IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 16.03.2026	PRONOUNCED ON 30.04.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

AS No. 714 of 2017
and CMP.No.22759 of 2017

S.Jothimani
S/o N.Sankarappan,
285/286, Pera Naidu Layout, Ram Nagar Post,
Coimbatore-641 009.

..Appellant(s)

Vs

1. Praveen
   S/o Indirani Muralidharan,
   "Indiar Prabha"
   No.38 P& T Colony,
   Ganapathy, Coimbatore.

2. T.Kumaresa Manian
   S/o Thiruvenkataswamy,
   47, Mattukkadai Road,
   Karamadai, Mettupalayam Taluk,
   Coimbatore District.

..Respondent(s)

PRAYER:- Appeal filed under Order XLI Rule 1 r/w/ Section 96 of CPC, to set aside the judgement and decree dated 07.06.2017 made in OS.No.498 of 2014 on the file of the Learned First Additional District Judge, Coimbatore by allowing this First Appeal.

For Appellant(s): Mr.R.Dharshan
for Mr.N.Manoharan

For Respondent(s): Mr.L.Mouli for R1
R2 – Served – No appearance

JUDGMENT

The above Appeal suit has been filed challenging the Judgement and decree dated 07.06.2017 made in O.S.No.498 of 2014 on the file of the learned Additional District Judge-I, Coimbatore.

2. The case of the plaintiff is that, he is the absolute owner of the suit schedule property, by the virtue of the Sale Deed dated 09.06.2003. According to the plaintiff, his friend, one Mr. Karthik, had approached the 2nd defendant seeking financial assistance and had borrowed a sum of Rs.50,000/-. At the request of the said Mr.Karthik, the plaintiff agreed to stand as a surety for the said loan. Subsequently the 2nd defendant, in turn, insisted that the plaintiff has to hand over the original title deeds of the suit property and further execute a mortgage deed as security for the said loan. Subsequently the Plaintiff had handed over the original Title documents to the 2nd defendant and executed the alleged mortgage deed. Thereafter, when the plaintiff was unable to contact the said Karthik. When he applied for an Encumbrance Certificate for the Suit Property, upon which only when he came to know about that the document executed by him was not a Mortgage Deed, but in fact a Power of Attorney in favour of the 1st defendant, who is closely associated with the 2nd defendant. The

plaintiff further came to know that the 2nd defendant had entered into a sale agreement with the 1st defendant within three months from the date of execution of the said Power of Attorney. It was further stated that the Plaintiff can read and write only three languages, namely, English, Hindi, and Sanskrit.

3. The plaintiff further states that the Sale Agreement was registered in the year 2010 for a sale consideration of Rs.1,00,000/-, however, the Sale Deed came to be executed only on 20.11.2013 in favour of the 2nd defendant for a sale consideration of Rs.14,00,000/-, which amount was wholly received by the 1st defendant. The plaintiff submits that the aforesaid transaction was never disclosed to him, and had further asserted that he had never executed any General Power of Attorney in favour of the 1st defendant. Therefore, the plaintiff contends that the 2nd defendant has no right, title, or interest over the suit schedule property and is not entitled to retain the original title deeds.Further when the plaintiff had issued a notice dated 06.08.2014 to both the defendants, calling upon them to cancel the invalid Sale Deed and to return the original title deeds, the defendants sent separate replies to the said notice and upon scrutiny of the same it was evident that both the replies were issued by the same counsel and on the same date with similar contents, thereby indicating collusion between the defendants. From the said replies, it is seen that the defendants have categorically asserted that the Sale Deed was duly and validly executed, and that the 2nddefendant was the rightful owner of the suit property. Hence, the

plaintiff has filed the present suit seeking, *inter alia*, cancellation of the said Sale Deed

4. On the other hand, from the defendants' side, the 1st defendant did not contest the suit, the 2nd defendant filed a written statement contending that he had no prior knowledge of the plaintiff. The 2nd defendant in his Statement has further asserted that it was the 1stdefendant who had approached him and requested him to sign as a witness to a document, which was duly complied by him. It is averred that, in November 2009, the first defendant informed the second defendant that the plaintiff had intended to sell the suit property. After negotiations, the sale consideration was fixed at Rs.10,00,000/-, and a Sale Agreement was executed on 20.11.2010, with an advance of Rs.25,000/-, but owing to a typographical error, the said agreement was cancelled on 13.06.2012, and the advance was repaid by the plaintiff.

5. Thereafter, the 2nddefendant approached the 1stdefendant and offered to purchase the suit property for a sum of Rs.14,00,000/-. The said offer was accepted by the first defendant, and consequently, a Sale Deed was executed on 20.11.2013.Accordingly the first defendant received the entire sale consideration in the presence of witnesses and handed over physical possession of the suit property to the 2nd defendant. It is further stated that the revenue records were mutated in the name of the 2nddefendant, and that he has been in

possession and enjoyment of the property ever since.The 2nd defendant had categorically denied the allegations made by the plaintiff that he was a money lender to one Mr. Karthik, that the plaintiff had stood as surety by offering his property, or that any Power of Attorney in favour of the 1st defendant was fraudulently obtained under the guise of a mortgage deed.The 2nd defendant further alleges that the plaintiff has instituted the present suit with mala fide intent and as part of a criminal conspiracy to cheat him. Hence, the second defendant prays that the suit be dismissed.

6. Based on the above pleadings made on both sides the Trial Court had framed the following issues:

1. *Whether the Sale Deed dated 20.11.2013 bearing document No.13271/2013 is fraudulent document liable to be cancelled ?*
2. *Whether the plaintiff has received entire sale consideration on 20.11.2013 as per 2nd defendant statement ?*
3. *Whether the Plaintiff is entitled for the relief of mandatory injunction of return of original documents ?*
4. *Whether the Plaintiff is entitled for permanent injunction ?*
5. *What other relief the Plaintiff is entitled for ?*

7. On the side the side of the Plaintiff, he had examined himself as PW1 and had marked Ex.A1 to Ex.A9 as the documentary evidence. On the side of the defendants, the 2nd defendant had examined himself as DW1 and had marked Ex.B1 to Ex.B12 as the evidence on his side.

8. The learned Trial Judge, after hearing the arguments on both sides and upon perusing the oral and documentary evidence available on record, had decided the aforesaid issues in his judgment dated 07.06.2017. Insofar as the Issues Nos. 1 and 2 are concerned, the learned Trial Judge had observed that 2nd defendant (DW1), who is also an attesting witness to the Deed of Power of Attorney marked as Ex.A2, had deposed that he was not aware whether the contents of the document were read over and explained to the plaintiff, or whether the plaintiff had signed the document with knowledge of its contents. Based on the said deposition, the learned Trial Judge had held that the Deed of Power of Attorney, viz., Ex.A2, was not executed by the plaintiff with his full knowledge and consent. Further the learned Trial Court below had held that the 2nd defendant has not substantiated their claim that the Sale Consideration has been paid to the Plaintiff by providing any admissible evidence, and the 1st defendant who had played the major role in the aforesaid transaction had neither contested nor had been examined as a witness by the 2nd defendant. Therefore the learned Trial Judge had held that the Power of Attorney (Ex.A2) had been obtained in a fraudulent manner and consequently, the Sale Deed dated

20.11.2013 executed in favour of 2nd defendant (DW1) and marked as Ex.A4, which has been executed on the basis of such invalid Power of Attorney, is held as illegal, void, and liable to be cancelled. Accordingly, Issues Nos.1 and 2 were decided in favour of the plaintiff.

9. Since the Sale Deed executed in favour of the 2nd defendant was held to be illegal, the Court below, while deciding Issues Nos.3 and 4, had held that 2nd defendant (DW1)has no right to retain the original title deeds of the suit property and is not entitled to create any encumbrance over the same. Accordingly, by judgment and decree dated 07.06.2017, the Court below had held that the plaintiff is entitled to the reliefs of mandatory injunction and permanent injunction. Aggrieved by the aforesaid judgment, the second defendant has preferred the present Appeal Suit before this Court and has impleaded the plaintiff and the first defendant as respondents.

10. Heard Mr.R.Dharshan, learned counsel for Mr.N.Manoharan, learned Counsel appearing on behalf of the appellant and Mr.L.Mouli, learned Counsel appearing on behalf of the 1st respondent

11. The learned counsel for the appellant submits that the plaintiff/first respondent, who sought cancellation of the registered Sale Deed and mandatory injunction, had failed to establish fraud, misrepresentation, or coercion so as to

rebut the presumption under Section 114(e) of the Indian Evidence Act, 1872. It is further contended that the plaintiff had neither specifically pleaded nor proved fraud in compliance with Order VI Rule 4 of the Code of Civil Procedure, 1908. The learned counsel submits that the plea of the plaintiff, that his intention was only to execute a mortgage deed and not a Power of Attorney, is contrary and inconsistent with the terms of the document itself, and that the plaintiff, being a well-qualified individual employed in a multinational Insurance Company, cannot take the plea of ignorance as to the nature of the document executed by him. The learned counsel vehemently contends that the plaintiff has not disputed the execution of the Power of Attorney (Ex.A2), and that the said document has neither been revoked nor been cancelled to this date. Therefore the power agent, namely the 1stdefendant, had no legal impediment in executing the Sale Deed (Ex.A4) in favour of the appellant/2nd defendant. It is further submitted that, with regard to the alleged loan transaction involving his friend, one Mr. Karthick, who is stated to have accompanied the plaintiff up to the execution of Ex.A2, has not been examined by the plaintiff and hence Court below erred in not drawing adverse inference for such non-examination of the said crucial witness.

12. The learned counsel also submits that a registered instrument cannot be set aside lightly, and that the plaintiff has neither examined any independent witnesses or attestors to the said document nor has produced any cogent

evidence to discredit the execution of the Sale Deed (Ex.A4).He further contends that even assuming that the sale consideration was not paid to the plaintiff, the same would not vitiate the registered Sale Deed, contrarily, it is for the plaintiff to work out his remedy, against his own power agent, who had received the Sale Consideration and the plaintiff cannot seek cancellation of a duly registered Sale Deed on that ground. It is further submitted that the mere fact that defendants 1 and 2 issued similar replies at the same time to the plaintiff's notice does not establish any collusion between them. The learned counsel submits that since the plaintiff purchased the property under Ex.A1, which is written in Tamil, he cannot now take a contrary stand regarding Ex.A2 on the ground of language. It is further contended that the increase in sale consideration from Rs.1,00,000/- under Sale Agreement (Ex.A3) to Rs.14,00,000/- under Sale Deed (Ex.A4)clearly proves the *bonafides* of the transaction.

13. It is further submitted that plea raised by the plaintiff with regard to Ex.A2 is contrary to the provisions of Sections 58, 59, and 60 of the Registration Act, 1908. It is also contended that the learned Trial Court, from the very beginning had, approached the case with a preconceived doubt against the 2nddefendant and, instead of requiring the plaintiff to prove his case, erroneously shifted the burden of proof onto the defendant's whch is contrary to Sections 101 and 102 of the Indian Evidence Act, 1872 and that the plaintiff

cannot succeed on the weakness of the defendant's case. In conclusion, the learned counsel submits that the reasons assigned by the learned Trial Court for decreeing the suit are erroneous, unsustainable in law, and is liable to be set aside. In view of the aforesaid facts and circumstances, the appellant seeks indulgence of this Court to the judgment and decree dated 07.06.2017 passed in O.S. No.498 of 2014.

14. *Per Contra*, Mr.L.Mouli, the learned counsel appearing on behalf of the 1st respondent/Plaintiff would submit that the judgment and decree passed by the learned Trial Court are well-reasoned, based on proper appreciation of both oral and documentary evidence, and do not warrant any interference by this Court.He submits that the plaintiff had executed the alleged Power of Attorney(Ex.A2), thinking it to be a mortgage Deed. He contends that the plaintiff has clearly established that the Power of Attorney (Ex.A2) was not executed with his full knowledge with regards of the contents of the document, but was obtained in a fraudulent manner. The learned counsel would further submit that 2nd defendant, who is an attesting witness to Ex.A2, in his deposition as DW1, has categorically admitted that he was not aware whether the contents of the document were read over or explained to the plaintiff. He submits the above admission itself would substantiate the fact that the Plaintiff was not aware of the contents of the deed executed by him, when it has been already been established that the plaintiff can neither read nor write the language in

which the said document is written.

15. The learned counsel would also submit that the plea of the 2nd defendant regarding payment of sale consideration is not supported by any cogent or admissible evidence as he had not even examined the 1st defendant to whom he had paid the said Sale Consideration as a Whole. The learned counsel submits that the learned Trial Court rightly appreciated the burden of proof, and that it was incumbent upon the 2nddefendant to establish his contention with regard to the Sale Consideration. It is further submitted that the entire sequence of events, including the execution of Power of Attorney (Ex.A2) in favour of the 1st defendant, the subsequent Sale Agreement (Ex.A3), and the Sale Deed (Ex.A4) in favour of the 2nd defendant, clearly establishes a fraudulent attempt by the both defendants in collusion to deprive the right of the plaintiff of his property. In conclusion the learned counsel submit that the learned Trial Court was correct in holding that once the Power of Attorney itself is found to be vitiated by fraud, all subsequent transactions flowing therefrom, including the Sale Deed (Ex.A4), are void and illegal. In view of the above, the learned counsel prays that this Court to dismiss the Appeal suit and confirm the judgment and decree dated 07.06.2017 passed by the Court below.

16. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

17. The following issues arisen for consideration before this Court.

(a) Whether, the Power of Attorney under Ex.A2 executed by the first respondent/ plaintiff has been validly executed?

(b) Whether the Sale Deed under Ex.A4 is valid in law?

(c) Whether the plaintiff is entitled for a mandatory injunction as claimed?

(d) Whether the plaintiff is entitled for a permanent injunction as claimed?

ISSUE (a):-

18. It is the claim of the first respondent/ plaintiff that he had never executed the Power of Attorney and had only executed a mortgage deed to support his friend one Karthik to enable him to avail a loan from the appellant/ second defendant.

19. A doubt had been created over the execution of the subsequent document between the first and the second defendants. It had been brought about that under Ex.A3, an agreement was entered into between the first and the second defendants for selling the suit scheduled land for a sum of Rs.1,00,000/-. However, a sale deed had been executed for a sum of Rs.14,00,000/-. On the contrary, Ex.B1 cancellation deed had been relied upon by the appellant/ second

defendant indicating that a cancellation had taken place in view of the wrongful noting of the consideration price in Ex.A3 and that thereafter, a sale agreement was entered into between the parties and a sale deed was registered in his favour by the first defendant on the strength of the Power of Attorney.

20. It is to be further noted that even though, the primordial claim of the first respondent/ plaintiff is that the Power of Attorney had never been executed by him and that he had only executed a mortgage deed. On the basis of such admission of execution of the mortgage deed, the first respondent/ plaintiff had not sought for any relief of redemption of the mortgage. The Court has also not framed any issue with regard to the execution of the Power of Attorney. In fact, the first respondent/ plaintiff had also not prayed for a declaration to declare the Power of Attorney executed by him as being obtained by fraud and consequently to declare the same as null and void.

21. It is the case of the first respondent/ plaintiff that he does not either know to read or write Tamil and therefore, he was not aware of the contents of the documents under Ex.A2 and was under the misconception that it was a mortgage deed. To support his contention, that he do not know to read and write Tamil, the first respondent/ plaintiff had not produced any evidence whatsoever. The Trial Court had come to a conclusion that the first respondent/ plaintiff had been deceived by the appellant/ second defendant and had got a

Power of Attorney executed on the pretext of a mortgage deed being executed. To come to the said conclusion it had relied upon the evidence of DW1, who is none other than the second defendant wherein, he had deposed that he did not know whether the contents of the documents was read over to the first respondent/ plaintiff.

22. It is to be noted that a witness to the document other than the document which requires attestations alone is to be attested by the witness affirming the contents that the documents was read over to the executor and was affirmed by the executor. A document of Power of Attorney does not requires such strict proof and therefore, the presumption that had been mandated under Section 114(e) of the Evidence Act alone would be relevant. As noted above, the first respondent/ plaintiff had not sought for any redemption of mortgage much less a prayer to declare the Power of Attorney as null and void fraudulently being obtained, would only drive this Court to come to a conclusion that the Power of Attorney have been validly executed.

ISSUES (b) & (c)

23. In view of the conclusion arrived at to Issue No.1, the sale deed under Ex.A4 which had been challenged cannot be held to be an invalid document and as a consequence the relief of mandatory injunction to hand over the original title deed cannot also be entertained.

24. A further plea had been raised by the first respondent/ plaintiff that no consideration had been passed to him to also to challenge Ex.A4, sale deed. It is to be noted that the appellant/ second defendant had produced Ex.B2 evidencing the receipt of consideration by the first defendant and hence, it is only proper for the first respondent/ plaintiff to have sued the first defendant for accounts and for recovery of such consideration paid by the second defendant. The Court below had failed to note Ex.B2 to come to a different conclusion.

ISSUE (d)

25. A relief of injunction could be independently be dealt with provided that the first respondent/ plaintiff had substantiated his possession to the suit property. Admittedly, the suit schedule property is a vacant land. In such event, the possession of the same follows title. In the present case, the plaintiff had also produced Ex.B3 a Patta that had been issued in his favour on 20.11.2013 which is a pre-suit document. As Exs.B4 to B6 are post suit documents this Court is not inclined to place any reliance upon the same, but takes those documents to corroborate Ex.B3 to conclude that the appellant, who is the second defendant to be in possession of the suit property based upon Exs.A4 and B3. Hence, the first respondent would also not be entitled for permanent injunction as prayed for.

26. For the foregoing reasons and findings arrived at for the aforesaid issues, this Court finds that the judgment and decree of the Trial Court requires interference.

27. In fine, the Appeal stands allowed and the judgment and decree made in O.S.No.498 of 2014 stands set aside. Consequently, connected miscellaneous petition is also closed. However, there shall be no order as to costs.

30-04-2026

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

GBA

To

1. The Additional District Judge – I,
   Coimbatore.

2. The Section Officer,
   VR Section,
   Madras High Court,
   Chennai.

K.KUMARESH BABU, J.

GBA

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and CMP.No.22759 of 2017

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