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S.A.No.155 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21 / 10 / 2024

JUDGMENT PRONOUNCED ON : 20 / 01 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.155 OF 2017
AND
CMP NO.3236 OF 2017

J.Padmavathi ... Appellant / Appellant /
2nd Defendant

Vs.

1.T.R.Muthuswami
2.Thamaraiveni
3.Kavitha
4.Karthick ... Respondents / Respondents /
Plaintiffs

5.District Registrar
Karungalpalayam,
Erode. ... Respondent / Respondent /
3rd Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated July 15, 2015 made in A.S.No.9 of 2014 on the file of the learned Subordinate



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Judge, Bhavani, confirming the Judgment and Decree dated August 30, 2013 made in O.S.No.195 of 2007 on the file of the learned I Additional District Munsif, Bhavani.

For Appellant : Mr.S.Parthasarathy
Senior Counsel for Mr.V.S.Kesavan

For Respondents : Mr.T.M.Hariharan
1 to 4

For Respondent-5 : Mrs.R.Anitha
Special Government Pleader

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated July 15, 2015 passed in A.S.No.9 of 2014 by the 'Subordinate Court, Bhavani' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated August 30, 2013 passed in O.S.No.195 of 2007 by the 'I Additional District Munsif Court, Bhavani' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.



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PLAINTIFF'S CASE

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3. The first plaintiff is the father of plaintiff nos.2 to 4. The Suit Property originally belonged to Karuppa Gounder, who is the maternal grandfather of the first plaintiff. After the demise of Karuppa Gounder, his three daughters namely, Velammal, Kuttiammal and Lakshmiammal became the owners of the Suit Property and they jointly enjoyed it. On May 9, 1972, Velammal sold her share within specific boundaries to the 1st plaintiff. Subsequently, on December 5, 1990 Kuttiammal and Lakshmiammal bequeathed their shares to the 1st plaintiff through a registered Will. The Will came into force and the plaintiffs are in possession and enjoyment of the Suit Property.

3.1. In 2001, the 1st plaintiff borrowed a sum of Rs.10,000/- from the 4th defendant with interest at 60% per annum and could not repay the same. At that time, the 4th defendant informed the 1st plaintiff that the outstanding due was Rs.85,000/- and insisted him to execute a General Power of Attorney ['G.P.A.' for short] in favour of the 1st defendant as security and promised him that it would be cancelled upon repayment of loan amount. Accordingly, the 1st plaintiff executed a G.P.A. on February 21, 2002 and it was duly registered. But, the 1st defendant misused this



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power and entered into a Sale Agreement with the 2nd defendant on February 22, 2002 in respect of Suit Property for a sum of Rs.2,00,000/- without the plaintiff's consent and the 4th defendant also received an advance of Rs.1,80,000/-. Upon learning the same, the plaintiffs cancelled the G.P.A. on July 26, 2002 and filed an objection on July 29, 2002 before the Sub-Registrar, Bhavani. Despite this, the 1st defendant continued with his attempts to alienate the Suit Property.

3.2. The 1st defendant had executed a Sale Deed in favour of the 2nd defendant and when it was presented for registration, the Sub-Registrar, Bhavani refused to register the said document and returned the same vide Order dated October 10, 2002. Aggrieved by the said Order, the second defendant preferred an appeal before the District Registrar / third defendant and the same was pending.

3.3. Subsequently, on June 27, 2003, the plaintiffs caused a legal notice to the defendants 1, 2 and 4, and the same was returned by the defendants 2 and 4. The plaintiffs remain in possession of the Suit Property, using it for residential and agricultural purposes. On June 20, 2007, the defendants attempted to trespass into the Suit Property and



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thereby, disturbed the peaceful possession and enjoyment of the Suit Property by the plaintiffs.

3.4. Further, on May 31, 2010, pending the Original Suit, the third defendant vide his Order dated May 31, 2010 directed the Sub Registrar, Bhavani to register the impugned Sale Deed and the same was registered accordingly on June 3, 2010 as Document No.3323 of 2010.

3.5. According to the plaintiffs, the G.P.A. was executed by the first plaintiff under threat and coercion and it was never intended to confer any ownership or sale rights to 1st defendant. Therefore, the plaintiffs filed the Suit praying for declaration of title, for declaration that the third defendant's Order dated May 31, 2010 is bad in law, for declaration that the alleged Sale Deed is not binding on the plaintiff and does not confer any title to the second defendant and for permanent injunction restraining the defendants from interfering with their possession and enjoyment of the Suit Property.



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FIRST AND SECOND DEFENDANTS' CASE

4. The defendants 1 and 2 denied the allegations made by the plaintiffs in the plaint. The relationship stated by the plaintiffs are admitted. The title traced by the plaintiffs to the Suit Property is true. According to the defendants 1 and 2, the 1st plaintiff was in need of money and approached 1st defendant who was doing real estate business wanting to sell the Suit Property. Therefore, to sell the Suit Property, on February 21, 2002, a G.P.A. was executed by the plaintiffs along with one Kuttiammal, who is the mother of the first plaintiff. The second defendant approached the 1st defendant, and entered into a registered Sale Agreement dated February 22, 2002 agreeing to purchase the Suit Property for Rs.2,00,000/-. An advance of Rs.1,80,000/- was received by first defendant from second defendant and the same was paid to the plaintiffs on the same day. It was agreed that the period of performance was one year from the date of Sale Agreement. Pursuant to the Sale Agreement, upon receiving the balance sale consideration of Rs.20,000/- from second defendant, the first defendant executed a Sale Deed on August 2, 2002 in respect of the Suit Property and presented the same for registration on the same day. The Sub-Registrar, Bhavani kept the same



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pending for registration on the ground that the first plaintiff had given an objection on July 29, 2002 that the G.P.A. dated February 21, 2002 was cancelled on July 26, 2002 by a Cancellation Deed registered at Kavundapadi 'Sub-Registrar Office' ['S.R.O.'] and eventually, he refused to register it vide his Order dated October 10, 2002. The second defendant appealed over the same before the District Registrar, Erode / third defendant in Appeal Order No.2 of 2002 and the same was allowed on May 31, 2010 and consequently, the Sale Deed was registered on June 3, 2010.

4.1. The Suit is not maintainable in the absence of prayer for cancellation of Sale Deed & G.P.A. as well as in the absence of payment of Court Fee under Section 40 of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955. Further, neither the first defendant nor the second defendant was given any notice either orally or in writing regarding the alleged cancellation of the G.P.A. Accordingly, the defendants 1 and 2 sought to dismiss the Suit.

THIRD DEFENDANT'S CASE

5. The third defendant filed written statement denying the allegations made by the plaintiffs in the plaint and reiterating the events



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narrated by the first and second defendant in their written statements relating to registration of the Sale Deed. He contended that he is not a necessary party to the Suit.

TRIAL COURT

6. At trial, the 1st plaintiff was examined as P.W.1 and three other witnesses were examined as P.W.2 to P.W.4 and Ex-A.1 to Ex-A.17 were marked on the side of the plaintiff. On the side of the defendants, 1st and 2nd defendants were examined as D.W.1 and D.W.2 respectively and Ex-B.1 to Ex-B.8 were marked.

7. The Trial Court, after analyzing the oral and documentary evidence, concluded that Ex-A.4 - G.P.A. is a sham and nominal document executed as a security for the loan obtained by the plaintiffs from fourth defendant, and its cancellation by the plaintiffs 1, 3 and 4 is valid. The first plaintiff being the absolute owner of the Suit Property, non-cancellation of G.P.A. by second plaintiff would not affect the validity of its cancellation. The Suit valuation and payment of Court Fee are correct. Since the cancellation of the G.P.A. is valid, the alleged Sale



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Deed executed by first defendant in favour of second defendant would not bind the plaintiffs and the Suit Property. Accordingly, decreed the Suit.

FIRST APPELLATE COURT

8. Feeling aggrieved, the second defendant preferred an appeal in A.S.No.9 of 2014 before the First Appellate Court, which upon hearing both sides, after an elaborate discussion, concurred with the findings of the Trial Court and dismissed the Appeal Suit.

SECOND APPEAL

9. Feeling aggrieved, the second defendant has preferred this Second Appeal, which was admitted on November 3, 2023 on the following substantial question of law:

“Whether the Courts below is right in coming to the conclusion that the sale deed executed by first defendant in favour of second defendant is invalid when the execution of the sale deed was completed even before first defendant acquired knowledge about the cancellation of power by the plaintiffs.”



ARGUMENTS:

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10. Mr.S.Parthasarathy, Senior Counsel for Mr.V.S.Kesavan, learned Counsel for the appellant / second defendant would argue that on the date of execution of Ex-A.4 – G.P.A. Deed itself, possession of Suit Property was handed over to the power agent and hence, Ex-A.4 becomes power coupled with interest, and therefore, irrevocable. Pursuant to Ex-A.4, first defendant executed registered Sale Agreement dated February 22, 2002. On August 2, 2002, first defendant executed Ex-B.5 - Sale Deed and presented the same for registration before the concerned Sub-Registrar who rejected it vide Order dated October 10, 2002 citing that the plaintiffs have raised an objection on July 29, 2002 that Ex-A.4 - G.P.A. Deed was cancelled on July 26, 2002 by a Cancellation Deed registered at Kavundapadi S.R.O. The first defendant as a power agent executed Ex-B.5 - Sale Deed before notice of cancellation of Ex-A.4. The cancellation came to notice of the defendants 1 and 2 only at the time of registering the Sale Deed. The alleged cancellation is a fraud on registration, as it is filed in a different Registrar Office. Notice contemplated under Section 206 of Indian Contracts Act, 1872 was not complied with and hence the cancellation of Ex-A.4 is invalid. The refusal



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Order passed by the Sub-Registrar, Bhavani was set aside in the appeal and pending the Original Suit, Ex-B.5- Sale Deed was duly registered.

Hence, the plaintiffs have no right or title over the Suit Property. In any case, the plaintiffs can only seek accounts from first defendant / power agent and cannot seek cancellation of Ex-B.5 – Sale Deed. The First Appellate Court and the Trial Court failed to appreciate the evidence in the right perspective and decreed the Suit. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court as well as the Trial Court, and dismiss the Suit.

10.1. He would rely on the following decisions in support of his contentions:

- (i) **Rayappan's Case** - Judgment of this Court in A.Rayappan Vs. P.Anthony Pushparaj and Another, reported in 2013 (3) MWN (Civil) 372 ;
- (ii) **Neela's Case** - Judgment of this Court in D.Neela Vs. K.V.Kumar and Others, reported in 2019 (2) MWN (Civil) 752 ;
and
- (iii) **Ravichandran's Case** - Judgment of this Court in T.Ravichandran Vs. Mrs.K.Kasthuri and Others, reported in 2019 (3) TLNJ 5 (Civil)



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11. Per contra, Mr.T.M.Hariharan, learned Counsel for the respondents 1 to 4 / plaintiffs would argue that Ex-A.4 – G.P.A. Deed was not executed with an intention to sell the Suit Property. On the other hand, it was executed for the purpose of security for loan obtained by the plaintiffs from fourth defendant. Further, Ex-A.4 was cancelled on July 26, 2002 through a registered Cancellation Deed before Kavundapadi S.R.O. The factum of cancellation was informed to first defendant orally and to the concerned S.R.O. as well in writing. Being fully aware of the cancellation, Ex-B.5 – Sale Deed has been executed collusively by defendants 1 and 2 with a view to defeat and defraud the rights of plaintiffs. Further, the plaintiffs did not receive any consideration as alleged from first defendant.

11.1. He would further argue that as per Section 54 of the Transfer of Property Act, 1882, a sale of an immovable property worth Rs.100/- or more is complete only when the Sale Deed is registered. As per Section 34 of the ‘Registration Act, 1908’ [‘Reg. Act’ for short], the Sub-Registrar shall be satisfied of the agent’s right to appear and present the documents for registration. In other words, the G.P.A. shall be valid and be in force at the time of registration of the document. Hence, the



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refusal to register the alleged Sale Deed by the Sub-Registrar is in accordance with law. However, pending Suit, the concerned District Registrar / the third defendant issued an Order directing the Sub-Registrar to register the Sale Deed which is against the provisions of the Reg. Act. He ought to have dismissed the appeal.

11.2. He would further argue that the possession remains with the plaintiffs and therefore, Ex-A.4 is not power coupled with interest. Further, without prejudice to the above arguments, he would bring notice to Ex-B.5 – Sale Deed and argue that even according to the executant, the market value of Suit Property on the date of Ex-A.4 was Rs.4,58,363/-, but the alleged Sale Deed recites Rs.2,00,000/- as consideration which itself demonstrates that the alleged Sale Deed has been executed collusively to grab the Suit Property from the plaintiffs. The First Appellate Court and the Trial Court appreciated the evidence in the right perspective and decreed the Suit. There is no reason to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal, and confirm the Judgment and Decree of First Appellate Court as well as the Trial Court.



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11.3. He would rely on the following decisions in support of

his contentions:

- (i) **Asset Reconstruction's Case** - Judgment of this Court in Asset Reconstruction Co. (India) Ltd., Mumbai Vs. The Inspector General of Registration, Chennai and Others, reported in AIR 2016 Madras 123 ;
- (ii) **Veena Singh's Case** - Judgment of the Hon'ble Supreme Court in Veena Singh Vs. District Registrar / Additional Collector, reported in (2022) 7 SCC 1 ;
- (iii) **Mary's Case** - Judgment of the Hon'ble Supreme Court in Mary Joyce Poonacha Vs. K.T. Plantations Pvt. Ltd., and Others, reported in 1995 Supp (2) SCC 459 ;
- (iv) **Thankamma's Case** - Judgment of the Hon'ble Supreme Court in Thankamma George Vs. Lilly Thomas and Another, reported in 2024 SCC OnLine SC 1673 ; and
- (v) **Sekar's Case** - Judgment of this Court in Sekar Mudaliar Vs. Shajathi Bi, reported in (1987) 1 MLJ 248

12. Mrs.R.Anitha, Special Government Pleader appearing for the respondent no.5 / third defendant would argue that the third defendant is not a necessary party to the Suit. He being a statutory authority passed



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order as per law. She would further submit that the third defendant is ready to abide any order to be passed by the Court.

DISCUSSION:

13. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

14. Ex-A.4 – G.P.A. Deed was registered before the Jurisdictional Sub-Registrar, namely, Sub-Registrar, Bhavani as Document No.81 of 2002 in Book No.4. In those days, the G.P.A. Deed registered in Book No.4 would not reflect in the encumbrance certificate, which gave rise to fraudulent transfers. Hence, Section 64 A of the Reg. Act was inserted by Tamil Nadu Act No.29 of 2012 with effect from December 1, 2012. Section 64 A reads thus:

"64-A. Procedure where instrument of Power of Attorney presented in office of Sub-Registrar relates to immovable property not situate in sub-district:- Every Sub-Registrar on registering an instrument of Power of Attorney including instrument of revocation or cancellation of such Power of Attorney relating to immovable property not situate in his own sub-district, shall make a copy and send the same together with a copy of the map or plan (if any) mentioned in section 21, to every other Sub-Registrar in whose sub-district



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the whole or any part of such property is situate and such Sub-Registrar shall file the same in his Book No. 1:

Provided that where such instrument relates to immovable property in several districts, shall forward the same to the Sub - Registrars concerned, under intimation to the Registrar of every district in which any part of such property is situate."

15. Before December 1, 2012, there was no such provision, and if cancellation of G.P.A. Deed is presented for registration before a S.R.O. other than the S.R.O. where the G.P.A. was registered, the Sub-Registrar may register the same and thereafter send a copy to the Jurisdictional S.R.O. for making necessary note / endorsement about the cancellation in the relevant files as per his duties prescribed in Sections 64, 65 and 66 under Part 11 of the Reg. Act read with Rule No.116 of the Registration Rules approved by the State Government under Section 69 of Reg. Act. Further, Order 757 to 779 under Chapter XVIII of the Departmental Orders contained in the Registration Manual Part 11 of the Registration Department of Tamilnadu, clearly sets out the procedure to be adopted by the Sub-Registrar in cases of registration of a Cancellation Deed in a different S.R.O.



15.1. It is fruitful to extract to said Sections 64, 65 and 66

hereunder:

“(C) Special duties of Sub-Registrar

64. Procedure where document relates to land in several sub-districts.—Every Sub-Registrar on registering a non-testamentary document relating to immovable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

65. Procedure where document relates to land in several districts.—(1) Every Sub-Registrar on registering a non-testamentary document relating to immovable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21, to the Registrar of every district in which any part of such property is situate other than the district in which his own sub-district is situate.

(2) The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub- Registrars subordinate to him within whose sub-district any part of such property is situate;



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and every Sub-Registrar receiving such memorandum shall file in his Book No. 1.

(D) Special duties of Registrar

66. Procedure after registration of documents relating to land.—*(1) On registering any non- testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.*

(2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

(3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.”

15.2. Said Rule No.116 reads as hereunder:

“116. (a) On the registration of document, which revokes, or cancels or rectifies an error in or modifies the terms of, a document previously registered in the same class or register



book or of a return of lands acquired under the Land Acquisition Act or of a document received and filed under section 89 of the Act, Vide Rule 11 supra or on the receipt of a communication from a revenue officer or from a Court which intimates a similar revocation, cancellation, rectification or modification, a note shall be entered at foot of the entry of the latter document or communication as under:-

“This document/ communication revokes (cancels, rectifies or modifies) the document No. of 19 copied/ filed/ the return filed at pages volume of book/ File Book/ File Book I”.

and at foot of the previous entry or of the document previously registered or filed a note shall be entered as shown below:-

“This document/ return has been revoked (cancelled, rectified or modified) by document No. of 19 Copied/ document filed/ the return filed at pages volume Of book/ File Book/ File Book I”.

(b) When the revocation, cancellation, rectification or modification is of a document, relating to immovable property, a corresponding note shall also be entered in Index No.II and when it relates to the rectification of any particulars entered in Index I, II, III or IV, a note of rectification shall also be entered in the respective index against the particular item rectified.”



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15.3. Relevant portion of said Order 757 to 779 reads thus:

**“CHAPTER XVIII
COPIES AND MEMORANDA.**

757. Copies and memoranda under section 64-67 of the Act, shall be forwarded with the least possible delay.

758. In the case of joint offices, when a document registered in one of the joint offices affects also property situated in a village assigned to another; a statement containing the particulars required for the indexing of the document in the indexes of the latter office shall be forwarded to such office in lieu of the memorandum prescribed in section 64 of the Act. The statement shall be in the memorandum form (Form Registration 11-35) and shall be sealed and dated. The despatch of the statement shall be shown in account A as in the case of memoranda under section 64. After the indexing in the receiving office has been completed this statement shall be filed in the file of appeal orders and judgments (Order 813).

759. The copies required to be forwarded under sections 65 (1), 66 (2) and 67 of the Registration Act shall be presented with the document by the party presenting the document. The copies shall be prepared in the manner prescribed in rules 4 and 6 of the Indian Registration (Filing of True copies) Rules, 1967. The total number of memoranda required shall be made in the office of original registration.



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760. *A Sub-Registrar registering a non-testamentary document relating to property lying partly in his sub-district and partly in the sub-district in charge of the District-Registrar of his own district shall transmit to the District-Registrar a memorandum of the document under section 64 instead of a copy under section 65.*

761. *When copies of documents are forwarded under section 65 from one district to another and are written in a language other than English or Tamil or the language of the district to which they are forwarded and relate to property in the sub district in the charge of the District Registrar, they shall be accompanied by an abstract in Tamil containing all the information required for the preparation of the indexes the abstract shall be used in File Book I with the copy.*

762. The date of despatch of every copy Or memorandum shall be shown against the entry relating to it in Account A.

763.(a) When a deed of rectification or a deed of cancellation is registered in any of the offices within the Jurisdiction of which the property affected by the original document is situate a copy or a memorandum, as the case may be; as required by sections 64 to 67 of the Act shall be issued to each of the other offices, the prescribed fee therefor being levied from the Party. The copy or memorandum shall, in the receiving office, be filed in File Book I and indexed. The instructions in Registration Rule 116 (b) regarding the addition of notes of cancellation or rectification apply mutatis mutandis.



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to copies and memoranda received under this order and to Index II relating thereto.

Where, after the transfer of a village from one sub-district to another, a deed is registered in the office to the jurisdiction of which the village has been transferred, rectifying or cancelling a document affecting property in that village and registered in the office to which the village was formerly attached, a memorandum of the rectification or cancellation deed shall be forwarded to the office where the original document was registered but no memorandum fee shall be levied in such a case.

(b) When a document cancels or rectifies an error in or makes any change in the terms of a document previously registered in Book 3 or Book 4 in another office, a memorandum shall be sent to that office without levying a memorandum fee. This memorandum shall be filed in the file of appeal orders and judgments in the office to which it is transmitted. This order applies to a document registered in a District-Registrar's office also. The memorandum need not be indexed in the receiving office.

(c) When a document is registered under section 30 in any of the District- Registrar's office and a deed of rectification or a deed of cancellation is registered in respect of the document in any of the offices within the jurisdiction of which the property affected by the original document is situate, a memorandum containing all the information required for the preparation of indexes shall be sent to the office which



registered the original document, without levying any fee in view to the requisite notes under Registration Rule 116 using entered in the records of that office. The memorandum shall be filed in File Book 1.

(d) When a document affecting immovable properties in two or more districts is registered in one district and a deed cancelling or rectifying it is registered in a sub office of another district, the officer who Registers the latter shall, if the original document does not relate to any property in the sub-district under the immediate charge of the District Registrar of his district, send to him a memorandum containing all the information required for the preparation of indexes without levying any fee in view to the requisite notes under Registration Rule 116 being entered in the records of that office. The memorandum shall be filed in File Book 1.

764. When, without levy of a memorandum fee under clauses (b), (c), (d), or second sub-paragraph of clause (a) of Order 763 a memorandum, in the form prescribed for memoranda under section 64, of a deed cancelling or rectifying an error in a document registered in another office is forwarded to such office, the despatch of the memorandum shall be shown in Account A as in the case of other memoranda, with a footnote to the effect that no fee has been levied for the memorandum.

765. (a) An extract from the Circular .Proceedings P.Dis. No. 887 of 1941, dated 17th November 1941, of the High Court of Judicature at Madras is furnished below :-



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“Section 80 (2) of the Indian Registration Act, places on the court the duty of sending a copy of the sale certificate to the Registering officer within whose jurisdiction any part of the property comprised in the sale certificates is situated. Courts must, therefore, send a copy of the sale certificates to every registering officer; within whose jurisdiction any part of the property is situated. When copies of sale certificate are sent to more than one registering officer, a note should be added to each copy setting out the other registering officers to whom copies are being sent.”

(b) Whenever a copy of a sale certificate is received from a court affecting property in other sub-districts besides their own, registering officers shall bring to the notice of the court any cases of omission to communicate copies to the other Sub-Registrars concerned that may be noticed in the copy with reference to the High Court circular extracted in clause (a).

(c) the instructions in clause (b) apply also to sale certificate received from Deputy Registrars and Joint Registrars of Co-operative Societies.

766. On receipt of a memorandum under Order 763 (b) a notice [sic : note] shall be entered at foot of the entry of the original document in the register, referring to the fact of rectification or cancellation and to the page and volume of the file of appeal orders in which the memorandum is filed”

(Emphasis supplied by this Court)



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15.4. Thus, it is clear that it is a statutory duty casted on the Sub-Registrar by the Reg. Act. That means cancellation of G.P.A. can be registered at any S.R.O. within Tamil Nadu. Further, whenever, the power agent presents any document for registration, the Sub-Registrar shall enquire and verify the validity of G.P.A. Deed.

16. In this case, had the plaintiffs registered the Cancellation Deed in the Jurisdiction S.R.O., as per the then law, the Jurisdictional Sub-Registrar after registering the same would have made an endorsement in Book No.4. In such a scenario, he would have straight away rejected the Sale Deed when presented by the power agent, citing cancellation of G.P.A. But the plaintiffs registered the Cancellation Deed before Kavundapadi S.R.O. on July 26, 2002. This Court is unable to figure out the reason for the same. However, law permits registration of Cancellation Deed in a different S.R.O. as stated *supra* and therefore, it cannot be termed as fraud as contended by the learned Counsel for the appellant / second defendant.

17. Be that as it may, upon registering the same, Kavundapadi Sub-Registrar ought to have communicated the same along



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with a copy of it to the Jurisdictional S.R.O. There is no evidence available on record to show whether he had done so or not. Further, the plaintiffs had sent an objection letter to the Jurisdictional Sub-Registrar on July 29, 2002 informing him of the cancellation of G.P.A. on July 26, 2002. Upon receiving the objection letter, it is the duty of the Jurisdictional Sub-Registrar to verify about the cancellation. There is no evidence to suggest that he did so. The District Registrar as well failed to verify about the cancellation of G.P.A. before passing the Appeal Order.

18. It is true that as per Sections 204 of 'Indian Contract Act, 1872' ['I.C.A.' for short], power coupled with interest cannot be revoked. As per Section 203 of I.C.A., the principal can revoke the agent's authority at any time before the authority has been exercised. Section 206 of I.C.A. speaks about notice of revocation, and Section 207 thereof says that such revocation can be express or implied, and Section 208 thereof stipulates that termination of agency shall not be said to be effected unless it comes to the notice of the power agent. In this case, assuming a moment that the defendants 1 and 2 did not have any knowledge about the cancellation at the time of execution of Sale Deed, even then, they would have definitely come to know about the cancellation at the time of



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presentation of the Sale Deed for registration. Section 54 of the Transfer of Property Act, 1882, reads that sale of an immovable property worth Rs.100/- or more is mandatorily registrable. That means, Sale requires registration and it is complete only when registered; Sale is incomplete in the absence of registration. In this case, the defendants got notice of the cancellation of Ex-A.4 – G.P.A. Deed at the time of presentation of Sale Deed *i.e.*, before the Sale was complete. Hence, they were communicated of the cancellation and hence, the first defendant had no power to execute the Sale Deed anymore. Since the Sale Deed was not registered, the sale was incomplete and therefore, the remedy available to the second defendant / purchaser is to file a Suit for specific performance of contract based on the Sale Agreement and unregistered Sale Deed. The Jurisdictional S.R.O. was correct in refusing to register Ex-B.5 – Sale Deed. The Appellate authority's decision directing the Jurisdictional S.R.O. to register the Sale Deed is not in consonance with law. Both the Courts concurrently held that the Sale Deed is invalid. There is no need to interfere with the same. In the facts and circumstances of this case, liberty is granted to second defendant to file a Suit for specific performance based on Sale Agreement and Ex-B.5 – Sale Deed [See ***S.Kaladevi -vs-***



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V.R.Somasundaram, reported in ***AIR 2010 SC 1654***]. In such a scenario, both parties are at liberty to raise all their contentions and pleas available in law in the said Suit. The parties are at liberty to invoke Section 14 of the Limitation Act, 1963 in the said Suit and seek to exclude the time spent in the Suit proceedings herein. There is no quarrel with the case laws relied on either side. Substantial Questions of Law are answered accordingly.

CONCLUSION:

19. Resultantly, the Second Appeal is dismissed. The second defendant is at liberty to file a Suit for specific performance as stated *supra*. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs. Connected Civil Miscellaneous petition shall be closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK



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To

WEB COPY

- 1.The Subordinate Judge
Bhavani.
- 2.The I Additional District Munsif
Bhavani.



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S.A.No.155 of 2017

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.155 OF 2017

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