BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	*Judgment Pronounced On*
09.12.2024	***25.10.2025***

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S(MD)No.41 of 2018
and
C.M.P(MD)No. 2155 of 2018

1. G.Gunasekaran

2. R.Palanichamy, ... Appellants

[2nd plaintiff through Power of Attorney G.Shanmugakannan]

/Vs./

1. V.R.Rajendran

2. Ganesan

3. The District Registrar,
District Registrar Office,
Round Road,
Dindigul District.

4. The Sub Registrar,
Office of the Sub Registrar at Chinnalapatty,
Dindigul District. ...Respondents

PRAYER: Appeal Suit is filed under section 96 of Civil Procedure Code, to call for the records and set aside the Judgment and Decree dated 11.07.2016 in O.S.No. 48 of 2009 on the file of the Additional District Court, Dindigul and allow this appeal with costs throughout.

For Appellants : Mr.H. Lakshmi Shankar

For Respondents : Mr.J. Lawrance, for R-1
Mr.K.R.Manimaran, for R-2
Mr.Thiraviam,
Government Advocate, for R-3 & R-4

JUDGMENT

The present appeal suit is filed by the plaintiffs against the Judgment and Decree dated 11.07.2016 passed in O.S.No.48 of 2009 on the file of Additional District Judge, Dindigul.

2. The plaintiffs in the suit are the appellants herein and the defendants are the respondents herein. For the sake of convenience, the parties shall be referred to as plaintiffs and defendants.

3. The suit in O.S. No. 48 of 2009 was filed seeking a preliminary decree against the 1st defendant for rendition of accounts for functioning as the power of attorney of the plaintiffs till 16.07.2008 and to hold enquiry to determine the actual amount due to the plaintiffs from the 1st defendant including the difference between the actual sale price and the market value and to pass final decree. To declare that the proceedings of the 4th respondent dated 25.05.2009 in No.3436/A1/2009 are null and void and beyond jurisdiction and consequential permanent injunction restraining respondents 3 and 4 from registering any sale

deed relating to suit A and B schedule properties. To declare the sale deed dated 23.03.2009 executed by the 1st defendant in favour of 2nd defendant is not valid and not binding on the plaintiffs, decree for mandatory injunction directing the 1st defendant to hand over to the 1st plaintiff the original title documents Doc. No. 817 of 1990 dated 24.09.1990 and Document No. 818 of 1990 to the 2nd plaintiff and costs.

4.(i) The brief facts as stated in the plaint is that the plaintiffs had purchased the suit properties in two registered sale deed dated 24.09.1990 separately in each plaintiff's name. The first two survey numbers are covered under the sale deed of the 1st plaintiff and all other survey numbers are covered under the sale deed of the 2nd plaintiff. The 1st and 2nd plaintiff are in-laws and related. Since the 1st plaintiff through his father had some experience in the real estate business the 2nd plaintiff gave power of attorney to the 1st plaintiff in respect of his purchased properties and the 1st plaintiff combined the properties and formed layout namely "Aathi Kamatchi Nagar" which is approved by the Director of Town Planning and also Chinnalapatti Town Panchayat dated 24.11.1999. The 1st plaintiff had sold many plots as power of attorney of the 2nd plaintiff during the month of November and December 1999. Since the 1st plaintiff was also having business activities in Chennai and had been frequently travelling, he gave power of attorney to the 1st defendant on 02.12.1999 for selling the house plots. The 1st defendant has been a close associate of the 1st plaintiff's father hence the 1st plaintiff had trust on him and reposted great confidence on him. The plaintiffs have decided to entrust the sale of plots belonging to both to one person hence the power of attorney in favour of the 1st plaintiff was cancelled by the 2nd plaintiff in turn given to 1st defendant on 25.02.2001. The original title documents were entrusted to the 1st defendant at that time itself so as to be available readily for perusal and examination by the intending purchasers. The 1st defendant has maintained two accounts and furnished the same as and when demanded by the plaintiffs.

4.(ii) Thereafter, for many years till 2008, whenever the 1st plaintiff came over to Dindigul and met the 1st defendant enquired about the sale of plots, the 1st defendant would reply no plots could be sold for profitable prices in place like Chinnalapatti and as and when any offer is there, he would let the plaintiffs know. The 1st plaintiff believed the 1st defendant who was like a father figure to him. But during June 2008 in a matter pertaining to a lodge building, the 1st defendant was very indifferent and his dispossession towards 1st plaintiff was not as usual created doubts over the transaction regarding Chinnalapatty layout. Hence the plaintiff applied encumbrance certificate in the 1st week of July 2008 and it was orally informed that there are many pages and transactions and whether the plaintiffs want all. To the plaintiffs shock 12 plots have been sold to 2nd defendant as early as 2005 through sale deeds dated 28.06.2005, 28.07.2005 totally four documents and all the time the plaintiffs have been kept in dark by the 1st defendant. In the documents it is alleged to have sold for Rs.14,69,070/- but the real value would be much more and the actual sale price has been suppressed and the documents have been intentionally undervalued by the defendants 1 & 2 for the ulterior reasons. When demanded to furnish real accounts for those sale, the 1st defendant evaded the plaintiffs.

4.(iii) Since deceived by the 1st defendant, the 1st plaintiff revoked the power of attorney and executed a two registered cancellation of power of attorney on 16.07.2008 and wrote a letter to the 1st defendant on 18.07.2008 and delivered the same through his officer person namely, one Gopal. The revocation of power of attorney was also clearly brought out in the letter of the 1st plaintiff is having photo copy and the original is with the 1st defendant.

4.(iv) The 1st defendant neither revealed nor paid the amount and avoided the plaintiffs. The 1st defendant also informed the plaintiffs since the documents are pending for enquiry under Stamp Act, the 2nd defendant has also not paid full money. Once that is received the accounts would be settled by paying the plaintiffs' money. When the plaintiffs told the entire matter to the 2nd defendant and asked about the actual amounts paid, the 2nd defendant asked the plaintiffs to deal with the 1st defendant only and not to come him. The plaintiffs did not want to perceptive the matter by making any complaint but taking advantage of the same the 1st defendant has been dragging without disclosing the accounts. After cancelling the power of attorney in favour of the 1st defendant, the 2nd plaintiff had executed a power of attorney to the present agent G.Shanmuga Kannan on the very same day i.e. 16.07.2008. On that basis the said agent has sold various plots under 22 documents till 01.06.2009. Likewise, the 1st defendant had sold two plots under his survey numbers on 11.03.2009 and 13.03.2009 and executed a settlement deed in favour of his wife on 25.03.2009 regarding 19 plots. Thereafter, the 1st plaintiff's wife had sold 6 plots to various persons, which are reflected in the encumbrance certificate.

4.(v) In the meantime, the plaintiffs have received notice dated 25.05.2009 from the 4th defendant stating that the 2nd defendant has presented a document executed by the 1st defendant on 23.03.2009 for Rs.32,54,820/-. And the 3rd defendant had not registered the same since power was cancelled and has sent a communication to that effect on 22.04.2009. However the 2nd defendant submitted an application to the 4th defendant claiming to be a bonafide purchaser and requesting registration. The plaintiff states that the 1st and 2nd defendant are collusively acting in this manner only for creating encumbrances in the property and thereby creating problems for the plaintiffs by instigating the persons who had already purchased the properties from the plaintiffs. The said 23.03.2009 document cannot have any legal consequences since the 1st defendant has no authority to execute such document after cancellation of the power deed. The 1st and 2nd defendants have fabricated and forged the documents and committed fraud. The alleged 23.03.2009 document and the proceedings before the 4th defendant are manifestation of their pre-meditated process of legalizing their fraud. The notice dated 25.05.2009 styled as show cause notice issued by the 4th defendant has no legal basis, in effect the 4th respondent seeks to decide the complicated intricate legal and factual questions of the 2nd defendant being a bonafide purchaser or not and the legal consequences regarding the cancellation of power of attorney by the plaintiff. This amounts to usurping the jurisdiction of the civil court and is not vested in defendants 3 and 4. It is not clear under what authority the 3rd and 4th defendants would conduct the enquiry, in fact the plaintiff went in person to the office of the defendants and objected and explained that the 1st and 2nd defendants are acting fraudulently. The details sought in the said notice would support the contentions of the plaintiffs.

4.(vi) But the 4th defendant informed he would consider the law and deliver the Judgment. Inspite of questioning the jurisdiction of the 4th defendant he informed he would proceed further. The 4th respondent cannot conduct act as civil court, the issues raised need full-fledged trial, the 4th respondent cannot pass orders by calling only written submissions. In any event, the 2nd defendant's conduct in pressing for registration after knowing the plots were sold to various persons, after knowing about all issues between the plaintiffs and 1st defendant would show their mischievous motives. The 1st and 2nd defendants are attempting to compel the plaintiffs to their terms in regard of settlement of account, by holding the threat of registration already sold plot by using the revoked power of attorney. The Accounts are not settled and the 1st defendant has no authority to claim by act on behalf of the plaintiffs. Hence, the suit is filed for various prayer stated supra.

5. The 1st defendant has filed written statement and stated that the suit is not maintainable either in law or on facts and denied each and every allegation stated in the plaint. The 1st defendant admitted the power of attorney dated 02.12.999 and stated that he has properly rendered the account to the plaintiff then and there. The 1st plaintiff received the entire amount and given a receipt of the same on 16.12.1999. The 1st defendant acquired right over the suit property on the basis of the receipt and he is entitled to sell, mortgage and encumber the suit property with all rights. He is not entitled to pay any amount. The averments that the 1st defendant did not inform the plaintiffs the sale of properties from the date of POA until mid of 2008 is false and the other averments are all false and created by the plaintiffs. The plaintiffs were having lodge in the name but the same was mortgaged in the Cooperative Bank, which came for auction sale. The plaintiffs requested to repay the loan, which the 1st defendant had repaid the loan and executed a sale by paying the balance amount to the plaintiffs. The averments that the Power of Attorney was cancelled on 18.07.2008 and the plaintiffs have given a letter through the assistant Gopal are false. The plaintiffs have not given any letter through the said Gopal informing the cancellation of the power of attorney. This defendant has no knowledge about the cancellation of power of attorney as a

plaintiffs' have not issued legal notice to the defendant regarding cancellation. The defendant has no knowledge about the execution of power to one Shanmuga Kannan and has also no knowledge about the several alienations made by the said Shanmuga Kannan, 1st plaintiff and his wife. The plaintiffs are liable to implead all the purchasers of the suit properties therefore the suit is bad for non-joinder of properties. The 1st defendant based on the Power of Attorney had managed the properties and on 23.03.2009 had sold the properties to the second defendant which is legally valid and the same plaintiffs had received the amount and concealing the same the plaintiffs had filed the plaint. There is no cause of action, hence the plaint ought to be rejected under order 7 rule 11 of CPC. The plaintiffs have not paid property Court fee. The 1st defendant prays to dismiss the suit.

6. The 2nd defendant has filed a separate written statement and has stated the description of properties has lot of discrepancies. The subject matter of the case would depend on the intention of the plaintiffs as expressed in the said description of properties. The extent of the properties is ambiguous. The plaintiffs have not come to the Court with clean hands and as the description of the property is ambiguous, hence it is against order 7 rule 3 of CPC. There is no pleading for relief of injunction against the respondents 3 & 4 and questioning the proceedings of the 4th defendant. The sale by the 1st defendant during 2005 being questioned in the year 2009 which definitely deserves lawful and clear proof injunction cannot be granted as plaintiffs have not made out prima facie case. The declaration and

injunction cannot be granted as a matter of course and the Court is required to excise judicial discretion in grating the relief of injunction. The claim and relief are all barred by limitation and he prays to dismiss the suit.

7. The 3rd defendant filed written statement and the 4th defendant adopted the same. The plaintiffs have executed the power of attorney in Doc No. 279/1999 in Dindigul District Registrar and Sub Registrar, Chinnalapatti Doc No. 22/2001 and appointed one Rajendran as their power agent. On the basis of the said power of attorney the power agent executed sale deed in favour of one Ganesan through Document Nos.1123, 1124, 1149 and 1150 of 2005 on the file of the Sub Registrar, Chinnalapatti. The remaining extent was sold to the 2nd defendant on 23.3.2009 and the same was presented for registration the Sub-registrar returned the same as a power was cancelled as per Document Nos.126 of 2008 and 127/2008 on the file of Sub Registrar of Chinnalapptatti. The 2nd defendant preferred an appeal before the 3rd defendant challenging the return of document by the Sub-Registrar, Chinnalappatti. On basis of the appeal, notice was issued to the plaintiffs and defendants 1 & 2. After enquiry an order dated 12.06.2009 was passed by the 3rd defendant. Aggrieved the same, the plaintiffs have preferred an appeal before the Head of the Registration Department. They prayed to dismiss the suit.

8. On the basis of the above pleadings the Trial Court has framed the following issues:

1. Whether the suit is barred by limitation as sought for?

2. Whether the plaintiffs are entitled to preliminary decree against the 1st defendant for rendition of accounts of functioning as the power of attorney of the plaintiffs till 16.07.2008?

3. Whether the plaintiffs are entitled to declare the proceedings of the 4th defendant in No.3436/A1/2009 are null and void as sought for?

4. Whether the plaintiffs are entitled for permanent injunction restraining the defendants 3 and 4 from registering any sale deed relating to suit A and B schedule properties as sought for?

5. Whether the plaintiffs are entitled to declare that the sale deed dated 23.03.2009 executed by the 1st defendant in favour of the 2nd defendant is not valid and binding on the plaintiffs as sought for?

6. Whether the plaintiffs are entitled for mandatory injunction to direct the 1st defendant to handover the original title document of the 1st plaintiff dated 24.09.1990 registered as Document No.817/1990 in the office of the Sub Registrar, Chinnalapatti to the plaintiff?

7. Whether the plaintiffs are entitled for mandatory injunction directing the 1st defendant to hand over the original title document of the 2nd plaintiff dated 24.09.1990 registered as document No.818/1990 in the office of the Sub Registrar, Chinnalapatti to the 2nd plaintiff as sought for?

8. To what other relief, the plaintiffs are entitled to?

9. The Trial Court after hearing rival pleadings, the evidence and depositions had partly allowed the suit. The Trial Court had directed the 1st defendant to render proper accounts and as far as other reliefs are concerned the suit was dismissed. Aggrieved over the same the plaintiffs have preferred the present appeal suit. The 1st defendant has not preferred any appeal against the finding of rendition of accounts, hence the said finding of the Trial Court is confirmed and the same has attained finality.

10. This Court after hearing the rival submissions had framed the following points for consideration:

> i. Whether *the plaintiff is entitled to declaration that the 4th respondent proceedings dated 25.05.2009 are null and void?*
>
> *ii. Whether the plaintiff is entitled to permanent injunction restraining the defendants 3 and 4 from registering any sale relating to suit A and B schedule properties?*
>
> *iii. Whether the plaintiffs are entitled to declare that the sale deed dated 23.03.3009 executed by the 1st defendant in favour of the 2nd defendant is not valid and binding on the plaintiffs?*
>
> *iv. Whether the plaintiffs are entitled for mandatory injunction to direct the 1st defendant to handover the*

original title document of the 1st plaintiff dated 24.09.1990 registered as Document No.819 of 1990 and 2nd plaintiff dated 24.09.1990 registered as Document No.818 of 1990?

v. Whether the Trial Court has erred in not considering implied revocation under section 207 of Indian Contract Act since the plaintiffs had sold the properties themselves after cancellation of power of attorney and subsequent execution of sale deeds by the plaintiffs is evident from the Ex.A16 encumbrance certificate?

vi. Whether the PW2 is bound to know the contents of the letter? And whether the principles of burden of proof applicable to Will can be applied for the case when the PW2 is only a messenger to hand over the letter?

vii. Whether the defendants failed to cross examine P.W.2, can the plaintiffs be saddled for the mistake committed by the defendants?

viii. The defendants had not specifically denied the averments stated in paragraphs 6, 7 and 8 of the plaint, hence as per Order 8 Rule 3 & 5 in the absence of specific denial whether the said facts ought to be taken as admitted and proved by the plaintiff?

11. The 6th and 7th points for consideration are taken up for discussion. The plaintiff had taken steps to prove the fact that the 1st defendant was informed about the cancellation of the power of attorney by marking the letter dated 18.07.2008 as Ex.A13 and the said letter was handed over through one Gopal. The

said Gopal had deposed as PW2, wherein he had stated that the 1st plaintiff had directed him to hand over the letter to the 1st defendant and the PW2 had handed over the same to the 1st defendant. The Trial Court had recorded and agreed with the said fact, but had proceeded to hold that the PW2 do not know the contents of the letter, hence the said deposition of the PW2 cannot be considered. This Court is of the considered opinion that the Trial Court failed to see that the plaintiff is bound to prove that the letter was handed over and the same is proved by producing the said Gopal as witness. The said Gopal had acted as messenger. The plaintiff by producing the messenger Gopal as witness who had deposed as PW2 had discharged the initial burden of proof. Further the said Gopal is only a messenger who was directed only to hand over the letter. The said Gopal cannot be expected to know the contents of the letter since he has not affixed his signature in the letter or has acted as witness to the contents in the said letter. The principles applicable for proving a Will or any deeds has been applied by the Trial Court. To prove whether the messenger had handed over the letter it is not necessary to know the contents of the letter. Therefore, this Court is of the considered opinion that the Trial Court had erred in its finding by expecting to prove as a “attesting witness of the letter”. Suffice to prove the letter was handed over as “messenger”.

12. Further it is a specific contention of the plaintiff that the defendants failed to cross examine PW2 at the first instance. It is seen from the records that the defendants had not cross examined the PW2, in such

circumstances, the plaintiffs cannot be blamed for the mistake committed by the defendants. Furthermore, it is the specific case of the plaintiffs, had the defendants taken effective steps to recall the PW2 then it would have come to the knowledge of the defendants and the Trial Court that the PW2 died in an accident. Under section 33 of Indian Evidence Act if a person died or cannot be found, or if his presence cannot be obtained without an amount of delay or for other reasons could not be produced for examination / cross examination in the subsequent judicial proceeding, then the Court can come to the conclusion that production of the witness is not possible and the claim of the party seeking production of witness can be held unreasonable. When the said Gopal died then the Trial Court ought to have come to the conclusion that the same is unreasonable. Further, it is seen that the said Gopal had left the job from the plaintiff and was working elsewhere, this is evident from the deposition of the said Gopal in chief examination wherein he has stated that earlier he was working with the plaintiff and at the time of giving evidence itself he had been working elsewhere. Therefore, based on subsequent death of Gopal, section 33 is coming to the aid of the plaintiff. Therefore, this Court is of the considered opinion that the mistake of not cross examining at the first instance cannot be saddled on the plaintiffs. Therefore, the 6^{th} and 7^{th} points for consideration is held in favour of the plaintiffs.

13. As held supra the cancellation of power of attorney was intimated to the 1^{st} defendant through Ex.A13 through PW2, the messenger Gopal who was

produced as witness PW2 and this Court has already held that the said Ex.A13 is acceptable. Even though the 1st defendant denies the same, his plea cannot be considered, since the 1st defendant failed to appear and contest the case. Hence, adverse inference is drawn against the 1st defendant. Therefore, this Court is of the considered opinion that the 1st defendant was intimated about the cancellation of the power of attorney through the Ex.A13. And the plaintiff has discharged the initial burden of proof and had proved the 1st defendant was intimated about the cancellation of the power of attorney.

14. For the sake of argument, even if it is taken that the 1st defendant was not intimated by the plaintiff by issuing letter / notice, then also the case of the 1st defendant cannot be accepted since by subsequent action the plaintiff had clearly intimated about the cancellation of the power of attorney thereby attracting the principles of "implied revocation" under section 207 of Indian Contract Act. It is seen that the cancellation deed was executed on 16.07.2008 which has been registered. If any person is verifying whether the power is still exiting, then it would be evident the same is cancelled. Further the plaintiffs had appointed another power of attorney namely G.Shanmuga Kannan on the very same day i.e. 16.07.2008 which has also been registered. Thereafter the said G.Shanmuga Kannan had executed several sale deeds and the same were also registered, which are admittedly prior to the alleged impugned sale deed dated 23.03.2009. Infact the 1st plaintiff himself had sold two plots on 11.03.2009 and on 13.03.2009 which are

admittedly prior to the alleged sale deed dated 23.03.2009 (which was executed by the 1st defendant to the 2nd defendant). Under section 207 of Indian Contract Act the plaintiffs' action of appointing another power of attorney and selling the plots by himself would come under implied revocation. The said section is extracted hereunder:

> ***207.Revocation and renunciation may be expressed or implied.***—Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.
>
> ***Illustration***
>
> A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

The illustration is squarely applicable to the plaintiff's case. The Hon'ble Supreme Court in its judgment dated 09.07.2024 rendered in Thankamma George Vs. Lilly Thomas and another in Civil Appeal No.6495 of 2023 had held about implied revocation and the relevant portion of the judgment is extracted hereunder:

> ***21.*** *In the absence of a particular mode suggested for revocation of the authority of an agent, the manner adopted by the principal to revoke the authority of the agent must be one which clearly and unequivocally communicates to the parties i.e., to be affected by such revocation, that the agent's authority has been withdrawn. In the framework of Sections 207 and 208 of the Act,*

the revocation/renunciation of authority may be made by express words or may be implied from the words and conduct of the principal, viz., which is inconsistent with the continuance of the agency. This is one facet of renunciation or revocation of authority of an agent; the other facet is governed by Section 208 of the Act. Section 208 provides for the effective time and date of termination of the agent's authority and third parties. From a plain reading, Section 208 infers and gives effect to revocation upon the twin conditions being satisfied, (i) communication to the agent and (ii) knowledge to a third party i.e., one who deals with or is likely to deal with the agent. Then, the revocation of authority becomes known to the agent and the said third parties. In other words, an idea in the mind of the principal to revoke cannot be construed as implied revocation or renunciation of agency. There ought to be an act or conduct of the principal which implies that the agency is revoked or withdrawn. If the revocation is expressed, such as by publication in newspapers, public notice or advertisement, communication to the agent etc., the parties who deal with the agent have a reasonable opportunity to know the revocation of agency by the principal. Two stages of revocation are, firstly, one dealing with the agent, and secondly, one which applies to the third parties. For attracting the consequence of revocation to either of the situations, the revocation of the agent's authority is made by the principal in a manner that clearly implies that the principal has withdrawn the authority to act on his or her behalf by the agent. Followed by knowledge to third parties, let us examine the circumstances of the case on whether implied revocation coupled with communication is established.

***22.** The Power of Attorney (Ex. A-4) was executed on 04.12.2003. The Appellant, on 30.11.2007, claims to have retired from service and settled in India. A power of attorney confers* *power for the execution of deeds in situations of necessity, including in the absence of the Appellant in the country. From the record, it can be noted that from 2007 onwards, the Appellant was not entirely absent from India or residing exclusively in the U.S.A. Therefore, the Appellant and Respondent No. 1 executed the sale deed dated 18.01.2008 (Ex. A-3). Respondent No. 2 is one of the witnesses to Ex. A-3. The execution of sale deed dated 16.04.2008 (Ex. A-5) is inconsistent with and contradictory to the power granted to Respondent No. 1 in Ex. A-4. This is an explicit conduct of the Appellant to act for herself on the share she holds in the property purchased in 1991. In Deb Ratan Biswas (supra), this Court held that the signing of a compromise by the defendants themselves would amount to implied revocation of power of attorney. In a case where the principal chooses to act for himself, particularly to the agent's knowledge and a person to be affected, then it can be held that Section 207 of the Act is attracted. We have no doubt in holding that the Appellant, in terms of Section 207, impliedly revoked the authority of Respondent No. 1, and as required by Section 208, Respondent No. 2 had the knowledge of the independent dealing with the property by the Appellant. Therefore, the revocation takes effect on 18.01.2008. Ex. A-5 was executed on 16.04.2008. Thus, with the operation of implied revocation of authority, Respondent No. 1 cannot act as an agent of the Appellant and, hence, the sale deed insofar as the Appellant's share in the suit schedule is held void ab initio.*

The Hon'ble Supreme Court had held there is no particular mode of implied revocation, but it should a method which clearly and unequivocally communicates about the revocation. In the present case the cancellation of the

Power of Attorney against the 1st defendant, the new power of attorney executed in favour of G.Shanmuga Kannan and the sale by the plaintiffs themselves are three methods adopted by the plaintiffs which clearly communicates revocation of power of attorney given to 1st defendant. Therefore, this Court is of the considered opinion that the plaintiffs' have clearly intimated through the letter dated 18.07.2008 and also impliedly communicated the revocation of power by executing another power of attorney and by executing sale deeds dated 11.03.2009 and 13.03.2009. The Trial Court had not considered the case under implied revocation stated under section 207 of the Contract Act. Thereby the Trial Court had terribly erred in its finding. Therefore, the 5th point for consideration is held in favour of the plaintiff.

15. The alleged sale deed dated 23.03.2009 was executed by the 1st defendant to the 2nd defendant, which is after the cancellation of the power of attorney. When the registered cancellation of power of attorney had come into existence, then the same would act as implied revocation of power of attorney as stated supra. Then the alleged sale deed dated 23.03.2009 would become illegal and void sale deed. Further the 2nd defendant being the purchaser is expected to verify the encumbrance certificate. When the 2nd defendant failed to verify the encumbrance certificate, then the 2nd defendant cannot claim any right over the property. Further it is the specific case of the 1st plaintiff that he approached the 2nd defendant in person and explained about the entire issue, but the 2nd defendant had

refused to listen to the plaintiff and had directed to deal with the 1st defendant and not with the 2nd defendant. It is pertinent to point out that the 2nd defendant had not denied the said fact in his written statement. The 2nd defendant had elaborately stated about the boundaries, about the plaintiff is not entitled to injunction, about the proceedings pending before the Registrar but failed to utter even a single word about the fact that the plaintiff had explained about the entire issue. Therefore, it is evident that the plaintiff had conveyed about the cancellation of power of attorney to the 2nd defendant also. In such circumstances, the 2nd defendant cannot be considered as bonafide purchaser. Consequently, the 2nd defendant is not having any right to possess the original documents. Therefore, the plaintiff is entitled to the original documents and the 4th point for consideration is held in favour of the plaintiff.

16. Since this Court had held supra that the sale deed dated 23.03.2009 is illegal document, consequently the plaintiff is entitled to the prayer of declaration that the said sale deed dated 23.03.2009 is not valid and not binding the plaintiffs and permanent injunction restraining the defendants from dealing with the property.

17. The 2nd defendant had taken a plea that the plaintiff had not sought for prayer to set aside the sale deed dated 23.03.2009, therefore the suit cannot be entertained. This Court is of the considered opinion that when the document itself

is declared as illegal then the same would become non-est in the eyes of law. If the document becomes non-est in the eyes of law, then the document ought to be automatically set aside. Therefore, this Court is directing the Registrar to make an entry that the said sale deed has been declared as non-est in the eyes of law and the same had been set aside. Hence the 3rd point for consideration is held in favour of the plaintiff.

18. Since this Court had declared that the sale deed dated 23.03.2009 is illegal and non-est in the eyes of law, then the plaintiff is entitled to the relief of permanent injunction. Hence the 2nd point for consideration is held in favour of the plaintiff.

19. The next contention of the plaintiff is that the plaintiff has stated regarding the cancellation of power of attorney and subsequent happenings in paragraph 6, 7 and 8. But the same was not specifically denied by the defendants and was not disputed in the written statement by the 2nd defendant. Hence as per Order 8 Rule 3 & 5 in the absence of specific denial these ought to have been as admitted proof. It is seen both the 1st and 2nd defendants had not specifically denied the subsequent happenings of appointing another power of attorney G.Shanmuga Kannan and he had executed certain sale deeds, further the 1st plaintiff himself had executed two sale deeds and also settlement deeds. As rightly pointed out by the plaintiff the same were not specifically denied by the defendants, thereby the said

pleadings of the plaintiff ought to be considered as admitted facts. The 8th point for consideration is held in favour of the plaintiff.

20. The 2nd defendant tried to convince the Court by stating that the 1st defendant had executed confirmation deed as early as 2005 with the 1st plaintiff which is being reflected in the sale deed dated 23.03.2009. The said contention cannot be accepted since the 1st defendant had taken inconsistent stand, on one had the 1st defendant claims that the power of attorney is with consideration and on the other hand the 1st defendant claims that he had remitted the sale consideration to the plaintiffs and had furnished the accounts. There is specific finding by the Trial Court about the inconsistent stand. In fact, the prayer of rendition of accounts was granted by the Trial Court based on the said inconsistent stand. Further it is seen that the 1st defendant claims there is receipt for the payment of consideration. But it is only bare statement and no evidence was produced for the same. Therefore, the contention of the 2nd defendant about the contents of confirmation letter dated 28.01.2005 and 27.06.2006 (marked as Ex.B12 and Ex.B13) which is also stated in the sale deed dated 23.03.2009 is without any evidence and basis. Further as rightly pointed out by the plaintiff, the Ex.B.12 & 13 which are contradictory and unsupported by the registered documents Ex.Bs.1 & Ex.B.2. Therefore, this Court is of the considered opinion that the defendants failed to prove their claim that the power of attorney is supported with consideration, consequently the said plea is rejected.

21. The 2nd defendant submitted that the 2nd defendant had executed sale agreement dated 03.07.2009 with one Mariappan for several crores and produced Ex.B.3. The said contention cannot be accepted for the reason the said fact was not stated in the written statement at all. It is settled principles of law that without pleadings the said exhibits cannot be seen at all, hence there is no question of accepting the said plea. Further the same are unregistered documents, hence the veracity and genuineness are questionable. Therefore, this Court is of the considered opinion that the Ex.B.3 are created documents and the same cannot be relied on.

22. The 1st point of consideration that is whether the notice dated 25.05.2009 ought to be declared as null and void. The contention of the 3rd and 4th defendants is that notice or show cause notice cannot be declared as null and void. But the contention of the plaintiff is that the 3rd and 4th defendant have no jurisdiction to conduct enquiry since the power of attorney and other legal issues cannot be dealt with summarily by the 3rd and 4th defendant, hence the said notice ought to be declared as null and void. It is true that the notice and show cause notice cannot be declared as null and void and the person receiving the notice ought to submit objection to the notice. However, if it is issued without jurisdiction then the same is liable to be set aside. The plaintiff had challenged the same on the question of jurisdiction. The plaintiff stated that the Civil Court alone has

jurisdiction to deal with the complicated and intricate legal issues. This Court is of the considered opinion even though the notice cannot be challenged, but the issues like whether the power of attorney is coupled with the consideration or not, whether the 2nd defendant has any right to claim under the alleged Confirmation Deed ought to be decided by the Civil Court only, since the same need elaborate evidence. Therefore, the 3rd and 4th defendants ought to have directed the parties to approach the Civil Court. Since the plaintiff had filed the suit, then the said notice had become infructuous. Consequently, the said notice is set aside on the question of jurisdiction and also as infructuous. The 1st point of consideration is held in favour of the plaintiff.

23. The contention of the plaintiffs that the 1st defendant had remained exparte and petition to set aside the exparte order filed along with the written statement was dismissed by the Court below and confirmed by the Appellate Court. In such circumstances, the written statement filed by the 1st defendant ought not to have been placed on record and considered by the Court below. It is seen that the 1st defendant did not participate in the Trial and as rightly pointed out by the plaintiff, the 1st defendant is only watching the proceedings. Infact the 2nd defendant while deposing as DW1 has admitted that he is in contact with the 1st defendant. Therefore, this Court is of the considered opinion that there is an active collusion between the 1st defendant and the 2nd defendant with an aim to defeat the rights of the plaintiffs.

24. For the reasons stated supra, this Court is of the considered opinion that the Appeal Suit deserves to be allowed and accordingly allowed. The Judgment and Decree dated 11.07.2016 in O.S.No.48 of 2009 on the file of the Additional District Court, Dindigul is set aside and the present Appeal Suit is allowed. Connected Miscellaneous Petitions are closed.

25.10.2025

Index : Yes / No
NCC : Yes / No

KSA

TO:

1. The Additional District Court,
   Dindigul.

2. The District Registrar,
   District Registrar Office,
   Round Road,
   Dindigul District.

3. The Sub Registrar,
   Office of the Sub Registrar at Chinnalapatty,
   Dindigul District.

4. The Section Officer,
   VR Section,
   Madurai Bench of Madras High Court,
   Madurai.

S.SRIMATHY, J

KSA

Pre-Delivery Judgment made in
A.S(MD)No.41 of 2018

25.10.2025