

**THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA : HYDERABAD**

**IA.NOS.3 OF 2020 IN/AND
CIVIL MISCELLANEOUS APPEAL NOS.188 AND 189 OF 2020**

C.M.A.No.188 of 2020:

Garikipati Bulli Nayana

.. Appellant

Vs.

M/s. M.S.R.Housing and Resorts Private Limited
rep. by its Managing Director and others

.. Respondents

DATE OF THE JUDGMENT PRONOUNCED: 30.07.2020

SUBMITTED FOR APPROVAL:

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

*** HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

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CIVIL MISCELLANEOUS APPEAL NOS.188 AND 189 OF 2020**

% DATED 30th JULY, 2020

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Garikipati Bulli Nayana

.. Appellant

Vs.

\$ M/s. M.S.R.Housing and Resorts Private Limited
rep. by its Managing Director and others

.. Respondents

<Gist:

>Head Note:

In both Appeals:

! Counsel for the Appellants : Sri V.Hariharan

^Counsel for 1 and 4 Respondents : Sri M.V.S. Sridhar

^Counsel for 2nd Respondent : Sri A.Narasimha Rao

^Counsel for 3rd Respondent : Sri P.Venugopal, Senior Counsel
and Smt. Rachana S. Waddepalli

? CASES REFERRED:

1. (1856) 6 E&B 327 : 119ER 886
2. AIR 1938 PC 159 = ILR 1938 Bom 421 (PC)
3. AIR 2008 SC 1541
4. AIR 2013 AP 31 = 2013 (2) ALD 295

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.AMARNATH GOUD**

**IA.NOS.3 OF 2020 IN/AND
CIVIL MISCELLANEOUS APPEAL NOS.188 AND 189 OF 2020**

COMMON JUDGMENT:
(Per Sri Justice M.S.Ramachandra Rao)

Heard Sri V.Hariharan, learned counsel for the appellants, Sri M.V.S.Sridhar, learned counsel for respondents 1 and 4, Sri A.Narasimha Rao, learned counsel for the 2nd respondent and Sri P.Venugopal, learned Senior Counsel appearing for Mrs. Rachana S. Waddepalli, learned counsel for the 3rd respondent.

2. The issues raised in both the appeals are interconnected, the respondents are one and the same and the appellant in C.M.A.No.188 of 2020 is the father of the appellant in C.M.A.No.189 of 2020. Also the evidence adduced in the trial court is almost identical. Therefore these CMAs are being disposed off by this common order.

The background facts

3. The 1st respondent is a Private Limited Company. Respondents 2 to 4 are its Directors. The 4th respondent is the daughter of the 3rd respondent and respondents 2 to 4 are related to each other.

4. The 1st respondent Company is engaged in real estate business.

5. The appellants filed the said suits on 10.5.2018 before the Civil vacation Judge, Mahboobnagar during the summer vacation of May 2018 for specific performance of agreements for sale dt.21.11.2016 and alternatively for damages of Rs.30,00,000/- and Rs.80,00,000/-

respectively. They were later transferred to the Court of the II Addl. District and Sessions Judge, Mahboobnagar and numbered as O.S.No.38 of 2018 and O.S.No.39 of 2018.

6. Thus the appellants are plaintiffs in O.S.No.38 of 2018 and O.S.No.39 of 2018 on the file of the II Additional District and Sessions Judge, Mahboobnagar.

The case of the appellants/plaintiffs in the suits

7. In the suits, the appellants contended that the two agreements dt.21.11.2016 (both marked as Ex.P1 in IA.No.255 of 2019 in O.S.No. 38 of 2018 and also in I.A.No.256 of 2019 in O.S.No.39 of 2018), one in favour of the appellant in C.M.A.No.188 of 2020 and the other in favour of the appellant in C.M.A.No.189 of 2020, were executed for sale of a number of plots mentioned in the respective schedules to the plaints in Siddapur Village, Kothur Mandal of Ranga Reddy District (previously Mahboobnagar District); the vendee in these agreements of sale was the 1st respondent Company represented by its Managing Director, the 2nd respondent; that prior to entering into the sale agreements, respondents 1 and 2 informed the appellants that the plots, which were subject matter of the said agreements, were having approved layout issued by the competent authority; that the consideration for the purchase of plots in favour of the appellant in C.M.A.No.188 of 2020 was Rs.80,31,600/-, of which Rs.20,00,000/- was paid to the 1st respondent through the 2nd respondent on 21.11.2016 at Hyderabad towards earnest money and advance out of the total agreed sale consideration; that the total agreed sale consideration for the plots which were subject matter of the

agreement in favour of the appellant in C.M.A.No.189 of 2020 is Rs.33,87,200/- and the appellant therein had paid Rs.10,00,000/- to the 1st respondent through the 2nd respondent on 21.11.2016 at Hyderabad towards earnest money and advance out of the total agreed sale consideration; that the balance of sale consideration under the said agreements was to be paid by the respective appellants to the 1st respondent by March, 2018 and sale deeds were to be got executed and registered in their favour or in favour of their nominees.

8. They alleged that though they offered to pay the balance sale consideration, the 1st respondent through the 2nd respondent informed that certain development work was in progress and as soon as the same is completed, the agreements would be honoured; and that in January, 2018, the 2nd respondent informed the appellants that he was having certain disputes with respondents 3 and 4 and he had resigned from the 1st respondent Company, but assured that he would pursue the matter with respondents 3 and 4 and see that the suit agreements of sale were honoured.

9. The appellants contended that they are not concerned with the issues among respondents 2 to 4 and they were ready and willing to pay the balance sale consideration and perform their part of the contract; that they were not aware whether the information given by the 2nd respondent that he left the 1st respondent Company and resigned his directorship was true or not as the 2nd respondent had not given any public notice about his resignation; that the agreements of sale were entered into by them with the 1st respondent Company through the Managing Director, the 2nd

respondent, and hence, the same are also binding on respondents 3 and 4 or any other Directors in the 1st respondent Company.

10. They alleged that respondents 3 and 4 were not coming forward to honor the suit agreements of sale though they were aware that the 1st respondent validly entered into the agreements through the 2nd respondent; that legal notices Ex.P2 were issued by the appellants on dt.02.05.2008 to the respondents through RPAD; that respondents 2 to 4 have colluded with each other and were blaming each other and they were intentionally trying to avoid the suit agreements and were planning to alienate the suit property to others. They alleged that the respondents evaded to receive the suit notices.

I.A.No.256 of 2019 in O.S.No.39 of 2018 and I.A.No.255 of 2019 in O.S.No.38 of 2018

11. Along with the respective suits on 10.5.2018, the appellants filed I.A.s under Or.39 R.1 and 2 CPC seeking relief of temporary injunction restraining the respondents from alienating the respective suit schedule properties.

12. *Ex parte* ad interim injunctions were granted in favour of the appellants in the respective applications on 24.5.2018 by the Civil Vacation Judge at Nizamabad during the summer vacation of 2018.

13. On transfer to the court of II Addl.District and Sessions Judge, Mahboobnagar, the above I.As were numbered as IA.No.256 of 2019 in O.S.No.39 of 2018 and I.A.No.255 of 2019 in O.S.No.38 of 2018.

14. After receipt of notices in the I.As., the respondents filed counter affidavits.

Stand of the 1st respondent in the I.As.

15. The 1st respondent contended that the agreements of sale set up by the appellants were false, illegal and created at the instance of the 2nd respondent and that the 2nd respondent was the person behind the litigation and the appellants were only name lenders for the litigation generated by the 2nd respondent. The 1st respondent stated that the 2nd respondent resigned from the 1st respondent Company on 04.05.2017 by submitting resignation letter and the same was accepted by the Company by passing a resolution on 11.05.2018.

16. The 1st respondent admitted that prior to the resignation of the 2nd respondent, he was acting as Managing Director of the 1st respondent Company and that the 3rd respondent was the Chairman of the Company and the 4th respondent, a Director of the Company.

17. The 1st respondent contended that a perusal of Ex.P1 agreements of sale shows that the stamps were purchased in the name of the 1st respondent Company by the 2nd respondent on 09.10.2014 at Gannavaram Mandal, Krishna District, Andhra Pradesh. When Government of Telangana has been issuing separate stamp papers why the stamp paper issued by the Government of Andhra Pradesh is used is to be explained by the appellants to convince that the agreements of sale are genuine ones. It contended that when the alleged agreements of sale are dated 21.11.2016, why the old stamp papers dt. 09.10.2014 are used.

18. It is contended that it is not the practice in the 1st respondent Company that Managing Director alone is executing the documents. Whatever documents were executed prior to the alleged agreements of sale were executed by the Chairman, Smt. K.Roja Rani and the 2nd respondent together and the same is evidenced by a number of sale deeds filed. It also contended that except saying that Rs.20,00,000/- / Rs.10,00,000/- were paid in pursuance of the alleged agreements of sale, it is not stated in the plaint whether the same were paid by way of cash or cheques or DDs. There is silence in the plaint on that aspect and there is no receipt issued by the 1st respondent Company acknowledging the payment and therefore all these circumstances would go to show that the agreements of sale are merely set up by the appellants at the instance of the 2nd respondent.

19. It also contended that the Government of India issued notification of demonetization on 08.11.2016 and thereby all 500 and 1000 rupee notes were cancelled. When the alleged agreements of sale are dt. 21.11.2016, the appellants must establish that they have paid Rs.20,00,000/- / Rs.10,00,000/- with new currency notes etc., as they have not stated that the said payments were made by way of cheques or DDs. It contended that the bank statement filed pertaining to the 1st respondent does not reflect any advance payment of Rs.20,00,000/- / Rs.10,00,000/- made by the appellants.

20. The 1st respondent alleged that the 2nd respondent, who is the Managing Director of the Company, was misusing his powers and when he was questioned, he resigned and walked out of the Company and

because he had grouse against the Directors of the Company, he created the agreements of sale and set up the appellants to file the false suits. It is contended that legal notices were sent to the old addresses of the respondents and in the suits, present addresses of the respondents were given and this shows the dubious mind of the appellants who were acting at the instance of the 2nd respondent.

21. The 1st respondent contended that the appellants had not made out any *prima facie* case to obtain any order of temporary injunction in their favour; that balance of convenience is in fact in favour of the 1st respondent because it was a real estate Company and doing business successfully.

22. The 1st respondent alleged that only the plots which are shown in the suit schedule in both the suits are now available and if they are enjoined from alienation, it would suffer irreparable loss.

23. The 1st respondent contended that the appellants did not prove the payment or produce any receipt of payment and therefore, the Applications should be dismissed.

Counter of the 2nd respondent

24. The 2nd respondent filed counter in both the Applications supporting the appellants and admitting the appellants' claims to the extent of execution of the agreements of sale Ex.P1 and receipt of the advance amounts of Rs.20,00,000/- and Rs.10,00,000/- respectively on 21.11.2016 by him on behalf of the 1st respondent. He also stated that the

appellants were ready and willing to pay the balance sale consideration to the 1st respondent.

25. He stated that he had some issues with respondents 3 and 4 and so he resigned from the 1st respondent Company by promising the appellants that he would pursue the matter with respondents 3 and 4 and see that the suit agreements of sale were honoured. He stated that because of the said disputes he was unable to execute registered sale deeds in favour of the appellants.

26. He stated that he also filed C.P.No.469/249/HDB/2018 against the 1st respondent before the NCLT, Hyderabad Bench for a direction to the respondents not to alienate the properties of the 1st respondent until disposal of the cases.

The 3rd respondent's counter which was adopted by the 4th respondent

27. The allegations in the counter of the 3rd respondent are identical with that of the counter of the 1st respondent.

28. In addition, it is contended that stamp papers which were used for execution of the suit agreements of sale had been purchased in the name of the 1st respondent Company by the 2nd respondent under the instructions of the 3rd respondent and kept at the office for emergency use of the 1st respondent Company and that the 2nd respondent, without intimation and information to the 3rd respondent, had taken away the papers and misused them to fabricate the suit agreements of sale and FIR/ complaints had been registered against him with P.S. Banjara Hills and P.S. Kothur allegedly for theft of the stamp papers.

29. It is contended that as per the Memorandum of Association and Articles of Association (Clause 35) of the 1st respondent Company, it is mandatory that a Board resolution should exist with regard to any sale of property and that the Chairman and Managing Director together were always executing documents.

30. It is contended that the appellant in C.M.A.No.188 of 2020 was a retired Teacher and his daughter, who is the appellant in C.M.A.No.189 of 2020, worked as Clerk with the 1st respondent Company on a paltry salary of Rs.10,000/- per month, and it is difficult to believe that the appellants could have paid such large amounts as Rs.20,00,000/- and Rs.10,00,000/- respectively.

31. Before the Court below, the appellants marked Exs.P1 to P3 while the respondents marked Exs.R1 to R30 in I.A.No.256 of 2019 in O.S.No.39 of 2018 and Exs.R1 to R33 in I.A.No.255 of 2019 in O.S.No.38 of 2018.

Orders passed by the Court below in the I.As.

32. Initially the court below granted exparte ad interim injunctions in favor of the appellants on 24.5.2018 restraining the respondents from alienating the suit schedule properties and these interim orders continued till the disposal of the IAs on 16.3.2020.

33. By separate orders passed on 16.03.2020, the Court below dismissed both the I.As., and vacated the interim injunctions granted earlier by it.

34. The Court below, after looking at Ex.P1 agreements of sale dt.21.11.2016 in respect of both the appellants noted that the agreements were entered into by the 1st respondent Company represented by the 2nd respondent as its Managing Director and observed that *prima facie* the contention of the appellants is proved that there were agreements of sale executed by the 1st respondent Company in favour of the appellants. It referred to the legal notice Ex.P2 dt.02.05.2018 issued by the respondents and Ex.P3 postal receipts and observed that these documents support *prima facie* the requirements in a temporary injunction petition. It even observed that these were points tilting in favour of the appellants.

35. Having stated so, it then considered the defence set up by respondents 1, 3 and 4 and stated that the 2nd respondent had already authorized the 3rd respondent vide Ex.R-9 resolution dt.14.7.2016 to execute sale deeds and agreements of sale on behalf of the 1st respondent. It observed that in view of Ex.R9, a doubt arises as to whether the 2nd respondent could have executed the respective agreements of sale on 21.11.2016 in favour of the appellants; that the 2nd respondent would have to answer the said point in his counter how he signed Ex.P1 when he had already authorized the 3rd respondent to sign sale deeds and agreements on behalf of the 1st respondent, and therefore the balance of convenience tilts in favour of respondents 1, 3 and 4.

36. It also observed that if the appellants had allegedly entered into the agreements of sale with the 2nd respondent in November, 2016, there was no necessity for them to use stamp papers purchased in the year

2014 in the State of Andhra Pradesh for drafting the said agreements in 2016 and there is no explanation from the appellants in that regard.

37. It also noted that the respective agreements of sale were signed by the 2nd respondent who was Managing Director, but the stamp affixed by him on EX.P1 agreements stated that he was both Chairman and Managing Director. It noticed that there was no counter signature by the 3rd respondent who was said to be the Chairman of the 1st respondent.

38. It also observed that there is no *prima facie* evidence placed before the Court either by the appellants or by the 2nd respondent about deposit of Rs.20,00,000/- or Rs.10,00,000/- which the 2nd respondent had taken on behalf of the 1st respondent and that he credited the same in the 1st respondent Company's account.

39. It referred to the police complaints Exs.R21 to R23 filed by respondents 1, 3 and 4 against the 2nd respondent and observed that whether or not the said charges were proved in a criminal case, they *prima facie* indicate about a conspiracy and theft of stamp papers.

40. It also observed that the appellants should have filed *prima facie* some material to show that the 2nd respondent had all the powers to execute the respective agreements of sale in favour of the appellants and that they ought to have questioned the 2nd respondent for signing Ex.P1 independently without the signature of the 3rd respondent because the rubber stamp used mentioned both Chairman and Managing Director.

41. It observed that other sale deeds Exs.R24 to R26 and R1 to R6 executed on behalf of the 1st respondent contained the signatures of both

respondents 3 and 2 and the appellants did not file any documents to show that only the 2nd respondent was authorized to execute agreements of sale on behalf of the 1st respondent.

42. It then went on to hold that no prejudice would be caused to the appellants if the I.As. were dismissed since they can always keep adding the subsequent purchasers during the trial. It therefore dismissed both the I.As. and vacated the *ex parte* injunctions granted earlier by it.

43. Assailing the same, these Appeals are filed.

Events which occurred after decision dt.16.3.2020 of the court below in IA.No.255 and 256 of 2018 in the suits and before filing of these CMAs in this Court in May 2020

44. It is important to note that these Appeals were filed by the appellants on 18.5. 2020 within limitation, but *before* the appeals could be filed *and* after I.A.No.256 of 2019 in O.S.No.39 of 2018 and I.A.No.255 of 2019 in O.S.No.38 of 2018 were dismissed on 16.03.2020, the 1st respondent represented by respondents 3 and 4 executed registered documents of sale bearing (i) Document No.3398 of 2020 dt.16.04.2020 in favour of M/s. A.K. Estates and Construction Private Limited represented by another daughter of the 3rd respondent by name Ms.Kilaru Alekya, (ii) Document No.3399 of 2020 dt.16.04.2020 in favour of the husband of the 3rd respondent by name Dr.Kilaru Panduranga Prasad, (iii) Document No.3596 of 2020 in favour of M/s. A.K. Estates and Construction Private Limited represented by Ms.Alekya, the daughter of the 3rd respondent and (iv) Document No.3597 of 2020 in favour of Dr.Kilaru Panduranga Prasad.

45. *Prima facie* this action of respondents 1, 3 and 4 in making alienation of the plots covered by the two agreements of sale dt.21.11.2016 in favour of the appellants, which are subject matter of both the suits O.S.Nos.38 of 2018 and 39 of 2018, appears to have been done to somehow render the C.M.As. infructuous and frustrate the appeals filed by the appellants. We do not find this conduct to be *bona fide*.

46. Therefore, we deem it appropriate to *suo motu* implead (a) Dr. Kilaru Panduranga Prasad, S/o Satyanarayana Rao, aged 61 years, Occupation: Doctor, resident of House No.8-2-293/81A/E, Road No.12, Banjara Hills, Khairatabad, Hyderabad-500034 and (b) M/s. A.K. Estates Construction Private Limited, House No.8-2-293/81A/E, Road No.12, MLA Colony, Banjara Hills, Hyderabad-500034 represented by its Director Kilaru Alekya as respondents in both the C.M.As. in exercise of our inherent powers under Order I Rule 10 CPC read with Section 151 CPC.

47. We also hereby implead Dr. K.Panduranga Prasad and M/s. A.K. Estates and Construction Private Limited etc., in both the I.A.No.255 of 2019 in O.S.No.38 of 2018 and I.A.No.256 of 2019 in O.S.No.39 of 2018 as respondents 5 and 6 and also in both the suits O.S.No.38 of 2018 and O.S.No.39 of 2018 as defendants 5 and 6 since according to us, they are necessary and proper parties.

Events after filing of the CMAs by the appellants

48. Initially, after hearing the counsel for the appellants in I.A.Nos.2 of 2020 in C.M.A.Nos.188 of 2020 and 189 of 2020, ad interim

injunctions were granted restraining the respondents from alienating or encumbering suit schedule properties in any manner pending disposal of these Appeals. I.A.Nos.3 of 2020 have been filed by the 3rd respondent to vacate these orders.

Contentions of Counsel for the Appellants

49. Sri V.Hariharan, learned counsel for the appellants in both the Appeals contended that the orders passed by the Court below are contrary to law, weight of evidence and unsustainable. He pointed out that when the trial Court accepted Ex.P1 agreements of sale dt.21.11.2016 in favour of both the appellants and observed in para 13 that they support the *prima facie* requirements in a temporary injunction petition, it ought to have protected the appellants' interest pending suits.

50. He contended that the defence, if any, raised by respondents 1, 3 and 4 would only be a triable issue and the appellants cannot be denied protection from alienation of the suit schedule properties pending disposal of the suits.

51. He also stated that the Court below misconstrued Ex.R9 resolution dt.14.07.2016 and that notwithstanding the same, the 2nd respondent did retain the power as a Managing Director to enter into Ex.P1 agreements of sale with the appellants on behalf of the 1st respondent Company. He contended that even if there is any *inter se* dispute among respondents 2 to 4, it cannot be allowed to affect the rights of the appellants because the appellants cannot be presumed to know about any change in the authority of the 2nd respondent when they had entered into the agreements of sale Ex.P1 with the 1st respondent Company.

52. He also contended that there is no bar in law for usage of stamp papers of 2014 for execution of Ex.P1 agreements of sale in 2016 and even if the stamp papers used for Ex.P1 agreements of sale had been issued in the erstwhile composite State of Andhra Pradesh, the agreements of sale do not become invalid in law.

53. He contended that the respective Ex.P1 agreements of sale themselves contain a recital about receipt of consideration by the 1st respondent through the 2nd respondent and the Court below was not right in insisting on independent evidence in support of the said plea at the stage of considering the interim injunction Applications filed by the appellants.

54. He also contended that the criminal complaint filed by the 3rd respondent against the 2nd respondent by itself will not disprove the claim of the appellants and the same should not have been taken into account by the Court below to deny relief to the appellants.

55. According to him, the 2nd respondent alone on behalf of the 1st respondent Company had executed several documents and the fact that some other documents were executed by both respondents 2 and 3, would not be material.

56. According to him, the suit plots were only plots left out in the venture of the 1st respondent Company and the Court below should have taken the same into account while passing the impugned orders and its view that if sales are effected pending suits, the appellants can keep adding the purchasers *pendente lite* is perverse.

57. He also contended that the anxiety of respondents 1, 3 and 4 in executing the sale deeds on 16.04.2020 and 08.05.2020 in favour of the husband of the 3rd respondent Dr. K.Panduranga Prasad and the Company represented by Alekya, the daughter of the 3rd respondent, shows that the appellants wanted to do *fait accompli* and render the very Appeals infructuous with a *mala fide* intention and this cannot be countenanced.

Contentions of Counsel for 2nd respondent

58. Sri A.Narasimha Rao, learned counsel for the 2nd respondent contended that his client did not collude with other respondents as is being alleged by the appellants and it is only the other respondents, and in particular the 1st respondent, who have contractual relations with the appellants, who should answer the claim of the appellants.

59. He stated that the agreements of sale Ex.P1 had been entered into by his client on behalf of the 1st respondent with the respective appellants' properly and in a *bona fide* manner and to the knowledge of the other respondents, and the effort of respondents 1, 3 and 4 to assail the powers of the 2nd respondent to enter into such agreements, is unjustified and *mala fide*.

60. According to him, respondents 1, 3 and 4 are seeking to wriggle out of the contract with the appellants for oblique reasons as they all belong to the same family.

61. He stated that as Managing Director, his client had rightly executed Ex.P1 agreements of sale in favour of the appellants, that he

received advance, adjusted / accounted it with the 3rd respondent by depositing the sum of Rs.20,00,000/- in the account of the 3rd respondent with DCB bank as per her advice and respondents 1 and 3 who are in possession of the records had deliberately suppressed it.

62. He stated that the very Ex.R9 dt.14.07.2016 which has been relied upon by respondents 1, 3 and 4 would indicate that his client had the authority to execute documents or assign rights in favour of any party.

63. According to him, in the Court below the 2nd respondent did file *vide* SR No.325 on 14.02.2019 certain documents showing that as authorized signatory of the 1st respondent Company he executed them and registered them without the signature of the 3rd respondent Chairman, but the Court below did not mark the same on the ground that they were photocopies.

64. He admitted that the 2nd respondent had resigned from the 1st respondent Company on 04.05.2017 because of differences of opinion with the 3rd respondent and others who are majority shareholders and stated that the same was accepted belatedly.

65. He stated that the 2nd respondent cooperated with the 3rd respondent in executing documents as also registering some documents including sale deed Document No.5627 of 2017 dt.08.08.2017 favouring Smt. Thummala Kavitha in an extent of 5096 square yards comprising 19 plots in the same venture, for which Rs.20,36,500/- was received by the 1st respondent.

66. He also stated that the 2nd respondent filed C.P.No.469/241/HDV/2018 before NCLT, Hyderabad against respondents 1, 3 and 4 and that it was pending consideration.

Contentions of Counsel for 3rd respondent

67. Sri P.Venugopal, learned Senior Advocate appearing for Smt. Rachana, learned counsel for the 3rd respondent, contended that though there were *ex parte* ad interim injunctions granted in I.A.No.255 of 2019 in O.S.No.38 of 2018 and I.A.No.256 of 2019 in O.S.No.39 of 2018 on 24.05.2018 in favour of the appellants, the same were rightly vacated by the Court below in the impugned orders. He supported the reasoning of the Court below.

68. According to him, the Government of India has introduced demonetization on 08.11.2016 thirteen (13) days prior to execution of the agreements of sale; and the plea of the appellants that they paid portions of sale consideration amounting to Rs.20,00,000/- and Rs.10,00,000/- respectively in cash to the 1st respondent through the 2nd respondent, cannot be accepted.

69. According to him, the 2nd respondent had signed the Board Resolution on 14.07.2016 (Ex.R9) authorizing the 3rd respondent to execute sale deeds and agreements on behalf of the 1st respondent and therefore, he could not have entered into any agreement of sale with the appellants.

70. He stated that it was the 2nd respondent who was the brain behind both the appellants and the suits filed by them and the 2nd respondent had

in fact resigned from the Company on 04.05.2017 itself and the same had been communicated to the Registrar of Companies.

71. According to him, since the property in question is close to Hyderabad and is urbanisable even if the appellants are shown to have given any amount as part consideration to the 1st respondent, they can only seek refund of the same and cannot seek specific performance which is a discretionary relief.

72. He placed reliance on the criminal complaint initiated by the 2nd respondent against the 3rd respondent and he alleged that he committed theft of stamp papers from the office of the 1st respondent and utilized the same in collusion with the appellants.

73. He denied that any sale deed was executed by the 1st respondent with the 2nd respondent as the sole signatory and even in Ex.P1 agreements of sale, the seal used described the 2nd respondent as Chairman and Managing Director of the 1st respondent though he was only the Managing Director and not the Chairman.

74. According to him, the 1st respondent never intended to alienate the property and it also did not receive any consideration alleged to have been paid by the appellants through the 2nd respondent and therefore the agreements of sale being without consideration are void.

75. He also contended that in the notices issued by the appellants prior to filing of their respective suits, the correct addresses of the respondents were not mentioned and old addresses of the respondents were

mentioned and the said notices were not served, and this indicates the *mala fide* intention of the appellants.

76. According to him, as per Articles of Association of the 1st respondent Company, the Managing Director has to work under the Board of Directors of the Company and had no special powers granted to him to enter into any agreements with the appellants.

77. He also contended that the appellant in C.M.A.No.188 of 2020 was a retired Teacher and the appellant in C.M.A.No.189 of 2020 had worked as a Clerk with the 1st respondent on a meagre salary of Rs.10,000/- and they did not have capacity to pay the sums of Rs.20,00,000/- and Rs.10,00,000/- respectively.

78. A Memo was also filed on behalf of the 3rd respondent on 16.07.2020 after the C.M.As. were reserved for orders stating that the 1st respondent Company was in dire financial crisis almost on the verge of bankruptcy and the sale deeds referred to *supra* had been executed in favour of the husband of the 3rd respondent and M/s. A.K. Estates and Construction Private Limited represented by Alekya, the daughter of the 3rd respondent, for valuable consideration.

79. He admitted that the 3rd respondent had alienated the suit schedule property to third parties but the 3rd respondent did not give the dates of alienations or the parties to whom such alienations were made.

80. This Court had to direct him to produce the four sale deeds dt.16.04.2020, 16.04.2020, 08.05.2020 and 08.05.2020 being Document

Nos.3398, 3399, 3596 and 3597 of 2020 and they were only filed in the Court pursuant to the oral directions given by this Court.

Contentions of Counsel for 1st and 4th respondent

81. Sri M.V.S.Sridhar, learned counsel, appeared for the 1st respondent and adopted the contentions of the 3rd respondent.

82. In the light of the above rival contentions of the parties, we shall now consider whether the orders dt.16.03.2020 passed in I.A.No.255 of 2019 in O.S.No.38 of 2018 and I.A.No.256 of 2019 in O.S.No.39 of 2018 by the II Additional District and Sessions Judge, Mahboobnagar are liable to be sustained or not.

The consideration by the Court:

83. The appellants had filed the suits O.S.Nos.38 of 2018 and 39 of 2018 against the respondents 1 to 4 herein for specific performance of Ex.P1 agreements of sale dt.21.11.2016. It is their case that they paid Rs.20,00,000/- and Rs.10,00,000/- respectively towards part consideration to the 1st respondent Company through the 2nd respondent.

84. The 2nd respondent was admittedly the Managing Director of the 1st respondent Company as on 21.11.2016 and he is alleged by respondents 1,3 and 4 to have resigned only on 04.05.2017. He has admitted in the counter affidavits filed by him in the Court below and also in this Court that he received the amounts of Rs.20,00,000/- and Rs.10,00,000/- respectively on behalf of the 1st respondent Company from the appellants on 21.11.2016 and that he had executed the two agreements of sale Ex.P1 dt.21.11.2016 in favour of the appellants.

85. But respondents 1, 3 and 4 contend that Ex.R9 Board Resolution was signed by the 2nd respondent on 14.07.2016 authorising the 3rd respondent who was the Chairman of the 1st respondent Company to sign the sale deeds / AGPA documents on behalf of the 1st respondent in favour of proposed purchasers of the plots, and so the 2nd respondent could not have executed Ex.P1 agreements of sale in favour of the appellants.

86. Though the respondents 1, 3 and 4 contended that the appellant in C.M.A.No.189 of 2020 had worked as a clerk in the 1st respondent and was aware of this fact, no material has been filed in the Court below by them in support of the said plea. Therefore, it cannot be said that the appellant in C.M.A.No.189 of 2020 was aware of Ex.R9.

87. Even otherwise it is difficult to believe that such Board Resolutions are within the common knowledge of ordinary employees of a Company like clerks.

88. Therefore, *prima facie* the plea of the respondents 1, 3 and 4 that the appellant in C.M.A.No.189 of 2020 was aware of Ex.R9 and consequently her father, the appellant in C.M.A.No.188 of 2020 was also aware of Ex.R9, cannot be accepted.

89. It is a settled principle in Company Law that if a person deals with a Company or any other representative of a Company who is exercising the powers of Management and directing its business and affairs, that person is not affected by the lacuna of procedure within the Company or by its failure to fulfill conditions which are required by the Company's

Memorandum or Articles to be fulfilled before the transaction. Such outsider is not bound to enquire whether acts of internal management have been regular. This doctrine of “indoor management” protects the persons dealing with the Company.

90. This principle was laid down in **Royal British Bank Vs. Turquand**¹. In that case, a deed of settlement, the equivalent of the Memorandum and Articles of a Company, empowered the Board of Directors to borrow amounts as authorized by a resolution of the General Meeting of the shareholders. The Company borrowed money from a bank on the authority of two of its Directors who authenticated the Company’s common seal. There was no authority given by the General Meeting. The Company refused to repay the loan and argued that the bank had constructive notice of the articles and should have been aware of the lack of authority. It was held that *an outsider need not enquire into whether such a resolution had in fact been passed and the Company was bound to the Bank because the passing of the resolution was a matter internal to the Company.*

91. This rule thus seeks to protect an outsider against the Company and is therefore an exception to the doctrine of constructive notice which protects the Company against the outsider.

92. This principle had been applied by the Privy Council in **T.R.Pratt (Bombay) Limited (in liquidation) Vs. M.T.Limited (in voluntary liquidation)**². In that case, the appellant Company was financed by loans from respondents who in turn were financed by loans from Sassoon

¹ (1856) 6 E&B 327 : 119ER 886

² AIR 1938 PC 159 = ILR 1938 Bom 421 (PC)

Company. For the debts really owed by the respondent Company, the Sassoon Company had obtained an equitable mortgage of the appellant's property. The Directors of the appellant Company were all Directors and shareholders of the respondent Company and this fact was known to Sassoon Company. Section 91-B of the Indian Companies Act, 1914 provided that no Director shall, as a Director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested, and if he does so, his vote shall not be counted.

The Privy Council held that *Section 91-B would not operate to deprive of the benefit of this contract with the Company, a third party who had no notice of the defect in the Director's authority; as it would be contrary to the principle that such a person would be entitled to assume that the internal management of the Company had been properly conducted as held in the **Royal British Bank (1 supra)**.*

But on the facts of that case, since the Sassoon Company was aware that all the Directors of the appellant Company were all Directors and shareholders of the respondent Company, in proceedings for winding up of the appellant Company, it was held that the Directors of the appellant Company were disqualified under Section 91-B of Companies Act, from entering into the transaction and that the Official Liquidator of the appellant Company was entitled to avoid the mortgage.

93. Section 290 of the Companies Act, 1956 incorporates this principle and states:

“290. Validity of acts of directors.—Acts done by a person as a director shall be valid, notwithstanding that it may

afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the Company to be invalid or to have terminated.”

94. Section 176 of the Companies Act, 2013 also reiterates and states:

“176. Defects in appointment of Directors not to invalidate actions taken.

No act done by a person as a Director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the Articles of the Company:

Provided that nothing in this section shall be deemed to give validity to any act done by the Director after his appointment has been noticed by the Company to be invalid or to have terminated.”

95. Thus *prima facie* the appellants, while dealing with the 2nd respondent in good faith, are entitled to assume that the 2nd respondent, who was the Managing Director of the 1st respondent, while executing Ex.P1 agreements of sale was acting within the scope of his powers by the Articles of Association and they were not bound to enquire whether his actions had been properly and regularly performed.

96. The very admission by respondents 1, 3 and 4 of execution of Ex.R9 resolution by the 2nd respondent implies that in the normal course of business of the Company, he did have the authority to enter into agreements of sale of plots and only after Ex.R9 dt.14.07.2016 this practice changed. In our opinion, the appellants were entitled to assume

prima facie that he continued to have such powers and were not bound to enquire into such issues of internal management.

97. So the respondents 1, 3 and 4 are *prima-facie* not entitled to rely on Ex.R-9 Board resolution to contend that the 2nd respondent had no authority to execute Ex.P1 agreements of sale in favor of the appellants.

98. The view of the court below that a doubt arises as to whether the 2nd respondent could have executed the respective agreements of sale on 21.11.2016 in favour of the appellants, and they should have filed *prima facie* some material to show that the 2nd respondent had all the powers to execute the respective agreements of sale in favour of the appellants, or that they ought to have questioned the 2nd respondent for signing Ex.P1 independently without the signature of the 3rd respondent because the rubber stamp used mentioned both Chairman and Managing Director, and therefore the balance of convenience tilts in favour of respondents 1, 3 and 4, is in our opinion, *prima facie* erroneous.

99. Next, we shall deal with the issue of use of 2014 stamp papers purchased by the 1st respondent in the State of Andhra Pradesh for the suit agreements of sale Ex.P1 dt.21.11.2016.

100. In regard to this aspect, it was held by the Court below that the appellants should have given an explanation and that they did not do so.

101. There is no dispute that the stamp papers on which the Ex.P1 agreements of sale were drafted had been purchased by the 1st respondent. The fact that the respondents 1,3 and 4 now allege that they

were stolen by the 2nd respondent from the office of the 1st respondent proves this fact.

102. Counsel for the appellants placed reliance on the decision of the Supreme Court in **Thiruvengada Pillai Vs. Navaneethammal and another**³. In the said judgment, the Supreme Court dealt with a similar contention of the 1st respondent therein that use of old stamp papers invalidates agreements of sale.

It did not agree with the said plea and held that the *Indian Stamp Act, 1899 nowhere prescribes any expiry date for use of a stamp paper*; and that Section 54 of the said Act merely provides that a person possessing a stamp paper for which he has no immediate use (which is not spoiled or rendered unfit or useless), can seek refund of the value thereof by surrendering such stamp paper to the Collector provided that it was purchased within the period of six months next preceding the date on which it was so surrendered.

The Supreme Court held that the stipulation of the period of six months prescribed in Section 54 is only for the purpose of seeking refund of the value of the unused stamp paper, *and not for use of the stamp paper*; that Section 54 does not require the person who has purchased a stamp paper, to use it within six months; and there is no impediment for a stamp paper purchased more than six months prior to the proposed date of execution, being used for a document.

No doubt in the said decision there is an observation that usage of old stamp papers could be a circumstance that can be used as a piece of

³ AIR 2008 SC 1541

evidence to cast doubt on the authenticity of an agreement, but the Court held that that cannot be a clinching evidence. It observed that there is a possibility that a layman unfamiliar with legal provisions relating to stamps, *bonafide* thinking that he could use the old unused stamp papers lying with him for preparation of the document and accordingly use the old stamp papers. It therefore held that the agreement of sale in the said case executed on old stamp papers was valid.

103. This decision squarely applies to the instant cases and therefore we are of the opinion that the Court below cannot doubt the authenticity of Ex.P1 agreements of sale, particularly when the 2nd respondent, who was then Managing Director of 1st respondent, admits to their execution, merely on the ground that they were drafted on stamp papers purchased by the 1st respondent in 2014.

104. Coming to the next issue about the stamp papers on which Ex.P1 agreements of sale were executed, having been purchased in the State of Andhra Pradesh in 2014 and not in the State of Telangana, which was created with effect from 02.06.2014 is concerned, this plea is also not tenable prima facie.

105. A learned Single Judge of this Court in **V.Giridhar Kumar Vs. Sellammal**⁴, held that use of stamp paper purchased in a different State for a document does not invalidate the document.

In the said case, stamp papers purchased in the State of Tamilnadu were used for a promissory note executed in the State of Andhra Pradesh and the Court held that firstly, as regards promissory notes, the State

⁴ AIR 2013 AP 31 = 2013 (2) ALD 295

Legislature has no power to legislate on it under Entry 63 of List II of the Seventh Schedule to Constitution and that promissory notes would fall in Entry 91 of List I of the Seventh Schedule; and insistence of use of stamp paper purchased in the State of Andhra Pradesh can be only in respect of the instruments, that are covered by Entry 63 of List II of the Seventh Schedule to the Constitution, and not those, that fall in Entry 91 of List I of the Seventh Schedule.

The learned Judge specifically held that the insistence on use of stamp papers is basically a measure to provide evidence as to the date of execution and the authenticity of the transaction; and earning of revenue by the State, is secondary to this. He held that the slight defect as to the form of the stamp cannot be permitted to render the entire document inadmissible; and an inadvertent mistake to which, both the parties to the suit might have contributed, should not defeat a claim, if it is otherwise proved and valid.

The learned Judge held that Rule 3(iii) of the Indian Stamp Rules, 1925 no doubt requires stamps purchased in the Andhra Pradesh State alone to be used for instruments chargeable with duty under the Act as in force in that State, but the said Rule is only advisory in nature and that the said Rule does not invalidate a document as such, in the event of violation thereof.

He relied on Section 37 of the Act which stated that the State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be

duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

The learned Judge then referred to Rule 18 of the Rules made under the Act which stated that when an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by an endorsement that it is duly stamped.

The learned Judge therefore held that the mechanism provided for under Section 37 of the Act read with Rule 18 of the Rules ensures that the stamp duty of proper description is collected in the State, and the defect is cured.

106. The counsel for the respondents could not cite any decision / precedent taking a different view from that in **V.Giridhar Kumar (2 supra)**.

107. We respectfully agree with the view taken by the learned Single Judge in **V.Giridhar Kumar (2 supra)** and observe that merely because Ex.P1 agreements of sale dt.21.11.2016 were prepared on stamp papers purchased in the State of Andhra Pradesh in 2014, they cannot be held to be invalid in law because there is only a slight defect as to the form of stamp, which is capable of being cured, by paying the requisite stamp duty as per Section 37 read with Rule 18 of the Rules, as applicable in the State of Telangana and a *prima facie bonafide* claim under the said agreements of sale, cannot be defeated by such a plea.

108. We are not impressed by the contention of the respondents about the filing of the criminal complaints Exs.R14 to R16 regarding alleged theft of the stamp papers by the 2nd respondent and we are of the opinion that the Court below, cannot, without a trial being conducted, arrive at any presumption of existence of conspiracy between the appellants and the 2nd respondent on the basis of the said criminal complaints.

109. We are also of the opinion that the Court below erred in doubting the payment of advance amounts of Rs.20,00,000/- and Rs.10,00,000/- by the appellants on 21.11.2016, particularly when the 2nd respondent in his counter filed in this Court and also in the trial Court admitted that he received the said amount as managing Director of the 1st respondent Company.

110. Even assuming that there is any dispute between the 2nd respondent on the one hand and other respondents as to whether the said amounts were credited to the account of the 1st respondent or not, *prima facie*, the appellants cannot be put to any disadvantage on the said count, because the 2nd respondent had received the said amounts as Managing Director of the 1st respondent and payment made to him, has to be *prima facie* treated as payment to the 1st respondent.

111. It may be that demonetization was done by the Union Government on 08.11.2016 cancelling Rs.500 and Rs.1000 currency notes. Still it is possible that the payment could have been made of the advance amounts by the appellants in lesser denominations; and when the 2nd respondent admits to have received the advance amounts, this issue loses its relevance *prima facie*.

112. In our opinion, there was no necessity for the appellants *prima facie* to again prove payment of advance amounts to the 2nd respondent on account of the 1st respondent, when the 2nd respondent admits to have received it and there are clear recitals in Ex.P1 agreements of sale also to that effect.

113. Even if the rubber stamp affixed on Ex.P1 agreements of sale mentions that the 2nd respondent is both the Managing Director and also the Chairman, that will not invalidate the documents if, as Managing Director, the 2nd respondent had authority to execute the said agreements of sale.

114. As already held above, the very admission by respondents 1, 3 and 4 of execution of Ex.R9 resolution by the 2nd respondent implies that in the normal course of business of the Company, he did have the authority to enter into agreements of sale of plots and only after Ex.R9 dt.14.07.2016 this practice changed. In our opinion, the appellants were entitled to assume *prima facie* that he continued to have such powers and were not bound to enquire into such issues of internal management.

115. We are also of the opinion that mere allegation of collusion between the appellants and the 2nd respondent made by the other respondents is not a reason to doubt Ex.P1 agreements of sale *prima facie* and such collusion as is alleged by the other respondents is required to be proved during trial.

116. Further, we are of the opinion that the view of the Court below that no prejudice would be caused to the appellants if the interim

injunction granted by it is vacated, is not correct and that on the facts and circumstances of these Appeals, the appellants had not only made out a *prima facie* case, but there is balance of convenience also in their favour and irreparable injury would be caused if the respondents were permitted to alienate the suit schedule properties pending the suit.

117. We are of the opinion that the conduct of the respondents 1, 3 and 4 in transferring the properties which are subject matter of both I.As. to the husband of the 3rd respondent Dr. Kilaru Panduranga Prasad and M/s A.K.Estates and Construction Private Limited represented by Ms. Kilaru Alekya, daughter of the 3rd respondent, is not *bonafide* because the sale deeds document Nos.3398, 3399, 3596 and 3597 of 2020 were executed on 16.04.2020 and 08.05.2020 after the trial Court dismissed the I.A.Nos.255 and 256 of 2019 on 16.03.2020 and before the appeal time expired and that this was deliberately done to render the Appeals infructuous.

118. We hold that prima-facie these transactions are collusive in nature between the respondents 1, 3 and 4 and Dr. Kilaru Panduranga Prasad and M/s A.K.Estates and Construction Private Limited represented by Ms. Kilaru Alekya on account of the close relationship between them and the respondents 1,3 and 4 cannot be allowed to get away with these transfers.

119. So, pending the disposal of the suits, we hold that transfer of right, title and interest of 1st respondent, if any, conveyed to Dr. Kilaru Panduranga Prasad and M/s A.K.Estates and Construction Private

Limited represented by Ms. Kilaru Alekya i.e the purchasers under the above documents, shall also stand suspended.

120. Accordingly,

- (a) Dr. Kilaru Panduranga Prasad and M/s. A.K. Estates and Construction Private Limited etc., are impleaded in both the I.A.No.255 of 2019 in O.S.No.38 of 2018 and I.A.No.256 of 2019 in O.S.No.39 of 2018 as respondents 5 and 6 and also in both the suits O.S.No.38 of 2018 and O.S.No.39 of 2018 as defendants 5 and 6;
- (b) the Appeals are allowed with costs of Rs.20,000/- to be paid by the 1st and 3rd respondents to each of the appellants;
- (c) the orders dt.16.03.2020 in I.A.No.255 of 2019 in O.S.No.38 of 2018 and I.A.No.256 of 2019 in O.S.No.39 of 2018 are set aside; the said I.As. are allowed;
- (d) pending the disposal of the suits, the transfer of right, title and interest of 1st respondent, if any, conveyed to Dr. Kilaru Panduranga Prasad and M/s A.K.Estates and Construction Private Limited represented by Ms. Kilaru Alekya shall also stand suspended ;
- (e) all the respondents, including Dr. Kilaru Panduranga Prasad and M/s A.K.Estates and Construction Private Limited represented by Ms. Kilaru Alekya, who have been impleaded in these Appeals, are restrained from alienating the properties which are subject matter of O.S.No.38 of 2018 and O.S.No.39 of 2018 or any part

thereof pending disposal of the suits by the II Additional District
and Sessions Judge, Mahboobnagar; and

(f) IA.Nos. 3 of 2020 in CMA NO.188 of 2020 and in CMA No.189
of 2020 are dismissed.

121. Pending miscellaneous petitions, if any, in these CMAs shall stand
closed.

M.S.RAMACHANDRA RAO, J

T.AMARNATH GOUD, J

Date: 30 -07-2020

Note: L.R. copies to be marked.

B/o Svv

Issue CC in three days.

B/o.gra.

