



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO.37 OF 2014 (DEC/INJ)

BETWEEN:

SRI. G.V. NARASIMHAMURTHY,
S/O LATE G.A. VENKATARAMANAPPA,
AGED ABOUT 63 YEARS,
PRESENTLY R/A NO.40,
"RANGA RESIDENCY",
FLAT NO.1, SECOND FLOOR,
FIRST MAIN ROAD, AROGYA LAYOUT,
ANNAPURNESHWARI NAGAR,
BANGALORE - 560 091.

...APPELLANT

(BY SRI. G. PAPIREDDY., SR. ADVOCATE FOR
SRI. VARUN PAPIREDDY, ADVOCATE)

AND:

1. SRI. N. HARISH,
S/O LATE NARASIAH,
AGED ABOUT 42 YEARS,
NO.208, 1ST FLOOR,
14TH A CROSS, 2ND BLOCK,
5TH MAIN, R.T. NAGAR,
BANGALORE - 560 032.
2. SRI. C.B. RAJU,
S/O LATE D.C. CHANADEVVRAPPA,



AGED ABOUT 58 YEARS,
NAGARATPETA,
WARD NO.14,
DEVANAHALLI TOWN,
BANGALORE - 560 024.

3. SRI. MADIAH,
S/O CHIKKAIAH,
AGED ABOUT 60 YEARS,
NO.3, PUTTANNAHALLI,
RANASINGHPET,
BANGALORE - 560 053.
4. SRI AMRUTHLAL,
S/O BADARMAL,
AGED ABOUT 52 YEARS,
NO.1, PANCHALA ANKANNA LINE,
MANAVATHAPET,
BANGALORE - 560 053.

...RESPONDENTS

(BY SRI. P.M. NARAYANA SWAMY., ADVOCATE FOR C/R1 & R2)

THIS RFA IS FILED UNDER SECTION 96 OF CPC,1908,
AGAINST THE JUDGMENT AND DECREE DATED:20.12.2013
PASSED IN O.S.26186/2010 ON THE FILE OF XXVIII ADDL.
CITY CIVIL & SESSIONS JUDGE, BENGALURU, DECREETING THE
SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

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

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This Regular First Appeal is filed under Section 96 r/w Order XLI Rule 1 of the Code of Civil Procedure, 1908, by the defendant No.2 assailing the Judgment and Decree dated 20.12.2013 passed by the XXVIII Addl. City Civil Judge, Mayo Hall Unit, Bengaluru¹ in O.S.No.26186/2010.

2. The Trial Court by means of Judgment and Decree, decreed the suit as sought for by the plaintiffs declaring them as the absolute owners of the suit schedule property and directed the defendants to deliver vacant possession of the suit schedule property to the plaintiffs in a time bound manner, failing which the plaintiffs are entitled to recover the possession of suit schedule property through the process of Court.

3. Parties are referred to as per their ranking before the Trial Court.

¹ for short 'Trial Court'



4. Facts in brief leading to file this appeal are as follows:

AS PER THE PLAINTIFFS:

4.1 Originally the suit schedule property is acquired by Binny Mills Labour Association House Building Co-operative Society Limited². Later on the Society formed a layout in order to allot sites in favour of Members of the said Society. The Society after acquiring the land, got the approved layout plan from the then City Improvement Trust Board, Bangalore, by its Resolution No.155 dated 06.08.1970 and Resolution No.250 dated 21.10.1970.

4.2 Thereafter the Society allotted Site No.90 which is the suit schedule property, in favour of Sri.P.Muniswamy, who was a nominal Member in terms of receipt dated 07.11.1973. Sri.P.Muniswamy paid a sum of Rs.2,500/- on 07.11.1973 and Rs.1,000/- on 10.12.1973, thereafter paid a sum of Rs.1,844/- as final payment on

² for short 'Society'



09.02.1974 as per Exs.P-5 to P-8 (receipts). Thereafter, the Society registered an absolute sale deed on 15.02.1974 in the Office of Sub-Registrar, Srirampuram in favour of Sri.P.Muniswamy bearing registered Document No.3942/1973-74. As per sale deed dated 15.02.1974 (Ex.P-2) there is a clear recital, which reads as under:

"WHEREAS the Board of Directors of the First Party Society at its meeting held on 9th December 1973 considered the ways and means to dispose off the surplus building sites in the Lay-out formed by it and has decided to sell the same to outsiders who may be admitted as 'Nominal Members' in terms of Section 18 of the Mysore C-operative Societies Act, 1959;

WHEREAS the Special General Body Meeting of the First Party Society held on 29th December 1973 unanimously approved of the proposal to sell the surplus building sites to outsiders admitting them as 'NOMINAL MEMBERS' of the First Party Society ;

WHEREAS the Second Party is ready and willing to purchase Site No.90I formed in the Lay-out of the First Party situated at Kempapura Agrahara, Bangalore North Taluk, more fully described in the Schedule hereunto, for a total consideration of Rs.1670/- (Rupees One Thousand Six Hundred Seventy only)."

4.3 The sale deed was followed by Possession Certificate dated 13.10.1975 issued by the very same Society in favour of purchaser i.e., Sri.P.Muniswamy.



When Sri.P.Muniswamy approached the concerned Authority i.e., Bangalore Development Authority³ for effecting his name in the Khatha, the defendant No.1-Madaiah objected for the same. The Revenue Officials of BDA after considering the documents, proceeded to enter the name of Sri.P.Muniswamy in revenue records stating that the Society first allotted the site in favour of Sri.P.Muniswamy, and after lapse of eight (8) years, the Society again alleged to have allotted the very same site in favour of defendant No.1, as such, the first allottee-Sri.P.Muniswamy has got title to the site.

4.4 The defendant No.1 aggrieved by the action of BDA, challenged the same in W.P.No.19285/1986, which ultimately resulted in dismissal for non-prosecution by order dated 08.02.1988.

4.5 Thereafter, Sri.P.Muniswamy instituted a bare suit for injunction in O.S.No.1491/1986 against the defendant No.1-Madaiah, as there was interference by the

³ Hereinafter referred to as 'BDA' for the sake of brevity



said defendant. The suit came to be decreed by judgment and decree dated 12.10.1987 permanently restraining the defendant No.1 from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property.

4.6 On 01.02.1996, Sri.P.Muniswamy expired survived by his wife and children as his legal heirs. One of the legal heirs i.e., wife of P.Muniswamy, Smt.Vijayalakshmi has made a representation to BDA on 17.11.2005 seeking transfer of Khatha in her favour in respect of the suit schedule property by enclosing all the registered documents. Same was under process at the time of execution of sale deed in favour of the plaintiff. Thereafter, Smt.Vijayalakshmi and her children jointly conveyed the suit schedule property in favour of plaintiffs for a valuable consideration on 12.05.2006 as per Ex.P-1. Pursuant to the sale deed the plaintiffs are put in peaceful possession and enjoyment of the same, they have put up



a compound wall around the suit schedule property to avoid any trespassers.

4.7 As the matter stood thus, the defendants without having any matter of right, title or interest over the suit schedule property demolished the compound wall and high handedly entered into the property and started unauthorised construction in the suit schedule property on the basis of fraudulent documents. Though the plaintiff has approached the jurisdictional police, they have washed away their hands by advising the plaintiffs to avail remedy before the competent Civil Court as the matter involves civil dispute. The plaintiff having the left with no other option instituted the present suit in O.S.No.26186/2010.

4.8 Upon issuance of summons, defendant Nos.1 and 3 despite service remained absent and were placed *exparte*. Defendant No.2 appeared through his counsel and filed written statement denying all the plaint averments except certain facts.



AS PER DEFENDANT No.2:

5. As per the version of defendant No.2, the suit schedule property conveyed in favour of defendant No.1-Madaiah on 23.02.1981 by means of registered sale deed in his favour. Thereafter, registered cancellation deed was executed by the Society on 30.05.1981 cancelling the sale deed in favour of Sri.P.Muniswamy, the original allottee, on the premise that as per Bylaw No.2 of the Society, which reads as under:

"The jurisdiction of the Society shall be confined to the employees of The Bangalore Woollen, Cotton and Silk Mills Ltd., Bangalore and its allied companies, Showrooms, etc., situated in and around the Bangalore City Corporation area."

5.1 In that view of the matter, as Sri.P.Muniswamy was not Member of the Binny Mills Labour Association, the sale deed executed in his favour came to be cancelled. Followed by the Cancellation Deed, a Possession Certificate was issued in favour of defendant No.1-Sri.Madaiah putting him in possession of the property. Said Madaiah



on 22.03.1990 conveyed the said property by means of registered sale deed in favour of defendant No.3. Defendant No.3 thereafter by means of registered sale deed dated 23.05.2005 sold the property in favour of defendant No.2 and put him in possession of the suit schedule property.

5.2 In the interregnum there were certain proceedings between Sri.P.Muniswamy and Sri.Madaiah-defendant No.1 with respect to the suit schedule property. Subsequent to purchase of the property, the defendant No.2 approached the BDA for entering his name in the revenue records by receiving the arrears of tax and issue 'No Due Certificate'. Since the same was not considered, he approached this Court in W.P.No.1392/2006. This Court by order dated 23.02.2006 disposed of the writ petition directing the BDA to reconsider the application filed by the defendant No.2 (Annexure-L in that writ petition) in accordance with law and intimate the result of same to defendant No.2.



5.3 Thereafter, as the Bangalore Mahanagara Palike⁴ refused to enter the name of plaintiff and refused to effect or change the Khatha in the name of plaintiff in respect of the suit schedule property in favour of defendant No.2, he approached this Court in W.P.No.13391/2006. In the said writ petition, the learned counsel appearing for the Corporation submitted that an order has already been passed on 07.09.2006 on the application. This Court declining his request for Khatha on account of pendency of the suit before the Civil Court, disposed of the writ petition leaving open the right to defendant No.2 to question the communication dated 07.09.2006. As per Ex.D-10, the Bruhat Bangalore Mahanagara Palike⁵ issued Khatha Certificate in favour of defendant No.2 allotting PID No.35-112-90, so also issued Khatha Extract as per Ex.D-11. In the meanwhile, the defendant has got approved the plan by the BBMP, started construction in the suit schedule property by availing loan.

⁴ For short 'BMP'

⁵ For short 'BBMP'



He further contended that by means of documents stated supra, he has perfected his title and he is in physical possession of the property.

5.4 The defendant No.2 further contended that, the claim of plaintiffs is not sustainable in law as the original allottee i.e., deceased P.Muniswamy being a nominal Member was not entitled to be allotted any site in terms of Bylaw No.2 stated supra. As such sale deed executed in his favour is *nonest*, which is against the Bylaw and that too, in the teeth of Cancellation Deed thereafter execution of sale deed in favour of defendant No.1. He has purchased the property under registered documents, in possession and constructing the building thereon, as such the plaintiffs are not entitled for any relief, as the predecessor in title i.e., Sri.P.Muniswamy got executed the sale deed in his favour in active collusion of some office bearers of the Society against the Bylaw of the Society, as such the same is a nullity. With this the defendant No.2 sought to dismiss the suit with exemplary cost.



6. The Trial Court after completion of pleadings, framed the following issues:

- (1) Whether the plaintiffs prove that they are the absolute owners of the suit schedule property on the date of the suit?
- (2) Whether the plaintiffs prove that defendants are in unauthorised possession of the suit schedule property, liable to deliver vacant possession of the same by demolishing the structures?
- (3) Whether the plaintiff is entitled for permanent injunction?
- (4) Whether the suit is barred by limitation?
- (5) Whether the suit is hit by mis-joinder and non-joinder of parties?
- (6) Whether the suit is valued properly and court fee paid is sufficient?
- (7) What order or decree?

7. Plaintiffs in order to prove their case, examined plaintiff No.1 as PW1 and produced 11 documents as Exs.P-1 to P-11 and rest their case. On behalf of



defendants, the defendant No.2 is examined as DW1 and produced 15 documents as Exs.D-1 to D-15.

JUDGMENT OF THE TRIAL COURT:

8. The Trial Court after trial and appreciating the evidence both oral and documentary evidence answered all the issues in favour of plaintiffs and proceeded to decree the suit. The Trial Court based its judgment on the findings that deceased P.Muniswamy was allotted suit schedule property way back in the year 1974 after collecting the valuable sale consideration as per Exs.P-5 to P-8 and executed the registered sale deed - Ex.P-2. As per recital in Ex.P-2, which we have already extracted above, though deceased P.Muniswamy was a nominal Member, in terms of Ex.P-2 as per the Resolution of the Board stated supra, he is entitled to be allotted surplus building sites formed in the layout. In terms of the Board Resolution said sale deed came to be executed. Said sale deed was followed by Possession Certificate as per Ex.P-4.



9. The Trial Court further recorded its finding that Society once having executed the sale deed in respect of the suit schedule property in favour of Sri.P.Muniswamy- the predecessor in title of the plaintiff, loses its right to further convey the same in favour of defendant No.1 i.e., predecessor in favour of defendant No.2. **The Trial Court has held that the Society admittedly executed sale deed in favour of defendant No.1-Madaiah on 23.02.1981, however the cancellation deed came to be executed unilaterally on 30.05.1981.** This shows that much prior to cancellation of the sale deed in favour of predecessor in title of the plaintiff the sale deed was executed. That apart, the cancellation deed was unilaterally executed without causing any notice to the predecessor in title i.e., Sri.P.Muniswamy.

9.1 Further the Trial Court has relied on the judgment of this Court in the case of **BINNY MILL LABOUR WELFARE HOUSE BUILDING CO-OPERATIVE**



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and held that unilateral cancellation of sale deed is illegal and not sustainable in law. Further that there was no fault in allotting surplus building sites in favour of plaintiff. This Court in ***BINNY MILL'S*** case supra, framed points for consideration in paragraph No.16 and answered them in paragraph Nos.32, 35, 36, 37 and 38. The relevant paragraphs are extracted hereinbelow:

"32. In so far as the non-members who have purchased the property are concerned have dealt with the society represented by its President, Secretary and Treasurer. All the three of them have executed the sale deeds in their favour. The sale was for a valid consideration.

There is no prohibition in the bye-laws to sell the sites in favour of non-members. Therefore, the sale deed executed by the society in favour of the non-members cannot be said to be void. The said agreement is not forbidden by law or is of such a nature that it would defeat the provisions of any law or it is immoral or opposed to public policy. Therefore, the said agreement is lawful and not void. It is a valid contract, which is enforceable.

35. In view of the aforesaid authoritative pronouncement of the Supreme Court the said bye-law cannot be equated to law, rules or regulations. The said bye-laws only govern the

⁶ ILR 2008 KAR 2245



internal management, business or administration of a society. They are in the nature of Articles of Association of a Company incorporated under the Companies Act. It has no statutory force. Any act of the society contrary to the said bye-law ipso facto do not render the said act void and without authority. When the society enters into a contract with third parties or outsiders those outsiders are in no way bound by the said bye-law. The society is a body corporate by name having a perpetual succession and a common seal and when a contract is entered into by the office bearers of the society i.e., the President, the Secretary and the Treasurer on behalf of the society with the third parties, it is binding on the society even though it is contrary to the bye-law. In fact on that ground till today no steps are taken by the society to get the sale deed annulled. On the contrary, the society has executed the cancellation deed. The defence taken by the society clearly shows that it is under the impression that the sale deed in favour of a non-member is executed only by the Secretary and he has misappropriated the said amount and he had no authorization to execute the sale deed. But, the material on record demonstrates that before the execution of the sale deed, there was resolution dated:9-12-1973 authorizing the President, the Secretary and Treasurer to execute the sale deed in favour of non-members for the purpose of raising finance to complete the layout work as well as to pay interest due by the society which the members of the society were incapable of discharging. In pursuance of the said resolution, the President, Secretary and the Treasurer have executed the sale deed. Neither the subsequent sale deed executed by the society in favour of member nor the cancellation deed executed by the society is executed by the President, Secretary and Treasurer. It is only the Secretary who has



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executed the said documents. If the argument of the society is to be accepted; then the cancellation deed as well as sale deed in favour of a member also becomes void. The allegations made against the previous Secretary Sri Anniyappa is without any basis as is clear from the aforesaid three resolutions. Therefore, in the light of the aforesaid discussion, there is no merit in the said contention. The sale deed executed by the society represented by the President. Secretary and the Treasurer in favour of a non-member is valid and binding on the society and it is not void.

Points No.3 and 4:

36. When the owner of a property sells/conveys the property to the purchaser under a written document and get the same registered. the right and the title to the said property is transferred from the owner to the purchaser on registration of the said documents. After such registration the owner of the property ceases to have any interest and all his rights in the property gets extinguished. He would not have any right to meddle with the property thereafter. If such a person were to execute one more sale deed and get it registered in respect of the said property the said sale deed has no value in the eye of law. The reason being on the date of the second sale deed, he is not the owner of the property. Therefore, the purchaser would not get title to the property as the vendor could convey only that title which he has in the property on the date of execution and registration of the sale deed. Similarly, if after execution and registration of the sale deed, the owner wants to get back the property, it has to be done by cancelling the sale deed on any of the grounds which are available to him under the provisions of the Indian Contract Act. Unilaterally



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he cannot execute what is styled as a deed of cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property. Normally what can be done by a Court can be done by the parties to an instrument by mutual consent. Even otherwise if the parties to a document agree to cancel it by mutual consent for some reason and restore status quo ante, it is possible to execute such a deed. An agreement of sale, lease or mortgage or partition may be cancelled with the consent of the parties thereto. Because in the case of agreement of sale, lease, mortgage or partition, each of the parties to the said document even after the execution and registration of the said deed retains interest in the property and, therefore, it is permissible for them to execute one more document to annul or cancel the earlier deed. However, it would not apply to a case of deed of sale executed and registered. In the case of a sale deed executed and registered the owner completely loses his right over the property and the purchaser becomes the absolute owner. It cannot be nullified by executing a deed of cancellation because by execution and registration of a sale deed, the properties are being vested in the purchaser and the title cannot be divested by mere execution of a deed of cancellation. Therefore, even by consent or agreement between the purchaser and the vendor, the said sale deed cannot be annulled. If the purchaser wants to give back the property, it has to be by another deed of conveyance. If the deed is vitiated by fraud or other grounds mentioned in the Contract Act, there is no possibility of parties agreeing by mutual consent to cancel the deed. It is only the Court which can cancel the deed duly executed, under the circumstances mentioned in Section 31 and other provisions of the Specific Relief Act, 1963. Therefore, the power to cancel a



deed vests with a Court and it cannot be exercised by the vendor of a property. In this context it is necessary to see Section 31 of the Specific Relief Act, which reads as under:-

"31. When cancellation may be ordered:-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

37. A reading of the aforesaid provision makes it clear that both void and voidable instruments can be cancelled by the Court. The cause of action for such an action is an apprehension, if such an instrument is left outstanding may cause serious injury to the person against whom the written instrument is void or voidable. Such a person has the discretion to approach a competent Civil Court for adjudging the said instrument to be delivered up and cancelled. Even though in law a void instrument is unenforceable, has no value in the eye of law, void ab initio, the very physical existence of such a document may cause a cloud on the title of the party or cause injury or one can



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play mischief. Therefore, the law provides for cancellation of such instruments which are also non est, but which are in existence as a fact physically to get over the effect of such instrument. Once such an instrument is registered, the said registration has the effect of informing and giving notice to the World at large that such a document has been executed. Registration of a document is a notice to all the subsequent purchasers or encumbrances of the same property. The doctrine of constructive notice is attracted. Therefore, the effect of registration of an instrument not only affects the rights of the parties to the instrument but also affects parties who may claim under them. Therefore, once such an instrument is ordered to be delivered up and cancelled an obligation is cast upon the Court to send a copy of its decree to the officer in whose office the instrument was registered, so that such an officer shall note on the copy of the instrument contained in his books the fact of its cancellation. Once such an entry is made in the books of the Sub-Registrar about the cancellation of the registered instrument. it also acts as a notice of cancellation to the whole World and it is also a constructive notice of cancellation of the said instrument.

38. Part X of the Indian Registration Act, 1908 deals with effect of registration and non-registration of an instrument. A combined reading of Sections 47, 48 and 49 makes it clear that an instrument which purports to transfer title to the property requires to be registered, the title does not pass until registration has been affected. The registration by itself does not create a new title. It only affirms a title that has been created by the deed. The title is complete and the effect. of registration is to make it unquestionable and absolute. Section 47 of the Act makes it clear that



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a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. The Section however does not say when a sale would be deemed to be complete. However, Section 47 of the Registration Act makes it clear that, though a document is registered on a particular date, the effective date would be the date on which the said document was executed and not from the date of registration. If the document is not registered but is compulsorily registerable, though the document is duly executed, it has no legal effect and it does not affect the immovable property comprised in the said document in view of Section 49 of the Act. The registration of such a duly executed document comes into operation, the moment it is duly registered, not from the date of registration but from the date of execution of the said document. Section 54 of the Transfer of Property Act, 1882, which deals with sales of immovable property mandates emphatically the transfer of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument. Thus, without registration there is no transfer of ownership of the property. Therefore, it is clear that the act of registration in the scheme of things is not a mere instance of the State collecting some registration fee and providing authenticity to a written instrument. It is by the act of registration, the title in the property passes to the transferor, from the date of execution of the deed of transfer. Once such sale takes place, transfer is complete, the vendor of the property ceases to be the owner of the property. Thereafter if he executes one more sale deed in respect of the same property or a cancellation deed in respect of the property already sold, in law it has no value,



and it in no way affects the sale deed already executed. It is invalid, void, and non-est."

9.2 In the above said judgment, this Court so far as first point that the sale deed executed by the Society in favour of non-member is void or voidable; Answered that, any sale deed executed by the Society in favour of non-members cannot be said to be void in paragraph No.32 of the judgment and stated further that such a deed is not forbidden by law or is of such a nature that it would defeat the provisions of any law or it is immoral or opposed to public policy, therefore the deed executed is lawful and not void. Further on Point No.2 this Court has held that the sale deed executed by the Society in favour of non-member is valid and finding of the Society it is not void.

9.3 So far as Point Nos.3 and 4 are concerned, this Court in the aforesaid judgment referring to Section 31 of the Specific Relief Act, 1963⁷ has held that the sale deed, which was executed in favour of one C.Janardhana Rao by

⁷ For short 'the Act'



the Society was unilaterally cancelled without notice to him, was without due authority of law. Since the said person was in possession of the suit schedule property as on the date of cancellation deed, he is in lawful possession of the suit schedule property and the Society did not take possession from the said C.Janardhana Rao, as such answered the said questions that the cancellation deed executed unilaterally is bad in law.

9.4 The Trial Court having considered these aspects of the matter held that the subsequent sale deeds executed without first cancellation and the cancellation unilaterally has no binding force and are bad in law. In that view of the matter, the rights of P.Muniswamy does not get affected in law. As such, the sale deed conveyed by his legal heirs in favour of the plaintiff is valid. The defendant No.2 despite these facts has risked in purchasing the property and ventured to trespass and started construction despite pendency of the suit. As such, his possession is nothing but rank trespasser, who is



liable to deliver vacant possession. Accordingly, decreed the suit. It is this judgment and decree passed by the Trial Court is called in question in this appeal.

CONTENTIONS OF SRI.PAPIREDDY, LEARNED SENIOR COUNSEL:

10. Firstly, learned Senior counsel submits that as on the date when plaintiffs have purchased the property i.e., on 12.05.2006 from the legal representatives of P.Muniswamy the revenue records were not standing in the name of their predecessor in title namely, P.Muniswamy Goundar.

10.1 Secondly, learned Senior Counsel submits that the Trial Court has failed to take note that except sale deed - Ex.P-2 and possession certificate - Ex.P-4, no documents have been produced by the plaintiff to establish their possession and title relating to the property. The Trial Court has lost sight of these important aspects of the matter, as such the judgment and decree is bad in law.



10.2 Thirdly, he submits that the Trial Court has failed to consider the fact that the Society having allotted the site to a non-member in violation of its Rules and by-laws, and after realising the same, passed a resolution that the allotment is an illegal allotment and sale to a non member cannot be made. As such cancelled the allotment in favour of Sri.Muniswamy by means of Ex.D-3 i.e., deed of cancellation dated 30.05.1981. Though said deed of cancellation was within the knowledge of the allottee, he never took any pain to challenge the cancellation of sale deed in his favour till 2006 i.e., when he died. The Trial Court has brushed aside this important aspect of the matter. The Trial Court wrongly applied the judgment of this Court in ***BINNY MILL's*** case supra. In that view of the matter, the judgment of the Trial Court is bad in law.

10.3 He further submitted that much water has flown under the bridge after cancellation of the sale deed. The sale deed was executed in favour of defendant No.1,



thereafter he executed second sale deed in favour of defendant No.3 and thereafter defendant No.2 purchased the property in the year 2005 for valuable consideration. He has got his name entered in the Khatha and paid tax to the concerned Authorities. These documents coupled with tax paid receipts clearly show that the defendant No.2 is in possession of the property. The contention of the plaintiff that they were in possession and this defendant illegally trespassed upon the property and started illegal construction are only imaginary and far from truth. The Plaintiff got sanction plan and started construction, which are clearly visible in the photographs. In that view of the matter, the judgment and decree of the Trial Court is bad in law.

10.4 Further he submits that 26 years passed i.e., the date of execution of sale deed in favour of defendant No.2 and the date of cancellation of deed in the year 1981, no action has been taken either by the deceased P. Muniswamy nor his legal representatives challenging the



cancellation deed. In that view of the matter, the judgment and decree passed by the Trial Court suffers from perversity and illegality.

10.5 He further submits that the Trial Court has brushed aside all the documents produced by the defendants to establish his legal possession and legal title. He further submits that the Issue No. 2 has been framed regarding the plaintiff's claim that the defendants are in unauthorised possession of the property and are liable to deliver the vacant possession of the property by demolishing the structures. Though answered in affirmative, but there is no deliberation on the construction and its demolition either in the body of the judgment or in the operative portion of the judgment, as such, the decree is inexecutable. In that view of the matter, sought to allow the appeal and dismiss the suit by setting aside the judgment and decree.



CONTENTIONS OF SRI.P.M.NARAYANA SWAMY, LEARNED COUNSEL FOR RESPONDENT Nos.1 AND 2:

11. Per contra, Sri.P.M.Narayana Swamy, learned counsel appearing for the caveator/respondent No.1 and respondent No.2 placing reliance on the judgment of this Court in ***BINNY MILL's*** case supra submits that in view of declaration of law that the sale deed in favour of non-member of the Society, held as valid and unilateral cancellation of such sale deed as invalid nonest, as the same is hit by Section 31 of the Contract Act, 1872⁸. Further, he submits that the sale deed executed in favour of defendant No.1, thereafter to defendant No.3 and then to defendant No.2 have no value in the eye of law, as they in no way affects the sale deed already executed in favour of the P.Muniswamy and the plaintiff thereafter, as such the said deeds executed by the Society in favour of defendant No.1 and defendant No.1 in favour of defendant No.3 and defendant No.3 in favour of defendant No.2, are invalid, void and *nonest*. A document which is void or

⁸ For short 'Act'



nonest is 'void' from the inception and even does not call for any challenge to the same as once void is void forever and argued in support of the judgment and decree and sought to dismiss the appeal.

12. Having considered the rival submissions, following points would arise for our consideration are:

- (1) Whether the sale deed executed in favour of P.Muniswamy by the Society is valid or void or voidable?
- (2) Whether the unilateral cancellation of sale deed by the Society by means of Ex.D-3 dated 30.05.1981 is valid in law, in terms of Section 31 of the Act?
- (3) Whether the sale deed executed in favour of defendant No.1 by the Society dated 23.02.1981 much prior to cancellation of sale deed in favour of P.Muniswamy is valid and further sale deeds of the year 1990 and 2005 in favour of defendant No.3 and defendant No.2 are valid and having any force in law?



- (4) Whether the judgment and decree passed by the Trial Court calls for any interference at the hands of this Court?

ANALYSIS:

13. Our answer to Point Nos.1 to 4 is in favour of plaintiff and against the defendants. That the sale deed in favour of non-member is valid, unilateral cancellation is bad in law as the same is hit by Section 31 of the Act. The sale deed in favour of defendant No.1 by the Society and further deeds thereafter are void and *nonest* and the judgment and decree of the Trial Court does not call for any interference.

14. So far as Point No.4 is concerned, our answer is in negative i.e., in favour of the plaintiff and against the defendants. Insofar as Point Nos.1 to 3 are concerned, these points are no more *res-integra* in view of law settled by the judgment of this Court in **BINNY MILL's** case *supra*. This Court formulated Point Nos.1 to 4 in paragraph No.16 and answered the same stating that the



sale deed executed in favour of non member is valid and a cancellation of sale deed unilaterally is bad in law as the same is against the provisions of Section 31 of the Act. So also the sale deed subsequently executed by the Society in favour of defendant No.1 in no way affect the rights of the sale deed already executed in favour of the party earlier to that and as such they are invalid, void and *nonest*. It is settled position of law that in view of paragraphs which we have already extracted hereinabove and interpreted, as such does not require much deliberation on Point Nos.1 to 3 in view of the paragraphs afore.

15. It is settled principle of law that a thing which is void, is void from its inception as rightly contented by the learned counsel for the plaintiff that a void document is void forever. A void document is void from its inception and does not require any challenge to it as an absolute necessity as the same is just a mere formality. 'Void' is 'Void' forever and cannot be made valid merely because no challenge is made. The Trial Court having considered



this aspect of the matter rejected the contention of the defendants.

16. Besides this, even otherwise as properly pointed out by the Trial Court the sale deed came to be executed in favour of defendant No.1 much prior to the cancellation and subsequent to thereafter there was unilateral cancellation. As such, both the deeds are invalid and *nonest*. In that view of the matter, no person can create a further right in favour of a person under a void document. In these circumstances, no right flowed from the Society in favour of defendant No.1 and thereafter by defendant No.1 in favour of defendant No.3 and from defendant No.3 to defendant No.2. In these circumstances, the sale deeds in favour of defendant No.1 and thereafter in favour of defendant Nos.3 and 2 are void and *nonest*.

17. So far as the judgment of the Trial Court is concerned, the Trial Court having consulted the entire



documents and the evidence on record, properly considered and held that the plaintiffs have proved their title in terms of law and the defendant No.2 illegally trespassed into the property and started construction, which is illegal and directed the defendants to hand over vacant possession of the property. The said judgment is well reasoned and does not call for any interference at the hands of this Court.

18. So far as learned Senior Counsel's submission that, there are admissions in the evidence of PW1 in his cross-examination wherein he has admitted that the defendant No.2 was constructing the building after obtaining license from the Corporation, further that the sites are formed by the Society to allot to the workers of the Binny Mill are concerned. It is cardinal principles of Evidence Act, 1872 (Bharatiya Sakshya Adhiniyam, 2023) that the entire evidence be read as a whole and stray admission cannot be relied on to destroy the entire evidence. The oral evidence backed with documentary



evidence clearly shows that the plaintiffs have established their case that their predecessor in title has got valid title, interest and possession in the property in view of Exs.P-2, P-4 and P-5 to P-8. In that view of the matter, the arguments of learned Senior Counsel cannot be countenanced.

19. Learned Senior Counsel submits that the defendant No.2 has constructed the building in terms of the license issued by Bangalore Mahanagara Palike. The suit came to be filed in the year 2010 on the premise that the defendants have illegally trespassed into the property and started illegal construction, laid foundations and continued the construction. As per the documents produced by the defendants, the photographs as well as the Khatha Certificate issued by the Bruhat Bengaluru Mahanagara Palike and the licence are all subsequent to filing of the suit. The suit was admittedly filed on 30.07.2010. The Khatha Certificate is issued in the year 2011 and both Khatha Certificate and Khatha Extract are



dated 22.03.2011. In view of the settled position of law regarding the sale deed in favour of non-member and unilateral cancellation of sale deed, the Society once executed sale deed in favour of Sri.P.Muniswamy has got no right to convey the same in favour of any other person unless and until the earlier sale deed is cancelled in terms of law i.e., as per Section 31 of the Act.

20. Besides this, even otherwise the sale deed was executed much prior to the cancellation deed. In that view of the matter, since the Society itself has no right to convey further sale deed in favour of defendant No.1, thereafter by defendant No.1 in favour of defendant No.3 and thereafter by defendant No.3 in favour of defendant No.2 have no legs to stand in law as they all are void and *nonest*. In that view of the matter, we hold that the Trial Court has properly considered the entire material placed on record and properly decreed the suit.



21. So far as the contention that there is no order regarding demolition, the Trial Court having answered the Issue No.2 in its entirety in affirmative, held that, all the defendants are liable to handover vacant possession of the property, clearly shows that the property required to be conveyed as it was standing prior to the construction of the property. The construction started immediately prior to filing of the suit and continued during the pendency of the suit, cannot be permitted to stand in law. The claim of learned Senior Counsel that they have already constructed building in the suit schedule property, cannot be sustained. A person who seeks equity must do equity. A high-handed act by the defendants cannot now allowed be protected by lending a helping hand by the Court, amounts to perpetuation of illegality, which Courts are restrained in law to consider and grant. However, it is between the parties to work on it in the execution proceedings.



22. For the foregoing reasons, we proceed to pass the following:

ORDER

- (1) The appeal is ***dismissed*** with costs throughout.
- (2) The judgment and decree dated 20.12.2013 passed by the XXVIII Addl. City Civil Judge, Mayohall, Bangalore, in O.S.No.26186/2010, is confirmed.
- (3) Registry to draw decree accordingly.
- (4) Trial Court records be retransmitted to Trial Court, forthwith.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

DR
List No.: 1 SI No.: 4
ct-vn