

THE HONOURABLE SRI JUSTICE M.LAXMAN

I.A.Nos.4, 5 OF 2011 & 1 OF 2021

IN/AND

CITY CIVIL COURT APPEAL No.40 OF 2002

AND

TRANSFER CITY CIVIL COURT APPEAL No.168 OF 2003

COMMON JUDGMENT:

1. Since the issue involved in the above IAs and the appeals is one and the same, they are being disposed of by this common judgment.

2. Both these appeals arise out of a common judgment and decree dated 21.01.2002 in O.S.Nos.1402 of 1992 and 432 of 1993 on the file of the VI Senior Civil Judge, City Civil Court-cum-Additional Judge, City Small Causes Court at Hyderabad, whereunder and whereby O.S.No.1402 of 1992 filed for declaration of title and recovery of possession was decreed and O.S.No.432 of 1993 filed for injunction was dismissed. The present appeals are at the instance of defendant Nos.1 and 2 in O.S.No.1402 of 1992. Defendant No.2 in O.S.No.1402 of 1992 is the plaintiff in O.S.No.432 of 1993. Both the suits are relating to the same subject matter. The parties covered in O.S.No.432 of 1993, except defendant Nos.1 to 4, are the parties in O.S.No.1402 of 1992. The pleadings in both the suits from both the parties are common.

3. Since the relief claimed in O.S.No.1402 of 1992 is extensive, for the sake of convenience, the parties hereinafter are referred to as they are arrayed in O.S.No.1402 of 1992.

4. The case of the plaintiff is that the property bearing Municipal No.5-3-128, which is a composite house, situated at Hindi Nagar, Goshamahahal, Hyderabad, originally owned by the third defendant – Ranvir Singh. The said house was over an extent of 188 square yards. The said house consists of four blocks i.e., eastern block spread over 89.20 square yards, western block spread over 48 square yards, middle block spread over 107.80 square yards and northern block spread over 43 square yards. The descriptive particulars of the portions forming part of three blocks i.e., eastern block, western block and middle block are as follows:

“The eastern block consists of a row of four tin roofed shops numbered from north to south as I, II, III, and IV with a row of country title roofed rooms attached to the shops on the west with separate kitchen, bath and lavatory, both portions being separated by a common dividing wall. The four shops in this block have the main road on the east. There are no connecting doorways between the three shops, I, II, III and the row of room on the west. There is however a doorway in the western side of shop No.IV leading into the hall in the middle block and therefrom to the kitchen, bath and lavatory.

The western block consists of a row of two rooms with tiled roof.

The middle block consists of a hall extending along the entire southern portion of the composite house west of shop No.IV. The open site abutting this hall intervenes between the eastern and western blocks.”

5. The pleadings further show that the plaintiff purchased northern block covering 43 square yards forming part of original composite house through a registered sale deed dated 26.05.1988 prior to agreement of sale. The plaintiff also holds an agreement of sale from the third defendant in

respect of remaining three blocks through an agreement of sale dated 05.03.1986 which is bone of contention in the present suits. The sale price agreed was Rs.700/- per square yard, and on the date of agreement of sale, Rs.10,000/- was paid by the plaintiff towards advance, and a separate receipt was issued to that effect. In part performance of the contract, the possession of shop No.1 was delivered to the plaintiff. Subsequently, a supplementary agreement was entered on 28.01.1988 extending the life of the original agreement dated 05.03.1986. After execution of the supplementary agreement, the original agreement of sale was taken back by the third defendant.

6. The pleadings further show that the plaintiff issued a paper publication dated 09.07.1991 inviting the objections from the public to the proposed sale transaction. Subsequently, a further supplementary agreement of sale was executed on 30.08.1991. When there was no response from the third defendant, a legal notice dated 20.07.1991 was issued. When there was no response, the plaintiff filed O.S.No.179 of 1992 on the file of the I Additional Judge, City Civil Court, Hyderabad, for specific performance against the third defendant. In the said suit, the third defendant filed a written statement admitting the claim of the plaintiff and also agreed to execute registered sale deed in favour of the plaintiff. As per such agreement, he has executed a

registered sale deed dated 27.06.1992 vide document No.1935/1992. Thereafter, the said suit was decreed on 17.07.1992.

7. The pleadings further show that the plaintiff and the third defendant issued separate notices to the tenants under possession for attornment of tenancy. One of the tenants viz., Radha Krishna issued a reply stating that there was a claim from the first defendant with regard to ownership and the tenant Shankerjee attorned the tenancy in favour of the plaintiff and a fresh lease agreement dated 13.07.1992 was executed. The first defendant also issued a reply claiming that he is the owner of premises and he denied the claim of tenancy.

8. The pleadings further show that the second defendant filed O.S.No.2050 of 1992 on the file of the III Assistant Judge, City Civil Court, Hyderabad, claiming title and injunction in respect of shop No.3, which was in the occupation of Radha Krishna. The second defendant also filed another suit vide O.S.No.2427 of 1992 on the file of the V Assistant Judge, City Civil Court, Hyderabad, against the plaintiff and the third defendant seeking injunction restraining the plaintiff from obtaining the sale deed in respect of the composite house other than northern block.

9. The pleadings further show that later, the plaintiff issued a legal notice dated 01.10.1992, terminating the tenancy of the first and second defendants and asked them to deliver the possession of the property in their possession and also claimed Rs.3,000/- per month towards compensation for their illegal use and occupation. The first and second defendants issued a reply notice dated 17.10.1992 claiming title to the property and they denied the claim of tenancy.

10. The pleadings further show that there is no valid GPA in favour of the first defendant and it is a bogus and ineffective and it does not empower the first defendant to sell the property. The first defendant is not competent to confer title in favour of the second defendant. The sale deeds are collusive and no consideration forms part of the sale deeds. The third defendant had no right when the sale deeds were executed. In those circumstances, the plaintiff filed O.S.No.1402 of 1992.

11. The case of the first and second defendants is that the third defendant executed a registered GPA in favour of the first defendant, and the first defendant on the basis of the said registered GPA, has executed a sale deed in favour of the second defendant, as such, the GPA as well as the sale deed are valid. They also stated that the particulars of various shops given by the plaintiff are not tallying with the existing shops and they are mis-described. They admitted that shop

No.3 was in possession of Radha Krishna Yadav, the tenant, and shop No.4 was in possession of brother of the first defendant who runs 'Ajanta Supplying Company', by paying monthly rent of Rs.350/-. The other shop was in possession of Shankerji. The occupation of Radha Krishna, Shankerji and brother of the first defendant is on the basis of tenancy.

12. The first and second defendants denied the existence of agreement of sale and supplementary agreements, as claimed by the plaintiff and stated that they are all created to defeat their interest. According to them, agreement of sale and the supplementary agreements are result of collusion between the plaintiff and the third defendant to defeat the interest acquired by the second defendant on the strength of GPA executed by the third defendant.

13. Their pleadings further show that the plaintiff filed O.S.No.179 of 1992 in collusion with the third defendant. The third defendant filed written statement admitting the claim of the plaintiff. Having so admitted, the third defendant has executed sale deed vide document No.1935/1992 in favour of the plaintiff, even before the suit was decreed. When such a sale deed was executed, the third defendant had no right or title by virtue of prior execution of sale in favour of the second defendant.

14. Their pleadings further show that the paper publication issued by the plaintiff on 09.07.1991 contains no area, dimensions and boundaries of the properties agreed to sell by the third defendant in favour of the plaintiff. The first and second defendants have nothing to do with the attornment of tenancy. They also claimed that Shankerji is none other than paternal uncle of the plaintiff. Therefore, he is in collusion with the plaintiff in pleading in favour of the plaintiff.

15. Their pleadings further show that after purchasing the property, they have obtained permission from the Municipal Corporation of Hyderabad for construction. Subsequently, at the instance of the plaintiff, a notice was issued by the M.C.H for cancellation of permission, for which, they have filed W.P.No.11831 of 1992 and obtained interim orders. They have claimed that they are in possession of the property covered under O.S.No.432 of 1993, as such, the second defendant filed O.S.No.432 of 1993 for injunction against the plaintiff and her children. On the above pleadings, they prayed to dismiss the suit of the plaintiff.

16. The third defendant filed a written statement denying the execution of GPA in favour of the first defendant to sell the suit property to the second defendant. In any event, the first defendant was not empowered by the third defendant to sell the suit property and to effect registration of the alleged sale deeds.

17. The third defendant also pleaded that the sale deeds executed by the first defendant in favour of the second defendant are void and ineffective, as they were in between the husband and wife and they are result of collusion and no consideration forms part of such execution. It is also claimed that the second defendant had no capacity to pay such a huge consideration of Rs.2,70,000/- to the third defendant. According to him, he has not created any valid or legal right in favour of the first defendant to pass on title in favour of his wife, the second defendant, and such transactions are not binding on the third defendant. At the time of execution of sale deed dated 27.06.1992 in favour of the plaintiff, the portions were in the occupation of the tenants and the details of such portions are as follows:

“i) Sri Shankerji in shop No.3 i.e., 5-3-128/3, who is running a meat shop on the agreed and fixed monthly rent of Rs.250/-.

ii) That, Sri Radhakrishna in shop No.2, i.e., 5-3-128/2, who is running a cycle shop on the agreed and fixed monthly rent of Rs.250/-.

iii) Sri G.Rajender Kumar in shop No.4, i.e., 5-3-128/4, with 6 rooms, WC etc., for residential purpose on the agreed and fixed monthly rent of Rs.1,000/-.”

18. The pleadings further show that the third defendant put the plaintiff in physical and actual possession of mulgi No.1 in part performance of contract of agreement of sale dated 05.03.1986. Shop Nos.4 and 6 were obtained from the third defendant on oral tenancy in the month of January, 1990 and the first and second defendants are aware of the plaintiff's

actual possession over mulgi No.1. He admitted the execution of sale deed in favour of the plaintiff conferring valid title.

19. The trial Court, on the basis of the above pleadings, has framed the following issues in both the suits:

“Issues in O.S.No.1402 of 1992:

1. Whether the 3rd defendant appointed the 1st defendant as his General Power of Attorney and whether the sale deeds executed by the 1st defendant in favour of the 2nd defendant as General Power of Attorney are valid?
2. Whether the sale deed dated 27.06.1992 executed by the 3rd defendant in favour of the plaintiff is true, valid and binding on the defendants 1 and 2?
3. Whether the plaintiff is entitled to the declaration of his title to the suit property?
4. Whether the plaintiff is entitled for possession of the suit schedule property after evicting the defendants 1 and 2?
5. Whether the plaintiff is entitled to past damages at the rate of Rs.3,000/- per month from the defendants 1 and 2 as claimed?
6. Whether the plaintiff is entitled to past damages from the defendants 1 and 2 as claimed?
7. Whether the plaintiff is entitled to future damages from the defendants 1 and 2 as claimed?
8. To what relief?

Issues in O.S.No.432 of 1993:

1. Whether the suit schedule property boundaries are correct?
2. Whether there is proper identity of the suit property?
3. Whether the plaintiff was in possession of the suit schedule property by the date of the suit?
4. Whether the plaintiff is entitled to the permanent injunction as prayed for?
5. To what relief?”

20. In both the suits, joint trial was conducted. The plaintiff, to support her case, examined P.Ws.1 to 5 and relied upon Exs.A-1 to A-121. The defendants, to support their case, examined D.Ws.1 to 8 and relied upon Exs.B-1 to B-132 and Exs.X-1 to X-110 and X-111.

21. The trial Court, after appreciating the evidence on record, decreed the suit for declaration and recovery of possession and dismissed the suit for injunction. Hence, the present appeals at the instance of defendant Nos.1 and 2.

22. Heard both sides.

23. The following points emerge for consideration in these appeals:

“1. Whether the plaintiff is entitled for declaration of title in respect of the suit schedule property?

2. Whether the General Power of Attorney under Ex.B-125 executed by the third defendant in favour of the first defendant is valid, true, effective and binding on the party to the document?

3. Whether the sale deeds covered under Exs.B-1 to B-3 are invalid on account of improper GPA or on account of no consideration?

4. Whether the plaintiff is entitled for recovery of possession of the suit schedule property?

5. Whether the second defendant is entitled for injunction in respect of the suit schedule property?

6. To what relief?”

Point Nos.1 to 3:

24. The plaintiff claimed title to the suit schedule property on the strength of sale deed dated 27.06.1992 (Ex.A-10). The

sale deed was executed by the third defendant in favour of the plaintiff. The plaintiff claimed that originally there was an agreement to sell the composite house excluding the northern portion which she already purchased from the third defendant. The said agreement is dated 05.03.1986. There was also a supplementary agreement dated 28.01.1988 extending the life of the first agreement of sale. There was also further supplementary agreement dated 30.08.1991 (Ex.A-98).

25. The second defendant is claiming title to the composite house including the suit schedule property on the strength of three sale deeds under Exs.B-127 to 129 executed by the third defendant through the first defendant on the strength of registered GPA (Ex.B-125). The defendants also rely upon Ex.B-23 – final receipt showing the details of the receipt of sale consideration by the third defendant. The second defendant also relied upon Ex.B-14 – construction permission granted by the M.C.H in pursuance of three sale deeds - Exs.B-127 to B-129.

26. The facts which are not in dispute are that the composite house bearing No.5-3-128 was originally owned by the third defendant. It is also not in dispute that the plaintiff was the purchaser in respect of the northern block of the composite house consisting of small extent admeasuring 43 square yards prior to agreement of sale. There is no much

dispute with regard to existence of eastern block, western block and middle block and the structures therein, except to the extent of minor discrepancy between the parties. The area of dispute is that the plaintiff is claiming that the GPA is ineffectual and not in accordance with the registration, and hence, the sale deeds executed consequently are invalid on account of invalid GPA. The plaintiff also claimed that the sale deeds are void on account of no consideration to the sale deeds.

27. The case of the first and second defendants is that the GPA executed by the third defendant under Ex.B-125 is a valid one and the same was executed in terms of the provisions of the Registration Act, 1908 (for short, the Act). On the basis of the said valid registered GPA, the sale deeds under Exs.B-127 to 129 were executed in favour of the second defendant and total consideration was paid to the third defendant. The third defendant has also issued a consolidated final receipt giving the details of the entire consideration paid to him.

28. If this Court holds that GPA under Ex.B-125 is validly executed by the third defendant in terms of the Registration Act, the capacity to execute the sale deeds by the first defendant in favour of the second defendant is said to be valid capacity and those sale deeds become valid, unless it is established that no consideration was paid under the sale

deeds by the purchaser as set up by the plaintiff and defendant No.3. Further, if Exs.B-125 and 127 to 129 are held to be valid, the sale deed executed by the third defendant in favour of the plaintiff becomes invalid in the sense that by the date of execution of such a sale deed, no title was vested with the third defendant.

29. Further issue is whether the agreements of sale, as pleaded by the plaintiff, ultimately merged into the sale deed executed by the third defendant, make the sale deed executed by the third defendant in favour of the plaintiff becomes valid conferment of title without the second defendant being the party to such conveyance. Thus, it is to be decided the validity of the GPA under Ex.B-125 as well as the sale deeds under Exs.B-127 to 129.

30. The contention of the learned counsel for the plaintiff is that the execution of GPA by the third defendant under Ex.B-125 is not in accordance with Section 33 of the Act and Rule 49 of the Telangana State Rules under the Registration Act (for short, the Rules). According to him, the attestation as required under Rule 49 of the Rules was not done. Therefore, such a GPA does not confer any right on the first defendant to confer title to the second defendant.

31. On the contrary, the contention of the learned counsel for the first and second defendants is that the applicability of

Section 33 of the Act and Rule 49 of the Rules does not arise in the present case. According to him, those provisions are referable to the situation where a document which is to be presented under Section 32 of the Act was presented by the agent of the executant. Section 32 of the Act requires the person executing the document has to present the document, and when he is not present, he can present through his representative or agent. If the agent presents the document, the requirement of following the procedure under Rule 49 would arise.

32. As seen from the evidence on record, there is no serious dispute between the parties with regard to execution of GPA under Ex.B-125 by the third defendant in favour of the first defendant. The only serious dispute is that it was not registered as is required under Section 33 of the Act and Rule 49 of the Rules. Therefore, to answer such a dispute, it is apt to refer to Sections 32 to 34 of the Act and Rule 49 of the Rules.

“32. Persons to present documents for registration:-

Except in the cases mentioned in Sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office:-

- (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
- (b) by the representative or assign of such a person, or
- (c) by the agent of such a person, representative or assign, duly authorised by power of attorney executed and authenticated in manner hereinafter mentioned.

32A. Compulsory affixing of photograph, etc:-—Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.

33. Power-of-attorney recognisable for purposes of section 32:- (1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:—

- (a) if the principal at the time of executing the power of attorney resides in any part of India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
- (b) if the principal at the time aforesaid resides in any part of India in which this Act is not in force, a power of attorney executed before and authenticated by any Magistrate;
- (c) if the principal at the time aforesaid does not reside in India, a power of attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:—

- (i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;
- (ii) persons who are in jail under civil or criminal process; and
- (iii) persons exempt by law from personal appearance in court.

Explanation.—In this sub-section “India” means India, as defined in clause (28) of section 3 of the General Clauses Act, 1897 (10 of 1897).

(2) In the case of every such person the Registrar or Sub-Registrar or Magistrate, as the case may be, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid.

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

(4) Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

34. Enquiry before registration by registering officer:-

(1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
- (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.”

33. A close scrutiny of Section 32 of the Act shows that every document to be registered under the Act whether such

a document is to be registered compulsorily or optional shall be presented at the proper registration office by the following persons i.e., (a) the person executing the document, (b) representative or assignee of such person and (c) by agent of such a person or representative or assignee duly authorized by a power of attorney executed and authenticated in the manner hereinafter mentioned. This means, if the person who executed the document is chosen to present the document for registration, there is no requirement of production of power of attorney. The power of attorney requirement comes when the executant of document is unable to present and he can do so by an agent through power of attorney executed and authenticated in the manner mentioned hereinafter. The words 'in the manner hereinafter mentioned' refer to Section 33 of the Act.

34. Section 33 of the Act deals with how the power of attorney is to be executed. Section 33 also refers before whom the power of attorney shall be executed. Firstly, if the principal executing power of attorney resides in any part of India, in which this Act applies, the power of attorney shall be executed and authenticated before the Registrar, Sub-Registrar within whose district or sub-district the principal resides. Secondly, if the principal resides in any part of India, in which this Act is not in force, the power of attorney shall be executed and authenticated by any Magistrate. Thirdly, if the

principal at the time of execution does not reside in India, such execution and authentication shall be done before the notary public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government.

35. Sub-section (2) of Section 33 of the Act says that the person before whom the power of attorney is executed must satisfy that it was executed voluntarily by the person who purported to be principal may attest the document without insisting the personal attendance of such principal at the office or Court aforesaid. Sub-section (3) of Section 33 of the Act empowers the Registrar or Sub-Registrar or Magistrate to obtain evidence to satisfy the voluntary nature of execution and also to issue a commission. Sub-section (4) of Section 33 of the Act gives a presumption with regard to production of document which is purportedly executed and authenticated by the person authorized under the said section.

36. Section 34 of the Act deals with presence of executants of the document in order to satisfy by the Registrar as to identity and truthfulness of execution of document.

37. Rule 49 of the Rules deals with satisfaction by the Registrar about the identity of the person and obtaining the thumb impression of such person either the person who personally knows to him or his identity is proved by the witnesses.

38. The entire argument of the learned counsel for the plaintiff is based on the existence of words 'satisfaction with regard to identity of the party by the Registrar'. Such satisfaction may be personally or is established by other witnesses.

39. In the present case, according to the plaintiff, engrossment on the registered document does not satisfy the requirement of Rule 49 of the Rules i.e., there is no attestation with regard to satisfaction of identity of the executants by the Registrar who is registering the document either he personally knows the principal or his identity has been established by the witnesses.

40. Admittedly, the document under Ex.B-125 does not contain the requirements as required under Rule 49 of the Rules. The question is when Rule 49 comes into play. Rule 49 falls under Chapter XI of the Rules. The heading of the chapter itself shows that the Rules under the said Chapter are framed under Section 33 of the Act. Section 33 is applicable to the situation where the executant of the document fails to present the document executed by him before the Registrar, and if he presents the document through his agent on the strength of GPA, then applicability of Section 33 of the Act arises.

41. In the present case, the principal i.e., the third defendant executed the document and himself presented the same for registration. The registration of the document by the third defendant is not in dispute. The dispute is lack of attestation with regard to identity in terms of Rule 49 of the Rules.

42. The requirement of Section 32 of the Act is that the person executing the document shall present the document executed primarily, and if not, he can send through the agent. In the present case, the document is presented by the executant himself and the general power of attorney is not a compulsorily registerable document even it contains the power to alienate the property, and it is an optional document of registration. The person holding the GPA, if properly stamped, can execute sale deeds on the strength of such a document without registration also.

43. The learned counsel for the defendants has relied upon the decision of **Rajni Tandon v. Dulal Ranjan Ghosh Dastidar**¹. Paragraphs 24, 25 and 27 therein are relevant and they read as under:

“24. The words "executed and authenticated in manner hereinafter mentioned" in Section 32 (c) would mean the procedure specified in Section 33. This is clear from the opening words of Section 33 which reads "for the purposes of Section 32, the following power-of-attorney shall alone be recognised". Section 32 refers to documents presented for registration by a holder of "power-of-attorney" in Clause (c) and it therefore follows that the procedure specified

¹ (2009) 14 SCC 782

under Section 33 would be attracted where a document is presented by a person holding a "powers-of-attorney" of the persons mentioned in Clause (a) of Section 32.

25. The aforesaid position makes it explicitly clear that Section 32 of the Act requires the documents sought to be registered, to be presented, inter alia by the person executing it. In other words, the said expression requires presence of the actual person executing the document. The basic principle underlying this provision of the Act is to get before the Sub-Registrar the actual executant who, in fact, executes the document in question. In fact, the ratio of the decision in Ram Gopal (supra) as reported in AIR 1960 Punjab 226 has laid down a similar proposition on the conjoint reading of Section 32 and Section 33 of the Act and after referring to all the judgments noted hereinbefore. Same view has been expressed earlier by the Bombay High Court in Ratilal Nathubhai and Anr. v. Rasiklal Maganlal and Ors., AIR 1950 Bombay 326.

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27. In view of the aforesaid legal position, we are of the considered view that the law laid down by the Andhra Pradesh High Court in D. Sardar Singh v. Seth Pissumal Harbhagwandas Bankers [AIR 1958 Andhra Pradesh 107] and the decision of Calcutta High Court in Abdus Samad v. Majitan Bibi & Anr. [AIR 1961 Calcutta 540] with regard to the interpretation of Section 32 and 33 of the Act is not the correct legal position."

44. A reading of the above judgment would show that the requirement of Section 33 of the Act would apply when the document to be registered is presented through GPA and not by the executant of the document. He also relied upon several other judgments which are not so relevant in view of the clear language of Section 33 of the Act.

45. The trial Court misread the entire requirement of Sections 32 and 33 of the Act and Rule 49 of the Rules by giving more importance to the attestation when it is not required so. Therefore, I do not find any merit in the contention of the learned counsel for the plaintiff that the

GPA under Ex.B-125 is invalid on account of lack of attestation in terms of Rule 49 of the Rules and the said contention is rejected.

46. The next question is whether the sale deeds under Exs.B-125 and 127 to 129 are invalid on account of lack of consideration?

47. In this regard, the contention of the learned counsel for the defendants is that in a suit for declaration, the burden is on the defendants to establish title. No doubt, when a suit for declaration and title is claimed, it is the party who seeks declaration has to establish the title without relying upon the weakness of the defendant i.e., he must stand on his own case, but not on the weakness of the defendant. The other contention of the learned counsel for the defendants is that the purchaser (plaintiff) under the sale deed – Ex.A-10 has not entered into witness box to establish title, instead, his son on the strength of GPA has given evidence to prove the title to the suit property.

48. The fact remains is that the third defendant is not disputing the execution of sale deed under Ex.A-10 and proof of Ex.A-10 is not much required to be established by examining the plaintiff. No doubt, when the GPA Holder of the principal entering into witness box, he can only speak about the facts which are within his knowledge, but he

cannot speak the facts which are specially within the knowledge of the principal. When the evidence which is to be established is not referable to any special knowledge of the principal and it is based on the document, non-examination of the principal is not fatal to the case of the plaintiff. When Ex.A-10 sale deed was not denied by the executants himself, the proof of such a document has no much relevance.

49. Further, the evidentiary burden placed on the plaintiff is not discharged by mere proof of sale deed under Ex.A-10. There is obligation on the plaintiff to prove the fact that the executant of such a document at the time of execution possess right to confer title on the plaintiff. This has to be established by the plaintiff himself and he cannot throw such a burden on the defendants as was done by the trial Court.

50. In the present case, the plaintiff claims agreements prior to Ex.A-10 sale deed. Admittedly, he has not produced two agreements of sale which are prior in time except the one agreement of sale which was executed in the year 1991 under Ex.A-98.

51. Even any such agreement exists to be true, still without joining the second defendant, who holds title to sell and convey the property on the strength of Ex.A-10 – sale deed, has no valid conveyance of title. If the plaintiff could able to demonstrate that the prior sale deeds in favour of the second

defendant are either void or invalid, it can be said that the third defendant has good title, so that he can confer title on the plaintiff.

52. The further question in this case is whether the sale deeds under Exs.B-127 to 129 can be declared void or invalid for want of consideration without there being no specific relief to that effect? It is to be noted that absence of consideration to sale deeds is not *void ab initio*. They are void subject to proof that sale deeds have no consideration.

53. In this regard, it is relevant to refer to the decision of Apex Court in **Government of Orissa v. Ashok Transport Agency**² and the relevant portion therein reads as under:

“50. Thus the expressions “void and voidable” have been the subject-matter of consideration on innumerable occasions by courts. The expression “void” has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be one which is not a nullity but for avoiding the same, a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable

² (2002) 9 SCC 28

transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

54. A reading of the above judgment of the Apex Court would show that there are three categories of void documents. The first category is *void ab initio* for which no declaration is required. The second category is a transaction entered by the minor without next friend. Such a document is good transaction against the whole world, but so far as the minor is concerned, if he decides to avoid the same, he must have recourse to the appropriate proceedings to declare the transaction as void, and from the date of such declaration, it goes back from the date of execution and becomes void. Another type of void act may be one which is not a nullity but for avoiding the same, a declaration has to be made. This means, when the document is not *void ab initio*, necessarily there must have been a relief for declaration.

55. In the present case, the plaintiff has not claimed any relief of declaration to declare the sale deeds under Exs.B-127 to 129 as void, since they are not *void ab initio*.

56. The next question is without there being any relief of declaration, whether the Court can go into the validity of the sale deeds? To decide the same, a further question arises

whether the sale deeds covered under Exs.B-127 to 129 are void for want of consideration?

57. The learned counsel for the plaintiff has submitted that there is inconsistency from the defendants' evidence more particularly reply notices issued by them. In one of the reply notices, they have claimed that the first defendant obtained GPA by paying consideration. There is a contrary claim in another reply notice. According to him, when Ex.B-23 - final receipt which is produced by the defendants is ignored, absolutely there is no consideration for the sale deeds.

58. The contention of the learned counsel for the defendants is that a third party to the sale deeds cannot canvass the claim that the sale deeds are not supported by consideration. According to him, the trial Court has wrongly disbelieved Ex.B-23 solely on the ground that the same was at belated stage. He has also contended that the reply notice was not given in tune with the instructions given to the Advocate.

59. The contention of the learned counsel for the defendants is that a third party has no right to question the sale deeds. Now the question is whether the plaintiff is a third party. In this regard, it is relevant to refer to the judgment of the Apex Court in **Muddasani Venkata Narsaiah v. Muddasani Sarojana**³. Para 17 therein is relevant and it reads as under:

³ Civil Appeal No.4816 of 2016, dated 05.05.2016

“17. It is also settled law that passing of consideration under a sale deed cannot be questioned by third party. Defendant no. 3 has not been able to establish her case that she is an adopted daughter of the deceased Yashoda and thus, she being the third party, could not have questioned the execution of the sale deed by Buchamma on the ground of passing of consideration as rightly laid down by the High Court of M.P. in Pandit Ramjilal Tiwari v. Vijai Kumar & Ors (1970 MPLJ 50). The High Court of Patna has also held that passing of consideration can be questioned by a party or his representative in Mt. Akli v. Mt. Daho (AIR 1928 Patna 44). Similar is the view of the High Court of Nagpur in Maroti Bansi Teli (supra). Thus, the High Court has erred in law on this ground also in dismissing the suit.”

60. In the said decision, the Supreme Court has relied upon the judgment of the Patna High Court in **Mt.Akli v. Mt.Daho**⁴ to hold that a party to the document or his representative can question the sale deeds on the ground that they are not executed with valid consideration. The words ‘his representative’ are wider meaning.

61. Here, the plaintiff is claiming under the executant of the sale deeds on the strength of sale deed executed in his favour by the third defendant under Ex.A-10. He falls squarely under the category of representative. Therefore, he has *locus standi* to canvass that the sale deeds have no consideration.

62. Now the question is who has to establish that Exs.B-127 to 129 have lack of consideration. The plaintiff is seeking title declaration and these sale deeds are anterior to the documents of his sale deeds. Unless he establishes that the

⁴ AIR 1928 Patna 44

sale deeds are void on account of no consideration, he cannot succeed in getting the declaration.

63. In this case, the sale deeds on the face of them, show that the consideration is passed on and they are registered documents. Under the Act, once a document has been registered, it has got presumption in favour of the party who is claiming title under it. In this regard, it is apt to refer to some of the judgments of the Apex Court i.e., **Bhagat Ram v. Suresh**⁵, **Rattan Singh v. Nirmal Gill**⁶, **Prem Singh v. Birbal**⁷, **Bellachi v. Pakeeran**⁸ and **Jamila Begum v. Shami Mohd.**⁹.

64. In **Bhagat Ram**'s case (supra), the Apex Court held as under:

“19... The certificate of registration under Section 60 of the Registration Act, 1908 raises a presumption under Section 114 illustration (e) of the Evidence Act that he had regularly performed his duty and therefore the facts spelled out by the endorsements made under Sections 58 and 59 of the Registration Act may be presumed to be correct without formal proof thereof. The duties discharged by the registering officer do not include attestation or verification of attestation of will as required by the rules enacted by Section 63 of the Succession Act. An endorsement by registering officer is not by itself a proof of the will having been duly executed and attested.”

65. In **Rattan Singh**'s case (supra), the Apex Court held as follows:

⁵ AIR 2004 SC 43

⁶ Civil Appeal Nos.3681-3682 of 2020, dated 16.11.2020

⁷ (2006) 5 SCC 353

⁸ AIR 2006 SC 3608

⁹ AIR 2019 SC 72

“32. To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh and Ors. v. Birbal {(2006) 5 SCC 353}. The relevant portion of the said decision reads as below:

‘27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.’ (emphasis supplied) In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document.’

33. Be that as it may, before examining whether the plaintiff discharged that onus and thus shifted it on the defendants, we may take note of procedure prescribed for proof of execution of document. In this regard, we refer to Section 68 of the Indian Evidence Act, 1872. The same is reproduced hereunder:

‘68:-**Proof of execution of document required by law to be attested:-** If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.’ (emphasis supplied)

34. As the execution of the 1990 GPA and the sale deeds in the present cases is denied by the plaintiff, it became necessary for the plaintiff to examine the attesting witnesses of the disputed documents to establish her allegation about its non-execution...”

66. In **Bellachi**’s case (supra), the Apex Court observed that a registered document carries with it a presumption that it was executed in accordance with law.

67. In **Jamila Begum**'s case (supra), the Apex Court held that a registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.

68. A reading of the ratio laid down in the said cases would clearly show that there is a presumption with regard to the registered document that it is validly executed. It is the person who challenges the document has to lead rebuttal presumption. If he could able to establish from the evidence that there are circumstances to rebut the presumption, he will succeed, and it is for the other party to establish the contents of the document as true.

69. In the present case, the second defendant has got a presumption in his favour and it is for the plaintiff to establish either from his own or from defendants' evidence to rebut such a presumption. In the present case, the plaintiff has strongly relied upon the inconsistency with regard to claim for the payment of sale consideration. In the present case, the plaintiff has not examined the third defendant for the reason that he died prior to the commencement of trial. He has also not examined any of the legal heirs of the third defendant to prove that there is no consideration.

70. Admittedly, there are inconsistent pleas with regard to payment of consideration, as found in the two reply notices issued by the plaintiff. At one stage, they claim that consideration was paid and GPA was obtained and subsequently different stand was taken. This means, if the claim of payment of consideration is to be taken in terms of notices, it must have been at the time of execution of GPA, but not at the time of execution of the sale deeds, whereas the recitals of the sale deeds show that the consideration was passed on.

71. The trial Court has disbelieved Ex.B-23 – receipt. Ex.B-23 is a consolidated receipt issued by the third defendant. The truthfulness of Ex.B-23 was disbelieved by the trial Court on the ground that the second defendant admitted that she was in possession of the document althrough, but the same was not filed at the earliest and this was the reason for excluding such a document from the purview of consideration.

72. The background of evidence shows the manner in which the supplementary sale deeds were executed and the written statement was filed in a suit for specific performance. Further, execution of sale deeds even before the suit for specific performance was decreed, and filing of the pleadings in the present suit, would all demonstrate that the third defendant is sailing with the plaintiff althrough by supporting

the plaintiff. When the third defendant has been supporting the plaintiff prior to the institution and subsequent to institution of the suit till his death, the question of getting executed Ex.B-23 subsequently from the third defendant highly improbable. This means, there is improbability that the document under Ex.B-23 is brought in to suit the case of the defendants. When the third defendant is although not cooperating with the second defendant, there is no question of any collusion between the second and third defendants to fabricate Ex.B-23.

73. Once a document is received, it presupposes the satisfaction of the reasons for non-production at the earliest, and the trial Court was considering the only admissibility of the document and its evidentiary value. The trial Court has already received the document and marked it. The receipt of document itself presupposes the satisfaction of the reasons for non-production at the earliest. When such reasons have been satisfied, and when there is no scope for collusion between the second and third defendants so as to bring in such receipt to defeat the plaintiff's right, Ex.B-23 ought not to have been excluded by the trial Court. If Ex.B-23 was considered, the evidentiary burden which is placed on the second defendant on the strength of some inconsistency in the stand as found out in the legal notices has been discharged. Once it is established that the sale deeds are

supported by consideration, they cannot be declared as void. For any reasons, the trial Court has committed error in holding that the sale deeds are void for want of consideration. Therefore, such findings are required to be set aside.

74. Once the GPA and the sale deeds under Exs.B-125 and 127 to 129 are established, the relevancy of other documents is little. Both the parties have relied upon voluminous exhibits which have little consequence on the declaration of title of the plaintiff. Once the sale deeds of the second defendant are established, it must be consequently held that though the plaintiff has proved the sale deed under Ex.A-10, he failed to establish that his vendor had valid title to convey the same to the plaintiff. The situation would have been otherwise, had the plaintiff, basing on the agreements of sale who filed specific performance, has joined the second defendant to the specific performance. If there was a decree to execute the document, the plaintiff would have got title.

75. In the present case, the decree for specific performance was obtained only against the third defendant, and such a decree was passed in spite of the third defendant executed the sale deed in favour of the plaintiff. Even such a decree executable, it is not required to be executed for the two reasons i.e., first is that already sale deed was executed and the second is that he has not title to execute a fresh document, since he has parted away title in favour of the

second defendant on the strength of Exs.B-125 and 127 to 129. Therefore, the plaintiff failed to establish his title to the suit schedule property. Accordingly, these points are answered.

Point Nos.4 and 5:

76. The plaintiff sought recovery of possession on the basis of title. When the findings on title are negated, the plaintiff is not entitled for recovery of possession. Admittedly, the second defendant is in possession of the suit schedule property even prior to institution of the suit. According to the plaintiff, such a possession was on account of tenancy. Absolutely, there is no evidence that the second defendant was inducted into tenancy possession on the strength of any prior title. Once the title of the plaintiff is negated, there is no status as landlord and there is no possession of tenancy, thereby possession of the second defendant cannot be said to be the possession under tenancy and his possession is on the basis of Exs.B-127 to 129 - sale deeds. Therefore, the plaintiff is not entitled for recovery of possession, whereas the second defendant is entitled for injunction. Accordingly, these points are answered.

I.A.Nos.4, 5 of 2011 & 1 of 2021 in CCCA.No 40 of 2002:

77. The plaintiff filed two applications for receiving additional documents i.e., I.A.No.4 of 2011 and I.A.No.1 of 2021, whereas the second defendant filed I.A.No.5 of 2011.

The plaintiff sought to introduce additional documents like order in I.A.No.29 of 2005 in O.S.No.1110 of 1992 on the file of the Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, Hyderabad which was filed by the second defendant. As per the said proceedings, the suit filed by the second defendant was dismissed as infructuous, in the light of the judgment and decree adduced in the present case. He also sought to introduce order in revision which was filed by the second defendant, aggrieved by the order of dismissing the suit as infructuous. He also sought to introduce interlocutory orders passed by this Court in CCCA.No.40 of 2002, judgment in Tr.CCCA.No.168 of 2003 passed by this Court, an order relating to transfer of O.S.No.433 of 1993 which was filed by the second defendant for injunction and a report of Advocate Commissioner appointed in O.S.No.1402 of 1992.

78. The second defendant wants to introduce certified copy of sale deed document No.3863/1988. This document is sought to be introduced to show that from the recitals of the said document, there is no reflection of the existence of prior agreement. He also wants to introduce vakalaths in various suits i.e., O.S.No.1402 of 1992, CCCA.No.40 of 2002 and interlocutory orders in O.S.No.1575 of 1998, O.S.No.1110 of 1992 and A.S.No.256 of 2003.

79. These documents have no relevance to establish the title of either party. In the present case, entire dispute revolves around the title to the property. Once this Court holds that the title is based on the sales, which are declared to be valid, receiving of these additional documents at this stage has no bearing on the findings of this Court. Therefore, all such documents are not required to answer the findings on the title. Therefore, these applications are liable to be dismissed.

Point No.6:

80. In the result, both the appeals are allowed and I.A.Nos.4, 5 of 2011 & 1 of 2021 in CCCA.No 40 of 2002 are dismissed. Consequently, the suit filed by the plaintiff in O.S.No.1402 of 1992 is dismissed and the suit filed by the second defendant in O.S.No.432 of 1993 is allowed.

81. It is stated that in pursuance of interim order of this Court, 50% of the mesne profits were deposited and the plaintiff has withdrawn major amounts and some amount is still lying in the trial Court's account. In view of allowing of the present appeals, the plaintiff is directed to refund the amounts withdrawn in pursuance of the order of this Court and the second defendant is entitled to claim back the amount whatever available in the account of the trial Court. The second defendant shall take appropriate steps for recovery of the amounts withdrawn by the plaintiff. There

shall be no order as to costs. Miscellaneous petitions, if any,
pending, shall stand closed.

M.LAXMAN, J

Date: 24.12.2021
TJMR