

Jeyamani vs Umamaheshwari on 7 February, 2025

Author: N. Sathish Kumar

Bench: N. Sathish Kumar

A.S.N

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.Nos.39 & 40 of 2022
and CMP.Nos.1751 and 1758 of 2022

Jeyamani

... Appella

Versus

Umamaheshwari

... Respondent in A.S

1.Prabhakaran
2.Umahamaheshwari

... Respondents in A.S

Prayer: Appeals filed under Section 96 read with Order 4 Rule 1 of Code
Procedure, to set aside the judgment and decree dated 06.07.2021 made in
O.S.Nos.72 of 2019 and 42 of 2017 respectively on the file of the III Ad
District and Sessions Judge, Erode at Gobichettipalayam

In both ASs

For Appellant : Mr.S.Parthasarathy

For respondents : Mr.V.Anandhamurthy

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A.S.No.39 of 2022 has been filed challenging the order of the Trial Court in O.S.No.72 of 2019 dated 06.07.2021 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam.

A.S.No.40 of 2022 has been filed challenging the order of the Trial Court in O.S.No.42 of 2017 dated 06.07.2021 on the file of the III Additional District and Sessions Judge, Erode at Gobichettipalayam.

2. The suit in O.S.No.42 of 2017 has been filed by the appellant seeking for cancellation of the power of attorney dated 09.07.2012, sale deed dated 27.04.2017 and for permanent injunction.

3. The suit in O.S.No.72 of 2019 has been filed by the second defendant in O.S.No.42 of 2017 for the relief of permanent injunction.

4. The brief background of the case in O.S.No.42 of 2017 is as follows:

4.a. According to the plaintiff, the suit property is a vacant site. Plaintiff has <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 purchased the vacant land and is the owner of the property. In order to met out the expenses of business of her husband, the plaintiff and her husband approached one Govindaraj for a loan of Rs.3 lakhs. Govindaraj introduced the first defendant who is doing finance business. The first defendant has agreed to lend the amount and the plaintiff executed a general power of attorney dated 09.07.2012 in favour of the first defendant. Two blank promissory notes were obtained by the first defendant. Only during the 3rd week of October, 2017, when the defendants attempted to disturb the peaceful possession, the plaintiff came to know that based on the power of attorney, the first defendant on the strength of the power of attorney has executed the sale deed in favour of the second defendant for a sale consideration of Rs.9 lakhs and the same was registered on 27.04.2017. According to the plaintiff, the first defendant has no right to sell the property as per the terms of the power of attorney. The plaintiff is still continuing the possession of the property. Life certificate enclosed with the sale deed is a result of fraud and forgery. Hence, the suit.

4.b. It is the case of the defendants that there was no loan transaction between the plaintiff and the defendants and in fact, the plaintiff has approached <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 the first defendant on 09.07.2012 and requested him in selling the property and the first defendant was appointed as Power of Attorney. Only in pursuant to the power of attorney, sale deed was executed in favour of the second defendant. She is a bonafide purchaser of the property and she is in possession of the property.

4.c. Based on the above pleadings, the Trial Court framed the following issues:

1. Whether the plaintiff is in possession of the suit property?

2. Whether the plaintiff is entitled for the relief that the General Power of Attorney dated: 09.07.2012 is null and void and not acted upon?
3. Whether the plaintiff is entitled for cancellation of Sale Deed dated: 27.04.2017?
4. Whether the Plaintiff is entitled for the relief of permanent injunction against the defendants for not to alienate the suit property?
5. Whether the Plaintiff is entitled for the relief of permanent injunction restraining the defendants not to disturb the plaintiff's possession over the suit property?
6. To what other relief?

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5. The brief background of the case in O.S.No.72 of 2019 is as follows:

5.a. The second defendant in the suit in O.S.No.42 of 2017, who is the purchaser of the suit property has filed the suit seeking for permanent injunction as against the plaintiff in O.S.No.42 of 2017.

5.b. The Trial Court framed the following issues:

a. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

b. To what other relief?

6. On the side of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A6 were marked. On the side of the defendants, DW1 and DW2 were examined and no documents were marked.

7. On the side of the plaintiff, PW1 and PW2 were examined and Exs.A1 to A7 were marked. On the side of the defendant, none examined and Ex.B1 was marked.

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8. Both the suits were tried together, the Trial Court dismissed the suit in O.S.No.42 of 2017 and decreed the suit in O.S.No.72 of 2019. Hence, the unsuccessful plaintiff in O.S.No.42 of 2017 and the defendant in O.S.No.72 of 2019 has filed the present appeals.

9. The learned counsel for the appellant submitted that the plaintiff has given power of attorney only as a collateral security in getting hand loan, mere, execution of power of attorney does not authorize the first defendant to sell the property. According to her, life certificate appended to the sale certificate has been forged and not signed by the plaintiff. According to plaintiff, she has received

only Rs.3 lakhs at the time of executing the power of attorney, therefore, sale deed executed in pursuant to the sale deed is not valid in the eye of law. Hence, seeks interference of this Court.

10. The learned counsel for the respondents submitted that absolutely there is no evidence to show that there was money transaction, in fact, the very plaintiff herself has executed power of attorney, in pursuant to the same, agreement of sale was executed in favour of the second defendant in the year 2012 itself. Thereafter, <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 sale deed came to be executed in the year 2017. The contention that life certificate has been forged has not been established. Further, the property is a vacant land and the purchase made by the second defendant in O.S.No.72 of 2019 has been established, therefore, the appellant cannot claim any permanent injunction. Hence, submitted that the judgment and decree of the Trial Court does not require interference from this Court.

11. In light of the above pleadings, now, the following points arises for consideration:

- i) Whether the sale deed in favour of the second defendant is a result of forgery of life certificate?
- ii) Whether the appellant/plaintiff in O.S.No.42 of 2017 is entitled to annul such document?
- iii) Whether the appellant is entitled to permanent injunction?

Points (i) to (iii)

12. Though it is the contention of the plaintiff that power of attorney executed by her does not authorize the agent for sale of property, such contention <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 has no legs to stand. Ex.A1 in O.S.No.72 of 2019/general power of attorney dated 09.07.2012, when carefully seen, it would indicate that the power of attorney has been given to enter sale agreement, sale deed and also extend time for sale etc., Therefore, the contention that general power of attorney is not in respect of sale of property cannot be countenanced.

13. It is not disputed by the appellant about the receipt of Rs.3 lakhs and execution of power of attorney. Though it is contended that it is a loan agreement, Exs.A2/Original sale agreement entered into between the plaintiff and her husband and A3/Original sale deed executed by G.G.Prabhakaran in favour of the plaintiff filed in O.S.No.72 of 2019 makes it clear that agreement has been entered only for sale of property. Therefore, when there is a registered document entered on behalf of the appellant, merely, on the basis of oral evidence, the contention of the appellant cannot be countenanced. The appellant in her evidence, she has clearly admitted that there is no evidence to prove the relevant transaction. PW2/Mr.Balamurugan in O.S.No.42 of 2017, who is the son-in-law of the appellant, in his cross examination has admitted that power of attorney was executing by the appellant only after knowing its contents fully. Therefore, the <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 contention that she never gave power of attorney to sell the property has

no legs to stand.

14. The contention that the life certificate appended to the sale deed has been forged. Having taken such a stand, no attempts whatsoever made by the appellant to establish the so-called forgery. When the plaintiff takes a plea of forgery, the burden lies on her to prove the so-called forgery. Further, the very suggestion made to the defendant/DW1 by the plaintiff indicate that the contention that life certificate has been forged is falsified. It is suggested by the DW1 that when the plaintiff was in hospital with the help of doctor, such certificate has been obtained. Therefore, the very allegation of the plaintiff with regard to the life certificate has no legs to stand.

15. Further, it is not the case of the plaintiff that no consideration whatsoever received by her, whereas, it is the contention of the plaintiff that Rs.3 lakhs is received only towards loan transaction. Further, it is not the case of the plaintiff that power agent has not given any account after the sale. No doubt, the second defendant is none other than the wife of the first defendant. During the <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 trial, the plaintiff also filed an application in I.A.Nos.1 and 2 of 2019 to call for the records from the bank to show that any payments have been made by the second defendant, however, no steps were taken by the plaintiff to examine the bank manager. Therefore, as long as the power of attorney has not been questioned and the receipt of money is not disputed, it is highly improbable to contend that the plaintiff is not aware of the entire transaction. Having executed the power of attorney in the presence of his son-in-law and he is also aware of the contents and she herself purchased the property through power agent, it cannot be said that she has no knowledge about the power of attorney. This Court is of the view that having executed power of attorney and received the money, it is, too late for the plaintiff to contend that power of attorney did not authorize for sale.

16. Further, as per Section 92 of the Indian Evidence Act, 1872 or Section 95 of the Bharatiya Sakshya Adhiniyam, 2023 no oral evidence as against the terms of the contract is permissible. It is not the case of the plaintiff that the entire document is obtained fraudulently or by intimidation or want of due execution or want of capacity or mistake in fact or law to attract the provisions of Section 92 of the Indian Evidence Act, 1872 or Section 95 of the Bharatiya Sakshya Adhiniyam, <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 2023. Therefore, this Court is of the view that as far as the contention of the plaintiff to annul the document, the plaintiff has not made out his case.

17. As far as the decree and judgment in O.S.No.72 of 2019 is concerned, the plaintiff who is the defendant in the main suit has filed revenue records in Exs.A3, A4, A5 and A6. That apart, title deed is also filed. Admittedly, the suit property is a vacant land. As far as the vacant site is concerned, when the title is established, person is certainly entitled to injunction as held by the Hon'ble Supreme Court in the case of Anathula Sudhakar vs. B.Buchi Reddy (Dead) by LRS and others reported in (2008) 4 SCC 594. The relevant paragraphs reads as follows:

"16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will

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

18. In view of the above, I do not find any infirmity in the order passed by the Trial Court. Accordingly, both the appeals are hereby confirmed and the appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

07.02.2025 Index : Yes / No Speaking/non speaking order dhk <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 To, The III Additional District and Sessions Judge, III Additional District and Sessions Court Erode at Gobichettipalayam <https://www.mhc.tn.gov.in/judis> A.S.Nos.39 and 40 of 2022 N. SATHISH KUMAR, J.

dhk A.S.Nos.39 & 40 of 2022 and CMP.Nos.1751 and 1758 of 2022 07.02.2025 <https://www.mhc.tn.gov.in/judis>