IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.10.2025

Pronounced on: 23.01.2026

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S.No.928 of 2020
and
CMP No.12891 of 2020

1. Kalaimani
2. Palanisamy ... Appellants

Vs

1. Pandiyan
2. Arunvel
3. Samyuktha Gomathi
4. Velusamy ... Respondents

PRAYER in A.S.No.928 of 2020 : This Appeal suit is filed under Section 96 of C.P.C., against the judgment and decree dated 03.12.2019 passed in O.S.No.177 of 2015 on the file of the Principal District Judge, Namakkal.

PRAYER in CMP No.12891 of 2020: This Civil Miscellaneous Petition is filed under Order XXXIX Rule 1 & 2 of C.P.C., to grant an interim injunction, restraining the respondents 1 to 3 from creating any third party rights, from disposing and alienating the property in any manner, in pursuance of the judgment and decree dated 03.12.2019 passed in O.S.No.177 of 2015 on the file of the Principal District Judge, Namakkal, pending disposal of the above first appeal.

For Appellants : Mr.Vivek

For R1 to R3 : Mr.Sam Jayaraj Houston
for M/s.Sarvabhauman Associates

For R4 : Mr.M.Guruprasad

JUDGMENT

This appeal is filed by the plaintiffs against the judgment and decree dated 03.12.2019 passed by the learned Principal District Judge, Namakkal, in O.S. No.177 of 2015, dismissing the suit.

2. For the sake of convenience, the parties are referred to as they are arrayed in trial court.

3. Brief facts of the plaint: The plaintiffs filed the suit seeking a preliminary decree on the basis of a mortgage deed dated 13.01.1998 executed by the 4th defendant as power agent of defendants 1 to 3. The suit was filed for recovery of a principal sum of Rs.4,00,000/- together with interest amounting to Rs.12,45,000/-, in total a sum of Rs.16,45,000/-.

4. The suit schedule property is the ancestral property of defendants 1 to 3. The plaintiffs rely upon a Power of Attorney dated 06.08.1997 executed

by the 1st defendant, for himself and on behalf of minor defendants 2 and 4 in favour of the 4th defendant, authorising him to execute sale deeds, register documents, and borrow loans on equity mortgage either from private financiers or nationalised banks, and to discharge such loans.

5. Pursuant thereto, the 4th defendant executed a mortgage deed in favour of Plaintiffs' dated 13.01.1998 for a sum of Rs.4,00,000/-. The consideration under the mortgage was stated to have been adjusted by discharging the antecedent debts of the 1st defendant under the following promissory notes:

(i) dated 25.06.1996 for Rs.1,50,000/- in favour of the 1st plaintiff;

(ii) dated 02.04.1995 for Rs.35,000/- in favour of Mrs. Mani, wife of the 2nd plaintiff;

(iii) dated 24.04.1995 for Rs.50,000/- in favour of Marappa Gounder, son of the Palaniyappa Gounder;

(iv) dated 17.03.1997 for Rs.75,000/- in favour of Kaliappan; and

(v) dated 04.05.1996 for Rs.65,000/- in favour of Ramasamy, totalling Rs.3,75,000/-. The remaining sum of Rs.25,000/- was stated to have been paid in cash to the 4th defendant.

6. It is further pleaded that on 05.01.2004, the 4th defendant made a part payment of Rs.25,000/- towards the mortgage debt. As the defendants 1

to 3 failed to repay the loan amount, the plaintiffs demanded payment. The 4th defendant informed the plaintiffs that the power of attorney had been cancelled on 01.12.2009 and advised them to proceed directly against defendants 1 to 3. Thereafter, a legal notice dated 17.08.2015 was issued, which remained unanswered, compelling the plaintiffs to file the suit.

7. Written statement of the 1st defendant in brief: The 1st defendant admitted that the suit property belongs to him. However, he denied the genuineness of the power of attorney, contending that it was not executed with an intention to authorise the 4th defendant to borrow loans. According to him, the 4th defendant was only a friend, and the power deed was executed when the 1st defendant went abroad, solely for managing and protecting the property, which was later misused.

8. The 1st defendant denied having borrowed any loan under the mortgage deed or otherwise, and alleged that the plaintiffs and the 4th defendant colluded to fabricate the power deed and mortgage deed. He further denied payment of any interest or principal and specifically denied authorising the 4th defendant to make part payment on 05.01.2004 so as to extend limitation. It was alleged that the endorsement dated 05.01.2004 was

fabricated with an ante-date after cancellation of the power deed on 01.12.2009.

9. Defendants 2 to 4 did not file written statements and were set ex parte.

10. **Issues framed by the Trial Court:**

(i) *Whether the plaintiffs are entitled to the suit amount from defendants 1 to 3?*

(ii) *Whether the power deed was created by the plaintiffs and 4th defendant?*

(iii) Whether the suit is barred by limitation?

(vi) To what other reliefs?

11. On the plaintiff side, five witnesses were examined and Ext. A1 to A22 were marked. On the defendant side, the 1st defendant examined himself as D.W.1 and no documents were marked. Upon consideration of pleadings and evidence, the trial court dismissed the suit.

12. Grounds of Appeal: Aggrieved, the plaintiffs filed the present appeal contending, inter alia, that the trial court erred in framing an issue

regarding fabrication of the power deed when such a plea was not raised; failed to properly appreciate the recitals of the power deed (Ex.A22); wrongly held that the 1st defendant did not borrow money under the promissory notes referred in Ex.A1; erroneously held that the suit was barred by limitation; failed to consider the part payment dated 05.01.2004 under Section 18 of the Limitation Act; and failed to properly assess the oral evidence.

13. Points for Determination:

1. *Whether the mortgage deed Ex. A1 executed by the 4th defendant as power agent of defendants 1 to 3 is valid and binding on defendants 1 to 3?*

2. *Whether the endorsement dated 05.01.2004 constitutes a valid acknowledgment/part payment under Section 19 of the Limitation Act?*

3. *Whether the judgment and decree of the trial court are liable to be set aside?*

Point No.1

14. The mortgage deed Ex. A1 dated 13.01.1998 was executed by the 4th defendant as power agent of defendants 1 to 3. The power of attorney dated 06.08.1997 (Ex. A22) authorises the agent to borrow loans either from

private financiers or nationalised banks by mortgaging the suit property and to discharge such loans.

15. The relevant recital in Ex. A22 specifically limits the source of borrowing. Admittedly, the 4th defendant borrowed the amount from two individuals, namely the plaintiffs, which is outside the authority conferred under Ex.A22. Further, P.W.1 admitted in cross-examination that there is no recital authorising the agent to discharge antecedent debts of the 1st defendant. Nevertheless, the consideration under Ex. A1 was adjusted mainly towards such alleged antecedent debts.

16. Ex. A1 further shows that out of the balance Rs.25,000/-, received in cash by the 4th defendant, substantial amounts about Rs.20,000/- were spent towards stamp duty and registration charges, leaving no evidence of actual transfer of consideration to defendants 1 to 3. Thus, there was no real inflow of funds to the principals.

17. The suit property is admitted to be ancestral property obtained by the 1st defendant under partition deed dated 30.03.1994 (Ex. A3). As on the date of Ex. A1, defendants 1 and 2 were coparceners, and defendant 3

subsequently became a coparcener by virtue of the 2005 amendment to the Hindu Succession Act.

18. Under Hindu law, a debt incurred by the Karta binds minor coparceners only if it is for family necessity or benefit of the estate. In the present case, the mortgage was executed only for adjustment of antecedent debts and not for any proved family necessity or benefit. Hence, the debt is not binding on defendants 2 and 3.

19. The power agent cannot enlarge the scope of authority beyond what is expressly conferred. Borrowing from unauthorised sources and adjusting antecedent debts is clearly beyond the mandate of Ex. A22.Accordingly, Ex. A1 is held to be invalid and not binding on defendants 1 to 3.

Point No.2:

20. Though unnecessary in view of the finding on Point No.1, this issue is examined as both sides addressed arguments. Ex. A1 was executed on 13.01.1998, and the mortgage amount was payable on or before 12.01.2002. The limitation for a mortgage suit under Article 62 of the Limitation Act is twelve years. The suit was filed on 09.09.2015.

21. The plaintiffs rely upon an alleged part payment of Rs.25,000/- on 05.01.2004 (Ex. A2) to save limitation under Section 19 of the Limitation Act. However, the 1st defendant categorically denied authorising such payment. The power deed had already been cancelled on 01.12.2009, and there is no evidence that the agent had any funds of defendants 1 to 3 to make such payment.

22. The power of attorney authorised discharge of loans availed for defendants 1 to 3 by the 4th defendant only from the funds or income of the principals. The suit property remained in the possession of defendants 1 to 3, and no income was shown to have been generated. The entire loan amount had already been adjusted towards alleged antecedent debts and stamp duty and registration expenses. Hence, the source of the alleged part payment remains unexplained.

23. A part payment made by an agent without authority, and not from the debtor's funds, does not satisfy the requirements of Section 19 of the Limitation Act. Therefore, Ex. A2 is held to be not valid and genuine.

Point No.3:

24. In view of the findings on Points Nos.1 and 2, the judgment and decree of the trial court do not warrant interference.

25. In the result the judgment and decree dated 03.12.2019 passed by the Principal District Judge, Namakkal, in O.S. No.177 of 2015 are confirmed. The appeal is dismissed with costs. Consequently, connected civil miscellaneous petition is also closed.

23.01.2026

dpq
Index: Yes / No
Speaking Order / Non-speaking Order
Neutral Citation: Yes / No

To
1. The Principal District Judge,
Namakkal.

2. The Section Office
VR Section
High Court, Madras.

DR. A.D. MARIA CLETE, J

dpq

Pre-Delivery Judgment in

A.S.No.928 of 2020
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