HC-KAR

CNR: KAHC010703002024

NC: 2026:KHC:63646
RFA No. 2683 of 2024
C/W RFA No. 650 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

REGULAR FIRST APPEAL No. 2683 OF 2024 (EJE)

C/W

REGULAR FIRST APPEAL No. 650 OF 2020 (DEC/INJ)

IN RFA No. 2683/2024

BETWEEN:

SMT. L GEETHA
D/O SHRI V KUPPUSWAMY
AGED ABOUT 62 YEARS,
No.779, BDA ROW HOUSES
DOMLUR 2ND STAGE, 4TH PHASE
BENGALURU-560 071.

...APPELLANT

(BY SRI SHUJATH AHMED, ADVOCATE)

AND:

SHRI. K PRABHU
S/O V KUPPASWAMY
AGED ABOUT 58 YEARS
No.25, BOWBEE LANE
E –STREET, ASHOK NAGAR
BANGALORE-560 025.

...RESPONDENT

(BY SRI S K HEGDE, ADVOCATE FOR R1)

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THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 04.09.2024 PASSED IN OS.No.1913/2020 ON THE FILE OF THE , XLII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY, PARTLY DECREEING THE SUIT FOR EJECTMENT.

IN RFA No. 650/2020

BETWEEN:

SMT. K GEETHA
D/O SHRI V KUPPUSWAMY
AGED ABOUT 59 YEARS
No. 779, B.D.A ROW HOUSE, 2ND STAGE
4TH PHASE, DOMLUR
BANGALURU – 560 071.

...APPELLANT

(BY SRI. NIKHIL KRISHNAMURTHY, ADVOCATE)

AND:

1. SHRI K PRABHU
   S/O V KUPPASWAMY
   AGED ABOUT 55 YERS
   No. 71, BOVILAN MAKER ROAD
   ASHOK NAGAR, BANGALORE.

2. VIJAYA BANK
   TRINITY CIRCLE BRANCH
   M G ROAD, BANGALORE – 560 001.
   REPRESENTED BY IT'S MANAGER.

...RESPONDENTS

(BY SRI. S K HEGDE, ADVOCATE CAV/R1
SRI NAARAJ DAMODAR, ADVOCATE FOR R2)

THIS RFA IS FILED UNDER SECTION 96 R/W ORDER XLI RULE 1 OF CPC, 1908 AGAINST THE JUDGMENT AND DECREE DATED 15.10.2019 PASSED IN O S.No.8450/2012 ON THE FILE

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OF THE XII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY, DISMISSING THE SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.09.2026, THIS DAY, ***SHIVASHANKAR AMARANNAVAR J***, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CAV JUDGMENT

RFA No.650/2020 is filed by the plaintiff challenging the judgment and decree dated 15.10.2019 passed in O.S.No.8450/2012 by the XII Additional City Civil and Sessions Judge, Bangalore (CCH-27) where under suit of the appellant/plaintiff came to be dismissed.

2. RFA No.2683/2024 is filed by the defendant challenging the judgment and decree dated 04.09.2024 passed in OS No.1913/2020 by XLII Additional City Civil and Sessions Judge, Bengaluru City (CCH-43), where under the suit of the respondent/plaintiff for ejectment came to be decreed.

3. The appellant in RFA No.650/2020 was the plaintiff, and respondent No.1 was defendant No.1 and respondent No.2 was defendant No.2 before the trial Court in

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O.S.No.8450/2012, and they will be referred to the rankings as in the trial Court for the sake of convenience.

4. The appellant in RFA No.650/2020 has filed a suit in O.S.No.8450/2012 seeking the following reliefs:

a) Declare that the Sale Deed dated 01.10.2007 executed by Plaintiff in favour of the Defendant No.1 and registered as document No.2543/2007-08 in Book-1 stored in CD.No.SHVD-89 dated 01.10.2007, before Sub-registrar, Shivajinagar, as fraudulent and null and void;

b) Declare that the Mortgage Deed dated 19.10.2007, registered as document bearing No.2741/2007-08, in Book-1 stored in CD No.SHVD-90 dated 19.10.2007, before Sub-registrar, Shivajinagar executed by Defendant No.1 in favour of Defendant No.2, on the basis of the said fraudulent Sale Deed is not binding on the plaintiff.

c) Issue an order of permanent injunction to restrain the Defendants or their henchmen or anybody claiming under them from interfering with the peaceful possession of the plaintiff of the Schedule property;

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d) Issue an order of permanent injunction to restrain the defendants or their henchmen or anybody claiming under them from alienating the Suit Schedule Property;

e) Pass such other orders as this Hon'ble Court deems fit and necessary in the interest of justice and equity.

5. The case of the appellant/plaintiff before the trial Court is as under:

(i) The defendant No.1 is younger brother of the plaintiff who was working with defendant No.2/Bank. Plaintiff is absolute owner of the suit schedule property. The suit schedule property was initially allotted to the plaintiff's father Sri.V.Kuppuswamy by Bengaluru Development Authority vide allotment letter dated 19.03.1984. Subsequently, BDA has executed lease cum sale agreement dated 07.11.1984 in favour of plaintiff's father and he was put in possession of the suit schedule property. Thereafter on completion of the tenure of the lease cum sale agreement, BDA has

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executed absolute sale deed dated 02.04.2005 registered on 03.05.2005 in favour of Sri.V.Kuppaswamy. Accordingly, BDA has transferred Khata Certificate in the name of said Kuppuswamy. After that Kuppuswamy out of love and affection gifted the suit schedule property in favour of the appellant/plaintiff under registered gift deed dated 25.02.2006. Subsequently, all the revenue records were mutated in plaintiff's name and since then the plaintiff is in possession and enjoyment of the suit schedule property.

(ii) The plaintiff due to some financial emergency had taken loan from M/s.BDA Housing Co-operative Society to the tune of Rs.4,00,000/- and mortgaged the suit schedule property in favour of BDA Housing Co-operative Society as security for the repayment of the loan amount. Thereafter the plaintiff had repaid said loan to the tune of Rs.2,00,000/-. However, due to monetary problems the plaintiff was not able to pay the remaining

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balance amount of Rs.2,00,000/- with the interest. The plaintiff approached defendant No.1 for monitory assistance and requested him to assist in clearing the debt with BDA Housing Co-operative Society for an amount of Rs.2,00,000/-. The defendant No.1 agreed to support the plaintiff in clearing the debt of Rs.2,00,000/-. Accordingly, during last week of September 2007, defendant No.1 approached the plaintiff and informed that he being employee of defendant No.2/Bank will help the plaintiff in getting the loan at a lesser rate of interest so that the plaintiff can clear the loan of BDA Housing Co-operative Society and requested the plaintiff to sign few papers claiming to be loan application form etc. Thereafter on 25.09.2007 the defendant No.1 handed over DD bearing No.936291 drawn on Vijaya Bank at Trinity Circle Branch, Bangalore, for an amount of Rs.2,74,254/- in order to clear the plaintiff's debt in BDA Housing Co-operative Society and requested the plaintiff to obtain a loan discharge

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certificate. Accordingly, plaintiff closed the loan of BDA Housing Co-operative Society and obtained the loan discharge certificate from the said Society and handed over all the original title deeds of scheduled property to defendant No.1. Thereafter defendant No.1 requested the plaintiff to come to Sub-Register Office, Shivajinagar, on 01.10.2007 for registering the loan agreement as well as mortgage deed in favour of defendant No.2/Bank. Believing the said representation of defendant No.1, on 01.10.2007, plaintiff visited the Sub Register Office and signed the papers furnished to the plaintiff by the defendant No.1. However, plaintiff could not read the contents of the same as the plaintiff is an illiterate except affixing signatures. Upon registering, defendant No.1 requested to get the loan discharge certificate from BDA Housing Co-operative Society. Accordingly, plaintiff got loan discharge certificate registered from BDA Housing Co-operative Society on 04.10.2007 and handed over the same to defendant No.1.

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Thereafter, plaintiff used to pay the defendant No.1 a sum of Rs.3,000/- in cash every month towards repayment of the loan of defendant No.2/Bank as per the instructions of defendant No.1. Such being the case, recently defendant No.1 came to plaintiff's house and created ruckus and galata with the plaintiff and her family members and warned the plaintiff that he will dispossess the plaintiff and her family members and claimed to be the owner of the suit schedule property. However, the plaintiff refused to the statement of defendant No.1 that he is owner of the suit schedule property. The defendant No.1 said that the plaintiff has executed sale deed in his favour to close the loan taken from BDA Housing Co-operative Society.

(iii) The plaintiff immediately thereafter on 25.10.2012 along with well wishers visited and verified with the Sub- Registrar Office and came to know the fact that defendant No.1 taking undue advantage of the fact that plaintiff being illiterate

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except signing has misrepresented the plaintiff that she could be executing a loan agreement in favour of defendant No.2/Bank and fraudulently obtained the signature of the plaintiff on sale deed. The plaintiff being illiterate and trusting defendant No.1 signed the sale deed believing it to be loan agreement. In the said sale deed, total sale consideration is mentioned as Rs.8,00,000/-. However, the plaintiff has not received any sale consideration either by cash or cheque towards execution of the fraudulent sale deed.

(iv) Defendant No.1 has fraudulently executed sale deed and further defendant No.1 on the basis of above said fraudulent sale deed has obtained the loan from the defendant No.2/Bank and mortgaged the original title deeds of the suit schedule property with the defendant No.2/Bank behind the plaintiff fraudulently.

(v) That even today plaintiff along with 7 family members has been in possession of the suit

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schedule property. The plaintiff does not have any property other than this suit schedule property and the plaintiff's family is totally dependent upon the plaintiff. The plaintiff has lodged police complaint before the jurisdictional police i.e. Halsoor Police against the defendants for these above said acts. However, the jurisdictional police instead of initiating action against defendant No.1 has issued endorsement stating that complaint contents are civil in nature and directed the plaintiff to approach competent Court of law. With these pleadings the plaintiff has sought the above said reliefs.

6. The defendant No.1 has filed a written statement and contended as under:

(i) The plaintiff has not approached the Court with clean hands and suppressed the material facts and the suit of the plaintiff is liable to be dismissed without going to the merits of the case.

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(ii) The plaintiff who was owner of the suit schedule property was in need of money to meet her family necessities and also to celebrate her daughter's marriage in the year 2007. Accordingly, she wanted to sell the suit schedule property and instead of selling the suit schedule property to third persons plaintiff has agreed to sell the suit schedule property to defendant No.1 who is her younger brother. Accordingly, on 23.05.2007 a sale agreement was entered into between plaintiff and defendant No.1 under which plaintiff has agreed to sell the suit schedule property for total consideration of Rs.8,00,000/-.

(iii) Subsequently, defendant No.1 approached Vijaya Bank, Trinity Circle Branch, i.e. second defendant for housing loan to purchase the suit schedule property. The Bank after obtaining legal scrutiny report about the title of the plaintiff has sanctioned housing loan of Rs.7,00,000/- and out of the housing loan of Rs.7,00,000/- since the

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property was mortgaged to BDA Housing Cooperative Society, a sum of Rs.2,74,254/- was paid by way of a pay order No.936291 dated 25.09.2007 towards discharge of the balance loan of the plaintiff with the Society and a sum of Rs.3,25,746/- was paid by pay order bearing No. 92013593 dated 01.10.2007 in the name of plaintiff and a sum of Rs.2,00,000/- was paid by cash. Thus, the plaintiff has executed sale deed in favour of the defendant in respect of suit schedule property for total consideration of Rs.8,00,000/- and was put in possession of suit schedule property and also handed over all the original documents.

(iv) Since the plaintiff was in need of the amount and wanted to sell the property instead of a third party purchasing the property being original allotted by BDA to the father of the plaintiff and defendant No.1, it was mutually agreed and decided that the defendant No.1 shall purchase the property for valuable consideration.

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(v) At the time of execution, the property was in possession of the tenants on mortgage/lease basis. The property consists of ground first, second and third floors. Since the plaintiff was not able to repay the advance amount, which was paid by the respective tenants to her without there being any rent payable by the tenant, defendant No.1 has paid to the respective parties who were in possession of respective portions and taken vacant possession. The amount paid to the respective tenants which were inducted by the plaintiff and who were in possession on the date of purchase was out of the total sale price fixed between the plaintiff and defendant No.1. Defendant No.1 had agreed to pay Rs.4,00,000/- which was paid to the plaintiff by tenant R.Ramendra who is in possession of first floor. Defendant No.1 has given ground floor portion to his mother and brother Ashoka to stay without rent and third floor to his brother Niranjan. At the time of purchase one Sri. K. Eshwar was in

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occupation of the third floor and defendant No.1 has paid Rs.1,29,500/- at the time of vacating the house. The said amount was received by the plaintiff. The lease amount and the amount repaid at the time of quitting has also been considered as sale consideration. Further prior to sale, the plaintiff has taken the loan from defendant No.1 amounting to Rs.1,50,000/- and the said amount was taken as a sale value.

(vi) The plaintiff who was in need of the house approached defendant No.1 with a request to lease the second floor portion in her favour instead of giving the property to some other third party. Considering the said request of the plaintiff, defendant No.1 instead of giving the property to third party has decided to give it to plaintiff being his sister. Therefore, lease deed was entered on 11.10.2007 to lease the property to the plaintiff consisting of one bedroom, hall kitchen, bathroom and toilet in the second floor of the suit schedule

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property on monthly rent of Rs.4,000/-. The plaintiff has paid the rent regularly till January, 2011 and since February 2011 she has failed to pay the rent inspite of demand by defendant No.1.

(vii) Therefore, when the plaintiff No.1 demanded the plaintiff to pay the rent, plaintiff is making allegations of fraud and misrepresentation and has filed the case with malafide intention to knock off the valuable property of defendant No.1.

(viii) The defendant No.1 is regularly paying interest to the Bank and also amount towards principal. Defendant No.1 got issued legal notice on 04.03.2013 terminating tenancy and directed the plaintiff to hand over the portion of the property which is in her occupation and said notice was duly served on the plaintiff and she got issued reply through her advocate on 22.03.2013.

(ix) The plaintiff voluntarily on her volition executed sale deed for valuable consideration. The

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amount of Rs.3,25,746/- given by way of DD was credited to the account of plaintiff and she has utilized the same from time to time by withdrawing the amount. Further a sum of Rs.2,74,254/- paid by way of a pay order dated 25.09.2007 towards the discharge of the loan amount of BDA Housing Co-operative Society was paid to the Society. Therefore, there is no question of any fraud or misrepresentation in obtaining the sale deed in respect of plaint schedule property from the plaintiff.

(x) Plaintiff has not given necessary evidence and details about the allegations of fraud and misrepresentation in plaint as required under the provisions of Civil Procedure Code. With these contentions the defendant No.1 had prayed to dismiss the suit.

7. Defendant No.2 has filed written statement contending as under :

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(i) The defendant No.1 approached the defendant No.2 for grant of financial assistance to purchase the suit schedule property from the plaintiff. Second defendant after obtaining legal scrutiny report from the panel advocate and also considering the title of the plaintiff has agreed to the first defendant to purchase the suit schedule property. Accordingly, housing loan was sanctioned and out of the loan sanctioned a sum of Rs.2,74,254/- was paid by way of deed in favour of BDA Housing Co-operative Society as the plaintiff has created charge in favour of the said society and another sum of Rs.3,25,746/- was paid by way of DD in the name of the plaintiff and the said DD was credited to the SB account of the plaintiff at its Branch.

(ii) Plaintiff was the absolute owner and after sanction of the loan by the defendant No.2 to the first defendant, she has executed absolute sale deed in favour of the defendant No.1 and he has executed

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registered memorandum of deposit of title deeds registered on 19.10.2007. Accordingly, the title deeds in the name of the first defendant and other parent documents of the suit schedule property have been deposited by the defendant No.1 with defendant No.2. Second defendant has got charge over the suit schedule property having advanced the housing loan to the first defendant.

(iii) Second defendant has no knowledge about the plaintiff approaching defendant No.1 in good faith for monetary assistance and also he informed to get a loan from second defendant for lower rate of interest. The plaintiff has not approached the second defendant for any loan. On the other hand, it is the first defendant who approached the second defendant for loan to purchase the suit schedule property and the plaintiff has also executed agreement of sale dated 23.05.2007 in favour of first defendant agreeing to sell the suit schedule property in favour of the first defendant. Accordingly, second

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defendant has granted loan to purchase the schedule property and first defendant has availed the housing loan and purchased the suit schedule property. The first defendant is paying monthly installments in terms of the loan granted to him.

(iv) The plaintiff has voluntarily come to the Sub-Registrar Office and executed sale deed and subsequently the defendant No.1 has registered the Memorandum of Deposit of Title Deeds. The defendant suspects a collusion between defendant No.1 and the plaintiff being brother and sister to defraud the Bank which has advanced the loan to the defendant No.1 on the security of the suit schedule property.

(v) The statement that on the basis of fraudulent sale deed the first defendant obtained a loan from the defendant No.2 is also not correct. The statement made in the plaint that the plaintiff being illiterate and trusting the defendant No.1 signing the

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sale deed believing it to be loan agreement is totally false and the same is denied.

(vi) The plaintiff voluntarily on her own volition executed the sale deed for valuable consideration. The sale deed executed by the plaintiff in favour of first defendant No.1 is legal and valid document and it cannot be called as a fraudulent sale deed in any manner and the defendant No. 2 has got valuable right over the suit schedule property being a mortgagee having advanced the loan.

8. On the basis of the above pleadings the following issues have been framed:

1) *Does the plaintiff prove that, she is the owner of the plaint schedule property?*
2) *Does the plaintiff prove that, she was in possession of the suit property on the date of filing the suit?*
3) *Does the plaintiff prove that, defendants are interfering in her possession over the same?*
4) *Does the plaintiff prove that, the sale deed executed by her in favour of the defendant*

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No.1 on 01.10.2007 is not binding on her for the reasons stated in the plaint?

5) *Does the plaintiff prove that, the registered mortgage deed executed by defendant No.1 in favour of defendant No.2 with respect to the schedule property on 19.10.2007 is not binding on the plaintiff for the reasons stated in the plaint?*

6) *Does the plaintiff prove that, she is entitled for the relief prayed in the plaint?*

7) *What order or decree?*

9. The plaintiff has been examined as P.W.1 and got marked Exs.P1 to P14. The defendant No.1 has been examined as DW.1 and examined DWs.2 to 6 and got marked Exs.D1 to D44. The trial Court after hearing the arguments and appreciating the evidence on record has answered issue Nos. 1, 3, 4, 5, 6 in the negative and issue No. 2 in the affirmative and dismissed the suit of the appellant/plaintiff by the impugned judgment. The said judgment and decree dated 15.10.2019 has been challenged by the plaintiff in RFA No.650/2020.

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10. After dismissal of the said suit in O.S.No.8450/2012, defendant No.1 - Sri.K.Prabhu, has filed a suit against the plaintiff, Mrs.L.Geetha in O.S.No.1913/2020 for ejectment and recovery of arrears of rent, contending that the lease has been terminated by issuance of legal notice dated 04.03.2013, with effect from 31.03.2013, and the suit filed by the plaintiff in O.S.No.8450/2012 has been dismissed. The said suit has been contested by Mrs.L.Geetha, who was the plaintiff, in O.S.No.8450/2012. The said suit came to be decreed by judgment and decree dated 04.09.2024. The said judgment and decree passed in O.S.No.1913/2020 has been challenged by the defendant of that suit in RFA No.2683/2024. The said two appeals in RFA No.650/2020 and RFA No.2683/2024 have been tagged together for disposal.

11. Heard arguments of learned counsel for appellant in both appeals, learned counsel for Respondent No.1 in RFA 650/2020, learned counsel for respondent No.2 in RFA

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650/2020 and learned counsel for respondent in RFA No.2683/2024.

12. Learned counsel for appellant in RFA No.650/2020 and RFA No.2683/2024 would contend that the appellant is the absolute owner of the suit schedule property by virtue of the gift deed dated 25.02.2006 executed by her father in her favour and she had mortgaged the said property in favour of BDA Housing Co-operative Society under Mortgage Deed–Ex.P3 dated 25.04.2006. The appellant in order to repay the balance amount borrowed from BDA Housing Co-operative Society requested the respondent No.1/defendant No.1 to get a loan from his bank at a lower interest and respondent No.1/defendant No.1 in the guise of the same got the signatures of the appellant/plaintiff on documents and created a sale agreement, rent agreement and also asked the appellant/plaintiff to come to Sub-Registrar Office on 01.10.2007 so as to execute mortgage deed in favour of respondent No.2/Bank and believing the words of respondent No.1, the appellant went to the Sub-Registrar

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Office and without seeing/verifying the document affixed her signature on it, believing that it is a mortgage deed. Subsequently, she came to know that the document what she has executed is not the mortgage deed, but it is a sale deed when respondent No.1 asked her to vacate the suit schedule property. The appellant had studied only up to third standard in the Tamil medium and she is not able to read and understand the sale deed which was in English language. The signature of Sudhakaran in lease agreement and sale deed are different. P.W.1, who is the appellant herein, has stated that she has not read the contents of Ex.P11-lease agreement. Even though the eviction notice has been issued on 07.03.2013, but the suit for ejectment has been filed in the year 2020. The appellant has got issued reply to the said legal notice/eviction notice on 22.03.2013 under Ex.P4 contending that she is the owner of the suit property. Even inspite of that, respondent No.1 kept quiet till the year 2020 without filing suit for ejection. The trial Court has not given proper reasons while answering issue No.1. D.W.2 is the brother of plaintiff and

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defendant No.1 and D.W.5 is sister's son of plaintiff and defendant No.1 and son-in-law of defendant No.1. They are interested in respondent No.1/defendant No.1. The amount credited to the bank account of the appellant/plaintiff has been withdrawn by cheques and on back of one of the cheque- Ex.D25 is the signature of one Mohan Raj. D.W.1 in his chief examination has stated that the sale consideration is Rs.16,00,000/- but the sale deed indicate the sale consideration has Rs.8,00,000/-. Defendant No.1 put forth contention that he has paid the said amounts to the tenants for refunding lease amount / security deposit.

13. Learned counsel for appellant further contends that there is a misrepresentation by respondent No.1/defendant No.1 as to the nature of the document and its contents and therefore, the said sale deed said to have been executed by plaintiff in favour of defendant No.1 is void. On that point he places reliance on the following decisions:

- 1968 SCC Online SC 206

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Ningawwa vs. Byrappa Shiddappa Hireknrabar and

Others

- 1990 SCC Online SC 458
  Dularia Devi vs. Janardan Singh and others
- (2024) 18 SCC 677
  Ramathal and others vs. K.Rajamani (dead) through

  LRs and another
- 1966 SCC Online SC 103
  Subhas Chandr Das Mushib vs. Ganga Prasad Das

  Mushib and others

14. The learned counsel further submits that respondent No.1 in his suit for ejectment has only claimed damages from 01.03.2017 even though the eviction notice has been issued in the year 2013 and reason for the same has not been stated in the plaint. He submits that there is no any reason for the appellant/plaintiff to sell her valuable property only for repayment of balance loan amount of Rs.2,00,000/- to BDA Housing Co-operative Society and the illiteracy of the plaintiff has been misused by her brother - defendant No.1 in getting executed the sale deed

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misrepresenting the appellant/plaintiff. The trial Court has not appreciated the evidence on record properly. With this he prayed to allow the appeals.

15. Learned counsel for respondent No.1 in RFA No.650/2020 and respondent in RFA No.2683/2024 would contend that the plaintiff became defaulter of repayment of the loan amount to the BDA Housing Co-operative Society and auction notice has been issued to her. In order to repay the amount due to BDA Housing Co-operative Society and to perform the marriage of her daughter, the appellant gave a proposal to defendant No.1 to purchase the property and executed a sale agreement -Ex.D31 on 23.08.2007 for sale consideration of Rs.8,00,000/- and received Rs.2,00,000/- in cash as advance sale consideration. Respondent No.1/defendant No.1 on the basis of the said sale agreement applied for a loan with respondent No.2/Bank and respondent No.2/Bank has granted the loan and out of the loan amount, Rs.2,74,254/- has been paid to BDA Housing Co-operative Society towards the balance loan amount of the

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appellant/plaintiff and Rs.3,25,746/- has been credited to the bank account of the appellant/plaintiff. The BDA Housing Co-operative Society has executed a loan discharge certificate dated 28.09.2007 and it has been registered subsequently. The appellant/plaintiff was aware of process of registration in Sub-Registrar Office as she earlier was beneficiary of the gift deed and she has executed mortgage deed in favour of BDA Housing Co-operative society. The said aspect has been considered by the trial Court by extracting her cross-examination. Even after sale deed, the plaintiff continued in the possession of the second floor of the property under lease agreement - Ex.D12 dated 11.10.2007 and she has paid rent only for some period and as she did not pay the further rent, notice has been issued to her on 04.03.2013 as per Ex.P15 and she sent a reply to the said notice stating that she has filed suit seeking declaration and she has been defrauded by defendant No.1. Sri.K.Eshwar was tenant in a portion of the suit schedule property has executed Ex.D13 -receipt for having received Rs.1,29,500/- from defendant No.1 and

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he has also given evidence as D.W.2 and stated that the plaintiff offered to sell the suit schedule property to defendant No.1 as she has to repay the loan to the BDA Housing Co-operative society and to perform marriage of her daughter. The amount paid by the plaintiff in a sum of Rs.3,000/- per month is not towards loan installment but it is towards rent of the portion of the property in which she was residing. D.W.5 is one Sudhakaran and he is the witness to the sale deed - Ex.P4 (Ex.D1) executed by plaintiff in favour of defendant No.1 registered on 01.10.2007. He has also given evidence in that regard that the plaintiff, after understanding the contents of the sale deed, has executed it in favour of defendant No.1. Learned counsel for respondent No.1 has placed reliance on the decisions which are relied upon before the trial Court and they are as under:

1. AIR 2009 SC page 3293
   Bellachi (Dead) by L.R v. Pakeeran

2. AIR 1986 Madhya Pradesh 106
   Hajra Bai and others v. Jadavba

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3. AIR 1991 Gauhati 58
   Asman Ali Laskar alias Jamir Uddin vs.
   Forjan Ali Barbhuiya

4. AIR 2001 Allahabad 353
   Ali Hasan Saifi v. Satish Kuma

16. The learned counsel for respondent No.1 further contended that the details of fraud have not been stated in the plaint as required under the provisions of Civil Procedure Code. The plaintiff has not established that defendant No.1 has played fraud and got executed the sale deed. The sale deed has been proved by the evidence of D.W.5, who is one of the attesting witnesses and by showing the passing of the consideration. The plaintiff has withdrawn the amount credited to her bank account which is credited by respondent No.2/bank to her bank account in a sum of Rs.3,25,746/- and she has withdrawn the amount several times. The plaintiff has not paid property tax of the suit schedule property from 2007 and that itself clearly indicate that she has executed sale deed in favour of the

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defendant No.1 in the year 2007 and stopped paying the property taxes. Considering all these aspects, the trial Court has rightly dismissed the suit of the plaintiff in O.S.No.8450/2012 and rightly decreed the ejectment suit filed by the respondent No.1 in O.S.No.1913/2020.

17. Learned counsel for respondent No.2 would contend that defendant No.1 has availed loan from the bank for purchase of suit schedule property and loan of Rs.6,00,000/- has been sanctioned and out of the same, Rs.2,74,254/- has been paid to the BDA Housing Co-operative Society for clearing the dues of the plaintiff and Rs.3,25,746/- is credited to the bank account of the plaintiff. Defendant No.1 now has repaid the said loan amount borrowed by him from defendant No.2/Bank.

18. In reply, the learned counsel for appellant would contend that the plaintiff was working as maid servant and as she is illiterate she was not able to read and understand the contents of the document which she has executed. In the sale deed there is no endorsement

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that the contents of the sale deed have been executed as she is illiterate.

19. Having heard the learned counsels, the Court has perused the judgment, decree and trial Court records.

20. The following points arise for consideration:

(i) Whether the appellant/plaintiff has proved that respondent No.1(defendant No.1) has misrepresented and played fraud and got executed sale deed dated 01.10.2007 in respect of suit schedule property in the guise of getting executed mortgage deed in favour of respondent No.2(defendant No.2/Bank)?

(ii) Whether the trial Court is justified in dismissing O.S.No.8450/2012?

(iii) Whether the trial Court is justified in decreeing O.S.No.1913/2020?

Re-Point Nos.1 and 2

21. The facts which are not in dispute are that the father of appellant/plaintiff and respondent No.1/defendant No.1 was owner of the suit schedule property and he

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executed gift deed dated 25.02.2006 in favour of appellant/plaintiff. The appellant/plaintiff got mutated her name in revenue records and she has been in possession of the suit schedule property as owner. The appellant/plaintiff due to some financial difficulty took loan of Rs.4,00,000/- from M/s BDA Housing Co-operative Society and mortgaged the suit schedule property in favour of M/s BDA Housing Co-operative Society as a security for repayment of loan amount. The plaintiff repaid the said loan to the tune of Rs.2,00,000/- and there was balance amount of Rs.2,00,000/- along with the interest.

22. The case of defendant No.1 is that plaintiff in order to repay the debt to M/s BDA Housing Co-operative Society as it had issued auction notice had approached him for sale of suit schedule property for the purpose of repayment of the loan amount and also for performing marriage of her daughter and he agreed to purchase the suit schedule property for Rs.8,00,000/- and plaintiff entered into sale agreement dated 23.08.2007 (Ex.D31) agreeing to sell the suit schedule property for

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Rs.8,00,000/- and received an advance of Rs.2,00,000/- by cash. Thereafter defendant No.1 availed a loan of Rs.6,00,000/- from defendant No.2/Bank and the Bank has sanctioned a loan of Rs.6,00,000/- out of that DD has been issued in favour of BDA Housing Co-operative Society for Rs.2,74,254/- and another DD has been credited to the bank account of the plaintiff in a sum of Rs.3,25,746/- and the plaintiff has executed registered sale deed dated 1.10.2007 in favour of the defendant No.1 by registered document. The plaintiff contended that she approached defendant No.1 - her brother, to assist her in clearing the debt with BDA Housing Co-operative Society for an amount of Rs.2,00,000/- and defendant No.1 agreed to support her in clearing the debt and he told her that he will get a loan from his bank for lesser rate of interest and on 25.09.2007 handed over DD for Rs.2,74,254/- in order to clear the debt of BDA Housing Co-operative society and asked her to get loan discharge certificate and she closed the loan of BDA Housing Co-operative society and obtained loan discharge certificate and handed over all original title

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deeds of the suit schedule property to defendant No.1. Defendant No.1 requested her to come to Sub-Registrar office on 01.10.2007 for registering loan agreement as well as mortgage deed in favour of defendant No.2/Bank and believing the representation of defendant No.1, she went to the Sub-Registrar office and signed papers furnished to her by the defendant No.1 and without reading the contents, she affixed her signature on document furnished by defendant No.1 and she got loan discharge certificate registered from BDA Housing Co-operative Society on 04.10.2007 and handed over the same to defendant No.1 and she used to pay Rs.3,000/- in cash every month to defendant No.1 for repayment of loan of defendant No.2/Bank and she came to know the sale of suit schedule property only after defendant No.1 came to her house and created ruckus and galata and on getting the documents from Sub-Registrar office.

23. Considering the said aspect, the contention of the appellant/plaintiff is that the defendant No.1 has misrepresented and played fraud against her and got

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executed a sale deed dated 01.10.2007 in respect of suit schedule property in the guise of getting executed mortgage deed in favour of respondent No.2(defendant No.2/Bank).

24. The Hon'ble Apex Court in the case of Ningawwa (supra) has considered a case of fraud and misrepresentation and observed as under:

> *"5.The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the Transaction is void, while in the case of the latter, it is merely voidable. In Foster v. Mackinon(2) the action was by the endorsee of a bill of exchange. The defendant pleaded that he endorsed the bill on a fraudulent representation by the acceptor that he was signing a guarantee. In holding that such a plea was admissible, the Court observed :*

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> *"It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended .... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the ,actual contents' of the instrument."*

This decision has been followed by the Indian courts-Sanni Bibi v. Siddik Hossain(3), and Brindaban v. Dhurba Charan(4). It is not the contention of the appellant in the present case that there was any fraudulent misrepresentation as to the character of the gift deed but Shiddappa fraudulently included in the gift deed plots 91 and 92 of Lingadahalli village without her knowledge. We are accordingly of the

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opinion that the transaction of gift was voidable and not void and the suit must be brought within the time prescribed under Article 95 of the Limitation Act."

25. The Hon'ble Apex Court in Dularia Devi(supra) has observed as under:

"6. In Ningawwa v. Byrappa, this Court referred to the well-established principle that a contract or other transaction induced or tendered by fraud is not void, but only voidable at the option of the party defrauded. The transaction remains valid until it was avoided. This Court then said:(SCR p. 801)

"The legal position will be different if there is a fraudu- lent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely

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(emphasis supplied)

7. From the facts narrated above, about which, as stated earlier, there is no dispute, it is clear that this is a case where the plaintiff appellant was totally ignorant of the mischief played upon her. She honestly believed that the instrument which she executed and got registered was a gift deed in

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favour of her daughter. She believed that the thumb impressions taken from her were in respect of that single document. She did not know that she executed two documents, one of which alone was the gift deed, but the other Was a sale of the property in favour of all the defendants. This was, therefore, a case of fraudulent misrepresentation as to the character of the document executed by her and not merely as to its contents or as to its legal effect. The plaintiff-appellant never intended to sign what she did sign. She never intended to enter into the contract to which she unknowingly became a party. Her mind did not accompany her thumb impressions. This is a case that fails within the principle enunciated in Ningawwa v. Byrappa and it was, therefore, a totally void transaction. Accordingly, as stated in Gorakh Nath Dube, the suit is not maintainable by reason of the bar contained in the Act."

26. The Hon'ble Apex Court in Ramathal and others versus K Rajamani(supra) has observed as under:

"18. A plea of non est factum can be taken by an executor or signatory of the deed to plead that the said document is invalid as its executor/signatory was mistaken about its character at the time of

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executing/signing it. It is a latin maxim which literally means "it is not the deed." A plea of non est factum is a defence available in Contract Law allowing a person to escape the effect of a document which she/he may have executed/signed.

19. As already noted above, the plea of non est factum basically means, "it is not my deed." The said plea has been a subject matter of consideration of this court in the case of Bismillah v Janeshwar Prasad. In the said case, the plaintiff/appellant therein had claimed herself to be a Pardanashin lady and on the representation of the defendant/respondents, had appointed them as agent to manage the estate under a written document which was drafted in Hindi, a language not known to her. Later on, she discovered that it contained an unauthorized clause empowering sale of properties. Taking advantage of the same, the said agents had executed fraudulent and elusive sale of the said property. The said case set up the plaintiff/appellant was considered and dealt with in paras 12 and 13 of the report. A further issue which this Court considered in the said case was a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. Such

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defense of non est factum was held to be available only where the mistake was as to the very nature or character as to the transaction. This Court also relied upon an earlier decision in the case of Ningawwa v. Byrappa. This Court further placed reliance upon the judgment of the House of Lords in case of Saunders v Anglia Building Society13 to fine tune the distinction between the document being void or voidable."

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22. The aforementioned test for a successful plea of non est factum requires that:

(A) The person pleading non est factum must belong to "class of persons, who through no fault of their own, are unable to have any understanding of the purpose of the particular document because of blindness, illiteracy or some other disability". The disability must be one requiring the reliance on others for advice as to what they are signing. As Lord Pearson had aptly put(Saunders case, AC p.1034)

"In my opinion, the plea of non est factum ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindness or illiteracy) is not capable

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of both reading and sufficiently understanding the deed or other document to be signed. By "sufficiently understanding" I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be."

(B) The "signatory must have made a fundamental mistake as to the nature of the contents of the document being signed", including its practical effects. Lord Wilberfore has succinctly put this aspect: (Saunders case, AC p.1026)

"….In my opinion, a document should be held to be void (as opposed to voidable) only when the element of consent to it is totally lacking, that is, more concretely, when the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended"

(C) The document must have been radically different from one intended to be signed. As Lord Reid Remarked in the judgement: (Saunders case, AC p.1017)

"There must, I think, be a radical difference between what he signed and what he thought he was signing — or one could use the words

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"fundamental" or "serious" or "very substantial." But what amounts to a radical difference will depend on all the circumstances."

27. The Hon'ble Apex Court in Subhas Chandr Das Mushib (supra) has observed as under:

"4. Under Section 16 (1) of the Indian Contract Act a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor and (2) has the donee used that position to obtain an unfair advantage over the donor'?

5. Sub-section (2) of the section is illustrative as to when a person is to considered to be in a position to dominate the will of another. These are inter alia (a) where the donee holds a real or apparent authority over the donor or where he stands in a fiduciary relation to the donor or (b) where he makes a contract with a person whose mental capacity is

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temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

6. Sub-section (3) of the section throws the burden of proving that a contract was not induced by undue influence on the person benefiting by it when two factors are found against him, namely that he is in a position to dominate the will of another and the transaction appears on the face of it or on the evidence adduced to be unconscionable.

7. The three stages for consideration of a case of undue influence were expounded in the case of Ragunath Prasad v. Sarju Prasad and others(1) in the following words :-

"In the first place the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached-namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in ,I position to dominate the will of the other.

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> *Error is almost sure to arise if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of these parties. Were they such as to put one in a position to dominate the will of the other?"*

28. Considering the above said decisions it is to be ascertained whether the plaintiff has executed sale agreement, sale deed and lease agreement under misrepresentation and fraud played on her by defendant No.1.

29. Defendant No.1 is brother of plaintiff. The plaintiff claims that she is illiterate. D.W.1 in his cross-examination has stated that the plaintiff has studied up to 8th standard and he has studied up to 4th standard. P.W.1 in her cross-examination on being shown Exs.D1, D2, D3, D4 to 6, D7 to 9, 10 and 11 has perused them, identified those documents and given answers admitting the said documents. The said evidence of plaintiff/PW1 clearly indicate that she is not an illiterate lady, but she is educated and can identify the documents.

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30. The appellant/plaintiff earlier to the alleged sale deed dated 01.10.2007 had visited the Sub-Registrar office twice, one at the time of her father executing gift deed dated 25.02.2006 in her favour and on another occasion at the time when she executed mortgage deed dated 25.04.2006 in favour of BDA Housing Co-operative Society. Since the plaintiff has visited the Sub-Registrar office she is aware of the process and procedure of registration of the documents in the Sub-Registrar office.

31. Ex.D31 is agreement of sale dated 23.08.2007 said to have been executed by plaintiff in favour of defendant No.1 agreeing to sell the suit schedule property in favour of defendant No.1 for sale consideration of Rs.8,00,000/- and received a sum of Rs.2,00,000/- as advance by way of part payment of sale consideration. D.W.6 is one of the witnesses to the said sale agreement - Ex.D31. DW.6 has given his evidence with regard to the execution of the said sale agreement by plaintiff in favour of defendant No.1.

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32. The defendant No. 1 on the basis of the said agreement of sale- Ex.D1 has availed a loan of Rs.6,00,000/- from defendant No.2/Bank. Out of the said loan amount of Rs.6,00,000/-, a sum of Rs.2,74,254/- was issued in the form of a demand draft in favour of BDA Housing Co-operative Society. The plaintiff admits receipt of the said DD for Rs.2,74,254/- and handing over the said DD to BDA Housing Co-operative Society for clearing the loan availed by her and getting certificate from the said Society. Thereafter the plaintiff got Ex.P4- loan discharge certificate dated 28.09.2007 issued by BDA Housing Co-operative Society and got it registered on 04.10.2007. The said registration of loan discharge certificate – Ex.P14 is after alleged the sale deed dated 01.10.2007. The plaintiff has not disputed the registration of the said loan discharge certificate – Ex.P14 by her on 04.10.2007.

33. The original absolute sale deed dated 01.10.2007 is at Ex-D11 and it is executed by plaintiff in favour of defendant No.1 in respect of suit schedule property for sale consideration of Rs.8,00,000/-. DW.6 - Sudhakaran is one

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of the witnesses to the said sale deed and he has given evidence with regard to execution of the sale deed by plaintiff in favour of defendant No.1 in respect of the suit schedule property. There is an endorsement of the Sub-Registrar on the back of first page of the said sale deed that the plaintiff has admitted that she has executed the sale deed in favour of defendant No.1.

34. A total consideration of Rs.8,00,000/- of the said sale deed dated 01.10.2007 has been paid by defendant No.1. Out of the said sale consideration, Rs.2,00,000/- has been paid by way of cash under Ex.D31 - Agreement to Sell. Rs.2,74,254/- has been paid by way of DD by respondent No.2/Bank out of the loan sanctioned to defendant No.1 in favour of BDA Housing Co-operative Society for closure of the loan of the plaintiff. Rs.3,25,746/- has been paid by way of DD to the plaintiff and the said DD has been credited to her bank account. The copy of the said DD is at Ex.D43. The plaintiff has operated her bank account to which Rs.3,25,746/- has been credited by withdrawing Rs.50,000/- on 05.10.2007

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(as per Ex.D25), Rs.2,00,000/- on 11.10.2007 (as per Ex.D26), Rs.75,000/- on 12.10.2007 (as per Ex.D27) and Rs.1,000/- on 17.01.2008 (as per Ex.D28). The withdrawal of the said amount which is part of the sale consideration itself clearly indicate that the plaintiff was aware of payment of that part sale consideration by way of DD credited to her bank account.

35. The plaintiff on 11.10.2007 has executed a lease deed as per Ex.D12 in favour of the defendant No.1 for continuing in the second floor of the suit schedule property as a tenant on monthly rent of Rs.4,000/- and has paid Rs.1,15,000/- as refundable security deposit. The stamp paper of the said lease deed has been purchased on 09.10.2007. Therefore, it cannot be said that she affixed signature on it on 01.10.2007 as on the date of executing the sale deed.

36. DW.2 is one Eshwar and he is brother of plaintiff and defendant No. 1. He has given evidence with regard to sale of suit schedule property by plaintiff in favour of defendant No.1. DW.3 is the sister of plaintiff and

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defendant No.1 and she has also given evidence with regard to plaintiff executing sale deed in respect of suit schedule property in favour of defendant No.1.

37. The defendant No.1 got mutated his name in the property records of BBMP and Khata has been transferred in his name. As the plaintiff asserts that she has not executed sale deed and only she has executed mortgage deed in favour of defendant No.2/Bank, she ought to have paid property tax of the suit schedule property from the year 2007 till filing of the suit in the year 2012. The plaintiff has not produced any tax paid receipts for having paid the property tax of the suit schedule property which also indicate that plaintiff after the sale deed- Ex.D11 by executing lease deed-Ex.D12 dated 11.10.2007 continued in the suit schedule property as a tenant.

38. The plaintiff has admitted that she has a daughter and her marriage was not performed as on the date of sale deed dated 01.10.2007 and subsequently, her marriage has been performed and she has spent money for her marriage. One of the reason for the sale of the suit

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property is that she required money for performing marriage of her daughter. The husband of plaintiff died prior to the year 2007 and the responsibility of performing marriage of the daughter was on the plaintiff. The plaintiff being a maid servant had a meager source of income which is not sufficient for performing the marriage of her daughter and also for repayment of loan availed by her from BDA Housing Co-operative Society.

39. All these circumstances clearly indicate that the plaintiff was not misrepresented by defendant No.1 for executing the sale deed in the guise of the mortgage deed. The said circumstances clearly indicate that the plaintiff knowingly and understanding the contents of sale deed dated 01.10.2007 executed it in respect of the suit schedule property in favour of defendant No.1 for consideration. The said consideration has been passed to the plaintiff and it is paid by the defendant No.1 partly by paying by cash and partly by availing a loan from defendant No.2/Bank. Considering the said aspect, the appellant/plaintiff has failed to prove that respondent No.1

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(defendant No.1) has misrepresented and played a fraud on her and got executed sale deed dated 01.10.2007 in respect of suit schedule property in the guise of getting executed mortgage deed in favour of respondent No.2 (defendant No.2/Bank). Considering the said aspect, the trial Court is justified in dismissing the suit of the plaintiff in O.S.No.8450/2012. Accordingly, point number 1 and 2 are answered.

Re-Point No.3

40. After dismissal of the suit in O.S.No.8450/2012, a suit came to be filed in O.S.No.1913/2020 seeking ejectment of the defendant of that suit on the ground that she is a tenant in the suit schedule property under lease deed dated 11.10.2007 and she has not paid rent and her tenancy has been terminated by legal notice.

41. The said legal notice has been issued by the plaintiff of that suit on 07.03.2013, but the suit has been filed in the year 2020. In reply to the said legal notice got issued by the defendant of that suit dated 22.03.2013, the

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defendant of that suit contended that she is owner of the suit property in which she is residing and the plaintiff of that suit has played a fraud on her and got executed sale deed in the guise of executing mortgage deed to the bank and she has filed a suit in that regard in O.S.No.8450/2012. As the said suit in O.S.No.8450/2012 was pending the plaintiff of O.S.No.1913/2020 did not file the suit immediately and he has filed a suit only after dismissal of the suit in O.S.No.8450/2012.

42. The tenancy of the defendant - Geetha has been terminated by issuance of legal notice dated 07.03.2013 which has been served on defendant - Geetha for which she has issued reply dated 22.03.2013. The plaintiff has claimed damages in the said suit from 01.03.2007. The plaintiff has not claimed the damages since the year 2013. It might be because the claim for that damages is not within the period of limitation. The plaintiff has claimed damages only for 03 years prior to the date of filing of the suit. The suit of Geetha in O.S.No.8450/2012 has been dismissed, wherein she had a claim to declare her as

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owner of the property and sale deed dated 01.10.2007 as null and void. The dismissal of the said suit and the said sale deed dated 01.10.2007 clearly establishes that the plaintiff of O.S.No.1913/2020, namely - Prabhu, is owner of the suit schedule property and defendant - Geetha is residing in the second floor of the said suit property as a tenant under lease deed dated 11.10.2007. Considering the said aspect, the trial Court has rightly decreed the said suit in O.S.No.1913/2020. Accordingly, Point No.3 is answered.

43. In view of the foregoing reasons, both appeals filed deserves to be dismissed. Accordingly, RFA No.650/2020 and RFA No.2683/2024 are **dismissed**.

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