



S.A.No.1391 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.09.2024

(Reserved on 18.07.2024)

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

S.A.No.1391 of 2002

K.A.Meeran Mohideen

... Appellant

vs.

1. Sheik Amjad

2. Khaleel Sherif

3. Nasbulla Sherif

4. Shawas Jameel

5. Y.Bharkath

6. Shafi

... Respondents

(Respondents 5 and 6 are impleaded vide order dated 26.09.2003 in CMP.No.3621/2003)

Prayer : Appeal filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the court of the Subordinate Judge, Hosur, made in A.S.No.33 of 1997 dated 27.09.2001, confirming the decree and judgment of the Court of the District Munsif, Hosur, made in O.S.No.118 of 1996 dated 21.04.1997.



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Amicus Curiae : Mr.Srinath Sridevan, Senior Counsel
For R1 & R2 : No appearance
For R3 & R4 : Mr.V.Raghavachari, Senior Counsel for
M/s.V.Srimathi

JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN, J.**)

This appeal is before us on a reference made by a Hon'ble Single Judge of this Court by order dated 24.08.2011, wherein, the Hon'ble Single Judge had referred the following question to be answered by a Larger Bench:

"Whether the General Power of Attorney executed jointly by more than one Principal will survive even after the death of one of the Principals and if so, under what circumstances?"

2. The Hon'ble Judge felt compelled to reserve the question for consideration by a Division Bench since he felt that the law on the point is a little nebulous and it requires a clarification by a Larger Bench of this Court. The statutory provisions which relate to powers of attorney are found in the Indian Contract Act, 1872 and the Powers of Attorney Act, 1882. Chapter X of the Indian Contract Act, 1872, deals with Agency. While Sections 182 to 189



deal with Agency, Sections 190 to 195 deals with Sub-agents. Sections 201 to

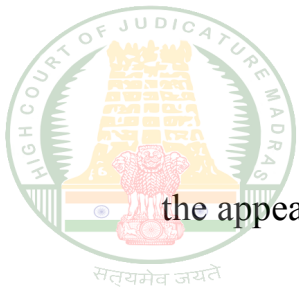
210 deal with termination of agency or revocation of authority. One of the circumstances in which the agency gets terminated is when the Principal dies.

Section 201 of the Indian Contract Act, 1872, reads as follows:

"201. Termination of agency.—An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors."

3. If the statutory provisions namely, Sections 201 to 210 do not deal with a situation where there are multiple Principals and one of them dies or becomes insane, we will have to necessarily fall back upon precedents to decide the said question. Since the appellant went un-represented, we had appointed Mr.Srinath Sridevan, learned Senior Counsel of this Court to assist us in answering the question that has been referred to us.

4. Mr.V.Raghavachari, learned Senior Counsel appearing for the respondents 3 and 4 would submit that the very appeal has abated since the appellant himself is no more and as such nothing survives for consideration in



the appeal on merits.

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5. No doubt, we will have to necessarily dismiss the appeal as having abated, but the question that has been referred to us being an important question and the Courts are faced with such situation in the light of development of Commerce, we deem it fit to answer the question referred to us. We have already enumerated the statutory provisions that deal with the termination of agencies. A agency can be created either by a contract or by operation of law. There can be several principals or several agents. Termination happens either by act of parties, within and beyond their control, or by operation of law. An agency normally gets terminated on the death of either the principal or the agent. The exception is made where the agent himself has an interest in the contract. If it is a case of one principal, there is no issue arising out of such termination. Difficulty arises only where there are several principals having different interests in the property, subject matter of agency and one of them dies.

6. If we are to look at the precedents on the issue, the earliest decision traceable is **Re Sital Prosad and others, Insolvents, Badrinarain Agarwalla vs. Raja Brijnarain Roy and another** reported in 1916 SCC



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Online Cal 212 : AIR 1917 Cal 436. That was a case where, three out of four

brothers who formed a Coparcenary, had authorised the fourth brother to mortgage their interests in the joint family property through a power of attorney deed. One of the brothers died prior to the execution of the mortgage. A Division Bench of Calcutta High Court held that the question whether the power of attorney came to an end by death of one of the principals depends upon the construction which is to be put upon the terms on the power of attorney. In coming to a conclusion as to the construction, the Court will also consider the position of the parties to the power of attorney and the property which was thereby affected. Though concurring, the two members of the Division Bench delivered separate opinions containing slightly different reasons. The Hon'ble **Chief Justice SANDERSON** concluded that the question whether the power of attorney came to an end by the reason of death of Ram Sundar Lall depended upon the construction which is to be placed on the terms of the power of attorney. He went on to observe that in coming to a conclusion as to the construction of the document, the Court must necessarily consider the position of the parties to the power of attorney and the property which was thereby affected. After analysing the facts of the case, the Hon'ble Chief Justice concluded that the intention of the parties needs to be ascertained from the prevailing factual situation as well as the terms of the instrument. The fact that



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the property belonging to the joint Hindu family was also fathomed by the

Hon'ble Chief Justice in coming to the conclusion and he held that the mortgage created after the death of one of the principals would be valid *vis-a-vis* all the principals in the light of the circumstances in that case. The Hon'ble **Mr.Justice MOOKERJEE**, the other member of the Bench, also concurred with the conclusions of the Hon'ble Chief Justice. While agreeing with the conclusions of the Hon'ble Chief Justice, **Justice MOOKERJEE**, however, went a step further and clarified that the agent namely, Raghbir Prosad, one of the four brothers, cannot act on behalf of his infant nephews namely, the children of Ram Sundar Lall, the deceased brother. The reason was that the object of the power was to raise loan for the benefit of the family and that object would survive and would be capable of realisation even after the death of one of the principals.

7. This Court had considered the question in **M.Ponnuswami Pillai and another vs. Chidambaram Chettiar and others** reported in **1918 Volume VII Madras Law Weekly 566**. There again, the power of attorney was executed by a two members of a Hindu trading family. After referring to the judgment of the Calcutta High Court in **Re Sital Prosad's case** (supra), the Division Bench held that in the circumstances, the power would survive. In



doing so, the Division Bench observed as follows:

"Section 253(10) of the Indian Contract Act declares that a partnership is dissolved by the death of a partner. There is no principle of Hindu law that a joint family is extinguished by the death of one member, but if one member dies without effecting a partition, his undivided share passes by survivorship to the surviving members of the family. In the present case the uncle Venkatachallam Chetty died without other heirs than his nephew Chidambaram Chetty with whom he was joint till the day of his death. The whole of his interest therefore devolved on the survivor whose authority to the agent" contained in the power of attorney remained unaffected by the death of one of the principals (See Re Sital Prasad (1916) 21 C.W.N. 620). It is not suggested that the surviving principal (first respondent) has revoked or attempted to revoke his authority under Ex. B. The objection is a technical one coming only from the judgment debtors. The 1st respondent after being made a party to these proceedings has taken no part in supporting this objection. On both points the District Judge's decision was right. We must therefore dismiss the appeal with costs."

8. In 1936, a some what analogous situation arose in **Monindra Lal Chatterjee vs. Hari Pada Ghose and others** reported in **AIR 1936 Calcutta 650**, wherein, the effect of death of one of the principals was raised. The appointment of agent was to file a suit for accounts. **Justice R.C.MITTER** of the Calcutta High Court, on facts, concluded that the power would terminate on



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the death of one of the principals. He, however, concurred with the views in **Re**

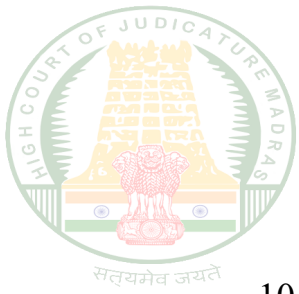
Sital Prosad's case (supra) and **M.Ponnuswami Pillai's case** (supra). **Re Sital**

Prosad's case was followed again by **Justice VIVIAN BOSE** in **Agarwal**

Jorawarmal and another vs. Kasam and another reported in **AIR 1937**

Nagpur.

9. The question again sprouted before this Court in **Garapati Venkanna vs. Mullapudi Atchutaramanna and others** reported in **AIR 1938 Mad 542**. **Justice VENKATASUBBA RAO** held that on the death of one of the principals, the authority of the agent is determined. Though the learned Judge referred to **Re Sital Prosad's case**, he concluded that the circumstances, in the case before him were little different since one of the parties had a distinct half right in the property and the circumstances did not favour the conclusion that the power of attorney was intended to be in force and even after the death of **Brahmayya (Junior)**. The learned Judge also rejected the contention that since the agent was to incur expenses in filing a suit for accounts, it would be a power coupled with interest. It should be noted that the judgment of the Division Bench in **M.Ponnuswami Pillai's case** (supra) was not brought to the notice of **Justice VENKATASUBBA RAO** who decided **Garapati Venkanna's case**.



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10. Recently, a Division Bench of this Court in **Periammal and others vs. Ramesh and others [A.S.No.307 of 2011, decided on 16.11.2022]** followed the view in M.Ponnuswami Pillai's case (supra). The Division Bench after considering the judgment in M.Ponnuswami Pillai's case (supra), held as follows:

"12. It is pertinent to mention that a previous judgment by this Court taking similar view in the case of M.Ponnusami Pillai and Another Vs. Chidambaram Pillai and Others reported in (1918) 35 MLJ 294 has been considered by the Division Bench of this Court in 2009 (3) MLJ 539. We find that the position is reiterated in several precedents and it is accepted that A Power of Attorney given to an agent by two members of a joint Hindu trading family is not terminated by the death of one of the executants.

13. In several cases, this aspect has been dealt with. When a Power of Attorney Deed is executed, it only gives only a limited right in favour of the agent to act on his behalf in respect of certain things and the right to act on behalf of principal has to be seen from the written instructions in the deed. In the present case, the Power of Attorney Deed under Ex.A2 confers absolute right in favour of the Power of Attorney Agent to deal with the property on behalf of his principals. The authority under the Power of Attorney Deed to act on behalf of others does not come to an end by the death of any one of the executants either as per the terms or by applying any law. No law extinguishes or terminates the Power of Attorney Deed executed by



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several persons on the death of one of the co-executants. In this case after the death of brothers of appellants, the other legal heirs defendants 3 to 5 have also executed a Power of Attorney Deed independently under Ex.A4. The findings of the Trial Court with regard to the validity of Power of Attorney Agent to represent plaintiffs and defendants 1 and 2 despite the death of one of the co-executants is based on binding precedents and hence no interference is warranted."

11. The learned Amicus Curiae Mr.Srinath Sridevan had also placed before us the position in the United Kingdom and the United States. The position in United Kingdom is laid down in **Tasker vs. Shepherd** reported in **9 W.R 476**. The facts, as disclosed by the report, are that a partnership which was carrying on business as stone merchants, appointed the plaintiff as their sole agent in London for a period of four years and half on certain terms as to payment. The plaintiff namely, the agent, sued the surviving partner, since one of the partners died, for recovery of money contending that though he had performed his part of the contract, the defendant has failed to perform his part of the contract. The suit was resisted on the ground that one of the partners Emanuel Bentley died and the partnership itself was dissolved. Therefore, the plaintiff cannot sue the other partner for recovery. It was also contended that the contract became unenforceable. The Court held that though the entire



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contract would not become invalid, the facts and circumstances should be considered by the Court in order to find out whether the contract will be valid and binding on the surviving partner. On the conclusion that the breach occurred due to the death of the partner, it was found that there was no business between the parties after the death of one of the partners. On the above facts, the Court concluded that the contract was with reference to a certain existing partnership business only, but it cannot survive after the death of one of the partners which would result in dissolution of the business of the partnership. The Court concluded as follows:-

[581] It is not that the defendant failed to employ the plaintiff as the agent of the "firm," treating the contract as an absolute agreement on the part of the defendant that the firm should last for four years and employ the plaintiff during that time, but that the defendant failed either to carry on business separately after the other party's death, or, carrying on business, failed to employ the plaintiff.

Probably the latter was intended, though there is no distinct averment that the defendant did ship any stone, or do any business, after the death of his partner.

Such being the breach, we are of opinion that the declaration is bad on the ground that there was no such contract.

We think the contract had reference to a certain existing partnership business only.

Any business carried on after the death of one partner might be a totally different one. It might be much smaller and less lucrative



to the plaintiff. And he might well object to act as agent for a much more limited concern at the rate of remuneration for which he was content to serve the original firm.

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And as we find no mention in the contract of any other than the partnership business; as we see no trace of the parties having looked to or contemplated any other, we conclude that they were contracting only in reference to the partnership business, and that consequently there is nothing to bind the parties on either side to an agency for any other than such business.

This is sufficient to dispose of the case. But as an amendment in the declaration by extending the breach to the non-employment of the plaintiff in the partnership business for the full term of four years would raise the broader question, whether the defendant had contracted absolutely for the continuance of the partnership, we think it right to give our opinion upon that point also.

[582] After fully considering the contract and the probable intention of the parties, to be collected from the various terms of the agreement, we come to the conclusion that the contract was intended to be for a period of four years and a half, subject to the condition that all the parties so long lived.

We do not believe, on reading the contract, that the parties contemplated the continuance of the agency by the executor after the death of the agent, or by the surviving partner after the death of either member of the firm.

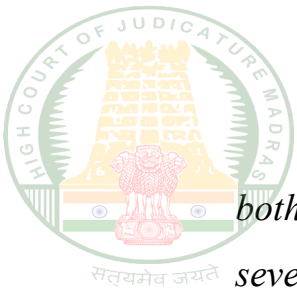
We think the agreement of the parties had relation to the existing state of things, which they presumed would continue for four years, and in reference to which presumption alone they contracted."



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12. Similar question arose in **Hand vs. Chalhoun** reported in **19 Pa. D & C.2d 655**. After discussing the law, it was held as follows:

"As a result of these decisions, we hold that as to whether or not an agent is authorized to act only on the joint account of the principals or for the principals separately depends upon the wording of the instrument, the surrounding circumstances and the manifestations of the principals. Since this matter is before the Court on preliminary objections, there is no testimony as to any manifestations of the principals except such as are indicated in the power itself. The surrounding circumstances do not indicate any reason why the power should be revoked as to the surviving principals. No intention can be gathered from the instrument which would indicate that the agent or attorney in fact had authority to act only jointly for all of the principals. On the contrary, the language of the power is clearly severable in nature and authorizes the attorney in fact to act for each or any of the principals. The principals each owned an undivided interest in the real estate in question and each could have alienated his interest therein without acting in unison with the remaining principals. In fact, all of the principals together owned only an undivided three fifth interest in the property. The agent or attorney in fact was not bound to convey her undivided twelfth interest to the same granted to whom she might sell the undivided three-fifth interest of the principals. We therefore hold that the power of attorney dated January 31, 1944, could be exercised both jointly and severally and since it contained language which was



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both jointly and severally and since it contained language which was several, in nature, was not revoked by the death of Ellen Schnars as to the surviving principals."

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13. There is also one another aspect which we must advert to, that is, Section 202 of the Indian Contract Act, 1872, which 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.

Illustrations

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death."

14. The termination of an agency in some cases would depend upon the nature of the agent's interest in the contract. Where the agent has got an interest in the subject matter of the contract, there cannot be a termination in the



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Krishnaswami Konar and 14 others reported in AIR 1946 Mad 9, the scope

of Section 202 of the Indian Contract Act, 1872, was considered by a Division Bench of this Court. After discussing the law governing the situation, the Division Bench concluded as follows:

"The test to be applied for finding out whether a power-of-attorney given to an agent is irrevocable or not under section 202 of the Indian Contract Act is to see whether the primary, object in giving the power-of-attorney was for the purpose of protecting or securing any interest of the agent. If the primary object was to recover on behalf of the principal the fruits of his decree and, in doing so, the agent's rights were also incidentally protected, then the power is revocable. Still more so would it be if the power-of-attorney also contained a clause in the following terms:- "I shall not for any reason whatever cancel without your permission this authority which I have given you, without paying the amount expended by you and without giving ... relief for your trouble", which makes express provision for the revocation of the power under certain terms and conditions."

15. From the precedents discussed above, we will have to necessarily reach the conclusion that a power of attorney deed executed by several persons, which cannot be said to be coupled with interest, is not automatically terminated on the death of one of the principals. The question of termination



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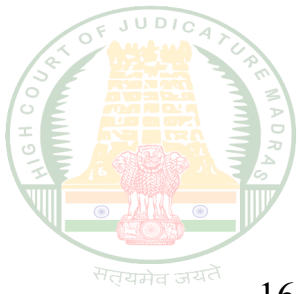
terminated on the death of one of the principals. The question of termination would necessarily depend on the facts and circumstances of each case. We are aware of the fact that we cannot exhaustively elucidate various circumstances, under which, the power will terminate or survive. We could only lay down broad guidelines. The termination will necessarily be,

(i) dependent on the facts and circumstances of each case.

(ii) The intention of the parties at the time of execution of the power which could be gathered either from the recitals in the instrument or from other circumstances that are placed before the Court, will play an important role in the decision making process.

(iii) If it is shown that the intention of the parties was that the power was to continue even after death of one of the executants as laid down by the Calcutta High Court in *Re Sital Prosad's* (supra) and this Court in *Garapati Venkanna's* case, (supra), the agency will continue till the object sought to be achieved is complete.

(iv) If it is shown that the principals had specific interest, independent of each other, like two joint owners executing a power for sale of the property, if their share is specific, the power will stand terminated in respect of the joint owner who dies. If the interest is unascertainable like that of an interest in the coparcenary of a joint family and the intention is shown to be to survive even



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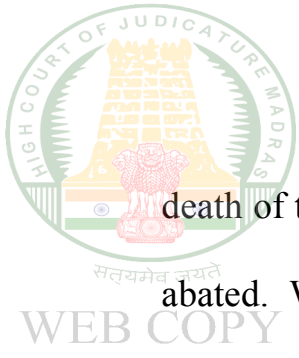
16. We hasten to add that these are only few instances and the ultimate conclusion would depend upon the evidence that is made available and the recitals in the instrument. If the interest of the deceased principal is separable from that of the surviving principal's, then, the power would not survive in respect of the deceased principal.

17. Adverting to the question of power coupled with interest if it is demonstrated that the power is coupled with interest, then the termination is governed strictly by Section 202 of the Indian Contract Act, 1872, and in such event, death of one of the principals will not result in termination of the power even with reference to his interest.

18. In fine, we answer the question as follows:

Termination of the power on the death of one of the principals is not automatic. It will depend on the facts and circumstances of each case and the recitals in the document as well as the object that is sought to be achieved.

19. The reference is answered as above. However, in view of the death of the appellant herein, the Second Appeal will stand dismissed as having



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death of the appellant herein, the Second Appeal will stand dismissed as having abated. We place on record our sincere appreciation for the valuable assistance

rendered by Mr.Srinath Sridevan, learned Senior Counsel, whose assistance was sought for by us to enable us to answer the issue raised in this appeal.

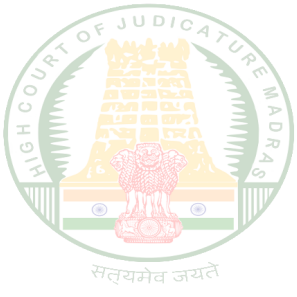
(R.S.M, J.) (R.S.V, J.)
27.09.2024

Index : Yes
Neutral Citation : Yes
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To

1. The Subordinate Judge,
Hosur.

2. The District Munsif,
Hosur.



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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT
MADE IN
S.A.No.1391 of 2002
DATED : 27.09.2024