

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

A.S.No.90 of 2008

JUDGMENT:

This appeal is filed questioning the judgment dated 11.12.2007, passed in O.S.No.1559 of 2004, on the file of the II Additional Senior Civil Judge, R.R.District at NTR Nagar, Hyderabad, by and under which, the learned Senior Civil Judge decreed the suit of the plaintiff filed for specific performance and delivery of possession.

2. The appellants are defendants Nos.1 to 3. 1st respondent is the plaintiff and the 2nd respondent is the 4th defendant.

3. During pendency of the proceedings, the 1st respondent/plaintiff died and his legal representatives are impleaded as Respondents Nos.3 and 4. The 1st appellant/1st defendant also died and his legal representatives are impleaded as Respondents Nos.6 to 9, whereas the 5th respondent in the appeal is impleaded, vide orders in ASMP No.1319/2015, dated 19.04.2017.

4. For convenience, the parties shall be referred to as they are arrayed in the original suit.

5. The plaintiff filed the suit for specific performance of a contract said to have been executed by the 4th defendant in his capacity as General Power of Attorney Holder (for short' GPA') of defendants Nos. 1 to 3 on 30.03.2001. The plaintiff also sought for handing over the vacant physical possession and to direct the defendants to execute the sale deed in his favour by accepting the balance sale consideration, alternatively, the plaintiff sought for refund of Rs.5,25,000/- together with interest thereon @18% p.a from the date of agreement of sale till its realisation. The suit

schedule property comprises of an extent of Ac.2.38 gts in Sy.No.130, situated at Yapral village, Malkajgiri Mandal, Ranga Reddy District.

6. The averments in the plaint in brief are as under:

The plaintiff is resident of Venkatapuram colony, Padmaraonagar, Secunderabad and he is a businessman. Defendants Nos.1 to 3 are the absolute owners and possessors of the schedule property, admeasuring Ac.2.38 gts in Sy.No.130 of Yapral village, Malkajgiri Mandal, R.R.District and they have executed a General Power of Attorney in favour of the 4th defendant by way of a registered GPA, dated 18.01.1993 to sell the schedule property. Defendants Nos.1 to 3 through the 4th defendant approached the plaintiff and offered to sell the schedule property for which, the plaintiff agreed to purchase the same for a consideration of Rs.6,00,000/-. The 4th defendant being GPA holder executed Ex.A1 agreement of sale on 30.03.2001 in favour of the plaintiff to sell the schedule property and received a sum of Rs.5,25,000/- from the plaintiff towards part sale consideration and agreed to register the sale deed after receiving the balance consideration of Rs.75,000/-. Under clause No.5, it is mutually agreed that the scheduled property shall be measured with a qualified surveyor at the cost of the defendants, and under clause No.6 of the agreement of sale, defendants agreed to measure the land and after ascertaining the exact extent of the property, they shall inform the plaintiff and thereafter, the plaintiff shall pay the balance sale consideration and shall obtain registered sale deed from the defendants. The plaintiff on several occasions requested all the defendants to measure the property with a qualified surveyor, but defendants failed to do so and did not survey the property and did not execute the sale deed as agreed.

On 10.10.2004, the plaintiff personally informed the defendants that he is always ready and willing to perform his part of obligation under agreement of sale, but the defendants did not come forward. Hence, the plaintiff got issued a legal notice on 15.10.2004 calling upon the defendants to measure the schedule property with a qualified surveyor and inform him within 15 days. Though the said notice was served on the defendants Nos.1, 3 & 4 on 21.10.2004, but the defendants have not responded, and otherwise, they are trying to alienate the schedule property to third parties and hence the plaintiff filed the suit for specific performance and recovery of possession, or in the alternative, for refund of the amount of Rs.5,25,000/- with interest @18% p.a from the date of agreement of sale till realisation.

7. On behalf of defendants Nos.1 to 3, Defendant No.3 filed written statement which is adopted by defendants Nos.1 & 2 to the following effect:

8. While admitting that defendants Nos.1 to 3 were the owners and possessors of the schedule property, they denied the averments of the plaint that through GPA i.e. 4th defendants, defendants Nos.1 to 3 approached the plaintiff and offered to sell the property for a total consideration of Rs.6,00,000/- for which the plaintiff agreed and paid Rs.5,25,000/- towards part consideration and agreed to pay the remaining balance of Rs.75,000/- at the time of registration of sale deed. They denied the execution of Ex.A1 agreement of sale and issuance of Ex.A2 legal notice. It is contended that they never approached the plaintiff and they did not know the plaintiff and offered to sell the schedule property. They did not receive any amount from the plaintiff. Defendants Nos.1 to

3 admitted that they gave GPA in favour of the 4th defendant and the said GPA with their consent already sold the schedule property to three persons, viz., (1) Rayanna Chowdary to an extent of Ac.1.00, (2) S.Ramchndra Reddy to an extent of Ac.1.00, and (3) G.Jayakumar Reddy to an extent of Ac.0.38 gts. under three registered sale deeds, vide Documents Nos.1033/2001, 1034/2001 and 1035/2001, dated 10.04.2001 and delivered the possession.

9. It is contended that with the collusion of the 4th defendant the plaintiff created Ex.A1 sale agreement 10 days before the above registered sale deeds, and filed the suit with false allegations, as mentioned in the plaint. It is contended that they are no more owners of the schedule property after sold out the property to the above named three persons.

10. The 4th defendant filed written statement contending that defendants Nos.1 to 3 are owners and possessors of the schedule property and they approached the plaintiff through 4th defendant and offered to sell the property and the plaintiff agreed to purchased the same and accordingly defendants Nos.1 to 3 entered into agreement of sale with the plaintiff on 30.03.2001 agreeing to sell the property for a sum of Rs.6,00,000/- and the plaintiff paid a sum of Rs.5,25,000/- as part consideration, and the remaining balance of Rs.75,000/- was agreed to be paid on the date of execution of sale deed and the defendants agreed to deliver the possession of the property on the date of execution of the sale deed. It is also admitted that it was mutually agreed between the parties that before paying balance sale consideration, the land has to be measured by a qualified surveyor and after ascertaining the exact extent

of land, the defendants shall inform the plaintiff and thereafter the defendants shall execute registered sale deed. It is also admitted that the suit land was not measured and surveyed as per terms of the agreement. It is also admitted that the plaintiff approached the defendants on 10.10.2004 and requested to measure the land and offered the balance sale consideration and when the defendants failed to do so, the plaintiff got issued legal notice on 15.10.2004. Thus, the 4th defendant supported the case of the plaintiff.

11. On the basis of the above pleadings, the Court below framed following issues.

- 1) Whether the suit agreement of sale dt.30.03.2001 is true, valid and supported by consideration?
- 2) Whether defendants Nos.1 to 3 sold the suit schedule property through defendant Nos.4 on 10.04.2001 under three registered sale deeds and delivered possession to the purchasers?
- 3) Whether the plaintiff is entitled for the relief of specific performance as prayed for?
- 4) Whether the plaintiff is entitled for the alternative relief of refund of Rs.5,25,000/- together with interest at 18% per annum?
- 5) To what relief?

12. The plaintiff examined himself as PW 1 and also examined PW 2, who is said to be attesting witness to the agreement of sale and produced Exs.A1 to A5. On behalf of the defendants, DWs 1 and 2 are examined and Exs.B1 to B4 are marked. The 4th defendant examined himself as DW 3.

13. In view of the oral and documentary evidence on record and having heard the submissions of the learned counsel appearing on either side, the learned II Additional Senior Civil Judge, Ranga Reddy District at NTR Nagar, Hyderabad, by the impugned judgment and decree, dated

11.12.2007 decreed the suit, directing the plaintiff to deposit the balance sale consideration of Rs.75,000/- and defendants Nos.1 to 3 were directed to execute the sale deed thereafter in favour of the plaintiff. Feeling aggrieved thereby Defendants Nos.1 to 3 preferred the present appeal.

14. The learned counsel appearing for the appellants submits that the judgment and decree is not based on proper appreciation of evidence on record, that the Court below ought not to have believed Ex.A1 agreement of sale, which is a document brought into existence by the 4th respondent-GPA by using the old stamp paper, that as a matter of fact, the 4th respondent, with their consent, sold the schedule property to three persons viz., (1) Rayanna Chowdary to an extent of Ac.1.00, (2) S.Ramchndra Reddy to an extent of Ac.1.00, and (3) G.Jayakumar Reddy to an extent of Ac.0.38 gts. under three registered sale deeds, vide Documents Nos.1033/2001, 1034/2001 and 1035/2001, dated 10.04.2001, that with an ulterior motive, the 4th respondent has set up the plaintiff, who is his relative and pressed into service Ex.A1, which is not a genuine document. The learned counsel further submits that the Court below ought not to have believed the case of the plaintiff and there are several circumstances which disentitles the plaintiff from obtaining the discretionary relief of specific performance of contract. The learned counsel further submits that the authority to deal with the property of the appellants given to the 4th respondent was by virtue of GPA, dated 18.01.1993, vide Document No.121/1993 and exercising the authority given to him, the 4th defendant sold the property to the above named three persons under Exs.B2, B3 & B4 on 10.04.2001.

15. On the other hand, the learned counsel appearing for the 1st respondent/plaintiff submits that the contention of the defendants is incorrect and the allegation that Ex.A1 is brought into existence subsequently taking the help of his relative is false. It is further submitted that Ex.A1, the agreement of sale is in respect of the property that is covered by GPA given to the 4th defendant, whereas the registered sale deeds viz. Exs.B2, B3 & B4 are in respect of the other property, and therefore, there is no substance in the submission of the learned counsel appearing for the defendants, that Ex.A1 agreement is created or fabricated document and that the trial Court has properly appreciated the material on record in proper perspective and decreed the suit.

16. In view of the above submissions, the points that arise for consideration are:

1. Whether the plaintiff is entitled to a decree of specific performance of the contract of Ex.A1, dated 30.03.2001 and consequently delivery of possession thereof.
2. Whether the sale deeds Exs.B2, B3 & B4, dated 10.04.2001 have no sanctity in view of there being a prior agreement of sale Ex.A1 in respect of the suit land.
3. Whether the plaintiff can be granted discretionary relief of specific performance or alternatively relief of refund of advance money paid by him to the 4th defendant.

Points:

17. Having heard the submissions of the learned counsel and perusing the oral and documentary evidence on record, it can be said that the controversy in the appeal lie in narrow compass and that is as to whether Ex.A1 agreement of sale, dated 30.03.2001 is genuine and valid so as to grant specific performance or whether it is created or brought

into existence with ulterior motive by the 4th defendant so as to nullify the sale deeds Exs.B2, B3 & B4, dated 10.04.2001.

18. The admitted facts are that defendants Nos.1 to 3 are absolute owners of the land in Sy.No.130, admeasuring Ac.2.38 gts, situated in Yapral village, having inherited the same from their mother Tulasamma. It also appears that the suit land being close to Hyderabad city and was having potential, about 36 plots were made therein. On the ground that the defendants were unable to negotiate and dispose of the said plots, they executed registered GPA in favour of the 4th defendant on 18.01.1993, which is Ex.B1, bearing document No.121/93. As per the said irrevocable GPA, exclusive rights were conferred on the 4th defendant to deal with the suit schedule property. He was authorized to sell the plots and execute the sale deeds and do all the acts on behalf of the owners, viz. defendants Nos.1 to 3. He was also authorized to deliver possession of the property sold in exercise of his authority under the GPA.

19. It is also admitted fact that the 4th defendant acting on behalf of his principals defendants Nos.1 to 3 sold an extent of Ac.2.38 gts of land under three registered sale deeds under Exs.B2, B3 and B4 in favour of three persons viz., (1) Rayanna Chowdary to an extent of Ac.1.00, (2) S.Ramchndra Reddy to an extent of Ac.1.00, and (3) G.Jayakumar Reddy to an extent of Ac.0.38 gts. under three registered sale deeds, vide Documents Nos.1033/2001, 1034/2001 and 1035/2001, dated 10.04.2001. In these documents, the 4th defendant has specifically mentioned that he is executing the documents in pursuance to the registered GPA bearing document No.121/93, viz., Ex.B1.

20. The plaintiff, however, claims that even prior to the registered sale deeds, the 4th defendant entered into an agreement of sale with him on behalf of his principals on 30.03.2001 for a total sale consideration of Rs.6,00,000/-, out of which on the same day Rs.5,25,000/- was paid to the 4th defendant and the remaining Rs.75,000/- was agreed to be paid at the time of registration of the sale deed, which was supposed to take place after the land is measured and intimation given to the plaintiff. This is also by virtue of the authority conferred on the 4th defendant by registered GPA-Ex.B1.

21. The main contention of the 4th defendant is that both the Ex.A1 agreement of sale and Exs.B2, B3 & B4 registered sale deeds are genuine but they are in respect of different properties. It is submitted that the boundaries that are mentioned in the registered sale deeds do not tally with the boundaries in Ex.A1 and therefore, it is manifest that Exs.B2, B3 & B4 are in respect of the property, other than the property covered by Ex.A1. For the sake of clarity, the boundaries of the property covered under different documents may briefly be noticed.

22. The boundaries mentioned in Ex.A1 agreement of sale, dated 30.03.2001, in respect of Ac.2.38 gts are as under:

NORTH: Sy.No.122 of Pitta Narsimha Reddy

SOUTH: Meherbaba colony – A

EAST : Owners Land

WEST : Sy.No.123 of Dara Reddy

23. The boundaries mentioned in Ex.B1 registered General Power of Attorney in favour of the 4th defendant, dated 18.01.1993, in respect of Ac.2.38 gts are as under:

NORTH: Sy.No.122 of Pitta Narsimha Reddy
SOUTH: Meherbaba colony – A
EAST : Owners Land
WEST : Sy.No.123 of Dara Reddy

24. The boundaries mentioned in Ex.B2 registered sale deed, dated 10.04.2001, in respect of Ac.1.00 are as under:

NORTH: Owner's land part of Sy.No.130
SOUTH: Owner's land Sy.No.130 part
EAST : Part of Sy.No.635, Kapra village boundary
WEST : Neigh. land

25. The boundaries mentioned in Ex.B3 registered sale deed, dated 10.04.2001, in respect of Ac.1.00 are as under:

NORTH: Owner's land part of Sy.No.130
SOUTH: Owner's land Sy.No.130 part
EAST : Part of Sy.No.635, Kapra village boundary
WEST : Neigh. land

26. The boundaries mentioned in Ex.B4 registered sale deed, dated 10.04.2001, in respect of Ac.0.38 gts are as under:

NORTH: Owner's land part of Sy.No.130
SOUTH: Owner's land Sy.No.130 part
EAST : Part of Sy.No.635, Kapra village boundary
WEST : Neigh. land

27. A careful perusal of the above boundaries show that while the boundaries mentioned in Ex.A1 tallies with the boundaries mentioned in

Ex.B1 GPA, there are different boundaries in EXs.B2, B3 & B4. This difference appears to be obvious for the reasons that Ex.A1 and Ex.B1 are in respect of total extent of Ac.2.38 gts, whereas Exs.B2, B3 and B4 are in respect of smaller bits out of the same property i.e., for one acre; one acre and 0.38 guntas respectively.

28. The discrepancy in the boundaries, more particularly, towards northern side, is apparent but that by itself cannot be taken as a ground to accept the case of the plaintiff that since the boundaries in Ex.A.1-Agreement of Sale and Ex.B.1-GPA are tallying Ex.A.1 has to prevail over the subsequent sale deeds Exs.B.2, B.3 and B.4 in which there is a discrepancy in the boundaries. It may be recalled that the GPA-Ex.B.1 is of January, 1993 whereas the sale deeds Exs.B.2, B.3 and B.4 are in April, 2001 i.e., more than eight years after the GPA – Ex.B.1. The land is situated within the Greater Hyderabad limits. It is a fast growing area and it may also be stated here that even Ex.B.1-GPA, dated 18.01.1993, that is executed in favour of D.4 is in respect of plot Nos.1 to 36 in the suit survey numbers but not in respect of any larger extent of land. It is evident that even in the year 1993, several plots were carved out in and around the land in suit survey number. Therefore, minor discrepancies in the boundaries when compared with Ex.B.1, dated 18.01.1993 and the registered sale deeds – Exs.B.2, B.3 and B.4 dated 10.04.2001 are obvious. Furthermore, the fact that the boundaries mentioned in Ex.B.1, dated 18.01.1993 is the same as those mentioned in Ex.A.1-agreement of sale, dated 30.03.2001 in a way gives credence to the contention of the appellants that Ex.A.1 is nothing but a created document. Lest, the boundaries would not have been completely identical in Ex.A.1 and Ex.B.1

even though there is a gap of eight years in between the two and that the area was being developed into residential area as is evident from the GPA of 1993 itself.

29. A careful perusal of the impugned Judgment shows that the learned Trial Judge has accepted the case of the plaintiff and decreed the suit for specific performance of the suit schedule lands mainly on the ground that the boundaries that were mentioned in exs.A.1 and B.1 are same whereas the boundaries that are mentioned in Exs.B.2, B.3 and B.4 are different and consequently held that the land that is sold by D.4 with the consent of D.1 to D.3 to three different persons under Exs.B.2, B.3 and B.4 is different from the land covered by the agreement of sale – Ex.A.1 in favour of the plaintiff executed by the fourth defendant. In view of what is discussed above, the findings of the learned Trial Judge that the lands that were sold under Exs.B.2, B.3 and B.4 are not the suit schedule lands whereas the suit schedule lands are covered by the agreement of sale – Ex.A.1 cannot be sustained.

30. It is also noticed from the record that in the year 1993, the property which was handed over to the 4th defendant by executing Ex.B1 GPA, comprised of 36 residential plots in an extent of Ac.2.38 gts. However, the agreement Ex.A1 was executed more than nearly 8 years thereafter in respect of Ac.2.38 gts and there is no reference whatsoever of 36 plots that have been carved out in the suit land. As already stated, defendants Nos.1 to 3 have executed irrevocable GPA under Ex.B1 in favour of the 4th defendant, since they are unable to transact the sale of the respective plots. It is curious to note that even after 8 years, not even a single plot was sold, but the total extent of land remained intact

and the agreement of sale Ex.A1 was in respect of the entire extent of land as covered by Ex.B1, the registered GPA.

31. It is also noticed from the record that as per GPA Ex.B1, the 4th defendant was authorized to deal with the property in the manner he likes, more particularly, the following covenants are worth noticing:

“Whereas the Appointers have decided to sell the said property by dividing the same into residential plots and unable to attend personally to arrange for the sale of the said property admeasuring Ac.2.38 guntas by searching for the prospective buyers and negotiate and undertake other formalities to complete the registration due to pre-occupations, we have now appointed the above attorney, Sri K.Sitharama Rao, S/olate K.Kotaiah, on our behalf to complete the sale of the said property.

We are executing this “IRREVOCABLE” General Power of Attorney in favour of our Attorney, Sri K.Sitharama Rao to do the following acts on our behalf and in our names;

- 1) To sell and dispose off all the rights, titles and on the said property with appurtenances and all other rights and easements for 2.38 Guntas.
- 2) To receive the same consideration amounts whether advances, “Final settlement” amounts or other wise from the intending purchasers on our behalf to give valid receipts therefore, which receipts shall exonerate the person paying such money from being responsible for the loss or misappropriation etc.
- 3) XXXX
- 4) XXXX
- 5) XXXX
- 6) To execute and register sale deed or sale deeds in favour of purchasers or their nominee/nominees in full or in part in respect of the schedule property and file all declarations, forms, and affidavits for executing such sale deeds and to hand over such documents and physical possession.
- 7) To do all such other act or acts incidental or ancillary to as may be necessary, to give effect to the purpose for which this “instrument is executed”.
- 8) The attorney shall all account for all the nominees received and paid by him in implementing this Power of Attorney.
- 9) XXXX

32. Admittedly, the plaintiff initiated legal proceedings more than three years after the agreement of sale Ex.A1. For the first time, he issued legal notice Ex.A2 on 15.10.2004 and thereafter filed the suit on 16.11.2004. The reason for not taking legal steps for more than 3 years is said to be the fact that defendants have to get the land surveyed and measured and then inform the plaintiff and thereafter, he was required to

pay the balance sale consideration. As per Ex.B1 GPA, it is the 4th defendant who was competent and authorized to do the above acts. Nothing is placed on record by the plaintiff to show that he issued any notice to the 4th defendant calling upon him to fulfil his promise within a period three years. Only after more than 3 years, for the first time, the legal notice Ex.A2 is issued to all defendants on 15.10.2004.

33. Admittedly, the possession of the property said to have been agreed to be sold under Ex.A1 was not delivered and as a matter of fact, in the present suit also, the plaintiff seeks recovery of possession. On 30.03.2001 the plaintiff claims to have paid nearly 90% of the sale consideration, viz. Rs.5,25,000/- out of the total sale consideration of Rs.6,00,000/- and the balance to be paid is only Rs.75,000/-. Having parted with such substantial consideration, the plaintiff would not have kept quiet for more than 3 years without enjoying even the possession of the land, leave alone any rights over the property. A person, who parted with almost 90% of the consideration, will not keep quiet for a long period of more than 3 years, if his vendor do not move an inch from the place from where they were left on the date of agreement of sale Ex.A1. This conduct of the plaintiff tends to support the contention of the defendants Nos.1 to 3 that the 4th defendant being the GPA developed evil intention and set up the plaintiff, who is related to him and created Ex.A1 having sold the same under Exs.B2, B3 and B4 for ulterior motives. Though Defendants Nos.1 to 3 assert that the plaintiff is none other than the son-in-law of the 4th defendant, the 4th defendant in his evidence as DW 4 denies the same, but admitted the fact that the plaintiff is his relative. If that being the case and if the plaintiff really parted with substantial

consideration on 30.03.2001, he would not have kept quite for more than 3 years without insisting the 4th defendant to execute the sale deed and deliver the possession thereof, more particularly, when as per Ex.B1 it is the 4th defendant who was exclusively authorized to deal with the said property and complete the sale transaction without any reference whatsoever to the owners, viz., defendants Nos.1 to 3. If any measurement is to be done, the GPA is authorized to do so and even delivery of possession could have been effected by the 4th defendant. It is the 4th defendant who is competent to execute the sale deed, but not defendants Nos.1 to 3. The plaintiff being a relative of the 4th defendant kept quite for three years which gives credence to the submissions of the learned counsel for the appellants that Ex.A1 has been created and brought into existence long after the property was sold under Exs.B2, B3 & B4 by none other than the 4th defendant himself as GPA of defendants Nos.1 to 3.

34. It is also on record that it is the 4th defendant who received the amounts of Rs.5,25,000/- from the plaintiff on 30.03.2001 and admittedly, there is no evidence that the said amount was transferred to defendants Nos.1 to 3.

35. It is also noticed from the record that after the plaint was filed on 16.11.2004, defendants Nos.1 to 3 filed written statement on 10.06.2005 specifically denying the agreement of sale Ex.A1 and asserting that all the defendants have sold the suit property under registered sale deeds dated 10.04.2001 in favour of R.Rayana Chowdary, S.Ramachandra Reddy and G.Jaya Kumar Reddy. In the written statement filed by defendants Nos.1 to 3 it is also placed on record that the registered

documents were executed by the principal and General Power of Attorney-DW 3 (4th defendant) on 10.04.2001.

36. More than 10 days thereafter i.e., on 23.06.2005 the 4th defendant filed written statement which is very brief and cryptic and while he supported the claim of the plaintiff with regard to the agreement of sale Ex.A1, dated 30.03.2001 and having received the amount, he is conspicuously silent about the assertions made by defendants Nos.1 to 3 that the suit schedule property was sold in favour of R.Rayana Chowdary, S.Ramachandra Reddy and G.Jaya Kumar Reddy under registered sale deeds dated 10.04.2001. Significantly, the 4th defendant in his written statement asserts that after having received the legal notice on 15.10.2004 from the plaintiff, he informed defendants Nos.1 to 3 and asked them to survey and measure the lands in terms of the agreement, but the defendants 1 to 3 failed to do so. It may be recalled that as per Ex.B1 GPA, dated 18.01.1993, these are the acts which are exclusively to be performed by the GPA, but not by the principals, i.e. defendants Nos.1 to 3. The 4th defendant being GPA was given full authority to sell the property with all easementary rights, receiving amounts, execute the documents and handover the physical possession to the purchasers. Therefore, the contention that after having received the original of Ex.A2, he informed defendants Nos.1 to 3 to measure the land cannot be believed.

37. It is no doubt true that the appellants were having different properties and they executed different GPAs in favour of the 4th defendant. However, the GPA, on the basis of which, the 4th defendant derives authority to deal with the property involved in the present suit is

Ex.B1, dated 18.01.1993. The 4th defendant supported the claim of the plaintiff that on 30.03.2001, by virtue of the authority, conferred on him under Ex.B1, he entered into an agreement of sale in respect of the land covered by Ex.B1, agreeing to sell the same to the plaintiff for a total sale consideration of Rs.6,00,000/-. Within 10 days thereafter, the 4th defendant along with the appellants executed three registered sale deeds in favour of third parties, in respect of the same land which is covered by Ex.B1. Significantly, both in the agreement of sale Ex.A1 and registered sale deeds Exs.B2, B3 & B4, there is a reference to Ex.B1 only as the basis on which the GPA is acting and executing the documents for and on behalf of the appellants.

38. As already stated, even though it is the specific contention of the appellants that on 10.04.2001 the 4th defendant along with them have executed three registered sale deeds under Exs.B2, B3 and B4, he is conspicuously silent in his written statement, even though he admits having entered into an agreement of sale with the plaintiff in respect of the suit schedule land on 30.03.2001, acting under the authority conferred upon him by virtue of GPA Ex.B1. It is not his case that Ex.A.1 is in respect of property other than the property which he sold under Exs.B.2, B.3 and B.4. He did not even contend that reference to Ex.B.1 in Exs.A.1, B.2, B.3 and B.4 is by mistake.

39. As stated above, the 4th defendant was authorized to deal with the property in the manner in which he likes for which the GPA was executed. According to the 4th defendant, he received Rs.5,25,000/- from the plaintiff on 30.03.2001 at the time when Ex.A1 was executed. Within 10 days thereafter, the registered sale deeds Exs.B2, B3 and B4 are

executed, and significantly, it is the 4th defendant who has executed the registered sale deeds as well.

40. If really Ex.A1 was executed on 30.03.2001, as contended, the 4th defendant could have pleaded and proved the aspects which are now raised in the appeal. This circumstances strongly supports the contention of the appellants that Ex.A1 was not executed on 30.03.2001 as contended, but it was executed long thereafter, and therefore, there was no action on the part of the plaintiff for seeking enforcement of the contract for well over a period of 3 years.

41. On behalf of defendants Nos.1 to 3, the 3rd defendant entered into the witness box as DW 1. It is suggested to him that after coming to know of the fraud by the 4th defendant in executing the suit agreement on 30.03.2001, they (defendants Nos.1 to 3) forced the 4th defendant (DW 1) to execute Exs.B2, B3 & B4 and that Exs.B2, B3 & B4 are not valid as they are executed after the suit agreement. From this stand taken by plaintiff who is supported by D.4, it is evident that Exs.B.2 to B.4 are in respect of the property covered by the Agreement of sale-Ex.A.1 and the GPA-Ex.B.1, but not in respect of other property as contended by the plaintiff and D.4.

42. As per the covenants of the GPA-Ex.B1, it was the 4th defendant who was authorized to complete the transaction including the delivery of possession, but admittedly, the plaintiff did not initiate any steps till October, 2004 by issuing the legal notice, calling upon the defendants including the 4th defendant to complete the transaction. This silence or inaction on the part of the plaintiff for well over 3 years having parted with substantial consideration without having been delivered

possession of the property is a circumstance which creates suspicion about Ex.A1 being a document executed on 30.03.2001, as claimed by the plaintiff and supported by the 4th defendant. This conduct of the plaintiff is not expected of any prudent person, more particularly when except for getting the land measured, there was no hindrance whatsoever for execution of the sale deed and delivery of possession, which was well within the competence of D.4 his relative and to whom he claims to have paid Rs.5,25,000/- on 30.03.2001.

43. The learned counsel for the respondent/plaintiff submits that it is by mistake or inadvertence that in both the agreement of sale-Ex.A1 and registered sale deeds-Exs.B2, B3 & B4, the source of authority of the executant is referred to as Ex.B1, which is GPA, dated 18.01.1993, and that due to that inadvertent mistake, it cannot be said that it is the 4th defendant who sold the same property to third parties under Exs.B2, B3 & B4 and also entered into agreement of sale with the plaintiff under Ex.A1. This contention of the learned counsel is devoid of substance for the reason that there is no such material placed on record to hold that there was any mistake in referring to the GPA on the basis of which, the two set of documents were being executed. The 4th defendant, as already stated, in the written statement did not set up such a plea, even though in the written statement filed by defendants Nos.1 to 3, these facts were specifically referred to. Even when he was in the witness box as DW 3, the 4th defendant did not whisper even a single word that the reference to Ex.B1 was made in both Ex.A1, Exs.B2, B3 & B4 out of any inadvertence or mistake nor is it put to the plaintiff/PW.1 during the course of his

evidence.. Therefore, this submission of the learned counsel for the respondent/plaintiff cannot be accepted.

44. Similarly, the 4th defendant (DW 3) in the chief affidavit asserted that he entered into agreement with defendants Nos.1 to 3, paid the sale consideration and obtained the GPA (Ex.B1) in respect of the suit survey numbers. As per Clause-8 of Ex.B1, as extracted supra, the GPA shall account for all the nominees (sic monies) received and paid by him in implementing the power of attorney. As per the said clause, the GPA holder the 4th defendant (DW 3) was required to account for all the money received by him to his principal, viz., defendants Nos.1 to 3 which admittedly he has not done and with an intention to wriggle out of the said fact, it appears that DW 3 (4th defendant) in his chief affidavit asserted that he has paid the entire sale consideration to defendants Nos.1 to 3, and thereafter obtained GPA under Ex.B1.

45. It is also noticed from the testimony of DW 3 (4th defendant) that he do not remember as to how many days after Exs.B2, B3 and B4, he (4th defendant) executed the agreement of sale-Ex.A1. What could be inferred from his evidence that Ex.A1, the agreement of sale was executed after Exs.B2, B3 & B4, but the 4th defendant (DW 3) do not remember as to how many days thereafter Ex.A1 was executed. It may be recalled that the specific case of D.1 to D.3 is that only in 2004 for the purpose of filing the suit with false allegations to harass and extract money from them, the GPA holder (D.4) in collusion with his relative, the plaintiff, fabricated the agreement of sale – Ex.A.1 with date 30.03.2001.

46. In view of the foregoing discussion, I have no hesitation in holding that the Judgment and Decree of the learned II-Additional Senior

Civil Judge, RR District at NTR Nagar, Hyderabad, in O.S.No.1559 of 2004 dated 11.12.2007 cannot be sustained and the same is liable to be set aside. The appeal is accordingly liable to be allowed.

47. In the result, the appeal is allowed setting aside the impugned Judgment and Decree dated 11.12.2007 in O.S.No.1559 of 2004 on the file of the II-Additional Senior Civil Judge, RR District at NTR Nagar, Hyderabad. The suit of the plaintiff stands dismissed. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: 30th June, 2017
Dsr/Smr



M.S.K.Jaiswal, J