Supreme Court of India
Syed Abdul Khader vs Rami Reddy And Ors. on 29 November, 1978
Equivalent citations: AIR 1979 SC 553, (1979) 2 SCC 601, 1979 2 SCR 424
Author: D Desai
Bench: D Desai, P Shinghal
JUDGMENT D.A. Desai, J.

1. This appeal by certificate granted under Article 133(1)(a) of the Constitution arises from Civil Suit No. 23/1 of 1952 filed by the appellant against 56 respondents for recovering possession of lands more particularly set out in the Schedule annexed to the plaint, mesne profits, accounts and injunction, which suit was largely dismissed and partly decreed by the trial Court but in appeals bearing A.S. Nos. 252 and 283 of 1960 by the unsuccessful defendants and the plaintiff, respectively, was dismissed as a whole.

2. A brief narration of facts necessary for appreciating the contentions raised herein may be set out. Plaintiff-appellant is the son of late Kazim Yar Jung who was a Minister of H.E.H. the Nizam of Hyderabad. The father of the plaintiff obtained grant of certain lands in Ryalamadugu village from the Government of Nizam, the patta having been granted in the name of the plaintiff. At about the time of police action in 1948 when the local conditions in Hyderabad City and State were disturbed, the plaintiff, his father Kazim Yar Jung and his step brother Mustafa found it difficult to even approach their lands and the plaintiff was then contemplating to shift to Pakistan with others. Defendant No. 1 Rami Reddy who was a police Patel approached the plaintiff and represented that he would manage the affairs of the plaintiff, his brother and father, but that as he was not keeping well a nominal Power of Attorney would have to be granted to defendant No. 34 Uppara Sattayya whereupon the plaintiff, his father and brother jointly executed a Power of Attorney, Ext. P-1 dated 10th April 1949 in favour of defendant No. 34 which was further supplemented by the deed Ext. P-2 dated 20th April 1949. The plaintiff alleged that in October 1949 he came to know that defendants Nos. 1 and 34 were perpetrating fraud when on 25th October 1949 the plaintiff and his brother Mustafa published a notice in the newspapers and the Gazette cancelling the Power of Attorney granted in favour of defendant No. 34. Plaintiff then came to know that defendant Nos. 1 and 34 and other defendants in collusion with each other got transferred the lands of the plaintiff for inadequate or no consideration and that a fraud was perpetrated. The plaintiff further alleged that the Power of Attorney is vague and void and inoperative and would not clothe defendant No. 34 with legal authority to deal with the properties in the manner in which they have been dealt with. At any rate, the Power of Attorney did not clothe defendant No. 34 with the authority to sell the land and, therefore, the purchasers have not acquired any title to the lands purporting to have been sold by defendant No. 34. The plaintiff accordingly sued for possession, mesne profits and accounts from the defendants.

3. Different groups of defendants filed three separate written statements but more or less the contentions raised in the various written statements are identical. The first contention is that the plaintiff was not the lull and absolute owner of the suit lands but was a benamidar inasmuch as the lands were granted to the father of the plaintiff who was a Minister in the Nizam's Government but the patta was formally taken in the name of the plaintiff who was then a minor. It was also

contended that the Power of Attorney, Ext. P-1 with P-2 was legal and valid and binding and it clothed defendant 34 with an authority to sell the lands and different parcels of lands have been sold to different defendants for full consideration and the plaintiff was aware of it and is now trying to take an advantage on the basis of a technical plea. There were some other contentions which at this stage are hardly relevant.

4. The trial Court held that the plaintiff was the full and absolute owner of the suit properties. The Power of Attorney Ext. P-1 was not vitiated by fraud and has clothed defendant No. 34 with the necessary authority to sell the lands and the sale of different parcels of lands in favour of different defendants were not vitiated by fraud and each sale was for consideration and binding on the plaintiff. The Trial Court further held that the properties bearing Items 27 to 40, 42-44, 46, 47, 55-67 and 69 set out in the Schedule annexed to the plaint were not proved to have been sold, the conclusion having been based on the only ground that no sale deeds were forthcoming and accordingly it was held that the plaintiff was entitled to recover possession of the aforementioned pieces of land. The trial Court accordingly dismissed the suit except for the aforementioned pieces of land in respect of which a decree for possession and mesne profits was granted in favour of the plaintiff.

5. Two appeals came to be filed to the High Court Appeal bearing A.S. 252/60 was preferred by original defendants 8, 9 and 11 to the extent decree was made against them by the trial Court. Appeal bearing A.S. 283/60 was preferred by the plaintiff to the extent the suit was dismissed. Both the appeals came to be disposed of by a Division Bench of the Andhra Pradesh High Court by a common judgment rendered on 17th August 1966 by which A.S. 252/60 preferred by original defendants 8, 9 and 11 was allowed and the decree made against them in favour of the plaintiff was set aside, and A.S. 283/60 preferred by the plaintiff was dismissed. As a consequence the entire suit of the plaintiff came to be dismissed with costs in one set.

6. The plaintiff thereupon approached the High Court for a certificate and on a certificate under Article 133(1)(a) being granted, the plaintiff lodged the present appeal.

7. When the appeal reached the stage of hearing on an earlier occasion, CMP. 17845/78 was filed requesting the Court to record a memorandum of compromise between the appellant and the legal representatives of respondents 1, 2, 3, and respondent 34 inviting the Court to dismiss the appeal of the plaintiff appellant against them. By an order made by this Court, this compromise was recorded and the appeal was so down for further hearing against the remaining respondents. We take note of this compromise because on the basis of this compromise a submission has been made on behalf of the remaining respondents that the appeal against them would no more survive.

8. Mr. V. Gopalakrishnayya, learned Counsel for the appellant urged that it is impermissible in law to give a joint Power by three persons in favour of one agent. Alternatively it was contended that if such a power of Attorney is legal and valid it would clothe the agent with the only authority to Act in respect of the joint affairs or property of the co-principals and not for any individual affair or property of any one of them. It was further urged that upon a true construction of the authority conferred by the Power of Attorney, Ext-P-1 the scope of authority only encompassed the

management of the joint properties of the three co-principals or at best the management of property of each one of the principal but it did not clothe him with an authority to sell the property of any one of them and the situation is not improved by the supplementary deed, Ext. P-2. Alternatively it was contended that if Ex. P-1 conferred an authority to sell the land it was hedged in with a pre-requisite that the property can be sold to finance the litigation or to repay the loan, if any, borrowed for the aforesaid purpose. In this context it was submitted that the Court should bear in mind that the Purden is on the party who seeks to rely on the authority of the constituted attorney to establish that the impugned transaction falls within the ambit of authority of the attorney, and in this connection it may be borne in mind that ordinarily the courts construe Power of Attorney strictly. It was then urged that even if it is held that by the combined operation of Exts. P-1 and P-2 the Attorney had the authority to sell the land he had not acted on his own but merely completed the sale negotiated by an outsider and thereby he acted as a rubber stamp and such an act of the attorney would not bind the principal, and in that event the purchaser did not acquire any title to the land. It was also contended that the High Court was in error in admitting the three sale deeds by granting CMP. 2762/61 purporting to act under Order 41, Rule 27, Civil Procedure Code, and if they are excluded from consideration, in the absence of sale deeds the decree of the trial Court against original defendants 8, 9 and 11 will have to be restored.

9. On behalf of the contesting respondents it was urged that the plaintiff being benamidar, cannot maintain the suit on the allegation that he is the full and absolute owner of the properties.

10. The first contention of the appellant is that it was impermissible in law for three persons to jointly grant a Power of Attorney in favour of defendant 34. Barring the ipse dixit of the learned Counsel nothing was shown to us to make such a joint power impermissible in law. The relation between the donor of the power and the donee of the power is one of principal and agent and the expression 'agency' is used to connote the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. The relation of agency arises whenever one person called the agent has authority to act on behalf of another called the principal and consents so to act. The relationship has its genesis in a contract. If agency is the outcome of a contract between the principal and the agent, in order to show that three principals jointly constituting an agent by a deed called 'Power of Attorney' was impermissible, provisions of Contract Act or the general law of contract should have been shown as having been violated by such a contract. Nothing of the kind was pointed out to us. On the contrary, in Halsbury's Laws of England, Vol. I, 4th Edn. para 726, the following proposition has been stated:

Co-principals may jointly appoint an agent to act for them and in such case become jointly liable to him and may jointly sue him.

11. We are in agreement with this view and, therefore, three principals could jointly appoint an agent.

12. The next limb of the submission was that if three co-principals jointly constituted an agent then unless contrary is indicated by the deed of the Power of Attorney, the necessary inference would be that the agent can act in respect of those affairs in which all the co-principles are jointly interested.

In other words, it was said that such a Power of Attorney would clothe the agent with an authority to act in respect of joint affairs of the co-principals. We are unable to find any force in this argument, for what the Power of Attorney authorises depends on its terms and the purpose for which it is executed. It would, therefore, be necessary to refer to the Power of Attorney, Ext. P-1 and the supplementary deed, Ext. P-2. Ext. P-1 is dated 10th April 1949 and is styled as general Power of Attorney. The co-principals are: (1) plaintiff Syed Abdul Khader, (2) Kazdm Yar Jung, and (3) Syed Mustafa Hussain. The purpose for which the power was executed is set out in Ext. P-1 in the following words:

...that in view of our private needs and as we are unable to conduct cases and answer them in time, we therefore appoint Copper Sattayya son of Coper Durgayya resident of Ghanpur, Medak Taluq as our general power of Attorney to act on our behalf and we empower the said person through this power of Attorney that the said Muktar can conduct the cases (parvi) of all sorts, question and answer, admit or deny, either orally or writing on our behalf in all departments, civil and criminal courts, in the High Court, in the judicial committee, in the Revenue Departments of the Districts, namely, in the offices of the IInd, IIIrd, and Ist Taluqdars, the Tahsil Offices etc. ... and purchase or sell (sic) of lands and that he is authorised to appoint any pleader or special Muktar when occasioned (sic) and to stop or to take or file any copies in any suit or to file any suit or file any written statements with his own signature to fetch any loan for our business or lands or to pay the debts from out of the income of the estate or to purchase or sell the lands and to execute the sale deeds and get registered under his signature etc....

13. The last sentence is that "all the acts of the said Muktar shall be deemed to be acts done and effected by us which we hereby accept and approve". Subsequently on 20th April 1949 a supplementary Power of Attorney in addition to Ext. P-1 was executed by the aforementioned three donors of Power in favour of defendant No. 34 in which it is specifically stated that they affirm earlier Power of Attorney dated 10th April 1949 and thereafter the relevant recital is as under:

But by the said document, the powers of sale and registration were not confirmed (sic) on him and that therefore through this deed the same is hereby confirmed (sic) on him.

14. It was urged that the Court should bear in mind the first principle that a Power of Attorney has to be strictly construed. Undoubtedly, where someone other than the person who has a right to act in respect of certain things has, under a contract of agency, the right to act on behalf of principal, the authority conferred by the written instrument has to be strictly construed. Ordinarily a Power of Attorney is construed strictly by Courts (vide Bryant, Powis and Bryant Ltd. v. La Banque du Peuple) [1893] A.C. 170 at 177.

15. Adopting the principle of strict construction of a Power of Attorney, the first question that is required to be answered is whether the Power of Attorney, Ext. P-1 was meant to confer the authority on the agent to act only in respect of the joint affairs or joint property of the co-principals or it was in respect of the individual affairs and effects of each principal. In Ext. P-1 at three places the expression used is: "our Power of Attorney to act on our behalf and we empower the said person"; then again "on our behalf in all departments", and then lastly, "acts done and effected by

the agent shall be deemed to be the acts done and effected by the principals." Mr. Gopalakrishnayya said that it would be extraordinary to hold that the expression "on our behalf" as disclosing a conjoint action on behalf of more than one person could ever be interpreted by any canon of construction as one on behalf of each individual. He said that apart from the strict construction the Court must put on a Power of Attorney, where the terms of the written contract are clear and unambiguous it is impermissible for the Court to take into consideration the other circumstance's to determine the intention of the parties. When a contract is reduced to writing, undoubtedly the Court must look at the terms of the contract and proceed on the assumption that the parties intended what they have said and if the terms are unambiguous the Court must give effect to the terms of the contract. However, it is well establish ed that in considering a contract it is legitimate to take into account the surrounding circumstance's for ascertaining the intention of the parties (vide Modi & Co. v. Union of India) .

16. Exhibit P-1 being a Power of Attorney granted by three co-principals in favour of one agent, the expression "on our behalf" would hardly be decisive of the scope of authority conferred by the deed. The circumstances in which such Power of Attoreny came to be executed and the fact that three different persons though near relations but having no joint property or venture joined in executing a Power of Attoreny and the purpose and object for which it was executed when taken into consideration would throw light on the true nature of the authority conferred by the deed. In this connection it is an admitted position that the Power of Attorney was executed in April 1949 and that too in the State of Hyderabad, the erstwhile Nizam's State. In the wake of police action in the fall of 1943 and thereafter there were unusually disturbed conditions in Hyderabad State. Plaintiff himself has stated in plaint para 1 that the conditions in Hyderabad were disturbed, that like himself, his father and brother found it difficult to make contact with their properties and it was being contemplated by the plaintiff that he might shift to Pakistan with others. All the three persons, i.e. his father, brother and the plaintiff found it difficult even to approach the properties of each of them and that all of them were contemplating to migrate to Pakistan. In his belated evidence in Court after defendants' evidence was closed the plaintiff re-affirmed that after police action he lost possession of his lands and it was difficult to approach the lands or manage the same. Even his clerk was not willing to undertake the responsibility. Further there is no evidence to show that all the three co-principals had any joint property or any joint business or any joint venture in which they were jointly interested. Plaintiff says in his evidence that all the three joined in executing Power of Attorney Ext. P-1 because each of them had his land in that area and each was unable to manage his land. In this background it would be futile to say that the three co-principals executed the power of Attorney in favour of the agent to look-after their joint affairs and joint property alone. In fact, plaint para 1 leaves no room for doubt that each of the three co-principals neither could manage nor could have access to each one's own property and that each one was contemplating to migrate to Pakistan and that therefore they all gathered together and executed one Power of Attorney in favour of defendant No. 34 as a matter of convenience for dealing with the property of each one of the co-principals. It thus clearly transpires that each one of the co-principals had his land, that each one of them was unable to manage his land, and that all the three of them were contemplating to migrate to Pakistan and that they wanted possibly to dispose of their lands, collect cash and skip over to Pakistan. If Power of Attorney Ext. P-1 was executed in this background it would illumine the scope and ambit of authority conferred by Ext. P-1. It would clearly appear that each one wanted to

constitute defendant 34 to be his agent in respect of his property. Therefore, the contention that the power of attorney Ext. P-1 read with Ext. P-2 was a joint power only in respect of joint properties of the three co-principals must be rejected.

17. An incidental submission may be disposed of at this stage. It was urged that the Power of Attorney Ext. P-1 is legally invalid and defective in form and that the supplementary document Ext. P-2 does not render in valid. The defect pointed out is that when Ext. P-1 was offered for registration the Sub-Registrar has nowhere noted in his endorsement that the donors of the power who executed the Power of Attorney Ext. P-1 were identified to him by someone known to him or they were personally known to him. Undoubtedly the Sub-Registrar in order to be satisfied that there is no impersonation may require some person known to him to identify those who admit execution before him but in case the persons who have executed the deed before him are known to him the failure to endorse that fact on the deed does not render the deed invalid. In any event if those who executed the deed admit having executed the deed, the fact that the Sub-Registrar failed to endorse the fact of the persons being known to him would not render the deed invalid. A General Power of Attorney is not a compulsorily registrable document. No rule or regulation was pointed out to us in support of the submission that it was obligatory for the Sub-Registrar to make the endorsement that those who have executed the deed were either personally known to him or were identified by someone known to him. Therefore, there is no merit in the contention and it must be rejected.

18. The next contention is that upon a true construction of Ext. P-1, the authority conferred thereby was to manage the property of the donors of the power and it did not confer any authority to purchase or sell the property. Simultaneously it was stated that Ext. P-2 does not improve the position in this behalf. Both the Courts have rejected this submission and for very good and convincing reason's. A bare perusal of Ext. P-1 clearly shows that apart from the power to manage the property, a further power to purchase and sell lands was conferred on the agent. Power to purchase and sell lands has been expressly mentioned at two places in Ext. P-1. But even apart from this, the plaintiff in his cross-examination has admitted that after executing Ext. P-1 the Registrar pointed out that the Power of Attorney Ext. P-1 does not confer the authority to sell land and offer for registration sale deed and requested them to execute a supplemental document expressly conferring such authority and he identified Ext. P-2 to be the supplemental document. Ext. P-2 has been reproduced in extenso by the High Court in its judgment and in no uncertain and most unambiguous terms it is stated therein that the power to sell and registration of sale deed was conferred by Ext. P-2. But even if Ext. P-2 were to be excluded from consideration, the Fewer of Attorney Ext. P-1 clearly confers an authority on the agent to sell the property. If we recall at this stage the circumstances in which Ext. P-1 came to be executed in favour of defendant No. 34, it clearly appears that plaintiff, his father and brother were keen to get the lands sold as they were contemplating to migrate to Pakistan. In the face of this express and explicit power it could not be said that the authority was conferred only to manage the property. In Ext. P-1 the expression 'to manage the property' is nowhere to be found. On the contrary the general Power of Attorney is couched in a language which confers wide authority to file suits, defend actions, engage advocates, appear in various offices, purchase and sell land and execute sale deeds and get them registered, to borrow money, to employ persons needed for carrying out affairs and to dismiss them. It is difficult to appreciate the submission that the authority was only to manage the property. The submission is

not borne out by the contents of Exts. P-1 and P-2.

19. Incidentally in this connection it was urged that the power to purchase and sell land and to execute documents and to offer them for registration does not include the power to sell agricultural land. This has only to be mentioned to be rejected because the expression 'lands' would include both agricultural and non-agricultural land.

20. The next contention is that even if the Court were to accept that the authority conferred by the Power of Attorney encompasses the authority to sell land, the power to sell land was hedged in with a pre-condition or with a pre-requisite that the land could be sold either for financing litigation or if for that purpose a loan was borrowed, to repay the loan. Sustenance is sought to be drawn for this submission from the following few lines in Ext. P-1:

...and purchase or sell (sic) of lands and that he is authorised to appoint any pleader or special Muktar when occasioned (sic) and to stop or to take or file any copies in any suit or to file any suit or file any written statements with his own signature to fetch any loan for our business or lands or to pay the debts from out of the income of the estate or to purchase or sell the lands and to execute the sale deeds and get registered under his signature and to obtain money or to enter into a compromise in any suit or get it settled through arbitration or to withdraw any suit etc. In Ext. P-2 the supplemental Power of Attorney, it is stated that the power for sale and registration of documents was conferred on the agent The construction suggested is not warranted by the language used in Ext. P-1. The power to purchase or sell land was not hedged in by any pre-requisite or pre-condition. Each recital constitutes a separate power, namely, (i) power to purchase or sell land, (ii) power to appoint a pleader or Mukhtar, (iii) power to file suit or appear and file written statement, (iv) power to borrow money or to enter into any compromise in any suit or get it settled through arbitration and withdraw any suit Each was an independent power. There is nothing in Ext. P-1 which would even remotely indicate that the land could be sold only for financing the litigation or if for that purpose a loan was borrowed, to repay the loan Such power of wide amplitude conferring such wide authority cannot by construction be narrowed down to deny an authority which the donors expressly granted. The ordinary authority given in one part of the instrument will not be cut down because there are ambiguous and uncertain expressions elsewhere but the document will be considered as a whole for interpretation of particular words or directions (see Halsbury's Laws of England, 4th Edn., Volume I, Para 733). The contention, therefore, must be negatived.

21. The next contention is that even if Ext. P-1 confers authority on defendant 34 to sell land, the authority so conferred on defendant 34 was to act on his own and not at the behest of an outsider or as a rubber stamp of someone and that in this case evidence clearly shows that it was Kazim Yar Jung, the father of the plaintiff who entered into an agreement, Ext. D-18 dated 14th February 1949, with defendant No. 1 for sale of land and the agent defendant 34 merely rubber stamped the sale and executed the sale deed and that such a sale is not binding on the plaintiff. At first blush the argument is really attractive but it does not stand scrutiny. Land involved in the dispute was granted by the Nizam when the father of the plaintiff was a Minister in the Nizam's Government. Patta evidencing the grant was taken in favour of the plaintiff who was then a minor. The father of the plaintiff really believed that he was the owner of the land and in fact on 20th October 1949 he wrote

to Tahsildar, Medak that his son was a benamidar and that the lands may, therefore, be transferred in his name. Thus, the father of the plaintiff acted as if he was the owner of the land but when a contention on behalf of the respondents that the plaintiff was a benamidar would be presently examined, it would be pointed out that the plaintiff was the real owner and was not a benamdar. That is the true legal position. The fact, however, remains that the father of the plaintiff who must be a man of considerable influence being a Minister in the Government of Nizam, must have acted as if he was the owner of the land. Undoubtedly, the agreement Ext. D-18 for sale of land was entered into between the father of the plaintiff and defendant No. 1 and pursuant to this agreement defendant No. 34 executed a sale deed in favour of defendant No. 31, but it may be noticed that the agreement Ext. D-18 was entered into two months prior to the grant of Power of Attorney, Ext. P-1. There is, however, evidence to show that the agreement for sale of land and the sale deed were taken in the presence of and to the knowledge and with the full acquiescence of the plaintiff. Witness Kishta Reddy, D.W. 2 has stated in his evidence that defendant 1 Rami Reddy paid the consideration for purchase of land pursuant to agreement Ext. D-18 to plaintiff in his own presence. He has further stated that Kazim Yar Jung, Plaintiff's father and daughter of Kazim Yar Jung and both of his sons including the plaintiff were present when the amount of consideration was paid. This witness's presence at the time of payment of consideration cannot be disputed because receipt Ext. D-16 which evidences payment of consideration for the sale of land to defendant No. 1 though signed and passed by Kazim Yar Jung, the father of the plaintiff, was attested by him. This evidence which has remained uncontroverted would show that the consideration for sale of land in favour of defendant 1 pursuant to agreement of sale Ext. D-18 was paid to the plaintiff in the presence of this witness and plaintiff accepted the same though the receipt Ext. D-16 was passed by the father of the plaintiff. A feeble attempt was made to explain this inconvenient evidence by saying that in agreement Ext. D-18 lands are not specifically described by setting out the Survey Numbers or the Khata Numbers and as in that very village plaintiff's father had also his lands, the plaintiff may have as well remained under the impression that the father had sold his own lands and, therefore, could not raise any objection about the sale. This explanation cannot be swallowed for the obvious reason that there was no reason for the plaintiff to accept the consideration or the consideration being put in his hands if his land was not being sold. Even if the father of the plaintiff could be said to be an ostensible owner of the land and he purported to sell the land, the plaintiff the real owner as he claimed to be had acquiesced in the same and accepted the consideration and in this background he would be estopped from challenging the title which was transferred pursuant to the sale. In the back-drop of these circumstances the principle enunciated in Section 41 of the Transfer of Property Act would come to the rescue of the transferee. Section 41 of the Transfer of Property Act provides that where, with the consent, express or implied, of the person interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it. Section 41 codifies what was once treated as a principle in equity which the Judicial Committee had recognised in Ramcoomar v. Macqueen (1872) I.A. 11 Bengal L.R. 46 wherein the Judicial Committee observed as under:

It is a principle of natural equity which must be universally applicable that, where one man allows another to hold himself out as the owner of an estate and a third person purchases it, for value, from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold

himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing either that he had direct notice, or something which amounts to constructive notice, of the real title; or that there existed circumstances which ought to have put him upon an inquiry that, if prosecuted would have led to a discovery of it.

22. In this case the father of the plaintiff throughout acted in relation to others as the owner of the property though the plaintiff was the real owner of the property. The father of the plaintiff executed agreement D-18 to sell the land to defendant 1. The transaction was completed in the presence of the plaintiff and the consideration was put in the hands of the plaintiff. Plaintiff would certainly be estopped from contesting the validity of the sale on the ground that the father had no authority to sell the land or on the ground that though his father entered into the agreement Ext. D-18, his constituted attorney defendant 34 acted as a mere rubber stamp.

23. In this connection it would be very profitable to refer to a notice served by the plaintiff on defendant 1, Ext. D-21 dated 19th December 1949. Now, before the true impact of this notice can be gauged, a few dates may be recalled. The Power of Attorney Ext. P-1 was executed in favour of defendant 34 on 10th April 1949. Agreement Ext. D-18 was entered into between the father of the plaintiff and defendant No. 1 on 14th February 1949. This would show that agreement D-18 was entered into between the father of the plaintiff and defendant 1 prior to the execution of the Power of Attorney, Ext. P-1. The public notice cancelling the Power of Attorney was issued on 25th October 1949. Now, notice Ext. D-21 is dated 19th December 1949. Therefore, it clearly transpires that notice Ext. D-21 was issued by the plaintiff after he had developed a suspicion about the fraud alleged to have been perpetrated by defendants 1 and 34 and after cancelling the Power of Attorney in favour of defendant No. 34. Yet by this notice Ext. D-21 plaintiff called upon defendant 1 to meet him to purchase the lands set out in the notice if he was so desirous, otherwise plaintiff would sell the same to others. The lands described in the notice clearly exclude those pieces of lands sold under the authority of Power of Attorney Ext. P-1. Does it stand to reason to believe that plaintiff who suspected that he was the victim of a fraud at the hands of defendant 1 and that he had to take steps to cancel the Power of Attorney granted by him in favour of defendant 34 specifically at the instance of defendant 1 would ever invite him to purchase some other land ? If there was any substance in the case put forth by the plaintiff that the sale already completed by defendant 34 in favour of defendant 1 pursuant to the agreement, Ext. D-18 executed by the father of the plaintiff in favour of defendant 1 was not acceptable to him or was not binding on him he would not invite him to purchase other lands. The conduct of the plaintiff belies his suspicion, and the allegation of fraud and want of authority is clearly an after thought. Viewed from any angle, the contention of the plaintiff is without merits and must be rejected.

24. It was next contended that the High Court was in error in granting CMP. 2762/61 permitting the heirs of defendants 8, 9 and 11 to produce the sale deeds which they did not produce in the trial Court and after relying on the same, reversing the decree of the trial Court. The High Court has given cogent reasons for granting CMP. 2762/61. Order 41, Rule 27, C.P.C. enables the appellate Court to admit additional evidence in the circumstances or situation therein mentioned, one such being where the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause. By a catena of

decisions of this Court, it is well established that Order 41, Rule 27, C.P.C. does not confer a right on the party to produce additional evidence. But if the Court hearing the action requires any document so as to enable it to pronounce judgment, it has the jurisdiction to permit additional evidence to be produced. The High Court has given cogent reasons why it felt impelled to permit production of registered sale deeds so as to enable it to pronounce judgment in the matter. If the High Court considered the production of registered sale deeds essential so as to enable it to pronounce judgment, there is no reason why we should interfere with the discretionary power properly exercised by the High Court in the interest of justice. Even otherwise, the High Court was justified in permitting additional evidence to be produced when it consisted of registered sale deeds. Such additional evidence has to be read as part of the record. Once these registered sale deeds are taken into consideration, a part of the decree of the trial Court granted in favour of the plaintiff awarding him possession of the land on the only ground that the sale deeds in respect of those pieces of lands were not produced, could not be maintained and the High Court rightly allowed the appeal of original defendant Nos. 8, 9 and 11 and no exception can be taken to it.

25. We may now turn to two contentions raised on behalf of the respondents.

26. The first contention on behalf of respondents is that the plaintiff being a benamidar, he is not entitled to seek possession of the land on the basis of his title as full and absolute owner of the suit lands. The High Court in this connection has not specifically dealt with this contention though the trial Court raised a specific issue in respect of it and answered it in favour of the plaintiff. The High Court has, however, observed that the plaintiff's father was the real owner of the suit lands and he was managing the property although the patta was issued in the name of his son, the plaintiff. The High Court then observed that Kazam Yar Jung for the reason that he was an employee of the Nizam in order to avoid embarrassment to himself nominally made the plaintiff, his minor son, the pattadar. In the opinion of the High Court this is borne out by the fact that after executing the Power of Attorney, Ext. P-1 in favour of defendant 1, he wrote to the Tahsildar, Medak on 20th October 1949 that his son was a benamidar and that the lands may therefore be transferred in his name. However, after making these observations the High Court has not chosen to non-suit the plaintiff on the ground that he was a benamidar.

27. Undoubtedly, Kazim Yar Jung was holding a high office in Nizam's Government. It is rational to believe that he may have influenced the decision of the Nizam to grant the land and that he may not have taken the patta in his own name. The patta may, therefore, have been granted in favour of his minor son, the plaintiff. Does that make the plaintiff a benemidar? Section 82 of the Indian Trusts Act, 1882, provides that where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration. Now, there is no evidence to show that the patta was for consideration. It is said that there was a grant of land and it is not clear that it was meant to be a gift of land. Even if the Nizam in appreciation of the services rendered by the plaintiff's father granted the land to the plaintiff, it could not be said that any consideration flowed from the father of the plaintiff so as to make the plaintiff a benamidar. The genesis of the concept of benami is the consideration for a transfer must flow from one person and the transfer is taken in the

name of the other person and the consideration so flowing for the transfer was not intended to be a gift in favour of the person in whose name the transfer is taken. All these ingredients of benami are absent in this case and, therefore, the contention that the plaintiff was a benamidar cannot be accepted.

28. It was also contended that the plaintiff came to the Court with an allegation that defendant 1 induced the plaintiff, his father and brother to execute a nominal Power of Attorney in favour of defendant No. 34, and defendants 1 and 34 in collusion with each other defrauded the plaintiff his property. It was said that if defendants 1 and 34 were the perpetrators of the fraud, the plaintiff having compromised with them and withdrawn the appeal against them, the appeal would not survive against the rest. There is absolutely no merit in this contention. The plaintiff may have valid reasons for entering into a compromise with defendants 1 and 34 who might have made good a part of the loss suffered by the plaintiff. But apart from the allegation of fraud, the suit was substantially based on the scope of authority conferred by Exts. P-1 and P-2 to sell lands and the acquisition of the title by the purchasers from the attorney defendant 34 in exercise of the authority conferred by Exts. P-1 and P-2 and, therefore, a compromise with defendants 1 and 34 would not render the appeal against the rest of the defendants infructuous or untenable.

29. The third contention was that the plaintiff left India and his evidence having remained incomplete, the same could not be read in evidence. After we explained the relevant documents, we are satisfied that there is no substance in this contention.

30. As all the contentions raised by the appellant fail, the appeal fails and is dismissed with costs.