IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1335 OF 2016

Yogesh s/o Sudhakar Chavanke,
Age 33 years, Occupation Agril.,
R/o 2, Abhinav Society, Patil
Lane No.1, Canada Corner,
Nasik Road, Nasik Dist. Nasik. ...Appellant

Versus

1) Sitaram Damu Mate,
Age 60 years, Occupation Agril.,
R/o Nighoj Nimgaon Tq. Rahata
Dist. Ahmednagar.

2) Sau. Bharati Ramkrushna Misal,
Age 45 years, Occupation Agri. And
Household,
R/o At and Post Mundhewadi
Taluka Kannad Dist. Aurangabad. ...Respondents

Mr. V. D. Sapkal, Advocate for appellant.
Mr. S. S. Deshmukh, Advocate for respondent No.1.
Mr. S. D. Kulkarni, Advocate for respondent No.2.

WITH
FIRST APPEAL NO. 1355 OF 2016

Sau. Bharati Ramkrushna Misal,
Age 45 years, Occupation Agri. And
Household,
R/o At and Post Mundhewadi
Taluka Kannad Dist. Aurangabad. ...Appellant

Versus

1) Sitaram Damu Mate,
Age 60 years, Occupation Agril.,

R/o Nighoj Nimgaon Tq. Rahata
Dist. Ahmednagar.

2) Yogesh s/o Sudhakar Chavanke,
Age 33 years, Occupation Agril.,
R/o 2, Abhinav Society, Patil
Lane No.1, Canada Corner,
Nasik Road, Nasik Dist. Nasik. ...Respondents

Mr. S. D. Kulkarni, Advocate for appellant.
Mr. S. S. Deshmukh, Advocate for respondent No.1.
Mr. Y. S. Choudhari, Advocate for respondent No.2.

CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, J.
DATE : 06-12-2018.

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Since both the appeals are arising out of same Judgment and decree, they are proposed to be disposed of by this common Judgment. Both the appellants are the original defendants. They want to challenge the Judgment and decree passed in Special Civil Suit No. 27 of 2012 by Civil Judge, Senior Division, Kopargaon on 17-02-2016 whereby the suit for declaration and perpetual injunction came to be decreed against them. Parties are referred by their nomenclature before the trial Court.

2. Plaintiff has come with a case that, the property i.e. the agricultural land bearing Gut No. 165/1, admeasuring 1 Hectare 86 Ares plus barren land admeasuring 0.29 Are situated at village

Nimgaon Korhale Tq. Rahata Dist. Ahmednagar is his ancestral land. Out of the said land, land admeasuring 1 Hectare 12 Ares plus Potkharaba 0 Hectare 07 Are, in all 1 Hectare 19 Ares is the suit property. Plaintiff has three adult married sons and wife in the family. They all are cultivating the said land. Plaintiff and defendant No.1 are distant relatives. It is stated that, taking disadvantage of the innocent behaviour of the plaintiff, the defendant has got executed an irrevocable power of attorney in his favour in respect of the suit property on 29-02-2008 and it was registered with the Sub-Registrar. No information was given by the defendant No.1 to the plaintiff at the time of registration of the power of attorney. Plaintiff realised the preparation of such bogus and fabricated power of attorney by defendant No.1, and therefore, by issuing notice dated 05-11-2008 he canceled the said power of attorney. It was specifically informed that, he shall not do any act on the basis of the said power of attorney which may be in the nature of execution of a document. The said notice was refused by defendant No.1. Plaintiff had also given public notice regarding cancellation of the power of attorney in daily “Deshdoot” Nashik edition on 15-11-2008 and daily “Sarvamat” Ahmednagar edition on 22-11-2008. In view of the said notice the said power of attorney is cancelled. When defendant No.1 realised the said fact, there was dispute between him and plaintiff. There were attempts by the relatives to have compromise between them. Defendant No.1 was giving threats to the plaintiff stating that he will not allow the plaintiff to cultivate the land and he would sell out the property without his consent. After receiving frequent threats, the plaintiff put a proposal for compromise through Advocate Mr. S. T. Kote from Rahata to have compromise with defendant No.1 on 07-10-2011. However said lawyer joined hands with defendant No.1 and took disadvantage of the innocence of the plaintiff. Said lawyer gave 11 stamp papers valuing Rs.100/- each and promised that, he would arrange for a compromise between him and defendant No.1, and for that purpose the plaintiff should sign on blank stamp papers at the end of the document. Believing him and in hope that the dispute would come to an end, the plaintiff signed on those documents as stated by the lawyer and gave it to him. The said stamp papers have been used by the concerned advocate and the defendant No.1 to prepare an affidavit of the plaintiff dated 07-10-2011, another document stating that, the plaintiff is taking back the notice which he had given for cancellation of the power of attorney. Defendant No.1 has thereby cheated the plaintiff. Thereafter the defendant No.1 taking disadvantage of those documents, executed sale deed vide registered sale deed No. 1016-12 in favour of defendant No.2. The said sale deed would show that defendant No.1's name is shown as 'the person purchasing suit property' and 'the person who is selling it' is also the defendant

No.1. Defendant No.1 has not paid any consideration amount to him. Defendant No.1 had not given any information about the sale to the plaintiff. Therefore, the said sale deed is not binding on him. When plaintiff had gone to Talathi Office on 27-03-2012 to take 7/12 extract, at that time he came to know about the said document. After obtaining the certified copy of the said sale deed, he realised the illegal act of defendant No.1. No such agreement or transaction had taken place between the plaintiff and defendant No.1. There is every possibility that the defendant No.1 and 2 will create third party interest taking into consideration the fact that the suit property's value is increased as it is just near Shirdi. The value of the suit property is in crores of rupees. By way of amendment, the plaintiff has contended that, during the pendency of the suit, defendants No.1 and 2 have obtained forcible possession. Plaintiff therefore prayed for declaration that the sale deed dated 01-03-2012 registration No. 1016 of 2012 executed between defendants No.1 and 2 is bogus, and it is not binding on him. By way of amendment he has also prayed for the possession of the suit land. Consequent prayer of injunction has also been made.

3. Defendants No.1 and 2 have filed common written statement at Exhibit 17 and additional written statement after the amendment of the plaint at Exhibit 37. They have denied the disputed facts in specific words. It has been denied that, by taking disadvantage of

the innocence of the plaintiff, the defendant No.1 has got executed irrevocable power of attorney on 29-02-2008. It has been denied that, after the plaintiff had issued notice, with the help of advocate and without giving information to the plaintiff, certain documents have been got executed by obtaining the signatures of the plaintiff on the blank stamp papers. It has been stated that, the suit property has been sold by plaintiff and defendant by virtue of sale deed dated 01-03-2012 and the defendants have been put in possession by virtue of the said sale deed. Revenue entries have been made by virtue of the sale deed in their favour. It has been stated that, now the defendants have become owner of the suit property and therefore the suit is not maintainable. It has been contended that, the defendants had filed Regular Civil Suit No. 629 of 2012 against plaintiff with Civil Judge Junior Division, Rahata. Temporary injunction was granted against the plaintiff on 03-12-2012. The said order was confirmed in Misc.Civil Appeal No. 44 of 2012 by District Judge, Kopargaon. It has been further contended that, the plaintiff has received amount of Rs.1,17,00,000/- deposited in Bank of Baroda, Kopargaon Branch by demand drafts issued by State Bank of India. Further time and again the amount was given and thus the plaintiff has in all received Rs.2,38,00,000/-. Plaintiff has purchased 12 Acres of land in the name of his three sons from the said consideration amount. Now the plaintiff cannot take a stance that, he had not received any amount. By way of additional written statement it has been contended that, the suit suffers from non-joinder of necessary parties. It is impossible that the irrevocable power of attorney could have been cancelled by the plaintiff. The silence on the part of plaintiff would speak for him and it will show that the suit has been filed with ulterior motive.

4. Taking into consideration the rival contentions, issues came to be framed. Both the parties have led oral as well as documentary evidence. Taking into consideration the evidence on record and hearing both the sides, the learned trial Court has held that the plaintiff has proved that the sale deed dated 01-03-2012 in favour of defendants is void, illegal, and therefore not binding on him. It has been further held that the defendants are obstructing the peaceful possession of the plaintiff over the suit property. Defendants are trying to alienate the suit property. Defendants have taken illegal possession of the suit property, and therefore, the suit has been decreed. The defendants have been directed to hand over the peaceful possession of the suit property within two months from the date of the decree i.e. 17th February 2016. This decree is under challenge in these two appeals.

5. Heard learned advocate Mr. V. D. Sapkal for appellant in First Appeal No. 1335 of 2016 i.e. original defendant No.1, learned

advocate Mr. S. S. Deshmukh for respondent No.1 in both the appeals i.e. original plaintiff and learned advocate Mr. S. D. Kulkarni for the appellants in First Appeal No. 1355 of 2016 i.e. original defendant No.2 and respondent No.2 in First Appeal No. 1335 of 2016, and learned advocate Mr. Y. S. Choudhary for respondent No.2 in First Appeal No. 1355 of 2016 i.e. original defendant No.1.

6. Following points arise for determination, findings and reasons for the same are as follows ;

	POINTS		**FINDINGS**
1]	Whether the plaintiff proves that the sale deed dated 01-03-2012 is void, illegal and not binding on him ?	:	Yes.
2]	Whether the plaintiff proves that he had cancelled the power of attorney dated 29-02-2008 ?	:	Yes.
3]	Whether the plaintiff has proved that the defendants have taken forcible possession of the suit land ?	:	Yes.
4]	Whether the plaintiff is entitled to the relief sought ?	:	Yes.

REASONS

ON ALL THE POINTS :

7. Both the learned advocates appearing for the appellants submitted that, the learned trial Court has not appreciated the evidence properly. The admissions given by the plaintiff and the

other documents on record have not been considered. Plaintiff had come with a case that the power of attorney got executed on 29-02-2008 is forged and without giving any kind of intimation to him. Further he is also challenging the documents executed on 07-10-2011 including the sale deed stating that his own advocate had cheated him. However in his cross-examination the plaintiff has admitted that, he has received crores of rupees in his account and then he has withdrawn that amount. The said amount was deposited by defendant No.1 and the withdrawal of the amount is with interest. Under such circumstance, there is no force in his say that the document is executed without consideration. He has admitted in clear terms that, he had executed irrevocable power of attorney in favour of defendant No.1 on 29-02-2008, therefore his alleged action of giving notice personally to defendant No.1 and publication of the notice in the newspaper will not take away the rights which were accrued in favour of defendant No.1. In fact prior to the execution of the power of attorney (Exhibit 64) there was an agreement to sell executed by the plaintiff in favour of defendant No.1 which is at Exhibit 65 dated 28-02-2008, and therefore, 'interest' was created in favour of defendant No.1 in the property. The learned trial Court did not frame any specific issue in respect of the power of attorney, and therefore, the findings given cannot be said to be complete. The son of the plaintiff, P.W.2 Sunil though supported his father has also given certain admissions which would show that the amount was received by the plaintiff from defendant No.1. In spite of receipt of the amounts; with ulterior motive, the plaintiff is denying the execution of the documents as well as challenging the sale deed. Merely because defendant No.1 is also a person purchasing the property and then executing that document in the capacity as the power of the attorney holder, the document cannot be set aside. In the agreement to sell (Exhibit 65) it was specifically mentioned that the plaintiff would execute document of sale deed in favour of defendant or in the name of any other person as per the wish of the defendant No.1. Therefore, now he cannot challenge the sale deed. An affidavit was also given by the plaintiff in front of Notary stating that, due to misunderstanding he had issued the notice of cancellation of power of attorney but then he reiterated the rights given under the power of attorney to defendant No.1 by executing that affidavit Exhibit 100. Plaintiff has admitted in his cross-examination that the affidavit bears his photograph. Therefore, there is no substance in his say that, his signatures were obtained on about eleven blank stamp papers. When interest was created in favour of defendant No.1, the document Exhibit 64 was irrevocable power of attorney which could not have been cancelled. This main aspect was not considered by the learned trial Court in proper perspective, and therefore, it has resulted in miscarriage of justice.

8. The learned advocates appearing for the appellants have relied on the decision in *Dr. (Mrs.) Valensha Surong and Another Versus The State of Meghalaya*, reported in *2016 SCC OnLine Megh 94*, wherein also there was an agreement to sell and a Registered General Power of Attorney. It was held that, they cannot be read in isolation. The combination of both the documents will have to be considered and it has to be interpreted that the power of attorney was executed for consideration or in lieu of consideration. Further when the power of attorney was a registered document then it can be cancelled only by executing a registered document. The same ratio was held in *Shanti Budhiya Vesta Patel and others Versus Nirmala Jayprakash Tiwari and Others*, reported in *2010 (5) Supreme Court Cases 104*, wherein it has been observed that,

> *"Registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure. Merely by filing complaints with police, deeds, documents and powers of attorney cannot be revoked."*

Further same ratio has been laid down in *Chandrama Singh and Others Versus Mirza Anis Ahme*, reported in *AIR 2011 Allahabad 114*, *Harcharanjit Singh Thind (Capt.) Versus Deeksha Thind and Ors.,* reported in *2008 (6) Bombay C.R. 771,* and *H. Siddiqui (dead) by Lrs. Versus A. Ramalingam*, reported in *2011 DGLS (Soft.) 449*.

9. Per contra, the learned advocate appearing for the respondent – original plaintiff supported the reasons given by the learned trial Court and submitted that, the power of attorney itself was got executed by mis-presenting and playing fraud upon the plaintiff. When he came to know about it, he has cancelled the power of attorney by appropriate mode. Defendant No.1 admits that, he had the knowledge about cancellation of the power of attorney. Unfortunately the advocate on whom the plaintiff had reposed confidence had obtained the signatures of the plaintiff on blank stamp papers and then those documents have been misused. The act of misuse of the documents is elaborately covered by the learned trial Court while giving reasoning. The act of the defendant No.1 in getting the suit land sold to himself is also a questionable action, which supports the contention of the plaintiff that he was kept in dark and with ulterior motive his signatures have been obtained to dupe him. Further during the pendency of the suit, the plaintiff has been dispossessed because neither the power of attorney nor the agreement to sell on which the defendants are relying, discloses that the possession was handed over to defendant No.1. Merely mention of handing of possession by defendant No.1 in the capacity of power of attorney to the sellers vide disputed sale deed, will not infer that prior to that date plaintiff had handed over the possession of the suit land to defendant No.1. There is no document supporting the said

preposition. The disputed power of attorney was not an irrevocable power of attorney.

10. The first and the foremost, sequence of the events are required to be considered. As per the defendants, there was execution of an agreement to sell between plaintiff and defendant No.1 on 28-02-2008. Thereafter on the next day i.e. 29-02-2008 a power of attorney came to be executed between plaintiff and defendant No.1. Thereafter, notice was given by the plaintiff to defendant No.1 regarding cancellation of the power of attorney which he had refused but then the plaintiff had published the cancellation of the document in newspaper. Thereafter, affidavit Exhibit 100 is stated to have been executed on 07-10-2011 by plaintiff. On the same day agreement to sell Exhibit 118 was also executed between plaintiff and defendant No.1. But again affidavit came to be executed on 05-11-2008 by the plaintiff stating that he is taking back the notice regarding cancellation of the power of attorney. Thereafter, the sale deed dated 01-03-2012 came to be executed by defendant No.1 in the capacity as power of attorney of plaintiff in favour of himself and defendant No.2. Thus, it is with these events the evidence is required to be assessed.

11. Thus the above said chronology of events would start with the agreement to sell (Exhibit 65) dated 28-02-2008. Important point

to be noted is that, in the written statement filed by the defendants No.1 and 2 there is absolutely no mention of execution of this document, and therefore, the learned trial Court has rightly relied on the decision in, *Badat and Co. Bombay Versus East India Trading Co.,* reported in *AIR 1964 Supreme Court 538*, wherein it has been held that,

> *"The written statement must deal specifically with each allegation fact in the plaint and when a defendant denies any such fact, he must not do so evasively but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. Not only this but the defendant is required to plead and prove those documents or those events on which he or she intents to rely upon."*

Thus it can be seen that, there is absolutely no pleading in respect of the agreement to sell dated 28-02-2008 (Exhibit 65) in the written statement and the said document though came to be proved through D.W.2 Vilas it cannot be considered at all. It is to be noted that, when the said document Exhibit 65 was tried to be shown to P.W.1 Sitaram, objection was taken by the plaintiff that, there is no pleading to support the said document. However, the objections were kept open and then permission was granted to ask questions based upon the said document. Plaintiff admitted his signature on the said document, and therefore, the exhibit was given as Exhibit 65 and then it appears that the document was got proved through

D.W.2 Vilas. Even if for the sake or arguments by keeping aside the objections if it is considered that, defendant can still rely upon that document yet it is to be noted that, now for the first time it appears at the time of appeal a contention has been raised that interest was created because of the execution of agreement to sell (Exhibit 65) in the power of attorney (Exhibit 64) that was executed on the next date. From the Judgment of the trial Court it appears that, no such specific point was raised. If we consider the contents of power of attorney (Exhibit 64), it is to be noted that it is totally silent on the point of execution of agreement to sell dated 28-02-2008. As per agreement to sell (Exhibit 65) it is stated that, defendant No.1 had paid amount of Rs.5 lakhs to the plaintiff as earnest amount. If that is so, then what was the hurdle for defendant No.1 to get that fact mentioned in power of attorney. In fact the question is when the agreement to sell was executed on 28-02-2008 in which the property to be sold is specified, the rate agreed for consideration was specified, it was also specified as to when the sale deed was to be executed, and the manner in which the rest of the amount of consideration was fixed; then what was the reason for plaintiff as well as defendant No.1 to execute the power of attorney (Exhibit 64) is a big question, which has not been answered at all by defendant No.1. Surprising fact further is that, in power of attorney it has been stated that, the power is given to the defendant No.1 to search for prospective purchasers,, to talk with such prospective purchasers, to fix the consideration amount, to get the property converted to non-agriculture etc. etc. When agreement to sell (Exhibit 65) was executed with all aforesaid factors fixed or agreed, there was absolutely no necessity to search for prospective purchasers and negotiate for the consideration amount. Therefore, there is substance in the say of the plaintiff that document Exhibit 64 was got executed from him by keeping him in dark. It will not be out of place to mention here that, the plaintiff is not disputing the execution of the document but he says that, defendant No.1 had not given him any idea as to what is the document and for what purpose it is being got executed. Further it is also to be noted at the same time that, for execution of Exhibit 65 agreement to sell the stamp appears to have been purchased on 28-09-2008 but the date of the execution of the document is stated to be 28-02-2008. How before the purchase of the stamp paper the said document would have been executed ? The said document (Exhibit 65) appears to be a notarized document. Further the written statement by defendant No.1 and his testimony would show that, he never relied on this document or pleaded that the interest if at all anything was created in his favour by virtue of the said document. In specific words it was stated in Exhibit 65 that, the sale deed should be got executed by the end of March 2008. The testimony of defendant No.1 does not disclose what steps he had taken to get the sale deed executed in his favour in view of Exhibit 65. But he is harping upon the alleged rights created under power of attorney (Exhibit 64).

12. Document Exhibit 64 has been styled as "irrevocable power of attorney." In respect of evidence in the form of documents, it is necessary to determine the real intention of the parties. The mere form in which document is couch is immaterial. The intention of the parties has to be gathered from the terms of the document themselves and from the surrounding circumstances, the language used etc. If the language used in the document is unambiguous then the Court can take note of it, however the extraneous circumstances brought on record are also required to be considered at the same time. The Court, can clearly say that the document though, as in this case, is styled as an 'irrevocable power of attorney,' is not in substance a power coupled with interest so as to make it an 'irrevocable power of attorney.' Under such circumstance now it is required to be seen as to whether Exhibit 64 *per se* created any kind of interest in favour of defendant No.1. The contents of Exhibit 64 in entirety would show that, there is absolutely no mention of payment of any amount, No extra powers were given to defendant No.1. It is mainly styled as simple general power of attorney. At the cost of repetition it can be stated that there is absolutely no mention of execution of agreement to sell (Exhibit 65)

a day earlier, even in this power of attorney (Exhibit 64). Therefore, on what basis it can be said that 'interest' was created in the property by virtue of the irrevocable power of attorney (Exhibit 64) is a question which has not been answered by the defendant No.1. The document has to be construed as a whole independently when there is absolutely no mention of execution of any earlier document. Reliance can be placed on the decision in, *Syed Abdul Khader Versus Rami Reddy*, reported in (*1979) 2 SCC 601,* and also in *Timblo Irmaos Limited, Margo Limited Versus Jorge Anibal Matos Sequeira*, reported in *1977 (3) Supreme Court Cases 474*, wherein it is held that,

> *"What the power of attorney authorises depends on its terms and the purpose for which it is executed."*

Thus taking into consideration these pronouncements it can be seen that, parties had no intention to have bearing of agreement to sell Exhibit 65 on document Exhibit 64, and therefore they had not at all mentioned execution of the same. Further as aforesaid there was absolutely no necessity to have another document on the next day itself in the form of Exhibit 64. Defendant No.1 has not come with a case that, after execution of agreement to sell Exhibit 65, both of them intended either to cancel the said transaction or arrive at a different transaction, and then plaintiff authorized him to act on his behalf to do all those things which have been mentioned in

Exhibit 64. Under such circumstance when there are two different and independent documents, and the parties had the opportunity to make a mention of execution of the document which had taken earlier but abstained themselves from doing so, now the said party i.e. defendant No.1 cannot be allowed to rely on Exhibit 65 to show that interest was created in his favour, when document Exhibit 64 was executed.

13. Thus from the above discussion it can be seen that Exhibit 64 though styled as irrevocable power of attorney was absolutely not intended to be irrevocable. As aforesaid in fact when there was no necessity to execute this document yet it appears that it was got executed. Plaintiff was in dark at that time. After he came to know about the execution of such a document, he has cancelled it by issuing notice. Now it has been tried to be contended that, since it was an irrevocable power of attorney, plaintiff had no right to cancel it. However, for aforesaid reasons it can be seen that document Exhibit 64 was not at all an irrevocable power of attorney. The learned trial Court has rightly relied on the decision in *Suraj Lamp and Industries Pvt. Ltd. Versus State of Haryana and Another*, reported in *2011 (4) Mah L R 303 (SC)*, wherein it has been held that,

> *"A transfer of immovable property by way of sale can only be by way of deed of conveyance (sale deed). In*

> *the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transfered.* "

Further it has been held that,

> *"A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. 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 is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee."*

Therefore it can be said that, execution of Exhibit 64 did not create any interest in favour of defendant No.1. Plaintiff had the right to cancel the said power of attorney. The cancellation was by way of sending notice and also by giving publication in the newspaper. Defendant No.1 has admitted in his cross-examination that the said power of attorney (Exhibit 64) was cancelled by the plaintiff. Non-framing of specific issue in this respect by learned trial Court will not give any advantage to appellants herein. They had every knowledge of the case required to be meted out. Non-framing of issue has not resulted in any kind of prejudice to them.

14. The plaintiff has then come with a case that, defendant No.1 was harassing him, and therefore, he went to his advocate. It was

promised that, the said advocate would help the plaintiff in resolving the dispute with defendant No.1. Plaintiff has then come with a case that, thereafter his advocate had asked him to sign on eleven blank stamp papers. He acted as told by his advocate. But those documents have been misused by defendant No.1 and the advocate for creating certain documents. There appears to be substance in his say. It can be seen that the stamp papers used for getting executed document Exhibits 100, 101 and 118 are having consecutive serial numbers, except one serial number is missing. However, as per the plaintiff the said serial number which has been signed by him is still in possession of the defendant No.1. We would like to consider the evidence in respect of those documents also. Exhibit 100 is the affidavit executed by plaintiff on 07-10-2011. By this affidavit it is stated that, plaintiff is taking back the cancellation of the power of attorney and again conferring all the powers which were given on 29-02-2008 in favour of defendant No.1. Exhibit 101 is the last page of the said document. Exhibit 118 is also executed on 07-10-2011 styled as Sathekhat i.e. agreement to sell between plaintiff and defendant No.1. The first and the foremost fact that is again required to be considered as to why if the power of attorney was to be continued then there should be a separate agreement to sell ?. The purpose with which this document has been executed is also not clarified by the defendant No.1. Further it is also to be noted is that, the said document reiterates the document dated 28-02-2008, that is Exhibit 65, irrevocable power of attorney Exhibit 64. But then it says that, out of the consideration amount, amount of Rs.65 lakhs has been already paid and the plaintiff has purchased lands in the name of his daughter's-in-law. If we consider the further contents, then it can be seen that the ultimate consideration amount was not at all stated. It can be seen that whatever was agreed in Exhibit 65, was already paid and much more is stated to have been paid by defendant No.1 to the plaintiff. It is stated that, balance amount is Rs.1,17,00,000/- and even in presence of the witnesses it is stated that, the plaintiff has accepted amount of Rs.1,21,00,000/-. The first and the foremost fact is that, defendant No.1 is not explaining as to why such huge amount has been paid by cash. Every doubt is created in respect of this document. Further when Exhibit 64 was executed, it was registered with the Sub-Registrar then why it was not thought fit by both the parties to register this document also i.e. Exhibit 118 before the Sub-Registrar, is a question. The conduct of the parties is therefore required to be considered. These facts make the execution of the document doubtful.

15. The last transaction is, the transaction between defendant No.1 and defendant No.2 i.e. the sale deed dated 01-03-2012. It has been executed by defendant No.1 in favour of himself and

defendant No.2. He has executed it as a power of attorney holder of the plaintiff. As aforesaid power of attorney (Exhibit 64) was cancelled by the plaintiff. Thereafter, he has proved that documents Exhibit 100, 101, 118 have been got executed by fraud or misrepresentation. Under such circumstance on the date of execution of Exhibit 77 i.e. sale deed dated 01-03-2012, defendant No.1 had no authority to sale the land belonging to plaintiff to anybody including himself. The execution of the said sale deed is illegal and void, not binding on the plaintiff.

16. Throughout the trial the defendant No.1 as well as defendant No.2 have restrained themselves from adducing evidence as to exactly how they had paid the amount of consideration to the plaintiff. No doubt plaintiff admits deposit of certain amount by defendant No.1 in his bank account and then he has withdrawn the said amount. However, that admission is vague. It was not put to the plaintiff that, on this and this date he received this much amount. Reliance has been placed by the defendant on the certified copies of sale deed Exhibits 86, 87 and 88 to show that, certain lands were purchased by plaintiff in the name of his daughters-in-law and it is stated that the amount of consideration for those sale deeds was from the amount of consideration which he had received from the defendant No.1. Plaintiff cannot be deny that his daughters-in-law purchased certain lands by giving consideration.

But when the defendant No.1 is coming with a specific case that the said consideration which was for Exhibits 86, 87 and 88 was from the consideration he paid, then burden was on him to prove it specifically. It is also to be noted that, amount of Rs.65,00,000/- has been alleged to be paid to the plaintiff in May 2008 by the defendant No.1. But if we consider the execution of sale deeds Exhibit 86 to 88, then we can see that they were executed on 21-03-2008, that means prior to the alleged payment of Rs.65,00,000/- by the defendant No.1.

17. The fraud can be spelt from the documents also. The supplementary earnest receipt which is a piece of paper attached at the end of Exhibit 65 says that, defendant No.1 paid amount of Rs.50,20,000/- to plaintiff. However, plaintiff's signature was not obtained. That chit has no meaning at all, but then the said amount is taken in to the total by the defendant No.1. All these facts show that, defendant No.1 wanted to get the said land from plaintiff by any means, and therefore, there are creations of documents by him. We therefore, conclude that, plaintiff has proved that, he had the right to cancel the power of attorney and accordingly he has cancelled it. The sale deed dated 01-03-2012 executed by defendant No.1 as the power of attorney of plaintiff in favour of himself and defendant No.2 is void, illegal and not binding on the plaintiff. Further it can be seen that, there was no mention of giving of

possession of the suit land by plaintiff to defendant No.1 in any other documents. The wordings tried to be used for having possession in document Exhibit 118 is not properly worded and the said document is not a registered document. Therefore, the recital about possession in the said document cannot be considered at all. But it appears that, the defendants No.1 and 2 have taken the possession of the suit property by illegal means, and therefore, the plaintiff was entitled to get back the possession. Therefore, the points are answered accordingly.

18. The ratio of decisions relied by the learned advocate for the appellants are not applicable to the facts of the case. In those cases the registered document was duly executed, that means, without any fraud or misrepresentation. Under such circumstance mainly in 2010 (5) Supreme Court Cases 104, it was held that the cancellation can be by registered document only.

19. We do not find any illegality or error committed by the learned trial Court in decreeing the suit. Both the appeals are devoid of merits, hence dismissed with costs. Decree be drawn accordingly in both the matters.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vjg/-.