

*** THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

+ Appeal Suit No.462 OF 2023

% 01.04.2024

Between:

Sreekanth Raju

Appellant

Vs.

Ravi Varma and another

Respondents

! Counsel for Appellants

: Sri Sheelam Ashok Reddy

^ Counsel for Respondents

: Sri M. Achuta Reddy

<GIST:

> HEAD NOTE:

? Cases referred :

1. (1996) 9 Supreme Court Cases 388
2. 2009 (7) SCC 363]
3. MANU/SC/1112/2021
4. MANU/SC/1093/2013

THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**I.A.No.1 of 2023**
In and
A.S.No.462 OF 2023**JUDGMENT:**

Aggrieved by the judgment and decree dated 13.09.2023 in O.S.No.90 of 2012 (new - O.S.No.782 of 2022) (hereinafter will be referred as 'impugned judgment') passed by the learned XI Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar (hereinafter will be referred as 'trial Court'), the defendant preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the appellant to file the present appeal, are as follows:

a) The plaintiff filed O.S.No.90 of 2012 (new - O.S.No.782 of 2022) against defendant Nos.1 and 2 claiming specific performance of deed of cancellation of agreement of sale cum GPA vide document No.4471 of 2007, dated 21.09.2012 and consequently cancelling the sale deed vide document No.5470 of 2012 dated 29.10.2012 in favour of defendant No.2. The brief averments of the plaint are as under:

i) Plaintiff is the owner of suit schedule property i.e., agricultural land in Sy.No.135 (Ac.7.18 guntas), 136 (Ac.4.24 guntas), 137 (Ac.6.06 guntas), 138 (Ac.2.27 guntas), 139 (Ac.0.11 guntas) and 140 (Ac.6.12 guntas) total admeasuring Ac.27.18 guntas in Edulapally Village, Kothur Mandal, Mahaboobnagar District having acquired the same by virtue of registered sale deed bearing document No.7554 of 2006. The plaintiff being owner of the suit schedule property and as he was in need of money, agreed to sell the suit schedule property. The defendant No.1, who is father-in-law of daughter of the plaintiff was interested to purchase the suit schedule property. As defendant No.1 and his son were in real estate business, they promised the plaintiff that they are in a position to find a purchaser and pay the money. However, defendant No.1 could not identify a buyer and could not bring the property to sale. Therefore, the plaintiff was regularly in contact and requesting defendant No.1 either to sell or get the agreement of sale cum GPA bearing document No.4471 of 2007 executed on 05.03.2007 be got cancelled or otherwise pay the consideration what was agreed which was not paid at the time of execution of document. Defendant No.1 neither sold the property nor paid the money, as such, the defendant No.1 agreed to come and execute the cancellation agreement before

the Sub-Registrar, Shadnagar.

ii) On 21.09.2012 the defendant No.1 has executed the deed of cancellation of agreement of sale cum GPA, where under the defendant No.1 had accepted that he did not pay any sale consideration in respect of the document that was executed vide document No.4471 of 2007 dated 05.03.2007 and that it was not acted upon and both the parties have agreed to treat the document as cancelled. It was also stated in the document that the document was never acted upon and no transaction took place out of the said document. However, the defendant No.1 did not come to the registration office to get the document presented and admitted for registration as required under law within.

iii) The plaintiff got issued a telegraphic notice to defendant No.1 to attend registration office on 25.10.2012 failing which the plaintiff will be compelled to seek enforcement by an appropriate direction from the court. Despite receipt of the notice, the defendant No.1 did not come forward to attend the registration office, though the plaintiff waited with the document at registration office. Hence, the plaintiff was constrained to file the suit seeking a specific direction directing the defendant to get the deed of cancellation to present and get it admitted or else present the document on behalf of the

defendant and get it admitted and registered as per law.

iv) After issuance of telegraphic notice, the defendant No.1 in collusion with defendant No.2, got executed sale deed bearing document No.5470 of 2012 dated 29.10.2012 in favour of defendant No.2 to an extent of Ac.25.18 guntas out of total extent of Ac.27.18 guntas. The said transaction is fraudulent, as such the plaintiff took criminal steps against defendants. Defendant No.2 is the brother-in-law of one D.V.S.Subramanyam Raju, who is the son of defendant No.1 herein. The said D.V.S.Subramanyam Raju is behind the entire conspiracy in siphoning of the properties including the suit properties.

b) In reply to the plaint averments, the defendant No.1 filed written statement, the brief averments of which are as under:

i) Plaintiff is no more the owner of the suit schedule property having sold it to defendant No.1 through agreement of sale cum GPA vide document No.4471 of 2007, dated 05.03.2007 having received sale consideration of Rs.10,99,000/-. Thus, defendant No.1 had become absolute owner and possessor of the property and out of it he sold an extent of Ac.2.00 gts in Sy.No.135 to Mohd. Assadullah Chisti and Mohd. Kamal Khan vide registered sale deed bearing

document Nos.2893 of 2010 and 2892 of 2010. Thereafter, this defendant entered into Agreement of sale with defendant No.2 on 05.09.2012 to sell the remaining land admeasuring Ac.25.18 guntas. After receiving total sale consideration, this defendant executed a registered sale deed in favour of defendant No.2 vide document No.5470 of 2012 dated 29.10.2012 for his immediate necessities.

ii) After payment of entire sale consideration of Rs.10,99,000/- by the defendant No.1, the plaintiff has handed over the physical possession of the suit schedule property to the defendant No.1. The sale consideration passed to the plaintiff is clearly mentioned in the recitals of AGPA vide document No.4471 of 2007. The plaintiff and his family members by playing fraud on this defendant created alleged deed of cancellation of agreement of sale dated 21.09.2012 without the knowledge and consent of this defendant, who came to know about the alleged deed of cancellation after receiving notice from the Court.

iii) Plaintiff is the father of this defendant's younger son DVS Varma Raju married plaintiff's daughter D. Rajeshwari Sirisha about 12 years back and they blessed with only son by name Ruthvik, who is aged about 5 years. During the life time of DVS Varma Raju, he has no cordial relationship with his wife, who was residing

separately with her parents for last two years. DVS Varma Raju fell sick with chronic disease of heart problem and hyper tension due to the harassment of his wife and her parents i.e., the plaintiffs herein and finally expired on 20.07.2012 at Fortune Towers, Madhapur, Hyderabad.

iv) After the death of this defendant's son i.e., DVS Varma Raju, the plaintiff and his family members in greedy of money and to absorb the properties of this defendant and his family members created false and fabricated documents by maintaining cordial relationship with this defendant. When this defendant went to see his grandson Ruthwik at the residence of the plaintiffs on 22.09.2012, the plaintiff and his family members i.e., daughter in law, wife of plaintiff and one DVV Laxmipathi Raju in collusion with each other took signatures of this defendant on non judicial stamp paper (5 Nos.) worth Rs.20/- and on other papers by making false representations that the property standing in the name of DVS Varma Raju situated at Gowadavelly Village to transfer the same in the name of his grandson Ruthvik. This defendant does not know English and blindly put the signatures on the said papers believing the plaintiff and his family members as they have maintained good cordial relationship. The plaintiff by playing fraud and

misrepresenting this defendant, prepared a document in the style of deed of cancellation of Agreement of sale cum GPA dated 21.09.2012 to retain the property. After knowing the alleged creation of deed of cancellation of agreement of sale cum GPA, this defendant filed a criminal complaint against the plaintiff and two others.

iv) This defendant shifted his residence from the address mentioned in the notice (4-67, Sampanbool, Hrijanwada, Jaganguda Village, Shameerpet Mandal, R.R. District) about 7 or 8 years back and came to Hyderabad. The plaintiff having known about the change of address, he sent the notice to the wrong address. Thus, this defendant is not aware about the notice, as such the question this defendant on receipt of notice agreeing to execute the deed of cancellation on 21.09.2012 does not arise.

v) This defendant on receipt of total sale consideration and having full capacity to convey the property, executed a registered sale deed in favour of defendant No.2 in respect of suit property. The sale transaction between this defendant No.1 and defendant No.2 is not fraudulent one and it is a fair deal.

vi) The suit of the plaintiff is barred by limitation and it is also not maintainable for seeking the relief of specific performance under the

provisions of Specific Relief Act. Therefore, the suit is liable to be dismissed on this ground. The cause of action is false and fictitious and made only for the purpose of filing the present suit. The plaintiff has approached the Court with unclean hands and by suppressing the real facts and by creating false and fabricated documents, as such the plaintiff is not entitled for any relief and finally prayed to dismiss the suit.

c) In reply to the plaint averments, the defendant No.2 filed written statement, the brief averments of which are as under:

i) The plaintiff has created a false story and in order to grab the property of the defendant No.2 filed the vexatious suit with all false and frivolous allegations. D. Sreenivasa Raju and the plaintiff have jointly purchased the suit schedule lands through registered sale deed bearing document No.7554 of 2006 dated 03.04.2006.

ii) The plaintiff offered to sell his undivided share of property in the suit schedule lands and executed registered agreement of sale cum GPA with possession in favour of defendant No.1 through registered document bearing No.4471 of 2007 dated 05.03.2007. Defendant No.1 paid entire sale consideration amount to the plaintiff for the sale of lands and thereafter the defendant No.1 sold the suit

schedule lands in favour of this defendant No.2 through registered sale deed bearing document No.5470 of 2012 dated 29.10.2012 and delivered the vacant possession of land to an extent of Ac.25.18 guntas of Edulapally Village. Pattadar passbooks and title deeds were issued in favour of defendant No.2 in respect suit schedule lands.

iii) It is utter false to aver that the plaintiff approached the defendant No.1 at his residence and requested him to come and execute the deed of cancellation of agreement sale cum GPA dated 05.03.2007. There was no occasion for the plaintiff to approach the defendant No.1 for the said purpose, as he had already sold the suit schedule lands to the defendant No.1. the defendant No.1 neither agreed to execute the deed of cancellation nor he agreed that he had not paid the sale consideration amount as alleged.

iv) The alleged document dated 21.09.2012 is bogus, forged and fabricated and brought into existence so as to cause hardship and irreparable loss to this defendant No.2. This defendant No.2 apprehends that defendant No.1 might be in collusion with the plaintiff in bringing the documents into existence. There was no contractual obligation on the part of defendant No.1 to perform or to execute any document in favour of the plaintiff. The contentions

made in para No.3 (x) of the plaint are highly objectionable and defamatory and this defendant No.2 is nothing to do with the sale transaction of defendant No.2 with defendant No.1. There was no fraud as alleged and the defendant No.2 reserves the right of suing the plaintiff for making such deliberate allegations. Thus, prayed to dismiss the suit.

d) Based on the pleadings of both the sides, the trial Court has framed the following issues:

1. *Whether the deed of cancellations of the agreement of sale cum GPA is true and valid?*
2. *Whether the sale deed dated 29.10.2012 executed by defendant No.1 in favour of defendant No.2 vide document No.5470 of 2012 is valid and binding on plaintiff?*
3. *Whether the plaintiff is entitled for specific performance of contract as prayed for?*
4. *To what relief?*

e) The plaintiff, in support of his contentions, examined PWs 1 and 2 and got marked Exs. A1 to A6. On the other hand, the defendant got examined DWs 1 and 2 and got marked Exs.B1 and B2. The trial Court on appreciating the evidence on record, has decreed the suit by cancelling the Agreement of sale cum General Power of Attorney bearing document No.4471 of 2007 dated 05.03.2007 executed by the plaintiff in favour of defendant No.1 and

consequently the registered sale deed bearing document No.5470 of 2012 dated 29.10.2012 executed by defendant No.2 is also cancelled.

4. Aggrieved by the judgment and decree, the defendant No.2 filed the present appeal.

5. Heard both sides and perused the record including the grounds of appeal.

6. The first and foremost contention of the learned counsel for the defendant No.2 is that plaintiff, who was examined as PW1, admitted to the receipt of total sale consideration under Agreement of Sale cum GPA document bearing No.4471 of 2007 dated 05.03.2007 and sold the same to defendant No.1, as such, defendant No.1 is the absolute owner and possessor and *bonafide* purchaser, thus, the Agreement of Sale - cum - GPA dated 05.03.2007 is valid document. It is further contended that the defendant No.2 is *bonafide* purchaser having purchased the property under Ex.A4 by paying considerable value without having any knowledge or notice of such alleged fraudulent cancellation deed i.e., Ex.A6, hence, the defendant No.2 cannot be put to loss or injury. As seen from Ex.A1 i.e., sale deed through which plaintiff and his brother-in-law D. Srinivasa Raju have jointly purchased Ac.54.38 guntas in the year

2006 for a sale consideration of Rs.10,99,000/-. Ex.A2 dated 05.03.2007 is the Agreement of Sale - cum - GPA through which plaintiff authorized defendant No.1 to alienate the suit schedule property to third parties. As per Ex.A2 the sale consideration is Rs.10,99,000/- in respect of Ac. 27.18 guntas, which is part and parcel of schedule property mentioned in Ex.A1. At this juncture, the trial Court has rightly observed that when with such a phenomenal increase in the cost of suit land of only Ac.27.18 guntas was purchased, which on the face of it is unusual, why had defendant No.1 not obtained 'sale deed' from plaintiff instead of agreement of sale cum GPA is concerned, there is no plausible explanation emanate from the defendant No.1. It is also to be seen that the trial Court in the impugned judgment observed that when a document evidences a transaction, no amount of oral evidence per contra to such transaction do become relevant, nor can such evidence be allowed to be adduced in terms of Section 92 of Indian Evidence Act.

7. The other contention of the learned counsel for the defendant No.2 is that the trial Court ought to have seen that there cannot be a cancellation agreement in respect of a registered sale deed in favour of the third party and or an agreement of cancellation in respect of a

registered document and the only remedy that is available for a party is to mutually cancel the document by going to the concerned sub-registrar or ought to have filed a suit for cancellation of the registered document in accordance with the provisions of the Specific Relief Act. It is further contended that Ex.A2 is Agreement of Sale - cum - GPA coupled with interest including delivery of possession and handing over of the link documents to the defendant No.1 and that mere nomenclature of the document would not change the nature of transaction. In **Namburi Basava Subrahmanyam v. Alapati Hymavathi and others**¹, the Honourable Supreme Court observed that the nomenclature of the document is not conclusive and the recitals in the document as a whole and the intention of the executant and acknowledgment thereof by the parties are conclusive. It was further observed that the Court has to find whether the document confers any interest in the property in *praesenti* so as to take effect *intra vivos* and whether an irrevocable interest thereby, is created in favour of the recipient under the document. There is absolutely no doubt that the contents of the documents need to be understood and it is nothing to do with the nomenclature of the document. A perusal of Ex.A2 discloses that as per clause No.7 the principal is unable to execute the sale transaction and get them

¹ (1996) 9 Supreme Court Cases 388

registered personally due to domestic pre-occupations. Further as per clause No.19 the principal has to ratify and confirm and agree to ratify and confirm all the acts deed receipts and things lawfully done by the attorney. From these two clauses, it is evident that the transactions done by the agent i.e., defendant No.1 would be completed only when the plaintiff ratifies the acts of the defendant No.1 and that sale transaction is not yet completed. When the sale transaction is not completed, the defendant No.1 will not have any rights to alienate the suit schedule property to defendant No.2, more particularly when Ex.A6 – Cancellation deed in respect of Ex.A2 - Agreement of sale – cum – GPA was already executed between plaintiff and defendant No.1.

8. It is further contended that the trial Court ought to have seen that the entire plaint as well as alleged cancellation of agreement would show that the same is purported to be cancelled for non payment of alleged sale consideration of Rs.10,99,000/-, in such circumstances, money would have been an adequate compensation to the plaintiff and there was no need for specific performance of cancellation of agreement of sale cum GPA. It is to be seen that the Agreement of Sale - cum – GPA was executed in the year 2007 and five years thereafter the said agreement was cancelled. It is the

plaintiff who has given authorization to the defendant No.1 to alienate the suit schedule property to third parties and on the failure of the defendant No.1 to alienate the suit schedule property to third parties, it is the discretion of the plaintiff either to ask for specific performance or refund of money. On one hand, the defendants are contending that the consideration under Ex.A2 is received by the plaintiff and on the other hand defendants are contending that money would have been an adequate compensation to the plaintiff and there was no need for specific performance or cancellation of agreement of sale cum GPA. Thus, the defendants are blowing hot and cold at a time. If at all the defendant No.1 has paid sale consideration under Ex.A2 to the plaintiff, there is no necessity for the defendant No.2 to contend that money would have been an adequate compensation to the plaintiff instead of seeking relief of specific performance or cancellation of agreement of sale cum GPA.

9. It is to be seen that the defendant No.1 is a GPA holder of plaintiff based on registered Agreement of sale – cum – GPA and based on such registered Agreement of Sale – cum – GPA, the defendant No.1 has alienated the suit schedule property to the defendant No.2. Whether such alienation by defendant No.1 in favour of defendant No.2 in respect of suit schedule property is valid

as per law, is the question that has to be decided at this juncture.

In **Suraj Lamps and Industries Private Limited v. State of Harayana and others**² the Honourable Supreme Court observed as under:

“16. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of ‘GPA sales’ or ‘SA/GPA/WILL transfers’ do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. 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. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.”

10. In view of the principle laid down in the above said decision, it can be held that transactions in the nature of GPA do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. Though the principle laid down in **Namburi Basava Subrahmanyam case (supra)** is absolutely correct, it is to be seen that in the case on hand, as per Ex.A6, wherein the defendant No.1 subscribed his signature, the consideration of Rs.10,99,000/- was not paid to plaintiff. A contract without consideration is invalid in view of the provisions of Contract

² 2009 (7) SCC 363]

Act. In **Kewal Krishan v. Rajesh Kumar and others**³ the

Honourable Supreme Court observed as under:

15. Section 54 of the Transfer of Property Act, 1882 (for short “the TP Act”) reads thus:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

16. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the complaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half share of the appellant in the suit properties. In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the

³ MANU/SC/1112/2021

basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10th April 1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings."

Even in the case on hand, the plaintiff executed Ex.A2 cancelling the agreement of sale cum GPA on the ground that consideration was not paid by defendant No.1. Furthermore, the defendant No.1 alleged to have executed Ex.A4 in favour of defendant No.2 without consideration with an intention to deprive the rights of the plaintiff over the suit schedule property.

11. The appellant/defendant No.2, who is examined as DW2 admitted in his cross examination that he may have done business worth of Rs.80,00,000/- upto the year 2012 and filing income tax returns since the year 2011 and 2012. He further admitted that he shows all his business transactions in his income tax returns, however, he adds that since 2012 to 2017 he did not show transactions of his business in his income tax returns. DW2 further admits that he has not shown the transactions between himself and defendant No.1 with regard to the sale deed dated 29.10.2012 vide document No. 5470 of 2012 – Ex.A4. If at all the transaction

between himself and defendant No.1 is a genuine one, certainly he would have shown the transaction in his income tax returns, otherwise, there is no reason for the defendant No.2 in not disclosing the said transaction between himself and defendant No.1 in his income tax returns.

12. DW2 further admitted that as per Ex.A4 sale deed, the market value of the property as per basic value register is Rs.1,27,25,000/-. A perusal of Ex.A4, it is clearly mentioned that the value of the property is Rs.5 lakhs per acre and the total value of land to an extent of Ac.25.18 guntas is Rs.1,27,25,000/- and they have also paid stamp duty. But for the reasons best known to the defendants the total sale consideration of the property mentioned in Ex.A4 is Rs.63,62,500/-. Furthermore, Ex.A4 was executed in pursuance of an agreement of sale on which the defendant No.2 alleged to have paid Rs.50,00,000/- as advance sale consideration. But neither the defendant No.1 nor defendant No.2 could produce the alleged agreement of sale before the trial Court and they did not even disclose the date on which the advance sale consideration of Rs.50 lakhs was alleged to have been paid by the defendant No.2 to defendant No.1. However, the appellant filed I.A.No.1 of 2023 under XLI Rule 27 of the Civil Procedure to receive the Agreement of Sale

dated 05.09.2012 and the old pattadar passbook and the old title deed both bearing patta No.1064 and the new pattadar passbook and title deed bearing Khata No.1122. The reason assigned by the appellant for not producing the documents before the trial Court is that the appellant could not trace the documents at the relevant time despite due diligence. Considering the submission of learned counsel for the appellant and since it is the contention of the defendant No.2 that these documents are relevant for proper adjudication of the case, this Court is inclined to consider the plea of defendant No.2 to receive the documents filed along with I.A.No.1 of 2023. Accordingly, I.A.No.1 of 2023 is ordered. As seen from the documents filed along with I.A.No.1 of 2023, the name of the defendant No.2 is mutated in the revenue records. But the fact remains is the defendant No.2 is claiming his rights through defendant No.1, who is only a GPA holder of plaintiff. When the title of defendant No.1 is not perfected, the defendant No.2, who is the subsequent purchaser from defendant No.1, cannot be considered to be a *bonafide* purchaser.

13. A perusal of Ex.A4 discloses that it was written with different ink that balance of Rs.13,62,500/- will be paid on the execution date i.e., on 29.10.2012. Thus, the columns in the sale deed were kept blank for the reasons best known to the defendants. A perusal of

Ex.A4 further discloses that column No.7 was inserted at page No.3 and it was inscribed that principal vendor is alive and AGPA is in force till today. If at all the AGPA is valid and in force as on the date of Ex.A4, there is no necessity for the defendants to mention specifically about the existence of AGPA by inserting column No.7 by writing with pen.

14. A perusal of Ex.A4 does not clearly disclose as to what kind of document was executed by the plaintiff in favour of the defendant No.1 under Ex.A2. On one hand, the defendant No.1 submitted in Ex.A4 that Ex.A2 is Agreement of Sale cum GPA and on the other hand he submitted that under Ex.A2 the plaintiff has alienated it to him. Thus, there is an ambiguity as to whether Ex.A2 is a sale deed or an agreement of Sale cum GPA. If at all the plaintiff has sold the property to the defendant No.1, there is no necessity for the plaintiff to execute agreement of sale cum GPA and in fact he ought to have executed a sale deed.

15. As stated supra, DW2 deposed in his cross examination deposed that he done business worth of Rs.80 lakhs and that he worked as Consultant Geologist and also did real estate business. But DW2 pleaded ignorance that he had no idea about the open market value of the property purchased under EX.A4 as on the year

2012 and even the present value. A prospective purchaser, who is intending to purchase a property, more particularly, a person, who is thorough with the real estate business, is bound to have knowledge about the property, more specifically the market value of the property. But surprisingly, the defendant No.2 pleaded ignorance about the market value of the property, which he is going to purchase it.

16. It is pertinent to note that the attestors to Ex.A4 are none other than the brother in laws of DW2, who admitted that Mr. Venkat Ram Reddy came on his behalf and Subramanya Raju came on behalf of Defendant No.1. But surprisingly DW1 denied that his son Subrahmanya Raju is one of the attesting witnesses to the sale deed.

17. DW2 admitted that he has paid Rs.63,62,500/- as sale consideration under Ex.A4 by way of cash but he has not shown the same in his income tax returns. DW2 deposed that he paid cash of Rs.50,00,000/- under agreement dated 05.09.2012. A suggestion was given to DW2 that without payment of sale consideration, DW2 and defendant No.1 and his son brought the sale deed into existence. This suggestion gains strength from the following admission made by DW2.

“It is true that the sale deed was typed keeping the amount columns blank.”

However, DW1 pleaded ignorance as to whether the column in consideration of sale deed was kept blank and it was filled later with pen. Thus, the defendant No.1 is not even aware of the contents of the document under Ex.A4.

18. In **I.S.Sikandar (d) by LRs v. K. Subramani and others**⁴ the Honourable Supreme Court observed that the Court has to see the conduct of party as well as attending circumstances of case regarding whether readiness and willingness of party can be inferred. A perusal of Ex.A2 discloses that the main purport of executing the said deed is authorizing defendant No.1, who is in the field of real estate, to sell the suit schedule property to third parties. But DW1 admitted in his cross examination that since the date of the agreement of sale cum – GPA vide document No.4471 of 2007 dated 05.03.2007 till death of Varma Raju i.e., from 2007 till execution of alleged sale deed in favour of D2 in the year 2012, he has not made any alienation of the property to third parties. It is to be seen that the son of defendant No.1 died on 20.07.2012 and two months thereafter the defendant No.1 purchased stamp paper on 03.09.2012 and executed agreement of sale dated 05.09.2012 in favour of

⁴ MANU/SC/1093/2013

defendant No.2 and in pursuance of the same executed Ex.A4 in favour of defendant No.2 on 29.10.2012 in order to defeat the rights of the plaintiff in respect of suit schedule property. Since the defendant No.1 failed to fulfil his promise to sell the property to third parties, the plaintiff got executed a deed cancellation of Agreement of Sale - cum - GPA by obtaining the signature of defendant No.1 on it and when the plaintiff insisted the presence of defendant No.1 for registration of the cancellation deed document, the defendant No.1 is postponing on one pretext or the other. It is to be seen that defendant No.2 is none other than the brother in law of his second son of defendant No.1. It is also admitted that A. Venkatram Reddy another attesting witness of document bearing No.5470 of 2012 dated 29.10.2012 is one of the distant relatives of his son Subrahmanya Raju and Srikanth Raju (D2). Thus, the two attesting witnesses to the document are none other than the closely related family members of defendant No.1.

19. As per the record, originally, the daughter of plaintiff was given in marriage to the son of defendant No.1 but the son of defendant No.1 got addicted to alcohol, which became the prime reason for the daughter of the plaintiff to get herself separated from the son of the defendant No.1. In the meanwhile, the son of defendant No.1 got

issued legal notice to the daughter of plaintiff asking her to join his matrimonial life. But the son of the defendant No.1 died on 20.07.2012. Thereafter disputes arose between the members of two families. DW1 admitted that during life time of his son Varma Raju there were differences between him and his wife Rajeshwari Shireesha with regard to consumption of alcohol by Varma Raju and Rajeshwari Shireesha was at the house of her parents on the date of death of Varma Raju.

20. DW1 deposed that he cannot read and write English language. The plaintiff and his family members i.e., daughter in law, wife of plaintiff and one DVV Laxmipathi Raju in collusion with each other took signatures of this defendant on non judicial stamp paper (5 Nos.) worth Rs.20/- and on other papers by making false representations that the property standing in the name of DVS Varma Raju situated at Gowadavelly Village to transfer the same in the name of his grandson Ruthvik. It is further deposed by defendant No.1/DW1 that he does not know English and blindly put the signatures on the said papers believing the plaintiff and his family members as they have maintained good cordial relationship. At this juncture, the trial Court has rightly observed in the impugned judgment that the landed property at Gowdavelly village

stands in the name of son of defendant No.1 and the daughter of the plaintiff and in such circumstances, the defendant No.1 cannot even imagine to transfer the property in the name of his grandson by executing any kind of document, more particularly, the document under Ex.A6. Any transfer of property at Gowdavelly village belonging to son and daughter in law of defendant No.1 can be made by daughter – in – law of defendant No.1 in favour of grandson of defendant No.1 but not defendant No.1. Thus, the reason assigned by the defendant No.1 for subscribing his signature on Ex.A6 is appearing to be far from truth.

21. DW1 deposed that the sale deed bearing document No.5470 of 2012 dated 29.10.2012 was got prepared by defendant No.2 and that he do not know the contents of the said document. From the above paragraph, it is clear that the defendant No.1 does not know reading and writing of English. Ex.A6 and Ex.A4 are drafted in English. Thus, the defendant No.1 is not aware of the contents of both the documents and he admitted to have signed in both the documents without knowing the contents of the documents. The defendant No.1 is taking advantage of this situation and speaking falsehood against the plaintiff that he does not know the contents of the document as the relationship between plaintiff and defendant No.1 were strained

after the death of son of defendant No.1. Since he has executed Ex.A4 in favour of defendant No.2, who is none other than the brother – in – law of his second son, though he does not know the contents of Ex.A4, he has signed it without any inconvenience. Once, the signature is admitted, it is deemed that the person, who subscribes his signatures is aware of the contents of the document until and unless contrary is proved. The defendants failed to establish that the defendant No.1 has subscribed his signature on Ex.A6 without knowing the contents of document. Though the learned counsel for the defendant No.2 contended that the plaintiff and defendant No.1 colluded with each other and depriving his right over the suit schedule property, it is to be seen that defendant No.2 is closer relative of defendant No.1 rather than plaintiff. Hence, any amount of collusion between the parties can be inferred from the transactions between the defendant No.1 and defendant No.2 and their conduct in executing Ex.A4 despite having knowledge that there was cancellation agreement between plaintiff and defendant No.1 cancelling the agreement of sale cum GPA executed by plaintiff in favour of defendant No.1.

22. It is the contention of the defendant No.2 that plaintiff, who on one hand is seeking cancellation of agreement of sale cum GPA

dated 05.03.2007, has not even questioned or challenged the above mentioned sale deeds executed by defendant No.1 in favour of third parties. It is also contended that the plaintiff has not made the purchasers of Exs.B1 and B2 as parties to the suit. It is to be seen that the Ex.A2 was executed in respect of property admeasuring Ac.27.18 guntas and in pursuance of the same defendant No.1 alienated two acres of land under Exs.B1 and B2. The plaintiff is not challenging those two sale deeds as those deeds were executed in the year 2010 and by that time the agreement of sale - cum - GPA was very much subsisting. When the plaintiff is not challenging sale deeds under Exs.B1 and B2, the question of non joinder of purchasers under Exs.B1 and B2 does not arise, more particularly, when the Agreement of Sale - cum - GPA under Ex.A2 is subsisting as on the date of execution of Exs.B1 and B2.

23. It is the contention of the defendant No.2 that plaintiff is a third party to Ex.A4, which was validly executed by defendant No.1 in favour of defendant No.2, as such the plaintiff cannot seek cancellation of the said document. In this regard, the trial Court in the impugned judgment rightly observed that Ex.A4 reflects that the said document was in fact executed by the defendant No.1 himself, therefore, the plaintiff being the affected party has every right to

challenge the said document.

24. It is further contention of the defendant No.2 that the trial Court ought to have dismissed the suit as the plaintiff failed to seek for the relief of recovery/payment of sale consideration. It is to be seen that right from the inception of the suit the only grievance is that the defendant No.1 having agreed to sell the schedule property to third parties, failed to fulfil his obligation and that while executing Ex.A2 there was no consideration paid by the defendant No.1 to the plaintiff. As stated supra, the purpose of executing agreement of sale - cum - GPA is authorizing defendant No.1 to sell the schedule of property to third parties and the plaintiff himself asserted that no consideration was paid. Further, Ex.A2 is not a sale deed and it is only an agreement of sale - cum - GPA, as such, the plaintiff being *bonafide* party cannot insist for a payment/recovery of the money, which is not at all existing in either of the transactions i.e., transaction between plaintiff and defendant No.1 and transaction between defendant No.1 and defendant No.2.

25. It is the contention of the defendant No.2 that existence and veracity of Ex.A6 is being questioned for being fraudulent, fabricated, illegal and nonest in law, as such no relief especially that of specific performance ought not to have been granted. As evident

from Ex.A6 and as per the admission of DW1, the defendant No.1 has subscribed his signature and also failed to explain the palpable reasons for subscribing his signature on Ex.A6. In such circumstances, it cannot be said that Ex.A6 is fraudulent.

26. It is the contention of the defendant No.2 that the trial Court ought to have dismissed the suit as plaintiff has not sought recovery of possession of the suit schedule property despite being fully aware about the suit property being in possession and enjoyment of the defendant No.2 pursuant to sale deed dated under Ex.A4. As stated supra, the rights of defendant No.2 over the schedule property are subject to the perfection of title over the schedule property by defendant No.1. When the title of the defendant No.1 is defective, the defendant No.2 has nothing to say with regard to his title and possession as he alleged to have obtained such rights through defendant No.1. Once the Agreement of Sale - cum - GPA under Ex.A2 is cancelled by executing Ex.A6 i.e., prior to execution of Ex.A4, the defendant No.2 cannot claim any rights in respect of suit schedule property.

27. The defendant No.2 has raised several grounds in this appeal, however, it is pertinent to note that most of those grounds were not raised by the defendant No.1 before the trial Court. The proper

function of an appellate court is to correct an error in the judgment or proceedings of the court below and not to adjudicate upon a different kind of dispute a dispute that was never taken before the court below. It is only in exceptional cases that the appellate court may in its discretion allow a new point to be raised before it provided there are good grounds for allowing it to be raised and no prejudice is caused thereby to the opponent of the party permitted to raise such point. For the reasons best known, the defendant No.2 failed to satisfy this Court that there are exceptional circumstances to entertain the new grounds urged in this appeal.

28. It is to be seen that all the alleged alienations made by the defendant No.1 in favour of third parties were made in the capacity of GPA holder but not in the capacity of 'owner'. One of the grounds urged by the defendant No.1 for executing sale deeds in the capacity of GPA holder but not as a 'owner' is that though sale consideration is paid, the plaintiff is not coming forward to executed registered sale deed in his favour. If at all the plaintiff is not coming forward to execute sale deed in pursuance of Ex.A2, certainly the defendant No.1 is entitled to initiate necessary steps to proceed against the plaintiff in accordance with law. The defendant No.1 has not even issued

any legal notice to the plaintiff asking him to come forward and execute sale deed in respect of suit schedule property in pursuance of Ex.A2. Even as per the covenants of Ex.A2, the defendant No.1 cannot be considered as owner of the suit schedule property and in such circumstances, since the defendant No.2 alleged to have purchased the suit schedule property from defendant No.1, who has no better title, then certainly the defendant No.2 cannot claim his rights over the suit schedule property as a *bonafide* purchaser.

29. In view of the above facts and circumstances, this Court do not find any merits in the appeal to set aside the impugned Judgment and in fact, the trial Court has elaborately discussed all the aspects and arrived at a proper conclusion. Thus, the appeal is liable to be dismissed.

30. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 01.04.2024

Note: LR copy to be marked.
B/o. AS