

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on : 10.04.2026

Judgment pronounced on : 12.06.2026

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

S.A(MD).No.183 of 2019
& CMP.(MD).No.3979 of 2019

1.Mariappan
 2.Kanthiah

.. Appellants/Respondents/Plaintiffs

Vs.

1.A.Paulraj (Died)
 2.P.Radhamani
 3.C.David
 4.Anish Paul
 5.Anusha Rethi

.. Respondents/Respondents/Defendants

.. Respondents 4 & 5/LRs of 1st respondent

*[R4 and R5 brought on record as
 Lrs of the deceased 1st respondent
 vide Court order dated
 24.07.2024 made in CMP.
 (MD).No.7987 of 2024 in S.A.
 (MD).No.183 of 2019]*

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.47 of 2013 dated 29.08.2018 on the file of the Principal District Court, Kanniyakumari at Nagercoil, reversing the judgment and decree passed in O.S.No.74 of 2010 dated 21.02.2013 on the file of the Sub-Court, Kuzhithurai.



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For Appellants : Mr.H.Arumugam

For Respondents : Mr.Nissar Ahmed
Senior Counsel
for Mr.M.R.Seenivasan for RR2, 4 & 5
Mr.M.P.Senthil for R3

JUDGMENT

The plaintiffs in a suit for declaration of title and for recovery of possession and also for declaration of documents to be null and void and not binding on the plaintiffs, are the appellants herein, aggrieved by the reversal findings rendered by the First Appellate Court.

2. I have heard Mr.H.Arumugam, learned counsel for the appellants and Mr.Nissar Ahmed, learned Senior Counsel for Mr.M.R.Seenivasan, learned counsel for the respondents 2, 4 and 5 and Mr.M.P.Senthil, learned counsel for the 3rd respondent.

3. The Second Appeal was admitted by this Court on 16.04.2019, on the following substantial questions law:

1. Whether the Lower Appellate Court was right in declining to grant the relief of declaration under Section 34 of Specific Relief Act, 1963, when the sale deed executed by 1st defendant remains unchallenged?



2. Whether the Lower Appellate Court is right in reversing the decree in the suit when the defendants pleaded fraud, but did not discharge the burden of proving the fraud as contemplated under Sections 101 to 103 of the Indian Evidence Act, 1872?

3. Whether 1st defendant/principal is entitled to repudiate the sale claiming fault on his own agent or on account of non-rendering accounts, without taking any action under law and when the agent has acted within his authority as per Section 188 of the Indian Contract Act, 1872?

4. Whether revocation of power by the 1st defendant, after the agent exercised his authority is valid and binding on the purchaser when Section 203 of Indian Contract Act, 1872 specifically says that the revocation of authority may only before the exercise of power by the agent?

4. The brief facts that are necessary for deciding the Second Appeal are as hereunder:

(a) The plaintiffs filed O.S.No.74 of 2010 before the Sub-Court, Kuzhithurai, contending that the suit property originally belonged to one Paulraj, S/o. Aseervatham, the 1st defendant, he having purchased the same under Sale Deed registered as Doc.No.495 of 1986. A Ratification Deed was also executed in the year 1987 and the same was also



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registered. The plaintiffs contend that the 1st defendant was known to the them and he was in need of huge sums of money for his business purposes and he approached the plaintiffs and their father, Chellappa Pandian, who were living together and doing business jointly. The 1st defendant mortgaged the suit property in favour of the 1st plaintiff on 01.10.1999 for a sum of Rs.4 lakhs availed by him. The mortgage was also registered in Doc.No.557 of 1999 on the same day. 1 cent of land in R.S.No.D4/153 and D4/155, Old Surevey No.1367-B, was sold to the 2nd plaintiff for a sum of Rs.1 lakh, in and by a registered document. The 1st defendant also executed a general power of attorney in Doc.No.55 of 1999 in favour of the father of the plaintiffs, Chellappa Pandian, empowering him to execute sale deed on his behalf, in respect of 8.5 cents of land in Survey Nos.D4/153 and D4/155

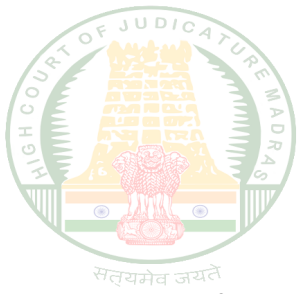
(b) According to the plaintiffs, the 1st defendant committed default and did not even come forward to pay interest on the mortgage debt of Rs.4 lakhs, in spite of several demands. It is the case projected by the plaintiffs that the 1st defendant instructed the father of the plaintiffs, Chellappa Pandian, the power of attorney agent on 27.02.2001 to execute a sale deed in favour of the 1st plaintiff in respect of 8.5 cents of land



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which was subject matter of the power of attorney for a sale consideration of Rs.4,50,000/-. Accordingly, sale deed was executed in Doc.No.130 of 2001 and the mortgage executed by the 1st defendant was fully discharged.

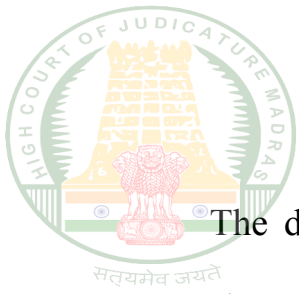
(c) The 2nd defendant is the wife of the 1st defendant, Paulraj. The plaintiffs permitted defendants 1 and 2 to stay in one of the buildings, which was the subject matter of the sale in favour of the plaintiffs, on humanitarian grounds, till such time, they were able to shift to another residential house. However, the defendants colluded to cause wrongful loss to the plaintiffs and created a bogus document styled as 'Arrangement Deed' in favour of the 2nd defendant in respect of a property already sold to the plaintiff. The 1st defendant did not have any subsisting right to execute such a document which cannot convey title or any right in favour of the 2nd defendant. The alleged Arrangement Deed is invalid in the eye of law, besides also being fraudulent and collusive in nature. A collusive suit was also filed in O.S.No.164 of 2002 on the file of the District Munsif Court, Kuzhithurai suppressing material facts. However, the said suit came to be dismissed subsequently.



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(d) The 2nd defendant has fraudulently executed a sale deed in favour of the 3rd defendant on 03.07.2002. The said document is invalid in the eye of law and cannot convey valid title to the 3rd defendant, as the 2nd defendant herself did not have any right in the suit property. The 3rd defendant filed a suit in O.S.No.316 of 2003 before the District Munsif Court, Kuzhithurai for a bare injunction. Though an exparte interim order was granted in favour of the 3rd defendant, on the plaintiffs entering appearance and contesting the matter, the injunction was also vacated. None of the defendants have any right or title over the suit property, which belongs to the plaintiffs absolutely. Hence, the suit for declaration was instituted.

5. The defendants 1 and 2, husband and wife, filed a written statement, contending that the plaintiffs are money lenders and they have cheated not only the defendants, but also their relatives. They are in the habit of receiving blank signed cheques and also taking custody of title deeds of immovable properties and without even lending any money, they have cheated the 1st defendant. The 1st defendant is an illiterate person and has executed the documents without knowing the contents of the same. The 1st defendant has not received any money from any of the plaintiffs.



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The documents created on 01.10.1999 are void and invalid documents since they have been brought about in a fraudulent manner.

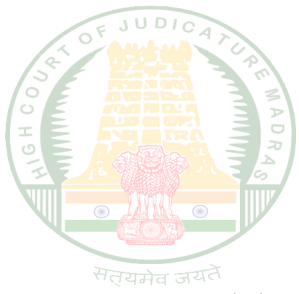
The 1st defendant has cancelled the power of attorney on 14.10.2003 as soon as he came to know about the fraud played by the plaintiffs and their father. The power agent has not complied with the conditions in the power of attorney and the sale deed executed as power agent is also void and invalid. The allegation of collusion between the defendants 1 and 2 is denied. The suit has been filed only as a counter blast to the suit filed by the defendants in O.S.No.316 of 2003, pending before the District Munsif Court, Kuzhithurai. There is no cause of action for filing the suit and the defendants 1 and 2 therefore prayed for dismissal of the suit.

6. The 3rd defendant filed an independent written statement, contending that the plaintiffs and their father, Chellappa Pandian are money lenders and the documents that came into existence on 01.10.1999 are all fraudulent documents, without any consideration. Possession was also not delivered in pursuance of the said documents. The power of attorney executed by Chellappa Pandian was also as a result of fraud played on the illiterate 1st defendant and the same has been duly cancelled and intimated to the power agent. The Gift Deed executed by the 1st



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defendant in favour of the 2nd defendant is a true and valid document and binding upon the plaintiffs. Hence, the purchase made by the 3rd defendant from the 2nd defendant for valuable sale consideration on 03.07.2002 is also a true and valid document. The 3rd defendant filed a suit in O.S.No.316 of 2003 before the District Munsif Court, Kuzhithurai, where the defendants 1 and 2 have also been impleaded. The suit has been filed against the plaintiffs and their father. The Trial Court granted a decree that the defendants 1 and 2 should not be evicted except by due process of law. The 3rd defendant has preferred an appeal in A.S.No.85 of 2007, which came to be dismissed. The 3rd defendant has preferred a Second Appeal, the same is pending. The plaintiffs' claim is barred Order II Rule 2 of the Code of Civil Procedure and also barred by *res judicata*, as well as limitation. The plaintiffs have not challenged the Sale Deed in favour of the 3rd defendant. The 3rd defendant has already surrendered possession of the suit property to the defendants 1 and 2, who are paying water taxes, building taxes, as well as the electricity consumption charges and the plaintiffs have no right, title or possession over the suit property. The sale deed executed by the power agent, representing the 1st defendant is a sham and nominal document and consequently void and invalid.



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7. The parties went to trial and on the side of the plaintiffs, the 1st plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A33 and on the side of the defendants, they examined themselves as D.W.1 to D.W.3 and marked Ex.B1 to Ex.B10.

8. The Trial Court, on appreciation of the oral and documentary evidence, decreed the suit, granting the reliefs of declaration as prayed for and also directed the defendants 1 and 2 to vacate and hand over vacant possession within a period of three months.

9. Aggrieved by the judgment and decree of the Trial Court, the defendants 1 and 2 alone preferred an appeal in A.S.No.47 of 2013 before the Principal District Court, Kanyakumari at Nagercoil. The First Appellate Court reversed the findings of the Trial Court and dismissed the suit filed by the plaintiffs/appellants, as against which the present Second Appeal has been filed.

10. Mr.H.Arumugam, learned counsel appearing for the appellants taking me through the pleadings, as well as the oral and documentary evidence adduced by the parties, would contend that the Trial Court had



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rightly appreciated the evidence adduced by the parties in the context of their respective pleadings and found the plaintiffs to be entitled to the suit reliefs. However, according to Mr.H.Arumugam, learned counsel for the appellants, the First Appellate Court, on an erroneous consideration of the factual as well as legal position, has overturned the well considered findings of the Trial Court, which require interference under Section 100 of the Code of Civil Procedure.

11. It is the primordial submission of the learned counsel for the appellants that the 1st defendant had admitted to the execution of the documents, namely, the Mortgage Deed, Sale Deed in respect of 1 cent and a power of attorney in respect of 8.5 cents in favour of the plaintiffs/their father. He would therefore state that the burden was very heavily on the 1st defendant to establish that all was not well with the execution of these documents and that they were only executed for securing repayment of the money allegedly lent under the Mortgage Deed. In this regard, it is his submission that the 1st defendant has miserably failed to establish his case that no money was ever lent to him under the Mortgage Deed and that the Sale Deed as well as the power of attorney were only nominal, sham documents executed by way of security



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for repayment of the amounts covered by the Mortgage Deed. He would also attack the findings of the First Appellate Court that there was no necessity for the 1st defendant to mortgage the property, if he really had the intention of selling the property, as the proper mode of sourcing funds would have been to dispose of the entire property at one go, instead of having three documents executed and registered on the same day. Such finding, according to the learned counsel, is based on surmises and conjectures and not based on pleadings or evidence on record.

12. Equally, Mr.H.Arumugam, learned counsel for the appellants would challenge the findings of the First Appellate Court regarding the execution of the power of attorney in favour of the father of the plaintiffs, who lives 110 kms away from the suit property, considering the fact that the 1st defendant resided very much in the suit property and therefore, there is no necessity to have executed a power of attorney in favour of the father of the plaintiffs.

13. Taking me through the power of attorney deed, the learned counsel for the appellants would contend that the First Appellate Court has misconstrued the power of attorney, as if it had been executed for



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looking after the property, whereas the power of attorney was clearly intended for execution of sale of 8.5 cents of land alone. He would therefore state that on this very ground of improper appreciation of the document, namely the power of attorney, the findings of the First Appellate Court are clearly perverse and liable to be set aside.

14. Taking me through the further findings of the First Appellate Court regarding the non-payment of the balance sale consideration by the power agent to the 1st defendant, Mr.H.Arumugam, learned counsel for the appellants would contend that the relationship between the principal and power agent will not in any manner affect the rights of the purchaser from the power agent and if at all the principal had any grievance with regard to the consideration not being transferred or made over to him by the agent, then the proper remedy available to the principal could have been to proceed against the agent for rendition of accounts or for recovery of amounts due and payable to him and not to invalidate the documents executed by the power of attorney agent.

15. In this regard, he would also take me through the written statement filed by the defendants 1 and 2 and to contend that such a plea



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was not even raised by the defendants and it was totally unwarranted and unnecessary for the First Appellate Court to go into such aspect in the absence of the parties being at issue. He would also invite my attention to the findings of the First Appellate Court regarding the misquoting of boundaries, namely southern and eastern boundaries in the documents executed by the 1st defendant and contended that the 1st defendant cannot take advantage of his own wrong of quoting wrong boundaries in the documents executed by him and the same will not in any manner affect the rights of the plaintiffs. He would also state that the inadequacy of consideration cannot be a ground to invalidate the sale transaction itself when the defendant himself has not challenged the sale by way of a counter claim or in the absence of even a claim against the power agent for recovery of the sale consideration received by the power agent on behalf of the 1st defendant or for rendition of accounts.

16. Mr.H.Arumugam, learned counsel for the appellants would further contend that the First Appellate Court has erroneously placed the burden upon the plaintiffs to prove the case of the defendants, who had pleaded that the documents were executed only as security for the loan transaction. In this context, the learned counsel for the appellants would



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contend that the defendants have not even examined the witnesses to the power of attorney document or the sale deed in respect of 1 cent to establish their defence. He would further state that the production of the original title deeds by the plaintiffs should have found favour with the First Appellate Court to hold that the sale in favour of the plaintiff was a true and genuine transaction, however, the First Appellate Court has suspected the production of the original title deeds on account of the same not being mentioned earlier, which is unwarranted, when it is not even pleaded or justified by the defendants.

17. The learned counsel for the appellants would further state that the First Appellate Court has also erred in law, in assuming that the plaintiffs are duty bound to ensure that the consideration paid to the agent reaches the principal, when there is no such requirement under law. He would further submit that the First Appellate Court ought to have seen that the 1st defendant did not challenge the sale deed executed by him and also did not establish the allegation of fraud, by adducing satisfactory oral and documentary evidence. He would further state that admittedly the revocation of power was after the exercise of authority by the power agent and therefore, all acts by the power agent, prior to such revocation,



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would bind the principal, namely the 1st defendant. In support of his submission, the learned counsel for the appellants would rely on the decision of the Privy Council in ***Ramchandra Jivaji Kanago and another Vs. Laxman Shrinivas Naik and another***, reported in (1945) 1 ***MLJ 253*** and the decision of this Court in ***K.Kalidass (deceased) and others Vs. P.Munusami and another***, reported in (2020) 1 ***MLJ 85***.

18. Per contra, Mr.Nissar Ahmed, learned Senior Counsel appearing for the respondent 2, 4 and 5 would submit that the very fact that the three documents, namely Ex.A3, Ex.A4 and Ex.A5 were all executed on 01.10.1999 itself creates suspicion. In this connection, he would invite my attention to the findings of the First Appellate court and contends that there was no necessity for execution of three documents when it is the case of the plaintiffs that the 1st defendant was in need of funds and therefore, he came forward to sell a portion of the property, namely 1 cent.

19. It is therefore the submission of Mr.Nissar Ahmed, learned Senior Counsel that a prudent person owning immovable property and in need of money for augmenting his business purposes would have in



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normal course disposed of the immovable properties and would not have conveyed only 1 cent by way of a registered sale deed and additionally, execute a mortgage deed in respect of some other properties and a power of attorney in respect of another 8.5 cents. He would further contend that the 1st defendant never authorized the father of the plaintiffs to execute sale deed on the basis of the power of attorney as alleged by the plaintiffs in the plaint. He would further state that the boundaries in the sale deed for 1 cent and the mortgage deed for 4 cents are one and the same, which also throw light on the fact that the sale deed could not have been an intended sale transaction, but executed only for securing the amount reflected in the mortgage.

20. The learned Senior Counsel would further contend that the power agent was none else than the father of the plaintiffs and he was duty bound to furnish accounts and admittedly there is no proof forthcoming with regard to handing over of the balance sale consideration to the 1st defendant by the Chellappa Pandian, the father of the plaintiffs. It is his further submission that if the transactions were really intended sale transactions, then a prudent purchaser would never had permitted the defendants 1 and 2, the vendors to continue in possession of the property



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conveyed to the purchasers. He would further state that when the documents are executed in suspicious circumstances and not binding on the 1st defendant, the 1st defendant was well within his right to execute a Gift Deed in favour of his wife, the 2nd defendant. He would further state that the cancellation of power of attorney was also duly intimated to the power agent as well and further, the sale executed by the 2nd defendant, the wife of the 1st defendant in favour of the 3rd defendant was also a valid and binding conveyance deed for consideration and that the 3rd defendant is a bonafide purchaser for value. In support of his submissions, the learned Senior Counsel would rely on the following decisions:

1.J.Prabakaran and another Vs. S.Babujan and others, reported in ***2022 Supreme (Mad) 3307***.

2.T.Sridharan Vs. N.Ranjani, reported in ***2024 Supreme (Mad) 2545***.

3.Raja Vs. Indira, reported in ***2025 Supreme (Online) (Mad) 72428***.

21. Mr.M.P.Senthil, learned counsel appearing for the 3rd respondent, besides adopting the arguments of the learned Senior Counsel appearing for the respondents 2, 4 and 5, would submit that the 3rd defendant was a bonafide purchaser for valuable consideration. He would



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also contend that the plea of illiteracy of the 1st defendant was clearly spoken about by D.W.1 and D.W.2 in the witness box and therefore, the First Appellate Court did not commit any error in placing the burden of proof on the plaintiffs to establish that the transactions executed on 01.10.1999 were all bonafide and genuine documents to be binding on the defendants. In support of his submission, the learned counsel for the 3rd respondent would rely on the decision of the Hon'ble Supreme Court in *Ramathal and others Vs. K.Rajamani (dead) through L.R's and another*, reported in **2024 (2) CTC 115**.

22. I have carefully considered the submissions advanced by the learned counsel appearing for the parties.

23. It is not in dispute that the 1st defendant was the owner of the suit property and it is also an admitted fact that on 01.10.1999, the 1st defendant executed three documents, namely a Mortgage Deed, Sale Deed for 1 cent and a Power of Attorney for 8.5 cents. All these documents are registered documents. Though it is the case of the 1st defendant that he did not even receive the mortgage money in the first place, while taking the defence that the plaintiffs and their father are in



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the habit of cheating gullible people like the 1st defendant, there is absolutely no iota of evidence on the side of the 1st defendant to establish that the mortgage deed or sale deed for 1 cent were not supported by consideration. Hence, I do not see any merit in the arguments advanced by the learned counsel for the respondents that the plaintiffs brought about the documents executed in their favour, without even they being supported by any consideration.

24. The admitted position is that the 1st defendant had authorised the father of the plaintiffs, by executing a registered power of attorney on 01.10.1999, to deal with an extent of 8.5 cents. It is the case of the defendants that the power of attorney was executed only for managing the said extent of 8.5 cents and not for sale and consequently, the power agent was not authorised or empowered to execute any sale deed in favour of the plaintiffs, much less any other persons.

25. On going through the power of attorney, I find that the only object with which the power of attorney was executed was to empower the power agent to sell 8.5 cents which is subject matter of the power of attorney. The preamble to the power of attorney clearly indicates that the



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1st defendant had decided to sell the property and therefore, he has come forward to execute the said power of attorney, enabling the agent to execute sale deeds and also register the same. Unfortunately, the First Appellate Court has misconstrued the said power of attorney deed, as if it was executed only for the purpose of looking after/managing the 8.5 cents of land. The interpretation given to the said power of attorney document by the First Appellate Court is therefore wholly misplaced and misconceived. The consequent reasons assigned by the First Appellate Court that the principal, being a resident of the same locality, would not have given such a power of attorney to a person who was residing 110 kms away to manage the suit properties is fallacious and cannot be countenanced.

26. It is further seen that on the date of the sale deed having been executed by the power agent in favour of the one of his sons, namely 1st plaintiff, the power of attorney was admittedly in force. Therefore, on the said date, the father of the plaintiffs was competent to execute the sale deed. The 1st defendant has not chosen to challenge the sale deed executed by his power agent. At least, after the filing of the suit in the light of the defence taken, the 1st defendant ought to have filed a counter



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claim, challenging the sale deed executed by the power agent. This has also not been done. Equally, the 1st defendant has also not made any demand against the power agent for accounts or for recovery of the balance sale consideration, or has not even chosen to file a suit in that regard.

27. Therefore, the arguments advanced on the side of the respondents that the agent has not handed over the balance sale consideration to the 1st defendant or that he has not been examined or that he has not rendered accounts in compliance with the power of attorney covenants cannot be gone into in these proceedings. Nothing prevented the 1st defendant to sue the power agent, questioning his acts and omissions. The absence of such action having been taken by the 1st defendant, coupled with the fact that he has not challenged the sale deed executed by the power agent, exercising right under the registered power of attorney dated 01.10.1999 clearly estops the 1st defendant from taking a defence that the sale deed executed by his power agent is a sham and nominal document and not binding on the 1st defendant.



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28. In so far as the arguments advanced by the learned counsels for the respondents that the boundaries to both the mortgage deed and sale deed for 1 cent are one and the same and the properties are clearly overlapping, as rightly contended by Mr.H.Arumugam, learned counsel for the appellants, the documents were executed by the 1st defendant himself and merely because two of the boundaries in the schedule are misquoted, the document having been executed by the 1st defendant himself, he cannot now try to derive undue advantage of the same to invalidate the sale deeds in favour of the plaintiffs.

29. The other argument put forth was with regard to a prudent purchaser not taking possession of the properties conveyed in his favour, though the arguments appear to be attractive at first blush, on going through the facts of the present case, I am unable to see any merit in the said submissions. Admittedly, on 01.10.1999, only a power attorney was executed in respect of 8.5 cents. It is the case of the plaintiffs themselves that the power attorney was only for the purposes of securing the mortgage amount covered by the mortgage deed.



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30. It is however the further case of the plaintiffs that the 1st defendant committed default and was not in a position to pay even the interest component and therefore, the 1st defendant had instructed the power agent to execute the sale deed in discharge of the mortgage amount. The plaintiffs had therefore pleaded that the execution of sale deed in furtherance of the power of attorney was not contemplated on 01.10.1999, but much later, consequent to default committed by the 1st defendant alone. The plaintiffs have also additionally pleaded that they permitted the defendants 1 and 2 to continue to occupy on humanitarian grounds. Such a conduct of the plaintiffs is certainly probable and acceptable. No doubt, there is no documentary evidence adduced in this regard. However, on an overall assessment of the facts and circumstances of the case, the case projected by the plaintiffs that the defendants 1 and 2 requested for time to vacate the hand over position and that they would vacate as soon as they are able to find a suitable alternate residential accommodation is clearly probable.

31. Though it is contended that the 1st defendant was illiterate and the burden was on the plaintiffs to establish that the documents executed on 01.10.1999 were all valid and binding documents, I am unable to



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countenance the said arguments for the simple reason that as even according to the 1st defendant, his case is that he knew he was cheated on 01.10.1999 itself. Despite coming to Court with such a case, there is no explanation offered on the side of the 1st defendant as to why there has been an inordinate delay in cancellation of the power of attorney executed in favour of the father of the plaintiffs.

32. In fact, though the defendants 1 and 2 have pleaded illiteracy, the fact that they have been initiating legal proceedings against the purchasers of other properties, which have been admitted by them and despite having been cautious enough to cancel the power of attorney executed in favour of the father of the plaintiffs and also the 1st defendant having executed an Arrangement Deed/Gift Deed in favour of his wife, the 2nd defendant, who in turn conveyed the property to the 3rd defendant, I do not see that the defendants are really so illiterate or naive, for the plaintiffs to have taken advantage of the same and consequently taken them for a ride.

33. Further, in Ex.A20, which is the judgment in A.S.No.85 of 2007, which was an appeal suit filed by the defendants against the



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plaintiffs herein, as well as their father, Chellappa Pandian in O.S.No.316 of 2003, one of the grounds of appeal raised by the defendants is that the Trial Court ought to have come to the conclusion that the defendants 1 and 2 herein are permissive occupants under the 3rd defendant, purchaser herein and that Ex.B1 to B3, which are three documents executed on 01.10.1999 are void and invalid documents. Therefore, the defendants were well aware of their rights. However, they did not choose to challenge the three registered documents executed on 01.10.1999 for want of consideration, or as being sham and nominal documents. Therefore, I am unable to see merit in the arguments advanced on the side of the respondents that the defendants 1 and 2 were illiterate and therefore, the burden of proof was on the plaintiffs. Consequently the burden of proof rests only on the defendants to establish fraud alleged to have been played by the plaintiffs. In this regard, I do not find any iota of oral or documentary evidence, excepting the pleadings in the written statement. The Trial Court has, in my considered opinion, rightly factored the oral and documentary evidence to grant relief to the plaintiffs. The First Appellate Court, based on surmises and conjectures and also committing a foundation error in misconstruing the covenants of the power of attorney deed, has reversed the well considered findings of the



Trial Court, which clearly warrant interference under Section 100 of the Code of Civil Procedure.

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34. Coming to the decisions that have been relied on by the learned counsel on either side, the Privy Council, in *Ramchandra Jivaji Kanago's case*, held that limitation would begin to run from the time, facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. In the present case, the 1st defendant, even in the written statement, alleges that the plaintiffs played fraud upon him on 01.10.1999. If really, even the mortgage money was not paid, despite documents having been executed by the 1st defendant, no prudent person, even an illiterate person would not remain silent thereafter, without challenging the documents. Further, as already discussed, the documents were in fact challenged in A.S.No.85 of 2007 in Ex.A20 as well, though no relief was prayed for in the suit filed by not only defendants 1 and 2, but also the purchaser from the 2nd defendant, who is admittedly not an illiterate person.

35. In **K.Kalidass's** case, this Court held that when sale deeds have been executed by the power agent, then the principal being a party to the



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sale deeds cannot contend that he continues to be the owner of the suit properties, without endeavouring to cancel the sale deeds executed by the agent in a manner known to law, by paying applicable court fees. In the present case also, the sale deed executed by the power agent is not challenged by the 1st defendant and further, having allowed the power agent to deal with the property, the 1st defendant did not have any subsisting right to execute the arrangement deed or gift deed in favour of his wife, the 2nd defendant. The said document was therefore clearly void in the eye of law and certainly not binding on the plaintiffs, who have already become the owners under the strength of the sale deed executed by the power agent of the 1st defendant.

36. This Court, in *J.Prabakaran's case*, held that when a power of attorney is executed as a security for loan and sale deed was executed without consideration, then the sale deed would be a void document. I have no quarrel with regard to the proposition laid down in this case. However, the said ratio will not apply to the facts of the present case, since it is admittedly the case of the plaintiffs that the sale deed was executed in discharge of the mortgage dues which was the consideration



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for the sale. In such circumstances, it cannot be successfully contended by the defendants that the sale was without consideration and hence, void.

37. In ***T.Sridharan's case***, this Court held that when a power of attorney was executed only for the purpose of maintenance and did not authorize sale, then the alienation by the power agent was invalid. However, I have already gone through the power of attorney executed by the 1st defendant in favour of the father of the plaintiffs, which clearly empowered the power agent to alienate 8.5 cents. Therefore, I am not able to apply the ratio laid down in this case to the facts of the present case.

38. In ***Ramathal's case***, the Hon'ble Supreme Court dealt with the principle of *non-est* factum, where the plaintiff claiming to be illiterate challenged the misuse of power of attorney given for development of land into plots by alienation of the same to the father and brother of the agent himself. The Hon'ble Supreme Court held that though the plaintiff did not seek for any relief of declaration that the power of attorney was void or also did not seek for cancellation of sale deeds, it was held that when a document of sale is void, then no cancellation would be necessary and document can be ignored under law. The Hon'ble Supreme Court further



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reiterated that cancellation of a sale deed would be necessary only when it is alleged to be voidable on facts. However, the case before the Hon'ble Supreme Court was one where it was found on facts that the contents of the power of attorney had been fraudulently incorporated, without due authorization of the principals and only in order to deprive him of their valuable rights. It was also brought on record by adducing evidence that the plaintiffs were illiterate, simple and rustic villagers and in such circumstances, applied the principle of *non-est* factum to the facts of those case.

39. Here, I have already discussed as to how the defendants cannot be given the benefit of illiteracy for the reasons that even in the earlier suit, joining hands with the purchaser, the 3rd defendant, they have asserted that the three documents executed on 01.10.1999 are all invalid and void documents. Further, in the written statement also, defendants 1 and 2 put forth a defence that they were aware that the plaintiffs took them for a ride even on the date of execution of the three documents on 01.10.1999. Therefore, the ratio laid down by the Hon'ble Supreme Court, by no measure, can be apply to the facts of the present case, to accept the plea of illiteracy and place the burden of proof on the plaintiffs, instead of



on the defendants, to prove execution of the mortgage deed, sale deed as well as the power of attorney.

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40. In view of the fact that the First Appellate Court has erroneously set aside the findings of the Trial Court, which were based on the pleadings, as well as oral and documentary evidence, that too, on misconstruing documentary evidence and also misapplying the position of law, I am inclined to allow the second appeal and the substantial questions of law are answered in favour of the appellants.

41. In fine, the Second Appeal is allowed. The judgment and decree in A.S.No.47 of 2013 dated 29.08.2018 on the file of the Principal District Court, Kanniyakumari at Nagercoil, is set aside and the judgment and decree passed in O.S.No.74 of 2010 dated 21.02.2013 on the file of the Sub-Court, Kuzhithurai, is restored to file. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

12.06.2026

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

1. The Principal District Court,
Kanniyakumari,
Nagecoil.
2. The Sub-Court,
Kuzhithurai.
3. The Section Officer,
V.R.Section,
Madurai Bench of High Court,
Madurai.



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P.B.BALAJI.J,

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Pre-delivery Judgment made in
S.A(MD).No.183 of 2019
& CMP.(MD).No.3979 of 2019

12.06.2026