



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-06-2026

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CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 352 of 2026 and

CMP No.12264 of 2026

R.Ganesan, S/o. Ramasami,
Old D.No.323, New No.112,
Kannagi Street, Thiruvangoundanur,
Salem 636 005.

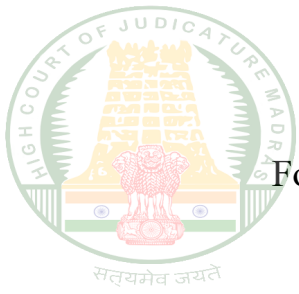
..Appellant(s)

Vs

1. T.A.Kadirvelu, S/o. T.T.Arjunan,
No.232, Kannagi Street,
Bodinaickenpatti Village,
Sooramangalam Via,
Salem Taluk and District.
2. P.Babushankar, S/o. Periannan,
Morambu Kadu,
Sivathapuram Village,
Salem 636 307.
(Notice to the 2nd Respondent may be dispensed
with he was set exparte)

..Respondent(s)

Prayer: Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the Judgment and Decree dated 29.10.2025 in A.S.No.61 of 2024 on the file of the Principal District Judge at Salem confirming the Judgment and Decree dated 22.12.2023 in O.S.No.138 of 2012 on the file of the I Additional Sub-Court, Salem.



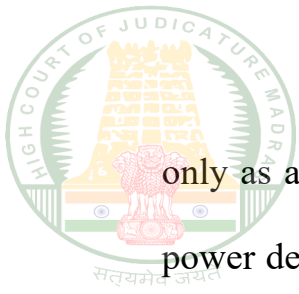
For Appellant(s): Mr. V.Sekar

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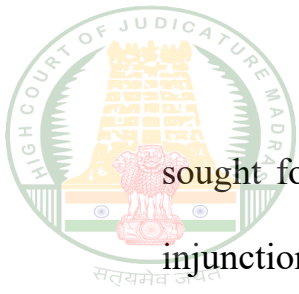
JUDGMENT

The unsuccessful plaintiff is the appellant herein. He filed a suit seeking to set aside the sale deed dated 12.12.2005, executed by his power of attorney, the 2nd defendant in favour of the first defendant as a fraudulent document. He also sought for consequential permanent injunction restraining the first defendant from interfering with his peaceful possession and enjoyment over the suit property. The suit was dismissed by the Trial Court and the findings of the trial court were affirmed by the first appellate court. Aggrieved by the concurrent findings of the courts below, the plaintiff has filed the present second appeal.

2. According to the plaintiff/appellant, the suit property belonged to him under a sale deed dated 13.12.1985. It is the case of the plaintiff that he borrowed a sum of Rs.5,00,000/- from one Periyannan and at the time of borrowal, the said Periyannan insisted the plaintiff to execute a power of attorney in favour of his son, the 2nd defendant, as a security for the above said loan transaction. Therefore, the plaintiff executed a power of attorney on 31.12.2001 in favour of the 2nd defendant with regard to the suit property. It is contended by the plaintiff that the above said power of attorney was executed



only as a security for the above said loan transaction and it was not a genuine power deed, intended to empower the 2nd defendant to sell the suit property. It is further contended by the plaintiff that the 2nd defendant after taking the power deed, entered into a nominal sale agreement with his brother P.Selvakumar on 31.12.2001, agreeing to sell the suit property to him and the said transaction was entered into, as per the usual practise followed by the money lenders. The plaintiff further stated that he discharged the entire loan amount borrowed by him from Periyannan, however, the 2nd defendant did not return the original power of attorney and he demanded more amount towards interest. The plaintiff refused to pay more amount, as he already paid the principal amount together with the agreed interest. The plaintiff also contended that on 15.02.2012, the first defendant set fire the trees standing in the suit property and on enquiry it came to the knowledge of the plaintiff that the first defendant purchased the suit property from the 2nd defendant, the power agent of the plaintiff. It was also came to the knowledge of the plaintiff that the sale agreement with Selvakumar was cancelled by the 2nd defendant and subsequently property was sold to the 1st defendant, vide sale deed dated 12.12.2005. It is the specific case of the plaintiff that the 2nd defendant by using the power of attorney, which was executed as a security alone for the loan transaction between the plaintiff and Periyannan, created a false sale deed. Therefore, according to the plaintiff, the above said sale deed is liable to be set aside as it was the fraudulent document. On these pleadings, the plaintiff



sought for setting aside the sale deed dated 12.12.2005 and for consequential injunction.

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3. The first defendant filed a written statement and denied various allegations made by the plaintiff in his plaint. It was the case of the first defendant that the plaintiff executed a power of attorney in favour of the 2nd defendant, authorising him to deal with the suit property and pursuant to the same, the 2nd defendant sold the suit property to the first defendant for a valid consideration. It was also stated by the first defendant that he was a bonafide purchaser of the suit property for a valuable consideration and hence, the sale deed executed by the 2nd defendant, based on the power of attorney executed by the plaintiff is binding the plaintiff. The allegation of the plaintiff as if the power of attorney was executed in favour of the 2nd defendant as a security for a loan transaction was specifically denied by the first defendant. The first defendant also claimed that he has been in possession and enjoyment of the suit property from the date of purchase and he denied the allegation of the plaintiff in his plaint regarding his possession over the suit property. It was also contended by the first defendant that the plaintiff not only executed the power of attorney in favour of the 2nd defendant, but also delivered possession of the property to the power of attorney, enabling him to administer the property. On these pleadings, the first defendant sought for dismissal of the suit.



4. It is pertinent to mention that the present suit in O.S.No.138 of 2012 was tried along with another suit in O.S.No.246 of 2007 filed by one K. Chinnaponnu and K.Sankar Ganesh, represented by their power of attorney T.A.Kadirvel, who is the first defendant in the present suit, seeking specific performance of the sale agreement dated 30.06.2004 against the present plaintiff's brother R.Ramakrishnan and one P.Selvakumar, in respect of the adjacent property. Both the suits were tried together and evidence was recorded in the suit for specific performance in O.S.No.246 of 2007.

5. Before the Trial Court, the first defendant in the present suit, namely T.A.Kadirvel, who is the power of attorney of the plaintiffs in O.S.No.246 of 2007 was examined as PW1 and the 2nd plaintiff in O.S.No.246 of 2007, namely K.Sankar Ganesh was examined as PW2. On behalf of the plaintiffs in specific performance suit, 34 documents were marked as Ex.A1 to Ex.A34. The first defendant in specific performance suit, namely R.Ramakrishnan was examined as DW1 on the side of the defendants in specific performance suit and 7 documents were marked as Ex.B1 to Ex.B7.

6. It is pertinent to mention that the plaintiff in the present suit, namely R.Ganesan not even entered the box and let in any evidence on his behalf. The



Trial Court, on appreciation of oral and documentary evidence came to the conclusion that the plaintiff failed to enter the box to substantiate his allegation that the power of attorney was executed by him in favour of the 2nd defendant, only as a security for loan transaction and hence, dismissed the suit. Aggrieved by the same, the plaintiff/appellant herein filed an appeal in A.S.No.61 of 2024.

7. It is also to be noted that the first defendant in specific performance suit, namely R.Ramakrishnan also filed first appeal in A.S.No.60 of 2024 and the appeal has been heard along with the first appeal filed by the present appellant/ plaintiff.

8. The appeal in A.S.No.61 of 2024, filed by the present appellant/ plaintiff, namely R.Ganesan was dismissed, affirming the findings of the Trial Court and the appeal in A.S.No.60 of 2024 filed by the first defendant in the specific performance suit, namely R.Ramakrishnan was partly allowed and the decree passed by the Trial Court was set aside and consequently, the primary relief for specific performance was negatived, however, the first appellate court directed the defendant therein to return the advance amount. Challenging the concurrent findings of the courts below, the appellant herein/ plaintiff has come before this by filing the instant second appeal.



9. The learned counsel for the appellant would submit that the power of attorney executed in favour of the 2nd defendant was not intended to be acted upon as it was executed only as a security for the loan transaction and the courts below, without appreciating the contentions raised by the plaintiff in proper perspective, erroneously dismissed the suit. The learned counsel for the appellant also submitted that the brother of the plaintiff, namely R.Ramakrishnan, who was arrayed as first defendant in the suit for specific performance, was examined as DW1 and therefore, the courts below committed an error in non suiting the plaintiff on the ground that he has not entered the box and examined himself as a witness.

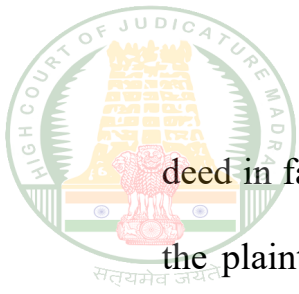
10. It is an admitted case of the plaintiff/appellant that he executed a power of attorney in favour of the 2nd defendant on 31.12.2001 and the same was marked as Ex.A4 = Ex.B4. It is the specific case of the plaintiff that though he executed the power of attorney in favour of the 2nd defendant, it was not intended to be acted upon as power deed and the same was executed only as a security for the loan obtained by him from one Periyannan.

11. When the plaintiff questions the registered power of attorney executed by him in favour of the 2nd defendant on the ground that it was not intended to be acted upon, it is incumbent on him to enter the box and depose evidence regarding loan transaction with Periyannan. In the case on hand, the plaintiff failed to enter the box and subjected himself for cross examination. It is settled



law that a registered document carries a strong presumption of genuineness. In the case on hand, the plaintiff failed to adduce any acceptable evidence to rebut the said presumption and impeach the validity of power of attorney executed by him.

12. The learned counsel for the appellant vehemently contended that even though the plaintiff was not examined himself as witness, his brother R.Ramakrishnan was examined as DW1 and he deposed about the loan transaction between the plaintiff and Periyannan. However, the above said R.Ramakrishnan is not a party to the power of attorney executed by the plaintiff in favour of the 2nd defendant. Therefore, he is not a competent witness to contradict the terms of the power of attorney executed by the plaintiff. Moreover, the plaintiff failed to examine any third party witness to establish that there was a loan transaction between himself and Periyannan and only as a security for the loan transaction, the power of attorney was executed by him. Both the courts below rightly held that the failure of the plaintiff to enter the box is fatal to his case. I do not find any error in the said conclusion reached by the courts below. Since the plaintiff has failed to lead any evidence to impeach the validity of the registered power of attorney executed by him in favour of the 2nd defendant, the subsequent sale deed executed by the 2nd defendant in favour of the 1st defendant would confer good and valid title. It is not the case of the plaintiff that he cancelled the power of attorney prior to the execution of the sale



deed in favour of the 1st defendant by the 2nd defendant. In such circumstances, the plaintiff is not entitled to get any relief as prayed for. The courts below rightly pointed out that the failure of the plaintiff to enter the box destroyed the very foundation of the plaintiff's case and dismissed the suit. I do not find any substantial question of law arising for consideration in this second appeal. Whether the power of attorney executed by the plaintiff is a genuine one or it was executed only as a security for loan transaction, is the question of fact and the plaintiff failed to lead cogent evidence to establish the pleas raised by him. In such circumstances, the second appeal fails, as this court cannot interfere with the finding of facts by the courts below, in the absence of perversity.

13. Accordingly, the second appeal is dismissed, confirming the findings of the courts below. There shall be no order as to costs. Connected miscellaneous petition is closed.

04-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
MST

To

1. The Principal District Judge, Salem.
2. The I Additional Subordinate Judge, Salem.



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S.SOUNTHAR, J.

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