HC-KAR

NC: 2026:KHC:64025
RSA No. 325 of 2018

CNR: KAHC010342372018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

REGULAR SECOND APPEAL NO. 325 OF 2018 (POS)

BETWEEN:

RAMACHANDRA
S/O APPU NAIK
R/A GURUVAYANAKERE
KUVETTU VILLAGE
BELTHANGADY TALUK
DK DISTRICT – 574 214.

…APPELLANT

(BY SRI. SACHIN B S, ADVOCATE)

AND:

SMT. ATHIJAMMA
SINCE DEAD BY HER LRS

1. ABDUL RAZAK
   S/O LATE ATHIJAMMA
   AGED ABOUT 64 YEARS

2. HYDER
   S/O LATE ATHIJAMMA
   AGED ABOUT 72 YEARS.

3. BASHEER
   S/O LATE ATHIJAMMA
   AGED ABOUT 57 YEARS.

   ALL ARE R/A SUNNATHKERE
   KUVETTU VILLAGE AND POST
   BELTHANGADY TALUK
   DK DISTRICT – 574 214.

…RESPONDENTS

(BY SRI. ABUBACKER SHAJI, ADVOCATE)

Digitally signed by VANDANA S
Location: High Court of Karnataka

CNR: KAHC010342372018

THIS RSA IS FILED UNDER SEC.100 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 08.12.2017 PASSED IN RA NO.74/2009 ON THE FILE OF THE PRL.SENIOR CIVIL JUDGE AND JMFC., BELTHANGADY, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 01.04.2009 PASSED IN OS NO.320/2001 ON THE FILE OF THE CIVIL JUDGE [JR.DN] AND JMFC., BELTHANGADY, D.K.

THIS APPEAL, COMING ON FOR ADMISSION THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL JUDGMENT

The appellant was the defendant in O.S.No.320/2001 filed by the respondent-plaintiff against the appellant for recovery of vacant possession of the suit schedule immovable property, for arrears of rent and other reliefs. The respondents are the legal representatives of the deceased plaintiff. According to the plaintiff, she was the landlord of the suit schedule property and had inducted the appellant-defendant as a tenant in respect of the suit schedule property on a monthly rent at premium and had received Rs.30,000/- and executed a irrevocable GPA in favour of the appellant and put him in permissive possession of the suit schedule property. It is contended by the plaintiff that since the appellant did not vacate and hand over vacant possession of the suit schedule

property to the respondent-plaintiff, the respondent-plaintiff instituted the aforesaid suit against the appellant-defendant seeking the aforesaid reliefs.

2. The appellant-defendant filed his written statement and contested the suit and by disputing and denying the various allegations and claim made by the plaintiff and contended that there was no jural relationship of landlord and tenant between the respondent and the appellant and accordingly, sought for dismissal of the suit.

3. The Trial Court after hearing both parties, framed the following issues:

> *"1. Whether the plaintiff proves that there was landlord and tenant relationship between late G. Ismail and defendant in respect of the suit house property?*
>
> *2. Whether the plaintiff proves that after the death of G. Ismail, the defendant from 1st January 98 had agreed to pay rent in respect of the suit premises at the rate of Rs.500/- per month?*
>
> *3. If so, whether the plaintiff proves that the defendant is due rent amount in respect of the suit premises from January 1999 till the date of filing the suit?*

4. *Whether the defendant proves that on 16.2.1990, late G. Ismail had executed an irrevocable General Power of Attorney in respect of the suit premises in favour of the defendant appointing him as his Attorney and in that capacity, put the defendant in possession of the suit schedule property and at that time, he had paid an amount of Rs.30,000/- to G. Ismail?*

5. *Whether the suit is bad for non-joinder of necessary and proper party?*

6. *To what relief the parties are entitled?*

7. *What order or decree?"*

4. The plaintiff examined herself as PW.1 and another witness as PW.2 and got marked documentary evidence at Exs.P-1 to P-7 on her behalf. While the defendant examined himself as DW.1 and two witnesses as DWs.2 and 3 and documentary evidence as Exs.D-1 to 10 on his behalf.

5. The Trial Court upheld the claim of the plaintiff and rejected the defence of the defendant and decreed the suit by holding as under:

> *"The plaintiff has filed this suit against the defendant for the vacant possession of suit property and also for recovery of arrears of rent of Rs.16,500/- and for other reliefs.*

2. The plaint averments are as under:-

The plaintiff contends that the Land Tribunal has granted the suit schedule property to her husband in LRY No.174/79-80. Her husband G. Ismail died on 25.02.1995. After his death, she and her children have succeeded to the suit A schedule property. The RTC of the suit A schedule property is standing in the name of her husband. The defendant is a tenant in respect of the building existing in the suit A schedule property and running a bakery. The defendant has taken possession of the said house property from her husband about 7 years back as per the oral agreement on monthly rent of Rs.200/-. After the death of her husband, the defendant has agreed to pay monthly rent at Rs.300/- to her. The defendant has paid the rent last 3 years. The defendant has agreed to pay rent at Rs.500/- per month from January 1998. The Defendant has paid the rent at Rs.500/- per month to the entire year 1998. Thereafter, the defendant has stopped paying the rent to her. She has demanded the defendant to pay rent. Afterwards, she has received the notice from the Land Tribunal in the name of her husband. As per the said notice, the defendant has claimed occupancy right over the suit schedule property. After enquiry, the Land Tribunal has rejected the claim of the defendant. She has issued a legal notice to the defendant on 29.08.2001 and called on him to handover vacant possession of the suit schedule building and she has asked for payment of arrears of rent of Rs.16,000/-. The said notice was served on the defendant. The defendant has sent a

reply to the said notice. The defendant is due of Rs.16,500/- towards arrears of rent till September 2001. She is entitle to get vacant possession of suit schedule building. She has terminated the lease by issuing notice. She is entitle for mesne profits also. Therefore, she has filed this suit and prays for decree of the suit.

3. The defendant has appeared and filed his written statement. The defendant contends that the suit of the plaintiff is false, frivolous and not maintainable. The plaintiff is not the owner of suit A schedule property. The suit property was belonged to late G. Ismail. The Land Tribunal has granted the suit property to the said G. Ismail. He admitted the death of G. Ismail on 26.02.1995. The plaintiff is one of the legal heirs to the said G. Ismail. The said G. Ismail had other children namely Abdul Razak, Hyder, Basheer and Hameed. They are the necessary parties to the suit. Therefore, the suit is bad for non-joinder of necessary parties. He contends that he is not a tenant to the suit property. He is running a bakery in the suit property. He has not taken possession of suit property 8 years back on monthly rent of Rs.200/- from the husband of the plaintiff. He has not agreed enhancement of rent. He has not paid rent at the rate of Rs.500/- per month to the plaintiff upto 1998. The plaintiff has created the said facts for the purpose of the suit. He claims that late G. Ismail has executed a irrevocable General Power of Attorney and appointed him and put him in possession of suit schedule property on 16.02.1990. At that time, he has paid Rs.30,000/- to late G. Ismail. As per the

terms of the power of attorney, he is entitle to enjoy the suit property for a period of 30 years and on payment of Rs.30,000/- with interest at the rate of Rs.16% per annum and on payment of Rs.1000/-, he is to surrender the possession of suit property. He is empowered to sell the suit property as per the power of attorney. After the said power of attorney the plaintiff and her children have executed agreement on 17.02.1990 in his favour and admitted the power of attorney executed by G. Ismail. Therefore, he is entitle to continue in possession of suit schedule property till the expiry of 30 years from 16.02.1990. After the said period, the plaintiff and her children are entitle to take possession of the suit property by paying the amount due to him as per the power of attorney. He further contends that he has renovated the entire building and spent Rs.35,000/- towards renovation. The plaintiff is aware of the said renovation. The plaintiff and her children have not objected the renovation. Therefore he is entitle for Rs.35,000/-. He further contends that he is not tenant in respect of suit schedule building. He has not attempted to make an unlawful gain by filing application to the Land Tribunal. He admits the receipt of notice and he admits that he has replied the said notice. He claims that there is no landlord and tenant relationship between him and the plaintiff. Therefore, there is no termination of the tenancy. He is entitle to continue in possession of suit property. Therefore, he prays to dismiss the suit.

4. Based on the pleadings of the parties the following issues have been framed

ISSUES

1. Whether the plaintiff proves that there was landlord and tenant relationship between late G. Ismail and defendant in respect of the suit house property.

2. Whether the plaintiff proves that after the death of G. Ismail the defendant from 1st January 98 had agreed to pay rent in respect of the suit premise at the rate of Rs.500/- per month?

3. If so, whether the plaintiff proves that the defendant is due rent amount in respect of the suit premises from January 1999 till the date of filing the suit?

4. Whether the defendant proves that on 16.02.1990, late G. Ismail had executed an irrevocable General Power of Attorney in respect of the suit premises in favour of the defendant appointing him as his Attorney and in that capacity, put the defendant in possession of the suit schedule property and at that time, he had paid an amount of Rs.30,000/- to G. Ismail?

5. Whether the suit is bad for nonjoinder of necessary and proper party?

6. To what relief the parties are entitled?

7. What order or decree?

The plaintiff has got examined herself as PW.1. She has got examined one witness as PW2. She has got marked Ex.P1 to Ex.P7 documents. The defendant has got examined

himself as DW.1. He has got examined two witnesses as DW2 and DW3. He has got marked Ex.D1 to Ex.D10 documents. The parties have closed their side of evidence.

5. Heard the arguments, perused the notes of arguments and entire file.

6. My findings to the above issues are as under:-

Issue No.1	*:*	*In the Affirmative*
Issue No.2	*:*	*In the Affirmative*
Issue No.3	*:*	*In the Affirmative*
Issue No.4	*:*	*In the Negative*
Issue No.5	*:*	*In the Negative*
Issue No.6	*:*	*In Partly Affirmative*
Issue No.7	*:*	*As per the final order*

For the following reasons:

REASONS

*7. **Issue No.1 to 6:** The issues No.1 to 6 require discussion at a time to avoid repetition of facts. Hence, they have been taken for discussion jointly. It is the case of the plaintiff that, the Land Tribunal has granted the suit schedule property to her husband in LRY No.174/79-80. Her husband G. Ismail died on 26.02.1995. After his death, she and her children have succeeded to the suit A schedule property. The RTC of the suit A schedule property is standing in the name of her husband. The defendant is a tenant in respect of the building existing in the suit A schedule property and running a bakery. The defendant has taken possession of the said house property from her husband about 8 years back as per the oral agreement on monthly rent of Rs.200/-. After the death of her husband, the defendant has agreed to pay monthly rent at Rs.300/- to her. The defendant has paid the rent for 3 years. The defendant has agreed to pay rent at*

Rs.500/- per month from January 1998. The defendant has paid the rent at Rs.500/- per month to the entire year 1998. Thereafter, the defendant has stopped paying the rent to her. She has demanded the defendant to pay rent. Afterwards, she has received the notice from the Land Tribunal in the name of her husband. As per the said notice, the defendant has claimed occupancy right over the suit schedule property. After enquiry, the Land Tribunal has rejected the claim of the defendant. She has issued a legal notice to the defendant on 29.08.2000 and called on him to handover vacant possession of the suit schedule building and she has asked for payment of arrears of rent of Rs.16,000/-. The said notice was served on the defendant. The defendant has sent a reply to the said notice. The defendant is due of Rs.16,500/- towards arrears of rent till September 2001. She is entitle to get vacant possession of suit schedule building. She has terminated the lease by issuing notice. She is entitle for mesne profits also. Therefore, she has filed this suit and prays for decree of the suit.

8. Against to the claim of plaintiff, the defendant contends that the plaintiff is not the owner of suit A schedule property. The suit property was belonged to late G. Ismail. The Land Tribunal has granted the suit property to the said G. Ismail. He admitted the death of the G. Ismail on 26.02.1995. The plaintiff is one of the legal heir to the said G. Ismail. The said G. Ismail had other children namely Abdul Razak, Hyder, Basheer and Hameed. They are the necessary parties to the suit. Therefore, the suit is bad for non-joinder of necessary parties. He contends that he is not

a tenant to the suit property. He is running a bakery in the suit property. He has not taken possession of suit property 8 years back on monthly rent of Rs.200/- from the husband of the plaintiff. He has not agreed for enhancement of rent. He has not paid rent at the rate of Rs.500/- per month to the plaintiff up to 1998. The plaintiff has created the said facts for the purpose of the suit. He claims that late G. Ismail has executed a irrevocable General Power of Attorney and appointed him and put him in possession of suit schedule property on 16.02.1990. At that time, he has paid Rs.30,000/- to late G. Ismail. As per the terms of the power of attorney, he is entitle to enjoy the suit property for a period of 30 years and on payment of Rs.30,000/- with interest at the rate of Rs.16% per annum and on payment of Rs.1000/-, he is to surrender the possession of suit property. He is empowered to sell the suit property as per the power of attorney. After the said power of attorney the plaintiff and her children have executed agreement on 17.02.1990 in his favour as per the power of attorney executed by G. Ismail. Therefore, he is entitle to continue in possession of suit schedule property till the expiry of 30 years from 16.02.1990. After the said period the plaintiff and her children are entitle to take possession of the suit property by paying the amount due to him as per the power of attorney. He further contends that he has renovated the entire building and spent Rs.35,000/- towards renovation. The plaintiff is aware of the said renovation. The plaintiff and her children have not objected the renovation. Therefore, he is entitle for Rs.35,000/-. He further contends that he is not a tenant in

respect of suit schedule building. He has not attempted to make an unlawful gain by filing application to the Land Tribunal. He admits the receipt of notice and he admits that he has replied the said notice. He claims that there is no landlord and tenant relationship between him and the plaintiff. Therefore there is no termination of the tenancy. He is entitle to continue in possession of suit property. Therefore, he prays to dismiss the suit.

9. In support of her case, the plaintiff as PW1 has deposed to the plaint averments. Therefore, she prays to decree the suit.

10. The PW2 namely Abubakar has deposed that he knows the plaintiff and defendants and the suit properties. The husband of the plaintiff has given the suit property to the defendant on monthly rent of Rs.200/-. After the death of husband of plaintiff the rent has been increased to Rs.300/- and in the year 1998 the rent was fixed at Rs.500/- per month. The defendant has paid rent for the entire year 1998. Afterwards, the defendant has not paid rent to the suit property.

11. The plaintiff has got marked Ex.P1 to Ex.P7 documents. Ex.P1 is the RTC. Ex.P2 is the death certificate. Ex.P3 is the notice. Ex.P4 is the order of the Assistant Commissioner. Ex.P5 is the copy of the Form No.7A. Ex.P6 is the copy of the legal notice issued to defendant. Ex.P7 is the reply notice.

12. In support of his case, the defendant as DW1 has deposed that he is the defendant in the suit. He is not due of any rent to the plaintiff. The husband of the plaintiff namely G. Ismail has handed over the possession of suit property to him as per the irrevocable power of attorney dated 16.02.1990 and he has paid Rs.30,000/- at that time to the said G. Ismail. The said G. Ismail has agreed to pay interest at Rs.16% per annum to the said Account. It was also agreed to pay Rs.1000/- towards the existence of GPA. He is having right to sell the suit property. The plaintiff and her children have executed an agreement on 17.02.1990 and confirmed the GPA executed by G. Ismail. As per the said GPA, he has to enjoy the suit property for 30 years. Only after the said period, the LRs of G. Ismail are entitle to get the suit property by paying the amount with interest. The suit property was having mud wall. He has demolished the said mud wall and renovated the house by spending Rs.35,000/-. The plaintiff has objected for the said renovation. The plaintiff has lost her right to seek for the possession of suit property. The plaintiff is liable to pay the said expenses of Rs.35,000/- also. He has not taken the suit property on rent from G. Ismail. He has not agreed to pay rent at Rs.300/- per month after the death of G. Ismail. He has not enhanced the rent for Rs.500/- per month from the year 1998 and he has not paid the rent for the year 1998. Therefore, he prays to dismiss the suit.

13. The DW2 namely Sathyapalan Nair has deposed that he knows the plaintiff, the defendant and late

G. Ismail and their children and the suit property. The defendant has taken the suit property from G. Ismail by paying Rs.30,000/-. At that time GPA and an agreement was taken place. The said GPA was being notarised at Puttur. He has also put his signature to the agreement. The suit property was having mud wall house. The defendant has renovated the house about 8 years back.

14. The DW3 namely M. Raghava has deposed that he is a notary at Puttur. He has notarised Ex.D7 document. At that time, the parties to the documents and the witnesses were present. He has identified the signatures on Ex.D7 document.

15. The defendant has got marked Ex.D1 to Ex.D10 documents. Ex.D1 is the Land Revenue paid receipt. Ex.D2 is the copy of form No.21. Ex.D3 is the endorsement of Tahsildar. Ex.D4 is the RTC. Ex.D5 is the copy of demand statement. Ex.D6 is the form No.10. Ex.D7 is the GPA dated 16.02.1990. Ex.D8 is the agreement dated 17.02.1990. Ex.D9 is the reply notice issued by defendant. Ex.D10 is acknowledgement.

16. The learned Advocate for the plaintiff has argued that the plaintiff is the wife of late G. Ismail. The suit property was belonged to late G. Ismail. The said G. Ismail has handed over the suit property to the defendant on monthly rent. On the death of G. Ismail the rent was enhanced for Rs.300/- per month. Again in the year 1998, the rent was enhanced to Rs.500/-. The defendant has paid

rent for the year 1998 and the defendant has failed to pay rent afterwards. Therefore, the plaintiff has issued notice. The defendant is due of arrears of rent. The defendant is liable to handover vacant possession of suit property.

17. Against to the said argument, the learned Advocate for the defendant has argued that the defendant has not taken possession of suit properties on rental basis. The husband of the plaintiff namely G. Ismail has executed an irrevocable GPA on 16.02.1990 and handed over the possession of suit properties to the defendant by taking Rs.30,000/-. As per the GPA, the plaintiff has to pay Rs.30,000/- with interest at Rs.16% per annum. As per the said GPA, the defendant has to enjoy the suit property for 30 years. Only after 30 years and only after payment of the amount, the LRs of G. Ismail are entitle to get vacant possession of suit property. He has further argued that the plaintiff and her children have executed an agreement and confirmed the GPA. Therefore, the plaintiff has no right to claim vacant possession of suit property. He has further argued that the defendant has renovated the suit house by spending Rs.35,000/-. Therefore, the plaintiff has to pay the said amount also. The plaintiff has no right to seek for vacant possession. The defendant is not due of any rent to the plaintiff. Therefore, he prays to dismiss the suit.

18. On consideration of the entire evidence, pleadings and the arguments, the parties to the suit have admitted that the suit property was belonged to G. Ismail. It is also admitted that the plaintiff is the wife of G. Ismail. It is

also admitted that the defendant is in possession of suit property. The dispute according to the plaintiff is that the defendant is in possession of suit house on the basis of the rent. The defendant has not paid rent from the year 1999. Therefore, she has issued a notice and asked for arrears of rent and vacant possession of suit property. The dispute according to the defendant is that he is in possession of suit property based on the irrevocable GPA executed by G. Ismail dated 16.02.1990. He is having right to enjoy the suit properties up to 30 years as per the said GPA. During the period, the plaintiff or others have no right to seek possession of suit property. He is not enjoying the suit property on rental basis. The plaintiff and her children have also executed the agreement confirming the GPA and his possession over the suit property. Therefore, the plaintiff cannot seek for possession of suit property.

19. To answer the said dispute, I am referring to the available evidence of the parties here onwards.

20. The plaintiff has claimed that the defendant has taken possession of suit schedule property from her husband on tenancy basis and after the death of her husband, the defendant has continued the tenancy under her and the rent was enhanced to Rs.300/- again in the year 1998. The rent was enhanced to Rs.500/- per month and the defendant has paid the entire rent amount for the year 1998 and the defendant is due of rent to the suit property from the year 1999.

21. Against to the said claim, the defendant has contended that he is in possession of the suit property based on the GPA executed by G. Ismail dated 16.02.1990 and as per the agreement executed by the plaintiff and others as per the said GPA, he has paid Rs.30,000/- to the said G. Ismail and he is to continue in the suit property for 30 years. The plaintiff has to pay Rs.30,000/- to him as per the GPA. He has spent Rs.35,000/- towards the repair of house. The plaintiff is also liable to pay the said amount. Therefore, there is no landlord tenant relationship between him and the plaintiff.

22. The plaintiff has deposed to her claim in her evidence. The plaintiff has got marked Ex.P2 document to show that the said G. Ismail died. As per Ex.P2, the said G. Ismail died on 26.02.1995. The Ex.P1 and Ex.P3 shows that G. Ismail was the owner of suit schedule property. The Ex.P3, Ex.P4 and Ex.P5 shows that the defendant has filed application under Section 77A for grant of land. Based on the said application, the Land Tribunal has issued notice as per Ex.P5. The learned Assistant Commissioner has passed the order on Ex.P5 application as per Ex.P4 order. The learned Assistant Commissioner has rejected the claim of the defendant. The defendant has claimed that he was the tenant to the suit property as per the Ex.P5 document. But, the said claim of the defendant has been rejected by Assistant Commissioner as per the Ex.P4 order dated 08.02.2001. The said document establishes that the defendant was not the tenant to the suit schedule property.

23. The defendant has relied on Ex.D7 document. The Ex.D7 is the General Power of Attorney stated to be executed by G. Ismail in favour of the defendant. It is necessary to refer to Ex.D7 at page No.1. It reads as under:

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT

I, G. Ismail, son of Bava Beary, aged about 80 years, residing at Guruvayanakere of Kuvettu Village, Belthangady Taluk, P.O. Guruvayanakere do hereby nominate, appoint and constitute Sri. K. RAMACHANDRA, son of late K. Appu, aged about 32 years, residing at Guruvayanakere of Kuvettu Village, Belthangady Taluk, P.O. Guruvayanakere, D.K. District, as my lawful attorney in my name and on my behalf to do any of the following acts, things or deeds namely to be in rightful possession of the immovable property and the building therein and more fully described here below for and on my behalf.

24. It is necessary to refer to the Ex.D7 at para No.6. It reads as under:

"(6) as I have already received a sum of Rs.30,000/- from you today. I bind myself to keep this power of attorney in force for a period of 30 years or till the repayment of Rs.30,000/- is made by me to you whichever is later. My legal representative or anybody else shall not have any right to demand possession from you of the following property till I or my

representatives repay you Rs.30,000/- along with interest at the rate of 16% p.a. and also Rs.1,000/- which you have incurred expenses for this document. Further I have given all papers connected with the properties described below to your custody."

When we have referred to the above said stipulation of Ex.D7, the executant G. Ismail has not stated when he has received Rs.30,000/- from the defendant. If really, the amount was paid to the executant on the day of the GPA, there must be a consideration receipt for having received the amount. But no such consideration receipt has been produced by the defendant to show that the said G. Ismail has received the Rs.30,000/-.

25. Admittedly, the executant G. Ismail died on 26.02.1995 as per Ex.P2 document. When the executant died the GPA executed by him also dies. Therefore, the GPA becomes invalid on the death of executant. Therefore, the defendant cannot claim right or Authority over the suit schedule property based on the Ex.D7 document. The Ex.D7 is not having any value since 26.02.1995 as the executant G. Ismail died on the said date.

26. The said GPA is not the registered document. Therefore, the condition that has been incorporated in the said GPA are contrary to the requirements. Therefore, the said GPA does not give any right to the defendant to continue in possession of suit schedule property.

27. The defendant has claimed that the late G. Ismail, the plaintiff and their children have executed an agreement with regard to possession of immovable property as per Ex.D8 document. When the defendant has claimed that late G. Ismail has executed GPA as per Ex.D7 and handed over the possession of the suit schedule property, what was the necessity for the defendant to get one more document as per Ex.D8 for the same purpose. The Ex.D8 creates shadow on the Ex.D7 document. Therefore, it is difficult to accept Ex.D7 and Ex.D8 documents.

28. If the lease deed has not been registered, the said deed do not give right to the party and it cannot be said that the said deed is the yearly lease deed or the said deed creates lease for years or 30 years as per Ex.D7 and Ex.D8 documents. Therefore, it is to be treated and termed as the lease is monthly lease.

29. When we referred to the stipulations of Ex.D7, the executant has handed over the possession of the suit schedule building to the defendant. It is also stated that the executant has received Rs.30,000/-. It is also stated that the defendant has to enjoy the said property for 30 years and it is also stated that the executant has to repay Rs.30,000/- with interest at Rs.16% from the date of Ex.D7 till the payment of the amount. When we referred to the said terms of the Ex.D7, the said terms are inconsistent and they are contradictory to one another and the GPA has been found to be executed without any consideration. Therefore, any

document without valid consideration is invalid. Therefore, the Ex.D7 is also an invalid and fabricated document.

30. The defendant has claimed about Ex.D7 and Ex.D8 documents in this suit. But the defendant has not stated about the said documents before the Land Tribunal proceedings, which took place as per Ex.P3 to Ex.P5 documents. Therefore, the non disclosure of GPA and agreement by the defendant before the Land Tribunal proceedings creates a strong doubt with regard to the existence of the said documents during that time. Therefore, the said documents Ex.D7 and Ex.D8 cannot be believed and it cannot be held that the defendant has right to continue in possession of suit property for 30 years and the plaintiff has to pay Rs.30,000/- with interest.

31. When we referred to the page No.2 of Ex.D8 document there is a mention that the plaintiff and others are the legal representatives of G. Ismail. During the lifetime of G. Ismail the plaintiff and others cannot become legal representatives. Therefore, the said Ex.D8 also cannot be believed. The stipulations of Ex.D8 create doubt about the said document. Therefore, the Ex.D8 also not an acceptable document.

32. Admittedly the husband of the plaintiff was the owner of suit schedule property. The Ex.P1, Ex.P3, Ex.P5 and Ex.D1 to Ex.D6 establishes that the said G. Ismail was the owner of the suit A schedule property. The Ex.P2 establishes the death of G. Ismail. There is no dispute with

regard to the relationship of the plaintiff with the late G. Ismail. The plaintiff is the wife of G. Ismail. Therefore, the plaintiff is having right to get possession of suit properties.

33. The defendant has got examined the notary also. The examination of the notary and the examination of a witness found in Ex.D7 document do not make the Ex.D7 document a valid document. Therefore, the evidence of DW.1 to DW.3 cannot be believed in respect of Ex.D7 and Ex.D8 documents. Therefore, the plaintiff is entitle to get the suit property.

34. The GPA stated by the defendant is an invalid document on the death of executant as per Ex.P2 document. The said executant died on 26.02.1995. Therefore, the said GPA also died. Though there is a reference that it is an irrevocable GPA, the said stipulation do not stand as the executant died.

35. As the defendant has failed to establish the GPA and the agreement, it is necessary to accept the claim of plaintiff, because the plaintiff is the owner of the suit schedule property. Therefore, it is to be acceptable that the defendant was the tenant of the suit property on monthly rental basis and after the death of G. Ismail, the defendant has continued as a tenant to the suit property with the plaintiff.

36. As far the rent is concerned, no proper evidence is available. The rent that has been claimed by the plaintiff is found to be reasonable. The plaintiff has claimed

the arrears of rent at Rs.16,500/- as on the date of suit. Therefore, the plaintiff is entitle for the said arrears of rent.

37. The defendant has claimed that he has spent amount of Rs.35,000/- towards renovation of the suit schedule building. But, the defendant has not produced any document to that effect. The defendant has failed to prove the GPA and the agreement. Therefore, the claim of the defendant is not acceptable as correct. The defendant has contended that the suit of the plaintiff is bad for non joinder of children of plaintiff. There is no dispute between the plaintiff and her children with regard to suit property. The defendant cannot question the said fact. The plaintiff being the wife of G. Ismail, she can file the suit and recover possession of suit property on behalf of herself and other LRs of her husband. Therefore, the claim of the defendant is not acceptable as correct. Therefore, I am holding issue No.1 to 3 in the Affirmative, issues No.4 and 5 in the Negative and issue No.6 in partly affirmative.

*38. **ISSUE NO.7**: In view of my findings to issue No.1 to 6 and the reasons stated therein, I proceed to pass the following order.*

ORDER

The suit of the plaintiff is hereby decreed.

The defendant shall pay arrears of rent of Rs.16,500/- to the plaintiff. The defendant shall handover the vacant possession of the building to the plaintiff within two months from this date. Failing which, the plaintiff is at liberty to take possession of suit

property from the defendant as per law at the cost of defendant.

Considering the facts and the circumstances of this case, both the parties have to bear their own costs."

6. Aggrieved by the impugned judgment and decree of the Trial Court, the appellant-defendant approached the First Appellate Court in R.A.No.74/2009 in which the First Appellate Court framed the following points for consideration and answered the same against the appellant by holding as under:

" 13. From the materials placed before the court following points arise for my consideration;

1) Whether the Defendant has proved that he is entitled to protect his possession under Section 53A of Transfer of Property Act?

2) Whether the defendant has proved that he is entitled to be in possession under Ex.D7?

3) Whether the Judgment of the trial court calls for interference?

4) What order or decree?

14. After the closed scrutiny of the entire LCR and after hearing the arguments, my findings to the above points are as follows:-

Point No.1 : In the Negative
Point No.2 : In the In the Negative
Point No.3 : Partly in the Affirmative

Point No.4 : As per the final Order for the following:

R E A S O N S

15. ***POINTS NO.1 TO 3***: *All these points are interconnected and therefore they are taken up together for consideration.*

The plaintiff has filed the suit for arrears of rent and recovery of possession. It is her case that the plaint schedule property was granted to her husband G.Ismail by the Land Tribunal in LRY 174/79-80. The same has been admitted by the defendant. Further the plaintiff has contended that G.Ismail died on 26-02-1995. It has also been admitted by the defendant. The plaintiff has further stated that she is the wife of G.Ismail and the said fact has also been admitted by the defendant in his written statement. It is the contention of the plaintiff that the defendant is in occupation of the plaint schedule property as a tenant and the said tenancy commenced during the lifetime of her husband G.Ismail and after his death the rent was enhanced and the tenancy continued. It is her further case that the defendant is a chronic defaulter and therefore, she has filed the suit seeking for arrears of rent and for eviction. The property is situated in Kuvettu village, Belthangady Taluk. On the other hand, it is contention of the defendant that he was put in possession of the plaint schedule property by G.Ismail by executing an irrevocable General Power of Attorney dated 16-02-1991 which has been marked as Ex.D7. Even in Ex.D7 the property has been described as sy.no.25/2P3 measuring

0.01 acre with a tiled building situated in Kuvettu village, Belthangady Taluk. Therefore, there is no dispute regarding the identity and location of the property as argued by the learned counsel for appellant. It is his further contention of the defendant that on 17-02-1991 the plaintiff and her children have executed an agreement confirming the execution of Ex.D7 i.e. the power of attorney. So on the basis of Ex.D7 and Ex.D8 the defendant is contending that he is in lawful possession of the plaint schedule property and his possession is entitled to be protected. The execution of Power of Attorney and the Agreement of Sale has been specifically denied by the defendant. Therefore, heavy burden lies upon the defendant to prove the execution of the said power of attorney and the agreement of sale.

16. In this regard no doubt the defendant has examined one of the attesting witnesses to both Ex.D7 and Ex.D8 as DW2. He has filed affidavit in lieu of chief examination stating in para No.3 that the defendant after paying Rs.30,000/- to Ismail has taken the land and executed agreement of sale and general power of attorney. He has been cross examined wherein he has deposed that the defendant paid Rs.30,000/- to the plaintiff at Puttur. However, Ex.D7 and Ex.D8 have not been got identified through DW2. DW3 is the scribe of Ex.D7. However, the main matter in controversy is as to whether possession has been delivered under Ex.D7 and if so whether the alleged possession of the defendant under Ex.D1 is entitled to be protected under Section 53A of Transfer of Property Act.

From the perusal of Ex.D7 it is seen that it is an unregistered General Power of Attorney. It is dated 16-02-1990. It has been executed by one Ismail appointing the defendant as his G.P.A. It is stated that he has already received Rs.30,000/- from the agent and that the power of attorney shall be in force for a period of 30 years or till the repayment of Rs.30,000/- whichever is later. It is further stated that the said Ismail or his legal representatives shall repay Rs.30,000/- along with interest at the rate of 16% per annum and alsoRs.1000/- which has been incurred for execution of the said document. It is the contention of the defendant that he has been delivered possession under the said document. According to DW1 and DW2 the plaint schedule property has been purchased by the defendant under said Ex.D7.

17. Therefore, on the basis of an unregistered power of attorney the defendant is claiming his possession and title. ***As per Section 17 of the Registration Act, "any instrument which acknowledged the receipt or payment of any consideration on account of creation, declaration, appointment, limitation or extension of any such right, title or interest requires compulsory registration".*** *Therefore, the present Ex.D7 which is an unregistered document cannot be considered to have conveyed or assigned any right, title or interest in the plaint schedule property. It is seen that under Ex.D7 the husband of the plaintiff is said to have acknowledge the receipt or payment of consideration of Rs.30,000/-. It is very pertinent to note that as per Clause 6 of Ex.D7, Rs.30,000/- has been paid*

by the defendant to the husband of the plaintiff and the husband of the plaintiff has agreed to repay the said amount along with interest at the rate of 16% per annum. It is stated that the possession has been delivered and the husband of the plaintiff shall not have any right to take possession till the payment is made and the said power of attorney will be in force for a period of 30 years or till the repayment of Rs.30,000/-whichever is later. Therefore, if the recitals of the said document are considered there arises a doubt as to whether it is a mortgage. Even a mortgage is a compulsorily registerable document. Therefore, Ex.D7 which is an unregistered Power of Attorney cannot be held to have helped the defendant in any manner to prove his lawful possession and that his possession is entitled to be protected.

18. In fact in the land mark judgment of the ***Hon'ble Apex Court in Suraj Lamp & Industries Pvt. Ltd., -Vs- State of Haryana and Another,*** *the Hon'ble Apex Court has observed that,* ***"The modus operandi in such transactions is for the vendor or person claiming to be the owner to receive the agreed consideration, deliver possession of the property to the purchaser and execute the irrevocable General Power of Attorney or Agreement or a Will to avoid payment of stamp duty and registration charges to avoid payment of capital gains on transfers, to invest unaccounted money and to avoid payment of unearned increases due to Development Authorities on transfer".*** *Further in para 13 of the Judgment it has been*

observed that, ***"A power of attorney is executed by donor so as to enable the donee to act on his behalf and except in cases where power of attorney is coupled with interest, it is revocable".*** *It has further been observed that,* ***"The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof and he cannot use the power of attorney for his own benefit".*** *It is specifically stated that, "He acts in a fiduciary capacity". In para No.15 it has been held that, " Therefore, a S.A/GPA/WILL transaction does not convey any title nor create any interest in an immovable property and such transactions do not convey title and do not amount to transfer nor can they be recognized as valid mode of transfer of immovable property". It is further stated that, "The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property". Further it is stated that, "They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the TP Act". Therefore, Ex.D7 does not come to the rescue of the defendant to protect his possession.*

19. Further in the appeal memo it has been urged that his possession is entitled to be protected under Section 53A of T.P Act. First of all from reading Ex.D7 it cannot be said that it is a contract or agreement for sale. On the other hand, it is stated that the said G.P.A has been executed for a period of 30 years with the condition that the Principal or his

legal representative shall have no right to demand possession until payment of Rs.30,000/- along with interest. Therefore, it cannot be considered as an agreement for sale of immovable property. On the said ground itself it can be said that Section 53A of T.P Act is not applicable. As regards Ex.D8 it is seen that it has been said to be executed by the present plaintiff and her children on 17-02-1990 admitting the execution of Ex.D7 and binding for the terms and conditions of the said power of attorney. Therefore, under Ex.D8 possession has not been delivered and therefore, Ex.D8 does not also attract Section 53A of T.P.Act. Further from reading Section 53A of T.P.Act it is seen that the conditions necessary for the right and part performance are; 1) That there should be a contract for transfer; 2) It should be for consideration; 3) It should be for immovable property; 4) It should be in writing signed by transferor or someone on his behalf. Further it must also be proved that transferee has in part performance of the contract taken possession of the property or if he is already in possession continues in possession and has done some act in furtherance of the contract. Further it should also be proved that the transferor has performed or is willing to perform his part of the contract. Therefore, first of all it must be proved that there is a contract for transfer. But in this case as stated above the defendant has failed to prove Ex.D7 or Ex.D8. The recitals of the Ex.D7 does not show that it is a contract for sale of the plaint schedule property. Thirdly the defendant has not adduced any evidence to show that he has paid the entire consideration amount of Rs.30,000/-under Ex.D7. It is very

astonishing to see that under Ex.P7 the possession also has been said to be delivered and there is also a clause that the principal or his L.Rs would repay the amount along with interest which is totally against the principles of the mortgage or the contract of sale.

20. On the other hand, from cross examination of DW1 and DW2 it becomes very clear that the intention of the parties under Ex.D7 was purchase of the plaint schedule property by the defendant. Therefore, as held in the above decision of the Hon'ble Apex Court, a sale of an immovable property worth more than Rs.100/- cannot be effected by means of G.P.A, that too which is an unregistered General Power of Attorney. Therefore, the defendant has failed to prove that he is entitled to protection under Section 53A of T.P.Act on the basis of Ex.D7 or Ex.D8. Therefore, the defendant having failed to prove that he is entitled for protection under Section 53A of T.P.Act or that his possession is entitled to be protected on the basis of Ex.D7, it is to be held that the defendant having admitted that the plaintiff is the wife of the original owner G.Ismail who has died on 26-02-1995, it is to be held that the plaintiff is entitled for recovery of possession.

As regards arrears of rent as observed in the impugned judgment there is no evidence at all. When there is no evidence as regards the actual amount of rent agreed and the actual amount of rent due from the defendant, the finding of the lower court that the defendant is liable to repay Rs.16,500/- is to be held erroneous.

21. It was argued that only the wife of G.Ismail has filed the suit and her children have not been impleaded. A suit by a co-owner for possession is maintainable and therefore, the claim of the plaintiff cannot be rejected only because of her children are not arrayed as parties in the above suit. Therefore, any of the contentions raised by the appellant are to be held not tenable so as to reject the claim of the plaintiff with regard to recovery of possession. Therefore, to that extent interference in the judgment of the lower court is warranted. Accordingly I answer ***Points No.1 and 2 in the Negative and Point No.3 Partly in the Affirmative.***

22. ***POINT NO.3****: In the result, I proceed to pass the following –*

ORDER

Appeal is partly allowed.

Consequently the Judgment and Decree dated 01-04-2009 passed in O.S. 320/2001 on the file of Civil Judge & J.M.F.C., Belthangady with respect to payment of arrears of rent is set aside.

The suit of the plaintiff is dismissed with respect to claim for arrears of rent. However, the impugned judgment and decree with respect to possession is hereby confirmed.

No order as to costs. Draw decree accordingly."

7. As can be seen from the judgment and decree of the Trial Court and the First Appellate Court, both the Courts came to the correct conclusion that the appellant, who claimed to be in possession under a GPA dated 16.02.1990, cannot claim status of a tenant under the said document and as such, he was liable to vacate and hand over vacant possession of the property to the respondent. So also, both the Courts came to the conclusion that in the light of the judgment of the Apex Court in ***Suraj Lamp & Industries Pvt. Ltd., Vs. State of Haryana and another*** – ***(2012) 1 SCC 656***, the appellant cannot claim possession or protection of possession under Section 53-A of the Transfer of Property Act and Ex.D-7 the alleged GPA would not enure to the benefit of the appellant.

8. Under these circumstances, the claim of the respondent-plaintiff for recovery of possession from the appellant-defendant was upheld by both the Courts which decreed the suit insofar as the relief of possession is concerned and directed the appellant-defendant to hand over vacant possession of the suit schedule property to the respondent. However, insofar as mesne profits and arrears of rent are concerned, the First Appellate Court

set aside judgment and decree of the Trial Court and dismissed the claim for arrears of rent put forth by the respondent-plaintiff. In my considered opinion, the categorical findings of fact recorded by both the Courts cannot be said to be capricious or perverse nor suffer from any illegality or infirmity so as to give rise to any question of law, much less substantial question of law warranting interference by this Court in the present appeal, which is accordingly devoid of merits and the same is **dismissed** at the stage of admission itself.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC
List No.: 1 Sl No.: 28