

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present : **Tmt.N.Renuga**, B.A., B.L.,

District Munsif, Sulur

Wednesday, the 13th day of November 2024

I.A.No.2/2023

in

O.S.No.58/2023

R.Sekar

...Petitioner/ Plaintiff

/ Vs /

1. S.Anita

2. The Sub Registrar,

Sulur Sub Register Office

...Respondents/ Defendants

This petition coming on 19.07.2024 for final hearing before me in the presence of Thiru.S.Marimuthu, Advocate for the Petitioner and Thiru.M.Ponnusamy, Advocate for the 1st Respondent and the 2nd Respondent being called absent set exparte and upon hearing of both parties and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioner under Order 39 rule 1 and 2 and section 151 of CPC to an order of Ad-interim injunction restraining the 1st respondent/ 1st defendant and his men and hench men not to alienate the schedule mentioned property until the disposal of this application.

1. The brief averments of the affidavit filed by the Petitioner as follows:-

1.1. The 1st respondent/ 1st defendant is petitioner/plaintiff's brother's daughter. The suit property originally belongs to the 1st respondent/ 1st defendant by way of registered sale deed No.9989/2008 dated 19.09.2008 and was in the peaceful possession and enjoyment of the same. The 1st respondent/ 1st defendant in the year

2010, approached the petitioner/plaintiff to sale the schedule mentioned property to meet out her urgent family expenses. The 1st respondent/ 1st defendant have executed general power of attorney vide doc.No.766/B4/2010 in favour of petitioner/plaintiff to elicited to executed the sale deed to any third party's also the 1st respondent/ 1st defendant hand over the original sale deed to petitioner/plaintiff.

1.2. The petitioner/plaintiff with intention to assist the respondent/defendant to meet out her immediate needs, agreed to purchase the suit property, in lieu to the sale to the third persons and paid an amount of Rs.1,10,000/- as the total sale consideration to the 1st respondent/ 1st defendant executed the receipt in favour of petitioner/plaintiff dated on 16.03.2016 in the presence of the witnesses, on the same date with the assurance to give life certificate, to enable the petitioner/plaintiff execute the sale deed in favour of others as and when its required.

1.3. In the month of August 2022, the petitioner/plaintiff approached the 1st respondent/ 1st defendant to get life certificate, and to execute the sale deed, in favour of third party. But the respondent/defendant failed to co-operate petitioner/plaintiff to get life certificate also demanded to hand over the original sale deed which was given to petitioner/plaintiff at the time of execution of power of attorney. Further the respondent/defendant attempted to cancel the power of attorney, contrary to the contract entered with petitioner/plaintiff to sale the suit property by receiving the sale consideration. Then the petitioner/plaintiff with no other option, taken steps prevent petition to the cancellation of power of attorney through the office of the 2nd defendant vide his application number SOIL ANDVV 2022/21495/23441 dated 14.12.2022 in the office of the Sub Registrar, Suler, Coimbatore by filing complaint in the Race Course Police Station, and filed against the 1st respondent/ 1st defendant vide CSR No.662/2022 dated 29.08.2022.

1.4. In the meantime, the 1st respondent/ 1st defendant send the legal notice dated 27.02.2023 thereby calling petitioner/plaintiff to cancel the power of attorney dated 20.06.2010 and to handover the sale deed. After receipt of the legal notice the

petitioner/plaintiff have send the reply notice dated 02.03.2023 to the 1st and 2nd defendants instructing the 1st respondent/ 1st defendant to give the life certificate, and to drop any steps to cancel the power of attorney. The 1st and 2nd respondents/defendants received the notice on 03.03.2023, but without follow the instruction of petitioner/plaintiff reply notice, the 1st respondent/ 1st defendant cancel the power of attorney vide doc.No.7179/2023 dated 10.05.2023 without knowledge of petitioner/plaintiff and also the 1st respondent / 1st defendant attempted to sale the suit property to the third persons with intention to cheat and defraud of petitioner/plaintiff also the 2nd defendant neglected to consider the prevent application of petitioner/plaintiff and cancel the General power of attorney without seeking production of original power of attorney which was intimated through the official letter dated 04.03.2023.

1.5. The cancellation of power of attorney vide the its doc.No.7179/2023 and attempt made by the respondent/defendant to alienate the suit property is illegal and against the law. The petitioner/plaintiff have prima facie case and balance of convenience in his favour. Hence, the petition.

2. The brief averments of written statement adopted as Counter filed by the 1st Defendant as follows:

2.1. The suit is false, frivolous and unsustainable both in law and on facts of the case. The suit property is absolutely belonged to this defendant through registered sale deed dated 19.09.2008 and the 1st defendant is in peaceful possession and enjoyment of the suit property from the date of the sale deed dated 19.09.2008 till this date. It is true that this defendant had executed the registered general power of attorney deed dated 29.06.2010 in favour of the plaintiff in respect of the suit property and handed over original sale deed dated 19.09.2008 and other original documents to the plaintiff.

2.2. This defendant had appointed the plaintiff as her general power of attorney under the general power of attorney deed dated 29.06.2010 to sell the suit

property. This defendant had not received any money from the plaintiff at the time of execution of power of attorney deed. After execution of power of attorney deed, the plaintiff had not taken any steps to sell the suit property. Meanwhile, the 1st defendant's husband died on 12.02.2014. When this defendant approached the plaintiff and asked about sale of suit property for which the plaintiff has not given proper reply with this defendant and whereas the plaintiff has demanded and got two signatures of this defendant in a blank white sheet papers. After that the plaintiff has not taken any endeavor to sell the suit property.

2.3. This defendant has issued lawyer notice dated 27.02.2023 to the plaintiff and called him to cancel the power of attorney deed dated 29.06.2010 and hand over all original deeds to this defendant. The plaintiff has issued a reply notice dated 02.03.2023 through his counsel with false and untenable allegations. Hence, this defendant has cancelled the general power of attorney deed dated 29.06.2010 through cancellation of general power of attorney deed dated 10.05.2023. After execution of the cancellation of general power of attorney deed dated 10.05.2023 the plaintiff has no right over the suit property. The plaintiff is bound and liable to return the original documents to this defendant.

2.4. This defendant has sent registered letter dated 18.05.2023 to the plaintiff by informing the cancellation of power of attorney deed dated 10.05.2023. The plaintiff has received this defendant's registered letter dated 18.05.2023. This defendant has lodged Police complaint dated 24.05.2023 against the plaintiff before Coimbatore Kattoor Police Station for getting original documents from the plaintiff. Under the receipt No.428/2023, Kattoor Police issued receipt in favour of this defendant on 24.05.2023. The plaintiff is in illegal and unauthorized custody of this defendant's original documents.

2.5. It is totally false and incorrect to state that the plaintiff paid an amount of Rs.1,10,000/- as total sale consideration for the suit property to the 1st defendant. This defendant never received any amount from the plaintiff on 16.03.2016 or any other date. This defendant has not execute any receipt in favour of the plaintiff.

Hence, the alleged receipt dated 16.03.2016 is false, created, fabricated and forged one. The signatures found in the alleged receipt dated 16.03.2016 are not belonged to her. The witnesses mentioned in the alleged receipt are not known to this defendant. The plaintiff has forged this defendant's signatures and created the forged receipt with his close associates. The plaintiff has created the alleged receipt with intent to grab this defendant's suit property.

3. Point for Consideration:-

Whether the petition under Order 39 rule 1 and 2 and section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard both side. Perused records. The facts of the case is the plaintiff is paternal uncle of the 1st defendant. The suit property originally belongs to the 1st defendant through the sale deed dated 19.09.2008 which is marked as Ex.P.1. Further the defendant had given power of attorney to the plaintiff on 29.06.2010 in respect of the suit property to deal with the same, the said power of attorney is marked as Ex.P.2. Subsequently on 03.03.2023 the defendant have cancelled the said power of attorney deed and the said cancellation of power of attorney is marked as Ex.R.8 by respondent side and Ex.P.12 as petitioner side.

4.2. The plaintiff's case is that, his brother's daughter the 1st defendant had given power of attorney to deal with the suit property and she received Rs.1,10,000/- as a sale consideration on 16.03.2016 and she given a receipt to that effect, the xerox copy of alleged receipt is marked as Ex.P.3. After that, the plaintiff had given Police complaint before Race Course Police Station by stating, the defendant have refused to give life certificate to the plaintiff to take further action on the general power of attorney deed to deal with property. After that, the 1st defendant issued notice to plaintiff to hand over the original sale deeds and cancelled the power of attorney deed on 27.02.2023 the CSR receipt is marked as Ex.P.4. The notice dated 27.02.2023 is marked as Ex.P.6. The plaintiff issued objection to the Sub Registrar, Sulur, the copy of the same is marked as Ex.P.5. The reply issued by the plaintiff

dated 02.03.2023 is marked as Ex.P.7 and acknowledgment is marked as Ex.P.8 and P.9. The memo issued by the Sub Registrar, Sulur to the plaintiff's counsel is marked as Ex.P.10. The encumbrance certificate of the suit property is marked as Ex.P.11. The plaintiff side stated after receiving the sale consideration, the 1st defendant have not come forwarded to give life certificate to deal with power and presently the 1st defendant have cancelled the general power of attorney deed given to the plaintiff under Ex.P.11 and Ex.R.8.

4.3. On the side of respondent, they have denied the execution of sale receipt under Ex.P.3. Further they contented on repeated insists, the plaintiff have not return the original title document, therefore the 1st defendant cancelled the power of attorney by complying the provisions of law before cancellation and after cancellation of power of attorney. The death certificate of defendants' father is marked as Ex.R.1. The letter issued by the defendant on 18.05.2023 by intimating the cancellation of power of attorney is marked as Ex.R.2. The CSR receipt is marked as Ex.R.3. The patta for the suit property is marked as Ex.R.4 and R.5. The A – Register for the suit property is marked as Ex.R.6. The FMB for the suit property is marked as Ex.R.7.

4.4. The main suit is filed for the relief of declaration to declare the cancellation of power of attorney is null and void and until the disposal of the suit, the present application filed to restrained the respondents/defendants from alienating the suit property. The execution of power of attorney admitted by both side. The execution of sale receipt under Ex.P.3 is denied by the defendants. Here the plaintiff filed the xerox copy of the sale receipt before the court, hence, the proof, relevancy and admissibility of the Ex.P.3 and validity of cancellation of general power of attorney deed under Ex.P.12 are the subject matter to be decided on merits in trial.

4.5. Further more once the suit filed by challenging any validity of the deed, the further transaction are all subject to the result of main suit. The plaintiff's right is protected *under section 52 of Transfer of Property Act - 1872*. Hence, without deciding the validity of sale receipt and unilateral cancellation of power of attorney

deed, which is subject matter, this court grant any order of temporary injunction.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 13th day of November 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses on petitioner side:-

Nil

List of documents on petitioner side:-

Ex.P.1	19.09.2008	Sale deed	Notarized copy
Ex.P.2	29.06.2010	General power of attorney	Notarized copy
Ex.P.3	16.03.2016	Receipt	Notarized copy
Ex.P.4	29.08.2022	CSR No.662/2022 Race Course Police Station, Coimbatore	Notarized copy
Ex.P.5	15.12.2022	Thadangal Manu	Notarized copy
Ex.P.6	27.02.2023	Legal notice issued by 1 st respondent/ 1 st defendant	Served copy
Ex.P.7	02.03.2023	Reply notice by petitioner/plaintiff counsel	Office copy
Ex.P.8	---	Acknowledgment card	Original
Ex.P.9	---	Acknowledgment card	Original
Ex.P.10	03.03.2023	Reply sent by the 2 nd respondent/ 2 nd defendant	Office copy
Ex.P.11	23.05.2023	Encumbrance certificate	Online copy
Ex.P.12	10.05.2023	Cancellation of power of attorney	Certified copy

List of witnesses on Respondents side :-

Nil

List of Documents on Respondents side :-

Ex.R.1	29.05.2014	Death certificate of Joshva (a) Murugavel	Xerox copy
Ex.R.2	18.05.2023	Letter by 1 st Respondent to petitioner	Original
Ex.R.3	24.05.2023	CSR.No.428/2023, Kattoor Police Station.	Original
Ex.R.4	04.07.2023	Patta No.2283, Appanaickenpatti village	Online copy
Ex.R.5	12.12.2023	Patta No.2283 Appanaickenpatti village	Online copy
Ex.R.6	---	A – Register for S.F.No.54/4, Appanaickenpatti village	Online copy
Ex.R.7	07.08.2017	FMB for S.F.No.54, Appanaickenpatti village	Online copy
Ex.R.8	10.05.2023	General power of attorney cancellation deed	Certified copy
Ex.R.9	---	Acknowledgment card	Original

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.2/2023 in
O.S.No.58/2023
Dated:13.11.2024
DMC, Sulur