submit the same before the Registrar, Sub registrar or any other Competent Authority/Authorities for registration and to receive the same after due registration.*
- 5. To deliver vacant possession of the **SCHEDULE** mentioned property.”*

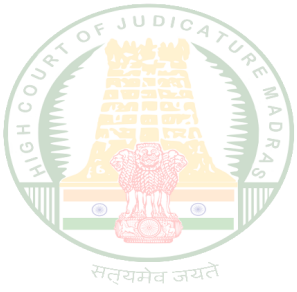
13. The clauses of the Power Deed extracted above would make it clear that the appellants authorised the 8th respondent to sell undivided share of 3281 sq.ft., out of total extent of 7104 sq.ft., available in the suit property to third parties either wholly or in part. The 8th respondent was also authorised to deliver the vacant possession of the property described in the



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Power Deed. It is not in dispute that the suit property has been mentioned in the schedule to the Power Deed. Therefore, it is clear that the 8th respondent has been authorised to sell specified extent of undivided vacant land available in the suit property.

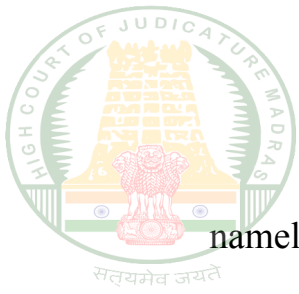
14. Clause 5 of the Power Deed specifically says that the 8th respondent was empowered to deliver vacant possession of the property to the purchasers. There is no mention about construction in the suit property and Power Deed does not stipulate only constructed portion shall be sold to the prospective purchasers together with proportionate undivided share. The 8th respondent has been given free hand to sell undivided vacant land of the suit property without any construction. Hence, the submission made by the learned Senior Counsel appearing for the appellants that 8th respondent can sell only the constructed portion to third parties and he is not entitled to sell undeveloped vacant land to third parties is not acceptable to this Court in view of the specific clause incorporated in the Power Deed executed by the appellants themselves.



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15. Though the learned Senior Counsel appearing for the appellants by relying on Clause-7 of Construction Agreement marked as Ex.A2 submitted that 8th respondent was authorised to sell only the constructed area to the prospective purchasers, in view of the specific clause in the registered Power Deed executed by the appellants enabling him to sell undivided share in the suit property and deliver vacant possession without any construction, this Court feels that the clauses in the registered Power Deed will always prevail over the unregistered Construction Agreement between the land owner and promoter.

16. The learned Senior Counsel appearing for the appellants vehemently contended that the appellants as the land owners have not received any consideration for the sale in favour of respondents 1 to 7 and therefore, the sale is void. The said submission made by the learned Senior Counsel for the appellants is untenable in the light of the averment made by the appellants in the pre-suit notice. In Ex.A21 notice issued by the appellants' counsel to 8th respondent, the appellants clearly admitted sale of undivided share in favour of respondents 1 to 7 and receipt of Rs.15,00,000/- towards sale consideration by their Power of Attorney



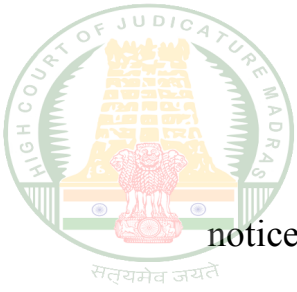
namely the 8th respondent. The relevant averment reads as follows:-

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“6. It is also found that you have collected the huge amount of Rs.15,00,000 (Rupees Fifteen Lakhs) from them and failed to construct the flats. It is almost end of 3 years after the executing of the Joint Venture agreement and that you have to fail commence the work in the said plot.”

17. Therefore, it is clear that the appellants admitted in Ex.A21, the original of which was also marked as Ex.B9 through DW.1 that respondents 1 to 7 paid a consideration of Rs.15,00,000/- to their Power Agent namely the 8th respondent towards sale consideration.

18. As mentioned earlier, the appellants admitted the execution of Power Deed in favour of 8th respondent. They also admitted payment of sale consideration by the purchasers to their Power Agent in pre-suit notice- Ex.A21 = Ex.B9. In Ex.B12 reply notice issued by appellants also it was clearly admitted by the appellants that 8th respondent did not do anything except collecting money from the prospective purchasers by showing registered General Power of Attorney and sold undivided share in the suit property and misappropriated the amount. Therefore, as per the pre-suit

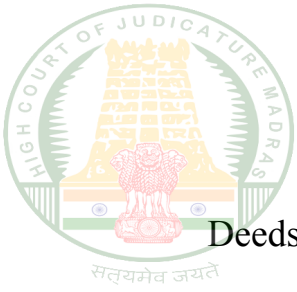


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notices Ex.B9 and Ex.B12, the appellants categorically admitted that their

Power Agent received Sale Consideration from the respondents 1 to 7 and misappropriated the same. The Principal is liable to the acts of his Agent. Once the appellants admitted that their agent collected money from the respondents 1 to 7 and misappropriated the same, it is not open to the appellants to contend that they have not received any sale consideration for the sale in favour of the respondents 1 to 7 and hence, the documents should be treated as void documents. If the Power Agent of the appellants failed to pay the sale consideration, it is a matter between the Principal and Agent and the appellants have to workout their remedy as against their Power Agent independently. The failure of the Agent to pay the sale consideration to the appellants will not affect the rights acquired by purchasers under the Sale Deeds executed by Power Agent, when the power was in force.

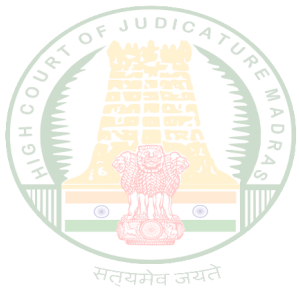
19. It was also contended by the learned Senior Counsel that only the 1st respondent was examined as PW.1 and all the Sale Deeds executed in favour of the respondents 1 to 7 were marked through him, since PW.1 was not party to the Sale Deeds in favour of respondents 2 to 7, he was not competent to prove the same. I have seen the evidence of PW.1. The Sale



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Deeds in favour of respondents 1 to 7 were marked as Exs.A7 to A13 without any objection at the time of marking. It is settled law that any objection as to want of proof shall be made when the document is tendered in evidence and objection as to lack of proof cannot be made at a later stage that too in a first appeal.

20. Had the objection as to proof been raised at the time of tendering documents in evidence, the party tendering the same would have had an opportunity to cure the defects by examining a competent witness. Since the appellants failed to raise any objection with regard to proof of document when the documents were tendered in evidence, those documents were marked without any objection and hence, it is not open to the appellants to raise their little finger at a later point of time that too in first appeal. In this regard, useful reference may be had to the decisions of the Apex Court in ***R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami and V.P. Temple and others*** reported in (2003) 8 SCC 752 and ***Smt.Dayamathi Bai Vs. Sri.K.M.Shaffi*** reported in 2004 (4) CTC 226.



21. In ***R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami***

and ***V.P. Temple and others*** reported in (2003) 8 SCC 752 while explaining

the proposition, the Apex Court observed as follows:-

“20. The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission Vs. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made precise Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence



and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to herein above, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself



which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.

21. Privy Council in Padman and Others vs. Hanwanta and Others [AIR 1915 PC 111] did not permit the appellant to take objection to the admissibility of a registered copy of a will in appeal for the first time. It was held that this objection should have been taken in the trial court. It was observed:

"The defendants have now appeal to the Majesty in Council and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being led for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such objection being made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their lordships think that there is no substance in the present contention."

22. Similar is the view expressed by this Court in P.C.Purushothama Reddiar vs. S.Perumal [1972 (2) SCR 646]. In this case the police reports were admitted in evidence without any objection and the objection was sought to be taken in appeal regarding the admissibility of the reports. Rejecting the contention it was observed:



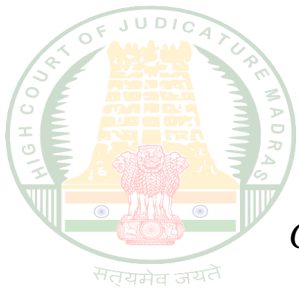
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"Before leaving this case it is necessary to refer to one of the contention taken by Mr. Ramamurthi, learned counsel for the respondent. He contended that the police reports referred to earlier are inadmissible in evidence as the Head-constables who covered those meetings have not been examined in the case. Those reports were marked without any objection. Hence it is not open to the respondent now to object to their admissibility see Bhagat Ram V. Khetu Ram and Anr. [AIR 1929 PC 110]."

23. Since documents A30 and A34 were admitted in evidence without any objection, the High Court erred in holding that these documents were inadmissible being photo copies, the originals of which were not produced."

22. The Hon'ble Apex Court expressed similar view in the case law reported in **2004 (4) CTC 226 in [Smt.Dayamathi Bai Vs. Sri.K.M.Shaffi]**, the relevant observation of the Hon'ble Apex Court is as follows:

"We do not find merit in this civil appeal. In the present case the objection was not that the certified copy of Ex.P1 is in itself inadmissible but that the mode of proof was irregular and insufficient. Objection as to the mode of proof falls within procedural law. Therefore, such objections could be waived. They have to be taken before the document is marked as an exhibit and admitted to the record (See: Order XIII Rule 3 of



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Code of Civil Procedure)”

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23. In view of the above position, this Court is unable to accept the contention raised by the learned Senior Counsel appearing for the appellants that the Sale Deeds executed in favour of respondents 1 to 7 were not proved properly. The submission made by the learned Senior Counsel appearing for the appellants that the 8th respondent failed to perform his obligation under the agreement with his land owners and therefore, the agreement got vitiated is also not helpful to him. If there is a breach of Joint Venture Agreement between the appellants and 8th respondent, it is always open to the appellants to seek enforcement of agreement against the 8th respondent or appellants can also seek damages for breach as against the 8th respondent. Though the appellants issued legal notice to the 8th respondent stating that legal action would follow, till date the appellants have not taken any legal action against the 8th respondent for the alleged breach. The fact remains that the 8th respondent sold the suit property to the respondents 1 to 7 under valid Power Deed when it was in force. Therefore, the respondents 1 to 7 acquired good title in respect of 2602 sq.ft., of undivided share in the suit property.

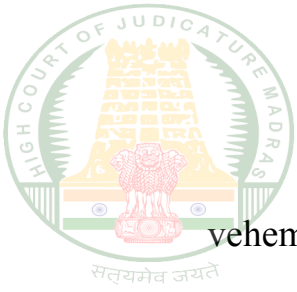
24. Merely because, the 8th respondent failed to perform his



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obligation towards the appellants, the title acquired by the respondents 1 to 7 under valid document will not get affected. It is also submitted by the learned Senior Counsel appearing for the appellants that the respondents 1 to 7 failed to seek any relief against the 8th respondent for construction of the flats in view of collusion between the respondents 1 to 7 and 8. As mentioned earlier, in the pre-suit notice issued by the appellants there was no mention about the alleged collusion between the respondents 1 to 7 and 8. In the pre-suit notice, the appellants claimed that the 8th respondent received sale consideration from the respondents 1 to 7 and misappropriated the same. The plea of collusion has been raised by the appellants only belatedly. Further, even the appellants have not sought for any relief against the 8th respondent. Though in the legal notice issued by them it was stated that legal action would follow against the 8th respondent, till date the appellants have not filed any suit against the 8th respondent either seeking enforcement of his obligation or recovery of damages for breach of his obligation.

25. The learned Senior Counsel appearing for the appellants



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vehemently contended that there was collusion between the respondents 1 to 7 and 8th respondent, as respondents 1 to 7 failed to seek any relief against the 8th respondent. If we accept the said contention, on the very same yardstick we can also say there was a collusion between appellants and 8th respondent, as appellants have not sought for any relief against 8th respondent by initiating appropriate legal proceedings. In the plaint filed by the respondents 1 to 7 there is a plea regarding collusion between the appellants and 8th respondent. The respondents 1 to 7 are third party purchasers. Even according to the admission made by the appellants, respondents 1 to 7 paid money to the 8th respondent for purchase of undivided share, the 8th respondent failed to raise any construction. Now, the appellants try to deprive the respondents 1 to 7 of the rights acquired by them over undivided portion of suit property purchased by them for valid consideration.

26. In the absence of any concrete evidence to suggest collusion between the respondents 1 to 7 and 8th respondent, we cannot readily accept the argument made by the learned Senior Counsel appearing for the appellants, especially in the light of the admission in the pre-suit notice that



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the respondents 1 to 7 paid consideration to the 8th respondent. Payment of consideration for purchase of the property would clear any needle of suspicion of collusion between the respondents 1 to 7 on one hand and 8th respondent on the other hand. Therefore, the said contention raised by the learned Senior Counsel appearing for the appellants is also not acceptable to this Court.

27. In view of the discussion made earlier, Point No.1 is answered against the appellants and in favour of the respondents 1 to 7 and this Court holds that the respondents 1 to 7 acquired valid title to 2602 sq.ft., of property in the total extent of 7104 sq.ft., in the suit property under Exs.A7 to A13.

Discussion on Point No.2:-

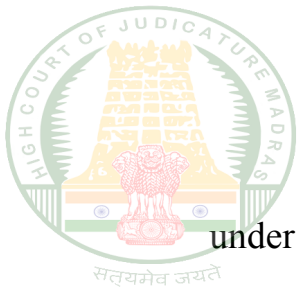
28. In view of the conclusion reached by this Court that the respondents 1 to 7 acquired valid title to 2602 sq.ft., of land in the suit property, they are entitled to decree for partition as granted by the Trial Court and the said finding need not be interfered with. From the discussion



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made above, it is clear that the 8th respondent herein-Power Agent of appellants sold 2602 sq.ft., of undivided land in the suit property in favour of respondents 1 to 7. The sale in favour of respondents 1 to 7 was very well known to the appellants as they referred about the sale in the pre-suit notice issued by them. The Sale Deeds were executed by 8th respondent, when Power Deed executed by appellants in his favour was in force. Therefore, in the Sale Deeds in favour of the respondents 1 to 7, the appellants were represented by their validly appointed Power Agent. In such circumstances, without seeking cancellation of Sale Deeds executed by their validly appointed Power of Attorney, the appellants are not entitled to defend the prayer of the respondents 1 to 7 for partition. Admittedly, till date the appellants have not filed any suit seeking cancellation of Sale Deeds executed by their Power Agent, when power was in force. In these circumstances, they are not entitled to challenge the Sale Deeds in favour of respondents 1 to 7 by raising a mere defence without a specific prayer seeking cancellation of the registered instrument. Apart from reasoning mentioned in earlier paragraphs, on this legal ground also, the Trial Court was justified in granting the decree for partition in favour of the respondents 1 to 7, who acquired title over the undivided portion of the suit property



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under the registered Sale Deeds.

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29.(i) In the light of what is stated supra, I turn my attention to decisions relied on behalf of appellants.

29.(ii) In *P.Shanthi @ Shanthi Bai and 5 others vs. D.Dhinakaran and another* in C.S.No.652 of 2016, there was a prayer by the plaintiffs therein to set aside sale deed executed by their Power Agent in favour of 2nd defendant therein. However, in the present case, the appellants neither filed separate suit nor filed counter claim in present suit seeking to set aside sale deeds in favour of respondents 1 to 7. In the absence of specific prayer, the appellants cannot rely on the said case law.

29.(iii) *Shanti Devi (Since Deceased) through LRs. Goran vs. Jagan Devi and others* reported in *2025 INSC 1105* was relied on by learned Senior Counsel for the appellants for the proposition that sale without consideration is void. In the case on hand, the sale in favour of respondents 1 to 7 by Power Agent of appellants was supported by consideration. As mentioned earlier, the appellants admitted receipt of consideration by Power



Agent in their pre-suit notice. Hence, the said case law is not applicable to the facts of this case.

29.(iv) In ***Bhatori vs. Ram Piari*** reported in ***(1996) 11 SCC 655***, a plea of fraud was specifically raised, as if Power Agent defrauded the Principal by transferring the suit property therein to his wife. On the said facts, the Apex Court held that fraud played by Power Agent vitiated transfer. In the case on hand, the appellants, in their written statement pleaded collusion between respondents 1 to 7 on one hand and 8th respondent on the other hand. However, no such plea of collusion was raised in the pre-suit notice issued by the appellants. As elaborately discussed earlier, appellants admitted payment of consideration by respondents 1 to 7 and receipt of the same by their duly appointed Power Agent-8th respondent. Admittedly, the cancellation of power had taken place subsequent to sale in favour of respondents 1 to 7. Hence, this Court comes to the conclusion that plea of collusion by appellants in their written statement is only an after thought. In these circumstances, this case law is not applicable to facts of the case on hand.

29.(v) In ***P.C.Kandasamy vs. A.Seerangasamy and another*** reported



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in **2018 SCC OnLine Mad 13172**, Power Agent sold a property worth about

Rs.3,00,000/- to his wife for paltry sum of Rs.34,000/- by misusing power.

On the other hand, in the case on hand, as mentioned earlier, 8th respondent sold the property to the respondents 1 to 7 after receipt of huge amount of Rs.15,00,000/- as per legal notice issued by the appellants. The word “huge” used by appellants while describing consideration received by 8th respondent speaks volumes amount sufficiency of consideration. The appellants have not pleaded or led satisfactory evidence regarding insufficiency of consideration. In these circumstances, **P.C.Kandasamy** case also not applicable to facts of present case. In view of discussion made earlier, the Point No.2 is answered in favour of the respondents 1 to 7 and against the appellants.

Discussion on Point No.3:-

30. The respondents 1 to 7 also prayed for permanent injunction restraining the appellants from putting up any new construction in the suit property till the partition of the property by metes and bounds. This Court already came to a conclusion that the respondents 1 to 7 acquired valid title



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in respect of undivided share of 2602 sq.ft., of land in the suit property. It would be appropriate to injunct the appellants from putting up any construction till the share of the respondents 1 to 7 are earmarked by metes and bounds. The Trial Court granted a larger relief by injuncting the appellants from putting up any construction in the suit property without any qualification.

31. The respondents 1 to 7 are entitled to only 2602 sq.ft., out of total extent of 7104 sq.ft., available in the suit property. Therefore, the Trial Court is not justified in granting unqualified permanent injunction restraining the appellants from putting up any construction in the suit property. The decree for injunction granted by the Trial Court is modified by restraining the appellants from putting up construction in the suit property till the partition of the share of respondents 1 to 7 by metes and bounds. Once the share of the respondents 1 to 7 is earmarked and separately allotted, the appellants are entitled to put up construction in the remaining extent of the suit property belonging to them. The decree for permanent injunction granted by the Trial Court is modified accordingly. With this modification, the appeal stands dismissed and the Point No.3 is



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answered accordingly.

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32. In view of the answer to Point Nos.1 to 3, the appeal is dismissed with a modification that the decree for permanent injunction granted by the Trial Court will operate only till the actual partition of the share of the respondents 1 to 7, 10/plaintiffs by metes and bounds. Consequently, the connected miscellaneous petition is closed. In the facts and circumstances of the case, there will be no order as to costs.

10.10.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm

To

1.The III Additional District Court,
Thiruvallur at Poonamallee.

2.The Sub Registrar, Konur,
Chennai.



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S.SOUNTHAR, J.

dm

Pre-delivery judgment made in
A.S.No.677 of 2014

10.10.2025