
(1912) 10 MAD CK 0076
In the Madras High Court

S.T.P.L. Palaniappa Chettiar

APPELLANT

Vs

T.R.M.A.R.R.M. Arunachella Chettiar and Others

RESPONDENT

Date of Decision : 15-10-1912

Acts Referred:

Contract Act, 1872 — Section 188

Citation : 17 Ind. Cas. 139 : (1912) 23 MLJ 595

Judgement

1. The Subordinate Judge has dismissed the assignee's application for execution in this case on the ground that Aiyavier who executed the assignment in his favour acted beyond the powers given to him under the power of attorney, Ex. A, in making the assignment. The scope of Aiyavier's agency under the power of attorney has been discussed at length at the bar and we have examined the provisions of the document carefully. We are obliged to arrive at the same conclusion as the Subordinate fudge did. Arunachella Chetti authorizes Aiyavier by Ex. A. to act for him for the purposes enumerated in the power of attorney. The enumerated powers include mortgaging and hypothecating lands, houses and property for debts due or to become due by the principal, selling Immovable properties for any lawful purpose, demanding, suing for debts and other claims, giving valid discharges, receipts and releases for payments made, negotiating, accepting, endorsing and making promissory notes and negotiable instruments : paying debts; compromising disputes and differences between the principal and other persons.

2. There is a clause relating to the realization of the decrees in these terms : " to execute all decrees in the name of my father or in any other name on my behalf or otherwise to attach and realize all monies due thereon."" There is no clause of a comprehensive character which would show that the principal intended to confer plenary powers on his attorney to deal with all properties and rights belonging to him. The clause relating to decrees does not in terms authorise the transfer of decrees. It is argued that it might be held to be comprised in the power to execute decrees. Execution of decrees would not according to the ordinary meaning of the expression include transferring decrees. The power to

realize all monies due to the principal might be held to include a power to receive the money due under a decree by means of a transfer of it to a third person; but it would be difficult to make it include a power to transfer a decree for a sum considerably less than the amount due under the decree. No attempt was made in the Lower Court to prove that there was any compromise with the debtor which reduced the amount of the decree. A power of attorney has according to established law, to be construed strictly. Such a construction does not disable an attorney from exercising all powers incidental to the execution of powers expressly enforced on him or from exercising powers which are necessarily implied and which may be termed "medium powers." See Bowstead on Agency 4th Edn. p. 74, Story on Agency, Section 68. Section 188, of the Indian Contract Act lays down the same rule. It is necessary to find any power contended for within the four corners of the instrument relied on. See Byrant Pour's and Bryant v. La Bunque and Peuple (1893) A.C. 170, Bryant Pour's and Byrant v. The Quebeck Bank (1893) A.C. 179. It is not possible to hold that the power to transfer decrees for a consideration which the attorney thinks reasonable, is incidental to any power expressly conferred under Ex. A or is necessarily required for the execution of any of such powers. The appellant stated in his petition that Aiyavier was also a partner of the principal and that the transfer of the decree by Aiyavier was within the scope of his power as partner. He also stated that the assignment of the decree was subsequently ratified by the principal, but he did not prove either of these facts. The diary of the case shows that the parties had an opportunity of adducing any evidence they had to let in. There is nothing before us to show that any evidence tendered by the appellant was rejected by the Court. The order of the Subordinate Judge must therefore be confirmed and the appeal dismissed with costs.