

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

REGULAR FIRST APPEAL NO.1578 OF 2024 (SP)

BETWEEN:

SRI. B.S. NAGENDRA
S/O LATE B. SHESHAGIRI RAO
AGED ABOUT 58 YEARS
HAVING HIS OFFICE AT:
161/2, 2ND FLOOR
UNION BANK OF INDIA BUILDING
11TH CROSS
MALLESHWARAM
BENGALURU-560 003

...APPELLANT

(BY SHRI. D.R. RAVISHANKAR, SENIOR ADVOCATE FOR
SHRI. ANILKUMAR S., ADVOCATE FOR
SHRI. DALWAI VENKATESH, ADVOCATE)

AND:

- 1 . MR. Y.S. SURESH
S/O SHINGEGOWDA
AGED ABOUT 59 YEARS
RESIDING AT NARAYANA POULTRY FARM
YELWALA
MYSURU-571 130
- 2 . MR. Y.S. SATYANARAYANA
AGED ABOUT 56 YEARS
S/O SHINGEGOWDA
RESIDING AT SATYA POULTRY FARM

YELWALA, MYSURU-571 130

- 3 . SMT. T. NALINI
AGED ABOUT 51 YEARS
W/O MR. Y.S. SATYANARAYANA
RESIDING AT SATYA POULTRY FARM
YELWALA, MYSURU-571 130
- 4 . M/S. MYSORE URBAN DEVELOPMENT AUTHORITY
8J4V+V8V, JHANSI RANI LAKSHMI BAI ROAD
CHAMARAJAPURA, CHAMARAJAPURAM MOHALLA
LAKSHMIPURAM, MYSURU
KARNATAKA-570 005
REPRESENTED BY ITS COMMISSIONER

...RESPONDENTS

(By SRI. JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR
SRI. NAGARAJULU NAIDU G., ADVOCATE FOR C/R1 TO R3)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, 1908,
AGAINST THE ORDER DATED 03.06.2024 PASSED ON I.A.No.4 IN
O.S.No.919/2023 ON THE FILE OF THE VII ADDITIONAL SENIOR
CIVIL JUDGE AND JMFC, MYSURU, ALLOWING I.A.No.4 FILED
UNDER ORDER 7 RULE 11(a) AND (d) R/W SEC.151 OF CPC FOR
REJECTION OF PLAINT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 17.02.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN
J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This appeal is preferred against judgment and decree dated 03.06.2024 passed in O.S.No.919/2023 by the VII Additional Senior Civil Judge and JMFC., Mysuru ('trial Court' for short), wherein, the trial Court has rejected the plaint.

2. We have heard Shri. D.R. Ravishankar, learned senior counsel as instructed by Shri. Anilkumar S, learned advocate appearing for the appellant as well as Shri. Jayakumar S Patil, learned senior counsel as instructed by Shri. Nagarajulu Naidu, learned advocate appearing for caveator/respondents No.1 to 3.

3. For the sake of convenience the parties are referred to as per the ranking before the trial Court.

4. The learned senior counsel appearing for the appellant would contend that the plaint has been rejected relying on the averments in the documents of the defendants, which is impermissible in law. It is submitted that the plaintiff is a developer involved in development of

properties in and around the City of Mysore. M/s. Karnataka Telecom Department Employees Co-Operative Society Limited ('Society' for short) had executed an agreement dated 29.03.2006 in favour of the plaintiff with a mandate to acquire lands and to develop them into a Township for the members of the Society. Thereafter, several agreements dated 10.11.2006, 23.05.2008 and 26.10.2019 were executed between the Society and the plaintiff. It is contended that the Karnataka Industrial Areas Development Board (KIADB) proposed acquisition of some of the properties which were purchased by the plaintiff. Therefore, the plaintiff identified further properties as evidenced by document No.5 series. Thereafter, a Development Agreement was executed on 27.08.2007 by defendants No.1 to 3 in favour of the plaintiff and a General Power of Attorney was also executed on the same day by defendants No.1 and 2 in favour of the plaintiff.

5. It is submitted that an amount of ₹10,00,005/- was paid by the plaintiff by way of Cheque bearing No.157597 dated 27.08.2007 and another Cheque bearing

No.157600 dated 27.08.2007 for a sum of ₹10,00,000/- was also handed over to defendant No.2, who encashed the said cheques. It is contended that an earlier suit, that is, O.S.No.446/2011 was filed seeking a declaration that the General Power of Attorney executed by defendants No.1 and 2 in favour of the plaintiff is subsisting and permanent injunction restraining the defendants, their agents, servants, assigns or any person acting or claiming on their behalf from interfering with the peaceful possession and enjoyment and developmental works of the schedule property. It is submitted that the said suit was dismissed by Order dated 11.09.2015 on the file of Additional II Civil Judge at Mysore. It is submitted that an appeal was filed as R.A.No.550/2016 before the IV Additional District Judge, Mysore, which was also dismissed by Judgment dated 13.10.2017. RSA No.2313/2017 was filed before this Court, which was also dismissed on 18.02.2020. An SLP was taken against the said judgment as SLP(C) No.11772/2020, which also stood dismissed on 05.02.2021. It is thereafter that the present suit was filed.

6. All these facts were clearly stated in the plaint filed by the plaintiff. However, the plaintiff contends that the prayers in the present suit and the suit which was dismissed were separate and distinct inasmuch as the present suit was filed specifically seeking enforcement of the Development Agreement, while the earlier suit was specifically with regard to the General Power of Attorney. It is further contended that the question whether the dismissal of the earlier suit constitutes *res judicata* in respect of the present suit is a pure question of fact which has to be decided after taking evidence. It is contended that the rejection of the plaint on the ground that an earlier suit for a different relief had been rejected was completely unwarranted.

7. The learned senior counsel appearing for the appellant would place reliance on the following judgments:-

- ***Keshav Sood v. Kirti Pradeep Sood and Others***, by Order ***dated 12.09.2023*** passed in ***Civil Appeal No.5841 of 2023***;
- ***Pandurangan v. T. Jayarama Chettiar and Another*** reported in ***2025 SCC OnLine SC 1425***;

- ***V. Rajeshwari (Smt) v. T.C. Saravanabava*** reported in ***(2004) 1 SCC 551***;
- ***Sathyanath and Another v. Sarojamani*** reported in ***(2022) 7 SCC 644***, and
- ***Srihari Hanumandas Totala v. Hemant Vithal Kamat and Others*** reported in ***(2021) 9 SCC 99***.

8. The learned senior counsel appearing for respondents No.1 to 3, on the other hand, contends that the entire facts which have been relied on by the trial Court to reject the plaint were matters, which were specifically pleaded by the plaintiff himself in the plaint. It is submitted that the entire documents were produced along with the plaint and it was on the basis of the said documents that the trial Court came to the clear conclusion that the plaintiff had absolutely no cause of action to maintain a second suit on the questions of facts and law which had already been adjudicated and decided in the earlier proceedings.

9. The learned senior counsel appearing for respondents No.1 to 3 would place reliance on the judgment in the case of ***Sri. B.S. Nagendra v. Sri. Y.S. Suresh and***

Others by Order **dated 18.02.2020** passed in **R.S.A. No.2313 of 2017.**

10. We have considered the contentions advanced.

The prayer in the present suit is as follows:-

- "a. *Pass a judgment and decree Declaring that Declaration of Deed of Cancellation of the Development Agreement dated 27.08.2007 dated 10.07.2020 registered as Document No.MYW-1-02241-2020-21 stored in CD No.MYND 490 registered on 13.07.2022 is illegal, null and void and not binding on the Plaintiff.*
- b. *Pass a judgment and decree directing the Defendants to specifically perform their obligations under the registered Development Agreement dated 27.08.2007 bearing Document No.MYN-1-08818-2007-08 stored in CD No.MYND 150 coupled with the registered General Power of Attorney dated 27.08.2007 bearing Document No.MYN-4-00680-2007-08 stored in CD No.MYND 150;*
- c. *Pass a judgment and decree Declaring that Deed of Relinquishment dated 13.09.2022 registered on 14.09.2022 stored in Book I, bearing Document No. MDA-1-01128-2022-23 stored in CD No. MDAD904 executed by Defendant No. 2 is illegal, null and void and not binding on the Plaintiff;*
- d. *Pass a judgment and decree awarding cost of the Suit and damages to the Plaintiffs by the Defendant.*

- e. *Grant such other relief or reliefs as this Hon'ble Court deems fit to grant in the facts and circumstances of the case and in favour of the Plaintiff, in the interest of justice and equity.*

11. The pleadings and the documents in the suit have been placed on record by the parties. We notice that the Development Agreement is dated 27.08.2007. Clause 27 of the Development Agreement specifically provides as follows:-

"27. COMPLETION:

27.1 That, the DEVELOPER agrees to complete the development of the schedule property within 18 calendar months from the date of this Agreement and in case of any unforeseen circumstances i.e., force majeure, the above said period shall be extended upto 36 (thirty six) calendar months period. The time is the essence of this Contract. At the completion of the aforesaid period, this Agreement shall stand Cancelled and the OWNER shall be free to transact with the schedule property in any manner the OWNER may choose. However if there are any government restrictions prohibition and orders effecting the development process, this agreement shall be retained upto one year deed date."

(emphasis supplied)

12. On the same day, a General Power of Attorney is also executed by defendants No.1 and 2 in favour of the plaintiff. In the plaint at paragraph No.11, the plaintiff specifically states as follows:-

"11. x x x x x As the said Development Agreement and General Power of Attorney have been executed on the same day, i.e., 27.08.2007 they ought to be read together. Furthermore, both the said Development Agreement and General Power of Attorney constitute one agreement."

13. The clauses of Development Agreement are referred to in the plaint. At paragraph No.22 of the plaint, it is specifically stated that on 20.08.2011, the defendants interfered with the development works of the plaintiff, thereby obstructing the plaintiff from developing the schedule properties in terms of the Development Agreement and the plaintiff filed O.S.No.446/2011, before the Additional II Civil Judge, Mysuru, seeking the following reliefs:-

- "(a) for a declaration of the General Power of Attorney executed by the Defendants in favour of the Plaintiff is subsisting and to act on the Power of Attorney.*
- (b) for a permanent injunction restraining the defendants their agents, servants, assigns or any*

other person acting or claiming on their behalf from interfering with the peaceful possession and enjoyment and developmental works of the Schedule Property, mention in the Schedule hereunder;

(c) *for costs and such other relief/s as this Hon'ble Court might deem meet."*

14. The plaint, the written statement and the judgments in the suit, the Regular Appeal, the Regular Second Appeal as well as the SLP are produced as documents No.12 to 17. It is thereafter contended in paragraph No.27 of the plaint as follows:-

"27. It is pertinent to mention that, the suit bearing O.S.No.446/2011 was for a declaration that the GPA is subsisting on its own and independent of the Development Agreement dated 27.08.2007. However, the Courts have held that the GPA is not surviving on its own but along with the Development Agreement dated 27.08.2007. Furthermore, there has not been trial ascertaining the rights of the parties under the Development Agreement dated 27.08.2007. Hence the present suit is maintainable and the previous litigations have no bearing to the facts and circumstances of the present suit."

15. An application under Order VII Rule 11(a) and (d) read with Section 151 of the Code of Civil Procedure was filed by defendants No.1 to 3. Defendants No.1 to 3 specifically pointed out that the learned Single Judge of this Court in RSA No.2313/2017, had specifically noticed that the General Power of Attorney as well as the Development Agreement stood cancelled and that there was no requirement for the defendants to take any steps to cancel the Development Agreement in view of Clause 27.1 of the Development Agreement.

16. It is submitted that the entire matter having reached finality till the Apex Court, the suit with a slightly different prayer was only the result of clever drafting and an abuse of process of Court. The trial Court found that once the entire question of enforcement of the rights and liabilities under the Development Agreement and the General Power of Attorney, which, according to the plaintiff, were two parts of the same transaction, had been conclusively adjudicated as between the parties, a second suit between the same parties on the same subject matter

cannot be entertained. It was specifically found that though the prayers in the two suits were for enforcement of the General Power of Attorney as well as the Development Agreement respectively, since the question of enforceability of the Development Agreement had been specifically found in the earlier round of litigation, no cause of action survived for the plaintiff to have filed a separate suit for enforcement of the terms of Development Agreement. It was found that the question of enforceability of the Development Agreement had also been considered and conclusively found against in the earlier suit and that in the nature of the pleadings in the plaint, it was clear that there was no further cause of action for maintaining a second suit.

17. From a perusal of the judgment in O.S.No.446/2011, the Court specifically found that there was no right or charge created over the schedule property under the contract and that the plaintiff is not entitled to permanent injunction against the defendants, who are the true owners of the schedule property. It is pertinent to note that the contract referred to is the Development Agreement

dated 27.08.2007. In R.A.No.550/2016, the provisions of the Development Agreement dated 27.08.2007 were considered and the evidence re-appreciated and it was found that the plaintiff had admitted that the Development Agreement had a specific clause, that after the expiry of four years the agreement would stand cancelled automatically and no overt-act is required on the part of the defendants to cancel the contract. In the RSA as well, the specific provisions of the Development Agreement were extracted and considered by this Court and the following substantial question of law was framed:-

"Whether an irrevocable Power of Attorney which is said to be co-extensive with the joint development of the property, if supported by valuable consideration and coupled with interest for consideration and possession could be cancelled unilaterally under Section 202 of the Indian Contract Act?"

Answering the said substantial question of law, this Court specifically held as follows:-

"12. Clause 29.1 contemplates that the owner would be free to transact with the schedule property in the manner he may choose fit after the deemed cancellation. I therefore held that the power of attorney would subsist only during the subsistence of Joint

Development Agreement. In other words, the General Power of Attorney would not survive beyond the tenure of the Joint Development Agreement. There is no question of either Joint Development Agreement or the General Power of Attorney being cancelled unilaterally or separately by any other act of the defendant (owner).

13. In other words, the defendants need not have taken any steps to cancel the Joint Development Agreement or General Power of Attorney in view of Clause 27.1 of the Joint Development Agreement. Therefore the question of law is answered in favour of the defendants and against the plaintiff."

This finding has reached complete finality by the rejection of the SLP by order dated 05.02.2021.

18. The learned senior counsel appearing for the appellant vehemently argues that a question of *res judicata* or maintainability, is a mixed question of fact and law and has to be decided after a full adjudication. However, in the light of the fact that the trial Court has considered the materials on record placed before it by the plaintiff and the contentions of the defendants that the present suit is an abuse of process of the Court and has come to the conclusion that there was no cause of action surviving for the plaintiff to have agitated in a second suit, we are of the

opinion that there is no merit in the contentions raised by the appellant herein. Even if all the contentions of the appellant are accepted, there is absolutely no purpose in relegating the parties to a full-fledged trial, where the outcome can only be a dismissal of the suit, since, the questions raised in the present suit have already been considered and have attained the finality in the earlier proceedings.

19. In the above view of the matter, the appeal fails and the same is accordingly ***dismissed***.

The parties shall bear their own costs.

All pending interlocutory applications shall stand *disposed of*.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**