IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-02-2026

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

AS Nos. 69 and 70 of 2022
& CMP No. 31601 OF 2025

A.S.No.69 of 2022

Nisani ... Appellant(s)

Vs

1.Saravanan
2.Rajeswari
3.N.Abirami
4.R.Ravi ... Respondent(s)

AS No. 70 of 2022

1. Nisani
2.N.Ponmudi ... Appellant(s)

Vs

Ravi ... Respondent(s)

Prayer in AS No. 69 of 2022: Appeal Suit filed under Section 96 of Code of Civil Procedure, to set aside the Judgment and Decree in O.S.No. 111/2011 dated 29.01.2020 passed by the Learned III Additional District Judge, Puducherry.

Prayer in AS No. 70 of 2022: Appeal Suit filed under Section 96 of Code of Civil Procedure, to set aside the Judgment and Decree in O.S.No. 14/2012 dated 29.01.2020 passed by the Learned III Additional District Judge, Puducherry.

For Appellants in both ASs	Mrs.Hema Sampath, Senior Counsel
For Respondents in A.S.No.69 of 2022	R1-Expired R2-Notice unserved R3-Notice unserved
For Respondent in A.S.No.70 of 2022	Mr.V.Manohar

COMMON JUDGMENT
(Judgement was delivered by N.Sathish Kumar J.)

Challenging the decree and judgment of the Trial Court dismissing the suit filed by the plaintiff in O.S.No.111 of 2011 for declaration and for permanent injunction, the appeal in A.S.No.69 of 2022 is filed. The appeal in A.S.No.70 of 2022 has been filed by the unsuccessful defendants as against the judgment and decree of the Trial Court passed in O.S.No.14 of 2012 granting declaration and permanent injunction in respect of the plaintiff in that suit.

2. As both the appeals arise out of the common judgment passed by the Trial Court in O.S.No.111 of 201 and O.S.No.14 of 2012, we are inclined to dispose of both the appeals in a common judgment.

3. The parties are arrayed to as per their own ranking before the Trial Court.

4. The suit in O.S.No.111 of 2011 filed by the plaintiff/Nishani through her power agent one Ponmudi to declare that the suit property belonged to her and sought for a declaration to declare the sale deeds dated 20.08.2003, 31.08.2006 and 23.11.2006 registered in Doc.Nos.3745 of 2003, 5541/2006 and 4173 of 2006 as null and void. The plaintiff in O.S.No.14 of 2012 is the purchaser of the property and had sought for declaration and permanent

injunction based on the purchase he had made.

5. The following facts are necessary for disposal of both the appeals:-

5.a. It is the case of the plaintiff in O.S.No.111 of 2011 that she domiciled in France, she came to India to purchase the property on 12.08.2002 and the first defendant one Saravanan, who was her family friend, therefore, she sought his help to purchase the property. Accordingly, he has helped her in purchasing the property. The plaintiff was not well-versed in Tamil language and as the first defendant is the family friend, he volunteered to assist the plaintiff taking advantage of the affinity with the plaintiff's family. He got confidence of the plaintiff, accordingly, the plaintiff has purchased the property on 12.08.2002 by the registered Doc.No.2871/2022 and the same has been registered on the file of SRO, Oulgarret, Pondicherry. According to the plaintiff, on the same day, taking advantage of the fact that the plaintiff was not well versed in Tamil, the power deed was created by the first defendant and is registered in his name in Doc.No.366 of 2002 dated 13.08.2002. The plaintiff bonafidely believed that the signature was taken only for the purpose of registering the sale deed alone. She has no knowledge about the execution of the power of attorney. According to her, power of attorney obtained by the first defendant is a forged one and she was not made to know about the contents as she is not in a position to read the Tamil language. Later, after the plaintiff left for France, she came to know that the first defendant claimed rights over the property, therefore, the plaintiff has executed a notarised deed of power of attorney on 02.03.2005 and subsequently on 08.08.2006, the plaintiff has also executed another registered power of attorney on 08.08.2006. On verification by her power agent, it came to her knowledge that the first defendant had sold the property in favour of his wife on the basis of power of attorney dated 20.08.2003. Hence, according to the plaintiff, the sale deed is not valid since the same has come into existence pursuant to the fraudulent power of attorney.

5.b. It is also the case of the plaintiff that the first defendant had even before the purchase of the property by the plaintiff entered into an agreement to sell with the vendor K.Rajarajan for sale of the property to himself. This factum was suppressed by the first defendant, the same is done only to perpetrate fraud on the plaintiff. The plaintiff has also sent a legal notice on 02.03.2005 questioning the sale made in his wife's favour. The defendant sent a false reply on 09.03.2005. Again, the plaintiff has sent another notice on 09.08.2006 to the Sub Registrar, Oulgaret, Pondicherry and requested him to not register any document relating to the property. Later, a criminal case is also filed against the defendant and further, the second defendant has also sold the property in favour of the third defendant on 31.08.2006 and the third defendant in turn sold the property to the fourth defendant/plaintiff in O.S.No.14 of 2012 on 23.11.2006. Hence, according to the plaintiff, all the three sale deeds in favour of the defendants 2, 3 and 4 dated 20.08.2003, 31.08.2006 and 21.11.2006 are fraudulent and liable to be set aside.

5.c. The defendants 1 to 3 in the suit remained exparte, the fourth defendant alone contested the suit. According to the fourth defendant, he is the bonafide purchaser of the property for a valuable consideration from the third respondent. The power of attorney was originally given by the plaintiff to the first defendant as early as on 13.08.2002 and he has purchased the property on 31.08.2006. The property is also subject matter of the acquisition in G.O.Ms.No.21 dated 15.03.2007 and this defendant was recognised by the Government as lawful owner and was proceeded under the Land Acquisition Act. The revenue records also mutated in the name of the defendant and he is in possession of the property. Therefore, disputing the plaintiff's claim, he has also filed a suit in O.S.No.14 of 2012 seeking declaration and also permanent injunction. The pleadings in other suit may not repeated since the crux of the pleading in other suit is almost one and the same.

5.d. On the basis of pleadings and evidence, the Trial Court framed the following issues:

<u>Issues in O.S. 111/2011:</u>

1. Whether it is possible to declare the plaintiff as absolute owner of suit property?

2. Whether it is possible to declare the sale deeds dated 20.08.2003, 31.08.2006

and 23.11.2006 as null and void?

3. Whether plaintiff is entitled for permanent injunction restraining the defendants and their men from interfering his peaceful possession of suit property?

4. Whether suit is barred by limitation?

5. Whether the cause of action set forth in the plaint are false?

6. Whether the valuation is adequate?

7. To What other relief plaintiff is entitled to?

Issues in O.S. 14/2012

1. Whether it is possible to declare that plaintiff is the absolute owner with proper title and lawful possession of the suit property?

2. Whether permanent injunction restraining the defendants and their men from interfering in the rights, title and possession of suit property by the plaintiff possible?

3. Whether the power of attorney dated 13.08.2002 is a product of fraud?

4. Whether suit is bad for non-joinder of necessary parties?

5. What are the other relief's plaintiff is entitled to?

5.e. On the side of the plaintiff, the power agent of plaintiff was examined as PW1 and Exs.A1 to A14 were marked. One Arul was examined as PW2 and one Venkatakrishnan was examined as PW3. On the side of the defendants, the fourth defendant was examined as DW1 and Exs.B1 to B55 were marked.

6. The Trial Court after appreciation of the entire evidence has dismissed the suit in O.S.No.111 of 2011 and upheld the title of the fourth defendant who has filed the suit in O.S.No.14 of 2012 by common judgment dated 29.01.2020. Aggrieved over the same, the present appeals have been filed.

7. The main contention of the learned senior counsel for the appellant is that the plaintiff in O.S.No.111 of 2011 domicile in France, taking advantage of the fact that she is not well versed in Tamil language while she was purchasing the property and registering the document in her name, a power of attorney was fraudulently obtained by the first defendant. According to the learned senior counsel, the first defendant having obtaining power of attorney had sold the property to his wife, later on 20.08.2003 under Ex.A5 and further, the property has been conveniently sold to the other defendants. Now the fourth defendant alone is contesting and other defendants remained exparte, hence, it is the contention that when the document itself is fraudulently executed, fraud vitiates every solemn act. Further, the very conduct of the first defendant in registering the document in favour of his wife clearly shows that the entire document is not supported by any consideration. There is no need whatsoever to obtain the power of attorney on the same day when the plaintiff had became the owner of

the property. All these facts clearly show that the transaction is not genuine and result of fraud. The Trial Court has not appreciated both oral and documentary evidences, hence, seeks for allowing this appeal suits.

8. Whereas, the learned counsel for the fourth respondent in A.S.No.69 of 2022 would submit that the entire suit itself is nothing but abuse of process of law. Though the plaintiff claims that she is not well versed with Tamil language, fact remains that she is a permanent resident of Pondicherry, all the documents executed by her show that she is the resident of Puducherry. That apart, the power of attorney executed in favour of PW1, the present power of attorney on 02.03.2005 under Ex.A1 indicate that she was a resident of Puducherry, therefore, her contention that she was not well versed in Tamil is absolutely false and pressed into service only for some or other reasons to challenge the sale deeds which are validly executed in favour of the defendants. It is the further contention that the plaintiff has not chosen to examine herself and only her present power agent has given evidence, who is also not aware of any transaction between the plaintiff and the first defendant, therefore, his evidence also does not help the plaintiff in any manner. Hence, seeks for dismissal of the appeal suits.

9. In light of the above, now the following point arise for consideration:-

(i) Whether the power of attorney dated 13.08.2002 is a result of fraudulent act? If it is so, whether all the subsequent sales are valid in the eye of law?

Point (i)

10. The plaintiff in the suit in O.S.No.111 of 2011 has sought to annul the registered documents dated 20.08.2003, 31.08.2006 and 23.11.2006 which are admittedly the registered documents. Now the fourth respondent has purchased the property vide sale deed dated 31.08.2006. The main ground on which the documents are sought to be annulled is that the plaintiff was not well versed with the Tamil language and she was domiciled in France, when she came to India to purchase the property, the first defendant being a family friend volunteered to assist her in purchasing the property at the time of registration of the sale deed. He also obtained the signature in blank papers and got it registered as power of attorney, therefore, it is her contention that she was not at all in a position to understand the Tamil language, therefore, the document has been fraudulently created. Later, only after she left to France, she came to know that the first defendant has laid a claim over the property and thereafter, she had appointed the present power agent who was examined as PW1.

11. It is relevant to note that in all the documents executed including the sale deed in which the plaintiff originally had purchased the property on 12.08.2002 which is also marked as Ex.A3 is prepared in Tamil and the address

given in the sale deed clearly indicate that it is never stated that plaintiff is a domicile in France and she has come over only for the purpose of sale, whereas, the address recorded in the sale deed clearly indicates that she is a resident of Puducherry. The power of attorney executed in favour of the first defendant also indicate that she is a resident of Puducherry.

12. It is also to be noted that these documents are registered before the Sub Registrar, Puducherry, therefore, when the registered sale deed which is prepared in Tamil language and the plaintiff taking advantage of that document/sale deed and claiming title over the property has conveniently disowned the other document executed on the very same day. If really, the plaintiff was not well versed in Tamil, there was no explanation as to how she was able to come to the conclusion that document registered in her favour is only a sale deed originally. Further, it is relevant to note that both the documents are registered before the Sub Registrar and the registration is done properly, therefore, having taken advantage of one document, her conduct in denying the other document creates very serious doubt about her pleadings. That apart, it is relevant to note that with regard to the aspect that she has never studied Tamil at any point of time and she is not in a position to read or write in Tamil, absolutely, there is no materials available to show that she never studied in Puducherry and she all along studied only in France. Having failed to file any

documents in this regard, she also has not entered into witness box to testify her contention. It is the settled position of law that when a person alleges fraud, particularly, while executing the document, the entire burden lies on the person to establish the same before the Court of law, who alleges fraud. Admittedly, the plaintiff was a party to the registered documents. When she tried to assail those documents on the ground of fraud, she ought to have come before the Court and establish her case, whereas, very conveniently, she has not chosen to examine herself in the suit, the power agent appointed only in the year 2005 was testified before the Court on her behalf.

13. The evidence of the power agent (PW1) when carefully scanned, the same makes it very clear that he is not aware as to what has transpired between the plaintiff and the first defendant at the time of registration of power of attorney as well as sale deed, Ex.A3 and Ex.A4. Therefore, when the power agent has no personal knowledge about the facts which were exclusive within the knowledge of the executant and beneficiary, the evidence of the present Power of Attorney as PW1 will not serve any purpose in proving the plaintiff's case.

14. Further, it is relevant to note that all the registered documents including Ex.A9/legal notice issued by the plaintiff as early as on 02.03.2005,

her address has been given at Puducherry, therefore, the contention that she never lived in Puducherry cannot be believed. Even assuming that she was taken in surprise and Power of Attorney was executed behind her back, having known said fact in the year 2005 itself and had sent a legal notice under Ex.A9, she had filed the suit only in the year 2011, therefore, we are of the view that the suit itself is barred by limitation. Admittedly, the plaintiff is a party to the documents under Exs.A3 and A4, if any person intends to avoid such document on the ground of forgery or fraud etc., declaration ought to have been sought within a period of 3 years as per Article 58 of the Schedule to the Limitation Act, but the suit has been filed almost 9 years after the Ex.A5 dated 20.08.2003. On that ground also, the suit is not maintainable.

15. It is further to be noted that even under Ex.A9 and Ex.11 issued by the plaintiff show that in fact, she was aware of the execution of the power of attorney, she was made known what was the nature of the document and the contents of the documents. Above documents show as if first defendant has requested her to execute the power of attorney, though, she refused, but the fact remains that she was aware of the nature of the document, in such case, she ought to have avoided the document within a period of 3 years which has not been done so. In this regard, it is relevant to refer to the judgment of the Hon'ble Apex Court in the case of *Janki Vashdeo Bhojwani and another vs. Indusind*

Bank Ltd and others reported in (2005) 2 SCC 217, wherein, the Hon'ble Apex Court has held as follows:-

> *17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri Vs. State of Rajasthan, 1986 2WLL 713 it was held that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.*
>
> *18. The aforesaid judgment was quoted with the approval in the case of Ram Prasad Vs. Hari Narain & Ors. AIR 1998 Raj. 185. It was held that the word "acts" used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but be cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of the CPC.*
>
> *21. We hold that the view taken by the Rajasthan High Court in the case of Shambhu Dutt (supra) followed and reiterated in the case of Ram Prasad (supra) is the correct view. The view taken in the case of Floriano Armando Luis (supra) cannot be said to have laid down a correct law and is accordingly overruled.*

16. Further, no school certificate or passport or other particulars have been filed to show that she never resided in Puducherry and she has been all along residing in France for the reasons best known to her. PW1 is also not aware of what has been transpired personally between the plaintiff and the

defendant. Therefore, his evidence cannot substitute the principal evidence in assailing the document. Admittedly, the fourth respondent in the main suit has purchased the property and the title deed also stands in the name of the fourth respondent. The property is admittedly a vacant site, therefore, as far as the vacant site is concerned, the possession follows the title which has been settled in the case of *Anathula Sudhakar vs. P.Buchi Reddy (Dead) by Lrs and others* reported in *(2008) 4 SCC 594*. The relevant portion of the judgment reads as follows:-

> *16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.*

17. In such view of the matter, the subsequent documents executed and registered cannot be annulled after lapse of many years. The evidence of PW1 also clearly indicate that while appointing PW1, the recitals in the document is

also typed only in Tamil. All these facts clearly probabalise the defence theory that the plaintiff has come to the Court with unclean hands. Accordingly, we do not find any merits in the appeal suits.

18. In fine, these Appeal Suits are dismissed and the common judgment and decree dated 29.01.2020 made in OS.Nos.111 of 2011 and 14 of 2012 on the file of III Additional District Judge, Puducherry is confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

(N.SATHISH KUMAR J.)(R.SAKTHIVEL J.)
04-02-2026

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

To

1. The III Additional District Judge
III Additional District Court
Puducherry

2. The Section Officer
VR Section
Madras High Court

N.SATHISH KUMAR J.
AND
R.SAKTHIVEL J.

dhk

AS Nos. 69 and 70 of 2022

04-02-2026