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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.09.2026

PRONOUNCED ON : 18.11.2026

CORAM

THE HON'BLE MR. JUSTICE M. DHANDAPANI

AND

THE HON'BLE MR. JUSTICE N. DILIP KUMAR

SA(MD) Nos. 561 and 562 of 2020

CNR:{HCMD011182892018}

AND

CMP(MD) No. 6088 and 6089 of 2020 and
CMP(MD) No. 2823 of 2020

In S.A.(MD) No.561 of 2020:-

1. D. Chellakumar (Died)
2. P.Narayanan
3. P.Paichmuthu

(2nd Appellant is impleaded vide court order dated 12.08.2026)

(3rd Appellant is impleaded vide court order dated 18.11.2026)

..Appellant(s)

Vs

1. V.G.P. Rajadas,
2. Lisi Edward,
3. Stella,
4. Stephen,
5. Subbaiah Konar,

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6. V.G.Santhosam,

7. V.G.Paneerdas and Company,
V.G.P.Square, Saidapet, Chennai - 15. Through its registered shareholder V.G.P.Rajadas,

..Respondent (s)

PRAYER: To submit this Memorandum of Second Appeal before this Honourable Court against the Judgment and Decree dated 20.03.2018 passed in A.S.No.8 of 2013 on the file of the III Additional District Court, Tirunelveli confirming the Judgment and Decree dated 05.04.2010 passed in O.S.No.334 of 2003 on the file of the Additional Sub Judge, Tirunelveli for the following among other Grounds.

For Appellant(s): Mr G.Prabhu Rajadurai for
2nd substituted appellant, Narayanan

Mr.S.Mukund Senior Counsel for
Mr.J.Avinash Dhandapani for
3rd substituted appellant,
P.Paichmuthu

For Respondent(s): Mr.S.Meenakshi Sundaram
Senior counsel for Mr.N.G.A.Natraj
for R1 and R6 & R7

In S.A.(MD) No.562 of 2020:-

1. D. Chellakumar(Died)

2. P.Narayanan,

2nd Appellant is brought on record as LR of the deceased Sole Appellant vide court order dated 12.08.2026

..Appellant(s)

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Vs

1. V.G.Panneerdas and Company,
   VGP Square, Saidapet, Chennai 15, through its
   registered shareholder V.G.P. Rajadas

2. V.G.Santhosam

3. V.G.P.Rajadas

4. A.Kingwin Royan

5. Nicewin Royan

6. Joywin Royan

7. Coolwin Royan

   Kalaiselvan (died)

8. K.Amutharani

9. K.Shanmugaraja

10. K.Chandrababu

11. K.Sathishkumar

12. K.Sankari

(cause title accepted vide order dated 13.03.2019)

..Respondent (s)

PRAYER: To submit this Memorandum of Second Appeal before this Court against the Judgment and Decree dated 20.03.2018 passed in A.S.No.9 of 2013 on the file of the III Additional District Court, Tirunelveli confirming the Judgment and Decree dated 05.04.2010 passed in O.S.No.423 of 2003 on the file of the Additional Sub Judge, Tirunelveli.

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For Appellant(s): Mr G.Prabhu Rajadurai for
2nd substituted appellant, Narayanan

For Respondents(s): Mr.S.Meenakshi Sundaram
Senior counsel for Mr .N.G.A.Natraj
for R1 to R3

No appearance for R4 to R12

COMMON JUDGMENT

(Judgment of the Court was delivered by N. DILIP KUMAR J.)

These second appeals were filed by the original plaintiff, viz., D. Chellakumar, challenging the decrees and common judgment passed against him by the learned III Additional District Judge, Tirunelveli, dated 20.03.2018 in his Appeal Suits bearing numbers 8 and 9 of 2013, which were filed by him against the dismissal of his original suits bearing numbers 334 and 423 of 2003 vide common judgment and decree by the learned Additional Subordinate Judge, Tirunelveli on 05.04.2010.

For the sake of convenience the parties are referred as they stood in the trial court in OS 334 of 2003 as the context requires.

OS 334 of 2003

2. The case of D. Chellakumar as narrated in his plaint in O.S. No. 334 of 2003 is that the suit schedule and other properties originally belonged to his paternal uncle, Ebenezar Nadar. He executed a registered deed of gift dated 14.11.1969 (Ex.A.1) in respect

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of the suit schedule and other properties in favor of his brother, Dharmakkan Nadar. Dharmakkan Nadar is the father of the plaintiff. Dharmakkan Nadar died intestate on 24.10.1970, leaving behind the plaintiff as his only legal heir. Accordingly, the plaintiff got title, possession, and interest over the suit schedule and other properties.

2.1. The plaintiff appointed V.G. Santhosam, a partner of M/s. V.G. Panneerdas and Company, a registered partnership firm, as his power agent vide the registered power of attorney dated 21.01.1978, (Ex. B1) bearing Doc.No. 24 of 1978.

2.2. The plaintiff specifically contended that there was no independent right, interest, or possession available to V.G. Santhosam in respect of the suit schedule and other properties, other than that of his fiduciary status as the power agent of the plaintiff; this power deed was cancelled on 21.01.2003, and the cancellation was also registered on 20.08.2003 (Ex.A.21). The plaintiff appointed R. Vijayakumar as his power agent on 22.01.2003 (Ex.A.6).

2.3. The plaintiff specifically pleaded that he had not executed any power of attorney in favor of the registered partnership firm by the name of M/s. V.G. Panneerdas and Company. He also denied that V.G. Santhosam has any right of delegation under the power of attorney. The plaintiff denied the power of attorney dated 22.01.1978

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said to have been executed by V.G. Santhosam in favor of M/s. V.G. Panneerdas and Company. He disputed the validity of the four sale deeds executed by V.G.P. Rajadoss who claimed to represent M/s. V.G. Panneerdas and Company, the partnership Firm in its capacity as the power agent of the plaintiff in favor of the Lisi Edward (Ex.A.7 dated 23.05.2003) in respect of the ***first item*** of the suit schedule property described as ***Plot No.53 in S.No. 39/1, admeasuring 4028 square feet***; in favor of Stella (Ex.A.8 dated 23.05.2003) in respect of the ***second item*** of the suit schedule property described as ***Plot No. 62 in S.Nos.38/1 and 38/2, admeasuring 3240 square feet***; in favor of Stephen (Ex.A.9 dated 23.05.2003) in respect of the ***third item*** of the suit schedule property described as ***Plot No. 63, admeasuring 3447 square feet, in S.Nos.38/1 and 38/2***; and lastly, in favor of Subbiah Konar (Ex.A.10 dated 05.06.2003) in respect of the ***fourth item*** of the suit schedule property described as ***Plot No.84 in S.No.37/1, admeasuring 3200 square feet***. *(The detailed mentioning of the suit schedule is very much relevant, upon which we will be discussing later, in detail.)*

2.4. He sought a declaration and recovery of possession in respect of these four individual plots.

2.5. The plaintiff disputed the sale agreement mentioned in the

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reply notice dated 14.08.2003 (Exhibit A-19). The plaintiff denied having agreed to sell an extent of 21.20 acres of land comprised in Survey Nos.37/1, 38/1, 38/2, 39/1, 40/1 and 40/4, either on 23.05.1975 or on 19.01.1978. He also denied executing any stamped receipt dated 21.01.1978 (Ex.B.5) referred to in the reply notice dated 14.08.2003.

2.6. In effect, the plaintiff denied executing any power of attorney in favour of M/s. V.G. Panneerdas and Company, a registered partnership firm; entering into any agreement of sale in its favour, for a sale consideration of Rs. 21,200/-; and receiving any amount towards the alleged sale consideration from M/s. V.G. Panneerdas and Company or issuing any stamped receipt, in proof of it.

3.In the said suit, V.G.P. Rajadoss was the 1st defendant; V.G. Santhosam was the 6th defendant and M/s. V.G. Panneerdas and Company, a registered partnership firm, was arrayed as the 7th defendant. Lisi Edward, Stella, Stephen and Subbiah Konar who respectively purchased the suit schedule properties - items 1-4 were respectively arrayed as defendants 2-5.

3.1. In O.S. No. 334 of 2003, the sixth defendant, V.G. Santhosam, whom the plaintiff admitted to have appointed as his power of attorney, did not file a written statement. The first defendant,

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VGP Rajadoss, who had executed the impugned sale deeds in favour of defendants 2 to 5 as a representative of M/s. V.G. Panneerdas and Company, did not file a written statement.

3.2. The purchasers, namely, defendants 2 to 5, did not file separate written statements but adopted the written statement filed by the seventh defendant, as evidenced by the endorsement below the verification portion of the pleadings. However, the trial Court erroneously recorded that no written statement had been filed on behalf of these defendants.

3.3. The seventh defendant filed a written statement. They admitted the plaintiff's title, right, and possession over the suit schedule property and the other properties. They admitted the execution of the power of attorney dated 21.01.1978 in favour of the 6th defendant; but, claimed that the 6th defendant had not been appointed in his individual capacity, but had acted only as the representative of the seventh defendant partnership firm in such GPA.

3.4. The seventh defendant disputed the validity of the cancellation of the power of attorney. It contended that the seventh defendant had become the owner of the properties, a long time back, upon payment of the entire sale consideration, as evidenced from the stamped receipt dated 21.01.1978.

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3.5. According to the seventh defendant, the plaintiff had received the entire sale consideration in respect of the alienation of the suit schedule and other properties and had thereby divested himself of his rights over them. Consequently, the seventh defendant maintained that the sale deeds executed by the first defendant in favour of defendants 2 to 5 are valid and binding.

3.6. The defendants also sought to explain their admission in the reply notice dated 14.08.2003, wherein 6th defendant was described as the individual power of attorney. They contended that the power of attorney was executed in favour of the seventh defendant partnership firm and that it was irrevocable, because the plaintiff had already received the entire sale consideration before its execution.

3.7. They further claimed that, acting under the power of attorney, they had converted the properties into house plots after obtaining approval from the competent authorities and had sold the individual plots to various third parties.

3.8. According to them, possession and enjoyment of the properties had remained with the defendants since 21.01.1978.

3.9. In the additional written statement, the seventh defendant also referred to an agreement of sale dated 25.03.1975 between the plaintiff and the seventh defendant and a power of attorney dated

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22.03.1976 executed in favour of one Mr. John to sell the suit schedule properties to the partnership firm.

OS 423 of 2003

4. D. Chellakumar instituted another suit in O.S. No. 423 of 2003, claiming title over the suit property.

4.1. His plaint averments are similar to his earlier suit to a larger extent.

4.2. D. Chellakumar set up another nemesis in this case. He pleaded that the power of attorney dated 02.02.1999 claimed in favour of Arul Raj (Ex.B.22) is fraudulent and is falsely represented to have been executed by him. He denied the validity of the sale deed dated 24.02.1999 executed by Arulraj as his GPA in favour of Jayakumar Ruban in respect of the suit schedule properties.

4.3. According to him, Jayakumar Ruban without any title, falsely conveyed the ***first item*** of the suit schedule property, measuring ***2 acres and 11 cents in Survey No.40/1A***, in favour of the Kingwin Royan, Nicewin Royan, Joywin Royan, Coolwin Royan under a sale deed dated 24.01.2000; and another sale deed dated 08.03.2000 (Ex.B.24) in respect of the ***second and third items*** of the property, comprising ***43 cents in Survey No. 40/1C and 25 cents in Survey No. 40/4***, in favour of Kalaiselvan. *(The detailed mentioning of*

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the suit schedule is very much relevant, upon which we will be discussing in detail.)

4.4. The plaintiff sought a declaration of his title over the suit properties. He also sought the consequential relief of perpetual injunction, restraining the defendants from interfering with his possession; alienating or encumbering the properties; and claiming any right over them on the strength of documents relied upon by them. In the said suit, M/s. V.G. Panneerdas and Company, a registered partnership firm, was arrayed as the first defendant, followed by V.G. Santhosam, V.G.P. Rajadoss as 2nd and 3rd defendants, respectively. The purchasers of the first item of the properties, Kingwin Royan, Nicewin Royan, Joywin Royan, Coolwin Royan were impleaded as defendants 4 to 7 (Royan family) and the purchaser of the second and third items, Kalaiselvan was impleaded as the eighth defendant.

4.5. M/s. V.G. Panneerdas and Company, the first defendant in O.S. No. 423 of 2003, filed a written statement, which was adopted by the second defendant, V.G. Santhosam, and the third defendant, VGP Rajadoss. They contended that the plaintiff had executed a registered power of attorney dated 21.01.1978 in favour of V.G. Santhosam, who had represented the registered partnership firm.

4.6. They further contended that the plaintiff had earlier

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executed a power of attorney in favour of John, authorising the sale of the suit schedule properties to the registered partnership firm. They contended that the entire sale consideration had already been paid to the plaintiff and, consequently, the power of attorney dated 21.01.1978 was irrevocable. They disputed the validity of the cancellation dated 21.01.2003 and its subsequent registration.

4.7. They specifically pleaded that the plaintiff had entered into an agreement of sale dated 25.03.1975 with the first defendant and had issued a stamped receipt acknowledging receipt of the entire sale consideration. They denied obtaining any blank signed stamp papers from the plaintiff and asserted that the possession and enjoyment of the properties remain with them.

4.8. Defendants 4 to 7 in their written statement claimed that the power of attorney dated 02.02.1999 executed by the plaintiff in favour of Arulraj was genuine and that the subsequent alienation made by Arulraj in favour of their vendor, Jayakumar Ruban was valid. They claimed that they had filed an independent suit in O.S. No. 534 of 2003 before the same Court to protect their interests.

4.9. The purchaser of the second and third items of the suit schedule properties, Kalaiselvan, the eighth defendant in O.S. No. 423 of 2003, raised similar contentions and asserted his rights over the

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properties purchased by him, viz., items 2 and 3.

5.The suit instituted by defendants 4 to 7 in O.S. No. 534 of 2003 was subsequently renumbered as O.S. No. 26 of 2007. All three suits, viz., O.S. Nos. 334 of 2003, 423 of 2003, and 26 of 2007, were taken up together for a common trial.

6.During the common trial, the plaintiff, D. Chellakumar examined himself as P.W.2, his power of attorney, R.Vijayakumar, as P.W.1, V. Karthik as P.W.3. On the defendants' side, V.G. Santhosam was examined as D.W.1, V.G.P. Rajadoss as D.W.2, and an officer from the Income Tax Department, Mr. G. Chandrababu, as D.W.3. The eighth defendant, Mr. Kalaiselvan, examined himself as D.W.5. One P.J. Edward, the husband of the second defendant, Lisi Edward, in O.S. No. 334 of 2003 was examined as D.W.4.

7.The learned trial Judge framed the following issues in O.S. No. 334 of 2003:-

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1. *Whether the power of attorney dated 21-01-1978 executed by plaintiff **in favour of D.6** is revocable or irrevocable?*
2. *Whether the plaintiff is entitled to the relief of declaration and recovery of possession as prayed for?*
3. *To what relief for him?*

8.The learned trial Judge framed the following issues in O.S. No. 423 of 2003:

1. *Whether the plaintiff is entitled to a declaration that the suit properties exclusively belong to him?*
2. *Whether the plaintiff is entitled to a decree of perpetual injunction restraining the defendants and their agents from interfering with his possession and enjoyment of the suit properties?*
3. *Whether the plaintiff is entitled to a decree of perpetual injunction restraining defendants 1 to 3 from creating any alienation or encumbrance over the suit properties?*
4. *Whether the plaintiff is entitled to a decree of perpetual injunction restraining defendants 4 to 8 from claiming any right over the properties on the basis of the documents relied upon by them?*

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5. *To what other reliefs, if any, is the plaintiff entitled?*

9.During the trial, the learned Judge noted that the plaintiff had denied executing the agreement of sale dated 25.03.1975, marked as Exhibit B-3, and the stamped receipt dated 21.01.1978, marked as Exhibit B-5; that these documents were marked subject to the objections, raised by the plaintiff; that the power of attorney executed in favour of the seventh defendant partnership firm had subsequently been cancelled by the plaintiff under Exhibit A-21.

10.The learned Judge held that after executing the agreement of sale dated 25.03.1975 and receiving the entire sale consideration, the plaintiff had issued the stamped receipt dated 21.01.1978 in favour of the seventh defendant (Ex. B5), and thus, the learned trial Judge held that the power of attorney dated 21.01.1978 (Ex. B1) is supported by consideration; thus the power of attorney is coupled with interest and hence it was irrevocable and that the seventh defendant had acted upon it, by obtaining the necessary approvals.

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11. By placing reliance on Section 202 of the Indian Contract Act, 1872, the learned trial Judge concluded that the plaintiff had no authority to cancel the irrevocable power of attorney.

12.The learned trial Judge also held that during cross-examination, the plaintiff admitted receipt of the sale consideration of Rs.21,200/; execution of the agreement of sale and power of attorney, and his signatures on those documents.

13.The learned Judge concluded that the seventh defendant had acquired rights and interests in the suit properties and had, on that basis, executed the impugned sale deeds in favour of defendants 2 to 5 in O.S. No. 334 of 2003. It is necessary to note here that the issue framed was "whether the power of attorney executed in favour of the 6th defendant is irrevocable", but the Judge concluded that the power of attorney issued in favour of the 7th defendant is irrevocable, making it evident that the trial Judge treated the 6th and 7th defendants as one and the same.

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14. The learned Judge found that the defendants had been in possession and enjoyment of the properties for more than 30 years. He accordingly dismissed the suit.

15.Insofar as O.S. No. 423 of 2003, the learned trial Judge held that, in view of the power of attorney dated 21.01.1978 and the payment of the entire sale consideration, the plaintiff could not maintain a claim over the suit schedule properties. The Court, accordingly, concluded that the plaintiff had failed to establish his title and dismissed the suit.

16.With regard to the fourth issue in O.S. No. 423 of 2003, concerning the alienation in favour of defendants 4 to 7 and the eighth defendant, the learned Judge held that defendants 4 to 7 could not claim any right or interest in the properties on the strength of the sale deeds relied upon by them.

17.The Learned Trial Judge concluded that the power of attorney executed in favour of the 7th defendant is irrevocable as it is coupled

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with interest. While considering the claim of the eighth defendant, the learned Judge accepted the power of attorney executed by Plaintiff in favour of Arulraj and the subsequent sale deeds executed in favour of Jayakumar Ruban and later by Jayakumar Ruban in favour of Kalaiselvan.

18.The Judge held that there is no serious objection by the plaintiff against the claim of title by the vendor of the 8th defendant; and holding that the revenue records stand in the name of the 8th defendant and it was admitted by sixth defendant during his cross examination, the Judge upheld the claim of the 8th defendant in respect of the properties purchased by him.

19.The learned Judge concluded that the properties purchased by the eighth defendant are comprised in 43 cents in Survey No. 40/1C and 25 cents in Survey No. 40/4, and these properties did not form part of any of the documents under which the seventh defendant partnership firm makes a claim.

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20.The learned Judge, took into consideration the revenue records, which did not reflect the grant of any patta in favour of VGP group, the availability of a patta in favour of the 8th defendant and the fact that the transaction in favour of the 8th defendant was executed on 8th March 2000, much earlier to the revocation of the power of attorney-concluded that the 8th defendant had valid title and possession of the property. Accordingly, this issue was answered in favour of the 8th defendant. The suit filed by Royan family in O.S. No. 534 of 2003, subsequently renumbered as O.S. No. 26 of 2007 was dismissed and it was not appealed further.

21.Aggrieved by the dismissal of his suits, the plaintiff, D. Chellakumar filed A.S. No. 8 of 2013 against the judgment in O.S. No. 334 of 2003 and A.S. No. 9 of 2013 against the judgment in O.S. No. 423 of 2003. Both the appeals were taken up together by the learned appellate Judge and dismissed under the impugned judgment and decree dated 20th March 2018.

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22.The learned first appellate Judge framed the following issues for consideration:

1. *Whether Exhibit B1, dated 21st January 1978, is an irrevocable power of attorney?*
2. *Whether the plaintiff is entitled to the reliefs of declaration and recovery of possession in O.S. No. 334 of 2003?*
3. *Whether the plaintiff is entitled to the relief of declaration in O.S. No. 423 of 2003?*
4. *Whether the plaintiff is entitled to the relief of perpetual injunction in O.S. No. 423 of 2003?*
5. *Whether the appeals are liable to be allowed?*

23.The first appellate Judge noted that the primary dispute between the parties is “Who is the agent under the power of attorney, whether, as claimed by the plaintiff, the power of attorney was executed by nominating an individual, namely, V.G. Santhosam, as the agent or the power of attorney nominates the 7th defendant partnership firm as the agent as claimed by the seventh defendant”; and also “Whether the power of attorney is coupled with interest thereby making it irrevocable as claimed by 7th defendant”.

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24.The learned first appellate Judge observed that Ex. B3, the sale agreement was executed in favour of VGP Housing Private Limited, represented by its Managing Director, V.G. Panneerdas. The learned appellate Judge also referred to the power of attorney dated 22nd March 1976 executed by the plaintiff in favour of John.

25.By referring to the land acquisition proceedings and the connected records, as well as the layout approval documents marked as Ex. B6 to Ex. B8 and Ex. B10 to Ex. B16, the learned Judge concluded that since these documents stood in the name of the 7th defendant, it could not be held that Exhibit B1 had been executed nominating an individual as the power of attorney. Accordingly, the learned Judge construed the power of attorney as having been executed in favour of the 7th defendant.

26.With regard to the irrevocability of Ex. B1, the learned first appellate Judge referred to the sale agreement dated 25th March 1975 entered into between the plaintiff and the 7th defendant, as mentioned in Ex. B1, and the availability of Ex. B4, the power of attorney executed by the plaintiff in favour of John authorising him to execute documents

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relating to the properties in favour of M/s. V.G. Panneerdas and Company. On these materials, the learned first appellate Judge concluded that Ex. B3, the sale agreement was executed by the plaintiff.

27.The learned first appellate Judge further concluded that the plaintiff's denial of the stamped receipt dated 21st January 1978 was not credible, since in his chief examination, the plaintiff had stated that, at the time of executing the power of attorney, his signatures had been obtained on three blank sheets of paper and therefore, he admitted his signature on the stamped receipt. Upon this admission and the fact that the original title documents, together with the power of attorney executed in favour of John, had been handed over to the VGP group, the learned first appellate Judge concluded that the stamped receipt was genuine and that the plaintiff had received the sale consideration.

28.With regard to the argument concerning the admissibility of the statement made before the police authorities, the first appellate Judge extracted a portion of the evidence of P.W.2 and held that the plaintiff had admitted the relevant transaction.

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29.The learned first appellate Judge also took exception to the plaintiff's reliance on the dismissal of O.S. No.553 of 2004. The first appellate Judge noted that the said suit had been dismissed for non-prosecution and that the alienation in respect of which O.S. No. 553 of 2004 had been instituted had taken place before the cancellation of the power of attorney on 21st January 2003.

30.Accordingly, the learned first appellate Judge concluded that the alienation covered by the proceedings should be presumed to have been made on the strength of the power of attorney executed in favour of the VGP group, V.G. Santhosam, V.G. Panneerdas, and the other concerned parties.

31.The learned first appellate Judge also considered the objection that the alienation involved in O.S. No. 334 of 2003 were made after the issuance of the letter cancelling the power of attorney on 21st January 2003. However, the learned first appellate Judge held that the cancellation was registered only on 20th August 2003 and that the reasons assigned by the plaintiff for cancelling the power of attorney were vague and flimsy.

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32.The learned first appellate Judge further held that the power of attorney itself mentions that it is irrevocable, and considering the fact that the plaintiff had not disputed its execution for more than 25 years, the learned first appellate Judge concluded that the power of attorney was irrevocable.

33.The learned first appellate Judge also considered the objections raised by the VGP group and the 7th defendant, who contended that the conclusion in favour of the 8th defendant was contrary to their case; that the suits were concerned with the reliefs sought by the plaintiff and that, since the plaintiff had failed to establish his entitlement to those reliefs, they could not be granted. He held that the suit does not concern the availability of title with the 8th defendant. Accordingly, the learned first appellate Judge affirmed the judgments of the trial Court.

34.Challenging the concurrent findings of the courts below, the unsuccessful plaintiff, Mr. D. Chellakumar filed the present second appeals. He died during the pendency of these second appeals. *Despite specific orders from this Court, his children who are the available*

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natural legal heirs are not brought on record. Upon his demise, both these appeals stood abated. The impact of such abatement and the extent to which the substituted appellant can contest these appeals in the place of the original plaintiff will be determined at the relevant place.

35.These Second Appeals were admitted on the following substantial questions of law:

1. *Whether the Courts below are correct in law in assuming that a sale agreement will create an interest in property and therefore a subsequently executed power of attorney becomes one coupled with interest?*
2. *Whether the power of attorney dated 21.01.1978 has created an agency coupled with interest, in terms of Section 202 of the Indian Contract Act?*
3. *Whether the power of attorney dated 21.01.1978 is an irrevocable instrument and whether the defendant can deal with the property on the basis of the power of attorney?*
4. *Whether Ex.B.3 and Ex.B.5 are proved in the manner known to law?*

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5. *Whether the first appeal and the second appeal filed by the original plaintiff are maintainable, since he sold the property to the newly impleaded appellant?*

36.Mr. G. Prabhu Raja Durai, the learned counsel for Narayanan and Mr. S. Mukundh, Learned Senior Counsel appearing for Paichmuthu, for the newly substituted appellants made the following submissions :-

36.1. That the power of attorney is not irrevocable. The transfer of title of an immovable property can be made only under a registered deed of conveyance like sale deed and not by execution of sale agreement coupled with a power of attorney; a mere statement in the power of attorney, that it is irrevocable, will not make the power of attorney, irrevocable; unless it is satisfied that the power of attorney is coupled with interest created in favour of the agent himself, the question of treating the power of attorney as irrevocable and extending the benefits of Section 202 of the Indian Contract Act 1872, does not arise.

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36.2.They relied upon the judgment of the Honourable Supreme Court of India in ***Ananda Murthy vs Manjula*** reported in ***(2025) 10 SCC 596*** and also the judgment in ***Ramesh Chand case*** reported in ***2025 SCC OnLine SC 1879***, which relies upon ***Suraj lamps*** reported in ***(2012) 1 SCC 656***. By relying upon the propositions laid down in the above judgments, they would contend that there cannot be a completed sale transaction, upon execution of a power of attorney and a sale agreement on the same date.

36.3.The power of attorney is executed not in favour of the 7th defendant (a registered partnership firm) but in favour of a single individual; this is evident from a bare reading of the power of attorney; this is also admitted by the 7th defendant in their reply notice marked as Exhibit.A.19. It is also admitted by DW1 that the Power of attorney was executed only in his favour.

36.4.That the argument made by the defendants that the private limited company, the individual and a registered partnership firm are all representing different businesses of the same family and they should be treated as one single entity and the rights and liabilities of the different

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legal entities are interchangeable is not only fanciful, but contrary to law. According to them, even DW1, in his cross-examination, has conceded that these are separate legal entities.

36.5.That the stamped receipt marked as Exhibit B5 is not proved in the manner known to law. Once the Plaintiff had denied the execution of the said document, it is not permissible for the defendant to claim any presumed validity to the stamped receipt and it is the bounden duty of the defendant to prove the admissibility and contents of the said stamped receipt.

36.6.They relied on the judgments of the Apex Court in ***Narbada Devi Gupta*** reported in ***(2003) 8 SCC 745*** and ***Ramji Dayawala and sons vs Invest Import*** reported in ***(1981) 1 SCC 80*** in support of the said argument. They further argued that the stamped receipt and sale agreement were marked only subject to objection on the side of the plaintiff, not only to the signature but also to the contents; despite accepting that several payments were made by cheques and such transactions will be reflected in their bank statement, no bank statement was produced by the defendant to prove the passing of the

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consideration; further DW1 during his cross examination had denied any knowledge to the execution of the stamped receipt and also to the preparation of such receipt; despite the availability of signature of two witnesses to the stamped receipt and even after a specific denial by the plaintiff to the execution of the document and despite objection having been raised on the side of the plaintiff to the admissibility of the document, the defendant had not examined anyone of the witnesses to the document and applying the ratio of the Supreme Court in ***ITC Limited Versus Ashana Roy*** reported in ***(2026) 5 SCC 140***, it has to be held that the stamped receipt is not proved; further there are serious interpolations made by hand as if several payments were made by cheques and also an entry regarding cash payment is made by insertion in handwriting; none of these infirmities are explained by the defendant either in their written statement or in their evidence; even the power agent had denied knowledge of the execution of the stamped receipt or about the handing over of cash payments and therefore Exhibit B5 is to be held as not proved in the manner known to law.

36.7.They would argue that the substituted appellants are

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subsequent purchasers and are therefore entitled to be brought on record in the place of the deceased plaintiff and relied upon the judgment of the Supreme Court of India in ***Sharadama Vs Muhammad Pyrejan*** reported in ***(2016) 1 SCC 730 and K. Naina Mohammed Versus A.M. Vasudevan*** reported in ***(2010) 7 SCC 603***. They accordingly prayed for allowing of the second appeals.

37. Mr. S. Meenakshi Sundaram, the learned senior counsel appearing for the respondents 1, 6 and 7 made the following submissions: -

37.1. That this Court in exercise of the power under Section 100 of the Code of Civil Procedure will not ordinarily interfere with the concurrent findings on facts rendered by the trial court and the first appellate court, and this court cannot re-appreciate the evidence.

37.2. That the power of attorney dated 21st January 1978 - Exhibit B-1 was executed on the basis of Sale agreement, viz., Exhibit B3 dated 25th March 1975 and the stamped receipt dated 21st January 1978. The receipt of the entire sale consideration by Chellakumar is accepted by

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him and only thereafter the power of attorney was executed and therefore the first substantial question of law does not arise for consideration;

37.3. Exhibit B.1, i.e., the Power of attorney is coupled with interest; it is evident from a cumulative reading of the same along with the Sale agreement and Stamped receipt; he relied upon the following judgments in support of the proposition that once the agency is coupled with interest, it is not revocable unilaterally:-

> ***"(a) Seth Loon Karan Sethiya Vs Ivan E. John reported in AIR 1969 SC 73;***
>
> ***(b) M. Chinnathambi Vs Kannaiyan reported in 2024 (2) CTC 312;***
>
> ***(c) Sakthi Durga Builders Vs. P.S. Raman reported in 2022 (5) CTC 84;***
>
> ***(d) K.A. Meeran Mohideen Vs. Shiek Amjad reported in 2024 (5) CTC 613; and***
>
> ***(e) S. Lakshmi Vs N. Rangasamy reported in (2026) 3 MLJ 120."***

37.4. He further argued that the defendant had improved and developed the land, which is evident from Exhibits B-6, B7, B8, and B9. The availability of possession of the properties with the VGP

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company is also evident from the land acquisition proceedings marked in Exhibits B.10 to B.16 along with the availability of Patta (Ex.B.17) in favour of VGP and company.

37.5. The statement given before the police, which is marked as Exhibit B.18 shows that the plaintiff admitted the receipt of the sale consideration and also the existence of a sale transaction in favour of VGP Company and hence the power of attorney is one coupled with interest and thus it is an irrevocable instrument.

37.6. In reference to the substantial questions of law regarding whether Exhibits B3 and B5 are proved in the manner known to law, it was argued by the learned Senior counsel that Chellakumar had admitted the execution of the sale agreement in the power of attorney. Thus the Sale agreement should be deemed to have been admitted. In the sale agreement, Chellakumar had admitted to execute an irrevocable power of attorney upon receipt of the sale consideration. Because Chellakumar executed a power of attorney mentioning that it is irrevocable, it could only mean that the stamped receipt dated 21st January 1978 is proved.

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37.7.He would argue that it is impossible for the defendant to prove the correctness of Exhibit B5 after 25 years, since Exhibit B5 was executed in 1978 and the suit was filed in 2003; he would attribute mala fide and fraudulent intention on the part of Chellakumar in filing the suit.

37.8.He would further argue that the proposition in Suraj lamps is not applicable to the facts of the present case, as the subject power of attorney was executed on 21.01.1978, which is long before the cut-off date prescribed in Suraj Lamps. To his support he relied upon the Apex Court Judgment in ***Maya Devi Vs. Lalta Prasad*** reported in ***(2015) 5 SCC 588***.

37.9.The learned Senior counsel argued that the original plaintiff died during the pendency of the Second Appeals. After the alienation of the properties, Chellakumar is not entitled to file these second appeals or continue to contest them and the whole proceeding is vexatious.

37.10.With reference to the locus of the substituted appellants, the senior counsel would argue that they are only subsequent purchasers who will have to independently agitate the correctness of the judgment

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and decree of the original suit in an individual first appeal and later in a separate second appeal and cannot implead themselves as party to the proceedings; they never filed any such application during the lifetime of the original plaintiff; he attributes lack of bona fide against the substituted appellants and argues that the substituted appellants are guilty of lack of vigilant conduct.

37.11.In reference to their right to continue with the appeal suits, the learned Senior counsel argues that unless the substituted appellants demonstrate that their claim is in full conformity with that of the original plaintiff, they cannot be allowed to contest the second appeals, as it cannot be continued in part, leaving the remaining portion of the decree unchallenged and it would lead to conflicting decrees. He pointedly argued that the appellant Narayanan had failed to bring the children/natural heirs of Chellakumar as parties to these second appeals, despite specific orders and this is fatal to their continuation of the second appeals.

37.12.He argued that the failure of substituted appellant to challenge the correctness of the judgment and decree granted against

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Chellakumar in OS 553 of 2004, which is marked as Exhibit B22 and B23 is fatal and would therefore seriously dispute the eligibility of the substituted appellants to continue with the present second appeals.

37.13.He accordingly prayed for the dismissal of the second appeals.

38.Before we dwell upon the questions of law, it is necessary to record the minimum facts for an effective adjudication of these two second appeals.

38.1. ***Admitted Facts***: The availability of title and ownership over the suit schedule and other properties covered in both the civil suits with D. Chellakumar, the original plaintiff is admitted; and the execution of a general power of attorney by D. Chellakumar, the plaintiff in favor of V.G. Santhosam, is admitted.

39.The following are the seriously disputed between the parties:-

39.1.According to VGP group, it is their case that there was an earlier sale agreement dated 25.03.1975 executed by the plaintiff in

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favour of the seventh defendant; that under the sale agreement, the plaintiff had agreed to alienate 21.20 acres of land for a total sale consideration of Rs.21,200/-; that the entire sale consideration was paid by the seventh defendant to the plaintiff, on various dates and upon completion of payment of the sale consideration, the plaintiff issued a stamped receipt signed on 21st January 1978; that the payment of the entire sale consideration created an interest in favour of the seventh defendant and to protect this interest, since they were unable to identify the purchasers of the divided plots, an irrevocable power of attorney came to be executed in favour of the seventh defendant, represented by their partner V.G. Santhosam, vide the power of attorney dated 21st January 1978, marked as Exhibit B1; that the power of attorney is coupled with interest; it is also specifically mentioned as irrevocable and stands substantiated with the aid of Section 202 of the Indian Contract Act (9 of 1872); that the subsequent cancellation of the power of attorney is not sustainable and all alienation made by them are legally valid; that upon the receipt of the sale consideration, D. Chellakumar is divested of his right and title over the suit and other

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properties in favour of the seventh defendant.

39.2. Rather the plaintiff specifically denied the execution of a sale agreement marked as Exhibit B-3, dated 25th March 1975; he denied the signature and also the contents available in the stamped receipt dated 21.01.1978; the plaintiff contends that these documents Ex.B3 and Ex.B5 are fabricated and falsely created; the plaintiff denied the receipt of the sale consideration and would only admit the GPA.

39.3. The plaintiff disputed the execution of any power of attorney in favor of Arul Raj and accordingly denied the validity of the sale deeds executed by Arul Raj in favor of Jayakumar Ruban and the subsequent alienation by Jayakumar Ruban in favour of Royan family and Kalaiselvan.

40. Generally, in any case, where there is a plea regarding abatement of suit or appeal, because of death of anyone of the parties, either the plaintiff or the defendant, the Court shall first decide whether the suit/appeal can be continued by the surviving party or by the person proposing to bring himself on record in the place of the deceased party.

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Unless the said question is decided in favour of the party seeking to continue the lis, the merits of the case cannot be touched.

41.Hence, it is necessary to first answer the last question raised by the senior Counsel for the defendants 1, 6 & 7, i.e., whether the substituted appellants can be allowed to continue with these second appeals?

42.At this juncture, it is essential to extract the entire order made on 25.10.2025 which is as follows:

> *"All the aforementioned Civil Miscellaneous Petitions have been filed in the two second appeals to bring on record a subsequent purchaser of the property in the place of the appellant Chellakumar, who died pending the appeals. But, however, all the applications have been filed invoking Order 22 Rule 3 of C.P.C. The correct provision should have been Order 22 Rule 10 of C.P.C. But any way we do not stand on technicality.* ***But it is imperative that class-I legal heirs of Chellakumar are also impleaded*** *and therefore, separate applications may be taken out to implead the class-I legal heirs of deceased Chellakumar, which would be an application under Order 22 Rule 3 of C.P.C.*

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2. The said application should be brought up before this Court by 13.11.2025."

43. Despite providing an opportunity, no such application is filed to bring the natural legal heirs of the deceased Chellakumar as parties to these second appeals. Narayanan had admitted that the natural legal heirs/children of the plaintiff are available, but have since settled in foreign countries, and hence, he is unable to bring them on record. We have allowed Narayanan and Paichmuthu to come on record in order to ensure that there is some representation for the estate of the deceased plaintiff in these second appeals. It is also not denied by the rival parties that these substituted parties in the place of the original appellant had purchased portions of properties from the plaintiff and they have some interest in this civil suit.

44.It is necessary to consider Order 22 CPC and the relevant portion is extracted hereunder:-

ORDER XXII

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES

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1. No abatement by party's death if right to sue survives:- *The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.*

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff:-

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

9. Effect of abatement or dismissal:- *(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.*

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an Order to set aside the abatement or dismissal; and if it is

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proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the 1[Indian Limitation Act, 1877 (15 of 1877)] shall apply to applications under sub-rule (2).

10. Procedure in case of assignment before final Order in suit:- *(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.*

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

11. Application of Order to appeals:- *In the application of this Order to appeals, so far as may be, the word "plaintiff shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal."*

45. Rule 1 provides that if the right to sue survives, the death will not cause abatement. Rule 2 provides that if the right to sue survives on the surviving party (either the plaintiff or defendant) the suit can continue, despite the death of the party, after causing an entry to that effect in the records. Under Rule 3, if the right to sue does not survive

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solely on the surviving plaintiff, then the legal representatives of the deceased plaintiff shall be made a party to the suit and the court shall then proceed with the suit, and in case of default to file application, the suit shall abate so far as the deceased plaintiff is concerned. Under Rule 4, if the right to sue survives not only on the surviving defendants, the legal representatives shall be brought on record and then the suit shall be proceeded. The defense of the impleaded legal representatives shall be in consonance with that of the deceased. On failure to file an application under Rule 4, the suit abates against the deceased defendant. Sub-Rule 4 of Rule 4 provides that it is not necessary to implead a deceased defendant who had not filed any written statement or who, after filing a written statement did not contest the case. Sub-Rule 4-A enables the Court to appoint an officer or other person in case of absence of any legal representative. Under Rule 5, it is permissible for the Court to determine the question, as to who is the eligible legal representative. Rule 6 prescribes that there shall be no abatement by reason of death, after the completion of the hearing and before the pronouncement of the judgment. Rule 7 talks about the impact of

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marriage of a female party and Rule 8 talks about the insolvency of a plaintiff and the procedure to be adopted by the assignee or receiver to bring themselves on record. Rule 9 provides the effect of abatement or dismissal and prohibits the institution of any fresh suit on the same cause of action. Rule 10 provides that in other cases of assignment (than insolvency) or creation or devolution of any interest, during the pendency of the suit, in any person, the suit, with the leave of the Court can be continued by or against the person, upon whom such interest has devolved. Sub Rule 10-A mandates certain duty on the part of the pleader to communicate to the court about the death of a party. Rule 11 extends the provision to pending appeals as well. Rule 12 prescribes the manner of application of the order to other proceedings and also the restrictions in reference to the application of the order to execution proceedings.

46. A recording of the bird's eye view of the provisions contained in Order 22 establishes that the availability of a right to sue, the nature of cause of action, the surviving right of the parties, and also

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the exclusive availability of right to sue, are all matters of consideration.

47. It is necessary to ascertain the meaning of the term “Right to Sue”. The Hon’ble Supreme Court of India in ***Phool Rani vs Naubat Rai Ahluwalia*** reported in (***1973) 1 SCC 688*** held that the term “Right to Sue” means the right to bring a suit asserting a right to the same relief, which the deceased plaintiff asserted at the time of his death.

48. The right to sue occurring in Order 22 is the legal threshold that determines whether the second appeal survives the plaintiff’s death at all. And critically, whether that right survives in favour of the pendente lite purchasers alone, or partially and whether it is then divisible/separable or not, warranting the presence of the natural heirs of the deceased are the determining factors.

49. The core principle is the *surviving right to sue*. The death of a plaintiff or appellant does not cause the appeal to abate, if the right to

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sue survives. In the present case, the dispute involves proprietary rights over immovable property and the validity of a power of attorney affecting the title. It is more than a purely personal right like defamation or personal service. The subject involves a substantive right to property which gives rise to the right to sue and certainly does survive the plaintiff's death.

50. Unfortunately, for the substituted appellants, upon the death of the plaintiff, the surviving right to sue does not automatically vest in one single person. Instead, it splits along the lines of the property ownership. The table given below demonstrates that the right to sue devolved upon the pendente lite purchasers, during the plaintiff's lifetime by assignment under Order 22 Rule 10 of CPC, only with regard to the portion of the property purchased by the substituted appellants. This does not encompass the entire portion of the suit scheduled properties. And for the remaining portion of the property forming part of the suit schedule, which is not purchased by these substituted appellants, the right to sue survives in favour of the other

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assignees or the deceased plaintiff's children who are his natural legal heirs entitled to be brought on record under Order 22 Rule 3 of CPC.

51. Under Order 22 Rule 3 CPC, upon the sole appellant's death and when the right to sue survived, the Court can bring his natural heirs as the legal representatives on record along with the pendente lite purchasers.

52. Both these second appeals abated on the death of the original plaintiff, Chellakumar on 6th May 2021 and soon upon the failure to file appropriate applications within time to bring the legal representatives on record, such abatement attained finality.

53. Now we shall consider whether the abatement of the appeal leads to conflicting decrees. To appreciate the same, it is necessary to verify the properties that are dealt with in the title deed of the Plaintiff, the power of attorney in favor of the sixth defendant, the power of attorney in favor of G. John, the sale agreement, the Suit schedule

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properties in both the civil suits and also in OS 553 of 2004 and also properties purchased by the substituted appellants. They are produced in the table hereunder:-

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Description	GPA (to D6) Ex.B1	Gift Deed Ex.B2	Sale Agreement Ex.B3	GPA (to John) Ex.B4	Schedule in O.S. No. 334 of 2003	Schedule in O.S.No. 423 of 2003	Schedule in O.S.No. 553 of 2004	Property purchased by Narayanan	Property purchased by Paichmuthu
Date	21.01.1978	14.11.1969	25.03.1975	22.03.1976	-	-	-	17.10.2007 and 11.02.2008	11.02.2008
Property	37/1 (individual extent not mentioned)	37/1 (5.30 acres)	37/1 (5.30 acres)	37/1 (5.30 acres)	Item 4- Plot 84 Sy.No.37/1 (7.35 cents)	-	37/1 (5.30 acres)		11.02.2008 – Doc.No.2052/2008 37/1 (5.1290 acres)
	38/1	38/1 (4.91 acres)	38/1 (4.91 acres)	38/1 (4.91 acres)	Item 3- Plot 63- Sy.Nos. 38/1 + 38/2 (7.43 cents) & Item 2- Plot 62 - Sy.Nos. 38/1 + 38/2 (7.91 cents)	-	38/1 (4.91 acres)	17.10.2007 – Doc.No.7584/2007 38/1 (4.8311 acres)	-
	38/2	38/2 (2.81 acres)	38/2 (2.81 acres)	38/2 (2.81 acres)		-	38/2 (2.81 acres)	11.02.2008 – Doc.No.2021/2008 38/2 (2.6968 acres)	-
	39/1	39/1 (4.67 acres)	39/1 (4.67 acres)	39/1 (4.67 acres)	Item 1 - Plot 53- Sy.No. 39/1 (9.25 cents)	-	39/1 (4.67 acres)	17.10.2007 – Doc.No.7540/2007 39/1C (3.2795 acres)	-
	40/1A + 40/1C	40/1 (3.26 acres)	40/1 (3.26 acres)	40/1 (3.26 acres)	-	**Item 1 40/1A (2.11 acres)** + Item 2 40/1C (0.43 acres)	-	11.02.2008 – Doc.No.2020/2008 40/1C (0.43 acres)	-
	40/4	40/4 (0.25 acres)	40/4 (0.25 acres)	40/4 (0.25 acres)	-	Item 3 40/4 (0.25 acres)	-	11.02.2008 – Doc.No.2020/2008 40/4 (0.25 acres)	-
Total Extent	21.20 acres	21.20 acres	21.20 acres	21.20 acres	31.94 cents	2.79 acres	7.58 acres out of this 17.69 acres	11.4874 acres	5.1290 acres

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54. The above table demonstrates that the properties inherited by the original plaintiff is the same as mentioned in the sale agreement, the power of attorney appointing the sixth defendant as his power agent and also the power of attorney appointing G. John as the power agent. The schedule of properties vary across his three suits in OS 334, 423 and 553 and even together, they do not encompass all his properties. Narayanan and Paichmuthu together had not purchased the entire properties of the plaintiff. They had not demonstrated before us that what they had purchased, encompasses the entire suit schedule property in OS 334 and 423 of 2003. They also do not claim to have exactly purchased the suit schedule. While in the suit survey numbers, the original plaintiff possesses a larger extent, only a lesser extent is sold to Narayanan and Paichmuthu, which is evident from the table above.

55. In **OS 423 of 2003**, we can see that against **item 1** – Sy.No.40/1A admeasuring 2.11 acres none of the substituted appellants make any claim. **Items 2 and 3** in OS 423 in Sy.Nos.40/1C – 0.43 acres and 40/4 – 0.25 acres purchased by Narayanan is in consonance with

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the suit schedule and also that of the extent available in the title deed of the plaintiff.

56. In so far as OS 334 of 2003, we can see that against **Item 4** of the suit schedule of 0.0735 acres in Sy.No.37/1, plaintiff had right over 5.30 acres, whereas Paichmuthu had purchased 5.1290 acres. This is lesser by 0.171 acres available with Chellakumar. This 0.171 acres is larger than the suit extent of 0.0735 acres. Similarly against **Items 2 and 3** of the suit schedule of 0.1544 acres in Sy.Nos.38/1 & 38/2, plaintiff had right over 4.91 and 2.81 acres respectively in Sy.Nos.38/1 & 38/2, whereas Narayanan purchased only 4.8311 acres and 2.6968 acres respectively. This is lesser by 0.1921 acres than what was available with the plaintiff. This is greater than the suit schedule extent of 0.1544 acres. Against **Item 1** of the suit schedule of 0.0925 acres in Sy.No.39/1, plaintiff had right over 4.67 acres, whereas Narayanan had purchased Sy.No.39/1C admeasuring 3.2795 acres. This is way lesser by 1.3905 acres available with Chellakumar. This 1.3905 acres is larger than the suit extent of 0.0925 acres. ***Narayanan and Paichmuthu had***

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not even pleaded in their respective affidavits that they had purchased the suit schedule properties.

57. Further the sale deeds in favor of Paichmuthu and also Narayanan mention that what is being sold to them, is after omitting a part of the property that is already sold by Chellakumar. This shows that Chellakumar is admitting alienation in respect of a portion of his property.

58. When an appeal would abate in its entirety for non-substitution of legal representatives of a deceased party depends upon the facts and circumstances of an individual case. The term “legal representative” is defined in the Code of Civil Procedure as follows: - “Section 2 *(11) “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued”.*

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59. In this regard it will be useful to refer to the decision of the Apex Court in ***Sardar Amarjit Singh Kalra (Dead) by LRs* v. *Pramod Gupta (Smt.) (Dead) by Lrs*** *reported in* ***(2003) 3 SCC 272*** wherein it is held as follows: -

> *"21... (a) In case of "joint and indivisible decree", "joint and inseverable or inseparable decree", the abatement of proceedings in relation to one or more of the appellant(s) or respondent(s) on account of omission or lapse and failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal and require to be dismissed in toto, as otherwise inconsistent or contradictory decrees would result and proper reliefs could not be granted, conflicting with the one which had already become final with respect to the same subject-matter vis-à-vis the others;*
>
> *(b) the question as to whether the court can deal with an appeal after it abates against one or the other would depend upon the facts of each case and no exhaustive statement or analysis could be made about all such circumstances wherein it would or would not be possible to proceed with the appeal, despite abatement, partially;*
>
> *(c) existence of a joint right as distinguished from tenancy-in-common alone is not the criterion but the joint character of the decree, dehors the relationship of the parties inter se and the frame of the appeal, will take colour from the nature of the*

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decree challenged;

(d) where the dispute between two groups of parties centered around claims or was based on grounds common relating to the respective groups litigating as distinct groups or bodies — the issue involved for consideration in such class of cases would be one and indivisible; *and*

(e) ***when the issues involved in more than one appeal dealt with as a group or batch of appeals, are common and identical in all such cases, abatement of one or the other of the connected appeals due to the death of one or more of the parties and failure to bring on record the legal representatives of the deceased parties, would result in the abatement of all appeals****. (emphasis supplied)"*

60. In ***State of Punjab*** **v.** ***Nathu Ram*** reported in **AIR 1962 SC 89**, the Apex Court enumerated certain tests to determine whether the whole appeal would abate on account of non-substitution of the legal representatives of one or some of the deceased parties. In this regard it was observed:

"6. The question whether a court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which

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weigh with the court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (a) when the success of the appeal may lead to the court coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to court passing a decree which will be contradictory to the decree which had become final with respect to the same subject-matter between the appellant and the deceased respondent. (emphasis supplied).

61. These substituted appellants are only seeking to step into the shoes of the original plaintiff. They do not have any independent or other right beyond what is available to their vendor, i.e., the original plaintiff. Their case relies upon the success of the plaintiff in demonstrating that no title is conveyed to the purchasers under the power of attorneys executed by him, first in favor of the sixth defendant and later in favor of Arul Raj.

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62. The Apex Court recently in ***Suresh Chandra Vs Parasram*** reported in ***2025 (5) CTC 196*** held as follows:-

*"**7.** Having regard to the aforesaid decisions, the law governing determination of the issue as to whether abatement of an appeal on non-substitution of a deceased party is partial or whole, can be summarized as under:*

1. The answer to the question whether the entire appeal abates or it abates partially qua the deceased party alone, will depend on facts of each case and, therefore, no exhaustive statement about the circumstances in which the entire appeal would abate can be made.

2. As a matter of course courts will not proceed with an appeal (a) when the success of the appeal may lead to the court coming to a decision which is in conflict with the decision between the appellant and the deceased respondent which had become final with respect to the same subject-matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the court; and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective that is to say, it would not be successfully executed.

3. In a case of "joint and indivisible decree" or "joint and inseverable or inseparable decree", the abatement of

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appeal in relation to one or more of the appellant(s) or respondent(s) on account of failure to bring on record his or their legal representatives in time would prove fatal to the entire appeal because proceeding qua the surviving party or parties may give rise to inconsistent or contradictory decrees.

4. The question as to whether the decree is joint and inseverable, or joint and severable or separable, must be decided, for the purposes of abatement or dismissal of the entire appeal, only with reference to the fact as to whether the judgment/decree passed in the proceedings vis-à-vis the remaining parties would suffer the vice of contradictory or inconsistent decrees.

5. A decree can be said to be contradictory or inconsistent with another decree only when the two decrees are incapable of enforcement or would be mutually self-destructive and that the enforcement of one would negate or render impossible the enforcement of the other which means that the two decrees are mutually irreconcilable or totally inconsistent, that is, if laid side by side, the only impression would be that one is in the teeth of the other.

6. Where the plaintiffs or appellants have distinct, separate and independent rights of their own i.e., not inter-dependent upon the other, and for the purpose of convenience, or otherwise, joined together in a single litigation to vindicate their rights, the decree passed by the court thereon is to be viewed in substance as a combination of several decrees in favour of one or the other parties and not as a joint and inseverable decree.

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7. Existence of a joint right as distinguished from tenancy-in-common is not the criterion of a joint or inseverable or inseparable decree. The joint character of the decree will take colour from the nature of the decree challenged."

63. As had been argued in the subject case, the substantial cause of action in this appeal is the personal and proprietary right of the deceased plaintiff and his challenge to the correctness of the claim of the contesting defendants regarding the irrevocable nature of the power of attorney, admitted to be executed by him in favour of 6th defendant and the impact of the cancellation of the power of attorney, upon the sale deeds executed by the power agent and also the power of attorney dated 02.02.1999 (Ex. B22) in O.S. No. 423 of 2003. The cause of action is inseparable making the decree joint and indivisible.

64. When the dismissal of the suit in respect of the original plaintiff insofar as the unrepresented portion, had attained a finality because of abatement, it is no longer permissible for the substituted

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appellants to seek any other decree which will be of conflict to the same. When the suit is dismissed against the plaintiff, because of abatement, it would only mean that plaintiff had failed to prove his case which revolves on his proving that there is no irrevocable power of attorney available with the defendants to have alienated the property to third party purchasers.

65. The allowing of the present second appeals by holding to the contrary would only lead to irreconcilable conflict. When the sales under the powers of attorney had attained a finality in respect of abated portion of the second appeal, it cannot be upheld for the remaining portion as it would lead to inconsistent decrees.

66. The reliance placed by the learned counsel for the substituted appellants on the decisions of the Hon'ble Supreme Court in ***Sharadamma v. Mohammed Pyrejan (Dead) through LRs and Another*** reported in **(2016) 1 SCC 730** and ***K. Naina Mohamed (Dead) through LRs v. A.M. Vasudevan Chettiar (Dead) through LRs and***

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Others reported in **(2010) 7 SCC 603** does not advance their case. Those decisions recognize the right of a *pendente lite* assignee under Order 22 Rule 10 of the Code of Civil Procedure to continue an appeal where the entire subject-matter of the suit has been assigned, or where the right to sue devolves completely upon the assignee. They do not apply to a case of partial assignment where the original plaintiff retained substantial portions of the suit properties—such as Item 1 measuring 2.11 acres in Survey No. 40/1A in O.S. No. 423 of 2003 and the unpurchased extents in O.S. No. 334 of 2003—and died pending the second appeals without his Class-I legal heirs being brought on record under Order 22 Rule 3 of the Code of Civil Procedure, despite a specific direction of this Court dated 25.10.2025. Where the assignment is only partial and the appeal has abated in respect of the remaining unrepresented estate of the deceased sole appellant, a *pendente lite* purchaser cannot maintain the appeal in isolation on an indivisible cause of action.

67. In ***Hemareddi* v. *Ramachandra*** *reported in* ***(2019) 6 SCC***

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756, one Govindareddi, the propositus died, leaving behind two sons and a daughter. The plaintiffs were children of one of the two sons. The second defendant was the wife of the other son. The suit properties were alleged to be the properties of the joint family of Govindareddi and his sons. Suit was filed for injunction as also for declaration that defendant no. 1 is not the adopted son. Trial court dismissed the suit and upheld the adoption. Against which, an appeal was filed. During the pendency of the appeal, one of the plaintiff-appellants died. His LRs were not brought on record. The High Court took the view that the entire appeal abated. Upholding the decision of the High Court, the Apex Court held as under:

> *"17. ……. The appeal having abated in regard to the late brother, the decree of the trial court has become final qua the deceased brother of the appellant. The effect of the same is that the adoption is found legal. The result of the appeal being allowed to proceed further and succeed in the appeal would be the passing of a decree by the High Court. The said decree would be to the effect that the adoption is invalid. The suit which was jointly filed by the appellant and his late brother would have to be decreed whereas the suit filed by the appellant and his late brother stands dismissed by the trial court. Both the decrees cannot stand together. There would be irreconcilable*

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conflict. The defendants are common. They would be faced with two decrees regarding the same subject matter which are irrevocably conflicting."

68. In ***Budh Ram* v. *Bansi*** reported in ***(2010) 11 SCC 476*** the plaintiffs instituted a suit for declaration to the effect that they and proforma defendant no.6 were co-owners and co-sharers in joint possession to a certain extent of the property in dispute. They also prayed for permanent prohibitory injunction to restrain the defendants 1 to 5 from ousting them. Defendant no. 6, namely, Smt. Parwatu, did not enter appearance in the suit. However, defendants 1 to 5, who were appellants before this Court, contested the suit by claiming title over the suit land through adverse possession. The trial court decreed the suit in favour of the plaintiffs and defendant no.6. Against the trial court decree the defendants 1 to 5 preferred an appeal to the High Court in which defendant no. 6 was arrayed as one of the respondents. However, during the pendency of appeal, defendant no. 6 died but no substitution was brought within time. Later, when substitution application was filed, it was dismissed for want of sufficient cause for the delay. Consequent

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thereto, the High Court held that as the trial court had passed a joint decree, the appeal stood abated in toto. Challenging the order of the High Court, appeal was laid before this Court. Affirming the order of the High Court, the Apex Court observed as follows:-

> *"20. The only question remains as to whether the appeal is abated in toto or only in respect of the share of Smt. Parwatu. The High Court has rightly reached the conclusion that there was a possibility for the appellate court to reverse the judgment of the trial court and in such an eventuality, there could have been two contradictory decrees, one in favor of Smt. Parwatu and the other, in favor of the present appellants. The view taken by the High Court is in consonance with the law laid down by this court consistently. The facts of the case do not warrant any further examination of the matter. (emphasis supplied)"*

69. The factor that turns the case, is the right to sue does not survive to the pendente lite purchasers ***ALONE***. The available materials carefully brought into the table demonstrates the same.

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70. The extracted table demonstrates that the pendente lite purchaser is only a partial assignee and not the universal heir of the plaintiff and the right to sue, to cancel the entire power of attorney, which is claimed as irrevocable and dispute the correctness of the alienation made by the defendants 1, 6 and 7, and also the power of attorney dated 02.02.1999 (Ex. B22) in O.S. No. 423 of 2003, claiming rights under the alienation made under the said power of attorney, does not survive to the purchasers/substituted appellants ***ALONE.***

71. The survival of the purchasers' partial right to sue is legally frustrated, since the children failed to step forward within 90 days and despite having been afforded an opportunity, the substituted appellants failed to bring the children on record.

72. The right to sue regarding the power of attorneys and to challenge the validity of the alienation regarding the remaining properties extinguished by abatement leaving the purchasers, with no standalone right to sue on this foundational issue. This is because the

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purchasers' right to sue could not survive even in respect of their item of the properties alone, since the underlying cause of action cannot be split as it would only lead to conflicting decrees.

73. Even if we proceeded to decide the second appeal on merits and accept the contentions of the substituted appellants that there is no Power of attorney executed in favour of the seventh defendant and there is no right available with the sixth defendant to represent the seventh defendant in the impugned alienation or that the power of attorney was executed only in favour of the 6th defendant and that it is also not coupled with interest and therefore it is not irrevocable, it would only lead to the reversing of the decree given in favour of the defendants solely for the subsequent substituted appellants/purchasers for their purchased items of the properties alone, while the decree granted by the lower courts will stand intact, for the remaining items of the property creating two irreconcilable decrees on the exact same power of attorney. This court refuses to create such a judicial chaos and cannot test whether the substituted appellants have a meritorious claim.

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74. In the absence of all the necessary parties before us, we have to necessarily hold that the appeal has abated in *toto* and since the court loses jurisdiction to touch the merits, we cannot test the correctness of the merits of the orders of the lower courts, and are bound by law to resist our temptation to answer the merits or determine the substantial questions of law, since we are of the conclusive opinion that the appeal has to be dismissed as abated in its entirety.

75. We therefore have no other option but to dismiss both these second appeals in their entirety. No costs. Consequently, connected Miscellaneous Petitions are closed.

(M.D.I.,J.) (N.D.K.,J.)
18-11-2026

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

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To

1. III Additional District Court, Tirunelveli.

2. The Additional Sub Judge, Tirunelveli

3.The Section Officer, V.R.Section,

Madurai Bench of Madras High Court, Madurai.

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M.DHANDAPANI, J.
AND
N.DILIP KUMAR, J.
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SA(MD) No. 561 and 562 of 2020

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