

IN THE SUPREME COURT OF INDIA

{S.C.R. ORDER XXI RULE 3 (1) (A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

D.No. 25871/2023

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 28.02.2023 passed by the  
Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014  
(SP) APPEALED FROM)

IN THE MATTER OF:

Smt. Narasamma and Others

... Petitioners

Versus

Sri. C.S. Raghavan Nair and Others

... Respondents

WITH

I.A. NO. OF 2023

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL  
TRANSLATION OF THE DOCUMENTS IN THE VERNACULAR

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: AWANTIKA MANOHAR

DIARY NO. 25871/2023

### DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.

✓  
*Awantika Manshakar*

ADVOCATE FOR THE PETITIONER

DATED: 03/07/2023

## INDEX

## RECORD OF PROCEEDINGS

[illegible]

INDEX

| S. No. | Particulars of Document   | Page No. Of part which it belong |         | Remarks |
|--------|---|----------------------------------|---------|---------|
| I      | Ii  | Iii                              | Iv      |         |
| 1.     | Office Report on Limitation   | "A"                              | A       |         |
| 2.     | Listing performa  | A1 - A2                          | A1 - A2 |         |
| 3.     | Cover page of paper book  |                                  | A3      |         |
| 4      | Index of record of Proceedings  |                                  | A4      |         |
| 5      | Limitation report prepared by the Registry  |                                  | A5      |         |
| 6      | Defect List   |                                  | A6      |         |
| 7      | Note sheet  |                                  | Nos.    |         |
| 8      | List of Dates   | B - P                            |         |         |
| 9      | True copy of the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 |                                  |         |         |

|    |  |        |  |  |
|----|--|--------|--|--|
|    | (SP) (IMPUGNED ORDER)  | 1-54   |  |  |
| 10 | Special Leave Petition with Affidavit  | 52-72  |  |  |
| 11 | <u>ANNEXURE P-1</u> : True copy of the agreement to sell dated 01.04.1980  | 73-75  |  |  |
| 12 | <u>ANNEXURE P-2</u> : True copy of GPA dated 16.10.1981 executed by K Bettaiah in favour of Respondent No.1                    | 76-80  |  |  |
| 13 | <u>ANNEXURE P-3</u> : True copy of the lease deed dated 01.04.1988   | 81-83  |  |  |
| 14 | <u>ANNEXURE P-4</u> : True copy of the plaint filed in O.S.No.4433/1991 dated 25.07.1991 before the City Civil Judge Bangalore | 84-93  |  |  |
| 15 | <u>ANNEXURE P-5</u> : True translated copy of the sale deeds dated 03.06.1992  | 94-107 |  |  |
| 16 | <u>ANNEXURE-P-6</u> : True copy of the order dated 11.02.1993 passed by the  |        |  |  |

|    |   |         |  |  |
|----|---|---------|--|--|
|    | Court of XV Additional City Civil Judge Bangalore in OS No.4433/1991  | 108-125 |  |  |
| 17 | <u>ANNEXURE P-7:</u> True copy of the amended plaint filed in O.S.No.4433/1991 dated 01.08.2012 before the City Civil Judge at Bangalore  | 126-143 |  |  |
| 18 | <u>ANNEXURE P-8:</u> True copy of the written statement filed by the Defendant Nos.2 and 3 in O.S.No.4433/1991 dated 18.03.2013   | 144-153 |  |  |
| 19 | <u>ANNEXURE P-9:</u> True copies of the evidence affidavit and transcript of examination in chief and cross-examination of P.W. 1 and transcript of examination in chief and cross-examination P.W. 2 | 154-203 |  |  |
| 20 | <u>ANNEXURE P-10:</u> True copies of the  |         |  |  |

|    |  |  |         |  |
|----|--|--|---------|--|
|    | evidence affidavits and transcripts of cross examination of D.W. 1, 2 & 3 dated 06.12.2013 & 15.03.2014  |  | 204-278 |  |
| 21 | <u>ANNEXURE P-11</u> : True of the judgement dated 01.09.2014 passed by the Court of the VIII Additional City Civil & Sessions Judge (CCH:15) At Bengaluru City in OS No.4433/1991 |  | 279-361 |  |
| 22 | <u>ANNEXURE P-12</u> : True copy of the memo appeal filed by the Petitioners before the Hon'ble High Court of Karnataka as R.F.A No.1646/2014                                      |  | 362-398 |  |
| 23 | <u>I.A. NO. OF 2023:</u><br><br>APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION OF THE DOCUMENTS IN THE VERNACULAR  |  | 399-401 |  |
| 24 | Filing Memo  |  | 402     |  |
| 25 | Vakalatnama  |  | 403-404 |  |

'A'

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) APPEALED FROM)

IN THE MATTER OF:

Smt. Narasamma and Others

... Petitioners

Versus

Sri. C.S. Raghavan Nair and Others

...Respondents

**OFFICE REPORT ON LIMITATION**

1. The Petition is /are within time.
2. The Petition is barred by time and there is delay of Nil days in filing the same against final judgement and order dated 28.02.2023 and petition for condonation of nil days delay has been filed.
3. There is delay of nil days in refilling the Petition and petition For condonation of nil delay in refilling has been filed.

BRANCH OFFICER

New Delhi

Dated: 03.07.2023



## PROFORMA FOR FIRST LISTING

SECTION -

The case pertains to (Please tick/check the correct box):

|                          |  |
|--------------------------|--|
| <input type="checkbox"/> | Central Act: (Title) _____                                     |
| <input type="checkbox"/> | Section: _____   |
| <input type="checkbox"/> | Central Rule: (Title) _____                                    |
| <input type="checkbox"/> | Rule No(s): <u>N/A</u>   |
| <input type="checkbox"/> | State Act: (Title) _____ <u>N/A</u>                            |
| <input type="checkbox"/> | Section: _____ <u>N/A</u>                                      |
| <input type="checkbox"/> | State Rule: (Title) _____ <u>N/A</u>                           |
| <input type="checkbox"/> | Rule No(s): <u>N/A</u>   |
| <input type="checkbox"/> | Impugned Interim Order: (Date) <u>N/A</u>                      |
| <input type="checkbox"/> | Impugned Final Order/Decree: (Date) <u>28.02.2023</u>          |
| <input type="checkbox"/> | High Court: (Name) <u>High Court of Karnataka at Bengaluru</u> |
| <input type="checkbox"/> | Names of Judges: <u>Hon'ble Mr. Justice N S Sanjay Gowda</u>   |
| <input type="checkbox"/> | Tribunal/ Authority: (Name) <u>N/A</u>                         |

1. Nature of matter: ☒ Civil ☐ Criminal
2. (a) Petitioner/ Appellant No.1: Sri R Srinivas  
(b) e-mail ID: N/A  
(c) Mobile Phone Number: N/A
3. (a) Respondent No.1: Sri Rajanna AND OTHERS  
(b) e-mail ID: N/A  
(c) Mobile Phone Number: N/A

4. (a) Main category classification: 18  
(b) Sub classification: 1807
5. Not to be listed before: N/A
6. (a) Similar disposed of matter with citation,  
if any, & case details: No similar disposed off matter  
  
(b) Similar pending matter with case details: **NO SIMILAR MATTER  
PENDING**
7. **Criminal Matter:** N/A  
(a) Whether accused/convict has surrendered: ☐ Yes ☐ No  
  
(b) FIR No. N/A Date: N/A  
(c) Police Station: N/A  
(d) Sentence Awarded: N/A  
(e) period of sentence undergone including period of Detention/Custody  
undergone N/A
8. **Land Acquisition Matter:**  
(a) Date of Section 4 notification: N/A  
(b) Date of Section 6 notification: N/A  
(c) Date of Section 17 notification: N/A
9. **Tax Matter:** State the tax effect: N/A
10. Special Category (first Petitioner/ Appellant Only): N/A  
☐ Senior Citizen > 65 ☐ SC/S ☐ Woman/C ☐ Disabl ☐ Legal  
years T hild ed  
Aid ☐ In custody  
case
11. Vehicle Number (in case of Motor Accident Claim Matters): N/A

FILED BY

DATE: 03.07.2023

(AWANTIKA MANOHAR)

AOR FOR PETITIONERS

AOR CODE NO.2866

SYNOPSIS

That the present Special Leave Petition impugns the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) whereby the Hon'ble High Court has dismissed the appeal of the Petitioners herein.

That Sri. K. Bettaiah, the husband of the Petitioner No 1 and father of the Petitioner No.2, acquired an immovable property forming part of Sy. No.1 at Kanteeravanagar Main Road, Yeshwantanpura, Bangalore ("**Scheduled Property**"), under the family partition deed dated 13.11.1981. Subsequently, on 01.04.1988, Sri. K. Bettaiah leased the Scheduled Property to the Respondent No.1 (who was the Plaintiff No.1 before the Ld. Trial Court). After the demise of Sri K. Bettaiah on 28.09.1988, the Respondent No.1 stopped paying rent and consequently the Petitioners were constrained to file a suit (bearing no. HRC No. 2760.1992) for eviction of the Respondent No.1. However, in the said eviction suit the Respondent No.1 disclosed that he has an ex-parte decree dated 30.08.1993, in O.S. No. 4433 of 1991 ("**Suit**"), for specific performance of the agreement to sell dated 01.04.1980 ("**Agreement to Sell**"), against the Petitioners. Consequently, the Petitioners challenged the ex-parte decree and the same was set aside by an order dated 27.09.2010 and the Suit was restored for fresh consideration.

It is the case of the Respondent No.1, for the relief of specific performance, that Sri K. Bettaiah, executed the Agreement to Sell in his favour and that subsequently Sri K. Bettaiah also executed a general power of attorney ("**GPA**") on 16.10.1981.

C

Before advertng to errors in the order of Ld. Courts below, it is pertinent to mention the following admitted facts in the trial:

- a) That the Respondent No.1 had only furnished a photocopy of the Agreement to Sell. The Respondent No.1 had not deposed and/or had not tendered any evidence to establish the existence and execution of the said agreement.
- b) That the Respondent No.1, on 25.07.1991 had filed the Suit for specific performance and then had subsequently sold the Scheduled Property to the Respondent No. 2 to 4, during the pendency of the Suit and in the sale deeds with Respondent No. 2 to 4, the Respondent No.1 had declared itself as the owner of the Scheduled Property, despite the fact the Suit was pending.
- c) The Respondent No.1 had not even produced the original GPA but had relied upon its certified copy. It is also apposite to mention that the GPA, even being a subsequent document, do not refer to the Agreement to Sell and/or payment of any consideration.
- d) It is admitted by the Respondents admitted that Sri K. Bettai had become the owner of the Scheduled Property on 13.11.1981, i.e. subsequent to the purported execution of the Agreement to Sell and GPA.
- e) It is the Petitioners who have established the execution of the lease deed dated 01.04.1988 by Sri. K. Bettaiah, through deposition of the attesting witnesses of the lease deed.
- f) The Respondent No.1 who had opted to seek specific performance of the Agreement to Sell for the Scheduled Property, after filing the suit,

D

proceeded with selling Schedule Property, which he had claimed in its Suit for specific performance.

It is respectfully submitted that the Hon'ble High Court and the Ld. Trial Court are in error and Impugned Order also liable to be set aside because:

- i. The plea of the Respondent No.1 for the specific performance of a purported agreement to sell, was untenable as it was based on a photocopy of the said agreement, which was never proved by the Respondent No.1 in terms of Section 65 of the Evidence Act 1872.
- ii. It submitted that it is a trite law that in order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Thus, the relief of specific performance could not have been granted to the Respondent No.1, as he had failed to establish the execution and existence of the Agreement to Sell while relying upon its photocopy. In this regard reliance is placed on the judgment, *J Yashoda v. K Shobha Rani (2007) 5 SCC 730*, wherein this Hon'ble Court has held that "*Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document*".
- iii. It is also submitted that in the instant case the Ld. Trial Court while marking the Agreement to Sell as Ex.P.1 has recorded that the same is marked subject to objections. However, while passing its judgment failed to give any ruling as to whether the alleged agreement is admissible evidence or not. It is submitted it is trite law a photocopy

E

of the document does not become either a primary evidence or a secondary evidence, unless it is proved, as contemplated under the Evidence Act. Reliance is placed upon *H. Siddiqui v. A. Ramalingam*, (2011) 4 SCC 240 "12.....The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon."

- iv. In light of the aforementioned principles, it is crucial to highlight that Respondent No. 1 had not deposed before the Ld. Trial Court, to prove the existence and execution of the agreement of sale. The only testimony presented was from Respondent No. 3 (on behalf of Plaintiff No. 2 to 4), who when cross-examined, admitted to having no knowledge of the execution of the Agreement to Sell or GPA.
- v. As such, it is abundantly clear that the Ld. Courts made a grave error in admitting and relying on the contents of the Agreement to Sell and GPA, which were not established by Respondent No. 1. In this regard reliance is placed upon the judgment of this Hon'ble Court, in *Vidhyadhar v. Manikrao*, (1999) 3 SCC 573, where it is held that, '17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct...."
- vi. It is submitted that the Hon'ble High Court failed to consider that the Respondent No.1 proceeded to sale the Scheduled Property, during the pendency of litigation, and in contravention of section 52 of the

F

Transfer of Property Act 1882, to the Respondent No. 2 to 4. The Ld. Courts failed to appreciate that the Respondent No.1 had illegally transferred the property which was directly and specifically in question of the Suit filed by the Respondent No. 1 and for which he was seeking relief of specific performance of agreement to sell and making multiple rights over the property.

- vii. It is also noteworthy mention that the Hon'ble High Court (@para 92 and 93 of the Impugned Order) had erroneously held that subsequent sale deed executed in favour of the Respondent Nos.2 to 5 was based on the ex-parte decree and thus the subsequent sale is valid. This finding the Court is erroneous for being contrary to the fact that the sale deeds were executed on 03.06.1992, i.e. during the pendency of the suit for specific performance and the suit for specific performance, came to be decreed on 11.2.1993, that to ex-parte. Thus the finding of the Hon'ble High Court (@para 92 and 93 of the Impugned Order) that subsequent sale would not be nullified is flawed and liable to be interfered with.
- viii. The Hon'ble High Court failed to appreciate that once the Respondent No.1 had filed the Suit seeking specific performance, it had conceded that his title over the property was defective and incomplete, thus the Respondent No.1 could not had proceeded with selling the Scheduled Property to the Respondent No. 2 to 4, declaring himself as the owner. Thus, the transfer to the Respondent No. 2 to 4, during the pendency of the Suit can be construed as illegal and void. Reliance is also placed upon *Mohd. Raza v. Geeta*, 2021 SCC OnLine SC 858 wherein the following is observed by this Hon'ble Court:"16. It is to be noted at this stage that defendant No. 2 cannot be said to be the owner as her suit for specific

G

*performance is yet to be decided by the learned Trial Court. Unless and until there is a decree passed in her favour and the decree for specific performance is passed and/or the sale deed is executed pursuant to such a decree, she cannot be said to be the owner of the suit property. Till the suit for specific performance is decided, the plaintiff - respondent herein continues to be the owner ...."*

- ix. That the Ld. Courts have failed to consider that, in terms of sections 201 and 202 of the Contract Act, the agency formed in favour of the Respondent, if the GPA presumed genuine, stood terminated on the death of Sri K. Bettaiah as per section 202 of the Contract Act. The GPA, if presumed genuine, does not create any interest in favour of the Respondent No.1 had categorically stated that it has been granted as Sri K. Bettaiah was unable to do the acts as stated in GPA.
- x. Also, given the fact GPA does not make reference to the Agreement to Sell and/or does not provide for any clause for the transfer of an interest in favour the Respondent No.1, the finding of the Ld. Courts that the interest is created in favour of the Respondent No. 1 is erroneous and perverse. It is further pertinent to mention that the findings of the Hon'ble High Court are contrary to the judgment of the coordinate bench of the Hon'ble High Court in *M.S. Ananthamurthy v. J. Manjula*, 2019 SCC OnLineKar 3490 wherein it is held by the Hon'ble High Court that *"merely because a Power of Attorney holder is said to have been put in possession of the subject property or merely because the Power of Attorney holder is said to have parted with some money in favour of the executant of the General Power of Attorney, by that itself, it cannot be inferred that the Power of Attorney has got any interest in the subject property."*
- xi. It is submitted that the Ld. Courts due to the erroneous application of the judgment of *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*,



H

(2012) 1 SCC 656 has wrongly held that even if the execution agreement to is not proved, the decree of specific performance can be granted for the GPA. In this regard, the Petitioners would like to submit the following:

- a) It is worth noting that the Suit was specifically filed for the performance of the Agreement to Sell, and the Respondent had not prayed for the performance of the GPA. Therefore, it is incorrect to assume that even if the Agreement to Sell is not established, the relief of specific performance of the GPA can be granted.
- b) It is submitted that the Ld. Courts overlooked the fact that the GPA does not contain any provision for the transfer of title to the Respondent. Without such a provision, it is impossible to enforce specific performance for the transfer of title. The lower courts erroneously relied on the obiter dicta of *Suraj Lamp & Industries* case, whereas this Hon'ble High Court has held that an agreement to sell or GPA cannot transfer any interest.
- xii. It is further submitted that Ld. Courts have failed to appreciate and to give its finding on the lease deed of Scheduled Property, dated 01.04.1988, between the Sri K. Bettaiah and the Respondent No.1,, execution of which is proved by the Petitioners vide the testimony of its attesting witnesses.
- xiii. It is also submitted that the finding of the Ld. Courts below that the interest in the GPA is created in the favour of the Respondent and thus it does not stand terminated on the death of Sri. K. Bettaiah is vitiated and prejudiced as no issue was framed by the Ld. Trial Court in this regard and thus the Petitioners never got the viable opportunity to

I

tender evidence and contend the same. Reliance is placed upon *Makhan Lal Bangal v. Manas Bhunia*, (2001) 2 SCC 652 wherein it is held that "An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission."

Hence, the impugned judgment passed by the Hon'ble High Court requires to be allowed as it is in disregard of the legal principles and the law set out in a catena of decisions of this Hon'ble Court.

J

LIST OF DATES AND EVENTS

| DATES      | EVENTS   |
|------------|--|
| 01.04.1980 | <p>The Respondent No.1 contends that father of the Petitioner No.2 and husband of the Petitioner No.1, namely K. Bettaiah, alleged to have executed an Agreement of Sale in respect of an immovable property forming part of Sy. No.1 of Kanteeravanagar Main Road, Yeshwantanpura, Bangalore ("Scheduled Property"), in favour of Respondent No.1 herein for a sum of Rs 75,000/- and alleged to have received a sum of Rs 13,000/- as an advance there under. A true copy of the agreement to sell dated 01.04.1980 is annexed herewith and marked as ANNEXURE-P/1 (Pgs. 73 To 75)</p> |
| 16.10.1981 | <p>The Respondent No. 1 also contends that Sri K.Bettaiah had also executed the General Power of Attorney in favour of the Respondent No.1 herein in respect of the Schedule Property. A true copy of GPA dated 16.10.1981 executed by K Bettaiah in favour of Respondent No.1 is</p>  |

K

|             |   |
|-------------|---|
|             | annexed herewith and marked as ANNEXURE-P/2 (Pgs. 76 To 80)   |
| 13.11.1981. | Sri. K. Bettaiah, acquired the Scheduled Property, under the family partition deed dated 13.11.1981.  |
| 01.04.1988  | On 01.04.1988, Sri. K. Bettaiah leased the Scheduled Property to the Respondent No.1. A true copy of the lease deed dated 01.04.1988 is attached herewith and marked as ANNEXURE-P/3 (Pgs. 81 To 83).   |
| 28.09.1988  | Sri.K.Bettaiah passed away intestate  |
| 25.07.1991  | The Respondent No.1 herein has filed a suit against the Petitioners before the City Civil Court Bangalore in O.S.No.4433/1991 for specific performance of the Agreement of Sale dated 01.04.1980 on the basis of the photocopy of the agreement. A true copy of the plaint filed in O.S.No.4433/1991 dated 25.07.1991 before the City Civil Judge Bangalore is attached herein as ANNEXURE-P/4 (Pgs. 84 To 93). |

L

|            |  |
|------------|--|
| 1992       | <p>The Respondent No.1 herein during the pendency of the suit in O.S. No. 4433/1991 ("Suit") alleged to have conveyed the Scheduled Property in favour of the Respondent No. 2 to 4 vide 4 sale deeds. A true copy of the sale deeds are attached herein as ANNEXURE-P/5 (Pgs. 94 To 107).</p>   |
| 11.02.1993 | <p>The Ld. Trial Court has decreed the Suit filed by the Respondent No.1 herein against the Petitioners ex-parte. A true copy of the order dated 11.02.1993 passed by the Court of XV Additional City Civil Judge Bangalore in OS No.4433/1991 is annexed herein as ANNEXURE- P/6 (Pgs. 108 To 125).</p>                               |
| 16.12.1992 | <p>The Petitioners preferred a suit bearing no. HRC No. 2760/1992 before the Court of Small Civil Judge, Bangalore, seeking eviction of the Respondent No.1 for non-payment of rent under the lease deed dated 01.04.1988. In the objection filed by the Respondent No.1, the Respondent No.1 for the first time disclosed the ex-</p> |

M

|            |   |
|------------|---|
|            | parte decree for specific performance which he had been obtained in the Suit. Owing to the same the Petitioners withdrew the eviction suit with liberty to pursue the requisite legal remedy. |
| 24.08.1994 | The Petitioners herein after coming to know about the ex-parte decree dated 11.02.1993 have filed a Misc. Petition before the Ld. Trial Court to set aside the same.                          |
| 27.07.2010 | The Ld. Trial Court has allowed the said Misc. Petition and set aside the ex-parte Judgment and decree dated 11.2.1993 and restored the Suit back.  |
| 18.10.2010 | After the restoration of the Suit before the Trial Court, the Respondent No.2 to 4 herein have filed an application to implead them in the suit as additional plaintiffs.                     |
| 18.01.2012 | The Ld. Trial Court mechanically allowed the said impleading application filed by the Respondent No.2 to 4 herein and permitted them to come on record as Plaintiff No.2 to 4 therein.        |

N

|            |  |
|------------|--|
| 01.08.2012 | The Respondent No. 1 filed an amended plaint in the Suit, before the Ld. Trial Court. A true copy of the amended plaint filed in O.S.No.4433/1991dated 01.08.2012 before the City Civil Judge at Bangalore is attached herein as ANNEXURE- P/7(Pgs. <sup>126</sup> To 143).  |
| 18.03.2013 | The Defendant 2 and 3 filed its written statement in the Suit before the Ld. Trial Court. A true copy of the written statement filed by the Defendant Nos.2 and 3 in O.S.No.4433/1991dated 18.03.2013 is attached herein as ANNEXURE- P/8(Pgs. <sup>144</sup> To 153).   |
| 23.02.2013 | The Respondent No.3 herein deposed before the Ld. Trial Court and gave evidence as P.W.1 and thereafter the Respondents have also examined one N. Manjunath as P.W.2 as their witness. However, it is apposite to mention that the Respondent No.1, who had filed the Suit for the relief of specific performanceand was claiming right over the Scheduled Property did not depose before the Ld. Trial Court. True copies of the evidence affidavit and |

|  |  |
|--|--|
|  | <p>transcript of examination in chief and cross-examination of P.W. 1 and transcript of examination in chief and cross-examination P.W. 2 are attached herewith and marked as ANNEXURE- P/9(Pgs. <sup>154</sup>To <sup>203</sup>)</p>  |
| <p>66.12.2013<br/>         &amp;<br/>         15.03.2014</p> | <p>That on behalf of the Petitioners, the Defendant No. 7, who is the son of Sri K. Bettaiah, deposed before the Ld. Trial Court as D.W.-1. Also, to establish the execution of the lease deed dated 01.04.1988, the attesting witnesses of the said lease deed also deposed before the Ld. Trial Court as DW- 2 &amp; 3. A true copies of the evidence affidavits and transcripts of cross examination of D.W. 1, 2 &amp; 3 <sup>dated 06.12.2013 &amp; 15.03.2014</sup> are attached herewith and marked as ANNEXURE- P/10(Pgs. <sup>204</sup>To <sup>278</sup>)</p> |
| 01.09.2014   | <p>The Ld. Trial Court after hearing the arguments of both the parties has decreed the suit filed by the Respondent No.1 herein for specific performance of the agreement dated 1.4.1980 and directed the Petitioners to execute the sale deed in favour of all the Respondents without understanding the scope of the suit and material evidence</p>  |



P

|            |  |
|------------|--|
|            | on record. A true of the judgement dated 01.09.2014 passed by the Court of the VIII Additional City Civil & Sessions Judge (CCH:15) At Bengaluru City in OS No.4433/1991 is attached herewith and marked as ANNEXURE- P/11 (Pgs. <sup>279</sup> To <sup>361</sup> )  |
| 2014       | Being aggrieved by the judgement dated 01.09.2014 of the Ld. Trial Court, the Petitioners preferred its first appeal before the Hon'ble High Court of Karnataka, against the said judgement of the Ld. Trial Court. A true copy of the memo appeal filed by the Petitioners before the Hon'ble High Court of Karnataka as R.F.A No.1646/2014, is attached herewith and marked as ANNEXURE- P/12 (Pgs. <sup>362</sup> To <sup>388</sup> ) |
| 28.02.2023 | That the Hon'ble High Court vide its final judgment and order dated 28.02.2023 dismissed the appeal filed by the Petitioners.(IMPUGNED JUDGMENT)   |
| 03.07.2023 | Hence, the Special Leave Petition.   |

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY 2023

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

**R.F.A. No.243/2008 (DEC)**

**C/w**

**R.F.A. No.1646/2014 (SP)**

**IN R.F.A. No.243/2008:**

**BETWEEN:**

1. SMT.NARASAMMA,  
W/O LATE K. BETTAIAH,  
AGED ABOUT 76 YEARS,
2. SRI. DEVARAJ,  
S/O LATE K.BETTAIAH,  
AGED ABOUT 52 YEARS,  
R/AT MULLUGATTE VILLAGE,  
NAGAMANGALA TALUK,  
MANDYA DISTRICT.
3. SMT. PAPAMMA,  
**SINCE DEAD BY HER LRs.,**
- 3(a) SRI.B.CHANNAIAH,  
H/O LATE SMT NARASAMMA @  
PAPAMMA,  
AGED ABOUT 67 YEARS,
- 3(b) SRI.B.C.BASAVARAJU,  
S/O B.CHANNAIAH,  
AGED ABOUT 41 YEARS,

3(c) SRI.B.C.RAVIPRAKASH,  
S/O B.CHANNAIAH,  
AGED ABOUT 39 YEARS,

3(d) SRI.B.C.MANJUNATH,  
S/O B.CHANNAIAH,  
AGED ABOUT 37 YEARS,

ALL ARE R/AT No.12, 7<sup>TH</sup> CROSS,  
PARIMALA NAGARA,  
NANDINI LAYOUT,  
BANGALORE -96.

4. SRI. PUTTARAJ,  
**SINCE DEAD BY LRS.**

4(a) SMT.SUSHEELA,  
W/O LATE PUTTARAJU,  
AGED ABOUT 40 YEARS,

4(b) SRI KIRAN KUMAR,  
S/O LATE PUTTARAJU,  
AGED ABOUT 19 YEARS,

4(c) SRI HARISH.P.  
S/O LATE PUTTARAJU,  
AGED ABOUT 18 YEARS,

APPELLANT Nos.4(a) TO 4(c) ARE  
R/AT No.38, 4<sup>TH</sup> CROSS, MUNESHWARA,  
TEMPLE ROAD, GORUGUNTEPALYA,  
BANGALORE -22.

5. SMT.GOURAMMA,  
W/O VENKATARAMAIAH,  
AGED ABOUT 37 YEARS,  
KANTEERAVA STUDIO MAIN ROAD,  
DEENABANDHUNAGAR,  
BANGALORE -22.

6. SMT. LAKSHMAMMA,

W/O MANJUNATHA,  
 AGED ABOUT 36 YEARS,  
 KANTEERAVA STUDIO MAIN ROAD,  
 DEENABANDHUNAGAR,  
 BANGALORE-22.

7. SRI. VENKATESH,  
 S/O LATE K. BETTAIAH,  
 AGED 33 YEARS,
8. SMT. KAMALAMMA,  
 W/O HANUMANTHARAYAPPA,  
 AGED ABOUT 33 YEARS,  
 RESIDING AT POLICE QUARTERS,  
 BEHIND BUS-STOP, TUMKUR.

APPELLANTS Nos. 1 TO 7 ARE  
 R/AT GORUGUNTEPALYA,  
 YESHWANTHAPUR HOBLI,  
 BANGALORE-22.

**... APPELLANTS**

(BY SRI.T.SESHIAGIRI RAO, ADV.)

**AND:**

1. SRI.C.S.RAGHAVAN NAIR,  
 S/O C.SHANKARA NAIR,  
 AGED 72 YEARS,  
 PROPRIETOR,  
 MAHALAKSHMI WOOD INDUSTRIES,  
 KANTEERAVA NAGAR MAIN ROAD,  
 GORUGUNTEPALYA,  
 YESHWANTHPUR,  
 BANGALORE-22.
2. SRI.N.NARASIMHA,  
**SINCE DEAD BY HIS LRs.,**
- 2(a) SMT.V.VIJAYA,  
 W/O LATE N.NARASIMHA,  
 AGED ABOUT 49 YEARS,

2(b) SRI.N.RAGHAVENDRA,  
S/O N.NARASIMHA,  
AGED ABOUT 29 YEEARS,

2(c) SRI.N.MURALI,  
S/O N.NARASIMHA,  
AGED ABOUT 25 YEARS,

R-2(a) TO R-2(c) ARE R/AT  
No.30, I 'A' CROSS, PARIMALA NAGARA,  
NANDINI LAYOUT, BENGALURU - 560 096.

3. SMT.VIJAYA,  
W/O N.NARASIMHA,  
AGED ABOUT 45 YEARS,  
R/AT No.30,  
2<sup>ND</sup> MAIN ROAD, PARIMALANAGAR,  
BANGALORE -22.

4. SRI. JOHN,  
S/O LEO SKAYER,  
AGED ABOUT 36 YEARS,  
R/AT No.725, 1<sup>ST</sup> F CROSS,  
3<sup>RD</sup> STAGE, 4<sup>TH</sup> BLOCK,  
WEST OF CHORD ROAD,  
BASAVEHWARANAGAR,  
BANGALORE -79.

5. SRI.S.SEETHARAM,  
S/O SEETAIAH,  
AGED ABOUT 44 YEARS,  
R/AT 3<sup>RD</sup> CROSS,  
PARIMALA NAGAR,  
BANGALORE -22.

**... RESPONDENTS**

(BY SRI.G.JANARDHANA, ADVOCATE FOR R-2(a TO c);  
SRI.V.B.SHIVAKUMAR, ADVOVATE FOR R-5;  
R-1 & R-3 ARE SERVED;  
VIDE ORDER DATED:02.07.2012, SERVICE OF NOTICE  
TO R-4 IS HELD SUFFICIENT)

THIS APPEAL IS FILED UNDER ORDER XLI RULE 1 READWITH SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED: 12.10.2007 PASSED IN O.S.No.2304/1995 ON THE FILE OF THE V ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, DISMISSING THE SUIT FOR DECLARATION, POSSESSION AND PERMANENT INJUNCTION.

**IN R.F.A.No.1646/2014:**

**BETWEEN:**

1. SMT.NARASAMMA,  
W/O LAE K. BETTAIAH,  
AGED ABOUT 83 YEARS,
2. SRI. DEVARAJ,  
S/O LATE K.BETTAIAH,  
AGED ABOUT 59 YEARS,
3. SMT. PAPAMMA,  
**SINCE DEAD BY HER LRs.,**
- 3(a) SRI.B.CHANNAIAH,  
H/O LATE SMT NARASAMMA @  
PAPAMMA,  
AGED ABOUT 67 YEARS,
- 3(b) SRI.B.C.BASAVARAJU,  
S/O B.CHANNAIAH,  
AGED ABOUT 41 YEARS,
- 3(c) SRI.B.C.RAVIPRAKASH,  
S/O B.CHANNAIAH,  
AGED ABOUT 39 YEARS,
- 3(d) SRI.B.C.MANJUNATH,  
S/O B.CHANNAIAH,  
AGED ABOUT 37 YEARS,

ALL ARE R/AT No.12, 7<sup>TH</sup> CROSS,  
PARIMALA NAGARA, NANDINI LAYOUT,  
BANGALORE -96.

4. SRI. PUTTARAJ,  
S/O LATE K.BETTAIAH,  
**SINCE DEAD BY LRs.,**
- 4(a) SMT.SUSHEELA,  
W/O LATE PUTTARAJU,  
AGED ABOUT 50 YEARS,
- 4(b) SRI KIRAN KUMAR,  
S/O LATE PUTTARAJU,  
AGED ABOUT 30 YEARS,
- 4(c) SRI HARISH,  
S/O LATE PUTTARAJU,  
AGED ABOUT 28 YEARS,

APPELLANT Nos.4(a) TO 4(c) ARE  
R/AT No.3/K, 4<sup>TH</sup> CROSS, MUNESHWARA  
TEMPLE ROAD, GORUGUNTEPALYA,  
YESHWANTHPURA, BANGALORE -560 022.

5. SMT.GOWRAMMA,  
D/O LATE K.BETTAIAH  
AGED ABOUT 47 YEARS,
6. SMT. LAKSHAMMA,  
D/O LATE K.BETTAIAH,  
AGED ABOUT 55 YEARS,
7. SRI. VENKATESH,  
S/O LATE K.BETTAIAH,  
AGED ABOUT 50 YEARS,
8. SMT. KAMALAMMA,  
D/O LATE K.BETTAIAH,  
AGED ABOUT 49 YEARS,

APPELLANTS 1 TO 3 AND 5 TO 8 ARE  
R/AT No.38, 3<sup>RD</sup> CROSS,  
MUNESHWARA TEMPLE ROAD,  
GORAGUNTAPALYA,  
YESHWANTHPURA, BANGALORE-560 022.

**... APPELLANTS**

(BY SRI.T.SESHAGIRI RAO, ADV.)

**AND:**

1. SRI.C.S.RAGAVAN NAIR,  
S/O C.SHANKARA NAIR,  
AGED ABOUT 79 YEARS,  
PROPRIETOR,  
MAHALAKSHMI WOOD INDUSTRIES,  
KANTEERAVA NAGAR MAIN ROAD,  
GORGUNTEPALYA, YESHWANTHPURA,  
BANGALORE - 560 022.
2. SMT. B.VIJAYA,  
W/O LATE N.NARASIMHA,  
AGED ABOUT 51 YEARS,
3. SRI.N.RAGAVENDRA,  
S/O LATE N.NARASIMHA,  
AGED ABOUT 34 YEARS,
4. SRI.N.MURALI,  
S/O LATE N.NARASIMHA,  
AGED ABOUT 26 YEARS,

R-2 TO 4 ARE R/AT No.30,  
1<sup>ST</sup> A CROSS, PARIMALA NAGAR,  
NANDINI LAYOUT, BANGALORE - 560 096.

**... RESPONDENTS**

(BY SRI.G.JANARDHANA, ADVOCATE FIR R-2 TO R-4;  
VIDE ORDER DATED:17.09.2018, APPEAL AGAIST  
R-1 IS DISMISSED)



THIS APPEAL IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 01.09.2014 PASSED IN O.S.No.4433/1991 ON THE FILE OF THE VIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DECREERING THE SUIT FOR SPECIFIC PERFORMANCE OF CONTRACT AND PERMANENT INJUNCTION.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 02.02.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**JUDGMENT**

1. C.S. Raghavan Nair instituted a suit in O.S. No.4433 of 1991 on 25.07.1991 against the legal heirs of K.Bettaiah i.e., Narasamma and her seven children, seeking to enforce the agreement of sale dated 01.04.1980. The agreement of sale was stated to have been executed by K.Bettaiah in respect of a property measuring 75 feet x 200 feet which had been carved out of Sy.No.1 of Jarakbande Kaval and which was now Kanteerava Nagara Main Road, Gorguntepalya, Yeshwanthpur, Bengaluru-560022, consisting of two sheds, known as "*Mahalakshmi Wood Industries*".

2. The parties would be referred to by their names instead of their rankings for the sake of convenience, since there are two suits instituted by the parties.

3. It was the case of Raghavan Nair that Bettaiah had executed an agreement of sale agreeing to sell a portion of the land which formerly formed part of Sy.No.1, for a total sale consideration of Rs.75,000/-. He stated that under the said agreement, a sum of Rs.13,000/- was paid on the same day and Bettaiah agreed to receive the balance sale consideration of Rs.62,000/- within a period of eight years from the said date.

4. He stated that he was already in possession of this land as a lessee for a period of two years prior to the date of the said agreement and on the execution of the agreement of sale, he continued in possession in part performance of the agreement of sale.

5. He further stated that he had misplaced the original agreement of sale and despite his best efforts, he could

not secure the same, but, he had a photocopy of the said agreement which he had produced. He also stated that he was always ready and willing to perform his part of the contract by paying the balance sale consideration, but the registration of the revenue property had been prohibited by the Government and therefore, he could not get the sale transaction completed. He also stated that Bettaiah could not secure the clearance under the Urban Land Ceiling Act and at the same time, the contiguous land of the suit schedule property had been notified for acquisition by the Bangalore Development Authority, however, only the suit property was exempted from acquisition.

6. He stated that after he had entered into the agreement, he had applied for a licence to put up two sheds and to install machineries for starting a wood industry and on 01.04.1982, a licence had also been issued in his favour allotting 45 Horse-Power. He also stated that the wood industry which he was running in

the year 1979 on the suit property had already been registered under the provisions of the Karnataka Sales Tax Act, 1957 and also under the Central Sales Tax Act.

7. Raghavan Nair also stated that Bettaiah confirmed his right to continue the business as a purchaser by executing a registered General Power of Attorney in his favour on 03.12.1981. This General Power of Attorney empowered him to execute the sale deed in respect of the property and also to do anything that Bettalah could do in respect of the suit property.

8. He submitted that the agreement had prescribed eight years for concluding the transaction. However, in the meantime, Bettaiah was not keeping good health and apprehending that something would happen to Bettaiah's life and also, since Bettaiah needed money, he gave Bettaiah a sum of Rs.62,000/- on 10.08.1988. He stated that Bettaiah passed away on 28.09.1988 leaving behind his wife and children to succeed to his properties.

9. He stated that despite several requests to the legal heirs of Bettaiah to conclude the sale transaction, they did not reciprocate and he reliably learnt that they were contemplating dispossessing him and alienating the property. He stated that some of the defendants came near the property and threatened him and in view of this threat, he was constrained to file the present suit.

10. The wife and children of Bettaiah though were stated to have been served and were also stated to have entered appearance through the counsel, they did not contest the proceedings.

11. The Trial Court on the basis of the evidence adduced by Raghavan Nair, which remained unchallenged, proceeded to decree the suit by its judgment dated 11.02.1993.

12. It would be pertinent to state here that during the pendency of this suit, Narasamma—the wife of Bettaiah had instituted an eviction petition in H.R.C. No.2760 of

1992 on 16.12.1992 against C.S.Raghavan Nair—Proprietor of Mahalakshmi Wood Industries and one George Sequeira—Managing Partner of M/s.Sequeira Wood Industries in respect of the schedule property therein, under Section 21(1)(h) and 21(1)(f) of the Karnataka Rent Control Act, 1961 (Ex.P-11).

13. In the said eviction petition, Narasamma contended that her husband—Bettaiah had leased out the schedule property therein to Raghavan Nair and entered into a lease agreement dated 01.04.1988, which was for a period of two years and after her husband died in September 1988, she was collecting monthly rents which were paid only upto February 1989 and thereafter, Raghavan Nair had stopped paying rents to her. She also contended that the said property was required for her *bona fide* requirement and Raghavan Nair had sublet the property to George Sequeira.

14. In this petition, Raghavan Nair filed his objections on 28.02.1994, in which he contended that he had

obtained a decree in respect of this property and by virtue of the decree passed in O.S. No.4433 of 1991 and also the execution petition in E.P. No.1157 of 1993 wherein a sale deed had also been executed in his favour on 30.08.1993 (Ex.D-1). He stated that since he had acquired the said property under this sale deed, the question of evicting him from the property on the premise that he was a tenant, would not arise.

15. In the light of the objections filed by Raghavan Nair, Narasamma sought to withdraw the eviction petition, citing the fact that she had filed Miscellaneous Petition No.707 of 1994 for setting aside the *ex parte* decree and reserving liberty for her to file a fresh petition, subject to result of the said Miscellaneous Petition. The said request was accepted and the petition was dismissed with liberty to file a fresh eviction petition subject to the result of the Miscellaneous Petition.

16. The Miscellaneous Petition filed by Narasamma and her children was subsequently concluded by the Trial

Court and by an order dated 27.09.2010, the Trial Court was pleased to set aside the *ex parte* order and restored the suit for fresh consideration.

17. This order setting aside the *ex parte* order was in fact challenged by the purchasers—Smt.B.Vijaya, Sri.N.Ragavendra and Sri.N.Murali before this Court in Civil Revision Petition No.253 of 2010. This Court after hearing the matter on 11.11.2010, ultimately accepted the submission of the purchasers that they were entitled to come on record in O.S. No.4433 of 1991 under Order XXI Rule 10 of the Code of Civil Procedure, 1908 and that they were seeking for relief in the suit and the petition should therefore be dismissed as withdrawn reserving liberty to them to adopt the above course. This Court accordingly granted liberty to them to pursue such course as was available to them in law.

18. In accordance with the liberty granted, the purchasers—Smt.B.Vijaya, Sri.N.Ragavendra and



Sri.N.Murali got themselves impleaded as plaintiff Nos.2 to 4 and prosecuted the suit.

19. During the course of trial, N.Ragavendra—one of the purchasers was examined as PW-1, apart from examining another witness as PW-2. In addition to the fourteen documents marked earlier, twenty-six documents were admitted in evidence and marked as exhibits on behalf of the purchasers and in all, forty documents were marked as Exhibits.

20. In the suit that had been filed by Raghavan Nair in which the purchasers had been impleaded subsequently, apart from the six issues that have been originally framed, on the appearance of Narasamma and their children and on them filing the written statement, the Trial Court besides framing additional issues, recast the earlier six issues and in all, eleven issues were framed.

21. On behalf of Narasamma, her son—Venkatesh, defendant No.7 was examined as DW-1 and two other

witnesses were examined and in all, thirteen documents were admitted in evidence and marked as exhibits.

22. It may also be pertinent to state here that during the pendency of the suit filed by Raghavan Nair for specific performance, Narasamma and others also instituted a suit in O.S. No.2304 of 1995 against Raghavan Nair and the purchasers from him, seeking for a declaration that the sale deeds executed by Raghavan Nair on the basis of the *ex parte* decree that he had obtained, were null and void and did not bind her and her children.

23. She also sought for a declaration that they were the absolute owners of the property and for cancellation of the sale deeds. She also sought for a direction for delivery of vacant possession of the suit property.

24. In this suit, as was contended in the written statement that had been filed in the suit filed by Raghavan Nair for specific performance, they contended

that Bettaiah had not executed any agreement of sale in favour of Raghavan Nair and Raghavan Nair was only a tenant of the premises and therefore, the decree that he had obtained and the sale deeds that he had executed on that basis were of no consequences.

25. This suit was resisted by Raghavan Nair and his purchasers contending that Bettaiah had in fact executed an agreement of sale and also a registered General Power of Attorney and in the light of the decree that had been passed in his favour in the suit for specific performance filed by him, the acquisition of his title over the property could not be called in question at all.

26. Raghavan Nair stated that since the registered General Power of Attorney had been executed in his favour and the same was coupled with the earlier agreement of sale, it was clear that Bettaiah had intended to convey the property and the plaintiffs, being his successors-in-interest, were bound by the rights that he had transferred in favour of Raghavan Nair.

27. In the suit (O.S. No.2304 of 1995) filed by Narasamma and others challenging the sale deeds, seeking for declaration and also for cancellation of the sale deeds, the Trial Court framed five issues.

28. In the suit filed by Narasamma and others, Venkatesh—plaintiff No.7 was examined as PW-1 and the two attesting witnesses to the lease agreement were examined as PWs-2 and 3. In all, nineteen documents were admitted into the evidence and marked as exhibits. On behalf of the purchasers, defendant No.2—N.Narasimha was examined as DW-1 and eighteen documents were admitted and marked as exhibits.

29. In the suit (O.S. No.4433 of 1991) filed by Raghavan Nair and the other purchasers, the Trial Court on the basis of the evidence adduced recorded a finding that K.Bettaiah had agreed to sell the suit property to Raghavan Nair and he had always been ready and willing to perform his part of the agreement. The Trial Court also held that Raghavan Nair and the other purchasers

had proved that they were in lawful possession over the suit property and the deceased Etttalah had executed a General Power of Attorney on 16.10.1981 in favour of Raghavan Nair. The Trial court also came to the conclusion that Raghavan Nair had executed the sale deeds in favour of Narasimha and another; Vijaya and another; and John and Seetharamu.

30. It has also held that N.Raghavendra and N.Murali (plaintiff Nos.3 and 4) had purchased a portion of the suit property from plaintiff No.2 / B.Vijaya. The Trial Court held that Narasamma and her children had failed to prove that the suit was not maintainable and that there is no cause of action for filing of the suit. The Trial Court accordingly decreed the suit O.S. No.4433 of 1991.

31. Insofar as the suit (O.S. No.2304 of 1995) filed by Narasamma and her children, the Trial Court on the evidence adduced before it, recorded a finding that Narasamma and her children had failed to prove that the

sale deeds executed by Raghavan Nair in favour of N.Narasimha, John and S.Seetharam (defendant Nos. 3 to 5) were null and void and they had also failed to establish that they were the absolute owners of the suit schedule 'A' property and were not entitled to vacant possession of the same. The Trial Court accordingly dismissed the suit O.S. No.2304 of 1995 filed by Narasamma and her children.

32. As a consequence of the decrees passed in O.S. No.2304 of 1995 and O.S. No.4433 of 1991, two appeals in RFA No.243 of 2008 and RFA No.1646 of 2014 have been preferred by Narasamma and her children, against the dismissal of their suit which they had filed for seeking for declaration and also against the grant of a decree for specific performance.

33. Learned counsel for Narasamma and her children, Sri.T.Seshagiri Rao, contended that admittedly, Raghavan Nair based his claim on the basis of an agreement of sale. However, the original agreement of

sale was never produced and therefore, the Trial Court could not have concluded that Bettaiah had agreed to sell the suit property in favour of Raghavan Nair. He also submitted that Raghavan Nair had also set up the plea that Bettaiah had executed a registered General Power of Attorney dated 03.12.1981. However, since Bettaiah had admittedly passed away on 28.09.1988, the agency that he had created in favour of Raghavan Nair stood terminated by operation of law and thus, the sale deeds which Raghavan Nair executed, thereafter, on 03.06.1992 was of no consequence and no title was conveyed to the purchasers.

34. He also submitted that there was no question of any interest in the subject matter of the agency having been created, because, the agreement of sale had been executed allegedly on 01.04.1980 and the General Power of Attorney had been executed more than a year afterwards i.e., on 03.12.1981 and no consideration had been passed at the time of creation of the agency and as

a result, it could not be contended that there was an interest being created in favour of the agent in the subject matter of the agency i.e., there was no agency coupled with interest.

35. He also stated that the General Power of Attorney was executed in the year 1981 and the balance sale consideration was alleged to have been paid seven years thereafter on 10.08.1988 and this fact by itself indicated that the entire transaction alleged was a sham transaction. It was also contended that Raghavan Nair came into possession of the property under a lease agreement dated 01.04.1988 and the question of there being an agreement of sale of the year 1980 or General Power of Attorney of the year 1981 could not therefore arise.

36. He also contended that no foundation had been laid down in the plaint for the production of a Xerox copy of the agreement of sale and the advantage was being taken of the fact that the agreement of sale had been



marked and admitted in the evidence. He submitted that in the absence of Narasamma and her children not producing the original, mere admission of a document in evidence, would not confer any evidentiary value on the document. It is also contended that since this agreement of sale was not even referred to in the registered General Power of Attorney, it was clear that no agreement of sale had in fact been executed.

37. Learned counsel on behalf of Raghavan Nair and the purchasers, Sri.G.Janardhana, however, supported the judgment and decrees of the Trial Court. He submitted that the documents produced clearly indicated that Raghavan Nair was in possession of the property right from the year 1980. He stated that the power was sanctioned in his favour in the year 1982 and the revenue entries were also mutated in his favour, thereby indicating that there is a transfer of an interest in the immovable property. He submitted that the Power of Attorney being a registered Power of Attorney, the

execution of the same could not be called in question. He also stated that Narsamma and her children in fact admitted in the plaint that they had filed in O.S. No.2304 of 1995 that Bettaiah had executed the General Power of Attorney. In fact, they had stated that Raghavan Nair had perhaps misused the Power of Attorney that was executed by late Bettaiah and this plea by itself clearly indicated that the execution of the General Power of Attorney was never in doubt.

38. Sri.Janardhana, countered the submissions of Sri.Seshagiri Rao regarding the contention that no agency coupled with an interest had been created in favour of Raghavan Nair, by contending that the Power of Attorney contained a recital that the property could be mortgaged by Raghavan Nair and he could also utilise the said money for himself. He submitted that this recital by itself clearly indicated that an interest in the property had been created in favour of Raghavan Nair and therefore, it was a clear case of agency coupled with

interest. He also sought to highlight the fact that various other recitals in the General Power of Attorney indicated that there was a transfer of all rights in favour of Raghavan Nair, including that of proprietary rights and therefore, it could not be argued that there was no agency coupled with interest created with the suit property.

39. Learned counsel also contended that even if the agreement of sale was to be ignored, in the light of the decision rendered by the Hon'ble Supreme Court in ***Suraj Lamp Industries vs. State of Haryana, 2012 (1) SCC 656***, the General Power of Attorney by itself could be treated as an *agreement of sale* and the suit for specific performance could be filed based on such a General Power of Attorney.

40. In the light of the arguments advanced by the learned counsel for the parties, the points that arise for consideration in these appeals are as to ***whether Raghavan Nair and the purchasers had established***

***that Bettaiah had executed an agreement of sale and the registered General Power of Attorney in favour of Raghavan Nair and whether Raghavan Nair possessed the right to convey the property on the basis of the said General Power of Attorney even after the death of Bettaiah.***

41. As stated above, the case put forth by Raghavan Nair was that Bettaiah had executed a General Power of Attorney in his favour on 01.04.1980 agreeing to sell the suit property for a sum of Rs.75,000/- and he had also paid Rs.13,000/- on the same day. It was his further case that thereafter on 03.12.1981, the registered Power of Attorney was executed in his favour by Bettaiah. He also contended that he had paid the balance sale consideration of Rs.62,000/- on 10.08.1988 and there was thus an agency coupled with interest created in his favour and was therefore entitled to convey the suit property in favour of the other plaintiffs.

42. It is, no doubt, true that the original agreement of sale dated 01.04.1980 was not produced by Raghavan Nair and only a photocopy was produced. One of the arguments advanced by the learned counsel for Narasamma and her children is that no foundation for the production of the photocopy i.e., secondary evidence was laid.

43. This argument would be factually incorrect since in the plaint, Raghavan Nair stated that *"the original agreement of sale is misplaced by the plaintiff and inspite of his best efforts, he could not get the same. However, he is having a xerox copy of the said original agreement, which he produced"*.

44. In the light of this clear recital in the plaint, the argument that no foundation was laid for the production of a photocopy cannot be accepted.

45. It may be stated here that after the decree in favour of Raghavan Nair had been set aside and the suit

was restored for adjudication afresh, an application in I.A. No.XV was filed by Narasamma and others for recalling the order by which Raghavan Nair was permitted to admit the photocopy of the agreement of sale as exhibit. The Trial Court by order dated 22.08.2014 rejected the said application.

46. This order passed by the Trial Court was not challenged by Narasamma and others and technically speaking, this would result in validating the admission of the agreement of sale as evidence.

47. Assuming that admission of a document in evidence would in no way lead to the presumption that it was the proof of the document, on considering the fact that Raghavan Nair was in possession of the suit property right from the year 1980, it is clear that his possession cannot be related to anything other than the agreement of sale.

48. It may also be noticed that the documents, such as grant of power supply, Certificate of Registration, Index of Lands and Record of Rights, indicate that Raghavan Nair was exercising his right over the suit property on the premise that he had acquired an interest over the same and not as a tenant. The argument therefore that the suit was based on the photocopy of the agreement of sale and hence could not be accepted is really without any merit.

49. It has to be stated here that Raghavan Nair claimed that Bettiah had executed a registered Power of Attorney on 03.12.1981, whereby he had empowered Raghavan Nair to enter into an agreement of sale in respect of the suit property with an intending purchaser and also authorised to receive the advance amount and issue an appropriate discharge for the same. He had also authorised him to execute the sale deed and receive the sale consideration and issue an appropriate receipt for the same.

50. It is pertinent to state here that Raghavan Nair was not obliged to account for the consideration that he received from an intending purchaser. The further recital indicated that he was authorised to pay all taxes and also to receive the compensation amount in case the suit property was acquired by the Government and also seek for enhancement of compensation.

51. The Power of Attorney also stated that Raghavan Nair was entitled to mortgage the suit property for grant of loan and he could not only receive such amount, but also could utilise the same in any manner that he thought fit. He also stated that he could obtain power and water connections from the concerned authorities and also pay the necessary charges thereafter. The General Power was also granted to do all such lawful acts in respect of the suit property which in the opinion of Raghavan Nair was necessary. The recitals indicate that there was a transfer of proprietary interest and Bettaih



had not received any right in respect of the property for himself.

52. A reading of the Power of Attorney indicates that Raghavan Nair was not obliged to account for the manner in which he dealt with the property and it would therefore be clear that the Power of Attorney by itself created the interest in the subject matter of the agency i.e., the property.

53. The recitals in the Power of Attorney would fundamentally indicate that Bettaiah had created an agency with Raghavan Nair in which he did not retain any control over the subject matter of the agency and he basically created an interest in the property in favour of Raghavan Nair. The consequence of this would be that the agency that Bettaiah had created in favour of Raghavan Nair was an agency which was coupled with interest and as a further consequence, the agency would be an irrevocable agency. As a further consequence, in

law, even the death of Bettaiah would also not result in termination of the agency.

54. However, Narasamma and her children put forth the plea that this Power of Attorney was a concocted document and therefore, there was no agency created at all. If this contention of Narsamma and her children was to be accepted, the earlier issue as to whether there was an agency coupled with interest would be rendered superfluous. It, therefore, has to be considered as to whether the Power of Attorney was actually executed by Bettaiah in favour of Raghavan Nair.

55. In the suit filed by Narasamma and her children for cancellation of the sale deed, it was pleaded as follows:

"7..... It is submitted that the defendant No.1 fraudulently in order to cheat these innocent plaintiffs, perhaps has misused the power of attorney that was executed by late K.Bettaiah in good faith just to help him in his business. ...."

56. This pleading is, by itself, an admission that the General Power of Attorney was executed in favour of Raghavan Nair.

57. Furthermore, in O.S. No.2065 of 2006, which had been filed by Narasamma and her children against Babu Rao and others (Ex. P-29) for a mandatory injunction to demolish the existing structures on their alleged encroached property and for the delivery of possession, her son Devaraju, who was incidentally plaintiff No.2 in that suit, stated as follows in the course of his cross-examination:

"18. Initially it was an agricultural land in Sy.No.1 to the extent of 01 acre 20 guntas. I have not at all formed any sites. To the east and west of this property, there are sites formed by Raghavan Nair. Sri.Raghavan Nair has formed sites in my survey number also. I had executed a General Power of Attorney in favour of Raghavan Nair to the extent 2000 X 100n feet....."

58. The plea of Narasamma and her children in O.S. No.2065 of 2006 coupled with the deposition of Devaraju would clearly indicate that Narasamma and her children actually admitted the execution of General Power of Attorney. Having admitted the execution of General Power of Attorney in O.S. No.2065 of 2006, Narsamma and her children cannot obviously contend that there was no General Power of Attorney.

59. It has to be kept in mind that the General Power of Attorney was a registered instrument and the execution of this instrument had been admitted before the Sub-Registrar, as provided under the Registration Act. Therefore, a presumption would have to be drawn that the General Power of Attorney was in fact executed by Bettaiah.

60. Learned counsel for Narasamma and her children contended that none of the attesting witnesses were examined in order to prove the execution of the General Power of Attorney.

61. The Power of Attorney is not a document which is required to be attested in law and therefore, the examination of the attesting witnesses in order to prove the execution of the General Power of Attorney would not really arise for consideration.

62. As regards the execution of the General Power of Attorney, apart from the admission by Narasamma and her children in the written statement filed by them in O.S. No.2065 of 2006, the deposition of Narasamma's son Venkatesh would also be relevant.

63. DW-1 when confronted with the Register produced by the officials of the Office of the Sub-Registrar, which contained the signature of Bettaiah admitted that the signatures found next to the Left Thumb Mark and the Left Thumb Mark was that of his father and the same was in fact marked as Ex.P-38 and 38(a). The relevant deposition reads as follows:

" 75. It is right to suggest that, my father had affixed his signature and LTM at the time of

registration of partition deed Ex.D-1. I cannot say looking the signature and LTM on the document shown to me. Again witness on verifying, stated that it is signature of my father and it is the LTM of my father. Hence, said document is marked at Ex.P-38 and signature is marked at Ex.P-38(a). ..."

64. The admissions of this signature of Bettaiah by his own son in the register in which Bettaiah had affixed the Left Thumb Mark at the time of execution of General Power of Attorney conclusively establishes that Bettaiah had executed a General Power of Attorney in favour of Raghavan Nair.

65. It may also be pertinent to state here that in the suit filed by Narasamma and others against Babu Rao and others (O.S. No.2065 of 2006) in which a decree of mandatory injunction was sought, the property described in schedule "C" of that plaint clearly indicated that to the west of that property was the property which belong to Raghavan Nair (Raghavendra Nair).

66. The agreement of sale that was executed by Narasamma and her children in favour of Govinda Rao (*Ex.P-33 in O.S. No.4433 of 1991*) also indicates that the western boundary was the property of Raghavan Nair.

67. These descriptions of the western boundary as property of Raghavan Nair establishes the fact that even Narasamma and her children have always considered the suit property to be that of the property of Raghavan Nair.

68. An argument was also advanced that the General Power of Attorney did not have a reference to the agreement of sale and therefore, it was clear that there had been no agreement of sale executed in favour of Raghavan Nair.

69. It is no doubt true that there is no reference to the execution of the agreement of sale in the General Power of Attorney. The Apex Court in ***Suraj Lamps*** (*supra*) has stated as follows:

"26. We have merely drawn attention to and reiterated the well-settled legal position that Sale Agreement/General Power of Attorney / Will transactions are not "transfers" or "sales" and that such transactions cannot be treated as completed transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of Conveyance to complete their title. The said 'SA/GPA/Will transactions' may also be used to obtain specific performance or to defend possession under Section 53-A of Transfer of Property Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to "SA/GPA/Will transactions" have been accepted / acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision."

*(underlined by me)*

70. Thus, even if it is assumed for the sake of argument that no agreement of sale had been executed,



by virtue of the fact that the Hon'ble Supreme Court has held that the General Power of Attorney by itself could be considered as an agreement of sale and could be enforced, the argument advanced by the learned counsel in this regard could not be tenable.

71. It has to be stated here that the Power of Attorney conferred power on Raghavan Nair to deal with the property and also empowered him to alienate the same.

72. Thus, it is clear that on the basis of the Power of Attorney itself, Raghavan Nair had acquired an interest in the property and therefore, in the light of the ratio laid down by the Hon'ble Supreme Court in **Suraj Lamps** case(*supra*), the General Power of Attorney itself could be enforced as an agreement of sale and in this view of the matter, the execution of an agreement of sale would pale into insignificance.

73. It may also be noticed that Raghavan Nair produced documents which indicated that he was in possession of the suit property right from the year 1979.

74. The proprietary concern of Raghavan Nair was in fact registered under the Sales Tax Act and the address mentioned in the Registration Certificate is that of the suit property.

75. The order sanctioning the power to the Plant set-up by Raghavan Nair also indicates that he was in possession by virtue of transfer of interest in his favour. The fact that the Karnataka Electricity Board granted power sanction in favour of Raghavan Nair and not in the name of Bettaiah by itself creates an inference that there was a transfer of interest in favour of Raghavan Nair.

76. It may also be pertinent to state that pursuant to the execution of General Power of Attorney, the revenue entries were also mutated in favour of Raghavan Nair on the basis of the General Power of Attorney. These

entries would also, therefore, indicate that Raghavan Nair had in fact acquired an interest in the immovable property.

77. The evidence adduced by Raghavan Nair when considered in totality would indicate that he was in possession right from the year 1980 and this was obviously pursuant to the agreement of sale and the General Power of Attorney.

78. Narasamma and her children contended that Raghavan Nair was inducted as a lessee in the year 1988. However, if this position were to be true, there was no question of revenue entries being changed in favour of Raghavan Nair in the year 1981 or power being sanctioned in his favour in the year 1980.

79. The documents produced indicating the possession of Raghavan Nair right from the year 1980 nullifies the case put forth by Narasamma and her children that he

was inducted as a tenant and he was not in possession of the property under the agreement of sale.

80. As already noticed above, the deposition of Bettaiah's son (Devaraj) in O.S. No.2065 of 2006 also establishes that Raghavan Nair had a Power of Attorney executed in his favour, on the basis of which he had formed sites. It, therefore, establishes that there was an agency coupled with interest created in favour of Raghavan Nair and he was thus entitled to sue for specific performance even on the death of Bettaiah.

81. Section 202<sup>1</sup> of the Indian Contract Act, 1872 makes it clear that an agency cannot be terminated, if an interest is created in the subject matter of the agency in favour of the agent. Thus, the death of Bettaiah would not terminate the agency created in favour of Raghavan Nair. The argument therefore that the sale deeds

---

<sup>1</sup>202. Termination of agency where agent has an interest in subject-matter.—Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

executed after the death of Bettaiah would have no merit and is accordingly rejected.

82. An argument was also advanced to the effect that the balance sale consideration was paid seven years after the execution of the agreement of sale and therefore, no agency coupled with interest had been created in favour of Raghavan Nair.

83. As noticed above, Raghavan Nair stated that he had paid a sum of Rs.13,000/- as on the date of the agreement itself and he also produced the receipt (Ex.P-11 to O.S. No.4433 of 1991) indicating that balance sum of Rs.62,000/- was paid to Bettaiah on 10.08.1988.

84. In order to secure an interest in the subject matter of the agency, it is not necessary for an interest to be created as on the date of the agency was created. Section 202 of the Contract Act does not stipulate or mandate that an interest in the property, which forms the subject matter of the agency, should be created at

the time the agency was created. It merely states that if an agent has interest in the property, that agency cannot be terminated unless there is an express contract to that effect. Thus, the interest in the property, which forms the subject matter of the agency, can be created in favour of the agent at any time and not necessarily at the time the agency had been created. The argument, therefore, that there was no interest in the property, which formed the subject matter of agency, created as on the date of the execution of the General Power of Attorney, would not be tenable at all.

85. As in the instant case, an interest in the subject matter of the agency can also be created subsequently. Thus, when the General Power of Attorney was executed in the year 1981 and the payment of a sum of Rs.62,000/- was made subsequently, an interest in the property, which is the subject matter of the agency, had been created.

86. It may also be pertinent to state here that a sum of Rs.13,000/- was paid under the agreement of sale according to Raghavan Nair and the receipt that is produced also indicates that the balance sale consideration of Rs.62,000/- was paid. These facts when read together indicate that an interest was created in the property which formed the subject matter of the agency.

87. In this view of the matter, the death of Bettaiah could have no effect on the agency and the same would continue. As a consequence, the execution of the sale deeds by Raghavan Nair in favour of other plaintiffs cannot be termed as illegal.

88. A reference is also required to be made to the decision of the Hon'ble Supreme Court in the case of **Loon Karan Sethiya vs. Ivan E. John and Others - AIR 1969 SC 73**, in this regard, wherein it is stated as follows:

"8. There is hardly any doubt that the power given by the appellant in favour of

the bank is a power coupled with interest. That is clear both from the tenor of the document as well as from its terms. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. It is settled law that where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The document itself says that the power given to the bank is irrevocable. It must be said in fairness to Shri Chagla that he did not contest the finding of the High Court that the power in question was Irrevocable."

*(underlined by me)*

29. A reference may also be made to the decision of the Division Bench of this Court in the case of **Mohammed vs. Assistant Commissioner – ILR 1993 KAR 2306**, where it has been stated as follows:



"5. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot in the absence of any express condition be terminated to the prejudice of such interest. The principle is that when an agreement is entered into on a sufficient authorisation whereby an authority is given for the purpose of giving some benefit to the donee of the authority such an authority is irrevocable. An authority coupled with interest is not determined by death, insanity or bankruptcy of the principal where the agent made advances to the principal and is authorised to sell at best price and recoup advances made by him, the agency is one coupled with interest and is irrevocable. Where all the rights and liabilities under a contract were made over by a power-of-attorney, such power is an agency coupled with interest."

*(underlined by me)*

90. It is clear that where the agent himself has an interest in the property, that agency cannot be

terminated to his prejudice, unless an express condition or a contract is provided in that regard.

91. The Trial Court has taken into consideration of the admission of Narasamma's son regarding the execution of the General Power of Attorney and has also taken into consideration the decision rendered in **Suraj Lamp's** case (*supra*), wherein the Hon'ble Supreme Court has stated that, the transactions through a General Power of Attorney, though cannot be treated as a conveyance or completed transfer, they can continue to be treated as an existing agreement of sale. It will therefore have to be concluded that Raghavan Nair and other plaintiffs were entitled to the decree of specific performance.

92. It has to be noticed that Raghavan Nair on the basis of a decree which had been passed in his favour proceeded to secure the sale deed and thereafter has conveyed the property in favor of other plaintiffs.

93. It is, no doubt, true that this decree that he had obtained was subsequently set aside. But, the consequence of that would not automatically nullify the sale deeds that he had executed.

94. Firstly, because he possessed the power to act as an agent of Bettaiah and therefore, he was entitled to execute sale deeds notwithstanding the fact that the decree passed in his favour had been set aside.

95. It has also to be noticed here that the purchasers by impleading themselves as plaintiffs were basically trying to ensure that the defect, if any, in their title was cured by seeking for a decree of specific performance on behalf of Raghavan Nair.

96. In the view I have taken above, it is clear that the Trial court was justified in decreeing the suit for specific performance and in the light of this decision, it naturally follows that the suit filed by Narasamma and her children for cancellation of sale deeds and for possession and also

for declaration that they are the absolute owners would have to ***necessarily fail***.

97. Accordingly, the appeal filed by Narasamma and others challenging the decree of specific performance granted in favour of Raghavan Nair and also the appeal filed by them challenging the dismissal of their suit for declaration are both ***dismissed***.

Sd/-  
JUDGE

RK  
CT:SN

T/c

52

{S.C.R. ORDER XXI RULE 3 (1) (A)}  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (C) NO. OF 2023  
(Under Article 136 of the Constitution of India)

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) Appealed From)

POSITION OF THE PARTIES  
BEFORE HIGH COURT BEFORE THIS COURT  
RFA No. 1646/2014

IN THE MATTER OF:-

1. Smt.Narasamma,  
W/O Lae K. Bettaiah,  
Aged About 83 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka  
Appellant No.1 Petitioner No.1
2. Sri. Devaraj, S/O Late K.Bettaiah,  
Aged About 59 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka  
Appellant No.2 Petitioner No.2
3. Smt. Papamma, Since Dead By Her Lrs.,  
3(A) Sri.B.Channaiah,  
H/O Late Smt Narasamma @ Papamma,  
Aged About 67 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka  
Appellant No.3A Petitioner No.3
- 3(B) Sri.B.C.Basavaraju,  
S/O B.Channaiah,  
Aged About 41 Years,

No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022

Karnataka

Appellant No.3B Petitioner No.4

3(C) Sri.B.C.Raviprakash,  
S/O B.Channaiah,  
Aged About 39 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022

Karnataka

Appellant No.3C Petitioner No.5

3(D) Sri.B.C.Manjunath,  
S/O B.Channaiah,  
Aged About 37 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka

Appellant No.3D Petitioner No.6

4. Sri. Puttaraj,  
S/O Late K.Bettaiah, Since Dead By Lrs.,

4(A) Smt.Susheela,  
W/O Late Puttaraju,  
Aged About 50 Years,  
No.3/K, 4th Cross, Muneshwara Temple Road,  
Goruguntepalya, Yeshwanthpura,  
Bangalore -560 022

Karnataka

Appellant No.4A Petitioner No.7

4(B) Sri Kiran Kumar,  
S/O Late Puttaraju,  
Aged About 30 Years,  
No.3/K, 4th Cross, Muneshwara Temple Road,  
Goruguntepalya, Yeshwanthpura,  
Bangalore -560 022

Karnataka

Appellant No.4B Petitioner No.8

4(C) Sri Harish,  
S/O Late Puttaraju,  
Aged About 28 Years,  
No.3/K, 4th Cross, Muneshwara Temple Road,  
Goruguntepalya, Yeshwanthpura,  
Bangalore -560 022

54

Karnataka

Appellant No.4C · Petitioner No.9

5. Smt. Gowramma,  
D/O Late K.Bettaiah  
Aged About 47 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka  
Appellant No.5    Petitioner No.10
6. Smt. Lakshamma,  
D/O Late K.Bettaiah,  
Aged About 55 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka  
Appellant No.6    Petitioner No.11
7. Sri. Venkatesh.,  
S/O Late K.Bettaiah,  
Aged About 50 Years,  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka  
Appellant No.7    Petitioner No.12
8. Smt, Kamalamma  
D/O Late K.Bettaiah.  
Aged About 49 Years  
No.38, 3rd Cross, Muneshwara Temple Road,  
Goraguntapalya, Yeshwanthpura,  
Bangalore -560022  
Karnataka  
Appellant No.8    Petitioner No.13

Versus

1. Sri.C.S.Ragavan Nair,  
S/O C.Shankara Nair,  
Aged About 79 Years,  
Proprietor, Mahalakshmi  
Wood Industries,

55

Kanteerava Nagar Main Road,  
Gorguntepalya, Yeshwanthpura,  
Bangalore-560 022  
Karnataka

Respondent No.1 Respondent No.1

2. Smt. B.Vijaya,  
W/O Late N.Narasimha,  
Aged About 51 Years,  
No.30, 1st A Cross, Parimala Nagar,  
Nandini Layout, Bangalore - 560 096  
Karnataka

Respondent No.2 Respondent No.2

3. Sri.N.Ragavendra,  
S/O Late N.Narasimha,  
Aged About 34 Years,  
No.30, 1st A Cross, Parimala Nagar,  
Nandini Layout, Bangalore - 560 096  
Karnataka

Respondent No.3 Respondent No.3

4. Sri.N.Murali  
No.30, 1st A Cross, Parimala Nagar,  
Nandini Layout, Bangalore - 560 096  
Karnataka

Respondent No.4 Respondent No.4

ALL THE ABOVE RESPONDENTS ARE CONTESTING RESPONDENTS  
TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE HON'BLE SUPEREME  
COURT OF INDIA

THIS HUMBLE PETITION OF THE PETITIONERS ABOVENAMED



57

**MOST RESPECTFULLY SHOWETH:**

1. That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) whereby the Hon'ble High Court has dismissed the appeal of the Petitioner herein.
- 1A. No LPA, Special Appeal & Writ Petition/Writ Appeal lies against the Impugned order.

2. **QUESTIONS OF LAW:**

The following questions of law of general public importance arise in the facts of the instant case which merits an authoritative determination from this Hon'ble Court:

- A. Whether the Hon'ble High Court failed to appreciate that plea for specific performance of a purported agreement to sell, was untenable as it was based on a photocopy of the said agreement, which was never proved by the Respondent No.1 in terms of the Evidence Act 1872 ?

- B. Whether the Hon'ble High Court overlooked the settled law, that for a party to produce secondary evidence the party must prove the existence and execution of the original document. ?
- C. Whether the Hon'ble High Court failed to appreciate that the relief of specific performance could not have been granted to the Respondent No.1, as he had failed to establish the execution and existence of the Agreement to Sell ?
- D. Whether the Hon'ble High Court failed to appreciate that once the Respondent No.1 had filed the Suit seeking specific performance, it had conceded that his title over the property was defective and incomplete, thus the Respondent No.1 could not have proceeded with selling the Scheduled Property to the Respondent No. 2 to 4, declaring himself as the owner ?
- E. Whether the Hon'ble High Court failed to consider that the Respondent No.1 proceeded to sale the Scheduled Property, during the pendency of litigation, and in contravention of section 52 of the Transfer of Property Act 1882, to the Respondent No. 2 to 4. and that the Respondent No.1 had illegally transferred the property which was directly and specifically in question of the Suit filed by the Respondent No. 1?

58

- F. Whether the Hon'ble High Court to appreciate that Respondent No.1 who had opted to seek specific performance of the agreement to sell for the Scheduled Property, after filing the suit, proceeded with selling Schedule Property, which he had claimed in its Suit for specific performance ?
- G. Whether the Ld. Courts failed to appreciate that the presumption should be raised against the case of the Respondent No.1, as he had failed to depose before the Ld. Trial Court, in terms of the judgment *Vidhyadhar v. Manikrao*, (1999) 3 SCC 573?
- H. Whether the Hon'ble High Court erred in holding that even if the agreement to sell is not proved the relief of specific performance can be granted on the GPA?
- I. Whether the Hon'ble High Court failed to note that no relief of the specific performance of the GPA can be granted, as the suit was preferred for the specific performance of the agreement to sell and there was no prayer for the specific performance of the GPA?
- J. Whether the Ld. Courts erred in holding that the interest is created in favour of the Respondent No.1, even though the GPA does not provide for any clause for the transfer of an interest in favour the Respondent No.1 and/or payment of any consideration?

- K. Whether the Ld. Trial Court failed to appreciate that the law laid down by this Hon'ble Court in (2011) 4 SCC 240 and (2007) 5 SCC 730?

3. DECLARATION IN TERMS OF RULE 3 (2) :

The Petitioners states that no other Petition seeking special leave to appeal has been filed by the Petitioners against the impugned order/judgment.

4. DECLARATION IN TERMS OF RULE 5 :

The Petitioners states that the annexures being Annexures P/1 to P/12 produced along with the present Special Leave Petition are true and correct copies of their respective originals and formed a part of the record of the Court(s) below against whose Order/Judgment the leave to appeal is sought in the present Petition.

5. GROUND:

The instant petition seeking special leave to appeal is being filed on, among others, the following grounds which may be considered as being without prejudice to each other:

- A. Because the Hon'ble High Court has failed to appreciate the fact and the law.
- B. Because the plea of the Respondent No.1 for the specific performance of a purported agreement to sell, was untenable as it was based on a photocopy of the said agreement, which was never proved by the Respondent No.1 in terms of Section 65 of the Evidence Act 1872.
- C. Because it is a trite law that in order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Thus, the relief of specific performance could not have been granted to the Respondent No.1, as he had failed to establish the execution and existence of the Agreement to Sell while relying upon its photocopy. In this regard reliance is placed on the judgment *J Yashoda v. K Shobha Rani* (2007) 5 SCC 730, wherein this Hon'ble Court has held that:

*"9. The rule which is the most universal, namely, that the best evidence the nature of the case will admit shall be produced, decides this objection. That rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution*

*of the original document. Under Section 64, documents are to be provided (sic proved) by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section.....".*

- D. Because in the instant case the Ld. Trial Court while marking the Agreement to Sell as Ex.P.1 has recorded that the same is marked subject to objections. However, while passing its judgment failed to give any ruling as to whether the alleged agreement is admissible evidence or not.
- E. Because it is trite law a photocopy of the document does not become either a primary evidence or a secondary evidence, unless it is proved, as contemplated under the Evidence Act. Reliance is placed upon *H. Siddiqui v. A. Ramalingam*, (2011) 4 SCC 240, wherein this Hon'ble Court has held that:

*The provisions of Section 65 of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a*

*document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] , State of Rajasthan v. Khemraj [(2000) 9 SCC 241 : AIR 2000 SC 1759] , LIC v. Ram Pal Singh Bisen [(2010) 4 SCC 491 : (2010) 1 SCC (L&S) 1072 : (2010) 2 SCC (Civ) 191] and M. Chandra v. M. Thangamuthu [(2010) 9 SCC 712 : (2010) 3 SCC (Civ) 907] .)*

- F. Because in light of the aforementioned principles, it is crucial to highlight that Respondent No. 1 had not deposed before the Ld. Trial Court, to prove the existence and execution of the agreement of sale. The only testimony presented was from Respondent No. 3 (on behalf of Plaintiff No. 2 to 4), who, when cross-examined, admitted to having no knowledge of the execution of the Agreement to Sell or GPA.
- G. Because the Hon'ble High Court failed to consider that the Respondent No.1 proceeded to sale the Scheduled Property, during the pendency of litigation, and in contravention of section 52 of the Transfer of Property Act 1882, to the Respondent No. 2 to 4. The Ld. Courts failed to appreciate that the Respondent No.1

had illegally transferred the property which was directly and specifically in question of the Suit filed by the Respondent No. 1 and for which he was seeking relief of specific performance of agreement to sell and making multiple rights over the property.

H. Because the Hon'ble High Court failed to appreciate that once the Respondent No.1 had filed the Suit seeking specific performance, it had conceded that his title over the property was defective and incomplete, thus the Respondent No.1 could not had proceeded with selling the Scheduled Property to the Respondent No. 2 to 4, declaring himself as the owner. Thus, the transfer to the Respondent No. 2 to 4, during the pendency of the Suit can be construed as illegal and void, Reliance is also placed upon *Mohd. Raza v. Geeta*, 2021 SCC OnLine SC 858 wherein the following is observed by this Hon'ble Court:

*"16. It is to be noted at this stage that defendant No. 2 cannot be said to be the owner as her suit for specific performance is yet to be decided by the learned Trial Court. Unless and until there is a decree passed in her favour and the decree for specific performance is passed and/or the sale deed is executed pursuant to such a decree, she cannot be said to be the owner of the suit property. Till the suit for specific performance is decided, the plaintiff - respondent herein continues to be the owner and defendant No. 1 - appellant herein continues to be the tenant...."*



- I. Because clearly the Ld. Courts made a grave error in admitting and relying on the contents of the Agreement to Sell and GPA, which were not established by Respondent No. 1. In this regard reliance is placed upon the judgement of this Hon'ble Court, in *Vidhyadhar v. Manikrao*, (1999) 3 SCC 573, where it is held that, '17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....'
- J. Because, PW-1 who deposed to establish the Agreement to Sell, was not even born in the purported date of the execution of the said agreements. However, the Ld. Trial Court by accepting the evidence of P.W.1 held plaintiff has proved the execution of agreement of sale by Bettaiah in favour of C.S. Raghavan Nair. The said finding one recorded by the Ld. Trial Court is contrary to the evidence on record, is unjust, improper and which is liable to be set aside.
- K. Because the Ld. Courts have failed to consider that, in terms of sections 201 and 202 of the Contract Act, the agency formed in favour of the Respondent, if the GPA presumed genuine, stood

terminated on the death of Sri K. Bettaiah as per section 202 of the Contract Act. The GPA, if presumed genuine, does not create any interest in favour of the Respondent No.1 had categorically stated that it has been granted as Sri K. Bettaiah was unable to do the acts as stated in GPA.

L. Because of the fact GPA does not make reference to the Agreement to Sell and/or does not provide for any clause for the transfer of an interest in favour of the Respondent No.1, the finding of the Ld. Courts that the interest is created in favour of the Respondent No. 1 is erroneous and perverse.

M. Because the findings of the Hon'ble High Court is contrary to judgment of the coordinate bench of the Hon'ble High Court in *M.S. Ananthamurthy v. J. Manjula*, 2019 SCC OnLineKar 3490 wherein it is held by the Hon'ble High Court that "*merely because a Power of Attorney holder is said to have been put in possession of the subject property or merely because the Power of Attorney holder is said to have parted with some money in favour of the executant of the General Power of Attorney, by that itself, it cannot be interred that the Power of Attorney has got any interest in the subject property.*"

- N. Because the Ld. Courts due to the erroneous application of the judgment of *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*, (2012) 1 SCC 656, has wrongly held that even if the execution agreement to is not proved, the decree of specific performance can be granted for the GPA.
- O. Because the Suit was specifically filed for the performance of the Agreement to Sell, and the Respondents did not pray for the performance of the GPA. Therefore, it is incorrect to assume that even if the Agreement to Sell is not established, the relief of specific performance can be granted under the GPA.
- P. Because the Ld. Courts overlooked the fact that the GPA does not contain any provision for the transfer of title to the Respondent. Without such a provision, it is impossible to enforce specific performance for the transfer of title. The lower courts erroneously relied on the obiter dicta of *Suraj Lamp & Industries* case, whereas this Hon'ble High Court has held that an agreement to sell or GPA cannot transfer any interest.
- Q. Because the Ld. Courts have failed to appreciate and to give its finding on the lease deed, dated 01.04.1988, which the Petitioners who have proved the execution of the lease deed, dated 01.04.1988,

for the Scheduled Property, between the Sri K. Bettaiah and the Respondent No.1, by the testimony of the attesting witnesses of the said lease deed.

- R. Because the finding of the Ld. Courts below that the interest in the GPA in the favour of the Respondent and thus it does not stand terminated on death of Sri. K. Bettaiah is vitiated and prejudiced as no issue was framed by the Ld. Trial Court in this regard and thus the Petitioners never got the viable opportunity to tender evidence and contend the same. Reliance is placed upon *Makhan Lal Bangal v. Manas Bhunia*, (2001) 2 SCC 652 wherein it is held that "*An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission.*"

6. GROUND FOR INTERIM RELIEF :

- (1) That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) whereby the Hon'ble High Court has dismissed the appeal of the Petitioners herein.

- 68
- (2) That the Petitioner has a good prima facie case in law and has every hope to succeed in the instant Special Leave Petition.
  - (3) That the balance of convenience is also in the favour of the Petitioner and the Petitioner will suffer grave hardship if the interim relief as prayed for is not granted.
  - (4) That the Petitioner will suffer great irreparable harm if the Impugned Order is not stayed during the pendency of the instant Special Leave Petition.
  - (6) That therefore it is in the interests of justice that the Impugned order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP) may be stayed during the pendency of the instant Special Leave Petition.

7. **MAIN PRAYER :**

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a. Grant special leave to appeal against the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP); and
- b. Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the instant case.

8. **PRAYER FOR INTERIM RELIEF :**

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a. Stay the operation and effect of the final judgment and order dated 28.02.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in R.F.A. No.1646 of 2014 (SP); and
- b. Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the instant case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY**

**DRAWN & FILED BY:**

**AWANTIKA MANOHAR  
ADVOCATE FOR THE PETITIONER**

**DRAWN ON: .06.2023  
FILED ON: 03.07.2023  
NEW DELHI**

70

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

Smt. Narasamma and Others

... Petitioners

Versus

Sri. C.S. Raghavan Nair and Others

... Respondents

CERTIFICATE

"Certified that the Special Leave Petition is confined only to the court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given to the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition."

FILED BY:

(AWANTIKA MANOHAR)

NEW DELHI: ADVOCATE FOR THE PETITIONERS

FILED ON: 03.07.2023

71

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

Smt. Narasamma and Others

... Petitioners

Versus

Sri. C.S. Raghavan Nair and Others

...Respondents

AFFIDAVIT

I, Devaraj, s/o late K.Bettaiah, Aged about 59 years, No.38, 3rd Cross, Muneshwara Temple Road, Goraguntapalya, Yeshwanthpura, Bangalore - Karnataka 560022 do hereby solemnly affirm and state as follows:-

1. I say that I am the Petitioner No.2 in the present Special Leave Petition and I am well conversant with the facts, proceedings and circumstances of the case and hence competent to swear this affidavit. I am also authorized on behalf of other Petitioners to depose this affidavit.
2. That I have read and understood the contents of the Paras 1 to 8 at Pages (52-70) of the Special Leave Petition, along with the interim relief, list of dates at Pages (B - P) and the I.A.s and I say that the contents thereof are true and correct to the best of my knowledge.

I say that the Annexures filed along with the Special Leave Petition are copies of their respective originals.

B. DEVARAJ

*[Signature]*





4. I say that I have not filed any other Special Leave Petition in this Hon'ble Court against the impugned judgment and order.
5. I say that the averments of facts stated herein above are true to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

B DEVARAJA  
DEPONENT

VERIFICATION

I, the deponent above named do hereby verify and state that the contents of the Special Leave Petition and List of dates are true and correct to the best of my knowledge and belief.

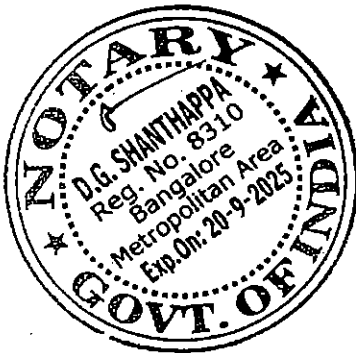
Verified on this 29 day of June 2023 at Bangalore.

B DEVARAJA  
DEPONENT

SWORN TO BEFORE ME

D.G. SHANTHAPPA  
ADVOCATE & NOTARY-PUBLIC  
GOVT. OF INDIA

# 123, Chaithanya Nivasa  
1st Main Road, Krishnananda Nagar  
Nandini Layout Post, Bengaluru-560 096  
Mobile: 9448506570



SL. No. 998 Vol. 2  
Page No. 48 Date. 29/6/23