

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE T. VINOD KUMAR

Civil Miscellaneous Appeal No.470 of 2020;

Civil Miscellaneous Appeal No.473 of 2020;

Civil Miscellaneous Appeal No.503 of 2020;

Civil Miscellaneous Appeal No.504 of 2020;

Civil Miscellaneous Appeal No.507 of 2020;

Civil Miscellaneous Appeal No.508 of 2020;

Civil Miscellaneous Appeal No.509 of 2020;

Civil Miscellaneous Appeal No.510 of 2020;

Civil Miscellaneous Appeal No.511 of 2020;

Civil Miscellaneous Appeal No.512 of 2020;

Civil Miscellaneous Appeal No.517 of 2020;

and

Civil Miscellaneous Appeal No.518 of 2020

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

Since common issues of fact and law arise for consideration in these Civil Miscellaneous Appeals, they are being disposed of by this Common Order.

2. The suits out of which these Appeals arise are filed in the Court of the XV Additional District Judge – cum – II Additional Family Judge, Ranga Reddy District, at Kukatpally for cancellation of registered Agreements of Sale – cum – General Power of Attorney bearing different dates in respect of alleged undivided shares of vacant land of various extents in Sy.No.1011/10 of Kukatpally, Balanagar Mandal, Ranga Reddy District. Relief of perpetual injunction

restraining the defendants from alienating the suit schedule property by executing registered documents in the Office of the Sub-Registrar, Kukatpally in any form to any third party or creating any third party rights or interest over the said land is also sought in these suits.

3. We shall mention the details of the Interlocutory Applications, the suits out of which these Appeals arise, the parties who have filed these Appeals, the dates of the registered Agreements of Sale – cum – General Power of Attorney and its Document numbers, and the date of the registered Sale Deeds in the following table :

C.M.A. No.	I.A. No.	O.S. No.	Date	Registered Agreement of sale-cum-GPA Doc. No. & Date	Registered sale deed Doc. No. & Date
470	523/17	369/17	17.10.2019	Doc.No.3337/08 dt.25-06-2008	1770/2017 dt.28-02-17
473	488/17	331/17	17.10.2019	Doc.No.3938/2008 dt.29.07.2008	1755/2017 dt.28.02.2017
503	489/17	332/17	17.10.2019	Doc.No.1843/2008 dt.09.04.2008	1704/2017 dt.28.02.2017
504	488/17	330/17	17.10.2019	Doc.No.3938/2008 dt.29.07.2008	1755/2017 dt.28.02.2017
507	523/17	369/17	17.10.2019	Doc.No.3337/08 dt.25-06-2008	1700/2017 dt.28-02-17
508	408/17	266/17	17.10.2019	Doc.No.1603/2008 dt.25.03.2008	
509	489/17	332/17	17.10.2019	Doc.No.1843/2008 dt.09.04.2008	1704/2017 dt.08.02.2017
510	524/17	370/17	17.10.2019	Doc.No.4709/2008 dt.17.09.2008	1756/2017 dt.28.02.2017
511	490/17	333/17	17.10.2019	Doc.No.1796/2008 Dt.02.04.2008	1701/2017 Dt.28.02.2017
512	407/17	267/17	17.10.2019	Doc.No.1645/2008 Dt.27.03.2008	
517	490/17	333/17	17.10.2019	Doc.No.1796/2008 Dt.02.04.2008	1701/2017 Dt.03.03.2017
518	524/17	370/17	17.10.2019	Doc.No.4709/2008 dt.17.09.2008	1756/2017 dt.28.02.2017

The case of the plaintiffs / respondents in the CMAs

4. The plaintiffs in the suits are different individuals but essentially their pleading is that they are owners of the plaint schedule properties in the suit; that they or their predecessors in title were allotted certain land by the Urban Land Ceiling authorities; they were all illiterates and innocent persons who did not have worldly knowledge and used to eke out livelihood by selling milk to near-by residents; one of their relatives by name A. Maisaiah who was an educated person having worldly knowledge hatched a plan to grab their properties; and on the pretext that he would develop land after obtaining permissions from the Hyderabad Urban Development Authority and the Greater Hyderabad Municipal Corporation and other Public Authorities. They alleged that he requested them to execute a Development Agreement cum General Power of Attorneys in his favour; but he obtained from them registered Agreement of Sale – cum – General Power of Attorney on various dates in 2008 without consideration in respect of their undivided share of land in favour of M/s. Kumar and Co. of which he was the Managing Partner.

5. According to them, there was no partition by *metes and bounds* and only undivided share of land was mentioned in the Agreements of Sale – cum – General Power of Attorney, that all the plaintiffs are co-owners along with other family members; that the agreements of sale recited that consideration was paid on 05.04.1985, though the registered Agreement of Sale – cum – General Power of Attorney was

executed in 2008; that this is ridiculous and not true, though stamp duty was paid by their relative as per the prevailing rate in the Office of the Sub-Registrar as on the date of the registration of the said Agreement – cum – General Power of Attorney.

6. It is their contention that they did not receive any consideration at the time of execution or at any point of time under the said Agreement of Sale – cum – General Power of Attorneys for the land transferred under the said Document; if such documents were proper documents, the 1st defendant would have paid to plaintiffs at least the Sub-Registrar rate per sq.yd. on the date of execution of the said document; such documents are typed in English and the contents were not read over to them in Telugu and not explained to them by the 1st defendant as well as the Sub-Registrar; and so, those documents are sham, fraudulent, and created to cheat them.

7. They also contended that A. Maisaiah misled them by making them think that they had executed a Development Agreement for development, that no prudent person would sell the land for a small consideration said to have been paid on 05.04.1985, more than 23 years back, and they were fabricated to defraud them and to grab their properties.

8. According to them, they questioned A. Maisaiah about the progress of development on 25.11.2010, 02.12.2013, 31.01.2014 but he assured that the land is vacant and if it was not developed, and he

will give it back to them. They contended that one of the executants of the Agreements of Sale – cum - General Power of Attorney died, and so they became unexecutable, that A. Maisaiah, even the General Power of Attorney holder died on 13.02.2014, and the Agreements of Sale – cum – General Power of Attorneys became unenforceable.

9. They also contended that possession of the property was not delivered to the defendant; that they got issued legal notice to the defendant regarding cancellation of the Agreements of Sale – cum – General Power of Attorneys in February, 2017, and after the said date, the Firm M/s. Kumar and Co. executed registered sale deed in favour of other defendant / defendants except in O.S.No.266 and 267 of 2017.

The I.A.s filed under Order XXXIX Rules 1 and 2 of C.P.C.

10. The plaintiffs filed different Interlocutory Applications under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 in each of the suits for grant of temporary injunction restraining the respondents from alienating the plaint schedule property to third parties, pending disposal of the suit. The plaintiffs reiterated the contents of the plaint and contended that they have *prima facie* case, balance of convenience is in their favour, and irreparable loss would be caused to them if temporary injunction sought by them was not granted.

Counter-affidavit of the Firm – M/s. Kumar and Co. (defendant in each of the suits) :

11. It is the case of the Firm M/s.Kumar and Co. that A. Maisaiah was the family head and looked after the family of the plaintiffs; that all the existing rights of family members including the plaintiffs were transferred title of the subject property of the suits to the Firm after receiving valuable consideration in 1985 itself, and after that, the plaintiffs have no right over the land and they are not in possession thereof. It is contended that the plaintiffs voluntarily executed Agreements of Sale – cum – General Power of Attorneys and had never raised any issue about it. They contended that the suit is barred by limitation and the plaintiffs have no *prima facie* case, and are not entitled to relief of temporary injunction.

The orders dt.17.10.2019 in the I.A.s filed under Order XXXIX Rules 1 and 2 of C.P.C.

12. In the Court below, the plaintiffs marked documents in each of the I.A.s in each of the suits.

13. By separate order dt.17.10.2019, the Court below allowed all the I.A.s filed for temporary injunction and restrained the defendants from alienating the plaint schedule properties.

14. After referring to the contentions of the plaintiffs, it opined that the documents i.e., Agreements of Sale – cum – General Power of Attorneys were executed in 2008, and since they mentioned that sale consideration was paid on 20.04.1985 and it appears to be meagre, it

suggests that fraud was played upon the plaintiffs. It then observed that the circumstances *prima facie* show that the plaintiffs have raised triable issues which have to be decided after full-fledged trial; *prima facie*, the points raised by them prove their claim over the plaint schedule property; contentions of parties show that alienations are being made; and so, they have balance of convenience and irreparable would be caused; and so they are entitled to temporary injunction till disposal of the suit.

The present CMAs

15. Challenging the same, M/s. Kumar and Co, one of the defendants in the suits filed these Appeals.

16. Sri Y.Chandra Sekhar, learned Senior Counsel appearing for Sri M.D.Phaneendra, learned counsel and Sri P.Sriraghu Ram, learned Senior Counsel appearing for Sri P.Sri Ram, learned counsel for the appellant/defendant and Sri Kuriti Bhaskara Rao, learned counsel for the respondents / plaintiffs in each of the suits.

17. It is the contention of the learned counsel for the appellants/defendants that the execution by respondent Nos.1 to 4/plaintiffs of the agreements of sale-cum-General Power of Attorney in 2008 in favour of A. Maisaiah who was Managing Partner of the Firm M/s.Kumar & Co., their relative being an admitted fact, the suits filed in 2017 for cancellation of the said agreements of sale-cum-G.P.As. are hopelessly barred by limitation; the plea of the plaintiffs

that plaintiffs continued to be in possession and enjoyment of the land is false and the defendants are in possession of the same; that it is not true to say that the plaintiffs are illiterates and innocent and did not have worldly knowledge; there was no fraud in the execution of the agreements of sale-cum-G.P.As. in favour of the Firm; till 13-02-2014, the date of death of A. Maisiah, the plaintiffs never questioned the agreements of sale-cum-G.P.As. on the ground of being fraudulent or that they were sham; the appellants invested huge amounts to develop the land and to extract more money from the defendants, the plaintiffs have filed the suit. It was denied that the plaintiffs did not know about the contents of each of the agreements of sale-cum-G.P.As.; that the said documents are irrevocable powers of attorney and death of A. Maisaiah /Managing Partner of the Firm does not effect the rights already passed on to the defendants. It is also contended that the Court below did not properly appreciate the facts while granting the interim order in the I.As. filed under Order 39 Rules 1 and 2 C.P.C.

18. Sri Kuriti Bhaskara Rao, learned counsel for the plaintiffs/respondents refuted the above contentions, and supported the orders passed by the Court below.

Consideration by the Court

19. It is the admitted case of the plaintiffs that pursuant to G.O.Ms.No.348 dt.20-03-2007, the State Government exercised powers under Section 20(1)(a) of the Urban Land (Ceiling and

Regulation) Act, 1976 and granted exemption of excess land in favour of 54 persons including the plaintiffs.

20. As per annexure to the said G.O., separate parcels of extents of land admeasuring 300 sq. mts each were exempted for each of the individuals and only for A.Maisaiah, the relative of the plaintiffs, 1000 sq. mts was exempted in Sy.No.1011/10 part situated at Kukatpally village.

21. *Prima facie* a reading of the said G.O. does not indicate that the land parcels are undivided shares and that the plaintiffs and other persons who were given exemption under the said G.O. were holding the land jointly, though the recital in the agreements of sale-cum-G.P.As. is otherwise.

22. The contents of each of the registered agreements of sale-cum-G.P.A. show that each of the plaintiffs had admitted receipt of sale consideration in cash in 1985. Clause (j) of the said documents specifically stated that the right, title and interest, easement, liberties, enjoyment and possessions are transferred in favour of the Firm absolutely and forever. Clause (1) stated that there is *Agency coupled with interest* in favour of the purchaser and he was entitled to transfer title in favour of prospective buyers, Clause (2) empowered him to handover possession of the property to the prospective purchaser, and Clause (4) entitled the purchaser as an Attorney to enter into agreements with any third parties with respect to the property and to

receive consideration thereof from time to time. Clause (16) recorded that the plaintiffs have delivered vacant possession of the property to the purchaser.

23. These clauses *prima facie* bind the plaintiffs and it is not open to them to contend that they are in possession of the property, and that the General Power of Attorney ceases to have effect on the death of A. Maisaiah, because it creates an agency coupled with interest.

24. Their plea that they were not aware of the nature of the transaction when they executed the Agreements of Sale cum General Power of Attorney as they were illiterate, innocent and not having worldly knowledge will have to be established during the trial.

25. Admittedly, during the life time of A. Maisaiah, who died on 13-02-2014, the plaintiffs never questioned the agreements of sale-cum-G.P.As. on the ground of being fraudulent or that they were sham. This silence *prima facie* indicates their acquiescence to the said documents transferring title to the Firm.

26. The fact that all the plaintiffs are selling milk indicates that they are familiar with ordinary business concepts such as “consideration” for a sale, and they cannot *prima facie* be presumed to be unaware of the same.

27. Under Section 2(d) of the Contract Act, 1872, a thing done in the past can also be good consideration for a contract. It states :

“Section 2. Interpretation clause

2. Interpretation clause.—*In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—*

- (a)
- (b)
- (c)
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
... ..” (emphasis supplied)

28. Under Indian Law, thus even past consideration is good for the purpose of a contract, and the mere fact that in the instant cases, the plaintiffs had received payments in 1985, by itself cannot be a ground *prima facie* to contend that the Agreements of sale – cum – General Power of Attorney, are not supported by consideration.

29. Inadequacy of consideration would not render a contract void as per Explanation 2 to Section 25 of the Contract Act, 1872 and it is not open to the plaintiffs to seek cancellation of the Agreements of Sale – cum – General Power of Attorney on the said ground.

30. Under Section 59 of the Limitation Act, 1963, the limitation for filing a suit to cancel an instrument or for rescission of a contract is *three* years when the facts entitling the plaintiff to have it cancelled or rescinded first became known to him. The burden of proof would lie on each of the plaintiffs in the suits to establish that the suits, filed *nine* years after the Agreements of sale – cum – General Power of Attorney were executed, were within time.

31. Whether proper stamp duty was paid on the Agreements of sale – cum – General Power of Attorney at the time of their execution is an issue which is required to be gone into at the time of trial since the Sub-Registrar, Kukatpally has not disputed the stamp duty and registration fee paid thereon.

32. In our opinion, the Court below overlooked the above circumstances and erred in allowing the applications for temporary injunction merely because some triable issues are raised by the plaintiff, which require a full-fledged trial. In our opinion, there is no *prima facie* case made out by the plaintiffs for grant of temporary injunction pending suits restraining the firm or the purchasers from the firm from alienating the suit schedule properties.

33. That apart, any alienation made in the subject properties pending the suits will attract the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882, and so, no serious prejudice is thereby caused to the plaintiffs.

34. Accordingly, all the Civil Miscellaneous Appeals are allowed; the orders - dt.17.10.2019 passed in I.A.No.523 of 2017 in O.S.No.369 of 2017; dt.17.10.2019 passed in I.A.No.488 of 2017 in O.S.No.331 of 2017; dt.17.10.2019 passed in I.A.No.489 of 2017 in O.S.No.332 of 2017; order dt.17.10.2019 passed in I.A.No.488 of 2017 in O.S.No.331 of 2017; order dt.17.10.2019 passed in I.A.No.523 of 2017 in O.S.No.369 of 2017; order dt.17.10.2019

passed in I.A.No.408 of 2017 in O.S.No.266 of 2017; order dt.17.10.2019 passed in I.A.No.489 of 2017 in O.S.No.332 of 2017; order dt.17.10.2019 passed in I.A.No.524 of 2017 in O.S.No.370 of 2017; order dt.17.10.2019 passed in I.A.No.490 of 2017 in O.S.No.333 of 2017; order dt.17.10.2019 passed in I.A.No.407 of 2017 in O.S.No.267 of 2017; order dt.17.10.2019 passed in I.A.No.490 of 2017 in O.S.No.333 of 2017; and order dt.17.10.2019 passed in I.A.No.524 of 2017 in O.S.No.370 of 2017 on the file of XV Additional District Judge – cum – II Additional Family Judge, Ranga Reddy District, at Kukatpally are all set aside, and the said I.A.s are dismissed.

35. It is made clear that any alienations made by the appellants / defendants pending the suits, shall abide by the result of the suits. The Court below is directed to decide the suits, uninfluenced by any observations made in its order dt.17.10.2019 in each of the I.A.s or in this order of this Court allowing the Appeals. No costs.

36. As a sequel, miscellaneous petitions pending if any in these Appeals, shall stand closed.

M.S. RAMACHANDRA RAO, J

T.VINOD KUMAR, J

Date:26.07.2021

Vsv/Ndr