

Dusane/Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.331 OF 2016

Shri. Kiran Somnath Gangurde .Appellant

V/s.

Shri. Naresh Babulal Shah .Respondent

**WITH
CIVIL APPLICATION NO.609 OF 2016
IN
SECOND APPEAL NO.331 OF 2016**

Shri. Kiran Somnath Gangurde .Applicant

V/s.

Shri. Naresh Babulal Shah .Respondent

**WITH
CIVIL APPLICATION NO.1032 OF 2017
IN
SECOND APPEAL NO.331 OF 2016**

Shri. Kiran Somnath Gangurde .Applicant

V/s.

Shri. Naresh Babulal Shah .Respondent

**WITH
CONTEMPT PETITION (ST) NO.4973 OF 2017**

Shri. Naresh Babulal Shah .Petitioner

V/s.

Shri. Kiran Somnath Gangurde .Respondent

**WITH
CIVIL APPLICATION (ST) NO.9319 OF 2017
IN
CONTEMPT PETITION (ST) NO.4973 OF 2017**

Shri. Kiran Somnath Gangurde .Applicant

In the matter between :

Shri. Naresh Babulal Shah .Petitioner

V/s.

Shri. Kiran Somnath Gangurde .Respondent

Mr. Shriram S. Kulkarni a/w Mr. Sujay Palshikar, Advocate, for the Appellant in SA/331/2016, for the Applicant in CAS/609/2016 & CAS/1032/2017, for the Respondent in CP(St)/4973/2017 and for the Applicant in CAN(St)/9319/2017 in CP(St)/4973/2017.

Mr. P. B. Shah a/w Ms. Gunjan Shah i/b K. P. Shah, Advocate, for the Petitioner in CP(St)/4973/2017 and for the Respondent in SA/331/2016.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 11 August 2023**

ORAL JUDGMENT

1. Heard Mr. Kulkarni, learned Counsel appearing for the Appellant and Mr. Shah, learned Counsel appearing for the Respondent.

2. In the present Second Appeal, challenge is to the legality and validity of the Judgment and Decree dated 19.12.2015 passed by the learned District Judge - 8, Nashik

in Civil Appeal No. 99 of 2013 as well as the Judgment and Decree dated 28.03.2013 passed by the learned 5th Jt. C. J. S. D., Nashik in Special Civil Suit No. 405 of 2011. The said suit was filed by the Respondent - Plaintiff seeking declaration that the two Sale Deeds dated 14.09.2010 executed in favour of the Appellant - Defendant be declared as null and void. It is the case of the Respondent in the said suit that land out of survey No. 905/2b, plot No. 12 admeasuring 925 sq. mtrs and plot No. 3 admeasuring 1350 sq. mtrs situated at village Musalgaon, Tal. Sinnar, Dist. Nashik is of the ownership of the Respondent and the Appellant, on the basis of forged and fabricated Power of Attorney dated 9th June 2008 allegedly executed by the Respondent in favour of the Appellant, has executed said two Sale Deeds dated 14.09.2010 in his favour. The learned Trial Court decreed the suit by recording finding that the said Power of Attorney is forged and fabricated. The learned Appellate Court dismissed the said Appeal with costs of Rs. 5,000/-.

3. Mr. Kulkarni, learned Counsel appearing for the Appellant - Defendant submitted that the substantial questions of law raised in Appeal Memo at grounds (D) to (I),

three questions of law submitted on 10th January 2023 and additional questions of law submitted on 3rd February 2023 are the substantial questions of law arising in this Second Appeal. The said substantial questions of law as raised by Mr. Kulkarni, learned Counsel appearing for the Appellant are set out hereinbelow:

- i) Whether the Courts below were justified in decreeing the Suit without properly appreciating the bharana pavati and power of attorney and addressing the effect of material admissions in that regard of plaintiff and his witness on record in its proper perspective while decreeing the Suit ?
- ii) Whether the power of attorney executed prior to the year 2013 required registration, to hold that the same can not be acted upon without registering it ?
- iii) Whether the bharana pavati authorising the defendant to execute sale deed in his favour on the basis of power of attorney already executed can validate the sale deed ?
- iv) Whether both Courts have misread and misinterpreted the documentary evidence brought

on record and more particularly the admissions given by the Respondent and his witness which categorically destroy his entire case put up by the Respondent ?

- v) It is the case of the Respondent that the Power of Attorney dated 9.6.2008 is false, fraudulent and fabricated and the Appellant has misused his signature and on the basis of the Power of Attorney has executed a false, fraudulent and fabricated Sale Deed dated 14.9.2010 in respect of the Suit properties. In view of the pleadings, the burden to prove the circumstances under which the signature of the Respondent has been misused is upon the Respondent. In that view of the matter whether in the absence of any evidence to prove the fraud or the circumstances under which the signature of the Respondent appears on the Power of Attorney, the Courts below could have recorded a finding that the Power of Attorney and the consequential Sale Deed are fabricated documents and that the Respondent had no intention to sell the Suit property to the Appellant ?

- vi) The Respondent has made a categorical admission during his cross-examination admitting his signature on the Power of Attorney dated 9.6.2008 as well as the photographs affixed thereto. Once the execution of the document has been admitted by the Respondents then whether the findings recorded by the Courts below are contrary to the record & therefore, perverse ?
- vii) Once the execution of the document i. e. the Power of Attorney is admitted by the Respondent, then in the absence of any evidence to challenge the contents therein, whether the Courts below were justified in passing the decree ?
- viii) In order to prove his case, the Respondent has examined PW-2 Mukund Ramchandra Pathak, Advocate who has identified the parties to the Power of Attorney. Said witness has deposed that he has not affixed his signature or the stamp on the Power of Attorney dated 9.6.2008, however, during his cross-examination, he has categorically admitted the signatures on the documents which clearly proves the execution of Power of Attorney.

The Courts below have not at all dealt with the admissions made by the witnesses. Therefore, whether the findings recorded by the Courts below are perverse, contrary to record and liable to be quashed and set aside ?

- ix) It is trite in law that once the execution of the document is admitted and proved, then the contents thereof have to be read as true and correct and the burden to prove contrary thereto rests upon the person disputing it. In view of the settled position of law whether the Courts erred in passing the decree ?
- x) That the Indica car sale receipt produced by the plaintiff was not exhibited by the Courts and therefore, whether the Courts are justified in relying upon it to hold that the said Power of Attorney is *prima facie* forged?

4. It is the contention of Mr. Kulkarni, learned Counsel appearing for the Appellant that the finding recorded by both the Courts that the power of attorney dated 9th June 2008 issued by the Respondent in favour of the Appellant is forged, fraudulent and fabricated, is the finding which has been

recorded contrary to the evidence on record. It is his submission that both the Courts have ignored the material facts and admissions in the cross-examinations of the Plaintiff and Shri. Mukund R. Pathak, Advocate and therefore, the findings are perverse. Mr. Kulkarni, submitted that sale receipts of Indica Car purchased by the Plaintiff is not accepted by the Courts and therefore, the same cannot be relied on to hold that the power of attorney is a forged document. He pointed out sale-receipt dated 9th June 2006 at Exhibit-65, power of attorney dated 9th June 2008 at Exhibit-64 and Bharna Pavati dated 18th August 2010 at Exhibit-66 and contended that the said un-exhibited Indica Car receipt when compared with the Indica car receipt produced by the Defendant below Exhibit-65 clearly shows that the stamp paper, serial numbers, stamp vendor name, date of purchase etc. are completely different. Mr. Kulkarni, submitted that the said alleged original Indica car receipt on which both the Courts have relied, is totally illegal as the original copy of the sale receipt is not produced in the evidence. He submitted that Exhibit-65 is the document, by which Indica car is sold to the Defendant and therefore, the original of said document has come from the custody of the

Defendant. He pointed out last page of said Exhibit-65 receipt and the last page of power of attorney and submitted that the finding of both the Courts that the said power of attorney is forged and fabricated is not in accordance with the said documents, which are exhibited documents. He submitted that Mr. Mukund Pathak, Advocate has admitted his signature on the said power of attorney and therefore the said power of attorney cannot be said to be forged and fabricated. He pointed out the evidence on record and submitted that the said evidence clearly shows the finding that the said power of attorney is a fraudulent document is not the finding recorded on the basis of the evidence on record. He submitted that the documents on record are not properly interpreted by both the Courts. He submitted that if the Bharna Pavati, power of attorney and various admissions made by the witnesses of the Plaintiff's are taken into consideration, then it is clear that the said power of attorney is a genuine document. He submitted that the Plaintiff is a money lender and the Defendant used to often visit his office. He submitted that the Plaintiff is in the habit of creating fabricated record and therefore, before accepting the evidence on record, thorough scrutiny is required to be made.

5. On the other hand, Mr. Shah, learned Counsel appearing for the Respondent submitted that the Plaintiff sold Indica car to the Defendant on 9th June 2006. The original sale Agreement was given to the Defendant along with the car and other original documents of car, while a photocopy of the said document was retained by the Plaintiff. It is his submission that the Defendant forged the power of attorney purportedly to be dated 9th June 2008 by utilizing the last page of the said original Agreement, by which Indica car was agreed to be sold to the Respondent. He pointed out the last page of the power of attorney dated 9th June 2008 and submitted that by applying white ink, certain text has been erased and some new contents are typed on the same. Mr. Shah relied on evidence of the Plaintiff of said Advocate, Mr. Pathak to substantiate his contention that the power of attorney is a fraudulent document. He submitted that the sale-deed dated 24th September 2010 is also fraudulent as the Defendant has executed the same in his capacity as the constituted attorney of the Plaintiff on the basis of said fraudulent power of attorney dated 9th June 2008. He pointed out the public notice dated 24th August 2008 and submitted that the said

public notice was also issued in the name of Advocate Manohar Gaikwad by the Defendant and Bar Council of Maharashtra and Goa has clarified that there is no such Advocate, by the name Manohar Gaikwad, who is registered with them. He submitted that in fact the Defendant is the author of the public notice and issued said public notice in the name of alleged, Advocate Manohar Gaikwad. He submitted that the relations between the Plaintiff and Defendant were strained after the sale of said Indica Car in the year 2006. He submitted that in the year 2007, the Plaintiff was compelled to file various criminal complaints against the Defendants. In the year 2008, the Plaintiff filed Civil Suit No. 41 of 2008 against the Defendant with respect to some other property. The Defendant has also filed some revenue proceedings in May 2008. He, therefore submitted that as the relations between the parties were strained, there was no question of execution of power of attorney dated 9th June 2008 by the Plaintiff in favour of the Defendant. With respect to the said Bharna Pavati dated 18th August 2010, it is the submission of Mr. Shah, learned Counsel appearing for the Respondent that no witnesses have been examined by the Defendant to prove the payment of consideration at Plaintiff's house. He

submitted that in the sale-deed dated 14th September 2010, there is no reference to the said Bharna Pavati. He submitted that even the said Bharna Pavati/payment receipt is also a forged and fabricated document. He pointed out contradictions in the contents of said Bharna Pavati and evidence regarding the payment. Therefore, it is the contention of Mr. Shah, learned Counsel appearing for the Respondent that there is no substance in the substantial questions of law raised by Mr. Kulkarni, learned Counsel appearing for the Appellant. He also submitted that as the Appellant has come up with the false case and he has relied on the forged and fabricated documents, the Second Appeal be dismissed with compensatory costs.

6. Before dealing with the contentions raised by both the learned Counsel, it is necessary to set out the admitted factual position.

7. Admittedly, the Plaintiff has executed an Agreement of Sale dated 9th June 2006 with respect to an Indica car in favour of the Defendant. According to the Plaintiff, the original document of the said Agreement was given to the purchaser of the car i.e. the Defendant and what

is produced as Exhibit-65 is not the original document of the said Agreement. It is the contention of the Plaintiff that even Exhibit-65 is also a fraudulent document.

8. The record shows that the Plaintiff has filed complaints with the Police on 28th August 2007 (Exhibit-43) and on 18th January 2008, Suit No.41 of 2008 against the Defendant (Exhibit-52) and thereafter F.I.R. No. 137 of 2011 was lodged by the Plaintiff on 18th May 2011 under Sections 403, 420, 465, 467, 468, 470 and 471 of the *Indian Penal Code, 1860* against the Defendant (Exhibit-51). The record further shows that on 7th February 2008, the Defendant has filed a complaint with the Deputy Chief Minister of the State of Maharashtra against the Plaintiff. The same is produced along with list of documents (Exhibit-63).

9. It is the contention of the Plaintiff that on 9th June 2008, the Plaintiff executed a power of attorney in favour of the Defendant (bearing Exhibit-64) with respect to the suit property. Thereafter, on 18th August 2010, the Plaintiff executed a Bharna Pavati in favour of the Defendant (bearing Exhibit-66). On 14th September 2010, the Defendant executed two registered sale deeds in his favour on the basis

of the power of attorney dated 9th June 2008 executed in his favour.

10. In the above background, on 3rd May 2011, the Plaintiff filed Special Civil Suit No.405 of 2011 seeking declaration that the two sale-deeds dated 14th September 2010 executed in favour of the Defendant are null and void and for relief of declaration that the Plaintiff is the owner of the Suit property.

11. The learned Trial Court after considering the evidence on record has held that the two sale-deeds in favour of the Defendant are null and void and that the Plaintiff is the owner of the Suit property. Accordingly, the learned Trial Court decreed the Suit of the Plaintiff granting declaration that the Plaintiff is the owner of the Suit property and further granted declaration that the two sale-deeds dated 14th September 2010 at Exhibit-68 and 68A executed by the Defendant in his favour on the basis of alleged power of attorney are null and void and further restrained the Defendant from causing obstruction and interference of lawful possession of the Plaintiff over the Suit property.

12. The Defendant challenged the said Order by filing Civil Appeal No. 99 of 2013 and by the impugned Order and Decree dated 19th December 2015, the said Appeal was dismissed. In the said appeal, Application bearing Exhibit-19 was filed seeking *status quo* during the pendency of the said Appeal and the learned *Ad hoc* District Judge-2, Nashik on 11th December 2014 passed following operative order:

"-: O R D E R :-

[1] Application Exh.19 is partly allowed.

[2] Both the parties of the suit/appeal are restrained from alienating the suit plot Nos.3 and 12 of the suit land Gat No.905/2B of village Musalgoan, Tal.Sinnar, Dist.Nashik to any other third person and are further restrained from creating any encumbrances or charge of any third person or institution on the above suit property till disposal of appeal.

Pronounced in open Court."

The said Order continued till the disposal of the Appeal before the learned First Appellate Court and thereafter, for some time, has been continued by Order dated 1st April

2016, passed by a learned Single Judge in this Second Appeal and the same has continued thereafter, from time to time.

13. Thus, the main issue involved in this Second Appeal is whether the said power of attorney dated 9th June 2008 is a genuine document or the same is false, fraudulent and fabricated document. It is clear that the entire case of the Defendant to contend that the said sale deeds dated 14th September 2010 at Exhibit-68 and 68-A transfer the title in favour of the Defendant, rests on the finding about the genuineness of the said power of attorney. It is an admitted position that the said sale Deeds are executed by the Respondent in favour of the Defendant on the basis of said power of attorney.

14. It is the case of the Appellant - Defendant that the Respondent - Plaintiff has executed Power of Attorney in favour of the Appellant on 9th June, 2008 which has been produced in the Court at Exhibit-64. It is the contention of the Respondent that the said Power of Attorney is fabricated.

15. The factual position set out hereinabove shows that the Plaintiff has filed Complaint dated 28th August, 2007

against the Appellant (Exhibit-43). In the said Complaint, it is stated that the Appellant in his capacity as Constituted Attorney of one Ms. Chandrabhagabai Ramchandra Shelar, has executed the registered sale deed dated 9th September, 2005. In spite of that, on 27th August 2007, he visited the office of the Respondent and threatened him saying that the prices of said lands have significantly increased and, therefore, he demanded Rs.10,00,000/-.

16. It is further significant to note that, on 18th January 2008, the Respondent filed Regular Civil Suit No. 41 of 2008 in the Court of Civil Judge, Senior Division, Nashik(Exh. 52) *inter alia* against the Appellant seeking injunction with respect to the land bearing Survey No.256/5 situated at Mouje-Pathardi, District-Nashik. In fact, various other documentary evidence on record including Public Notice issued on behalf of the Appellant by Advocate, Shri. Manohar Gaikwad dated 24th August 2008 (Exhibit-69), Reply dated 26th August 2008 by the Respondent to the Public Notice issued by the Appellant (Exhibit-70), Complaint dated 28th August 2007 by the Respondent against the Appellant (Exhibit-43) and letter dated 12th November 2008 of the Bar Council of Maharashtra and Goa informing the Respondent

that there is no Advocate registered in the name of Mr. Manohar Magan Gaikwad, all these documents clearly show that the relationship between the parties were strained even before the execution of the said alleged Power of Attorney as well as thereafter.

17. Although, various documents executed after the execution of alleged Power of Attorney executed on 9th June 2008 are produced on record, may not be relevant for the purpose of deciding whether said Power of Attorney dated 9th June 2008 is a fraudulent document, however, the above referred documents namely Complaint by the Respondent dated 28th August 2007 (Exhibit-43), the Regular Civil Suit No.41 of 2008 filed by the Respondent on 18.01.2008 *inter alia* against the Appellant (Exh.52), complaint dated 7th February 2008 filed by the Defendant against the Plaintiff clearly shows that the relationship between the parties is not at all cordial even before the execution of said alleged Power of Attorney dated 9th June 2008 and, therefore, there is substance in the contention of Mr. Shah that there was no reason for the Respondent to execute Power of Attorney in favour of the Appellant.

18. Although, the main issue involved in the present Second Appeal is the genuineness of the Power of Attorney, however, another very important aspect to be considered is whether Bharna Pavati dated 18th August 2010 (Exhibit-66) is a genuine document or is a fraudulent document. Mr. Kulkarni, learned counsel appearing for the Appellant has very heavily relied on said Bharna Pavati dated 18th August 2010 to substantiate his contention regarding genuineness of Power of Attorney dated 9th June 2008.

19. As far as the genuineness of the Power of Attorney is concerned, I have already discussed regarding various documents which clearly show that the relationship between the Appellant and the Respondent are very strained before execution of the Power of Attorney and, therefore, the execution of such Power of Attorney dated 9th June 2008 by which the Respondent has given power to the Appellant with respect to the Suit Property, is not genuine.

20. Mr. Shah, learned Counsel submitted that the said alleged Power of Attorney dated 9th June 2008 has been forged and fabricated by the Appellant by utilizing the last original page dated 9th June 2006 regarding sale agreement of

Indica Car by which Respondent has sold the same to the Appellant. For substantiating the said contentions, Mr. Shah, learned Counsel has relied on oral evidence of the Respondent as well as that of Advocate, Mr. M. R. Pathak.

21. As far as the said alleged Power of Attorney dated 9th June 2008 at Exhibit-64, the finding is recorded by the learned First Appellate Court in paragraph No.13. The said paragraph No.13 reads as under :

*"At Exh. 64 the General power of attorney which is alleged document refused by the plaintiff produced on record. **The said document were bearing of page no. 7 there is whitener used and the page no. 7 contents are** येणेप्रमाणे सदरचे जनरल मुखत्यारपत्र राजीखुशीने स्वसंतोषाने, कोणत्याही दबावास बली न पडता, साक्षीदारांसमक्ष सही करून लिहून दिली असे. हे जनरल मुखत्यारपत्र. सिन्नर, दि. ९/६/२००८. **Advocate M. R. Pathak has denied that he has given any identification on power of attorney. The plaintiff has come before the Court that the page no. 7 has been change, which is the second page of Exh. 65. Exh. 65 does not bear any photograph, but the power of attorney bears the photograph and also the signature of advocate Pathak. The signature existing on Exh. 65 by advocate Pathak is also different than the document Exh. 64. According to him when he had signed whitener was not existing on document. But when the said page no. 7 is affixed to the power of attorney it seems that there are correction. There is also contention 'सही करून लिहून दिली असे' The receipt in Marathi always called as the women gender as दिली. Whereas power of attorney in Marathi gents gender as called दिले आहे. The power of attorney***

word is also having the whitener placed is also change as Sinnar, whereas the vehicle receipt Exh. 65 was done at Nashik. As well as to require the change of page as the power of attorney was alleged to be written at Sinnar. If we perused the stamp is same to be purchased by one defendant/ appellant from Mr. Dolas at Nashik-road. The purchase date as 5/5/2008. It is seems to be notarised and noted with advocate G. C. Barke, who is the advocate of Taluka Sinnar, Dist. Nahsik. The other written portion of power of attorney is not signed for the whitener correction. Naresh Shah had purchased the stamp of sell of vehicle from stamp vendor Shri V. K. Jadhav Nashik."

22. The learned Trial Court discussed the said aspect in paragraphs 8 and 10 of it's Judgment dated 28.03.2013. The relevant discussion by the learned Trial Court regarding the same is reproduced hereinbelow for ready reference :

*"The plaintiff has examined P. W. No. 2 Mukund Ramchandra Pathak by way of affidavit at Exh. 59. P.W. No.2 **Mukund Pathak is witness to the sale transaction of Indica vehicle which took place in between plaintiff and defendant. The P.W. No. 2 Mukund Pathak has categorically deposed that he did not sign power of attorney executed by plaintiff in favour of defendant in the capacity of witness.** In the above peculiar facts and circumstances of the case, it is just and necessary to examine the alleged power of attorney executed by plaintiff in favour of defendant. **The alleged power of attorney executed by plaintiff in favour of defendant is produced on record at Exh. 64. It is admitted fact on record that the power of attorney Exh. 64 is un-registered document.***

*The power of attorney is produced on record at Exh. 64 wherein there are alterations at page Nos. 2, 3 and 7. **It is pertinent to note that there are four alterations at page No.7. However, the said alterations are not signed by any party to the document.** The defendant has not brought on record any reason for not signing the alterations at page Nos.2, 3 and 7.*

The defendant has also admitted during cross-examination that there are over writings at page No. 7 of power of attorney however, the said over writings are not signed by him. The defendant has categorically admitted during oral evidence that he was having dispute with the plaintiff. The plaintiff has produced on record letter dated 10/03/2008 at Exh. 48, letter/complaint dated 29/03/2008 at Exh. 49, complaint at Exh. 50, copy of plaint at Exh. 52, copy of F.I.R, at Exh. 51. From the documentary evidence on record, it prima facie indicates that the plaintiff and defendant were not having cordial relations before the date of execution of alleged power of attorney on record. Therefore, the allegations made by plaintiff that he was not having any occasion to execute the power of attorney authorizing the defendant to deal with the suit property, seems to be more probable. From the cumulative reading of evidence on record and the circumstances pointed out by the plaintiff it prima facie indicates that **the allegations of plaintiff that the defendant has created forged document of power of attorney and executed sale deeds on the basis of said document, seems to be more probable.** In the result it is hereby held that the sale deeds Exh. 68 and 69A are null and void and not binding on the right of plaintiff."

23. As already set out herein above the relations

between the Appellant and the Respondent were strained at least since 28th August 2007 and continuously their are complaints/cross complaints and the Suit has been filed. Therefore, the documentary evidence on record clearly establishes that when the alleged Power of Attorney was executed by the Plaintiff in favour of Defendant i.e. on 9th June 2008, the relation between the Appellant and the Respondent are strained.

24. A bare perusal of the said alleged Power of Attorney dated 9th June 2008 at Exhibit-64 clearly establishes the following aspects:-

i] The stamp paper was purchased in the name of Naresh B. Shah i.e. the Respondent, however, the same was purchased through Kiran Somnath Gangurde i.e. the Appellant.

ii] Page 7 of the said Power of Attorney which is very crucial for deciding whether the same is genuine document or fraudulent document is very relevant. The said Page 7 is scanned and reproduced here-in-below for ready reference :

हे जनरल, मुख्तयारपत्र //

दिनांक : २. ६. २००८

IDENTIFIED BY

I identified by me

[श्री. किरण सोमनाथ गान्धी]
लिहून देणा र.

साक्षीदार :- श्री. राजू शर्मा, जल, जल मंत्री, बिहार सरकार
श्री. सुनील कुमार शर्मा, जल, जल मंत्री, बिहार सरकार
श्री. राजू शर्मा, जल, जल मंत्री, बिहार सरकार

9] Spencer's Story

2) मिषय कटारनर

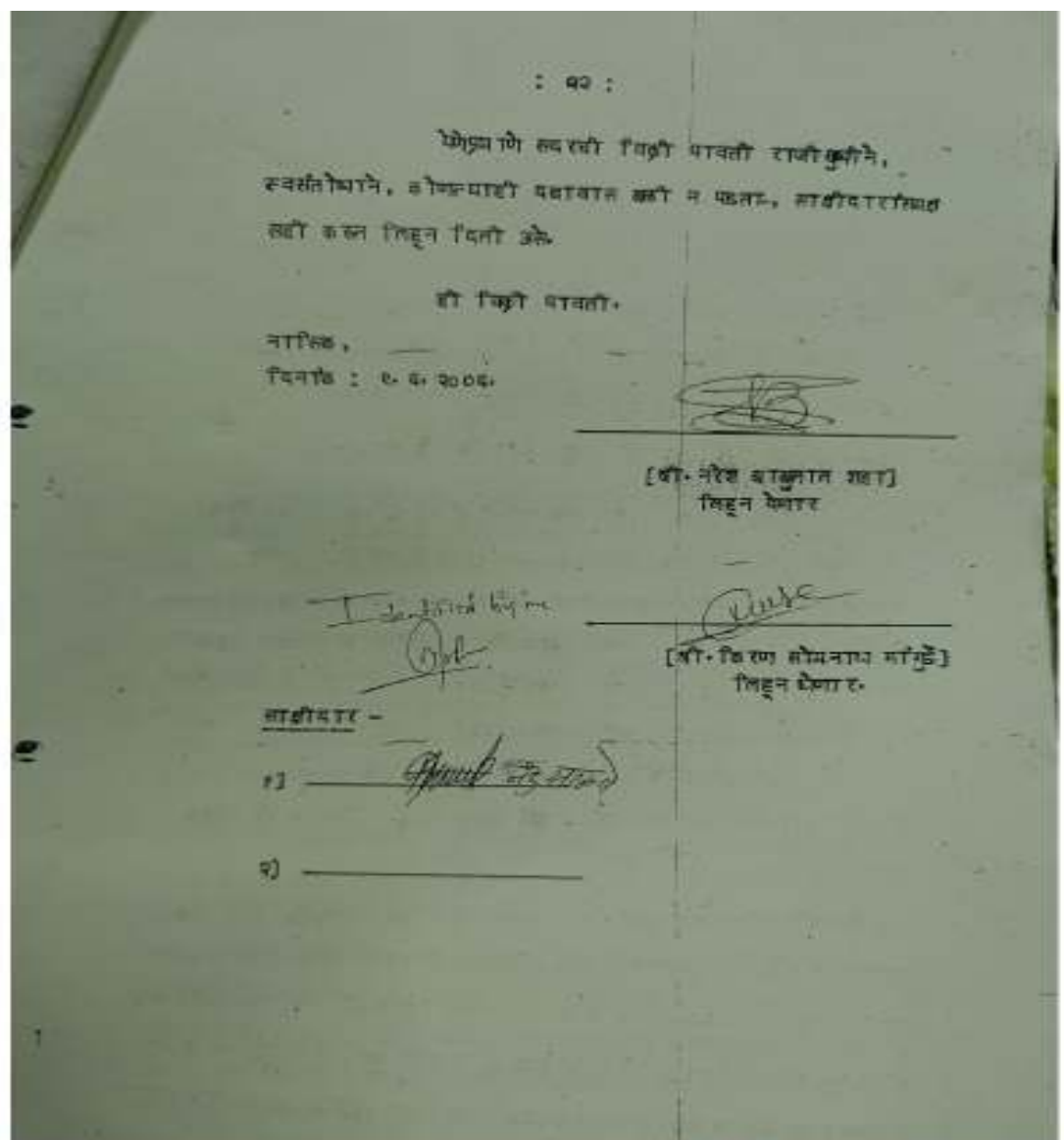
SIGNED BEFORE ME

GOPAL CHINDHU BARKE
 NOTARY Advocate For
 Tal. Sinnar, Dist. Nashik -422103

purchased from the stamp vendor, Nashik Road and address of the Appellant is at Sinnar, District-Nashik. The said alleged Power of Attorney shows that the same was executed at Sinnar by contending that the same has been signed before Mr. Gopal Chindhu Barke who is Notary Advocate for Taluka-Sinnar, Dist.- Nashik. The said document also bears signature of Mukund Ramchandra Pathak as he has identified the parties to the document, his address is 4, Sukenkar Building, Near Town Hall, M. G. Road, Nashik Road, Nashik.

25. It is significant to note that the Respondent has come up with a specific case that the said Power of Attorney is a fabricated, forged and fraudulent document and the same has been created by deleting some words by putting white ink and by typing certain words on the last page of agreement dated 9th June 2006 by which the Respondent has sold the Indica Car to the Appellant. It is specific case of the Respondent that the original sale Agreement is with the Appellant and he has retained photocopy of the said Agreement. The said photocopy is produced by the Respondent. It is the submission of Mr. Shah that a bare perusal of page No.3 of the said Agreement to sell clearly

shows that by making the relevant changes (on said page No. 3), page No.7 of the said alleged Power of Attorney dated 9th June 2008 is created. For appreciating the said contention, said page No. 3 of photocopy of Agreement to sell dated 9th June 2006 of Indica car, as produced by the Respondent is scanned and reproduced hereinbelow:



Scanned with OKEN Scanner

26. The page No.7 of the said alleged Power of Attorney dated 9th June, 2008 if compared with page No.3 of said agreement to sale/sale receipt dated 9th June, 2006 regarding Indica car makes it clear that the said Power of Attorney has been created by utilizing the said page No. 3 of Agreement to Sell.

27. A bare perusal of both these documents clearly show that the following changes are made on said page No. 3:

i] By applying white ink, page No.3 is changed as page No.7 and two dots are replaced as bracket, the part of sentence of first line in paragraph No.3 i.e. "सदरची विक्री पावती राजीखुशीने" is changed to "सदरचे जनरल मुखत्यारपत्र राजीखुशीने". It is significant to note that as rightly observed by both the Courts "सही करून लिहून दिली असे" is applicable to the "सदरची विक्री पावती" but the same will not apply to "जनरल मुखत्यारपत्र" and the proper sentence should have been "सही करून लिहून दिले असे".

ii] "ही विक्री पावती" is changed as "हे जनरल मुखत्यारपत्र", Instead of Nashik, it is mentioned as Sinnar and the date is changed from 9th June 2006 to 9th June 2008

by applying white ink on only number "6".

iii) It is very clear that white ink is applied at very crucial places and the very crucial changes are made to convert said Indica Car Sale Agreement/Indica Car Sale Receipt into the Power of Attorney.

iv) It is also significant to note that even the font size of pages 1 to 6 of the said Power of Attorney is different than page No. 7 and the same is similar to the Indica Car Sale Agreement/Indica Car Sale Receipt produced by the Respondent.

v) Signature of said Advocate, Mr. M. R. Pathak is at the same place in said Power of Attorney as that of Agreement regarding Indica Car. It is significant to note that stamp of "IDENTIFIED BY" is put in addition to the "Identified by me" written in handwriting by said Advocate, Mr. M. R. Pathak. Stamp of said "Mukund Ramchandra Pathak" is put below his signature.

Thus, it is clear that the said page No.3 of the agreement to sale of Indica Car dated 9th June 2006 has been changed as page No. 7 and by making certain alterations, said forged and fabricated Power of Attorney has been prepared. It

is clear that certain changes are made so that none could easily make out the said forgery.

28. Both the Courts after discussing the evidence on record have concluded that the said alleged Power of Attorney dated 9th June 2008 is a fraudulent document. In this behalf, it is very important to note the relevant evidence on record. The Respondent i. e. Plaintiff in his evidence affidavit has *inter alia* stated in paragraph No.3 as follows:

“दावा मिळकतीत माझाचा कब्जा आहे. प्रतिवादीस मुखत्यार नेमण्याचे मला कोणतेही कारण नव्हते व नाही. उलट माझे व प्रतिवादी यांच्यात शत्रुत्वाची भावना होती व आहे. माझी तथाकथित दस्तावरील सही प्रतिवादीस मुखत्यारपत्र करून देणेकामी केलेली नव्हती व नाही. तसेच अॅड. मुकुंद पाठक यांनी मुखत्यारपत्रावरील सहयांसाठी ओळख दिलेली नाही. तसेच नंदू साळवे यांनी मुखत्यारपत्राच्या दस्तावर साक्षीदार म्हणून सही केलेली नाही. मी प्रतिवादीस पूर्वी करून दिलेल्या अन्य दस्ताच्या पानामध्ये बेकायदेशिरपणे फेरफार करून प्रतिवादीने खोटा दस्तऐवज तयार केलेला आहे. प्रतिवादीच्या मनात पाप असल्यामुळे प्रतिवादीने स्वतःचेच नावे खरेदीखत लिहून व नोंदवून घेतलेले दिसते.

मुखत्यारपत्र लिहून “दिले” असा उल्लेख मराठी भाषेत केला जातो. “लिहून दिली” असा केला जात नाही. विक्री पावती “लिहून दिली” असा उल्लेख केला जातो.

मी दाव्यासोबत माझे व प्रतिवादी यांचेमध्ये दिनांक **9.6.2006** रोजी झालेल्या विक्री पावतीची झेरॉक्स प्रत दाखल केलेली आहे. सदरची मुळ विक्री पावती प्रतिवादीचे ताब्यात होती, त्याच मुळ विक्री पावतीचा दुरुपयोग करून प्रतिवादीने मुखत्यारपत्राचा दस्त तयार केल्याने मुळ विक्री पावती उपलब्ध होवू शकत नसल्याने

सदर विक्री पावतीस दुय्यम पुरावा ग्राह्य धरून निशाणी देण्यात यावी. सदर विक्री पावतीतील मजकूर बरोबर आहे. त्यावर माझी, प्रतिवादी व साक्षीदार म्हणून नंदू साळवे यांची सही आहे.

मी या प्रतिज्ञापत्रासोबत दिनांक 28.8.2007 रोजी पोलिस निरीक्षक साहेब, सिन्नर पोलिस स्टेशन यांना दिलेल्या तक्रारीची स्थळप्रत दाखल केली असून त्यावर माझी सही आहे. त्यातील मजकूर बरोबर आहे. त्यास निशाणी देण्यात यावी.

मी दिनांक 28.09.2007 रोजीची तक्रार सिन्नर पोलिस स्टेशन येथे रजिस्टर पोष्टाने पाठविली असून त्याची मुळ रजिस्टर पोष्टाची पोहच पावती दाखल केली आहे. त्यावर पोष्टाचा शिक्का आहे. त्यास निशाणी देण्यात यावी. मी दिनांक

27.8.2008 रोजी जिल्हाधिकारी साहेब, नाशिक यांना दिलेल्या पत्राची स्थळप्रत दाखल केली आहे. त्यावर माझी सही आहे. त्यातील मजकूर बरोबर आहे. त्यास निशाणी देण्यात यावी. तसेच सदर पत्र जिल्हाधिकारी, नाशिक यांना मिळालेबाबत रजि. पोष्टाची पोहच पावती दाखल केली आहे. त्यास निशाणी देण्यात यावी.

वादी व प्रतिवादी यांचेमध्ये नाशिक न्यायालयात प्रलंबित असलेल्या रे.मु.नं.

41/2008 च्या निशाणी 1 ची सही शिक्काची नक्कल दाखल केलेली आहे.

त्यास निशाणी देण्यात यावी. तसेच मी दिनांक 7.4.2011 रोजी तलाठी, मुसळगांव यांना दिलेल्या तक्रार अर्जाची स्थळप्रत दाखल केलेली आहे, त्यातील मजकूर बरोबर आहे, त्यावर माझी सही आहे. तसेच सदर तक्रार अर्ज तलाठी, मुसळगांव या प्राप्त झाल्याबद्दल त्यांची सही व शिक्का आहे, त्यास निशाणी देण्यात यावी. मी सिन्नर न्यायालयातून निशाणी ३२ अन्वये मागवून प्रतिवादीने तयार केलेला बनावट मुखत्यारपत्राचा मुळ दस्त या न्यायालयात दाखल झालेला आहे. सदर दस्ताचे बारकाईने अवलोकन केल्यास सदर दस्तांतील शेवटचे पान व इतर पानांचा टंकलेखनाचा मुद्रण फॉन्ट वेगळा आहे. तसेच शेवटच्या पानावर व्हाईट इंक लावून खाडाखोड करण्यात आलेली आहे. सदर मुखत्यारपत्राच्या शेवटच्या पानाची शाई व इतर पानांची शाई वेगवेगळी आहे. यावरून प्रतिवादीने विक्री पावतीचा दुरुपयोग करून

मुखत्यारपत्राचा दस्त तयार केल्याची बाब स्पष्ट होत आहे. प्रतिवादी व अशाचप्रकारे फसवणूक करीत असतो. त्याबाबत या प्रतिवादीविरुद्ध याच मे. न्यायालयात स्पे.मु.नं.

526/2010 चा दावा प्रलंबित आहे.

माझे व प्रतिवादी यांचे दरम्यान दिनांक **9.6.2006** रोजी झालेल्या विक्री पावती व्यतिरिक्त माझे व प्रतिवादी यांचे दरम्यान अन्य कोणतीही विक्री पावती कधीही झालेली नव्हती व नाही. अशा कोणत्याही दस्तावर मी कधीही सही केली नव्हती व नाही.”

(Emphasis added)

Translation:-

"The suit property is only in my possession. I had and have no reason to appoint the Defendant as an Attorney. On the contrary, there was and is an enmity between the Defendant and myself. My signature appearing on the so-called instrument had and has not been affixed thereto for executing a Power of Attorney in favour of the Defendant. Moreover, Advocate Mukund Pathak has not provided identification for the signatures appearing on the Power of Attorney. Further, Nandu Salve has not affixed signature to the Power of Attorney as a Witness. The Defendant has prepared bogus instrument by unlawfully carrying out alterations in the pages of other instruments which I had earlier executed in favour of the Defendant. It appears that, as the Defendant had malicious intention, he got prepared a Sale Deed in writing and got the same registered in his own name.

In Marathi Language, it is written as, "Mukhtyarpatra Lihoon Dile" (Power of Attorney has been executed in writing) and not "Lihoon Dilee" (executed in writing). Similarly, it is written as Vikri Pavati "Lihoon Dilee"

(Receipt for Sale is issued in writing).

I have annexed to the suit a photocopy of the Receipt for Sale dated 09.06.2006 executed between myself and the Defendant. The original Receipt for Sale was in the possession of the Defendant and as the Defendant has prepared the instrument of Power of Attorney by making misuse of the very original Receipt for Sale, and as the original Receipt for Sale may not be available, the said Receipt for Sale may be considered as secondary evidence and may be marked as Exhibit. The contents of the said Receipt for Sale are correct. It bears my signature and also of the Defendant and the signature of Nandu Salve has been affixed thereto as a Witness.

I have annexed to this Affidavit, the Office Copy of the complaint submitted to the Inspector of Police, Sinnar Police Station, on the date 28.08.2007. It bears my signature. The contents thereof are correct. The same may be marked as Exhibit. I had sent the Complaint dated 28.09.2007 to Sinnar Police Station by Registered Post and have filed the original Registered Post Acknowledgement Receipt in respect thereof. It bears stamp of the Post Office. The same may be marked as Exhibit. I have filed the office copy of the letter dated 27.08.2008 sent to the Collector of Nashik. It bears my signature. The contents thereof are correct. The same may be marked as Exhibit.

Further, I have produced the Registered Post Acknowledgement Receipt in respect of the Collector of Nashik having received the said letter sent by Registered Post. The same may be marked as Exhibit. I have filed an attested copy of Exhibit No. 1 of the R.S. No.41/2008 pending between the Plaintiff and the Defendant in the Court at Nashik. The same may be marked as Exhibit. Similarly, I have produced the office copy of the Complaint Application submitted to the Talathi of Musalgaon on the date 07.04.2011. The contents thereof are correct. It bears my signature. Further, there is a signature and stamp of the office of said Talathi of Musalgaon for

*his having received the said complaint application. The same may be marked as Exhibit. The original instrument of the bogus Power of Attorney prepared by the Defendant has been filed in the Court after **I had sought the same under Exhibit No.32 from the Court at Sinnar. If the said instrument is perused carefully, it is seen that the typing fonts of the typing made on the last page of the said instrument and on other pages thereof are different. Moreover, erasures have been made on the last page thereof by applying "white ink" at the said places. The ink of the contents of the said Power of Attorney appearing on the last page and on other pages is different. From this, it becomes clear that, the Defendant had made a misuse of the Receipt for Sale and had prepared the Deed of Power of Attorney. The Defendant B is committing cheating in very manner and in that regard, a Special Suit No. 526/2010, against the Defendant, is pending in this very Court.***

Except the Receipt for Sale dated 09.06.2006 that has been executed between myself and the Defendant, no other Receipt for Sale had or has ever been executed

between myself and the Defendant. Similarly, I had and have never ever affixed my signature to any such instrument."

The relevant cross-examination of the Defendant is reproduced here-in-below :

“हे म्हणणे खरे आहे की मी प्रतिवादीस माझी इंडीका गाडी विक्री केलेली आहे व त्यानुसार लेखी करारनामा आमचेत झाला होता. हे म्हणणे खरे नाही आता दाखविलेली वाहनाची विक्री पावती मी प्रतिवादीचे हक्कात करून दिली आहे व त्यावर माझी सही आहे. आता दाखविलेल्या कागदावरील पाठक वकीलांची सही मी ओळखत नाही. त्यावर नंदु साळवेची सही आहे. आता दाखविलेल्या विक्री पावतीमध्ये नमुद केलेला माझे गाडीविषयी व गाडीचे किंमतीविषयी बरोबर आहे. मी पाठक

वकीलांना ओळखतो. हे म्हणणे खरे आहे की पाठक वकील माझे वतीने काही प्रकरणात नाशिकरोड न्यायालयात काम पहातात. हे म्हणणे खरे नाही की पाठक वकीलांची सही ओळखत नसल्याचे मी खोटे सांगत आहे. आता दाखविलेल्या विक्री पावतीमध्ये कोठल्याही पानावर खाडाखोड नाही. हे म्हणणे खरे नाही की आता दाखविलेली विक्री पावती मी प्रतिवादीच्या हक्कात करून दिलेली आहे. हे म्हणणे खरे नाही की प्रतिवादी व माझे मध्ये दि. **09.06.2008** मध्ये मुख्त्यारपत्र झाले आहे.”

(Emphasis added)

Translation:-

"It is true to say that I have sold my Indica Motor Vehicle to the Defendant and an agreement in respect thereof, in writing, was executed between us. It is not true to say that, the Receipt for Sale of vehicle which is now shown to me has been executed and issued by me in favour of the Defendant and that it bears my signature. I do not identify the signature of Advocate Pathak affixed to the paper which is now shown to me. It bears signature of Nandu Salve. The contents regarding my vehicle and the price in respect thereof mentioned in the Receipt for Sale which are now shown to me are correct. I know Advocate Pathak. It is true to say that, Advocate Pathak appears as an advocate for me in some cases that have been filed in the Court at Nashik Road. It is not true to say that I am deposing false that I do not identify the signature of Advocate Pathak. There is no erasure on any of the pages of the Receipt for Sale which is now shown to me. It is not true to say that the Receipt for Sale which is now shown to me has been executed and issued by me in favour of the Defendant. It is not true to say that Power of Attorney has been executed between me and the Defendant on the date 09.06.2008."

29. In this behalf, it is also significant to note the evidence of Advocate M. R. Pathak. The relevant portion of oral evidence of Advocate M. R. Pathak is reproduced hereinbelow:

“१) मी वादी व प्रतिवादी या दोघांना पुर्वी पासून ओळखतो. वादी व प्रतिवादी यांचे माझेकडे एकत्रित कामे होती. वादीने प्रतिवादीस दि. ९/६/२००६ रोजी इंडिका कारची विक्री केली. त्यावाहन विक्री करारावर वादीने माझे समक्ष सही केली. त्या करारावर ओळख म्हणून माझी सही आहे. मी व वादीने या करारावर सही करतेवेळी कुठेही खाडाखोड झालेली नव्हती अगर पांढऱ्या रंगाने (व्हाईटनर लावून) कोणताही मजकूर खोडण्यात आलेला नव्हता मी केवळ वाहन विक्री करारावर एकदाच ओळख म्हणून सही केलेली असून कोणत्याही मुखत्यारपत्रावर वादीने माझे समक्ष सही केलेली नसून मी देखील ओळख म्हणून सही केलेली नाही मी जेव्हा ओळख दिली त्यावेळी माझे नावाचा शिक्का मारलेला नव्हता.

२) वादी व प्रतिवादी यांचे मध्ये अन्य दावे प्रलंबीत असल्याचे मला माहीती आहे मात्र त्या दाव्याचा तपशील मला माहीती नाही. मला आता विक्री पावतीची झेरॉक्स दाखविली ती मुळ प्रमाणेच बरोबर आहे. त्यातील मजकूर खरा व बरोबर असून त्यावर कुठलीही खाडाखोड नाही त्यावर माझी व वादीची सही आहे.”

(Emphasis added)

Translation:-

"1) I know both, the Plaintiff and the Defendant, since earlier. I had the works of the Plaintiff and the Defendant together. **On the date 09.06.2006, Plaintiff sold Indica Motor Car to the Defendant. Plaintiff affixed his signature to the said Agreement for Sale of the Vehicle in my presence. The said Agreement bears my signature as Identifier. When the Plaintiff and I had affixed our signatures to this Agreement, there was neither**

an erasure anywhere nor any content thereof was erased by applying white colour (Whitener). I have affixed my signature to the Agreement for Sale of Vehicle only once as Identifier and neither the Plaintiff had affixed any signature to any Power of Attorney in my presence nor had I affixed my signature as Identifier. When I affixed my signature as Identifier, I had not affixed the stamp of my name.

2) I know that other suits between the Plaintiff and the Defendant are pending, however, I do not have details in respect thereof. Now, I am shown a photocopy of the Receipt for Sale. The same is correct as per the original thereof. The contents thereof are true and correct and there is no erasure of whatsoever nature in the said receipt. It bears my signature and that of the Plaintiff."

The relevant cross-examination of Advocate, Mr. Mukund Ramchandra Pathak is reproduced here-in-below :

“हे म्हणणे खरे आहे की वादी व प्रतिवादी यांमध्ये इंडीका वहान खरेदीविक्रीचा व्यवहार झालेला आहे. हे म्हणणे खरे आहे की मी प्रस्तुत दाव्यातील वादी व प्रतिवादी यांना इंडीका वहान खरेदीविक्रीचा दस्त तयार करून दिला होता. सदरील दस्त मला दाखविल्यास मी तो ओळखु शकतो. नि. 37 सोबत दाखल केलेला दस्त मी वादी व प्रतिवादींना तयार करून दिलेला नाही. हे म्हणणे खरे आहे की नि. 37 सोबत दाखल केलेल्या दस्तावर ओळख म्हणुन मी सहि केलेली आहे. मी को—या कागदावर सही केलेली नाही. मी पक्षकारांसाठी तयार केलेले दस्तांचे टिपण ठेवत नाही. नि. 32 सोबत जनरल मुख्त्यारपत्राचा दाखल केलेला दस्त मी पक्षकारांना तयार करून दिलेला नाही त्यावर मी ओळख म्हणुन सही केलेली आहे तसेच त्यावर माझा शिक्का आहे. मी आज तारखेला वादीच्या वतीने वकील म्हणुन

काम नाशिकरोड न्यायालयात पहात आहे. मुख्यापत्रावर मी ओळख म्हणुन सहि संबंधीत पक्षकाराच्या सहया झालेनंतर केली आहे. माझे प्रतिज्ञापत्रातील मजकुर वादीने माझे समक्ष सही केली नाही हा खरा आहे.”

(Emphasis added)

Translation:-

"It is true to say that, the transaction of sale-purchase of Indica Motor Vehicle had taken place between the Plaintiff and the Defendant. It is true to say that, I had prepared the instrument of sale-purchase of Indica Motor Vehicle for the Plaintiff and the Defendant in the present Suit. I can identify the said instrument if the same is shown to me. I have not prepared the instrument that has been filed along with Exhibit No.37 for the Plaintiff and the Defendant. It is true to say that, I have affixed my signature to the instrument that has been filed along with Exhibit No.37 as Identifier. I have not affixed my signature to a blank paper. I do not maintain record of the instruments that I prepare for my clients. I have not prepared for the clients the instrument of General Power of Attorney that has been filed along with Exhibit No.32. I have affixed my signature thereto as Identifier. Further, my stamp has been affixed thereto. As on this date, I am appearing for the Plaintiff as his Advocate in the Court at Nashik Road. My signature as Identifier that has been affixed to the Power of Attorney has been affixed by me after the parties concerned had affixed their signatures. The contents in my Affidavit viz. The Plaintiff did not affix his signature in my presence" is true."

30. Thus, perusal of the oral evidence of the Respondent as well as that of the said Advocate, Mr. M. R. Pathak clearly shows that both of them are consistent that

they have not executed any document in the nature of Power of Attorney. Both of them have stated that the Respondent has executed document of Agreement to sell of Indica Car dated 9th June 2006 in favour of the Appellant. Said Advocate, Mr. M. R. Pathak has categorically stated that his signature has been put for identifying the parties on the document dated 9th June, 2006 which is regarding sale Agreement of Indica Car.

31. The Respondent has specifically in oral deposition stated that the last page of Indica Car sale Agreement, has been used for creating said alleged Power of Attorney by making alteration. The oral evidence of the Defendant is substantiated by the alterations which are found on the last page of said Power of Attorney. It is significant to note that a perusal of both the documents shows that there is a change in the font of said last page of Power of Attorney when compared to the font of other page of Power of Attorney. Apart from that, other aspects discussed hereinabove clearly show that the said alleged Power of Attorney dated 9th June 2008 is a fraudulent and fabricated document, created by making alterations on the last page of said Indica Car sale Agreement.

32. Mr. Kulkarni, learned counsel appearing for the Appellant has heavily relied on the certain admissions given in the cross-examination by Advocate, Pathak. In the said cross-examination of Advocate, Pathak clearly states the document of Power of Attorney is not prepared by him. By showing said last page of Power of Attorney, he was asked certain questions and as the same was the last page of said Indica Car Agreement bearing his signature, he admitted the signature. However, the said cross-examination is not helpful to the Appellant. I have already discussed that by making alteration on page 3 of the Indica Car Agreement, which admittedly was bearing signature of Advocate Pathak, the document of the Power of Attorney is prepared. The entire deposition of said witness is required to be read to appreciate the evidence of said witness. The said admission cannot be read in isolation. Thus, the said cross-examination is not helpful to the Appellant.

33. Advocate, Kulkarni has also raised contention that the Agreement of Sale of Indica Car is not proved and therefore, the same cannot be used for comparing with the Power of Attorney. However, on perusal of the evidence led on behalf of the Respondent, it is clear that the said document is

proved as secondary evidence and the same should have been exhibited. Therefore, there is no substance in the said contention.

34. According to Mr. Kulkarni, learned Counsel appearing for the Appellant, the Power of Attorney is not the only document on which the Appellant has relied. According to him, there is Bharna Pavati dated 18.08.2010 executed by the Respondent in favour of the Appellant. According to learned Counsel appearing for the Respondent, the said signature appearing on Bharna Pavati is not the signature of the Respondent and the same is also a fraudulent document.

35. I have already discussed hereinabove that before execution of the said alleged Power of Attorney dated 9th June 2008, there are several complaints filed by the parties against each other and apart from that, the Regular Civil Suit No.41 of 2008 was filed by the Respondent against the Appellant. The said documentary evidence on record clearly shows that the relations between the parties were strained even before alleged execution of said Power of Attorney dated 09.06.2008. It is further significant to note that even after execution of the alleged Power of Attorney, public notice has

been published in Dainik Gavkari dated 25th August 2008. The said notice is dated 24th August 2008 (Exhibit-69). The said notice appears to have been issued by one Advocate Mr. Manohar Magan Gaikwad. However, thereafter, Bar Council of Maharashtra & Goa by letter dated 12th November 2008 addressed to the Respondent (Exhibit-54) clarified that there is no such Advocate registered by the name of Mr. Manohar Magan Gaikwad. The said notice dated 24th August 2006 purported to have been issued by said Advocate, Gaikwad states that the Suit properties are in the possession of his client i. e. the client of said alleged Advocate Mr. Manohar Magan Gaikwad. As they are in possession of the Suit property and, therefore, it was informed to the public that no transaction of any type be executed with Mr. Naresh B. Shah i. e. the present Respondent with respect to Suit property. Thereafter, said public notice dated 24.08.2008 was replied by issuing reply dated 26.08.2008(Exh. 70) by Advocate, Ms. Meenakumari C. Shah, on behalf of Naresh B. Shah i. e. Respondent controverting the contents of the said public notice dated 24th August 2008. The Plaintiff i.e. present Respondent submitted a complaint dated 27th August 2008 to the District Collector, Nashik (Exhibit-47) and also notice

dated 20th September 2008 issued by him to the Appellant as well as the Advocate of the Appellant. On 20th September 2008, notice was sent by the Advocate of the Respondent to the Appellant as well as to the said alleged Advocate Mr. Manohar Magan Gaikwad. In the said notice, reference is also made to R.C.S. No.41 of 2008 and it is stated that the said public notice dated 24th August 2008 has been issued only for extortion of the amount. On 10th March 2008 (Exhibit-48), the Deputy Registrar, Co-operative Societies, Nashik Taluka, Nashik addressed a letter to the present Appellant and also sent a copy to the Respondent directing both of them to produce the documents on 24th March 2008. This was done pursuant to the complaint dated 7th February 2008 filed by the Appellant. On 29th March 2008 (Exhibit-49), a detailed reply has been given by the Respondent to the Deputy Registrar, Co-operative Societies, Nashik Taluka, Nashik. Thus, it is clear that in these circumstances, it is unbelievable that the Respondent would execute Bharna Pavati dated 18.08.2010 in favour of the Appellant.

36. The Respondent has submitted police complaint to the Police Superintendent, Sinnar Police Station, Taluka-Sinnar, District- Nashik on 18th May 2011 (Exhibit-51). It is

specifically mentioned in the said complaint that the Respondent has not agreed to sell the Suit property to any person including the Appellant and, therefore, a request was made to register offence and investigate the same. Pursuant to the said complaint, FIR was lodged on 18th May 2011 bearing No.137 of 2011 in Sinnar police station wherein the Respondent is mentioned as the Complainant and the Appellant as Accused. The said FIR is lodged under Sections 403, 420, 465, 467, 468, 470 and 471 of the *Indian Penal Code, 1860*.

37. In this background, it is significant to note that, it is the contention of the Appellant that Bharna Pavati dated 18th August 2010 (Exhibit-66) has been executed by the Respondent in favour of the Appellant. It is also significant to note that, page 4 of the said document at Exhibit-66 mentions that the two persons are witnesses to the said transaction i. e. Mr. Vijay P. Gaikwad and Mr. Vilas B. Rokade. It is further significant to note that, the Appellant who has relied on the said document dated 18th August 2010, has failed to examine the said witnesses.

38. It is the contention of Mr. Kulkarni, learned Counsel

appearing for the Appellant that the Plaintiff has failed to prove that the said Bharna Pavati is not a legal document. However, I have already discussed hereinabove various aspects, which show that the relationship between the parties is very strained and that various complaints are filed against each other. Therefore, the contention that Bharna Pavati has been executed by the Plaintiff cannot be believed. Apart from that, the evidence of PW-1 is very categorical. PW1 i. e. the Plaintiff has submitted that he has never executed any Bharna Pavati. He is very categorical that except one document i. e. sale of India car Agreement, no other document has been executed in favour of Defendant No.1. Therefore, there is no substance in the said contention.

39. I have discussed in detail that the documents namely Power of Attorney as well as Bharna Pavati are fraudulent. Therefore, there is no substance in any of the substantial questions of law raised by Mr. Kulkarni. It is a settled legal position that fraud vitiates everything. Both the learned Courts by giving cogent reasons have held that the Defendant has played fraud on the Plaintiff and also on Court by producing said documents in the evidence i. e. Power of

Attorney and Bharna Pavati. Therefore, there is no substance in any of the substantial questions of law.

40. The factual position on record clearly shows that the Appellant has produced fraudulent evidence and, therefore, it is necessary that exemplary cost be imposed on the Appellant.

41. As far as the Contempt Petition (St.) No. 4913 of 2017 is concerned, the same be proceeded as no submissions were advanced with respect to the Contempt Petition.

42. Accordingly, the Second Appeal is dismissed with costs of Rs.1,00,000/-.

43. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

44. As the Second Appeal is dismissed, interim order, if any, stands forthwith vacated.

[MADHAV J. JAMDAR, J.]

Note : The date of the judgment in this case is corrected by changing it from 11th July 2023 to 11th August 2023 vide Order dtd. 18th January 2024.

BHALCHANDRA
GOPAL
DUSANE

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