

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA
PRADESH

WRIT PETITION No.24073 of 2009

Between:

Ediga Chandrasekar Gowd and another

.....Petitioner

and

The State of Andhra Pradesh,
Rep. by the Principal Secretary,
Revenue (Registration & Stamps) Department,
Secretariat Buildings, Hyderabad and others

.....Respondent

Date of Judgment pronounced on : 22-03-2017

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO**WRIT PETITION No.24073 of 2009**

22-03-2017

Ediga Chandrasekar Gowd and another Petitioner.

Versus

\$ The State of Andhra Pradesh,
Rep. by the Principal Secretary,
Revenue (Registration & Stamps) Department,
Secretariat Buildings, Hyderabad and others

..... Respondents.

< **GIST:**> **HEAD NOTE:**

!Counsel for the petitioners : Sri P.Roy Reddy

!Counsel for the respondent Nos.1 & 2 : G.P. for REvenue

^ Counsel for the respondent Nos.3 to 17 : Sri Vedula Venkata Ramana

? Cases referred¹ (2014) 1 SCC 618² AIR 1999 SC 807(1)³ (1994) 1 SCC 531⁴ 1999(6) ALT 59 (D.B.)⁵ 2006(5) ALD 359⁶ 2012(4) ALD 411⁷ 2016(2) ALD (Cr.) 135⁸ 2006(6) ALT 523 (F.B.)⁹ order dt.13-03-2007 in W.P.No.3744 of 2007 = 2015(8) MLJ 769¹⁰ (2009) 11 SCC 737¹¹ AIR 1955 SC 661¹² (2004) 8 SCC 1¹³ 1985 2 All ER 355¹⁴ 2012(3) ALT 50 (SC)¹⁵ AIR 2012 SC 206¹⁶ (2011) 7 SCC 639¹⁷ AIR 1955 SC 830¹⁸ AIR 1970 SC 1880¹⁹ (2005) 6 SCC 344, at page 368²⁰ AIR 1977 SC 774²¹ AIR 1967 SC 744

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**WRIT PETITION No.24073 of 2009****ORDER:**

In this Writ Petition, the petitioners assail the action of the District Registrar, Stamps and Registration Department, Hyderabad registering cancellation deed dt.23-12-2008 (Doc.No.3247/2008) cancelling an agreement of sale-cum-irrevocable General Power of Attorney (with possession) dt.19-04-2008 and they seek a declaration that this action is without jurisdiction, contrary to the provisions of the Registration Act, 1908 and the statutory Rules framed thereunder.

2. It is not in dispute that respondent Nos.3 to 17 had executed an agreement of sale-cum-irrevocable General Power of Attorney (with possession) on 19-04-2008 being doc.No.1049/2008, in favour of petitioners in respect of an extent of 8372.2 sq. yards of land in part of Sy.Nos.137/1 and 2, 138, 139 corresponding T.S.Nos.15 to 20 and 30P of Amberpet, Hyderabad. Though the document recites that possession of the land was delivered to petitioners, it is pleaded by them that in fact physical possession was not handed over and they had issued instructions to stop payment of the amounts due under the cheques that were issued towards payment of part sale consideration. They contend that this document was unilaterally cancelled by respondent Nos.3 to 17 and said cancellation deed dt.12-12-2008 being doc.No.3247/2008, was registered by 2nd respondent.

3. On 09-11-2009, this Court in W.P.M.P.No.31289 of 2009 in this W.P directed the 2nd respondent not to entertain and admit to registration any document relating to the land which is the subject matter of this W.P.

4. Respondent no.s 3-11, 13 to 17 filed WVMP.No.4032 of 2012 to vacate this order. On 13-12-2012, the same was dismissed and the interim order dt.09-11-2009 was made absolute.

CONTENTIONS OF PETITIONERS

5. They contend that unilateral cancellation deed ought not to have been registered without the consent of both parties to the original document and before registering the cancellation deed, no notice had been issued to the petitioners and they did not sign the cancellation deed. They placed reliance on Rule 26(i)(k)(i) of the Rules framed under the Registration Act, 1908.

6. Learned counsel for petitioners contended that the term “conveyance on sale” used in the said Rule not only covers sale deeds but also documents such as agreements of sale-cum-irrevocable General Power of Attorney (with possession) and that since procedure prescribed in the above rule has not been complied with by the 2nd respondent, the cancellation deed has to be declared as null and void.

7. According to him, the said term “conveyance on sale” has not been defined in the Registration Act, 1908 but the said term has been

mentioned in sub-clause (10) of Section 2 of the Indian Stamp Act, 1899 defining the term “conveyance”; that the said term “conveyance” was defined to include a ‘conveyance on sale’ by which property, whether movable or immovable, or any estate or interest to any property is transferred, or vested in or declared to be of any other person *intervivos*, and which is not otherwise specifically provided for by Schedule-I or Schedule I-A of the Stamp Act, 1899 as the case may be. He pointed out that explanation-I to Article 47-A in schedule-IA of the Stamp Act, 1899 deals with an ‘agreement to sell followed by or evidencing delivery of possession of the property’ and directs that it shall be chargeable as a “sale”, and there are decisions of this Court as well as the Apex Court construing agreements of sale of the above nature to be ‘sale deeds’. He therefore contends that Rule 26(i)(k)(i) of the Registration Act, 1908 covers such documents also.

8. According to him, it is sufficient if immovable property is transferred and possession of the property is handed over; and for the purpose of complying the Rule, it is sufficient to look at the recital in the document in question which was later cancelled though the said recital is not decisive. He relied upon the decision in **Omprakash Vs. Laxminarayan and others**¹ in this regard. He also relied upon **Veena Hasmukh Jain and another Vs. State of Maharashtra and others**², which interpreted Bombay Stamp Act, 1958, which is *in pari materia* to Article 47-A of schedule IA of the Stamp Act, 1899 and

¹ (2014) 1 SCC 618

² AIR 1999 SC 807(1)

contended that in that case, the Supreme Court held that ‘agreements to sell’ are deemed as ‘conveyance whether possession of the property is transferred to purchaser before its execution or at the time of execution or subsequently without executing a conveyance in respect thereof’. He contended that in **Ruby Sales and Services (P) Ltd and another Vs. State of Maharashtra and others**³, the Supreme Court held that the terms “conveyance” and “Instrument” in the Bombay Stamp Act, 1958 would cover even a consent decree where under title to immovable property is expressly being conveyed. He also cited a Division Bench judgment of this Court in **B.Ratnamala Vs. G.Rudramma**⁴, wherein this Court also took a view that an ‘agreement of sale’ is on par with a ‘conveyance/sale deed’ and that Explanation-I to Article 47-A of schedule I-A of the Act would apply even to an agreement of sale.

9. According to learned counsel for petitioner, in **Sri Tirumala Housing (P) Ltd., Hyderabad Vs.GPR Housing (P) Ltd., Hyderabad**⁵, a similar view has been taken that an ‘agreement of sale coupled with delivery of possession’ is chargeable as a ‘conveyance’ in view of Explanation-1 to Article 47-A of Schedule I-A of the Stamp Act,1899. According to him, the word “conveyance on sale” has to be interpreted according to the context and in the context of the Registration Act, 1908, the term “sale” used in Rule 26(i) would

³ (1994) 1 SCC 531

⁴ 1999(6) ALT 59 (D.B.)

⁵ 2006(5) ALD 359

undoubtedly cover an 'agreement of sale-cum-irrevocable General Power of Attorney with delivery of possession'.

CONTENTIONS OF GOVERNMENT PLEADER FOR REVENUE

10. Learned Government Pleader appearing for respondent Nos.1 and 2 sought to contend that circulars had been issued from time to time by the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh, Hyderabad in exercise of power conferred on him under Section 69(1)(j) of the Registration Act, 1908. Initially vide office Memo No.Rc.No.G1/10866/2008, the Commissioner had issued orders extending Rule 26(k) to all instruments namely Agreement of sale-cum-GPA, Development Agreement-cum-GPA, Partition, Release and Mortgage etc., directing the Registering Officer not to register cancellation deeds of previously registered deeds of the said categories unilaterally w.e.f. 14-03-2008; but the said memo was withdrawn vide Memo RC No.G1/10547/2008 dt.18-07-2008; that again another memo No.G1/10547/2008 dt.25-08-2008 was issued by the Commissioner directing that unilateral cancellation deeds such as agreement of sale-cum-GPA, Development Agreement-cum-GPA, partition Release, mortgages, gifts and gift settlements shall not be registered unless both parties to the previously registered deed are present before the Sub-Registrar for execution of the cancellation deed; that this memo dt.25-08-2008 was again withdrawn vide proceedings No.G1/10547/2009 dt.30-04-2009 restoring the proceedings dt.18-07-2008.

11. However, according to him, on the date of registration of the document No.3247/2008 by 2nd respondent on 23-12-2008, memo No.G1/10547/2008 dt.25-08-2008 was in force wherein the Commissioner and Inspector General of Registration and Stamps, A.P., Hyderabad had ordered that unilateral cancellation of deeds of Agreement of Sale-cum-GPA, Development Agreement-cum-GPA, partition Release, mortgages, gifts and gift settlements shall not be registered unless both parties to the previously registered deed are present before the Sub-Registrar for execution of the cancellation deed; and that in violation of this circular, the 2nd respondent had registered the cancellation deed being doc.No.3247/2008 on 23-12-2008.

12. He stated that there is confusion about this aspect in the minds of the Registering authorities and an authoritative pronouncement on this point would be welcomed by the Government.

CONTENTIONS OF COUNSEL FOR RESPONDENT NOS 3-17

13. Sri Vedula Venkata Ramana, learned Senior Counsel appearing for respondent Nos.3 to 17 contended that there is a judgment of this Court in **Mir Khader Ali Khan and others Vs. District Registrar, Ranga Reddy and Appellate Authority, R.R.District and another**⁶ wherein a learned Single Judge of this Court took a view that a General Power of Attorney, even if coupled interest, can be unilaterally cancelled and that the Sub-Registrar

⁶ 2012(4) ALD 411

would be not be justified in refusing to register it on the ground that it was not signed by all the parties to it and in particular, persons in whose favour the General Power of Attorney was executed.

14. He also cited another decision of this Court in **Ummadisetti Ratnasagar Vs. State and another**⁷, wherein a learned Single Judge of this Court took a view that the word “deed of conveyance” in Rule 26(i)(k)(i) of the Rules should be interpreted in the context of its being used to achieve the object for which the Rule was made, that agreement of sale-cum-GPA does not fall within the parameter of the term “instrument” and that Rule 26(i)(k)(i) does not apply to an agreement of sale-cum-G.P.A.

15. He contended that an ‘agreement of sale’ does not transfer any interest in immovable property and it does not confer title. Therefore it cannot be termed to be a “conveyance” and the interpretation of the term “conveyance” used in the Indian Stamp Act, 1899 or Explanation-I to Article 47-A of the Schedule-I-A to the Indian Stamp Act, 1899 also cannot be applied.

16. He therefore contends that there is nothing wrong in the 2nd respondent registering the Agreement of Sale-cum-Irrevocable General Power of Attorney at the instance of respondents 3-17; that Rule 26(i)(k)(i) is not attracted; and it is not obligatory on the part of the Sub-Registrar or the District Registrar to insist that all parties to

⁷ 2016(2) ALD (CrL) 135

the earlier agreement of sale-cum-General Power of Attorney execute the cancellation deed.

17. I have noted the contentions of both sides.

THE POINT FOR CONSIDERATION

18. In view of the rival contentions, the point which arise for consideration is:

“Whether a deed cancelling an agreement of sale-cum-irrevocable General Power of Attorney (with possession) unilaterally by its executants be registered by the District Registrar and whether such registration of the cancellation deed by him is valid in law?”

THE CONSIDERATION BY THE COURT

19. Section 5 of the Transfer of Property Act, 1882 defines the term “transfer of property” as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and ‘to transfer property’ is to perform such act.

20. Executory contracts relating to immoveable property are referred to in common parlance as *agreements of sale* though the correct term is *agreement for sale*. So in this judgment both terms are used interchangeably. Such contracts are distinct from executed contracts such as sale deeds/ gift deeds/exchange deeds.

THE HISTORY OF ENACTMENT OF RULE 26(i)(k)(i)

21. It is important to note that prior to the framing of the Rule 26(i) (k) (i), a Full Bench of this Court in **Yanala Malleshwari and others Vs. Ananthula Sayamma and others**⁸ had held that unilateral cancellation of sale deeds can be done and they can be registered without notice to the executant by the District Registrar/Sub-Registrar.

22. Since the State perceived this judgment to create lot of complications to holders of land who could be exposed to problems created by their transferors by unilateral cancellation of the sale deeds and other documents transferring or alienating property executed by them, it introduced Rule 26(i)(k)(i) by way of notification dt.29-11-2006.

23. Rule 26(i)(k)(i) of the Rules framed under the Registration Act states :

“26.(i) Every document shall, before acceptance for registration, be examined by the Registering Officer to ensure that all the requirements prescribed in the Act and in these rules shall have been complied with, for instance...

....

(k)(i) The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously

⁸ 2006(6) ALT 523 (F.B.)

registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale;

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government Orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provisions of law.”

24. A challenge to the validity of this Rule on the ground that it is *ultra vires* the provisions of the Registration Act, 1908 was rejected by a Division Bench of this Court in **Kaitha Narasimha Vs. The State Government of A.P., rep. by its Principal Secretary, Revenue Department**⁹. In the said case, the question related only to cancellation of sale deeds executed earlier and registration thereof. The Division Bench held that the rule merely incorporates one of the facets of the rules of natural justice in the procedure laid down for registration of cancellation deed of previously registered document and is intended to ensure that a duly registered sale deed is not cancelled without the executant and claimant getting opportunity to contest the registration of cancellation deed. It held that it does not have the effect of taking away the right of the executant of cancellation deed and only seeks to put the executant and claimants of

⁹ order dt.13-03-2007 in W.P.No.3744 of 2007 = 2015(8) MLJ 769

the original document to notice that somebody is seeking cancellation thereof.

Heydon's rule

25. One way of interpreting Rule 26(i)(k) (i) is applying the well known Heydon's rule of Interpretation of statutes. It is also called as the Mischief rule or Rule of purposive interpretation of statutes.

26. It is explained in **R. Venkatkrishnan v. CBI**¹⁰, in the following terms :

" 51.The rule which is also known as the "mischief rule" enables consideration of four matters in construing an Act:

- (i) what was the law before the making of the Act,*
- (ii) what was the mischief or defect for which the law did not provide,*
- (iii) what is the remedy that the Act has provided, and*
- (iv) what is the reason of the remedy.*

The rule then directs the courts to adopt that construction which suppresses the mischief and advances the remedy. (See Bengal Immunity Co. Ltd. v. State of Bihar¹¹ and Zile Singh v. State of Haryana¹².) Simply stated

"... the courts should where possible identify 'the mischief' which existed before the passing of the statute and then if more than one construction is possible, favour that which will eliminate 'the mischief' so identified." (Anderton v. Ryan¹³, per Lord Roskill, at AC p. 573 G)

27. If the State perceived the judgment in **Yanala Malleshwari** (2 supra) to create complications to holders of land who could be exposed to problems created by their transferors by unilateral cancellation of the transfer deeds of whatever nature executed by them and introduced Rule 26(i)(k)(i) by way of notification dt.29-11-2006;

¹⁰ (2009) 11 SCC 737

¹¹ AIR 1955 SC 661

¹² (2004) 8 SCC 1

¹³ 1985 2 All ER 355

and as held in **Kaitha Narasimha (9 supra)**, the Rule 26(i)(k)(i) merely incorporates one of the facets of the rules of natural justice in the procedure laid down for registration of cancellation deed of a previously registered document, and it does not have the effect of taking away the right of the executant of cancellation deed, and only seeks to put the executant and claimants of the original document to notice that somebody is seeking cancellation thereof, that purpose cannot be allowed to be defeated by a narrow interpretation of the words “conveyance on sale” to mean only sale deeds and not agreements of sale/ powers of attorney/gift deeds/exchange deeds.

28. In my opinion, the Rule 26(i)(k)(i) applies to “agreements for sale”/ executory contracts or “agreements for sale-cum-General Power of Attorney” or “agreements for sale-cum-Irrevocable General Power of Attorney” too for the above reason.

The decision of the Supreme Court in Thota Ganga Laxmi (2012)

29. The judgment in **Yanala Malleshwari (2 supra)** was however set aside by the Supreme Court of India in **Thota Ganga Laxmi Vs. Government of Andhra Pradesh**¹⁴. The Supreme Court opined that there cannot be any unilateral cancellation and a party who wants to cancel a sale deed executed, has to necessarily file a civil suit for its cancellation or seek re-conveyance from the vendee, and executing a cancellation deed, or getting it registered, is unheard of in law. It also referred to Rule 26(i)(k)(i) of the Rules and stated that the said Rule is

¹⁴ 2012(3) ALT 50 (SC)

consistent with the view of the Court that a cancellation deed can be registered only after a sale deed is cancelled by a competent Civil Court after notice to the concerned parties and in the absence of any declaration by a competent Court or notice to parties, the cancellation deed as well as registration thereof were wholly void and *non est* and meaningless transactions.

30. From the above decision of the Supreme Court, it is very clear that as regards the 'sale deeds' which are 'executed contracts', procedure under Rule 26(i)(k)(i) is mandatory and there cannot be any unilateral cancellation of registered sale deeds or registration of such cancellation deeds unless all the parties to the sale deed are also parties to the cancellation deed.

31. In my view, the logic which the Supreme Court applied to cancellation of sale deeds equally applies to agreements of sale/ Power of attorneys.

THE OBJECTS OF THE REGISTRATION ACT, 1908:

32. The matter can also be looked at from another angle. What is the purpose and object of the Registration Act, 1908?

33. In **Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and another**¹⁵, the Supreme Court explained that the Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions

¹⁵ AIR 2012 SC 206

relating to immovable property and protection from fraud and forgery of documents of transfer . This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration. It held that registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed; it gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents; and it provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. It explained that registration enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevant by recording them, where people may see the record and enquire and ascertain what the particulars are, and as far as land is concerned, what obligations exist with regard to them. It held that registration ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers maintained under the Registration Act, 1908 as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.

34. Rule 26 (i) (k) (i) thus advances the object of the Registration Act,1908 too if it is interpreted broadly to cover “agreements for sale”/ executory contracts or “agreements for sale-cum-General Power of Attorney” or “agreements for sale-cum-Irrevocable General Power of Attorney” since it gives notice to parties prior to execution of cancellation deeds of all such transactions.

SEC.17 OF THE REGISTRATION ACT,1908

35. One more way to look at the issue is to keep in mind Sec.17 of the Registration Act,1908.

36. Section 17 of the Registration Act, 1908 deals with compulsorily registerable documents. It sets out in detail several types of instruments which are required to be compulsorily registered.

37. Clause (b) thereof is of particular importance and directs that non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of Rs.100/- and upwards, to or in immoveable property, should be registered. It covers instruments of gift (Clause (a)), leases of immoveable property (clause (d)) and decrees of civil court or awards which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of Rs.100/- and upwards, to or in

immoveable property (clause (e)) and makes them compulsorily registerable.

38. Initially, before 31-03-1999, an agreement of sale of immoveable property of value of Rs.100/- and upwards was not included in Sec.17.

39. But the then State of A.P. amended the Registration Act, 1908 by A.P.Act 4 of 1999 w.e.f. 01-04-1999 and added clause (g) to Sec.17 which states that *'an agreement of sale of immoveable property of value of Rs.100/- and upwards, also requires registration'*. Thus though as per the Transfer of Property Act, 1882, it is not a compulsorily registerable document, yet by Act 4 of 1999, it was made compulsorily registerable. This amendment enables the general public to know about even agreements for sale affecting immoveable property of value more than Rs.100/-, so that people intending to deal with that property become aware of it and are not taken by surprise after they get some right, title or interest in it. This provision being operative in both States of Telangana and Andhra Pradesh, and not in other States, it's importance has to be taken note of notwithstanding the decisions of the Supreme Court cited by both sides that agreements for sale /power of attorney do not normally create any right, title or interest in immoveable property and Sec.54 of the Transfer of Property Act, 1882 which states that agreements for sale do not by themselves create any interest in or charge on immoveable property.

40. Therefore Rule 26(i)(k)(i) of the Rules needs to be interpreted by keeping in view the amendment brought to the Registration Act, 1908 by A.P. Act 4 of 1999 also making agreements for sale compulsorily registerable.

41. Since such registrations invariably require presence of both parties, cancellation of such documents also would have to be done in the presence of both parties or through a Civil Court. This would be in consonance with the principles of natural justice and would curtail unnecessary litigation emanating from *ex parte* registration of cancellation deeds as pointed out by the Division Bench in **Kaitha Narasimha** (9 supra).

INTERPRETATION OF TERM “CONVEYANCE ON SALE”

42. Yet another way to deal with the issue is to consider the meaning of the words “conveyance on sale” used in Rule 26 (i) (k) (i). These words are not defined in the Registration Act, 1908.

43. In the Concise Oxford English Dictionary 12th Edition (2011), the term “*conveyance*” is described as “the action or process of conveying; the legal process of transferring property from one owner to another”.

44. In **P.Ramanatha Aiyar’s “The Law Lexicon”** (2nd Edition), the term “*conveyance*” is defined as “*a deed which passes or conveys land or thing from one man to another. The transfer of land or other*

estate or any interest therein from one person or class of persons to another.”

45. Thus, the term “conveyance” has a wider connotation and it would certainly include deeds of “sale”/ “gift”/ “exchange” by which property is transferred from one person to another.

46. If the rule making authority, which framed Rule 26(i)(k)(i), intended that the said rule should apply only to “sale”/ “gift”/ “exchange” deeds, it would have mentioned these category of documents specifically. There was no necessity to use the words “conveyance on sale”.

47. The obvious intention of the rule making authority appears to be to cover transactions which are not merely in the nature of deeds of sale. It thus, in my opinion, intended to cover not only “gift”/ “exchange” deeds but also “agreements for sale”/ executory contracts or “agreements for sale-cum-General Power of Attorney” or “agreements for sale-cum-Irrevocable General Power of Attorney”.

48. This conclusion is fortified by the passage in Principles of Statutory Interpretation by Justice G.P. Singh (14th Edition), where the learned author states:

“If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and

friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.”

49. In **State of M.P. Vs. Narmada Bachao Andolan**¹⁶, the Supreme Court approved the above passage and also another passage from the same Book which stated:

“76... ‘In selecting out of different interpretations ‘the court will adopt that which is just, reasonable and sensible rather than that which is none of those things’”.

50. In **Tirath Singh v. Bachittar Singh**¹⁷, the Supreme Court declared:

“it is a rule of interpretation well-established that, “Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.” (Maxwell’s Interpretation of Statutes, 10th Edn., p. 229).”

51. The following decisions of the Supreme Court also support this view.

52. Applying this principle, the word “*held*” in Section 9 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 was construed in **Budhan Singh Vs. Nabi Bux**¹⁸ as meaning “*lawfully held*” as a contrary construction would have conferred title on

¹⁶ (2011) 7 SCC 639

¹⁷ AIR 1955 SC 830

¹⁸ AIR 1970 SC 1880

trespassers and would have deprived real owners of the benefit of the provision.

53. Another illustration of this principle is found in the decision of the Supreme Court in **Salem Advocate Bar Assn. (II) v. Union of India**¹⁹. The Court interpreted the words “*plaintiff’s witnesses*” in Or.7 R.14 (4) to mean “*defendant’s witnesses*”. It held:

“35. Order 7 Rule 14 deals with production of documents which are the basis of the suit or the documents in the plaintiff’s possession or power. These documents are to be entered in the list of documents and produced in the court with the plaint. Order 7 Rule 14(3) requires leave of the court to be obtained for production of the documents later. Order 7 Rule 14(4) reads as under:

“14. (4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff’s witnesses, or, handed over to a witness merely to refresh his memory.”

In the aforesaid Rule, it is evident that the words “plaintiff’s witnesses” have been mentioned as a result of a mistake that seems to have been committed by the legislature. The words ought to be “defendant’s witnesses”. There is a similar provision in Order 8 Rule 1-A(4) which applies to a defendant. It reads as under:

“1-A. (4) Nothing in this rule shall apply to documents—

(a) produced for the cross-examination of the plaintiff’s witnesses, or

(b) handed over to a witness merely to refresh his memory.”

35. Order 7 relates to the production of documents by the plaintiff whereas Order 8 relates to production of documents by the defendant. Under Order 8 Rule 1-A(4) a document not produced by the defendant can be confronted to the plaintiff’s witness during cross-examination. Similarly, the plaintiff can also confront the defendant’s witness with a document during

¹⁹ (2005) 6 SCC 344, at page 368

cross-examination. By mistake, instead of “defendant’s witnesses”, the words “plaintiff’s witnesses” have been mentioned in Order 7 Rule 14(4). To avoid any confusion, we direct that till the legislature corrects the mistake, the words “plaintiff’s witnesses”, would be read as “defendant’s witnesses” in Order 7 Rule 14(4). We, however, hope that the mistake would be expeditiously corrected by the legislature.”

54. No doubt in **Suraj Lamp and Industries Pvt. Ltd** (11 supra), the Court declared that ‘agreements for sale’ or ‘General Power of Attorney’ cannot be construed as *concluded transfers* or as *conveyance*. Dealing with power of a ‘power of attorney’, the Supreme Court held in the said judgment, that a ‘power of attorney’ is not an instrument of transfer in regard to any right, title or interest in an immovable property and that the ‘power of attorney’ is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him. It held that it is revocable or terminable at any time unless it is made irrevocable in a manner known to law, and even an irrevocable attorney does not have the effect of transferring title to the grantee. It observed that except in cases where ‘power of attorney’ is coupled with interest, it is revocable and the donee, in exercise of his power under such power of attorney only acts in place of the donor subject to the powers granted to him by reason thereof; he cannot use the power of attorney for his own benefit; he acts in a fiduciary capacity and an act of infidelity or breach of trust is a matter between the donor and donee. It also held

that under Section 54 of the Transfer of Property Act, 1882, a *contract for sale*, i.e., an *agreement for sale* does not, of itself, create any interest in or charge on property, which is subject matter of such document (See also **Narandas Karsondas Vs.S.A.Kamtam and another**²⁰ and **Rambaran Prosad Vs. Ram Mohit Hazra**²¹.)

55. But the said decision, in my view, does not come in the way of construing Rule 26(i) (k) (i) in the manner suggested by petitioners in view of Heydon's rule and other factors mentioned above.

56. I am also of the opinion that there is no need to rely on decisions cited by both sides under the Indian Stamp Act, 1899.

57. Accordingly I hold that Rule 26 (i) (k) (i) is to be interpreted broadly to cover "agreements for sale"/ executory contracts or "agreements for sale-cum-General Power of Attorney" or "agreements for sale-cum-Irrevocable General Power of Attorney" also.

58. Since in the present case, the procedure prescribed therein has admittedly not been followed and petitioners were not put on notice by the 2nd respondent before registering the Deed doc.No.3247/2008 dt.12-12-2008 cancelling the agreement of sale cum General power of attorney, it is declared as null and void and of no effect. The Writ Petition is accordingly allowed. No costs.

59. It is made clear that this Court is expressing its opinion only on the aspect of the validity of registration of such deed by

²⁰ AIR 1977 SC 774

²¹ AIR 1967 SC 744

2nd respondent and not on the power of the respondent no.3-17 to cancel it.

60. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-03-2017

Note: L.R. copy to be marked.

B/o.
Vsv/*

