HC-KAR

NC: 2026:KHC:12386
RFA No. 405 of 2012

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

R

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

REGULAR FIRST APPEAL NO. 405 OF 2012 (DEC)

BETWEEN:

1. SMT. R DURGA
   AGED ABOUT 35 YEARS
   W/O P RANGANATH

2. SRI P RANGANATHAN
   AGED ABOUT 42 YEARS
   S/O K V PARSURAM

   BOTH ARE R/AT NO.36
   9TH 'B' MAIN ROAD
   2ND BLOCK, WEST OF CHORD ROAD
   MAHALAKSHMI PURAM
   BANGALORE 560 086.

...APPELLANTS

(BY SRI. A MADHUSUDHANA RAO., ADVOCATE)

AND:

1. SRI N L MAHESH RAO
   AGED ABOUT 51 YEARS
   S/O LATE LAKSHMAN RAO

2. SRI N L NAGENDRA RAO
   AGED ABOUT 45 YEARS
   S/O LATE LAKSHMAN RAO

   DEFENDANTS 1 AND 2 ARE
   R/AT NALLA HALLI VILLAGE
   KANAKAPURA TALUK
   BANGALORE RURAL DISTRICT-560 098.

3. SRI K N SRINIVASA MURTHY
AGED ABOUT 72 YEARS
S/O LATE SRI NANJUNDAPPA
RESIDING AT NO.13
NEAR KURUBARAHALLI CIRCLE
BASAVESHWARANAGAR POST
BANGALORE 560 086.

...RESPONDENTS

(BY SRI. K SREEDHAR., ADVOCATE FOR R1 & R2;
R3-SERVED AND UNREPRESENTED)

THIS RFA IS FILED UNDER ORDER 41 RULE 1 R/W SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 24.11.2011 PASSED IN O.S.NO.4551/2006 ON THE FILE OF THE XXII ADDL. CITY CIVIL JUDGE, BANGALORE, DISMISSING THE SUIT FOR PERMANENT INJUNCTION AND DECLARATION.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL JUDGMENT

The captioned appeal is by the unsuccessful plaintiffs directed against the judgment and decree passed in O.S.No.4551/2006, whereby the suit filed by the plaintiffs seeking permanent injunction and cancellation of registered sale dated 24.02.2003 executed by defendant No.3 in favour of defendant Nos.1 and 2 is dismissed. Plaintiffs are in appeal.

2. For the sake of brevity, the parties are referred to as per their rank before the trial Court.

3. Facts leading to the case are as under:

Plaintiffs are wife and husband. The suit schedule property admittedly belonged to defendant No.3. As per the admitted facts, defendant No.3 and his son executed registered General Power of Attorney in favour of plaintiff No.2 and simultaneously executed an agreement of sale on the very same day and an affidavit acknowledging receipt of entire sale consideration of Rs.2,17,391/- and delivery of possession. Plaintiffs have specifically pleaded that entire sale consideration was paid on 04.03.1992 and that plaintiff No.2 was put in possession in part performance. Subsequently, plaintiff No.2 acting as GPA holder of defendant No.3 executed a registered sale deed dated 20.08.2004 in favour of plaintiff No.1. Present suit is instituted alleging that defendants illegally trespassed on the suit site and attempted to put up construction on

26.05.2006. Hence, plaintiffs instituted a suit and later having noticed the alienation made by defendant No.3 in favour of defendant Nos.1 and 2, the plaintiffs by way of amendment sought cancellation of the sale deed executed by defendant No.3 in favour of defendant Nos.1 and 2.

4. Defendant No.1 filed written statement and also filed additional written statement and stoutly denied the entire claim of the plaintiffs. Defendant No.1 specifically claimed that the sale deed obtained by plaintiff No.1 from her husband/plaintiff No.2 is a sham document as no sale consideration is reflected and therefore, no saleable title and right is conveyed. Defendant No.1 has seriously disputed the genuineness of the sale deed obtained by plaintiff No.1 and it is alleged that it is a concocted document. Defendant No.1 has asserted that defendant No.3 as absolute owner has executed registered sale deed on 24.02.2003 in favour of defendant Nos.1 and 2 and therefore, the subsequent sale deed executed by plaintiff

No.2 in favour of plaintiff No.1 does not convey title and hence, sought for dismissal of the suit.

5. Based on rival claims, the trial Court formulated appropriate issues. Plaintiff No.2 examined himself as PW.1 and also examined defendant No.3 as PW.2 and also adduced documentary evidence marked as Exs.P-1 to P-19. Defendant No.1 examined himself as DW.1 and adduced documentary evidence vide Exs.D-1 to D-18.

6. Trial Court on appraisal of the material placed on record, has dismissed the suit holding inter alia that Ex.D-1 does not disclose passing of consideration and therefore, is not a GPA coupled with interest. The trial Court further held that plaintiffs did not obtain a registered sale deed within 3 years of the agreement of sale and that defendants' sale deed dated 24.02.2003 is prior in time to Ex.P-2 dated 20.08.2004 and that plaintiffs have failed to establish lawful possession.

7. Having heard the counsels on record, the following points would arise for consideration:

> *(i) Whether the trial Court was justified in holding that registered General Power of Attorney dated 04.03.1992 (Ex.P-1) executed by defendant No.3 in favour of plaintiff No.2 was not a Power of Attorney coupled with interest?*
>
> *(ii) Whether the trial Court erred in not appreciating Ex.P-1 (GPA), Ex.P-18 (agreement of sale) and Ex.P-19 (affidavit) acknowledging receipt of entire sale consideration of Rs.2,17,391/- as contemporaneous documents forming part of single composite transaction?*
>
> *(iii) Whether in the light of Sections 202, 203, 207 and 208 of the Indian Contract Act, defendant No.3 retained any subsisting saleable right in the suit schedule property so as to validly execute registered sale deed dated 24.02.2003 in favour of defendant Nos.1 and 2?*
>
> *(iv) Whether the trial Court was justified in dismissing the suit on the ground that*

defendant's sale deed was prior in point of time to the sale deed dated 20.08.2004 executed by plaintiff No.2 in favour of plaintiff No.1?

(v) Whether the finding of the trial Court that plaintiffs have failed to establish lawful possession suffers from perversity and is contrary to recitals indicated in agreement of sale evidenced at Ex.P-18 coupled with categorical admissions in chief examination by defendant No.3 admitting the execution of agreement of sale, GPA and affidavit?

(vi) Whether the trial Court erred in not declaring the sale deed dated 24.02.2003 executed by defendant No.3 in favour of defendant Nos.1 and 2 as null and void and not binding on the plaintiffs?

Finding on Point Nos.(i) and (ii):

8. Before this Court examines as to whether GPA vide Ex.P-1 is coupled with interest, it is apposite to extract the relevant contents of agreement of sale and

affidavit vide Exs.P-18 and P-19. The same reads as under:

Ex-P18

"ಸದರೀ ಕ್ರಯದ ಪೂರ್ತಾ ಮೊಬಲಗು 2,17,391-00 ಎರಡು ಲಕ್ಷದ ಹದಿನೇಳು ಸಾವಿರದ ಮೂರು ನೂರ ತೊಂಭತ್ತೊಂದು ರೂಪಾಯಿಗಳನ್ನು ಈ ದಿವಸ ಈ ಕೆಳಕಂಡ ಸಾಕ್ಷಿದಾರರ ಸಮಕ್ಷಮ ನಾನು ನಿಮ್ಮಿಂದ ನಗದಾಗಿ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ. ಈ ರೀತಿ ಕ್ರಯದ ಪೂರ್ತಾ ಮೊಬಲಗು ಎರಡು ಲಕ್ಷದ ಹದಿನೇಳು ಸಾವಿರದ ಮೂರು ನೂರ ತೊಂಭತ್ತೊಂದು ರೂಪಾಯಿಗಳು ನಿಮ್ಮಿಂದ ನನಗೆ ಸಂದಾಯವಾಗಿರುತ್ತೆಯಾಗಿ, ಇನ್ನು ಮುಂದೆ ಅನುಸೂಚಿ ಸ್ವತ್ತಿನ ಕ್ರಯಕ್ಕಾಗಿ ನಿಮ್ಮಿಂದ ನನಗೆ ಇನ್ನೇನು ಬಾಕಿ ಬರಬೇಕಾಗಿರುವುದಿಲ್ಲ.

ಅನುಸೂಚಿ ಸ್ವತ್ತನ್ನು ಈ ದಿವಸ ನಾನು ನಿಮ್ಮ ಸ್ವಾಧೀನಕ್ಕೆ ಬಿಟ್ಟುಕೊಟ್ಟಿರುತ್ತೇನೆ. ಮತ್ತು ಈ ಸ್ವತ್ತಿನ ಮೇಲೆ ನನಗಿರತಕ್ಕ ವಿಶಿಷ್ಟ ಹಕ್ಕುಭಾದ್ಯತೆಗಳನ್ನು ಮತ್ತು ಮಾಲೀಕತ್ವವನ್ನು ಸಹ ಈ ಮಾಲಕ ನಾನು ನಿಮಗೆ ವಹಿಸಿಕೊಟ್ಟಿರುತ್ತೇನೆ.

ಇನ್ನು ಮುಂದೆ ಅನುಸೂಚಿ ಸ್ವತ್ತಿನ ಮೇಲೆ ನನಗಾಗಲಿ, ನನ್ನ ಇತರೇ ವಾರಸ್ಸು ದಾರರಿಗೇ ಆಗಲಿ ವಂತು ನನ್ನ ಉತ್ತರ ವಾರಸ್ಸು ದಾರರಿಗೇ ಆಗಲಿ ಲೇಶಮಾತ್ರವು ಹಕ್ಕು ಭಾದ್ಯತೆಗಳು ಮತ್ತು, ಸಂಭಂದಗಳು ಯಾವುದ ಇರುವುದಿಲ್ಲ."

Ex-P19

"ನಾನು ನನ್ನ ಬಾಬ್ತು ನನ್ನ ಸಂಪೂರ್ಣ ಹಕ್ಕುಭಾದ್ಯತೆಗಳಿಗೆ ಮತ್ತು ಮಾಲೀಕತ್ವಕ್ಕೆ ಒಳಪಟ್ಟಿರುವ, ನನಗೆ ಸ್ವಯಾರ್ಜಿತವಾದ, ತಹಲೆವರೆಗೆ ಯಾವುದೇ ವಿಧವಾದ ಪರಭಾರೆಗಳಿಗೆ ಮತ್ತು, ತಂಟೆ ತಕರಾರುಗಳಿಗೆ ಒಳಪಡದ, ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲೂಕು, ಯಶವಂತಪುರದ ಹೋಬಳಿ, ಲಗ್ಗೆರೆ ಗ್ರಾಮದ ಸರ್ವೆ 18 ಹದಿನೆಂಟನೇ ನಂಬರು ಪೈಕಿ ನನ್ನ ಬಾಬ್ತು 1 ಎಕರೆ 29 ಗುಂಟೆ ಜಮೀನಿನಲ್ಲಿ ನಾನು ಪ್ಲಾನು ಪ್ರಕಾರ ವಿಂಗಡಿಸಿರುವ ನಿವೇಶನಗಳ ಪೈಕಿ 34 ಮತ್ತು 35, ಮೂವತ್ತನಾಲ್ಕು ಮತ್ತು ಮೂವತ್ತೈದನೇ ನಂಬರುಗಳನ್ನೊಳಗೊಂಡ ಪೂರ್ವ ಪಶ್ಚಿಮ ಉತ್ತರದ ಕಡೆ 44-0 ಅಡಿಗಳು. ದಕ್ಷಿಣದ ಕಡೆ 41-0 ಅಡಿಗಳು. ಉತ್ತರದಕ್ಷಿಣ ಪೂರ್ವದ ಕಡೆ

61-0 ಅಡಿಗಳು. ಪಶ್ಚಿಮದ ಕಡೆ 79-0 ಅಡಿಗಳು. ಈ ರೀತಿ ಅಳತೆಯುಳ್ಳ ನಿವೇಶನ ಮತ್ತು ಇದರಲ್ಲಿರುವ 17-0 * 12-0 ಅಡಿಗಳು ಆಳತೆಯ ಆಸ್ ಬೆಸ್ಟಾಸ್ ಷೀಟಿನ ಛಾವಣಿಯ ಮನೆ ಸಹಿತವಾದ ಸ್ವತ್ತನ್ನು ಬೆಂಗಳೂರು -560 086, ಮಹಾಲಕ್ಷ್ಮಿ ಪುರ ಅಂಚೆ, ಕಾರ್ಡ್‌ರಸ್ತೆ, ಪಶ್ಚಿಮ 2ನೇ ಹಂತ, 9 ನೇ ಬಿ. ಅಡ್ಡರಸ್ತೆ, 36 ನೇ ನಂಬರು ಮನೆಯಲ್ಲಿ ವಾಸವಿರುವ ಶ್ರೀ. ಕೆ.ವಿ.ಪರುಶುರಾಮ ಮೊದಲಿಯಾರ್ ರವರ ಮಗ ಶ್ರೀ. ಪಿ. ರಂಗನಾಥನ್ ರವರಿಗೆ 2,17,391-00 ಎರಡು ಲಕ್ಷದ ಹದಿನೇಳು ಸಾವಿರದ ಮೂರು ನೂರ ತೊಂಭತ್ತೊಂದು ರೂಪಾಯಿಗಳಿಗೆ ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟು, ಸದರೀ ಕ್ರಯದ ಬಗ್ಗೆ ಪಿ. ರಂಗನಾಥನ್ ರವರ ಹೆಸರಿಗೆ ತಾರೀಖು 4-3-1992 ರಲ್ಲು ಕ್ರಯದ ಒಪ್ಪಂದದ ಕರಾರು ಮಾಡಿಕೊಟ್ಟು, ಸದರೀ ಕರಾರು ಮೂಲಕ ಕ್ರಯದ ಪೂರ್ತಾ ಮೊಬಲಗು 2,17,391-00 ಎರಡು ಲಕ್ಷದ ಹದಿನೇಳು ಸಾವಿರದ ಮೂರು ನೂರ ತೊಂಭತ್ತೋಂದು ರೂಪಾಯಿ ಗಳನ್ನು ಪಡೆದುಕೊಂಡು, ಸ್ವತ್ತನ್ನು ಸಹ ಪಿ. ರಂಗನಾಥನ್ ರವರ ಸ್ವಾಧೀನಪಡಿಸಿರುವುದು ಸರಿಯಷ್ಟೆ. ಸದರೀ ಸ್ವತ್ತಿನ ಕ್ರಯಕ್ಕಾಗಿ ಪಿ. ರಂಗನಾಥನ್ ರವರಿಂದ ನನಗೆ ಇನ್ನೇನು ಬಾಕಿ ಬರಬೇಕಾಗಿರುವುದಿಲ್ಲ."

9. On examining these extracted portions of agreement of sale dated 04.03.1992 and the affidavit sworn to on the same day acknowledging receipt of entire sale consideration and delivery of possession, this Court also deems it fit to extract the relevant portion of the GPA vide Ex.P-1 to fully understand the nature of the documents executed and the transaction, the same is extracted which reads as under:

" ಸದರೀ ಸ್ವತ್ತಿನ ಬಾಬ್ತು ಕ್ರಯ ವಗೈರೆ ವಿಶಿಷ್ಟ ವ್ಯವಹಾರಗಳನ್ನು, ಉಸ್ತುವಾರಿ, ನಿಗಾವಣೆ ವಗೈರೆ ಎಲ್ಲಾ ಕೆಲಸಕಾರ್ಯಗಳನ್ನು ಸಹ ನಾನು ಖುದ್ದು ಹಾಜರಾಗಿ ನಡೆಸಲು ನನ್ನ ಇತರೇ ಕೆಲಸಕಾರ್ಯಗಳ ಅನಿವಾರ್ಯಗಳ ನಿಮಿತ್ಯವಾಗಿ ನನಗೆ ಸಾಧ್ಯವಾಗದ ಪ್ರಯುಕ್ತ ಮೇಲ್ಕಂಡ ಶ್ರೀ ಪಿ. ರಂಗನಾಥನೆ ಆದ ನಿಮಗೆ ನನ್ನ ಪರವಾಗಿ ಈ ಕೆಳಕಂಡ ಎಲ್ಲಾ ವ್ಯವಹಾರಗಳನ್ನು ಮತ್ತು ನಡವಳಿಕೆಗಳನ್ನು ಸಹ ನಡೆಸಲು ಈ ಮಾಲಕ ಅಧಿಕಾರ ಕೊಟ್ಟಿರುತ್ತೇನೆ

1. ಸದರೀ ಸ್ವತ್ತಿನ ಬಾಬ್ತು ಕಂದಾಯ. ಲೇಔಟ್ ವಾರ್ಜ್, ಅಭಿವೃದ್ಧಿ ತೆರಿಗೆ ವಗೈರೆ ಯಾವುದೇ ವಿಧವಾದ ತೆರಿಗೆಗಳನ್ನು ಸಹ ಬಿ.ಡಿ.ಎ, ಬೆಂಗಳೂರು ಮಹಾನಗರ ಪಾಲಿಕೆ, ಗ್ರಾಮ ಪಂಚಾಯ್ತಿ, ವಗೈರೆ ಸಂಭಂದಪಟ್ಟ ಯಾವುದೇ ಕಛೇರಿಗಳಿಗೆ ಸಹ ಪಾವತಿಮಾಡಿ, ಕ್ರಮವಾದ ರಸೀದಿಗಳನ್ನು ಪಡೆಯುವುದಕ್ಕು,"

10. On examining the above extracted portions, this Court is of the view that the Power of Attorney is clearly coupled with interest and these three contemporaneous documents clearly satisfy the requisite ingredients of Section 202 of the Indian Contract Act. Section 202 expressly provides that where the agent has himself an interest in the property, which forms subject matter of agency, the agency cannot, in absence of express contract, be terminated to the prejudice of such interest. The expression 'interest' in Section 202 has consistently

been interpreted to mean a present, proprietary or beneficial interest in the subject matter of the agency and not a mere expectation of remuneration.

11. Before this Court proceeds further, this Court deems it fit to extract the relevant portion of the chief examination of defendant No.3 who is the owner and the principal of plaintiff No.2. The same is extracted, which reads as under:

> *"3. The signatures now shown to me on Ex.P-18 are my signatures. They are marked as Ex.P-18(b) to P-18(e) and Ex.P-19(b) and (c). If suggested that on 4.3.1992. I had executed a registered General Power of Attorney in favour of plaintiff No.2 Ranganathan and had also executed an affidavit and agreement of sale, I say I had executed the said registered power of attorney in favour of him but I do not remember to have executed agreement of sale and affidavit. Witness further volunteers I had not received the consideration from him. If suggested that in my affidavit. It is stated that I had received Rs.2,17,391/ and I had received the entire consideration amount. I say Ranganathan had promised to pay me but he did not pay later. If suggested that in the agreement of sale there is a recital that I had received the said amount from Ranganathan and*

> *delivered him possession of property mentioned therein. I say, I had not received the amount and I had not delivered possession. I have not issued any legal notice to Ranganathan demanding him to pay the consideration amount shown in the said agreement of sale and affidavit. I have not cancelled the said registered power of attorney dated 4.3.1992 executed in favour of Ranganathan by me by issuing a legal notice to him or otherwise."*

12. On perusal of agreement of sale evidenced at Ex.P-18 and affidavit at Ex.P-19, conjointly with the statement on oath made by defendant No.3, defendant No.3 has clearly executed an agreement for sale which is admitted. He has further admitted in unequivocal terms the payment of entire sale consideration and delivery of possession to plaintiff No.2. If a General Power of Attorney is executed contemporaneously with an agreement of sale and an affidavit, acknowledging the receipt of entire sale consideration and the evidence discloses that full consideration was in fact paid on the very same day, the legal character of such a transaction cannot be reduced to a mere agency simpliciter. In such circumstances, the

authority granted to the GPA holder is one coupled with interest within the meaning of Section 202 of Indian Contract Act.

13. Section 202 expressly provides that where the agent has himself an interest in the property, forming the subject matter of agency, agency cannot, in the absence of express contract, be terminated to prejudice of such interest. Once such interest is created, the principal's power to revoke is curtailed by operation of law.

14. Section 203 permits revocation of agency by the principal only before the authority has been exercised. But this provision is expressly subject to Section 202. Therefore, where agency is coupled with interest, unilateral revocation is impermissible.

15. Further under Section 207, revocation must be expressed or implied by conduct. In addition, Section 208 stipulates that termination of agency does not effect as regards third parties until it becomes known to them.

16. Therefore, if defendant No.3 had received entire sale consideration and executed the contemporaneous documents conferring authority, acknowledging payment of entire sale consideration, he ceased to retain unfettered saleable title in the property. His residual title stood burdened by the purchaser's enforcement interest. Therefore, any subsequent sale by defendant No.3 in favour of third parties would be in derogation of the agent's protected proprietary interest and would not confer a better title than what he himself retained.

17. In law, a principal cannot convey a higher right than what subsists in him at the time of transfer and once Section 202 is attracted, the principal's right to deal with the property becomes subordinate to the interest created in favour of its GPA holder.

18. Therefore, in the present case Ex.P-1 (GPA), Ex.P-18 (agreement of sale) and Ex.P-19 (affidavit), which are all executed on the same day records agreement to

sell the suit property for a specific consideration. These documents are not independent or unrelated. They are interlinked and mutually re-enforcing. The GPA was clearly executed to facilitate and secure the rights created under the agreement of sale and to enable the purchaser to perfect title when circumstances permitted. The affidavit evidences completion of financial obligation and delivery of possession thereby creating an enforceable equitable interest. Therefore, despite alienation by defendant No.3 contrary to the authorization under GPA which is coupled with interest, no title is conveyed in favour of defendant Nos.1 and 2 at the instance of defendant No.3. Therefore, Point No.(i) is answered in the ***Negative*** and point No.(ii) is answered in the ***Affirmative***.

Findings on Point Nos.(iii) and (iv):

19. Once it is held that the registered GPA dated 04.03.1992 (Ex.P-1), read along with the Agreement of Sale (Ex.P-18) and the Affidavit acknowledging receipt of

entire sale consideration (Ex.P-19), constitutes an agency coupled with interest, the legal consequences flowing therefrom are governed by Sections 202, 203, 207 and 208 of the Indian Contract Act, 1872.

20. Under Section 202, where the agent has himself an interest in the property forming the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. In the present case, the entire sale consideration having been paid on 04.03.1992 and possession having been delivered, plaintiff No.2 acquired a proprietary and beneficial interest in the suit schedule property. The authority conferred under Ex.P-1 was intended to secure and effectuate that interest. Therefore, defendant No.3's dominion over the property stood legally curtailed to the extent of the interest created in favour of plaintiff No.2.

21. Section 203 permits revocation of agency by the principal "save as is otherwise provided by the last

preceding section.” Thus, the right of revocation under Section 203 is expressly made subject to Section 202. In a case where the agency is coupled with interest, the principal has no authority in law to revoke the agency so as to defeat the agent’s accrued proprietary interest. Any act inconsistent with the subsisting agency, such as executing a subsequent sale deed, would amount to an implied revocation. However, such implied revocation is legally impermissible if it prejudices the agent’s protected interest.

22. Further, Section 207 provides that revocation may be express or implied by conduct. Even assuming that the execution of the sale deed dated 24.02.2003 in favour of defendant Nos.1 and 2 amounts to an implied revocation, such revocation cannot operate in derogation of Section 202. The statutory protection under Section 202 overrides the general power of revocation contemplated under Sections 203 and 207.

23. Additionally, under Section 208, termination of agency does not take effect, as regards the agent, before it becomes known to him. There is no evidence on record to show that any lawful revocation, consistent with Section 202, was ever communicated to plaintiff No.2. In fact, when the agency itself was irrevocable by virtue of the agent's vested interest, no such revocation could legally operate.

24. In this legal background, defendant No.3 did not retain an absolute and unfettered saleable right as on 24.02.2003. His title stood burdened by the subsisting proprietary interest of plaintiff No.2 arising from payment of full consideration and delivery of possession in 1992. The principle is well settled that a vendor cannot convey a better title than what he himself possesses. Since defendant No.3's right to deal with the property was already subject to the protected interest under Section 202, the subsequent sale in favour of defendant Nos.1 and 2 could not extinguish or override that prior interest.

25. The Trial Court further committed an error in dismissing the suit solely on the ground that the defendants' sale deed dated 24.02.2003 was prior in point of time to the sale deed dated 20.08.2004 executed by plaintiff No.2 in favour of plaintiff No.1. This reasoning overlooks the crucial legal position that the rights of the parties crystallized on 04.03.1992, when the agreement of sale was executed, entire consideration was paid, possession was delivered, and the irrevocable agency came into existence. The sale deed dated 20.08.2004 was merely a formal conveyance executed in exercise of the pre-existing authority and to perfect the already accrued rights. The relevant date for determining priority is not the date of the formal sale deed executed by the GPA holder, but the date on which the equitable and statutory interest came into existence.

26. Thus, the Trial Court's emphasis on chronological priority between the two registered sale deeds is legally misplaced. Priority must be determined

with reference to the creation of substantive rights, not the date of formal documentation alone. Since the plaintiffs' interest originated in 1992 and was protected under Section 202, the subsequent sale deed of 2003 could not defeat it merely because it was registered earlier than the formal conveyance of 2004.

27. Accordingly, defendant No.3 did not retain any subsisting saleable right on 24.02.2003 free from the encumbrance of the plaintiffs' protected interest, and the Trial Court was not justified in dismissing the suit on the ground of prior registration of the defendants’ sale deed. Accordingly, point Nos.(iii) and (iv) are answered in ***Negative***.

Finding on Point No.(v):

28. The finding of the Trial Court on possession is manifestly erroneous, contrary to documentary evidence on record and suffers from perversity in appreciation of material evidence.

29. At the outset, Ex.P-18 (Agreement of Sale dated 04.03.1992) expressly records that possession of the suit schedule property was delivered to plaintiff No.2 upon receipt of the entire sale consideration. This recital is not a vague or formal statement; it is a specific acknowledgment forming part of a concluded transaction. The evidentiary value of such recital is further fortified by Ex.P-19, the sworn affidavit executed by defendant No.3 on the very same day, wherein he categorically affirms: execution of agreement of sale, receipt of entire sale consideration, delivery of possession to plaintiff No.2.

30. Ex.P-19 thus constitutes a clear admission within the meaning of Sections 17 and 21 of the Indian Evidence Act. An admission made by a party against his own proprietary interest carries significant evidentiary weight and shifts the burden onto the opposite side to dislodge it.

31. More importantly, defendant No.3, while deposing, has admitted in his chief-examination the execution of the Agreement of Sale, GPA and Affidavit. Once execution is admitted, the recitals therein cannot be lightly discarded. The Trial Court has failed to appreciate that admitted documents do not require further proof, and the contents therein operate against the executant unless specifically disproved.

32. The Trial Court's approach of ignoring the express recital of delivery of possession in Ex.P-18 and Ex.P-19 amounts to misreading of evidence. When a document contemporaneously acknowledges delivery of possession and such execution is admitted by the vendor himself, the finding that plaintiffs have failed to establish possession is clearly unsustainable.

33. Further, the legal position emerging from the earlier discussion on Section 202 of the Indian Contract Act, 1872, strengthens the plaintiffs' case on possession.

Once entire consideration was paid, possession was delivered and GPA was executed contemporaneously, the agency was coupled with interest, plaintiff No.2's possession was not casual or permissive; it was juridical possession in part performance of a concluded transaction. The GPA empowered plaintiff No.2 to execute the sale deed, and the authority being coupled with interest was irrevocable. Defendant No.3 never sought revocation nor initiated any proceedings to recover possession for more than a decade. Such long acquiescence reinforces the plaintiffs' case of possession.

34. The defendants rely upon subsequent khata mutation, payment of betterment charges and sanction of building plan. However, it is well settled that revenue entries are fiscal in nature. Mutation entries neither create nor extinguish title; they are maintained primarily for assessment and collection of property tax. Payment of betterment charges or obtaining a building plan does not

ipso facto establish lawful possession if the underlying title itself is defective.

35. When defendant No.3 had already divested himself of beneficial interest in 1992 upon receipt of entire sale consideration and delivery of possession, he had no subsisting transferable interest in 2003. Consequently, defendant Nos.1 and 2 could not derive better title or better possessory rights than their vendor. The principle nemo dat quod non habet squarely applies, one cannot convey what one does not possess.

36. The Trial Court has placed undue reliance on subsequent municipal entries while ignoring primary documentary evidence and admitted recitals evidencing delivery of possession in 1992. Such selective appreciation of evidence renders the finding perverse.

37. Therefore, the conclusion of the Trial Court that the plaintiffs failed to establish lawful possession is contrary to the express recitals in Ex.P-18, the sworn

acknowledgment in Ex.P-19, the admissions of defendant No.3, the legal protection under Section 202 of the Contract Act, the settled principle that revenue entries do not confer title. Accordingly, the finding on possession is liable to be set aside as being contrary to evidence and unsustainable in law. Accordingly, point No.(v) is answered in ***Affirmative***.

Finding on Point No.(vi):

38. The Trial Court has committed a substantial error both on facts and in law in refusing to declare the sale deed dated 24.02.2003 (Ex.D-4) executed by defendant No.3 in favour of defendant Nos.1 and 2 as null and void and not binding on the plaintiffs. The material on record clearly establishes that on 04.03.1992, defendant No.3 executed a registered General Power of Attorney in favour of plaintiff No.2 (Ex.P-1), simultaneously entered into an Agreement of Sale (Ex.P-18), and also executed an Affidavit (Ex.P-19) acknowledging receipt of the entire sale

consideration and delivery of possession to plaintiff No.2. These contemporaneous documents form a single composite transaction through which plaintiff No.2 acquired a vested proprietary and beneficial interest in the suit schedule property.

39. In view of Section 202 of the Indian Contract Act, 1872, such an agency is one coupled with interest and is therefore irrevocable to the extent necessary to protect the agent's interest. Consequently, defendant No.3's title stood burdened and restricted, and he did not retain an absolute and unencumbered right to deal with the property thereafter. The execution of the subsequent sale deed dated 24.02.2003 in favour of defendant Nos.1 and 2 was therefore legally incompetent as it amounted to an attempt to defeat an agency coupled with interest. Under Section 203 of the Act, revocation of agency is permissible only subject to Section 202, and under Section 207 revocation may be express or implied but cannot prejudice the agent's vested interest; further, under Section 208

termination of agency does not take effect unless communicated, and no lawful revocation consistent with these provisions has been established. In such circumstances, defendant No.3 could not have conveyed a better title than what subsisted in him as on 24.02.2003. Since he had already divested himself of beneficial interest upon receipt of full consideration and delivery of possession in 1992, the subsequent sale deed in favour of defendant Nos.1 and 2 was executed in derogation of the plaintiffs' protected rights. The reliance placed by the defendants on mutation entries, betterment charges or municipal sanctions does not validate the transaction, as revenue records are merely fiscal in nature and do not confer title.

40. The Trial Court further erred in placing undue emphasis on the fact that the defendants' sale deed preceded the sale deed executed by the GPA holder in 2004, overlooking that the plaintiffs' rights had crystallized as early as 04.03.1992 upon payment of full consideration

and delivery of possession, and the sale deed of 20.08.2004 was merely a formal conveyance in exercise of pre-existing authority. Therefore, the sale deed dated 24.02.2003, having been executed by a person who had no subsisting transferable interest free from the plaintiffs' protected rights, is not binding on the plaintiffs, and the contrary finding of the Trial Court is liable to be set aside. Accordingly, Point No.(vi) is answered in the ***Affirmative***.

CONCLUSIONS AND REASONS FOR REVERSAL:

41. Upon re-appreciation of the entire oral and documentary evidence on record, this Court is of the considered view that the judgment and decree of the Trial Court cannot be sustained either on facts or in law. The Trial Court has failed to properly appreciate the nature of the transaction evidenced by Ex.P-1, Ex.P-18 and Ex.P-19. These three documents, admittedly executed on 04.03.1992, constitute a single composite transaction. Ex.P-18 evidences the agreement of sale; Ex.P-19

contains a categorical acknowledgment by defendant No.3 of receipt of the entire sale consideration and delivery of possession; and Ex.P-1 confers authority upon plaintiff No.2 to deal with the property. When read conjointly, these documents clearly establish that plaintiff No.2 had acquired a proprietary and beneficial interest in the suit schedule property. The Trial Court gravely erred in isolating Ex.P-1 and concluding that it was not a Power of Attorney coupled with interest. In light of Section 202 of the Indian Contract Act, 1872, once an agent acquires an interest in the subject matter of the agency, such agency becomes irrevocable to the extent necessary to protect that interest. The admitted execution of these documents by defendant No.3 further strengthens the plaintiffs' case. The contrary finding of the Trial Court is therefore unsustainable.

42. The Trial Court also erred in holding that defendant No.3 retained a valid saleable right so as to execute the sale deed dated 24.02.2003 in favour of

defendant Nos.1 and 2. Sections 203 and 207 of the Indian Contract Act make the principal's power of revocation subject to Section 202. Once the agency is coupled with interest, it cannot be revoked to the prejudice of the agent. Any subsequent alienation inconsistent with such agency amounts to an impermissible attempt at revocation. Moreover, under Section 208, termination of agency does not take effect unless communicated, and in the present case no lawful revocation consistent with Section 202 has been established. As on 24.02.2003, defendant No.3's title stood burdened by the vested interest created in favour of plaintiff No.2 in 1992. It is a settled principle that a transferor cannot convey better title than what he himself possesses. Consequently, the sale deed in favour of defendant Nos.1 and 2 was executed in derogation of the plaintiffs' protected rights and cannot defeat them.

43. The Trial Court's reasoning that the defendants' sale deed was prior in point of time to the sale deed

executed by plaintiff No.2 in favour of plaintiff No.1 in 2004 is legally misconceived. The rights of the plaintiffs crystallized on 04.03.1992 itself, upon payment of full consideration and delivery of possession. The sale deed of 20.08.2004 was merely a formal act in exercise of pre-existing authority. Priority of rights must be determined with reference to the date of creation of substantive interest and not merely on the basis of chronological registration of documents. The Trial Court's emphasis on the date of execution of the subsequent sale deeds has led to a misdirection in law.

44. The finding of the Trial Court that the plaintiffs failed to establish lawful possession is equally perverse. Ex.P-18 and Ex.P-19 categorically record delivery of possession. Defendant No.3 has admitted execution of the agreement of sale, GPA and affidavit. Such admissions constitute substantive evidence and cannot be brushed aside. The long silence of defendant No.3 and absence of any attempt at revocation or recovery of possession

further corroborate the plaintiffs' possession. The reliance placed by the defendants on mutation entries, payment of betterment charges and sanction of building plan is misplaced, as revenue entries are fiscal in nature and do not confer or extinguish title. When defendant No.3 himself had no transferable interest in 2003 free from the plaintiffs' vested rights, defendant Nos.1 and 2 could not derive better possessory rights than their vendor.

45. Finally, the Trial Court erred in not declaring the sale deed dated 24.02.2003 as null and void and not binding on the plaintiffs. The sale was executed by a person whose authority stood restricted under Section 202 of the Indian Contract Act. The transaction was in clear derogation of an agency coupled with interest. The Trial Court failed to apply the correct statutory provisions and ignored material admissions and documentary evidence on record. The impugned judgment thus suffers from misapplication of law, misreading of evidence and erroneous conclusions on material issues, warranting

interference in appeal and reversal of the decree of dismissal.

46. In view of the foregoing discussion and findings recorded on the points for consideration, this Court proceeds to pass the following:

ORDER

(i) The appeal is ***allowed***;

(ii) The judgment and decree dated 24.11.2011 passed in O.S.No.4551/2006 on the file of the XXII Additional City Civil Judge, Bangalore are set aside. Consequently, the suit filed by the plaintiffs is decreed with costs;

(iii) It is declared that the registered sale deed dated 24.02.2003 executed by defendant No.3 in favour of defendant Nos.1 and 2 in respect of the suit schedule property is null and void and not binding on the plaintiffs;

(iv) The defendants, their agents, servants or anybody claiming under them are hereby permanently restrained from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs;

(v) Draw decree accordingly.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

CA
List No.: 1 Sl No.: 12