



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 21.01.2026

Judgment pronounced on :13.02.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S. No.415 of 2022
and CMP. No.15083 of 2022
and CMP. No.14163 of 2025

S.Lakshmi @ Vijayalakshmi

..Appellant

Vs.

- 1.N.Rangasamy
- 2.N.Murugesan
- 3.N.Thulasimani
- N.Kamalam (Died)
- V.R.Natarajan (Died)
- 4.M.Arumugam
- 5.P.Rajendran
- 6.P.Devaraj
- 7.K.Shanmugam
- 8.Pious Mary
- 9.Vasanth Kumari
- 10.Paulraj
- 11.Mayilkannan
- 12.S.Kamal Kumar
- 13.K.Malarvizhi
- 14.Dhanalakshmi
- 15.Eswari
- 16.Geetha
- 17.Parvathy
- 18.Sundaraj



- 19.Parthasarathy
- 20.Kishor Kumar
- 21.Sharmila Banu
- 22.Mohandass
- 23.Gopala Krishnan
- 24.Vadivel
- 25.Viswanathan
- 26.Shanmugam
- 27.Kowsalya
- 28.Balakrishnan
- 29.Mangayakraran
- 30.A.Rajendran
- 31.Mrs.Thavamani
- 32.Mrs.Anandhi
- 33.Mrs.Vedhupriya

..Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 21.04.2022 passed in O.S. No.513 of 2010 on the file of 3rd Additional District Judge at Coimbatore.

For Appellant : Mr.A.Vinodkumar

For Respondents :Mr.B.Singaravelu for R2
Mr.K.V.Bashyam Chari for R31 and 32
No Appearance for R1, 3, 4, 10, 12, 13,
15, 17,18, 24, 26 & 27
R6 and 28, Died, steps not taken
R5, 7 to 9, 11, 14, 16, 19 to 23,
25, 29, 30, 33 are Not Ready in Notice.



JUDGMENT

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The plaintiff in a suit for partition and declaration that has been dismissed by the Trial Court, is on appeal.

2. Pleadings:-

(a) Plaintiff in brief:-

The plaintiff and the defendants 1 to 3 are siblings. They are daughters and sons of one Nalla Gounder. The suit schedule properties were allotted to the father, Nalla Gounder in a partition deed dated 22.06.1981. The father was enjoying the properties as absolute owner and he died intestate on 23.10.1998. The plaintiff and defendants 1 to 3 have been in joint possession and enjoyment of the suit schedule properties. However, in 2006, defendants 1 to 3 denied the plaintiff's share in agricultural income and the plaintiff therefore, demanded partition and separate possession. The plaintiff has 1/4th share in the suit properties. The plaintiff issued a lawyer's notice demanding partition. The 5th defendant was a power of attorney appointed by father, Nalla Gounder. However without any authority, after the demise of Nalla Gounder, the 5th defendant, misusing the power of attorney executed a sale deed in respect of a portion of the suit property in favour of his wife, the 4th defendant. The said sale deed is *void ab initio* and null and void, relating to Item 2 of the suit property and is not binding on the plaintiff as well.



(a)(i) Pending the suit, the defendants 1 and 2 have also executed sale deeds in favour of the defendants 6 to 9, who in turn, sold properties to defendants 10 to 28 through defendants 29 to 31, power agents and subsequent transferees have also been impleaded as defendants in the suit. The plaintiff has sought for additional reliefs of declaring the subsequent transactions pending the suit, as also not binding on the share of the plaintiff.

(b) Written Statement filed by the defendants 1 and 2 and adopted by the defendants 4 and 5 briefly:-

(b) (i) The relationship between the parties is admitted. The partition deed dated 22.06.1981 is also admitted. However, Nalla Gounder during his lifetime executed a Will on 16.06.1998, bequeathing his properties to his sons, defendants 1 and 2. The plaintiff was aware of the execution of the said Will and in fact, after the demise of Nalla Gounder, defendants 1 and 2 have entered into a registered partition deed dated 31.07.2002, in respect of properties bequeathed to them under the above referred Will. The defendants 1 and 2 are enjoying their properties with their own right and the allegation that the plaintiff and the other daughters were also in common enjoyment is totally denied. The plaintiff is not entitled to any share in the suit property. After receipt of lawyer's notice, defendants 1 and 2, explained the facts to the plaintiff.



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(b)(ii). Nalla Gounder executed a power of attorney in favour of the 5th defendant, on similar lines, the first defendant also executed a Power of Attorney in favour of the 5th defendant. Based on the said powers of attorney, the 5th defendant has sold the plaint schedule 2nd Item to his wife/ the 4th defendant. The sale deed is valid and it binds, the legal representatives of Nalla Gounder, including the plaintiff. The first defendant has already sold his share in Item No.1 of the suit property to third parties which is also known to the plaintiff. However, the plaintiff has not chosen to implead the said purchasers and the suit is bad for non-joinder of parties. The suit is liable to be dismissed.

(c).Written Statement filed by the 29th defendant:-

Nalla Gounder purchased the suit property, Item No.1, by sale deed dated 03.07.1976. He partitioned the said property in the year 1981 and the plaint schedule property was allotted to the share of Nalla Gounder. However, Nalla Gounder did not die intestate, but executed an unregistered Will, based upon which, his sons entered into a registered partition deed. The first defendant executed a sale deed in respect of property allotted to him under the said partition deed in favour of the defendants 6 to 9, who in turn executed a power of attorney in favour of the 29th defendant. As duly constituted the power of attorney, the 29th defendant conveyed the property in favour of



the defendants 10 to 28, prior to the institution of the suit. The defendants 6 to 9 who have purchased the property from the first defendant have in fact laid out the property into house sites and hence, the plaintiff is not entitled to any share.

(d). Issues.

Based on the pleadings, the Trial Court has framed the following issues:-

- 1. Whether the plaintiff is entitled to 1/4 share in the suit schedule properties?*
- 2. Whether the sale deed executed by 5th defendant in favour of 4th defendant registered as Doc. No.972 of 2005 in Singanallur Sub Registrar Office has to be declared as null and void and not binding on the plaintiff?*
- 3. Whether to any other relief the plaintiff is entitled to?*

Thereafter, framed the following Additional Issue:-

- 1. Whether the defendants 6 to 9 are bonafide purchasers for value, without notice from the 1st defendant vide sale deed dated 13.01.2006?*



(e) Trial:-

The plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A12 on the side of the defendants. The first defendant examined himself as D.W.1. One Govindammal, was examined as D.W.2 and one Govindaraj, was examined as D.W.3. On the side of the defendants Ex.B1 to Ex.B15, were marked.

(f) Decision of the Trial Court:-

The Trial Court, finding that the Will executed by Nalla Gounder was true and genuine and had been proved in a manner known to law, held that the plaintiff is not entitled to any share in the suit properties. Even in respect of the sale deed executed by the power agent, 5th defendant, in favour of his wife, 4th defendant, the Trial Court found that the power of attorney was coupled with consideration and therefore, applying Section 202 of the Contract Act, 1872, (in short 'Contract Act'), the Trial Court rejected the prayer sought for by the plaintiff to invalidate the said sale deed.

(g) The plaintiff aggrieved by the dismissal of the suit has preferred the present First Appeal under Section 96 of CPC.



3. I have heard Mr.A.Vinodkumar, learned counsel for the appellant and Mr.B.Singaravelu, learned counsel for the second respondent and Mr.K.V.Bashyam Chari, learned counsel for the respondents 31 and 32. Even though services of notices has not been completed on all the respondents, it was agreed by the learned counsel appearing for the contesting respondents are already represented and therefore, the Court need not wait for completion of service on the other formal parties who only claim under the contesting respondents.

4. Arguments of the learned counsel for the appellant:-

Mr.A.Vinodkumar, learned counsel for the appellant, insofar as the Will would state that the Will has not been proved in a manner known to law. Referring the Sections 68 to 71 of the Indian Evidence Act, Mr.A.Vinodkumar, learned counsel for the appellant would contend that it has been established that one of the attesting witnesses were very much alive when the trial of the suit was being conducted and admittedly, he was not examined to prove the Will. In such circumstances, the learned counsel contends that the examination of the son of one of the attesting witnesses is of no avail and cannot be a substitute for proof of Will under Section 68 of the Evidence Act, 1872 (in short 'Evidence Act').



4.1. With regard to the sale deed executed by the power agent, 5th defendant, in favour of his own Wife, the 4th defendant, Mr.A.Vinodkumar, learned counsel would contend that the power of attorney would stand automatically extinguished with the death of the Principal, Nalla Gounder and therefore, the power agent had no right, that too, after lapse of 10 years to act upon the said power of attorney and execute the sale deed in favour of his own wife. He would further rely on Section 201 of the Contract Act, 1872 and contend that the Trial Court has miserably failed to follow the mandate of Section 201 of the Contract Act to declare the sale deed which has been admittedly executed by the power agent, post demise of the Principal, as null and void and *void ab initio*, leave alone the said document not being binding on the plaintiff.

5. Arguments of the second respondent:-

Mr.Singaravelu, learned counsel appearing for the second respondent would state that the plaintiff has not challenged the partition deed which has been exhibited as Ex.B4, which is a division of the properties in terms of the Will executed by Nalla Gounder. According to the learned counsel, in the absence of challenge to the said registered partition deed, the plaintiff cannot be entitled to relief in the suit.



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5.1. As regards the contentions of the appellant/plaintiff that the Will has been fabricated to defeat the right of the plaintiff, Mr.Singaravelu, learned counsel for the second respondent would invite my attention to the partition deed, Ex.B4 which clearly refers to the Will executed by Nalla Gounder and in such circumstances, the learned counsel states that there can be no substance in the arguments of the appellant that the Will has been brought about only to defeat the plaintiff's right after receipt of the pre-suit notice for partition.

5.2. As regards, non-examination of attesting witnesses, Mr.B.Singaravelu, learned counsel for the second respondent would submit that one of the brothers of the plaintiff would state that no doubt, one of the attesting witnesses, Arunachalam was alive, during the trial of the suit, however had been hospitalised and despite, an application having been filed for issuing subpoena, the plaintiff alone contributed for undue delay in the trial of the suit, by taking out various Interlocutory Applications, which kept the Court busy, even for almost 5 to 6 years without taking up the Application for issuing subpoena to the attesting witness, Arunachalam. Therefore, the plaintiff has to blame himself for the attesting witnesses not being made available before the Court to prove the Will. It is in such circumstances, the son of the said attesting witness was examined which is permissible under the provisions of the Indian Evidence



Act. He would therefore state that there is no error committed by the Trial Court in holding that the Will had been proved in a manner known to law.

6. Arguments of learned counsel for the respondents 31 and 32:-

Apart from the supporting the arguments of Mr.B.Singaravelu, learned counsel for the second respondent, he would contend that Section 201 of the Contract Act, would not apply and Section 202, which is an exception to Section 201 which alone would apply in the facts of the present case. In this regard, the learned counsel takes me through the written statement of the defendants where they have clearly admitted to the execution of the power of attorney for consideration and also the factum of possession being delivered to the 5th defendant. The learned counsel would therefore states that the power of attorney was one coupled with consideration and therefore, despite death of the Principal, the power of attorney would survive in terms of Section 202 of the Contract Act. In such view of the matter, it is the submission of the learned counsel for the respondents 31 and 32, Mr.Bashyam Chari that the sale deed executed by 5th defendant in favour of the 4th defendant cannot be invalidated or called in question. Mr.Bashyam Chari, learned counsel in support of his submissions has also relied on the following decisions:-



(1) *K.A.Meeran Mohideen Vs. Sheik Amjad & Others*, reported in 2024 (5) CTC

613;

(2) *P.Ganesan (died) and Others Vs. P.Chinnu & Others*, reported in 2025 AIR (MAD) 349; and

(3) *M/s.Jade Garden Plot Owners Association, Represented herein by its Hon'ble Secretary WG CDR Pratap Deshpande, Begaluru Vs. Bhagyalakshmi and others*, reported in 2025 (4) KantLJ 615.

7. I have carefully considered the submissions advanced by the learned counsel on either side and I have also gone through the oral and documentary evidence adduced at trial and I have also carefully perused the judgment of the Trial Court. Considering the submissions advanced on either side, the following points for consideration are framed to be answered.

(i) Whether the unregistered Will dated 16.06.1998 has been proved in a manner known to law?

(ii) Whether the General Power of Attorney executed by Nalla Gounder, father of the plaintiff and defendants 1 to 3 was one coupled with consideration for the defendants to take shelter under Section 202 of the Contract Act?



8. Point No.1:-

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The factum of Will being executed has been denied by the plaintiff. In the plaint, it is the categorical assertion of the plaintiff that the father, Nalla Gounder died intestate and therefore, as a Class I, legal heir, the plaintiff is entitled to 1/4th share in the suit schedule property. However, on the side of the defendants especially, the contesting defendants 1 and 2, the brothers of the plaintiff a specific defence has been taken in the written statement that Nalla Gounder did not die intestate, but he died leaving behind an unregistered Will dated 16.08.1998. In fact, it is their further contention that based on the bequest made to the defendants 1 and 2 under the said Will, the defendants 1 and 2, after the demise of their father, Nalla Gounder have effected a partition deed on 31.07.2002 in Ex.B4, which has also been registered in Doc. No.2881 of 2002. The Will is admittedly an unregistered document. The Will has been attested by three witnesses. Even at the time of filing of the suit, two of the witnesses were not alive. The said position is not disputed. However, the third witness by name, Arunachalam, was alive and an attempt was made to examine the said Arunachalam, by taking out an Application pending trial. However, when summons was awaited, the plaintiff filed an impleading application and matters were delayed. The Trial Court has also found that the witness summons was returned on the ground that the attester was hospitalised. In fact, D.W.3, Govindaraj, has clearly spoken about the fact that even in the year 2012, the first



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defendant met his father and showed him the Will and it was only at that point of time, when D.W.3 saw the Will for the first time. However, for reasons beyond the control of the defendants, the said Arunachalam, could not be examined while he was alive. Section 69 of the Evidence Act, provides for an avenue to prove the Will in the absence of the attesting witnesses. The only attesting witness, Arunachalam, was also attempted to be examined, but unfortunately, the fact remain that when the application was taken out, he was in the hospital and thereafter, he also passed away. Therefore, I do not see any willful omission on the part of the defendants to examine the said Arunachalam, in order to prove the Will.

9. In fact, with regard to proof of the Will, the sons, of course, being beneficiaries who have taken shelter under the Will, have admitted the fact that the Will has been executed by her father, Nalla Gounder. However, D.W.2, the Scribe of the Will has also been examined and she has spoken about the execution of the Will by Nalla Gounder. In such circumstances, requirement of Section 69 of the Evidence Act has been fully met and the proof of the Will had been duly proved in the manner required to be done under law. The Trial Court has considered all these aspects in a right perspective before coming to a finding that the Will stands proved. In such circumstances, I do not see any grounds to interfere with the said findings of the Trial



10. Point No.2:-

The fact that the Nalla Gounder, the father of the plaintiff had executed a power of attorney is not in dispute. It is the contention of the plaintiff that with the demise of Nalla Gounder, the power agent could not have acted upon the said Power of Attorney, as, with the death of the Principal, the power also dies. This is the general position under Section 201 of the Contract Act. However, Section 202 provides an exception to Section 201 of the Contract Act. If the power of attorney is one coupled with consideration, then the demise of the Principal will not affect or invalidate the power of attorney. In the present case, the sons of Nalla Gounder themselves, have even in the written statement, admitted to the fact that their father had executed a power of attorney and received the entire sale consideration and put the 5th defendant, in physical possession of Item No.2 of the suit property. The defendants could have easily taken advantage of the demise of the father, Nalla Gounder and also toed the same line, as that of the plaintiff and could have claimed benefit even in respect of Item 2 of the suit property. However, they have fairly admitted that they were aware of their father, Nalla Gounder having practically sold the property in favour of the 5th defendant, excepting



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for the fact that sale deed had not been executed, but it was only a power of attorney that had been executed. The said document viz., the power of attorney as well as the sale agreement in favour of the 5th defendant has been marked as exhibits. There is a clear endorsement that the entire sale consideration has been paid by the 5th defendant and the 5th defendant has been put in possession of the said Item No.2 of the suit property. In such circumstances, the General Power of Attorney is clearly one coupled with consideration and therefore, the demise of the principal, Nalla Gounder does not in any manner affect the validity of the said power of attorney.

11. The Hon'ble Division Bench of this Court in *K.A.Meeran Mohideen's* case (referred herein supra), applying the mandate of Section 202 of the Indian Contract Act, held that if the power of attorney executed by the Principal is coupled with interest, then it will not automatically terminate with the death of the Principal.

12. A similar view has been taken in *P.Ganesan's* case (referred herein supra), as well. In *M/s.Jade Garden Plot Owners Association's* case, (referred herein supra), the Karnataka High Court, held that when the power of attorney holder is a nominee of the agreement of sale holder and the agent is also put in possession with empowering the agent to execute sale deed, then the power of attorney would certainly be one coupled



with interest. These decisions would also apply to the facts of the present case. It has been established by the defendants that Item 2 of the suit property was decided to be alienated by Nalla Gounder, himself and during his lifetime, he had in fact, executed a registered power of attorney decides in an agreement of sale in favour of the 5th defendant who had paid the entire sale consideration agreed upon between the father Nalla Gounder and 5th defendant. Pursuant to which, Nalla Gounder had also placed the 5th defendant in possession. In such circumstances, the power of attorney was certainly one coupled with interest under Section 202 of the Contract Act, which alone would come into play and not Section 201 of the Contract Act. The Trial Court has rightly found that the power of attorney was coupled with consideration and hence, the plaintiff is not entitled to any right and consequently, any relief and therefore, Point 2 is also answered against the appellant.

13. In fine, the Appeal Suit is dismissed. Consequently, connected Miscellaneous Petitions are also closed. No order as to costs.

1302.2026

Neutral Citation Case: Yes
Speaking order
Index: Yes
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- To
1. The III Additional District Judge at Coimbatore.
 2. The Section Officer, V.R. Section, High Court of Madras.



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P.B.BALAJI.J.

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Pre-delivery judgment made in
A.S. No.415 of 2022
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and CMP. No.14163 of 2025

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