

IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE AT PONNERI**PRESENT: SELVI. R. JAGATHEESWARI M.L.,****PRINCIPAL SUB JUDGE****Dated this Tuesday the 18th day of August 2026,****O.S : 103 of 2015****CNR No: TNTR100005532015**

Arihant Gothi

.....Plaintiff

(Versus)

Sivakumar

.....Defendant

This suit came up finally before me on 20.07.2026 in the presence of Mr. N. R. Anantha Rama Krishnan, Learned Counsel appearing for the Plaintiff and Mr. M. Praveen Kumar, Learned Counsel appearing for the defendant and upon perusing the documents and evidence and hearing the arguments of both sides, having stood over for consideration till this date this court today doth delivers the following:

JUDGMENT:

This suit has been filed for the relief of specific performance of sale agreement dated: 15.09.2004 by directing the defendant to act in pursuance to the registered sale agreement dated: 15.09.2004 in Doc No: 3784/2004 at SRO, Ponneri and sale receipt dated: 24.09.2004 and to execute the registered sale deed in favour of the plaintiff in

respect of the suit properties and in the event of the defendant failing to do so, to execute the sale deed at the plaintiffs costs, for a declaration to declare that the General Power of Attorney dated: 24.09.2004 registered as Doc No: 4771/2004 at SRO, Ponneri by the defendant in favour of the plaintiff in respect of the suit properties is power coupled with interest and therefore irrevocable in law and consequently declaring that the unilateral cancellation deed dated: 23.05.2014 in Doc No: 4771/2004 at SRO, Ponneri by the defendant is illegal, arbitrary, void and unenforceable in law, for permanent injunction restraining the defendant, his men, agents, servants and subordinates from in any manner alienating or encumbering the suit properties and for costs of the suit.

2. Brief averments of the plaint filed by the plaintiff:

(I). The plaintiff states that the plaint schedule mentioned properties were allotted to the defendant's share in the partition deed in Doc No: 1808/2004 at SRO, Ponneri. The defendant had approached the plaintiff in 2004 offering to sell the suit properties. The defendant had furnished to the plaintiff photo copies of the title deeds for the said properties. The plaintiff had made necessary enquiries and on being satisfied that the defendant is the absolute owner of the suit properties, the plaintiff had agreed to purchase the suit properties. On 15-09-2004 a Sale Agreement was entered into between the Plaintiff and Defendant and the same was registered at Sub

Registrar, Ponneri in Document No.3782 of 2004, wherein the Defendant had categorically agreed to sell the suit properties to the Plaintiff. The total sale consideration was mutually fixed at Rs.3,00,000/- and the Plaintiff had paid the Defendant sale advance of Rs.50,000/- on the date of sale agreement. Subsequently, on 24.09.2004 the Plaintiff had paid the Defendant the balance sale consideration of Rs. 2,50,000/- and the Defendant had issued Sale Receipt in favour of the Plaintiff acknowledging receipt of the total sale consideration and putting the Plaintiff in peaceful possession and enjoyment of the suit properties. A Rs.20/- stamp paper purchased during the sale agreement referred above and which had remained unutilized was used by the Defendant for preparing the sale receipt and issuing it in favour of the Plaintiff. On the same day the Defendant had also appointed the Plaintiff as the Power of Attorney Agent for the suit properties under General Power of Attorney dated 24.09.2004 in Doct. No. 417/2004 at SRO, Ponneri. As such the Power of Attorney in Doct. No.417 of 2004 executed by the Defendant in Plaintiff's favour is power coupled with interest and therefore irrevocable. In the Power of Attorney the Plaintiff was given powers of alienation also. In the Sale Receipt the Defendant had acknowledged receipt of the total sale consideration and had categorically stated that he would execute and register sale deed in favour of the Plaintiff in respect of the suit properties as and when demanded.

(ii). After 10 long years, taking undue advantage of the appreciation in the market value of the suit properties, the defendant had clandestinely and illegally cancelled the irrevocable Power of Attorney by Cancellation Deed dated 23.05.2014. The unilateral cancellation of Power of Attorney dated 23.05.2014 executed by the defendant is illegal and non-est in the eye of law. The defendant had thereafter issued legal notices dated 09.06.2014 and 10.09.2014 to the plaintiff. The plaintiff denies all the allegations in the aforesaid legal notices. Further, the plaintiff had also issued reply notice dated 31.10.2014 to the legal notices referred above. The contents of the reply notice dated 31.10.2014 may be treated as part and parcel of this plaint. Interestingly in the Cancellation Deed of Power of Attorney there is no mention about the allegations made in the legal notices. Strangely in the legal notice dated 09.06.2014 there is no reference by the defendant mentioned in the legal notice dated 10.09.2014. It is therefore patently clear that the allegations about the aforesaid documents being for alleged security purposes for the financial transactions in the legal notice dated 10.09.2014 are afterthought invented by defendant. The allegations in the legal notice dated 09.06.2014 that the plaintiff had obtained defendant's signatures on blank papers, stamp papers and promissory notes are false, concocted and are denied by the Plaintiff. If the allegations in the legal notice dated 10-09-2014 were true, the defendant would not have remained silent for 10 years now. Only because the defendant had genuinely entered into sale agreement with the plaintiff with bonafide intentions to sell the suit properties, received sale advance of Rs.

50.000/- and thereafter received the entire balance sale consideration on 24.09.2004 as evidenced in the Sale Receipt and executed Power of Attorney which is coupled with interest, the defendant had remained passive all these years. The escalation in market price of the properties has made the Defendant greedy and with malafide intentions in 2014 the Defendant had cancelled the Power of Attorney and had issued the legal notices making false and frivolous allegations.

(iii). Under such circumstances the plaintiff is fully justified in retaining possession of the suit property, its original title deeds, sale agreement and power of attorney. The plaintiff is also entitled to enforce the sale agreement and sale receipt referred above. Therefore, the plaintiff was constrained to send a legal notice dated 31-10-2014 calling upon the defendant to comply with the registered Sale Agreement dated 15.09.2004 and Sale Receipt dated 24.09.2004. The plaintiff reiterates that the Sale Agreement dated 15.09.2004 and Sale Receipt dated 24.09.2004 are true and genuine transactions between the parties and therefore binding on the defendant. The defendant has failed to act in terms of the legal notice dated 31.10.2014. The Defendant has also not issued reply notice denying the legal notice dated 31.10.2014. However, the defendant was seeking time whenever the plaintiff contacted him. The plaintiff granted time till the end of February 2015. However, when the plaintiff contacted the defendant last week and requested the defendant to complete the sale transaction, for the first time the defendant had openly refused to accede to the

Plaintiff's request. The defendant is bound to execute the Sale Deed in favour of the Plaintiff. Having left with no other alternative the Plaintiff is constrained to file this suit for necessary reliefs. Presently the Plaintiff has come to know that the defendant is desperately attempting to alienate and encumber the suit properties. The defendant has no right to do so. The plaintiff has also come to know that the defendant has created false and fabricated records in respect of the suit properties. The same will not in any manner affect the plaintiff's right and interest over the suit properties. The plaintiff is entitled for the relief of specific performance and permanent injunction. The sale agreement dated 15.09.2004 has merged with the Sale Receipt dated 24.09.2004. As per the Sale Receipt the Defendant had agreed to execute and register sale deed as and when demanded by the Plaintiff. In the light of the irrevocable power of attorney, there was no necessity for the Plaintiff to demand the Defendant for executing sale deed earlier. Only last week the Plaintiff demanded and for the first time the Defendant had refused. Hence this suit is in time. The suit is not barred by limitation.

3. Brief averments of the written statement filed by the defendant:

(I). The suit is not maintainable either in law or on facts and liable to be dismissed in limini with costs. This defendant denies all the averments made in the plaint except those that are specifically admitted herein and puts the plaintiff to strict

proof of the same. This defendant admits the averments made in paragraph 3 of the plaint. The averments made in paragraph 4 of the plaint are all false and hereby denied. This defendant has not approached either this plaintiff or any other person to sell his properties detailed in the plaint and there is no necessity for this defendant to sell the suit properties. The averments made in paragraph 5 of the plaint are all false and hereby denied. This defendant never agreed to sell the suit properties that too for a paltry sum of Rs.3,00,000/- for an extent of 4 acres 64 cents and agreed to execute any sale agreement or power of attorney to sell the suit properties. No prudent man will agree to sell an extent of 4 acres 64 cents of lands for an amount of Rs.3,00,000/- and will execute registered sale agreement and general power deed and further more handover the original title deeds. This defendant denies the averments made in paragraph 6 of the plaint. The defendant is an agriculturist and wanted to purchase a Harvester and since the plaintiff is a financier and in and around Ponneri the plaintiff is well known by his business and hence the defendant has approached the plaintiff for financial assistance to purchase Harvesting Machine. The plaintiff has agreed to finance and since the harvester machine cannot be registered with the RTO and no hire purchase agreement could be entered for the said financial assistance and hence the plaintiff has insisted this defendant to give some property as collateral security and the plaintiff on coming to know that the suit properties belongs to the defendant had insisted this defendant to execute a sale agreement as well as a deed of general power of attorney in respect of agricultural lands owned by this defendant as a

security to the financial assistance proposed to this defendant to purchase the Harvesting machine. This defendant left with no option without receiving any consideration has executed the sale agreement with a oral agreement by the plaintiff to cancel the sale agreement immediate after the repayment of the loan availed for purchase of harvester.

(ii). Accordingly the plaintiff has prepared sale agreement dated 15/09/2004 in his favour for the agricultural lands i.e. the suit properties as if this defendant agreed to sell the said properties to the plaintiff for the alleged total sale consideration of 3,00,000/- and the plaintiff allegedly paid Rs.50,000/- to the defendant on the date of agreement and the alleged balance of sale consideration of Rs.2,50,000/- to be within three years. The said agreement was registered on 15/09/2004 as document No.3782 of 2004 on the file of SRO Ponneri. Subsequently the plaintiff has prepared a General Power Deed dated 24/09/2004 in his favour and got it registered on the file of SRO Ponneri vide document No.417 of 2004. But in fact no amount was paid by the plaintiff either on the date of sale agreement or on the date of General Power Deed or any other date and this defendant had not received any amount from the plaintiff under the said sale agreement. The said General Power deed is not coupled with any interest and no amount is mentioned in that to state that the said power is coupled with interest and there is no reference about the sale agreement dated 15/09/2004 in the general power of attorney, hence it is not coupled with interest. The plaintiff is put

to strict proof of the same. Even though this defendant and his family members have been cultivating the said lands all along till date, but the plaintiff has mentioned in the general power of attorney that this defendant has no time to look after, manage and sell the said lands and he appoints the plaintiff as his agent to look after, maintain and deal with the aforesaid properties which is incorrect and not required. There was no preoccupation by the defendant except the agriculture work and he is carrying on the same till date. The said Power of attorney and the agreement are sham and nominal documents and it is legally unenforceable as they were executed only as security for the loan granted to this defendant for the purchase of harvester machine. While registering the said General Power Deed the plaintiff demanded to produce all the original title deeds and relevant documents pertaining to the said properties not only for registration purpose but also for his custody and collected them from this defendant. Further the sale receipt dated 24/09/2004 was not executed by the defendant. As on date the defendant is in possession and enjoyment of the suit properties and at no point of time the possession of the lands were given to the plaintiff.

(iii). The plaintiff has obtained signatures of the defendant in several white papers, bond papers (green paper), non judicial stamp papers and also unfilled promissory notes and made use of the few papers to fabricate the sale receipt dated 24/09/2004 as if it was executed by the defendant. No one, like the plaintiff without

getting registered sale deed will pay the balance of consideration and even after paying the entire sale consideration nobody will keep silent that too for the past eleven years without getting the sale deed registered. These averments alone will prove the purpose, intention and character of the plaintiff. The loan availed by this defendant should be repayable in three years as agreed by the plaintiff and hence in the sale agreement the time was mentioned as three years. The nature of the document itself will reveal the fact that the same was executed only for security purpose. This defendant denies the averments made in paragraphs 7 to 9 of the plaint. This defendant has paid entire loan amount availed by him together with interest and hence this defendant has demanded the plaintiff to cancel the sale agreement and the general power and return the documents belong to him pertaining to the suit properties. But the plaintiff having received the entire dues, has demanded the defendant to pay huge amount as due and in the event of nonpayment of such alleged due, the plaintiff threatened the defendant as he will create a sale deed in respect of the said agricultural lands with the strength of the general power deed dated 24/09/2004. Immediately upon coming to know about the plaintiff's unlawful threat and evil intention, this defendant has cancelled the said deed of General Power of attorney dated 24/09/2004 by a deed of Cancellation of General Power of Attorney dated 23/05/2014 registered as document No.4771 of 2014 before SRO Ponneri. The same was informed to the plaintiff through notice dated 09/06/2014 and the same was duly acknowledged.

(iv). Thereafter this defendant had been repeatedly and persistently demanding the plaintiff to return all the title deeds, other relevant documents including the general power deed dated 24/09/2004 and sale agreement dated 15/09/2004 in respect of the said agricultural lands and also to cancel the sale agreement, but the plaintiff intentionally and deliberately evading for the same, which is highly atrocious and illegal. Because of the above said reasons, the plaintiff has not taken any steps to enforce the said agreement against the defendant. The plaintiff is illegally holding the aforesaid documents of this defendant. Hence, this defendant has caused a legal notice to the plaintiff on 10/09/2014 for return of her title deeds and the plaintiff has received the same and sent reply dated 31/10/2015 with false and untenable averments and filed the above vexatious suit with false and untenable averments and set up a story. This defendant denies the averments made in paragraph 10 and 11 of the plaint. The alleged sale agreement and the general power deed are executed only for the security purpose for the loan availed from the plaintiff to purchase the harvester machine by the defendant and hence till the loan was repaid in full the defendant has not demanded the documents from the plaintiff and subsequently after paying the entire amount, the defendant was repeatedly demanding the documents and since the plaintiff was giving lame excuses and threatened to execute sale deed on the strength of the general power and hence cancelled the general power and informed the same through notice and further issued legal notice to the plaintiff to hand over the documents in his custody. It is the plaintiff who has set up stories to

dictate terms to the defendant and if the allegations of the plaintiff is true that he has paid the sale consideration much earlier in 2004 itself he would not have waited for more than 10 years to get the sale deed registered in his name. Hence there is no binafide in the plaintiff's case. There is no contract between the plaintiff and the defendant and hence the suit is mere abuse of process of law and not sustainable in law. Since the defendant has already sent a detailed notice dated 10/09/2014 and hence the notice dated 31/10/2014 by the plaintiff does not require any reply at all. The plaintiff never contacted the defendant and the defendant never seek any time from the plaintiff to complete the transaction and hence the averment that the plaintiff granted time till the end of February 2015 is false and denied. The legal notice dated 31/10/2014 is a time barred one and issued only after cancelation of the power deed dated 25/09/2004.

(v). This defendant denies the averments made in paragraphs 12 and 14. The defendant is the absolute owner of the suit properties and there is no necessity for this defendant to alienate or encumber the suit properties. It is the plaintiff who has filed the above suit containing cock and bull stories and not the defendant who has sent notice with true and fair averments. As stated supra the original deeds were handed over to the plaintiff only as security for the loan availed by this defendant and the sale agreement and general power were also executed only for the said purpose. Hence, no consideration was passed under the alleged agreement as well as general power and

sale receipt and no possession was handed over to the plaintiff. Hence, the sale agreement and the sale receipt are void, sham and nominal and has no legal sanctity and unenforceable in law. The plaintiff has obtained signatures of the defendant and cooked up the sale receipt to file the above suit in order to dictate terms to the defendant. The agreement dated 15/09/2004 is time barred and void and as per the conditions of the agreement it should be completed within three years and since the general power in favour of the plaintiff pertaining to the suit properties also cancelled and hence the plaintiff cooked up the alleged sale receipt as if it was executed by the defendant and filed the above suit which is not sustainable in law. The plaintiff never discussed about the alleged agreement with the defendant and the said agreement is only for the purpose of security of a loan and hence obligation on the part of either the plaintiff or the defendant does not arise at all. The General Power and the sale agreement in favour of the plaintiff clearly prove the malafide intention of the plaintiff and nature and purpose of the documents. Hence he prays to dismiss the suit.

4. Issues:

1. Whether the defendant had agreed to sell the suit properties to the plaintiff for a sum of Rs. 3,00,000/- and executed the sale agreement dated: 15.09.2004 ?
2. Whether the General Power of Attorney deed dated: 24.09.2004 is coupled with interest?
3. Whether the cancellation of General Power of Attorney deed dated: 23.05.2014 is void ?

4. Whether the plaintiff is entitled to declaration of the General Power of Attorney deed dated: 24.09.2004 is coupled with interest and the cancellation of General Power of Attorney deed dated: 23.05.2014 is void as sought for?
5. Whether the plaintiff was ready and willing to perform his part of contract as per sale agreement dated: 15.09.2004 ?
6. Whether the plaintiff is entitled to the relief of specific performance of sale agreement dated: 15.09.2004 in respect of the suit properties as sought for?
7. Whether the plaintiff is entitled to the relief of Permanent Injunction against the defendant as sought for?
8. To what other relief, the parties are entitled to ?

Answer to Issue No: 1 to 4:

5. On the side of plaintiff, plaintiff Thiru. Arihant Gothi was examined as PW-1 and marked Ex.A-1 to A-14. On the side of defendant, defendant Thiru. R. Sivakumar was examined as DW-1 and no documents were marked. Heard both side arguments.

6. The plaintiff in order to substantiate his case has examined himself as PW-1 and marked Ex.A-1 to A-14. PW-1 has deposed that the suit property belongs to the defendant and he approached the plaintiff to sell the suit property for a sum of Rs. 3,00,000/-. On 15.09.2004 the plaintiff and the defendant were entered into an agreement of sale and the agreement was registered as Doc No: 3782/2004 at the office of Sub-Registrar, Ponneri. The plaintiff had paid a sum of Rs. 50,000/- as an advance to the defendant on the date of the sale agreement. On 24.09.2004 the

plaintiff had paid the balance sale consideration of Rs. 2,50,000/- and the defendant had issued sale receipt acknowledging the total sale consideration and the possession of the suit property was handed over to the plaintiff. The defendant had handed over the original title deeds of the suit properties to the plaintiff on the same day.

7. PW-1 further deposed that in pursuant to the registered sale agreement, the defendant had appointed the plaintiff as the power of attorney agent for the suit properties under General Power of Attorney dated: 24.09.2004 registered as Doc No: 417/2004 at the office of Sub Registrar, Ponneri. The said power of attorney is coupled with interest and therefore it is irrevocable. After 10 years taking advantage of the appreciation in the market value of the suit properties, the defendant had cancelled the Power of Attorney deed on 23.05.2014. The defendant issued legal notice dated: 09.06.2014 and 10.09.2014 to the plaintiff. The plaintiff had issued reply notice to the defendant on 31.10.2014. In the last week of 2015, the plaintiff contacted the defendant for registration of sale deed in respect of the suit property. The defendant had refused to accede the plaintiff's request and hence he filed this suit for the relief of specific performance of sale agreement dated: 15.09.2004 and consequential reliefs.

8. The registered original registered sale agreement dated: 15.09.2004 executed by the defendant in favour of the plaintiff has been marked as Ex.A-5. On perusal of

Ex.A-5 it revealed that the defendant had agreed to sell the suit properties to the plaintiff for a sum of Rs. 3,00,000/- and received a sum of Rs. 50,000/- as an advance. The defendant had admitted the execution of Ex.A-5. Ex.A-1 is the original registered partition deed dated: 22.03.2004. The defendant has got the suit property as his share under the said partition deed. Ex.A-2 and A-3 are Encumbrance Certificates for the suit properties. Ex.A-4 is the Chitta in respect of the suit properties. The plaintiff has stated that the original document in respect of the suit properties were handed over to the plaintiff by the defendant in pursuant to the sale agreement dated: 15.09.2004.

9. The receipt dated: 24.09.2004 issued by the defendant acknowledging the receipt of balance sale consideration of Rs. 2,50,000/- from the plaintiff is marked as Ex.A-6. The defendant had admitted the execution of Ex.A-5 and A-6. The case of the defendant is that the said documents were executed by the defendant in favour of the plaintiff for the loan transaction. The defendant during the cross examination had admitted that the plaintiff had paid a sum of Rs. 3,00,000/- to the defendant and the defendant had executed the sale agreement in favour of the plaintiff in respect of the suit properties. The defendant had admitted that he handed over the original documents in respect of the suit properties to the plaintiff. The defendant had executed the general power of attorney in favour of the plaintiff in respect of the suit properties on 24.09.2004. The original power of attorney deed dated: 24.09.2004

executed by the defendant in favour of the plaintiff in respect of the suit properties has been marked as Ex.A-7. The defendant had admitted his signature in the Ex.A-7.

10. On 23.05.2014 the defendant had cancelled the General Power of Attorney dated: 24.09.2004. The certified copy of cancellation of General Power of Attorney deed has been marked as Ex.A-8. The learned counsel appearing for the plaintiff has argued that the plaintiff has paid the entire sale consideration of Rs. 3,00,000/- to the defendant and in pursuant to the said sale agreement, the defendant had executed the General Power of Attorney in favour of the plaintiff in respect of the suit properties and the original title deed in respect of the suit properties was also handed over to the plaintiff and hence the defendant had no right to cancel the said General Power of Attorney which was coupled with the interest as per Section 202 of Indian Contract Act, 1872.

Section 202 of Indian Contract Act 1872 reads as follows:

202. Termination of agency, where agent has an interest in subject – matter:- Where the agent has himself an interest in the property which forms the subject – matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Section 202 of the Indian Contract Act, 1872 protects an agents rights when they have personal interest in the property. In this case, the defendant had received the entire sale consideration of Rs. 3,00,000/- from the plaintiff and the same was also admitted by the defendant during his cross examination. In pursuant to the said sale agreement, the defendant had executed the General Power of Attorney deed in favour of the plaintiff in respect of the suit properties. Though, there is no recital about the sale agreement dated: 15.09.2004 in the General Power of Attorney, the defendant had admitted that he received a sum of Rs. 3,00,000/- from the plaintiff and the defendant handed over the parent document to the plaintiff in respect of the suit properties. In the Ex.A-6, receipt dated: 24.09.2004, the defendant had stated that he is willing to execute the General Power of Attorney in favour of the plaintiff in respect of the suit properties. Hence it is made out that the General Power given to the plaintiff is coupled with our interest. As per Section 202 of the Indian Contract Act, the said Power of Attorney deed cannot be cancelled unilaterally. Hence the plaintiff is entitled to the relief of declaration that the cancellation of General Power of Attorney is void. Issues No: 1 to 4 are decided in favour of the plaintiff.

Answer to issue No: 5:

11. The learned counsel appearing for the plaintiff has argued that the plaintiff had paid the entire sale consideration to the defendant and the same was

acknowledged by the defendant under receipt dated: 24.09.2004. The original documents in respect of the suit properties were handed over to the plaintiff and the General Power of Attorney was executed in favour of the plaintiff and hence the necessity for registration of sale deed did not arise till the cancellation of General Power of Attorney. The legal notice dated: 09.06.2014 issued on behalf of the defendant to the plaintiff marked as Ex.A-9. The legal notice dated: 10.09.2014 issued on behalf of the defendant to the plaintiff was marked as Ex.A-10. The reply notices dated: 31.10.2014 issued on behalf of the plaintiff to the defendant were marked as Ex.A-11 and A-12. The postal acknowledgment cards were marked as Ex.A-13 and A-14.

12. On perusal of the receipt dated: 24.09.2004 marked as Ex.A-6 it revealed that the defendant had acknowledged the receipt of entire sale consideration of Rs. 3,00,000/- from the plaintiff. The defendant has stated that he agrees to execute the sale deed in favour of the plaintiff as and when required by the plaintiff. The defendant had admitted his signature in the receipt marked as Ex.A-6.

13. The learned counsel appearing for the defendant has argued that the sale agreement was executed on 15.09.2004 and the plaintiff has not taken any steps for the 10 years for the execution of the sale deed and hence he has not proved his readiness and willingness to perform his part of contract as per the sale agreement.

The learned counsel appearing for the defendant has relied upon the authority of Hon'ble High Court of Madras reported in A.S. 328/2022 and CMP: 12000/2022 in the matter of Selvaraj...Appellant (Versus) Pappathi...Respondent wherein the Hon'ble High Court of Madras has held that,

“ Appeal by Vendor readiness and willingness of purchaser is not theoretical in nature. It is question of fact and needs to be determined with reference to pleadings and evidence as also material circumstances having bearing on conduct of parties – conduct of purchaser is very crucial.”

The learned counsel appearing for the defendant has relied upon the authority of Hon'ble Supreme Court of India reported in (2011) 1 SCC in the matter of J.P. Builders and Another...Appellants (versus) A. Ramadas Rao and Another... Respondents wherein the Hon'ble Supreme Court has held that,

“ Readiness and willingness on the part of plaintiff to perform his part of contract, reiterated, is a condition precedent for obtaining relief ”

The learned counsel appearing for the defendant has relied upon the authority of Hon'ble High Court of Madras reported in S.A. 135/2015 and M.P No: 01/2015 in the matter of Rajammal and another... Appellants (Versus) M. Senbagam...Respondent wherein the Hon'ble High Court of Madras has held that,

“ Right to seek the relief of specific performance is one thing, whereas pleading and proving the readiness and willingness to seek such relief is another thing. Mere right to sue within time is not enough to get the relief of specific performance automatically even in the case of an admitted agreement, unless the plaintiff pleads and establishes the readiness and willingness in a manner known to law”

The learned counsel appearing for the defendant has relied upon the authority of Hon'ble High Court of Madras reported in 2017 (1) MWN (Civil) 187 A.S. 34/2010 in the matter of P. Vidhyanandhan.... Appellant Vs K. Sundaram... Respondent wherein the Hon'ble High Court of Madras has held that,

The learned counsel would also draw my attention to the Judgment of this court in Pappammal @ T. Pappa Vs P. Ramasamy, 2012 (4) CTC 100 wherein also, the Hon'ble Single Judge had followed the Division Bench Judgment referred to above and held that it is open to the defendant in the suit for Specific Performance to plead that the Contract was not intended to be an agreement of sale. Recently in the Judgment in Rajammal and another Vs. M. Senbagam, 2016 (6) CTC 225, this court held that the plea to the effect that the agreement was not intended to be acted upon can be entertained by the courts. I have examined the facts of the case on hand, in the light of the law laid down by the precedents referred to at the Bar. I have no hesitation in coming to the conclusion that the defendant cannot be precluded from taking plea that the agreement was not intended to be acted upon as an agreement of sale, but it was executed for some other purposes namely as security for loan transaction. Such plea would fall within the exceptions under Section 92 of the Evidence Act because, it is actually a invalidating circumstance which is pleaded before the court of law and by pleading so, the defendant is not attempting to vary the terms of the Contract. The actual attempt is to show that the contract is not one, which was intended to be acted upon. Therefore, in my considered opinion, the argument that Section 92 of the Indian Evidence Act prevents the Defendant from contending that the agreement was not intended to be acted upon cannot be countenanced, in view of the categorical judicial pronouncements referred to above.

The learned counsel appearing for the defendant has relied upon the authority of Hon'ble Supreme Court of India reported in (1997) 3 SCC in the matter of K.S. Vidyanadam and others...Appellants (Versus) Vairavan... Respondent wherein the Hon'ble Supreme Court has held that,

“ Even though time not of the essence of contract of sale of immovable property and suit can be filed within the period of 3 years provided under Article 54 of Limitation Act, but it should be performed within a reasonable time having regard to terms of the contract prescribing a time limit and nature of the property”

14. The learned counsel appearing for the plaintiff has argued that the defendant had refused to execute the sale deed for the first instance only in the month of March 2014 and therefore the cause of action for the suit arose on March 2015. The defendant during his cross examination had admitted that he refused to execute

the sale deed for the first instance in the month of March 2015. Hence the argument of the learned counsel appearing for the plaintiff is acceptable. The authorities cited by the learned counsel for the defendant is not applicable to the facts of the case. The plaintiff had filed this suit for the relief of specific performance of sale agreement on 24.04.2015 i.e. within 3 years from the date of refusal by the defendant. Hence the suit is not barred by the law of limitation and the plaintiff has proved his readiness and issue No: 5 is decided in favour of the plaintiff.

Answer to Issue No: 6 to 8:

The learned counsel appearing for the defendant has argued that the defendant is illiterate and doesn't know about the nuances of the legal procedures and hence his admissions made in the cross examination should not be considered.

The learned counsel appearing for the defendant has relied upon the authority of Hon'ble High Court of Madras reported in L.P.A. 181/2002 and C.M.P No: 10256/2003 in the matter of Kamireddi Sattiaraju...Appellants (Versus) Kandamuri Boolaeswari...Respondent wherein the Hon'ble High Court of Madras has held that,

“ At the outset, it will have to be stated that existence of Ex.A-1 agreement was never in dispute. As far as application of Section 92 of the Indian Evidence Act is concerned, by virtue of Section 91 and having regard to the existence of Ex.A-1, agreement, the terms contained in Ex.A-1 are to be considered without any reference to any other oral evidence in so far as it related to the terms contained therein. In that respect, Section 91 and 92 of the Indian Evidence Act are inter-dependent. In the light of the evidence available on record, both oral and documentary, as well as the application of Section 92 of the Indian Evidence Act, there is no scope to permit the appellants to contradict, vary or subtract the terms contained in Ex.A-1 agreement. Therefore, even taking Ex.A-1 agreement on its face value, what has to be considered

is whether the contention put forward on behalf of the appellants that it was never intended to be acted upon, requires consideration”.

The learned counsel appearing for the defendant has relied upon the authority of Hon’ble High Court of Madras reported in A.S. 240/2011 in the matter of G. Selvamani and others...Appellants (Versus) N. Raghunathan...Respondent wherein the Hon’ble High Court has held that,

“ The division Bench of this court in Lakshamma Vs Rathinamma reported in 2007 1 LW 309 had held that provision of Section 92 of the Evidence Act does not bar on the contention that the transaction was not intended to be a sale agreement. Once it is found that there is no legal bar for the defendants to plead that the agreement was not intended to be a sale agreement simplicitor, it has to be seen whether it was executed as a security for loan transaction. The above features pointed out by me would lead to the conclusion that the agreement was executed only as a security for the loan transaction and it was not intended to be a sale agreement. Once it is found that the evidence on record points out that the intention of the parties was not for sale of the properties, the suit for specific performance based on such agreement has to be dismissed.”

“ Similar view was taken by this court in Rajammal Vs Senbgam reported on 2016 (6) CTC 225 and this court taking note of the fact that the balance sale consideration payable was only a small portion of the sale consideration and the fact that larger time was fixed for performance of the agreement would by itself show that the agreement was not intended to be an agreement for sale. In the light of the above pronouncements as well as the evidence on record, I do not see any reason to differ from the conclusion of the learned Trial Judge that the suit agreement was only executed as a security for the loan transaction.”

The learned counsel appearing for the defendant has relied upon the authority of Hon’ble Supreme Court of India reported in Crl A. 1180/2004 in the matter of State of Uttar Pradesh...Appellant (Versus) Krishna Master and others...Respondents wherein the Hon’ble Supreme Court has held that,

“ Evidence should be appreciated as a whole when such witness is subjected to grueling cross – examination for several days, some inconsistencies or discrepancies may occur in his statement which are not significant to discredit his evidence.”

The defendant had admitted the execution of Ex.A-5 and Ex.A-6 in favour of the plaintiff and the case of the defendant is that he has executed those documents for the loan transactions. It is the duty of the respondent to prove his specific pleadings with sufficient oral and documentary evidence. Hence the above said authorities cited by the learned counsel for the defendant are not applicable to the facts of the case.

13. In view of answers arrived in earlier issues, it is made out that the defendant had agreed to sell the suit properties to the plaintiff for a sum of Rs. 3,00,000/- and executed the sale agreement dated: 15.09.2004, receipt dated: 24.09.2004 and General Power of Attorney deed dated: 24.09.2004 in respect of the suit properties to the plaintiff. Admittedly, the parent documents in respect of the suit properties were handed over to the plaintiff. The case of the defendant is that the sale agreement and other documents were executed in favour of the plaintiff for the loan transactions. The defendant has not stated in his written statement and proof affidavit about when he received the loan amount from the plaintiff, how much amount he borrowed from the plaintiff for the purchase of harvesting machine and why he has not taken any steps to return back the documents handed over to the plaintiff. The defendant has not marked any document in support of his case. The defendant has not pleaded about when he repaid the loan amount borrowed from the plaintiff and what steps he has taken to cancel the sale agreement and to receive the documents from the plaintiff in respect of the suit properties. Hence, the defendant failed to prove his case

with sufficient pleadings, oral and documentary evidence. On the other hand, the plaintiff has proved his case through the evidence of PW-1 and Ex.A-1 to A-14 and admission made by the defendant during his cross examination. Hence the plaintiff is entitled to the relief of declaration that the General Power of Attorney dated: 24.09.2004 is coupled with the interest and therefore it cannot be revoked unilaterally and hence cancellation of General Power of Attorney deed dated: 23.05.2014 is void, the plaintiff is entitled to the relief of specific performance of sale agreement dated: 15.09.2004. Issue No: 6 to 8 are answered accordingly.

In the result, the suit is decreed by declaring that the General Power of Attorney dated: 24.09.2004 registered as Doc No: 4771/2004 at the office of Sub-Registrar, Ponneri is irrevocable unilaterally and the unilateral cancellation deed dated: 23.05.2014 in Doc No: 4771/2004 at the office of the Sub-Registrar, Ponneri is void. The defendant is directed to execute the sale deed in favour of the plaintiff in respect of the suit properties within 2 months from the date of this Judgment as per the sale agreement dated: 15.09.2004 and permanent injunction is granted against the respondent by restraining the defendant and his men and agents from in any manner alienating or encumbering the suit properties. In view of the facts and circumstances of the case, both parties are directed to bear their own costs.

Dictated by me to Steno - Typist, typed by him, corrected and pronounced by me in the open court on this 18th day of August 2026.

**Principal Sub Judge,
Ponneri.**

List of witness on the side of plaintiff:

1. Thiru. Arihant Gothi PW-1

List of exhibits on the side of plaintiff:

- | | | | |
|-----|---|---|---------|
| 1. | - | Original Copy of Partition Deed dated: 22.03.2004 | Ex.A-1 |
| 2. | - | Copy of Encumbrance Certificate No: 4245/2004 | Ex.A-2 |
| 3. | - | Copy of Encumbrance Certificate No: 4246/2004 | Ex.A-3 |
| 4. | - | Original Copy of Chitta and Adangal | Ex.A-4 |
| 5. | - | Sale agreement | Ex.A-5 |
| 6. | - | Original Receipt dated: 24.09.2004 | Ex.A-6 |
| 7. | - | Original Copy of Power of Attorney | Ex.A-7 |
| 8. | - | Certified Copy of cancellation of Power of Attorney | Ex.A-8 |
| 9. | - | Legal Notice by the defendant | Ex.A-9 |
| 10. | - | Legal notice dated: 10.09.2014 | Ex.A-10 |
| 11. | - | Reply Notice dated: 30.10.2014 | Ex.A-11 |
| 12. | - | Legal Notice dated: 31.10.2014 | Ex.A-12 |
| 13. | - | Acknowledgment Card | Ex.A-13 |

14. - Acknowledgment Card

Ex.A-14

List of witness on the side of defendant:

1. Thiru. R. Sivakumar DW-1

List of Exhibits on the side of defendant:

NIL

**Principal Sub Judge,
Ponneri.**