NC: 2026:KHC:12251
RFA No. 60 of 2012

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 60 OF 2012 (DEC)

BETWEEN:

1. S. HEMANTHA RAO
S/O SHIVAJI RAO
AGED ABOUT 40 YEARS
NO.16/1, 8TH CROSS
DASARAHALLI MAGADI ROAD
BANGALORE-560 079.

...APPELLANT

(BY SRI. S.K. ACHARYA, ADVOCATE FOR
SRI. VIGNESHWARA .U, ADVOCATE)

AND:

1. H. INBAVALLI
W/O K. HARIKRISHNAN
AGED ABOUT 64 YEARS

2. H. RAVINCHANDRAN
S/O K. HARIKRISHNAN
AGED ABOUT 45 YEARS

3. SHANKAR .H
S/O K. HARIKRISHNAN
AGED ABOUT 44 YEARS
ALL ARE R/AT MATADAHALLI
FURTHER EXTN., 1ST CROSS
R T NAGAR, BANGALORE-32.

4. S. RAGHAVNEDRA
S/O S. SRINIVAS

MAJOR
5TH MAIN, 3RD CROSS
M C LAYOUT, VIJAYANAGAR
BANGALORE-560 040.

5. S. SAKKUBAI
W/O H.M. SHIVALINGAIAH
MAJOR
NO.1025/A, 12TH MAIN, M C LAYOUT
VIJAYANAGAR, BANGALORE-560 040.

6. SAMPATH RAJ
S/O JAITMALGI
MAJOR
NO.45, MAHAJAN PROVISION STORE
VENKU SAHOJI LANE CROSS
CHICKKAPETE, BANGALORE-53.

...RESPONDENTS

(BY SRI. V. JAVAHAR BABU, ADVOCATE FOR C/R1 - R3
V/O/DATED: 01.07.2016 APPEAL AGAINST R4 & R6 DISMISSED)

THIS RFA IS FILED U/SEC.96, R/W, O-41, RULE-1 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 01.10.2011 PASSED IN O.S.4459/2003 ON THE FILE OF THE XLIII-ADDL. CITY CIVIL AND SESSIONS JUDGE, CCH-44, BANGALORE, PARTLY DECREEING THE SUIT FOR THE DECLARATION.

THIS APPEAL, COMING ON FOR DICTATING JUDGMENT, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is preferred by defendant No.4, calling in question the legality and correctness of the judgment and decree rendered in O.S.No.4459/2003, whereby the suit instituted by the plaintiffs has been decreed and defendant Nos.1 to 4 have been directed to hand over vacant possession of Schedule 'A' and Schedule 'C' properties to the plaintiffs within two months from the date of judgment.

2. For the sake of convenience and to avoid confusion, the parties are referred to as per their ranking before the Trial Court.

3. The plaintiffs instituted suit in O.S.No.4459/2003 asserting right, title and interest over the suit schedule properties through defendant No.2. It is not in dispute that the suit schedule properties originally belonged to one G. Kempaiah, who was arrayed as defendant No.4 in the suit. According to the plaintiffs, the

said original owner executed a registered General Power of Attorney dated 15.01.1982 in favour of defendant No.3, authorising him to deal with and alienate the suit schedule properties.

4. It is the further specific case of the plaintiffs that defendant No.3, acting under the authority conferred by the aforesaid General Power of Attorney, executed another General Power of Attorney dated 02.07.1984 in favour of defendant No.2 in respect of the very same properties, thereby constituting what is described as a sub-agency. On the strength of this subsequent General Power of Attorney, the plaintiffs claim to have derived right and title over the suit schedule properties.

5. Thus, the entire foundation of the plaintiffs' claim rests upon two documents, namely: (i) the original General Power of Attorney dated 15.01.1982 allegedly executed by defendant No.4 in favour of defendant No.3; and (ii) the subsequent General Power of Attorney dated

02.07.1984 said to have been executed by defendant No.3 in favour of defendant No.2, through whom the plaintiffs trace their alleged title.

6. The plaintiffs further pleaded that the General Power of Attorney dated 27.07.1984 executed by defendant No.3 in favour of defendant No.2 was not a mere agency simpliciter, but one coupled with interest, inasmuch as defendant No.2 is stated to have paid a sum of Rs.8,000/- towards sale consideration in respect of the suit schedule property. On that premise, it was contended that the said power of attorney created an enforceable and irrevocable interest in favour of defendant No.2.

7. It is also their case that defendant No.2, in turn, executed another General Power of Attorney dated 21.09.1984 in favour of plaintiff No.1, which too is pleaded to be coupled with interest, on the ground that defendant No.2 received a sum of Rs.16,500/- from plaintiff No.1 towards sale consideration. In addition, defendant No.2 is

said to have executed an affidavit dated 26.10.1984 confirming the transaction and to have delivered possession of the suit schedule property to plaintiff No.1.

8. Plaintiff No.1 has specifically averred that in the year 1985, she constructed a residential house with RCC roofing over Schedule ‘A’ property at her own cost and has been in peaceful possession and enjoyment of the property ever since, asserting herself to be the absolute owner. It is further pleaded that electricity connection was obtained in respect of the constructed premises, thereby evidencing settled possession.

9. The plaintiffs also asserted that subsequent to construction, portions of the suit schedule property were let out to tenants and rental income was being derived therefrom. On these pleadings, the plaintiffs sought to establish long, continuous and settled possession over the suit schedule property, coupled with a claim of title traced through defendant No.2.

10. The gist of the plaintiffs' grievance is directed against defendant No.1, who is stated to be the son/nephew of defendant No.2 – Sakku Bai, and who was pursuing a BCA course during the relevant period. According to the plaintiffs, in or about the year 2002, defendant No.1 approached them seeking permission to occupy one room in Schedule 'A' property for his residential use, citing his educational needs. On account of close relationship and out of sympathy, the plaintiffs claim to have permitted defendant No.1 to occupy one room in the residential house.

11. The plaintiffs, however, allege that such permissive occupation was subsequently misused. It is their specific case that defendant No.2, with an ulterior motive to assert rights over the suit schedule properties, acted in collusion with defendant No.1. Taking advantage of the permissive entry, defendant No.1 is said to have secured possession of one room and thereafter asserted hostile claims over the property.

12. The plaintiffs further aver that they later came to know that defendant No.2 had executed a registered sale deed conveying Schedule 'C' property in favour of defendant No.1. According to them, knowledge of this transaction was gained only upon receipt of summons in O.S.No.8594/2002, instituted by defendant No.1 seeking a decree of permanent injunction simpliciter. It is stated that the said suit did not culminate in adjudication on merits, as defendant No.1 filed a memo before the Court stating that he had alienated the suit property in favour of defendant No.4, and on the basis of such memo, the suit came to be withdrawn/dismissed.

13. On the basis of these averments, the plaintiffs contend that the subsequent transactions are the result of collusion and are not binding on them. They assert that the initial entry of defendant No.1 being permissive, he is estopped from asserting any independent right, title or interest adverse to the plaintiffs.

14. Though defendant Nos.1 to 3 were duly served with summons, they remained absent and did not contest the proceedings. Defendant No.4 alone entered appearance and filed a detailed written statement. Defendant No.4, claiming to be a subsequent purchaser, denied the title set up by the plaintiffs and asserted that he is the absolute owner of the suit schedule property.

15. Defendant No.4 traced his title through defendant No.1. It was specifically contended that defendant No.1 had purchased the suit schedule property from defendant No.2 under a registered sale deed dated 08.08.2002 and, thereafter, conveyed the property in favour of defendant No.4 under a registered sale deed dated 03.09.2003. On the strength of the said conveyance, defendant No.4 claimed lawful title and possession. It was also contended that in the absence of a specific and substantive relief sought against defendant No.4, the suit as framed was not maintainable.

16. On the basis of the rival pleadings, the Trial Court framed necessary issues and called upon the parties to lead evidence. The plaintiffs and defendant No.4 adduced both oral and documentary evidence in support of their respective claims, including the General Power of Attorney documents, affidavits, sale deeds and other revenue and possession-related records.

17. Upon appreciation of the entire oral and documentary evidence on record, the Trial Court partly decreed the suit. The Court declared that the registered sale deed dated 08.08.2002 executed by defendant No.2 in favour of defendant No.1 and the subsequent registered sale deed dated 03.09.2003 executed by defendant No.1 in favour of defendant No.4 are null and void and not binding on the plaintiffs. Consequentially, the Trial Court held that the plaintiffs are entitled to recovery of possession of Schedule 'A' and Schedule 'C' properties and directed defendants No.1 to 4 to hand over vacant

possession of the suit schedule properties within the stipulated time.

18. Aggrieved by the judgment and decree passed by the Trial Court, it is only defendant No.4 who has preferred the present appeal. Defendant Nos.1 to 3 have not chosen to assail the decree and have, in effect, allowed the findings recorded by the Trial Court to attain finality insofar as they are concerned.

19. The learned counsel appearing for defendant No.4, reiterating the grounds urged in the memorandum of appeal, vehemently contended that the entire decree rests on a fundamentally erroneous understanding of the legal effect of transactions based on General Power of Attorney. Placing strong reliance on the judgment of the Hon'ble Supreme Court in ***Suraj Lamp & Industries Private Limited vs. State of Haryana[1],*** it is submitted that a General Power of Attorney does not convey title nor create any interest in immovable property. Referring

[1] AIR 2012 SC 206

specifically to Ex.P-4, namely the GPA dated 21.09.1984 executed by defendant No.2 in favour of plaintiff No.1, learned counsel would contend that even assuming its due execution, such a document by itself cannot operate as a conveyance of ownership. In the absence of a registered sale deed executed by the true owner, the plaintiffs could not have asserted title or sought declaratory and consequential relief of possession.

20. Learned counsel further drew attention to the earlier GPA dated 15.01.1982 allegedly executed by the original owner, G. Kempaiah, in favour of defendant No.3. It is contended that a plain reading of the said document discloses that it is a simple power of attorney authorising defendant No.3 only to execute sale deeds on behalf of the principal and does not create any proprietary interest in the property. In the absence of any clause conferring independent interest, defendant No.3 remained a mere agent and could not claim any right in his own capacity.

21. Proceeding on that basis, it is argued that defendant No.3 had no authority to create a sub-agency in favour of defendant No.2, nor to receive Rs.8,000/- purportedly as sale consideration and treat the transaction as one "coupled with interest." It is submitted that only the principal, namely Kempaiah, could have created an agency coupled with interest within the meaning of Section 202 of the Indian Contract Act, 1872, and that the alleged chain of sub-agencies is legally unsustainable.

22. In support of this submission, reliance is placed on Section 190 of the Indian Contract Act, 1872, which stipulates that an agent cannot lawfully delegate acts which he has expressly or impliedly undertaken to perform personally, unless such delegation is authorised by contract, trade usage or necessity. It is contended that there is no material on record to demonstrate that the original GPA dated 15.01.1982 authorised delegation or creation of sub-agency. Therefore, the subsequent GPAs form an invalid foundation for the plaintiffs' claim.

23. Further reliance is placed on Section 230 of the Indian Contract Act, 1872, which provides that an agent cannot personally enforce contracts entered into on behalf of the principal, nor be personally bound by them, unless there is a contract to the contrary. It is argued that the alleged transactions between defendant No.3 and defendant No.2, and thereafter between defendant No.2 and plaintiff No.1, are not transactions executed by the principal but are acts of agents purporting to travel beyond their authority.

24. The learned counsel also assailed the subsequent sale deed dated 08.11.2002 (Ex.P-13) executed by plaintiff No.1 in favour of plaintiff No.2, contending that plaintiff No.1 herself had no lawful title to convey. In the absence of a valid conveyance from the true owner, no legal title could have vested in plaintiff No.1 and, consequently, no title could pass to plaintiff No.2. It is thus contended that the entire edifice of the plaintiffs’ case is legally untenable.

25. On these grounds, it is urged that the plaintiffs neither have title nor legally protectable possessory rights and, therefore, lack locus standi to challenge the registered sale deed dated 08.08.2002 executed by defendant No.2 in favour of defendant No.1 and the subsequent sale deed dated 03.09.2003 executed by defendant No.1 in favour of defendant No.4. The learned counsel would submit that the Trial Court erred in declaring the said sale deeds null and void and in directing delivery of possession, and that the impugned judgment and decree are liable to be set aside.

26. Per contra, the learned counsel appearing for the plaintiffs stoutly opposed the contentions urged on behalf of defendant No.4. It is submitted that defendant No.4 is a *pendente lite* purchaser and cannot claim any independent or superior right than that of his vendor. When defendant Nos.1 and 2, through whom defendant No.4 traces title, have not chosen to challenge the judgment and decree of the Trial Court, defendant No.4

alone cannot be permitted to maintain the present appeal and re-open issues which have attained finality as against his vendors.

27. It is further contended that both the plaintiffs and defendant No.4 admittedly trace their respective claims through defendant No.2. Therefore, the pivotal question is whether defendant No.2 had any subsisting right, title or interest in the property as on the date of execution of the sale deed dated 08.08.2002 in favour of defendant No.1.

28. Learned counsel for the plaintiffs drew attention to Ex.P-2 to Ex.P-5, namely the GPA and affidavit executed by defendant No.2 in favour of plaintiff No.1 in the year 1984. It is pointed out that in these documents, the property is described as a vacant site. It is contended that defendant No.2, having received the entire consideration and delivered possession of the vacant site

under Ex.P-4 and Ex.P-5, had divested herself of possession as early as in 1984.

29. It is specifically submitted that after obtaining the GPA and affidavit coupled with delivery of possession, plaintiff No.1 constructed a residential house over Schedule 'A' property in the year 1985 from her own funds. The construction and subsequent enjoyment of the property are sought to be established through documentary evidence, including rental agreements marked as Ex.P-8 to Ex.P-12, which demonstrate that portions of the property were let out to tenants. These documents, it is urged, establish long and settled possession and development of the property by plaintiff No.1.

30. On this premise, it is argued that defendant No.2, who had earlier handed over possession of a vacant site in 1984, could not have subsequently conveyed a residential house under the sale deed dated 08.08.2002

(Ex.P-33) in favour of defendant No.1. The recital in the said sale deed referring to a residential structure presupposes the existence of such structure. Since the materials on record indicate that the house was constructed by plaintiff No.1 after 1984, defendant No.2 had no subsisting right, possession or authority to convey the property in 2002.

31. Insofar as the reliance placed by defendant No.4 on Sections 190 and 230 of the Indian Contract Act, 1872 is concerned, learned counsel for the plaintiffs would submit that there are no specific pleadings in the written statement laying a foundational challenge on those grounds. In the absence of specific pleadings and framed issues, such technical objections cannot be permitted to be raised for the first time in appeal. It is therefore urged that defendant No.4, being only a pendente lite purchaser claiming through defendant No.1, cannot assert any independent right higher than that of his vendor and cannot be permitted to defeat the possessory and

equitable rights of the plaintiffs. On these grounds, dismissal of the appeal and confirmation of the judgment and decree are sought.

32. This Court has heard the learned counsel appearing for defendant No.4 and the learned counsel appearing for the plaintiffs at considerable length. Upon anxious consideration of the pleadings, as well as the oral and documentary evidence available on record, and on meticulous re-appreciation of the material, the following points arise for consideration:

> *(i) Whether the General Power of Attorney dated 15.01.1982 (Ex.P-1) executed by the original owner in favour of defendant No.3 conferred authority to delegate or create a sub-agency, and consequently, whether the subsequent GPAs executed by defendant No.3 in favour of defendant No.2 and by defendant No.2 in favour of plaintiff No.1, claimed to be agencies coupled with interest, are valid and enforceable in law?*
>
> *(ii) Whether the plaintiffs have established any legally protectable right, title or interest over*

Schedule 'A' and 'C' properties on the basis of the General Power of Attorney dated 21.09.1984 (Ex.P-4), affidavit dated 26.10.1984 (Ex.P-5) and other allied documents, in the absence of a registered conveyance from the true owner?

(iii) Whether defendant No.4, claiming under the registered sale deed dated 03.09.2003 as a pendente lite purchaser and tracing title through defendant Nos.1 and 2, is entitled to protection in law and has independent locus standi to maintain the present appeal in the absence of any challenge to the decree by defendant Nos.1 and 2?

(iv) What Order?

Findings and Reasons on Point No.(i):

33. Upon careful scrutiny of Ex.P-1, the registered General Power of Attorney dated 15.01.1982 executed by the original owner, G. Kempaiah, in favour of defendant No.3 (Sampathraj), this Court finds that the document merely authorizes the attorney to execute sale deeds and to perform incidental and ministerial acts on behalf of the principal. The recitals do not disclose any intention on the

part of the principal to transfer or create any proprietary interest in favour of the attorney. The authority conferred is representative in character and confined to effectuating transactions on behalf of the principal. The document does not evidence any assignment of ownership nor any transfer of interest in the immovable property as contemplated under Section 54 of the Transfer of Property Act, 1882. Therefore, Ex.P-1 is a simple power of attorney creating an agency within the meaning of Section 182 of the Indian Contract Act, 1872, and not an agency coupled with interest under Section 202 of the said Act.

34. Significantly, Ex.P-1 does not contain any clause authorizing defendant No.3 to appoint a substitute, nominee or sub-agent. In the absence of such express or implied authorization, the matter is squarely governed by Section 190 of the Indian Contract Act, 1872, which embodies the well-settled principle that an agent cannot lawfully delegate acts which he has expressly or impliedly undertaken to perform personally, unless such delegation

is sanctioned by contract, usage of trade, or necessity. The maxim *delegatus non potest delegare* applies with full force. No material is placed before this Court to show that the original instrument contemplated delegation, nor is there evidence of any trade usage or necessity justifying sub-delegation. Consequently, defendant No.3, being a mere agent under Ex.P-1, lacked authority to create a sub-agency in favour of defendant No.2. The alleged GPA dated 02.07.1984 executed by defendant No.3 in favour of defendant No.2, even if proved, would be an act beyond the scope of authority conferred under Ex.P-1 and therefore legally unsustainable. An agent cannot enlarge the scope of his authority nor create an independent or derivative interest in favour of another when the principal himself has not conferred such power.

35. The contention that the GPA executed in favour of defendant No.2 was "coupled with interest" on the ground that a sum of Rs.8,000/- was paid under an affidavit also does not withstand scrutiny. Section 202 of

the Indian Contract Act contemplates an agency coupled with interest only where the agent has himself acquired an interest in the subject matter of the agency from the principal. Such interest must be created by the principal and must be contemporaneous with the creation of the agency. In the present case, the alleged payment was not made to the principal, nor is there any document executed by the principal creating an interest in favour of defendant No.2. The supposed interest flows from an act of defendant No.3, who himself was only an agent. An agent cannot, by unilateral act or by receipt of consideration, convert a simple agency into one coupled with interest when the principal has not so intended. Therefore, the plea of agency coupled with interest is legally untenable.

36. Once it is held that defendant No.3 had no authority to delegate his powers or to create an agency coupled with interest, defendant No.2, claiming under such defective delegation, cannot claim a better or higher authority than her predecessor. The principle that no

person can convey a better title than he himself possesses (nemo dat quod non habet) squarely applies. Defendant No.2, having derived no lawful interest from the principal, could not have created a further agency coupled with interest in favour of plaintiff No.1 under Ex.P-4. The subsequent GPA dated 21.09.1984 and the affidavit dated 26.10.1984, therefore, stand vitiated at their very inception, being founded on an unauthorized and invalid delegation.

37. Further, Section 230 of the Indian Contract Act reinforces this position by providing that, in the absence of a contract to the contrary, an agent cannot personally enforce contracts entered into on behalf of the principal nor be personally bound by them. In the present case, the chain of transactions does not emanate from any conveyance executed by the principal. Instead, it rests entirely upon successive acts of agents purporting to act beyond their conferred authority. Such transactions cannot bind the principal nor create enforceable rights against the

true owner or persons claiming under a valid registered conveyance.

38. It is also pertinent to note that under Section 54 of the Transfer of Property Act, 1882, transfer of ownership in tangible immovable property of the value of Rs.100/- and above can be effected only by a registered instrument. A power of attorney, howsoever worded, is not an instrument of transfer of title. It merely creates a relationship of principal and agent enabling the agent to act on behalf of the principal. In the absence of a registered sale deed executed either by the principal or by a duly authorized agent acting within the bounds of his authority, no right, title or interest in immovable property can pass. The plaintiffs, admittedly, have not produced any registered conveyance executed by the original owner in their favour or in favour of defendant No.2.

39. The plaintiffs' reliance on subsequent construction of a residential house and long possession,

even if accepted, does not cure the fundamental defect in title. Possession derived through an invalid or unauthorized agency cannot mature into lawful ownership in the absence of a valid conveyance. Construction of a building, payment of electricity charges, or letting out portions of the property may at best evidence de facto possession, but they do not confer de jure title when the initial entry itself is traceable to an unauthorized transaction.

40. In view of the foregoing discussion, this Court is of the considered opinion that the entire chain of General Power of Attorney transactions, from defendant No.3 to defendant No.2 and thereafter to plaintiff No.1, is contrary to the mandate of Sections 190, 202 and 230 of the Indian Contract Act, 1872, and is also inconsistent with the requirements of Section 54 of the Transfer of Property Act, 1882. The plaintiffs have therefore failed to establish that they derived any lawful right, title or interest in the suit schedule properties through the impugned GPA

transactions. Accordingly, Point No.(i) is answered in the ***Negative***.

Findings and Reasons on Point No.(ii):

41. The core question that now arises for consideration is whether the plaintiffs have established any legally protectable right, title or interest over Schedule 'A' and 'C' properties on the strength of Ex.P-4 (GPA dated 21.09.1984), Ex.P-5 (affidavit dated 26.10.1984) and other allied documents, admittedly in the absence of a registered conveyance executed by the true owner.

42. At the outset, it must be stated that Ex.P-2 to Ex.P-5 executed by defendant No.2 in favour of plaintiff No.1 in the year 1984 do not constitute registered instruments of conveyance within the meaning of Section 54 of the Transfer of Property Act, 1882. As already held while answering Point No.(i), the very authority of defendant No.2 to execute such documents is clouded in view of the prohibition contained in Section 190 of the

Indian Contract Act, 1872. Therefore, strictly speaking, the plaintiffs have not established absolute ownership flowing from a valid registered sale deed executed by the true owner. Their claim to title, in the strict proprietary sense, cannot be sustained.

43. However, the enquiry cannot be confined to the narrow question of formal title alone. The material on record unmistakably demonstrates that plaintiff No.1 acted upon Ex.P-4 and Ex.P-5 and was put in possession of what is consistently described therein as a vacant site. The recitals in Ex.P-4 and Ex.P-5 assume significance, for they clearly describe the property as a vacant site as on the date of execution in 1984. This description is a contemporaneous declaration attributable to defendant No.2 herself.

44. The subsequent conduct of the parties and the documentary evidence produced by the plaintiffs assume considerable importance. The rental agreements marked

as Ex.P-8 to Ex.P-12 reveal that portions of a residential building were let out to tenants by plaintiff No.1. The property tax receipts produced on record show assessment of a residential building standing in the name of plaintiff No.1. Electricity service connection documents further demonstrate that supply was obtained in respect of a constructed residential house and that plaintiff No.1 was in physical occupation and enjoyment thereof. These documents, though not documents of title, are cogent indicators of long, open and settled possession coupled with overt acts of ownership.

45. The evidence thus establishes a clear transformation of the character of the property. What was delivered in 1984 was a vacant site. What existed thereafter, as borne out by consistent documentary evidence, was a residential house constructed by plaintiff No.1 from her own resources. There is no pleading or evidence from defendant No.2 that she constructed any

such structure after 1984. The superstructure is demonstrably attributable to the acts of plaintiff No.1.

46. A crucial circumstance arises from the registered sale deed dated 08.08.2002 executed by defendant No.2 in favour of defendant No.1. In the said document, the property is described as a residential house. This recital stands in direct contradiction to the earlier documents of 1984 wherein defendant No.2 acknowledged handing over possession of a vacant site. If, as per Ex.P-4 and Ex.P-5, defendant No.2 had delivered possession of a vacant site in 1984, and if the residential structure admittedly came into existence thereafter at the instance of plaintiff No.1, defendant No.2 could not, in 2002, have conveyed a residential house unless she had retained possession and constructed it herself an assertion neither pleaded nor substantiated.

47. The description of the property as a vacant site in Ex.P-4 and Ex.P-5 operates as a significant admission

under the Evidence Act against defendant No.2. Having parted with possession and acknowledged the nature of the property at that point of time, she is estopped by her own conduct from asserting a contrary position nearly two decades later. The doctrine of estoppel by representation and conduct squarely applies. Persons claiming through her, namely defendant Nos.1 and 4, cannot claim a higher or better right than their predecessor in title.

48. Even assuming that the plaintiffs have not perfected title in the technical sense, the law recognizes and protects settled possession. Section 38 of the Specific Relief Act, 1963 empowers the Court to grant perpetual injunction in favour of a plaintiff to prevent the breach of an obligation existing in his favour, including an obligation arising out of lawful possession. Further, Section 5 of the Specific Relief Act provides that a person entitled to possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure. More importantly, Section 6 of the Specific Relief Act

recognizes possessory rights by enabling a person dispossessed without his consent and otherwise than in due course of law to recover possession, notwithstanding any question of title. The scheme of the Act thus makes it abundantly clear that possession, even independent of perfect title, is a legally protectable interest.

49. It is a settled principle that a person in settled and peaceful possession of immovable property cannot be dispossessed except in accordance with law. Such possession, if established, is good against the whole world except the true owner. In the present case, the disturbance does not emanate from the original owner, G. Kempaiah. On the contrary, it emanates from defendant No.2 and persons claiming exclusively through her. When defendant No.2 herself had divested possession in 1984 and acknowledged the nature of the property, she cannot, after a lapse of nearly eighteen years, reassert rights inconsistent with her earlier conduct. Defendant Nos.1 and

4, who trace their claim solely through defendant No.2, stand on no better footing.

50. The plaintiffs have thus clearly established that plaintiff No.1 was in settled, open and continuous possession of the property; that she constructed a residential house thereon; and that she exercised acts of ownership over a considerable period. Though they may not have established absolute proprietary title in the strict conveyancing sense, they have unquestionably demonstrated a legally protectable possessory interest over the suit schedule properties, particularly the superstructure erected by plaintiff No.1.

51. In these circumstances, such settled possession and the superstructure constructed thereon cannot be disturbed at the instance of defendants who claim under a person who had already parted with possession decades earlier. Accordingly, this Court holds that the plaintiffs have established a legally protectable interest over the

suit schedule properties to the extent of their settled possession and the residential structure constructed by plaintiff No.1. Point No.(ii) is therefore answered in the ***Affirmative***.

Findings and reasons on Point No.(iii):

52. It is not in dispute that defendant No.4 is a transferee *pendente lite*, having purchased a portion of Schedule 'C' property from defendant No.1 under a registered sale deed dated 03.09.2003 during the pendency of the suit proceedings. The record further discloses that defendant No.2, through whom the chain of title is traced, did not contest the suit and was placed ex parte. Defendant No.1, the immediate vendor of defendant No.4, also neither filed a written statement nor chose to contest the proceedings. It is also significant that defendant No.1 had earlier instituted a bare suit for injunction in O.S.No.8594/2002 against the plaintiffs but withdrew the same on the premise that he had already

alienated the property in favour of defendant No.4. These circumstances assume considerable relevance while examining the locus standi and the nature of rights, if any, available to defendant No.4.

53. The principles underlying Section 52 of the Transfer of Property Act, 1882, embodying the doctrine of lis pendens, are well settled. During the pendency of any suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred so as to affect the rights of any other party thereto under any decree or order which may be made therein. A transferee *pendente lite* is bound by the result of the litigation. Such a purchaser does not acquire an independent, indefeasible or superior title; rather, his rights are entirely subservient to and dependent upon the rights of his transferor and the ultimate adjudication of the dispute.

54. In the present case, defendant No.4 traces title exclusively through defendant No.1, who in turn claims under defendant No.2. As already held while answering the earlier points, defendant No.2 had, as early as in 1984, delivered possession of the property described in Ex.P-4 and Ex.P-5 as a vacant site to plaintiff No.1. The subsequent construction of a residential house by plaintiff No.1 is substantiated by consistent documentary evidence, including rental agreements, property tax receipts and electricity records. These materials clearly demonstrate that plaintiff No.1 altered the character of the property by constructing a residential house after obtaining possession.

55. Having divested herself of possession in 1984 and having acknowledged the property as a vacant site at that point of time, defendant No.2 could not have conveyed a residential house in 2002 to defendant No.1 unless she had retained possession and constructed the same, an assertion neither pleaded nor proved. If

defendant No.2 had no subsisting possession or saleable interest as on the date of execution of the sale deed dated 08.08.2002, defendant No.1 could not have acquired any valid title thereunder. Consequently, defendant No.1, having no valid or subsisting title, could not have conveyed any better or superior title to defendant No.4 under the sale deed dated 03.09.2003.

56. Further, it has already been held that defendant No.2 herself claimed only as a sub-agent under defendant No.3, whose authority to delegate was legally unsustainable under Section 190 of the Indian Contract Act, 1872. Thus, the very foundation of the title asserted by defendant Nos.1 and 4 is vitiated. When the immediate vendors, namely defendant Nos.1 and 2, have not challenged the decree for declaration and possession and have allowed the findings of the Trial Court to attain finality, a transferee *pendente lite* cannot assert a higher or independent right to reopen or unsettle those findings.

57. It is no doubt true that the plaintiffs have not established absolute title by producing a registered conveyance executed by the original owner. However, as already discussed, they have clearly established settled and long-standing possessory rights arising from delivery of possession in 1984 and subsequent construction of a residential house. Such possessory rights, though not amounting to perfect title, are legally protectable against all persons except the true owner.

58. Importantly, the challenge in the present case is not at the instance of the original owner, G. Kempaiah. The dispute is between persons claiming derivative rights through defendant No.2. If defendant No.2 had already divested herself of possession in 1984, neither she nor her successors-in-interest can, after a lapse of nearly two decades, dislodge the plaintiffs' settled possession. The possessory rights acquired by plaintiff No.1 through construction of a residential house can be questioned only

by a lawful and true owner asserting superior title, and not by persons whose own title is infirm and derivative.

59. In that view of the matter, defendant No.4, being a transferee *pendente lite* within the meaning of Section 52 of the Transfer of Property Act, 1882, stands exactly in the shoes of defendant No.1. His purchase is expressly subject to the result of the suit. He cannot assert an independent or superior right nor seek protection in derogation of the decree passed by the Trial Court. The mere fact that he was impleaded and has chosen to file an appeal does not elevate his status above that of his transferor.

60. Accordingly, this Court holds that defendant No.4 has no independent locus standi to maintain the present appeal so as to defeat the settled possessory rights established by the plaintiffs. Being a *pendente lite* purchaser bound by the doctrine of lis pendens, he is not entitled to any protection in law beyond the rights

available to his vendor. The appeal is therefore liable to be dismissed. Point No.(iii) is answered in the ***Negative***.

Finding on Point No.(iv):

61. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

Appeal is devoid of merits and accordingly, stands dismissed.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

CA
List No.: 1 Sl No.: 11