

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH 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, 7TH 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, 4TH 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.SESHAGIRI 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,
2ND MAIN ROAD, PARIMALANAGAR,
BANGALORE -22.

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

5. SRI.S.SEETHARAM,
S/C SEETAIAH,
AGED ABOUT 44 YEARS,
R/AT 3RD 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/C 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, 7TH 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, 4TH 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, 3RD 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,
1ST 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 Bettaiah 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 *exparte* 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 Bettaiah 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 Bettaiah 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 202¹ 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

¹**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)

89. 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