IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO

R.F.A.No.1035/2014
C/W
R.F.A.No.145/2013,

RFA CROB No.26/2015

R.F.A.No.1035/2014:

BETWEEN:

T. GOVINDARAJU
S/O MUNISWAMY
AGED ABOUT 65 YEARS
RESIDING AT No.344 (A)
BINNYPET,
BANGALORE – 560 053. ..APPELLANT

(BY SRI M S VARADARAJAN, ADVOCATE)

AND:

M. SRINIVAS MURTHY
S/O LATE MUNISWAMAPPA
AGED ABOUT 63 YEARS
RESIDING AT NO.181
1ST FLOOR, AKKAMAHADEVI ROAD
(AKKIPET)
BANGALORE-560 053. ..RESPONDENT

(BY SRI B S MANJUNATH, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 24.3.2014 PASSED IN O.S.No.15020/2000 ON THE FILE OF THE I-ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DECREEING THE SUIT FOR PERMANENT INJUNCTION.

R.F.A.No.145/2013:

BETWEEN:

1 . M. SRINIVAS MURTHY
AGED ABOUT 61 YEARS
S/O LATE MUNISWAMAPPA
No.181, 1ST FLOOR
AKKA MAHADEVI ROAD
(AKKIPET)
BANGALORE - 560 053.

2 . M GOVINDAMMA
AGED ABOUT 70 YEARS
W/O P M KRISHNAPPA
No.42, S.D.M. LANE
SULTANPET CROSS
BANGALORE-560 053.

3 . M SARASWATHAMMA
AGED ABOUT 66 YEARS
W/O P M KRISHNAPPA
No.38, MANAVARTHEPET
M R LANE
BANGALORE-560 053.

4 . M SAROJAMMA
AGED ABOUT 55 YEARS
W/O S N NARASIMHAMURTHY
No.34, CHAMUNDINAGAR
R .T. NAGAR POST
BANGALORE-560 034.

5 . M RUKUMINI
W/O LATE G.T.SRIRAMULU
AGED ABOUT 52 YEARS
No.2, 6TH CROSS, AKKIPET
BANGALORE-560 053. ..APPELLANTS

(BY SRI B S MANJUNATH, ADVOCATE
V/O DATED 29.1.2020, APPEAL AGAINST
A-3 IS ABATED)

AND:

1 . BINNY MILLS LABOUR
ASSOCIATION HOUSE
BUILDING CO-OPERATIVE SOCIETY LTD.,
No.14, MADURI MUDALIAR ROAD
JALI MOHALLA, BANGALORE-560 002.
BY ITS SECRETARY.

2 . P JAYASHEELAN
AGED ABOUT 63 YEARS
S/O PONNU SWAMY
No.113, 1ST CROSS
KAMALANEHARU NAGAR
GORIPALYA
BANGALORE-560 018.

3 . T GOVINDA RAJU
AGED ABOUT 64 YEARS
S/O CHALAMAIAH
No.102, 2ND STAGE
BINNY LAYOUT,
VIJAYANAGAR
BANGALORE-560 040.

4 . M JAYARAM
AGED ABOUT 60 YEARS
S/O MUNISWAMAPPA
No.181, 2ND FLOOR

VENKATADRI NIVAS
AKKAMAHADEVI ROAD
AKKIPET
BANGALORE - 560 053. ..RESPONDENTS

(BY SRI G PAPI REDDY, ADVOCATE FOR R-1
SRI M S VARADARAJAN, ADVOCATE FOR R-2
SRI M ASWATHNARAYANA REDDY, ADVOCATE FOR R-3
SRI B N ANANTHA NARAYANA, ADVOCATE FOR R-4)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 30.8.2012 PASSED IN O.S.No.8472/2002 ON THE FILE OF THE XXXIII ADDITIONAL CITY CIVIL JUDGE, BANGALORE, DISMISSING THE SUIT FOR DECLARATION.

IN RFA CROB No.26/2015:

BETWEEN:

P JAYASHEELAN
AGED ABOUT 65 YEARS
S/O PONNU SWAMY
No.113, 1ST CROSS
KAMALANEHARU NAGAR
GORIPALYA
BANGALORE-560 018. ..CROSS OBJECTOR

(BY SRI VARADARAJAN M S, ADVOCATE)

AND:

1 . M. SRINIVASA MURTHY
AGED ABOUT 64 YEARS
S/O LATE MUNISWAMAPPA
No.181, 1ST FLOOR
AKKA MAHADEVI ROAD

(AKKIPET)
BANGALORE - 560 053.

2 . M GOVINDAMMA
AGED ABOUT 73 YEARS
W/O P M KRISHNAPPA
No.42, S.D.M. LANE
SULTANPET CROSS
BANGALORE-560 053.

3 . M SARASWATHAMMA
AGED ABOUT 69 YEARS
W/O P M KRISHNAPPA
No.38, MANAVARTHEPET
M R LANE
BANGALORE-560 053.

4 . M SAROJAMMA
AGED ABOUT 58 YEARS
W/O S N NARASIMHAMURTHY
No.34, CHAMUNDINAGAR
R .T. NAGAR POST
BANGALORE-560 034.

5. M RUKMINI
W/O LATE G T SRIRAMULU
AGED ABOUT 55 YEARS
R/A No.2, 6TH CROSS
AKKIPET
BANGALORE – 560 053.

6. BINNY MILLS LABOUR
ASSOCIATION HOUSE
BUILDING CO-OPERATIVE SOCIETY LTD.,
No.14, MADURI MUDALIAR ROAD
JALI MOHALLA, BANGALORE-560 002.
BY ITS SECRETARY.

7. T GOVINDA RAJU
S/O CHALAMAIAH
No.102, 2ND STAGE
BINNY LAYOUT,
VIJAYANAGAR
BANGALORE-560 040.

8. M JAYARAM
AGED ABOUT 62 YEARS
S/O MUNISWAMAPPA
No.181, 2ND FLOOR
VENKATADRI NIVAS
AKKAMAHADEVI ROAD
AKKIPET
BANGALORE - 560 053. ..RESPONDENTS

(BY SRI.B.S.MANJUNATH, ADVOCATE FOR R-1 TO R-5,
SRI.G.PAPI REDDY, ADVOCATE FOR R-6,
SRI.M.ASHWATHANARAYAN, ADVOCATE FOR R-7)

THIS RFA CROB IN RFA No.145/2013 IS FILED UNDER ORDER 41 RULE 22 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED:30.8.2012 PASSED IN O.S.No.8472/2002 ON THE FILE OF THE XXXIII ADDITIONAL CITY CIVIL JUDGE, BENGALURU, DISMISSING THE SUIT FOR DECLARATION.

THESE RFAs AND RFA CROB COMING ON FOR FURTHER HEARING THIS DAY, THE COURT THROUGH VIDEO CONFERENCE AT BENGALURU DELIVERED THE FOLLOWING:

JUDGMENT

RFA No.1035/2014 is directed against the judgment and decree dated 24.03.2014 passed in O.S.No.15020/2000 wherein suit for permanent injunction filed by plaintiff Sri.M.Srinivasa Murthy against Sri.T.Govinda Raju came to be decreed in respect of the schedule property.

2. Being aggrieved by the said judgment and decree passed in O.S.No.15020/2000 the defendant therein Sri.T.Govinda Raju has come in appeal in RFA No.1035/2014. The said suit was filed on 05.01.2000. The present suit O.S.No.8472/2002 was filed on 16.12.2002. However, both the suits were disposed of by the trial Court separately. O.S.No.8472/2002 was adjudicated by XXXIII Additional City Civil Judge, Bengaluru on 30.08.2012 wherein suit came to be dismissed and O.S No.15020/2000 was decreed by 1st

Additional City Civil and Sessions Judge, Bengaluru in O.S.No.15020/2000 on 24.03.2014. Now it is clear and understandable that judgment and decree passed in O.S.No.15020/2000 is challenged in RFA No.1035/2014 and judgment and decree passed in O.S.No.8472/2002 is challenged in RFA No.145/2013 along with Cross Objection No.26/2015 filed by Jayasheelan –defendant No.2 in O.S.No.8472/2002 and are tied together to avoid conflict and overlapping. It is in this background, 3rd defendant-Govinda Raju is not challenging the judgment and decree passed in O.S.8472/2002. On the other hand, he has challenged the judgment and decree in O.S.No.15020/2000. It is directly connected to O.S.No.8472/2002.

3. In order to avoid confusion and overlapping parties are addressed in accordance with the rankings held by them before the trial court.

4. The brief presentation of the facts of the case in O.S.No.8472/2002; that plaintiffs are stated to be legal heirs –representatives of one late Muniswamappa. The main prayer of the plaintiffs is regarding cancellation deed dated 16.10.1990 that was stated to have been executed by defendant No.1 unilaterally and illegally and to declare it as void and unenforceable. The subject matter of the suit as described is a shed constructed over site No.50, II Stage, Hosahalli extension formed in Sy.No.444, Kempapura Agrahara, Bengaluru measuring East to West 30 feet, North to South 45 feet being bounded on East by 30 ft road and West by site No.51, North by site No.49 and South by 30 ft road.

5. The prime claim of the plaintiffs is that said late Muniswamappa was an employee in Binny Mills. He was also a shareholder in the Co-operative Society

namely Binny Mills Labour Association House Building Co-operative Society Limited (for the sake of convenience hereinafter referred to as `Society'). During his life time said Muniswamappa was allotted suit schedule property by first defendant and a registered sale deed was executed on 17.01.1973 in his favour, on the same day he was put in possession of the schedule property which are clear from the contents of the sale deed.

6. Meanwhile there was circumstances leading to appointment of administrator who was appointed to first defendant-Society called upon plaintiff's father Muniswamappa to remit balance sital value to enable it to in turn remit it to BDA for completing the balance layout work and it was also followed by another letter dated 08.05.1980 by the Secretary of the Society demanding Muniswamappa to pay Rs.3,050/-.

Muniswamappa paid the said amount on 18.06.1980 through cheque and first defendant-Society issued receipt bearing No.3755 after realizing the amount. The society also issued a confirming letter for possession and certificate of possession as well. Since the date of the sale deed Muniswamappa was in possession and enjoyment of the schedule property and till his death that happened on 13.04.1993. After the death of Muniswamappa plaintiffs and their brother M.Jayaram being legal representatives succeeded to the schedule property. Plaintiffs' brother Jayaram had filed O.S.No.6334/2000 for partition against first plaintiff and his wife claiming ½ share in the suit schedule property. The matter being contested on the ground that he does not get any share as claimed by him and it is stated to have been dismissed for non prosecution. Later it was not pursued. Defendant No.3 is an utter stranger to the

family and he has no right, title, interest or possession over the schedule property.

7. It is further claimed that on 25.12.1999 and again on 01.01.2000 defendant No.3 tried to interfere with the peaceful possession and enjoyment of the plaintiffs over the schedule property and tried to evict forcibly and tried to demolish the shed. First Plaintiff with timely assistance of the neighbours was able to prevent the high handed act of defendant No.3. Thereafter plaintiff filed O.S.No.15020/2000 for permanent injunction before the City Civil Court which was pending as on the date of the present suit.

8. Plaintiff contended regarding interference and all the related then he came to know first defendant-Society has cancelled and executed cancellation deed in favour of Muniswamappa and it was allotted to

second defendant and it is second defendant who got the property purchased from society sold it to defendant No.3 –T.Govinda Raju. Then attack of the plaintiff is that cancellation deed is biased and prejudicial document. Muniswamappa never subscribed his consent for such cancellation nor he was informed about proposal of cancellation nor participated in the proceedings nor enquiry was held for the very reason that there was no defect in the sale deed effected in favour of Muniswamappa. It is also contended that the sale deed executed in favour of Muniswamappa is not challenged on any lapses by the Society under Section 27 of the Specific Relief Act.

9. Rest is that first defendant -society allotted the schedule property to the second defendant - P.Jayasheelan and executed the sale deed dated 01.12.1990 and schedule property was sold by second

defendant-Jayasheelan in favour of third defendant - Govinda Raju on 27.12.1999. Insofar as the defendant No.4 is concerned it is already stated that he is also son of Muniswamappa who had earlier filed suit for partition which was dismissed for default. However the result is plaintiffs 1 to 5 and defendant No.4 belonged to one branch under the umbrella of Muniswamappa. Rest is defence by the defendants.

10. So far as first defendant-Society is concerned it contends suit is not maintainable either on law or facts. Plaintiff already got exhausted by filing a suit in O.S.No.15020/2000 on the file of I Additional City Civil and Sessions Judge, Bengaluru, for permanent injunction and justifies its act of cancellation and contends that it was proceeded by the authority conferred by the buyer and it also contends that it is only for the members who are entitled for allotment of

sites formed by society and said Muniswamappa was neither a member nor an employee of Binny Mills and in this connection society justifies its cancellation of sale deed and further sale in favour of second defendant -Jayasheelan.

11. Insofar as Jayasheelan is concerned he contends that he is a bonafide purchaser for value fulfilling all the qualifications for getting the site allotted or purchased in his favour. The rest is third defendant-Govinda Raju has purchased from second defendant - Jayasheelan.

12. Learned counsel for plaintiff Sri.B.S.Manjunath would submit that sale deed was effected in favour of deceased Muniswamappa in a legal and valid manner for valuable consideration. Sale deed dated 17.01.1973 is marked as Ex.P-1. In this connection,

the said Muniswamappa fulfilled and qualified all the requirements for getting the site. There are no lacunae in it. He would further submit that the act of the first defendant in canceling the sale deed on 15.10.1990 under Ex.P-20 is bad in law and on facts. It fails to qualify the test of either transparency or legality or validity. Learned counsel would further submit that it is unilateral attitude of the Society to get sale deed of the properties being made as aforesaid and then re-allot according to their whims and fancy and thus the object of the Co-operative Society is defeated.

13. Learned counsel Sri.M.S.Varadarajan who appears for appellant in RFA 1035/2014 would submit that Sri.Govinda Raju is a genuine purchaser of the schedule property for valuable consideration under registered sale deed dated 27.12.1999 marked at Ex.P22. He would submit that there are no allegations

of any kind against Govinda Raju and he is a perfect purchaser with bonafide interest. He got the property by due enquiries regarding the title and has purchased the same from the Society and fulfilling all the needs.

14. The learned Judge in O.S.No.8472/2002 was accommodated with oral evidence of PW1-M.Srinivasa Murthy and documentary evidence marked as Ex.P1 to P31. Similarly, oral evidence of DW1-R.Manoji Rao, DW2-P.Jayasheelan, DW3-T.Govinda Raju and DW4-Sampa and documentary evidence Exs.D1 to D95 on behalf of defendants.

15. The present appeal though is filed under Section 96 of CPC it involves question of law as well. In this connection the issues framed by learned trial Judge in O.S No.8472/2002 are as under:

> "1. Whether the plaintiffs prove that defendant No.1 Society has validly executed registered sale deed dated

17.01.1973 with respect to the suit property in favour of Muniswamappa and thereby he was put in possession?

2. Whether the defendant No.1 proves that the suit of the plaintiffs is barred under Order 2 Rule 2 CPC?

3. Whether the defendant No.1 proves that the suit of the plaintiffs is not maintainable against it, as they have not complied Section 125 of Karnataka Co-Operative Societies Act?

4. Whether the defendants proves that the suit of the plaintiffs is barred by limitation?

5. Whether the defendant No.2 proves that the plaintiffs have undervalued the market value of the suit property?

6. Whether the defendant No.2 proves that suit of the plaintiffs is not maintainable without the prayer for possession?

7. Whether the defendants prove that registered sale deed dated 07.12.1990 executed by defendant No.1 in favour of defendant No.2 with respect of the suit property is valid and according to law?

8. Whether the plaintiffs prove that cancellation deed dated 16.10.1990 executed by defendant No.1-Society is illegal and unenforceable and not binding on the plaintiffs?

9. Whether the plaintiffs are entitled to the relief sought for?

10. What order or decree?"

16. The issues framed in O.S No.15020/2000 are as under:

1. Whether the plaintiff proves that he is in lawful possession of the suit schedule property as on the date of suit?

2. Whether the plaintiff proves that the alleged interference of the defendant?

3. Whether the plaintiff is entitled for the relief of permanent injunction?

4. What Order or decree?

17. O.S.No.8472/2002 came to be dismissed and O.S.No.15020/2000 came to be decreed.

18. As stated, the point of law which is involved is as to whether the cancellation of sale deed stated to have been effected by first defendant- Society canceling the sale deed in favour of Sri.Muniswamappa was well within its power. In such a case, sale deed executed by first defendant-Society in favour of Sri.Muniswamappa is worthless. At the same time, sale deed executed by the first defendant-Society in favour of Sri.Jayasheelan stands tall and becomes justifiable. At the same time, the sale deed executed in favour of Sri.Govinda Raju by Sri.Jayasheelan becomes evaluated.

19. Per contra, in case the sale deed stated to have been cancelled by the Society against Muniswamappa is not good in law and patently illegal, the sale deed

dated 01.12.1990 by the Society under Ex.P-21 in favour of Sri.P.Jayasheelan and consequently sale deed 27.12.1999 under Ex.P-22 executed by Sri.P.Jayasheelan in favour of Sri.T.Govinda Raju would be totally non binding on the sale deed that was executed in favour of Sri.Muniswamappa by the Society.

20. To proceed from the elementary level, sale is a transfer of ownership when a person sells for a valid consideration followed by delivery of possession. The legal formality is execution of sale deed dated 17.01.1973 by first defendant-Society marked as Ex.P-1 in favour of Muniswamappa is not disputed by any party including the first defendant-society.

21. Per contra, the contention of the Society is that it was within its power to cancel it and it is enabled by

byelaw. It is submitted by Sri.G.Papi Reddy, learned counsel for Society that Ex.D1 is the sale deed executed in favour of Sri.Janardan Rao wherein the President, Secretary and also two directors have executed the registered sale deed in favour of Sri.Janardan Rao wherein executants are H.Kempahanumaiah-President, R.Anniappan, - Secretary. Ex.D2 is the Sale deed in favour of Sri.M.L.Krishna Murthy is also executed by H.Kempahanumaiah-President, R.Anniappan-Secretary and Dharmaraj Naidu- Treasurer. Similarly, Ex.D3 sale deed in favour of one R.Vandana is executed by H.Kempahanumaiah-President, R.Anniappan-Secretary and Dharmaraj Naidu-Treasurer. Ex.D4 Sale deed in favour of S.Chandra Kumar Jain is executed by H.Kempahanumaiah-President, R.Anniappan-Secretary and Dharmaraj Naidu- Treasurer. Ex.D5 Sale deed in favour of M.Mayavathy is executed by

H.Kempahanumaiah-President, R.Annaiappan-Secretary and Dharmaraj Naidu-Treasurer. Ex.D6 Sale deed in favour of P.Balaraman is executed by H.Kempahanumaiah-President, R.Anniappan-Secretary and Dharmaraj Naidu-Treasurer. Ex.D7 Sale deed executed in favour of Nagash Narasinha Kini is executed by H.Kempahanumaiah-President, R.Annaiappan-Secretary and Dharmaraj Naidu-Treasurer. Ex.D8 sale deed in favour of M.Hemoji Rao is executed by Kariyappa-President, R.Annaiappa-Secretary and K.Sampangi-Treasurer. Ex.D9 sale deed in favour of M.Hemoji Rao is executed by Kariyappa-President, R.Annaiappa-Secretary and K.Sampangi-Treasurer. Insofar as Ex.D10 is concerned it is stated to be sale deed in favour of M.Hemoji Rao executed by Kariyappa-President, R.Anniappa-Secretary and K.Sampangi-Treasurer.

22. Learned counsel Sri.Papi Reddy appearing for Society and also learned counsel appearing for appellant-Govinda Raju relied upon Regulation 14 or byelaws contending that Muniswamappa could not have been allotted site as he was not an employee of Binny Mills and has relied upon Regulations 14, 36 and 37 of the bye-laws of the society which are as under:

> *14. "MEMBERSHIP*
>
> *Any person who is above the age of eighteen years and who is competent to contract under Section 11 of the Indian Contract Act of 1872 (Central Act IX of 1872), residing in the jurisdiction of the Society may be admitted as a Member of the Society subject to the following conditions.*
>
> *a) He should be an employee of the Bangalore Woollen, Cotton and Silk Mills Co., Ltd., Bangalore and its allied companies, show-rooms, etc., situated in and around the Bangalore City Corporation area;*

b) He should not be a member of any other similar type of Co-operative society;

c) He should not have applied to be adjudicated an insolvent or he is undischarged insolvent;

d) He should not have been sentenced for any offence, other that office or a political character or an offence involving moral turpitude, such sentence nor having been reversed or the offence pardoned and period of five years have not elapsed from the date of expiry of the sentence.

e) He has paid an admission fee of 0.25np and share fee of .013 NP and has applied for allotment of at least one share;

f) Unless he gives two agreements in the form provided for the purpose, annexed o this Bye-law, one with the Society and other with the Officer disbursing his salary, agreeing to the deductions from his salary of the instalments of share

subscriptions, loans, if any, and other sums due to the Society. The agreements shall be operative all along on the applicant's continuance of the membership of the Society.

37. ***Powers of President****:*

The President shall have general control over the working of the Society and he shall whenever present, preside over the meetings of the Board as well as the General Meeting.

The President, Secretary and three other Directors shall sign all documents executed on behalf of the Society.

38. ***Powers of Secretary:***

The Secretary shall be appointed by the Board of Directors. The Secretary shall be responsible for the executive administration of the Society subject to control of the President. He shall among other matters be responsible.

a) To maintain correct and up to-date accounts and registers prescribed by the Department;

b) To issue receipts for all moneys received in the Society and obtain vouchers for all payment made;

c) To attend to the correspondence of the Society;

d) To convene and attend the meetings of the Board of Directors in consultation with the President of the Society and the General Body and resolved by the Board of Directors and duly record the proceedings of such meetings and to carry out the resolutions passed at the meeting;

e) To prepare annual statements and other returns that may be prescribed under the Rules and /or by the Registrar;

f) To control other salaried servants of the Society;

g) To receive the applications for membership or payment or withdrawal of deposits or shares, etc., and to place before the Board of Directors meeting for orders;

h) The Secretary shall be the officers to sue or to be sued on behalf of the Society and all bonds and agreements shall be in the name of the Secretary;

i) The Register and all other records of the Society including the Lock and other properties of the Society shall be in his custody and he shall be responsible for the safety of the same."

23. Both learned counsel Sri.M.S.Vardarajan and Sri.G.Papi Reddy would submit that the sale deed in favour of Muniswamappa is not executed by President, Secretary and three Directors. Hence, it is not valid. In this connection, the sale deeds produced under Exs.D1 to D10 have been executed in favour of various persons. In none of the sale deeds it could be seen that three directors have signed along with President and Secretary. More over, when the Secretary has executed the sale deed in the year 1973

there is no document to show that proceedings were initiated against the Secretary. If there is any misappropriation, non misfeasance and that it is not a pleading that proceedings were initiated against Muniswamappa. When it had maintained the disparity regarding the persons who have executed the sale deed it cannot blow hot and cold at the same time. Learned counsel Sri.G.Papi Reddy for first defendant-Society would submit that Muniswamappa was not at all qualified for the allotment of the site as he was not a member. The answer is provided in Ex.P1 which is as under:

The Binny Mills Labour Association House Building
Co-operative Society Limited
(Regd.No. a-10/drcs61, Dated 15-6-1961)
14 Madurai Modaliar Road, Jali Mohalla,
Bangalore-2a.

Sale Deed

The sale deed executed this seventeenth day of January One thousand

nine hundred seventy three between the Binny Mills Labour Association, House Building Co-operative Society Ltd., hereinafter called the first party represented by its President and Secretary and Treasurer who had been authorised by the members of the Board by a resolution at the meeting of the Board held on 31.01.1971 which term shall wherever the context so permits mean and includes his successors in office and assigns in favour of Sri Muniswamappa aged son of Sri Govindappa residing at Door No.181, Akkipet, Bengaluru-2A hereinafter called the second party which term shall wherever the context so permits means and includes his her heirs, executors, administrators and legal representatives.

Whereas the first party has formulated a scheme known as the Housing Scheme and whereas the Secretary of the first party Society has under directions and orders of the Board of Directors of the said Society formed sites and laid out the sites as approved by the Bangalore City Improvement Trust Board for the construction of dwelling house on the said sites for workers, who are share holders in the said Society and whereas it is now proposed to extend the scope of the scheme by allotting the formed and approved sites for building houses in Hosahalli to the shareholders the secondparty.

Whereas one of the sites so formed bearing Site No.50II in Survey No.444 in Kempapura Agrahara of the Hosahalli

Extnsion more fully described in the Schedule here under the referred to as the "Site of which first party is the absolute owner.

Whereas there were negotiations between the (purchaser) second party on the one hand the first party on the other allowing the second party to occupy and or take possession as purchaser as hereinafter provided until the payment in full of the Price of the aforesaid site is paid:

Whereas the first party has agreed to do so subject to the conditions specified in the Byelaws of the said Society and such decision and conditions specified and may be specified by the Board of the said Society from time to time and:

Whereas the first party has further agreed to sell the Schedule property to the Second party on terms and conditions hereinafter mentioned:

Now this indenture witnesseth:

And whereas the Second party on the other hand has agreed to purchase the Scheduled site under the said terms and conditions, it is hereby and among the above named parties:

1. The sale price of the Schedule property it Rs.4,050 (Rupees Four thousand and fifty only) being the cost of site.

24. When the site was allotted even balance amount was asked to be paid by Muniswamappa and letter is written by Secretary and the amount of Rs.3,050/ was demanded and the same is paid. Ex.P6 is the reminder for the payment. Ex.P7 is the receipt bearing No.3755 which shows Muniswamappa has paid the said amount through cheque No.252682 dated 18.06.80, to the Society. Locus standi on entitlement including Muniswamappa's possession was questioned by the Society for which answer is available under Ex.P9-Service Certificate dated 03.03.1971 wherein it mentions Sl.816, Name is Muniswamy, Department is T.Winding, Age as per their records at the time of leaving is 55 years (Fifty Five years), Total service 11 years which is issued by Mill Manager. In case, execution of sale deed is admitted but is stated to be improper there is no concrete specific ground stating that the grant of

property under sale deed was improper or on any other count. The Society stands exposed by attributing Muniswamappa was not at all employee. The said submission is totally falsified by Ex.P9 which is service record and period of service is also mentioned. The allotment letter, demand notice for payment for execution of sale deed when all are presented what else is required by the Society.

25. Misrepresentation and falsification are concerned there is difference between two private parties entering into contract and one blaming the other and other is misrepresenting it but when other agreement is entered into like between the society or individual to take the stalk of the society and society should not have made that kind of bargaining and hard earned amount was paid when the sale deed was executed and allotting the same for the sake of cancellation.

Canceling the sale deed, it is not proper because in this case sale deed that was executed in favour of Muniswamappa in the year 1973 and cancellation deed is dated 15.10.1990 which is almost 17 years later and sale deed executed in favour of Sri.P.Jayasheelan is on 01.12.1990. The purpose of cancellation could be very well understood by sale deed executed in favour of Sri.P.Jayasheelan who has sold the property to Sri.Govinda Raju-third defendant in O.S.8472/2002 and sole defendant in O.S.No.15020/2000.

26. The first defendant-Society first issues the notice to the father of plaintiff, Muniswamappa to pay the amount and therefore, wrote letter to complete the formality. The father of the plaintiff/appellant paid the amount through cheque. Respondent society issued possession certificate and sale deed which was

thereafter cancelled by cancellation deed. Respondent comes into notice of one more contention that it was meant for the members alone not for their legal heir. The very contents of the sale deed places the second party which includes his heirs, executors, administrators and legal representatives. More over, it is not membership or partnership wherein essence of partnership to claim that he is a partner by succession which is available under Companies Act.

27. On the other hand, it is a calculated misrepresentation by the Society by suppressing the sale already took place when complete formalities are over in favour of Muniswamappa. This is not the attitude expected from the society. The Court takes judicial notice of errors and misrepresentation by Society claiming as housing society and thereafter, when once one came into possession of the property

number of circumstances of favoritism, bias come across which is high time that there must be mechanism to control the mishaps in the society. Some of them almost stated that sale deeds are questioned by the Society but not of present Muniswamappa. The maintainability of the suit is questioned without grounds. When once fraud is there, it does not require sanction or permission. In fact it is the features of act opposite to objectives of a Co-operative Society by first defendant.

28. The plaintiff-Sri.Srinivasa Murthy earlier had filed O.S No.8472/2002 against first defendant-Society and others. Sri.Govinda Raju is third defendant in the present case. O.S.No.8472/2002 got disposed of during the pendency of O.S.No.15020/2000 which was decreed on 24.03.2014 and Sri.Govinda Raju being the sole defendant in the said case, has challenged

the judgment and decree in O.S.No.15020/2000 in RFA No.1035/2014.

29. The substance of the result would be one part if Sri.Govinda Raju lost the suit as a defendant against Sri.Srinivasa Murthy it prejudice the cause of action to the suit for permanent injunction before the concerned Court.

30. In this suit, it was the claimed that the sale deed was effected in favour of Muniswamappa on 17.01.1973 and Cancellation was effected in the year 15.10.1990 and further sale deed was executed in favour of Sri.P.Jayasheelan who in turn sold it in favour of Sri.Govinda Raju. If once cancellation is held illegal or void, sale deed by the society in favour of Sri.Jayasheelan fails consequently sale deed in favour of Sri.Govinda Raju fails altogether. Regarding

violation of rules and regulation, it is necessary to mention, laws are followed after testing the lawlessness of law and laws are followed because they are made by parliament or legislature. On the other hand, it is a combination of principles of nature and reasoning. Similarly any condition or regulation which provides for unilateral power of canceling the sale deed which was duly executed is as bad as itself.

31. In the circumstances, the contention of first defendant cannot be accepted. Further, irony in this case, the learned trial Judge comes to conclusion about illegality of the cancellation that is more fully mentioned in paragraphs 47 and 51 of the judgment in O.S.No.8472/2002. Trial Judge has held the cancellation deed dated 15.10.1990 was illegal and not enforceable and has also come to the conclusion that the sale deed dated 17.01.1973 by first

defendant in favour of Muniswamappa was not valid because of the discrepancies mentioned therein. The sale deed executed by the Society should be of uniformity. Now one of the grounds raised is three directors should have accompanied the President and Secretary for executing the sale deed. Under the circumstances, first defendant cannot blow hot and cold at the same time.

32. Sri.M.S.Vardarajan, learned counsel appearing for cross objector would submit that in the written statement filed by cross objector he contented that suit is not maintainable by virtue of Section 17 of Co-operative Societies Act and further submitted that notice was not issued.

33. Regarding illegality and suppression of the fact in the transaction and proceedings did not emanate

from the other previous proceedings wherein both the parties participated. More particularly, the present defendant is a purchaser who claimed to have purchased from Sri.P.Jayasheelan member of the Society. In other words, the scope and ambit of the title does not suffer from embargo under Section 70 or Section 125. He relied upon the decision in the case of ***Narasegowda V/s HMT Emlpoyees House Building Co-operative Society Ltd.*** reported in ***ILR 1992 KAR 3564***.

34. In my view, the present case projects allotment of site in favour of Muniswamappa which was followed by due proceedings and correspondence. The allotment made in favour of second defendant by first defendant definitely not for good reason and also in the facts and circumstances of the case, I do find the rights of the plaintiff is jeopardized.

35. In this case sale deed was executed by Society in the year 1973 and all procedural formalities have been done. Sale deed is of the year 1973 in favour of Muniswamappa. It is at par or even better and no elements which entail to consider for cancellation.

36. In the circumstances, I am of the firm view that reasoning projected, application of mind by the trial Judge is totally arbitrary and perverse and the judgment and decree is liable to be set aside.

37. The cancellation deed dated 15.10.1990 is held as bad in law and not binding in so many words and consequently sale deed Ex.P-21 executed by first defendant in favour of Sri.P.Jayasheelan-second defendant and Sale deed Ex.P-22 executed by second defendant in favour of third defendant are not binding on the plaintiff.

Accordingly, appeal filed by the plaintiff in RFA No.145/2013 is allowed. Judgment and decree dated 30.08.2012 passed in O.S.No.8472/2002 is set aside and O.S.No.8472/2002 is decreed as prayed for.

RFA No.1035/2014 is rejected.

Cross objection RFA Crob No.26/2015 in RFA No.145/2013 is rejected.

All pending applications stand disposed of along with the appeals.

Sd/-
JUDGE

SBN/UN