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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 05-01-2026**

CORAM

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

**AS No. 739 of 2018**

1. S.Ravi

Appellant(s)

Vs

1. S.Thiyagarajan@icehouse  
Thiyagarajan

2.K.M.Ismail

3.B.Anitha Kumari

4.Mahavir Surana

5.M.Rajan

6.The Manager  
Bank Of India, Asset Recovery Branch,  
Star House 30, Erabalu Street , 1st  
Floor, Chennai - 600001

Respondent(s)

Prayer: Appeal filed under Section 96 of Code of Civil Procedure read with Order 41 Rule 1 of CPC, to set aside the Judgment and decree dated 29/08/2018 in OS.NO.109/2010 on the file of the III Additional District Court , Tiruvallur at Poonamallee and allow the Appeal.

For Appellant(s): Ms.Ganthimathi, Senior Counsel  
for M/s.SA.Kanmani

For Respondent(s): No appearance for R1 to R5  
Mr.S.Sathiyarayanan for R6

**JUDGMENT**

**(Order of the Court was made by N.Sathish Kumar J.)**



Aggrieved over the judgment and decree of the Trial Court granting declaration in respect of Flat No.1 and dismissing other reliefs and also dismissing the suit in entirety in respect of Flat No.2, the instant appeal has been filed by the appellant.

2. Brief background of the appeal is as follows:

2.a. The plaintiff has purchased the suit properties in a public auction conducted under SARFAESI by the HDFC Bank and he became the successful bidder for two flats for a total amount of Rs.30 lakhs and the sale certificate is also registered in the name of the plaintiff on 03.11.2008. The flats were vacant at the time of inspection by the plaintiff. After registration of the sale certificate, when the plaintiff went to the suit properties, a group of men led by the first defendant claiming to be a political leader tried to barge into the flats. The first defendant claimed that the flats belong to him and he threatened the plaintiff and did not leave the flats. The plaintiff gave a complaint to the police which is registered as CSR.No.476/2008 dated 19.11.2008. The first defendant thereafter illegally broke open the two flats and the police officials did not take action. As the plaintiff is employed as a marine mechanic in a private company on contract has purchased the flats with his hard earned money, finally, the first defendant informed that he will give back possession of one flat, i.e., F1 provided that the plaintiff permits the first defendant to sell F2 flat. The first defendant also promised that he will pay the plaintiff Rs.34 lakhs out of the sale proceeds when



sells F2 flat. The plaintiff was compelled to agree to this proposal since the police did not take action on the report of the plaintiff. The plaintiff gave a power of attorney dated 10.12.2008 to the first defendant permitting the first defendant to sell F2 flat. After registration of the power of attorney for F2m the first defendant gave possession of F1 flat to the plaintiff. The plaintiff did repair works in F1 spending about Rs.3 lakhs.

2.b. The plaintiff came to know that the first defendant has registered a sale agreement for Flat F2 on 10.12.2008 itself based on the strength of the power of attorney to the second defendant. The second defendant is an employee under the first defendant. When the plaintiff questioned the illegal act, the first defendant did not answer properly, therefore, the plaintiff revoked the power of attorney on 28.01.2009 and duly intimated the first defendant by way of registered post on 29.01.2009. Though the first defendant has knowledge about the cancellation of the power deed, the first defendant had executed a registered sale deed with respect to Flat F2 in favour of the second defendant. The plaintiff enquired the first defendant and informed that he will take police action. Afraid of the police prosecution, the first defendant gave two cheques each for Rs.17 lakhs to the plaintiff totalling to a sum of Rs.34 lakhs and requested the plaintiff not to approach the police. The two cheques which were given to the plaintiff was bounced as the first defendant instructed his banker to STOP PAYMENT. The action of the first defendant amounts to land grabbing. The sale in favour of the second defendant by the first defendant is invalid in



the eye of law and it is null and void. No consideration was passed. The sale deed dated 24.03.2009 in favour of the second defendant is a sham and nominal document since the power holder/the first defendant has knowledge about the revocation of the power deed. Therefore, it is the contention that the defendants 1 and 2 in order to enrich themselves with criminal intention to defraud the plaintiff, the second defendant on 01.04.2009 had sold the suit property in favour of the third defendant. That sale deed is also null and void and the same was executed only to defeat the plaintiff's right. The third defendant on 01.04.2009 had availed the loan of Rs.15 lakhs and had executed a registered mortgage deed in favour of the fourth defendant.

2.c. The fifth defendant is now claiming right over the suit property. He alleges to have purchased the suit property. The fifth defendant has availed loan from the sixth defendant. The sale in favour of the fifth defendant and subsequent mortgage in favour of the sixth defendant is null and void and it is not binding on the plaintiff. The sixth defendant has sanctioned loan without properly ascertaining the title of the fifth defendant. The plaintiff is entitled for damages for the illegal occupation and possession by the defendants. The plaintiff estimates the damages to the tune of Rs.1500 per month from the date of dispossession till the recovery of the possession of the plaintiff. The plaintiff has given a complaint in Cr.No.55 of 2010 against the defendants 1 and 2 dated 04.02.2010 and the police have filed a final report in C.C.No.2739 of 2010 on



the file of the Chief Metropolitan Magistrate, Egmore. The plaintiff on 11.05.2010 issued a legal notice to all the defendants. The notice was acknowledged by the defendants 1, 2 and 6. The defendants 2 and 5 addressed covers are returned. The sixth defendant gave a false reply. The other defendants did not gave any reply. Hence, the plaintiff has filed suit for declaration, recovery of possession and damages for illegal occupations and possession of the suit property.

2.d. The 3<sup>rd</sup> defendant filed written statement contending that the plaintiff has purchased the suit properties in auction sale without confirming the same are vacant. The first defendant was in possession of the suit properties even when the plaintiff had purchased in auction and in fact, the plaintiff has agreed with the first defendant to sell the F2 flat. The power of attorney dated 10.12.2008 in favour of the first defendant is coupled with interest and therefore, irrevocable in law. The plaintiff had for valid consideration voluntarily executed power of attorney in favour of the 1<sup>st</sup> defendant wherein the first defendant was authorised to enter into sale transaction with regard to F2 flat. As such there is no illegality in the first defendant as the power agent of the plaintiff entering into registered sale agreement with the second defendant. The plaintiff has purchased F1 and F2 flats for a total sale consideration of Rs.30 lakhs, thereafter, the plaintiff had found the first defendant admittedly in possession of both the flats, laying a rival claim, which made the plaintiff



negotiate with the first defendant permitting the first defendant to sell F2 flat on the consideration that the first defendant would hand over possession of F1 flat.

The plaintiff had purchased both the flats together at Rs.30 lakhs, as such, the first defendant would not have agreed to Rs.34 lakhs to be paid to the plaintiff for F2 flat alone within a month, that too, when the first defendant was in possession of both the flats. The allegations that the first defendant issued two cheques to the plaintiff fearing the police action, in any event, the plaintiff admittedly received consideration of Rs.34 lakhs from the first defendant, the plaintiff has no further right in the property concerned. This defendant is a bonafide purchaser for valuable consideration of flat F2 with the corresponding undivided share of land from the second defendant without any notice of the alleged right claimed by the plaintiff herein. The first defendant has conveyed F2 flat with undivided share in the land to the second defendant under registered sale deed dated 24.03.2009. The second defendant has subsequently sold F2 flat to this defendant. This defendant has therefore derived title to Flat F2 by and through registered sale deed dated 01.04.2009 and also is in possession of the Flat F2. This defendant has mortgaged flat F2 with the 4<sup>th</sup> defendant under registered mortgage deed and had availed loan. The sale deed as well as the mortgage deed dated 01.04.2009 are reflected in the encumbrance certificate in respect of Flat F2. If really, the claim of the plaintiff is genuine and bonafide, the plaintiff would have put this defendant on due notice immediately after 01.04.2009. However, till date, the plaintiff had not served any notice to



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this defendant. Even the legal notice was issued only on 11.05.2010 nearly 13 months after this defendant's purchase of Flat No.2. The legal notice is also sent to wrong address wantonly and deliberately. The plaintiff has filed the suit only to harass the defendant to extract quick money from this defendant. As a matter of fact, the sixth defendant had initiated SARFAESI proceedings against both Flat F1 and F2. The plaintiff though aware of it, did not take any action to prevent the SARFAESI proceedings, however, this defendant had approached DRT-III, Chennai in SARFAESI Appeal No.36/2010 and obtained an interim stay against the sixth defendant from taking any action as against Flat F2, since, this defendant is concerned only with Flat F2. This defendant is a bonafide purchaser for valid consideration in rightful possession of Flat F2 and the corresponding undivided share of land without due notice to the plaintiff's alleged claim in the suit. Hence, opposed the suit.

2.e. The 4<sup>th</sup> defendant filed written statement contending that since the first defendant had established the right, ownership and possession over the suit property, the fourth defendant had extended loan to the first defendant by way of mortgage for the suit property. The mortgage in favour of the fourth defendant is therefore perfectly valid and is supported by consideration and the transaction between the fourth defendant and the first defendant is genuine. The plaintiff has no right to question the said valid transaction. The suit is a clear abuse of process of law and deserves to be dismissed in limine.



2.f. The sixth defendant has filed the written statement inter-alia contending that the fifth defendant/mortgagee has purchased the residential flat along with the corresponding undivided share of land and mortgaged the said property with the sixth defendant. Now, the sixth defendant has initiated SARFAESI proceedings as against the said property. Hence, the title is clearly vested with the mortgagor and now after SARFAESI auction, the plaintiff has come up with this false and frivolous suit.

2.g. The Trial Court, based on the pleadings, framed the following issues:

1. Whether the plaintiff has obtained clear and marketable title over the suit schedule properties consisting of F1 and F2 flats and is also absolute owner of F1 and F2 flats as per the sale certificate dated 03.11.2018?
2. Whether the registered General Power of Attorney dated 10.12.2008 executed by the plaintiff in favour of the first defendant is an irrevocable power of attorney?
3. Whether the plaintiff is entitled for the relief of declaration of title in respect of suit schedule properties i.e., F1 and F2 flats as prayed for?
4. Whether the second and third defendants are bonafide purchasers of F2 flat?
5. Whether the plaintiff is entitled for recovery of possession of suit properties?
6. Whether the plaintiff is entitled for damages at the rate of 1500/- p.m till the recovery of suit properties?
7. To what other reliefs the plaintiff is entitled to?



2.h. On the side of the plaintiffs, PW1 to PW4 were examined and Ex.A1 and Ex.A22 were marked. On the side of the defendants, third defendant was examined as DW1 and Ex.B1 to Ex.B7 were marked.

2.i. On appreciation of the documentary and oral evidences, the Trial Court decreed the suit in part and declaration was granted in respect of Flat No.1 in favour of the plaintiff and in respect of other reliefs, the suit was dismissed and as far as the Flat No.2 is concerned, the suit is dismissed in entirety. Challenging the decree and judgment, the unsuccessful plaintiff has filed the present appeal suit.

3. The learned senior counsel for the appellant submitted that the plaintiff has purchased the suit properties in the public auction conducted by the HDFC Bank. Sale certificate is also registered in his name on 03.11.2008. According to the plaintiff even before the purchase of the properties in a public auction, the plaintiff made inspection of the flats, the flats were vacant at the relevant point of time. After registration of sale certificate on 03.11.2008, when the plaintiff visited the suit properties on 17.11.2008, the first defendant along with his henchmen came to the property and made a claim over the property claiming that they are the absolute owner. Hence, it is the contention that thereafter, there was some arrangement agreed between the parties and the first defendant has



agreed to give back the possession of Flat F1 provided that plaintiff permit the first defendant to sell F2 flat. Accordingly, the plaintiff has executed the power of attorney dated 10.12.2008 in favour of the first defendant under Ex.A3 for sale of Flat No.2 for a total sale consideration of Rs.34 lakhs. On the same day, the first defendant has executed a sale agreement in favour of the second defendant for a total sale consideration of Rs.17 lakhs. Though the first defendant has given two cheques for a sum of Rs.34 lakhs as consideration for the flat No.F2, the said cheques were dishonoured. After dishonour of the said cheques, he has immediately revoked the power of attorney dated 28.01.2009 by registering the revocation deed, therefore, termination of agency is also communicated to the first defendant by registered post on 29.01.2009. Hence, it is the contention that first defendant despite the notice of termination of agency has sold the property to the second defendant on 24.03.2009, therefore, it is the contention that the sale in favour of the second defendant after the termination of power deed is not valid in the eye of law. Any subsequent sale to the third defendant, fourth defendant and other defendants are not valid in the eye of law.

4. According to the learned senior counsel, Ex.A6/receipt issued by the postal authorities clearly shows that the termination of power of attorney has been sent to the first defendant and the same has been delivered on 30.01.2009, therefore, it is the contention that once the revocation of power of attorney has been properly intimated and termination takes place, any transactions based on



the said power of attorney later is void ab initio and is not binding on the plaintiff. It is also the contention of the learned senior counsel that power of attorney was registered and the cancellation is also registered, therefore, the registration of the said cancellation deed itself amounts 'public notice' and subsequent sale deed executed in favour of the second defendant is only on 24.03.2009, prior to that, the power of attorney was cancelled as early as on 28.01.2009 and the same would have been reflected in encumbrance certificate, therefore, it amounts to public notice. At any event, Ex.A6 clearly shows that notice has been received by the first defendant as early as on 30.01.2009, therefore, subsequent transaction based on the said power of attorney is not valid in the eye of law.

5. Further, it is the contention that the Trial Court has granted declaration in respect of Flat No.1, however, the recovery of possession has not been granted. Hence, the plaintiff is also entitled to recovery of possession in respect of Flat No.1 and declaration in respect of Flat No.2, since, subsequent transaction is not valid in the eye of law.

6. Whereas, it is the contention of the learned counsel for the sixth respondent that notice of termination has not been communicated to the second defendant, as long as the notice of termination of agency has not been



communicated to first defendant or the second defendant, in whose favour agreement was already executed before the cancellation. Agency will not

terminate automatically as per Section 208 of the Indian Contract Act, 1872.

Further, the sixth defendant is the mortgagee has already initiated SARFAESI proceedings. The first defendant has already issued cheque for Rs.34 lakhs as consideration towards the sale of Flat No.2. The plaintiff is also aware of the registration of the document in favour of the second defendant. The plaintiff's right if any is only to sue for recovery of money as unpaid vendor, instead, he cannot assail the documents particularly, when the termination of agency has not been taken effect. Hence, opposed the appeal.

7. In the light of the above submissions, now the following points arises for consideration:

- i) Whether the notice of revocation of power of attorney dated 28.01.2009 has been served on the agent namely the first defendant?
- ii) Whether the termination came into effect by mere registration of revocation of power deed?
- iii) Whether the plaintiff is entitled to recovery of possession of both the flats, viz., F1 and F2.
- iv) to what other, the appellant is entitled to?

Point (i) to (iv)



8. It is not in dispute that the plaintiff has purchased F1 and F2 flats in a public auction conducted by the HDFC Bank and the sale certificate is also registered in his name on 03.11.2008 which has been marked as Ex.A2. Sale consideration paid by the plaintiff is Rs.30 lakhs. It is also the case of the plaintiff that after purchase, the first defendant has created problem and laid a rival claim over the property, therefore, the plaintiff has executed a power of attorney under Ex.A3 dated 10.12.2008 in favour of the first defendant for sale of F2 so that F1 will be handed over to the plaintiff. It is also the case of the plaintiff that towards such sale, he has received two cheques, each for Rs.17 lakhs totalling, Rs.34 lakhs. It is the specific case of the plaintiff that the cheques issued by the first defendant were dishonoured for the reason that STOP PAYMENT. Therefore, immediately, he realised that the first defendant is cheating him and cancelled the power of attorney and registered the revocation deed dated 28.01.2009 which is marked as Ex.A5. According to the plaintiff, immediately he has sent a registered post on 29.01.2009 intimating the revocation of power of attorney to the first defendant.

9. It is relevant to note that the evidence of plaintiff clearly indicate that he was also aware of the sale agreement executed by the first defendant dated 10.12.2008 in favour of the second defendant. His evidence clearly shows that he came to know about the sale agreement within a period of 15 days from the date of such agreement. Thus, the plaintiff was aware that the power of attorney



executed by him is partly exercised by executing the agreement of sale in favour of the second defendant. Having cancelled the power of attorney dated vide revocation of power deed dated 28.01.2009, the plaintiff has not chosen to send notice to the agreement holder intimating the so-called cancellation. It is relevant to note that when agency is terminated, such termination takes effect as to agent and as to third parties, only when the agent or third party become known to such termination.

10. Section 208 of the Indian Contract Act reads as follows:-

*208. When termination of agent's authority takes effect as to agent, and as to third persons.- The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.*

11. Therefore, in order to give effect of termination, it is mandatory on the part of the plaintiff to send notice intimating such termination. Admittedly, in this case, the third parties right have been created by agreement to enforce the contract. Though the agreement does not create any right or interest over the immovable properties, but the right to enforce the contract has already been created which is also known to the plaintiff, however for the reasons best known to the plaintiff, the plaintiff has not chosen to send any notice to the second defendant/agreement holder. It is to be noted that though it is stated by the plaintiff that he has sent the notice of termination to the first defendant



immediately after revocation of power of attorney by way of registered post on 29.01.2009, the fact remains that the copy of the said termination has not been filed by the plaintiff. Though the plaintiff has filed Ex.A6/communication from the postal authorities to show as if speed post has been delivered to the first defendant, it is relevant to note that in the entire plaint, it is nowhere pleaded that he has sent the communication of revocation of power of attorney by way of speed post, whereas, it is the specific case that he has sent the communication only by way of registered post. Ex.A6 relates to some speed post and further, what was the nature of the communication sent to the first defendant on 29.01.2009 and delivered to the first defendant has not been established. Even the copy of the communication said to have been sent by the plaintiff has not seen the light of the day. The said communication is also not received by the first defendant and in fact, it is received by one Meenakshi. How that Meenakshi related to the first defendant is not known. Therefore, in the absence of proof that communication sent is only with regard to the termination of deed, it cannot be said that the speed post sent and delivered only relates to the cancellation of power of attorney.

12. It is also further to be noted that no persons from the postal department is examined to show what was the nature of the article delivered to the first defendant and the communication Ex.A6 was only obtained on 17.06.2009, that too, after six months. Therefore, when the pleadings of the plaintiff indicate that he has only sent a registered post, now, the document



relates to the speed post has been filed to show that the communication was sent to the first defendant which is in our view is not related to the termination of agency. If really, the communication was sent, at-least the plaintiff could have filed a copy of the communication actually sent which has not been done so. Therefore, this fact creates serious doubt about the intimation of the termination of agency to the first defendant.

13. As already stated above, the plaintiff was already aware of the agreement for sale executed in favour of the second defendant by the first defendant, however, he has not even chosen to send a communication to the second defendant also. Therefore, in the absence of the service of notice about the termination of agency, termination will not effect as per Section 208 of the Indian Contract Act. In this regard, it is relevant to note that the Hon'ble Supreme Court in the case of *Thankamma George vs. Lilly Thomas and another* reported in (2024) 8 SCC 351, has held as follows:-

*28. From a plain reading, Section 208 infers and gives effect to revocation upon the twin conditions being satisfied, (i) communication to the agent and (ii) knowledge to a third party i.e., one who deals with or is likely to deal with the agent. Then, the revocation of authority becomes known to the agent and the said third parties. In other words, an idea in the mind of the principal to revoke cannot be construed as implied revocation or renunciation of agency. There ought to be an act or conduct of the principal which implies that the agency is revoked or withdrawn. If the revocation is expressed, such as by publication in newspapers, public notice or advertisement, communication to the agent etc., the parties who deal with the agent have a reasonable opportunity to know the revocation of agency by the principal. Two stages of*



*revocation are, firstly, one dealing with the agent, and secondly, one which applies to the third parties. For attracting the consequence of revocation to either of the situations, the revocation of the agent's authority is made by the principal in a manner that clearly implies that the principal has withdrawn the authority to act on his or her behalf by the agent. Followed by knowledge to third parties, let us examine the circumstances of the case on whether implied revocation coupled with communication is established.*

14. Further, as far as the cancellation of agency is concerned, there is a specific legal requirement under substantive law namely Indian Contract Act.

Section 206 of the Indian Contract Act reads as follows:-

*“206. Notice of revocation or renunciation.—Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.”*

15. The Act requires a reasonable notice to be given and such revocation could be either expressed or implied under Section 207 of the Act. When the revocation purports to be expressed, such express revocation is required to be served with notice in the manner contemplated under Section 206. Unless a notice is served, the termination will not take effect as per Section 208 of the Indian Contract Act.

16. As far as the contention of the learned senior counsel that since the



revocation of power of attorney itself was registered on 28.01.2009, it amounts to 'public notice', therefore, according to her, same should have been reflected in the encumbrance certificate and it amounts to notice. It is relevant to note Section 3 of the Transfer of Property Act deals with the public notice of the registration of the document. " a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

17. Explanation I of Section 3 of the Transfer of Property Act reads as follows:-

*Explanation I.—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:*

18. It is relevant to note that the registration of power of attorney relating to the immovable property was made compulsorily registrable under Tamil Nadu Act 29 of 2012 w.e.f. 01.12.2012. Prior to the said amendment brought



under TN Act 29 of 2012, registration of power of attorney of sale of property is not compulsorily under Section 17 of the Registration Act; only by way of amendment under Tamil Nadu Act 29 of 2012, registration of power of attorney relating to the immovable properties was made compulsory. Under Section 51 of the Registration Act, all the documents registered which are of non-testamentary documents will be entered in Book No.1. In all other documents, though registered not required under Section 17 of the Registration Act as a compulsory document will normally be entered in Book No.4 as per Section 51(3) of the Registration Act. Therefore, a combined reading of Sections 17, 18 and 51 of the Registration Act make it clear that power of attorney relating to the immovable property which is made compulsory registrable will now be entered under Book No.1 in view of the amendment by the Tamil Nadu Act 29 of 2012. Prior to that, power of attorney was normally entered in Book No.4 and it would not have reflected in the encumbrance certificate. The copy of the Ex.A8/sale deed dated 24.03.2009 makes itself clear that power of attorney dated 10.12.2008 was registered under Book No.4 in the office of the SRO, Konnur, Chennai. Such being the position, we are of the view that mere registration of power of attorney which was not compulsorily registrable prior to Tamil Nadu Act 29 of 2012 and the said entry normally would have been entered in Book No.4 under Section 51(3) of the Registration Act, 1908 and would not have been reflected in the encumbrance certificate. Hence, the contention of the learned senior counsel for the appellant that since the same has



been reflected in encumbrance certificate and it amount to 'notice' cannot be countenanced for the simple reason that at the relevant point of time, power of attorney was entered in Book No.4.

19. Though Section 3 of the Transfer of Property Act amounts to 'notice' relating to any transaction relating to the immovable property is required by law to be and has been effected by a registered instrument, the fact remains that power of attorney relating to immovable properties was made compulsorily registrable only after Tamil Nadu Act 12 of 2012 which came into effect from 01.12.2012. Therefore, only on that day onwards, power of attorney was made compulsorily registrable, in such case, any transaction in registering the documents relating to immovable property amounts to notice. Prior to that, it cannot be said that mere registration, it amounts to notice since the same is not reflected in Book No.1 to verify the entries.

20. As already stated above, notice of termination has not even established and served on either the first defendant or the second defendant. As the plaintiff has failed to prove that the termination of power deed was served either on the first defendant or the second defendant, such termination will not take effect as per Section 208 of the Indian Contract Act. Such view of the matter, sale deed executed by the first defendant to the second defendant is valid in the eye of law and that cannot be questioned.



21. It is also the case of the plaintiff that since the first defendant has executed sale agreement in favour of the second defendant in respect of F2, the plaintiff informed that he would take police action, afraid of police prosecution, the first defendant has issued two cheques for a sum of Rs.34 lakhs. Though, it is stated that cheques have been dishonoured, it is not pleaded in the plaint when the said cheques were dishonoured and what are the actions taken in this regard and further, the plaint also does not indicate whether any action has been taken to recover the unpaid sale consideration. Since, sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Even assuming that promise amount is not paid, the remedy of the plaintiff is only to recover the unpaid sale consideration, the plaint is totally absent about any action taken for recovery of money also.

22. As the very termination of the agency/revocation of power of attorney was not been served, such termination will not take effect in the eye of law. Such view of the matter, we are of the view that the sale executed on the strength of the power of attorney is valid in the eye of law, therefore, the plaintiff cannot claim any right in the property namely Flat F2. The plaintiff is also admitted in his evidence that the third defendant was in possession of the Flat No.F2. It is also now stated that the plaintiff is not in possession of the both the flats. Admittedly, the third defendant was in possession of Flat No.F2, the



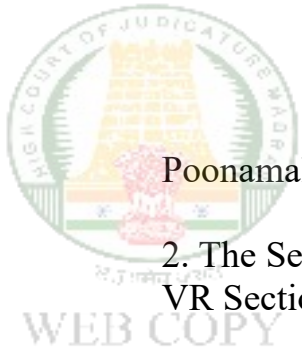
Trial Court having held that the plaintiff is entitled for declaration for Flat No.F1 ought to have granted recovery of possession, however, the Trial Court has granted only relief of declaration. Challenging the finding of the Trial Court granting declaration in respect of Flat No.F1, no appeal whatsoever is filed by the defendants. Such view of the matter, we are inclined to allow the appeal of the plaintiff in part granting relief of recovery of possession in respect of Flat No.1 in addition to the declaration already granted by the Trial Court. As far as the Flat No.2 is concerned, the judgment of the Trial Court is confirmed. Accordingly, these points are answered.

23. In result, this appeal suit is allowed in part in respect of the Flat No.1 granting recovery of possession in addition to the declaration granted by the Trial Court and in respect of Flat No.F2 is concerned, the judgment and decree of the Trial Court dismissing the suit in entirety is confirmed. Considering the nature of relief and dispute in between the parties, there is no order as to costs.

**(N.SATHISH KUMAR J.)(R.SAKTHIVEL J.)**  
**05-01-2026**

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

1.The III Additional District Judge  
III Additional District Court, Tiruvallur,



AS No. 739 of 2018



Poonamallee

2. The Section Officer  
VR Section, Madras High Court

3. The Manager  
Bank Of India, Asset Recovery Branch  
Star House 30, Erabalu Street,  
1st Floor, Chennai - 600001



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