

Sri Rangachar vs Smt Jayalakshamma on 12 April, 2023

Author: Ravi V. Hosmani

Bench: Ravi V. Hosmani

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

REGULAR FIRST APPEAL NO.1172 OF 2019 (SP)

BETWEEN:

SRI RANGACHAR
SINCE DEAD BY HIS LRs

1. SMT. VARALAKSHAMMA
W/O LATE RANGACHAR
AGED ABOUT 64 YEARS
2. SRI. VENKATESHACHAR
S/O LATE RANGACHAR
AGED ABOUT 50 YEARS
3. SRI. NAVEEN KUMAR
S/O LATE RANGACHAR
AGED ABOUT 30 YEARS

APPELLANTS NO.1 TO 3
ARE RESIDING AT NELAGADARAHALLI
VILLAGE AND POST
YESHWANTHAPURA HOBLI
BENGALURU NORTH TALUK
BENGALURU-560 073.

4. SMT. GIRIJAMMA
W/O KUMARASWAMY
AGED ABOUT 44 YEARS
R/AT KURABARAHALLI
K.R.PET, MANDYA DISTRICT
PIN: 571 426.

5. SMT. NINGAMMA @ BABY
W/O JAGADISH
AGED ABOUT 40 YEARS
R/A 17TH CROSS, 1ST MAIN ROAD
SHIVAPURA, BENGALURU-560 058.

... APPELLANTS

[BY SRI K. VIJAYA KUMAR, ADVOCATE (PH)]

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AND:

1. SMT. JAYALAKSHMAMMA
D/O PATEL C.NARAYANAPPA
AGED ABOUT 54 YEARS
R/A NELAGADARANAHALI
VILLAGE AND POST
YESHWANTHAPURA HOBLI
BENGALURU NORTH TALUK
BENGALURU-560 073.
2. SRI. C.N.NARAYANAPPA
S/O MEGALAMANE CHIKKANNA
AGED ABOUT 67 YEARS
R/AT NELAGADARANAHALI
VILLAGE AND POST
YESHWANTHAPURA HOBLI
BENGALURU NORTH TALUK
BENGALURU-560 073.

...RESPONDENTS

[BY SRI K.N.NITISH, ADVOCATE FOR C/R1 (PH);
NOTICE SERVED TO R2]

THIS REGULAR FIRST APPEAL FILED UNDER ORDER 96 RULE 1(r) OF CPC., AGAINST THE JUDGMENT AND DECREE DATED 01.03.2019 PASSED IN O.S.NO.7663/2003 ON THE FILE OF THE XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DECREETING THE SUIT FOR SPECIFIC PERFORMANCE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 18.10.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

JUDGMENT

Challenging impugned judgment and decree dated 01.03.2019 passed by XXXV Addl. City Civil and Sessions Judge, Bengaluru (CCH-36), in O.S.No.7663/2003, this appeal is filed.

2. Appellant no.1 was defendant no.2 and wife of defendant no.1. She along with appellant nos.2 to 5 - legal representatives of defendant no.1 has preferred this appeal. Respondents no.1 and 2 herein were plaintiff and defendant no.3 respectively in suit. For sake of convenience, they will be referred to as such.

3. Brief facts are that plaintiff filed O.S.no.7763/2003 seeking for relief of specific performance of unregistered agreement of sale dated 01.12.2000 by directing defendants to execute registered sale deed in favour of plaintiff in respect of sites no.11, 14 and eastern portion of site bearing no.19,

formed in Sy.no.26, situated at Nelagadaranahalli, Yeshvantpur Hobli, Bengaluru (for short 'suit property').

4. In plaint, it was stated that suit property belonged to defendant no.3 - C.N. Narayanappa, who had executed a registered General Power of Attorney ('GPA' for short) in favour of defendants no.1 and 2 in respect of suit property, who in turn executed agreement of sale in favour of plaintiff for total sale consideration of Rs.4,50,000/- after receiving Rs.4,00,000/- in advance and agreeing to execute registered sale deed by receiving balance of Rs.50,000/-, within 11 months from date of agreement. It was further stated that physical possession was not delivered as A.C.C. sheet roofed house in it was tenanted. Thereafter, plaintiff was ready and willing and called upon defendants to perform their part of agreement, but, they failed to come forward to execute sale deed.

5. On said cause of action, plaintiff engaged counsel to file suit for specific performance. But said counsel filed suit only for permanent injunction on erroneous facts, which necessitated amendment of plaint. After filing application, said suit was withdrawn and present comprehensive suit was filed. It was stated that cause of action for suit arose on 01.12.2000 i.e., date of execution of agreement of sale on receipt of Rs.4,00,000/- by defendants no.1 and 2.

6. On service of suit summons, defendants no.1 and 2 entered appearance; while defendant no.3 was placed ex-parte. During pendency of suit, defendant no.1 died. His legal representatives including his wife - defendant no.2 were brought on record as defendants no.1(a) to (e).

7. Written statement was filed denying execution of sale agreement dated 01.12.2000 in favour of plaintiff for Rs.4,50,000/- in respect of suit property after receiving Rs.4,00,000/- as advance etc. Alternatively, it was contended that even if sale agreement was executed, time of 11 months fixed for execution of sale deed expired on 01.11.2001. And as time was essence of contract, suit filed on 23.10.2003 indicate that plaintiff was not ready and willing to perform her part of contract.

6. It was further stated that instead of calling upon defendants to execute sale deed, plaintiff had deliberately resorted to filing suit for permanent injunction to dilate cause of action. Hence, she was not entitled for relief of specific performance.

7. Based on pleadings, trial Court framed following issues:

1. Whether the plaintiff proves that the defendant No.1 and 2 had entered into an agreement of sale dated 01.12.2020 agreeing there under to sell the suit schedule property in her favour for consideration of Rs.4,50,000.00 and received advance amount of Rs.4.00 lakhs?
2. Whether the plaintiff proves that she has always been ready and willing to perform her part of contract?
3. Whether the plaintiff is entitled for the relief of specific performance of contract?

4. Whether the plaintiff is entitled for possession of the plaint schedule property?

5. What decree or order?

8. To establish her case, plaintiff examined herself and another as PWs.1 and 2 and got marked Exhibits P1 to P12. On other side, defendant no.2 was examined as DW.1 and Exhibit C1 was marked during cross-examination.

9. On consideration, trial Court answered issues no.1 to 3 in affirmative; issue no.4 in negative and issue no.5 by decreeing suit and directing L.Rs of defendants no.1 (a) and defendant no.2 to execute regular sale deed in favour of plaintiff, by receiving remaining balance sale consideration of Rs.50,000/- within two months.

10. Aggrieved thereby, defendants no.1 and 2 are in appeal.

11. Sri K. Vijaya Kumar, learned counsel for appellants submitted that as per plaintiff, Ex.P2 - agreement of sale was executed on 01.12.2000 by receiving Rs.4,00,000/- as advance out of total agreed amount of Rs.4,50,000/- along with possession. Besides denying agreement, it was contended that as mentioned therein defendant no.1 (c) had signed it, though he was minor. Further, due to apparent insertion of sentences at bottom of page no.2 of Ex.P.2, there was material alteration. Hence, agreement was illegal and unenforceable.

12. It was further submitted that PW.2 specifically stated transaction between plaintiff and defendants was financial, otherwise it would have been signed by defendant no.3 - actual owner, who was stated to be present. But, trial Court erroneously ignored same on ground that said contention was without pleading.

14. It was submitted that earlier suit for permanent injunction filed on 18.07.2002, was dismissed as withdrawn on 06.09.2003. Thereafter, present suit was filed on 27.10.2003 i.e. after having prosecuted earlier suit for nearly one year. As filing of earlier suit was admitted, second suit would be barred by Order II Rule 2 of CPC. As it was pleaded in written statement that suit was not maintainable, rejection of contention of bar under Order II Rule 2 of CPC, would be contrary to material on record.

8. Insofar as delivery of possession, recital in Ex.P.2 was contradicted by plaint averment.

9. Attention was also drawn to contradiction in deposition of PW.1 wherein he first stated about notice having been got issued through Sri. Prakash - earlier counsel, who had misplaced it, and thereafter stating that he had orally requested counsel to issue legal notice. It was contended that failure to issue legal notice prior to filing suit for specific performance established lack of readiness and willingness, especially suit was filed just before expiry of period of limitation.

10. Even admission by PW.1 that market value of suit property as Rs.20,00,000/-, and she being only housewife had borrowed money from her father etc., established want of readiness and

willingness and hardship upon defendants.

11. In support of his submissions, learned counsel relied upon following decisions:

i) U.N. Krishnamurthy Vs. A.M. Krishnamurthy, reported in 2022 SCC OnLine SC 840, for proposition that to substantiate readiness and willingness, it was mandatory for plaintiff to plead and establish that he was always ready and willing to execute sale deed.

ii) Saradamani Kandappan Vs. S Rajalakshmi & Ors.

reported in 2011 (12) SCC 18, for proposition that whether time was essence of contract had to be decided with reference to contract as a whole. Where term of agreement provided for payment of balance sale consideration within specified time and to get sale deed registered, there would be presumption that time was essence of contract. Especially, as said obligation was unconditional.

iii) B.V. Nagesh Vs. H.V. Sreenivasa Murthy reported in 2010 (13) SCC 530, regarding scope of interference with findings of trial Court, in first appeal.

12. On other hand, Sri. K.N. Nitish, learned counsel for plaintiff submitted that as per agreement of sale dated 01.12.2000, defendants had agreed to sell suit property for total sale consideration of Rs.4,50,000/- within 11 months of agreement of sale after receiving Rs.4,00,000/- as advance. Said period of 11 months was fixed since seller was required to get record of rights rectified. It was specifically stated that though, averred in agreement, possession was not delivered. It was contended that written statement was one of mere general denial.

13. At outset appeal was opposed on ground of maintainability. It was submitted that when suit property admittedly belonged to defendant no.3 and defendants no.1 and 2 - GPA holders, appeal filed by legal representatives of GPA holders, instead of defendant no.3, would not be maintainable, as they are not aggrieved persons. In support of said submission, reliance was placed on decision of Hon'ble Supreme Court in case of V.N. Krishna Murthy & Ors. Vs. Ravi Kumar & Ors.1.

14. It was further submitted that when written statement was filed, it was signed only by defendants no.1 (b) to (e). Defendant no.1(a, who was defendant no.2 had not signed it. As such, deposition of DW.1 i.e., defendant no.2, would be of no avail.

15. Further, without pleading, claim that Rs.2,50,000/- admitted to be received by DW.1 towards loan transaction cannot be accepted. Pointing to conduct of DW.1, who denied her signature on vakalath, it was submitted that as per ratio in case of Mahabaleshwara Gurunath Hegde Vs. Gurunath Timmappa Hegde², entire defence was required to be struck off.

16. On proposition that it was not necessary for plaintiff to deposit amount in Court or tender same to defendants, except where 2020 (9) SCC 501 RSA no.100134/2019 d.d. on 24.01.2022, Court so directs, reliance was placed on decision in T Krishnamurthy Vs. Gangadharaiah³.

17. Further, readiness and willingness was clearly pleaded. As Rs.4,00,000/- was paid out of total sale consideration of Rs.4,50,000/- i.e. 90%, readiness and willingness stood established as per ratio in P Ramasubbamma Vs. Vijayalakshmi & Ors.⁴ On proposition that once agreement and readiness and willingness are proved, denial of decree for specific performance would be unsustainable, reliance was placed on decision in Sughar Singh Vs. Hari Singh (Dead) through LRs. & Ors.⁵ It was also held that amendment to Section 10(a) of Specific Relief Act ('S.R. Act' for short), though not retrospective, principles would guide discretion.

18. Insofar as delay in filing suit, it was submitted that agreement was signed on 01.12.2000 fixing time for performance of obligations as 11 months. Plaintiff had instructed counsel to file suit for specific performance. However, when she realized that only permanent injunction was sought, she withdrew said suit on 06.09.2003 with liberty to file fresh suit, and filed present suit on 23.10.2003. As such, there was neither delay nor laches. In support of said submission, 2010 SCC OnLine Kar.5208 (2022) 7 SCC 384 AIR 2021 SC 5581 reliance was placed on Apex Court decision in case of P. Daivasigamani Vs. S. Sambadan⁶.

19. Relying on decision in R Lakshmikantham Vs. Devaraji⁷, it was submitted that as long as suit was filed within period of limitation, mere delay in filing suit cannot be a ground for refusing specific performance.

20. Insofar as application filed under Order II Rule 2 of CPC, it was submitted that as per decision of Hon'ble Supreme Court in case of Alka Gupta Vs. Narendra Kumar Gupta⁸, without specific defence about bar under Order II rule 2 of CPC and framing of specific issue, suit cannot be held to be barred.

21. It was submitted that in any case, since earlier suit was for permanent injunction and present suit for specific performance, said bar would not be attracted by relying upon decision in Rathnavathi Vs. Kavita Ganashamdas⁹, and sought for dismissal of appeal on above grounds.

22. Heard learned counsel, perused impugned judgment and decree and record.

2022 SCC OnLine SC 1391.

(2019) 8 SCC 62 (2010) 10 SCC 141, 2015 (5) SCC 223

23. From above submission, following points would arise for considerations:

"1. Whether plaintiff established Ex.P2 - agreement of sale as valid and enforceable?

2. Whether plaintiff established that he was always ready and willing to perform his part of contract and there was default by defendants?

3. Whether defendants established that they would suffer hardship, if, decree for specific performance is granted?

4. Whether trial Court was justified in granting decree for specific performance?

5. Whether defendants no.1 and 2 as GPA holders of defendant no.3 are aggrieved persons so as to maintain appeal under Section 96 of CPC?"

24. Insofar as agreement of sale, while plaintiff stated that defendant no.3 was owner of suit property, he had executed Ex.P1 - GPA in favour of defendants no.1 and 2 authorizing them either to sell suit property or to execute agreement of sale. They executed Ex.P2 in favour of plaintiff agreeing to sell for total sale consideration of Rs.4,50,000/- after receiving advance of Rs.4,00,000/-. They also agreed to execute registered sale deed by receiving balance sale consideration within 11 months. But, when plaintiff was ready and willing to perform his part of contract and called upon defendants to come forward to execute sale deed, they failed to do so. Insofar as possession, it was specifically stated that actual physical possession was not delivered as it was in occupation of tenant and therefore, plaintiff sought decree for possession along with suit for specific performance.

25. On other hand, defendant no.3 remained ex-parte. And even while denying execution of agreement of sale, defendants no.1 and 2 alternatively contended that as per agreement, plaintiff was required to pay balance sale consideration within 11 months. Failure to pay balance amount and call upon defendants to execute sale deed established lack of readiness and willingness. Referring to earlier suit, it was contended that present suit was barred by principles of constructive res judicata and Order II Rule 2 of CPC.

26. To establish their case, plaintiff examined herself as PW.1 and deposed in terms of plaint. During cross-examination, she admitted that at time of execution of agreement of sale, defendants no.1 and 2, their children Venkateshachar and Naveenkumar and witnesses Muniraju and K.N. Ranagaswamy were present. It was elicited that suit property belonged to defendant no.3, who was present at time of execution of Ex.P2. It was suggested that as defendant no.1 had borrowed loan from plaintiff by signing on blank stamp papers.

27. Insofar as issuance of legal notice prior to filing of suit deposition of PW.1 was contradictory. After stating that legal notice issued prior to filing suit was misplaced by her earlier counsel, she thereafter stated that she had orally instructed counsel for issuance of notice. PW.1 further stated that at time of filing earlier suit, she had instructed counsel to seek for relief of specific performance and on finding that only relief of permanent injunction was sought, it was withdrawn with liberty to file fresh suit. Thereafter, present suit was filed.

28. Plaintiff also examined one Muniraju as PW.2, who deposed that he knew both plaintiff and defendants. He deposed in favour of plaintiff's case and stated that Ex.P2 - agreement of sale was executed in his presence and Sri K. Rangaswamy. He also deposed that due to rise in value of properties in and around Bangalore, defendants had refused to honour agreement. Suggestion about Ex.P2 being part of loan transaction and drawn by misusing blank signed stamp papers was denied.

29. In support of oral evidence, plaintiff got marked GPA, sale deed dated 31.10.2000, mutation extracts, Record of Rights ('RoRs' for short) and assessment register extracts as Exs.P1 to P12. Ex.P1

is registered GPA executed by defendant no.3 in favour of defendants no.1 and 2 authorizing them to execute agreement of sale or sale deed in respect of suit property etc. It also mentions about defendants no.1 and 2 being put in possession of suit property. Ex.P2 is alleged unregistered agreement of sale executed by defendants no.1 and 2. It states that since 31.10.2000 i.e. date on which defendant no.3 executed registered GPA in their favour, they were in possession as its owners. In order to clear their hand loans, agreement was executed agreeing to sell suit property for total sale consideration of Rs.4,50,000/- by receiving Rs.4,00,000/- as advance and agreeing to pay balance amount of Rs.50,000/- within 11 months and get sale deed registered. It was also specifically stated that on date of execution of Ex.P2, possession as well as original GPA was handed over to plaintiff. Exs.P3 and P4 are mutation extracts, while Exs.P6 to P10 are RoRs and Exs.P11 and P12 are demand register extracts, which are produced apparently in compliance of Section 164 of Karnataka Land Revenue Act, 1964.

30. On other hand, defendant no.1(a) i.e., defendant no.2 - Smt.Varalakshamma was examined as DW.1. In her examination-in- chief, she deposed in terms of written statement flatly denying agreement of sale and stating that present transaction was only a money transaction. She stated that if it were sale transaction, defendant no.3 - actual owner, who according to witnesses was present, would have signed agreement. She also stated that defendant no.3 was paternal uncle of plaintiff and admittedly in good terms with her. She specifically denied signature and thumb impression found on Ex.P2 as belonging to her or other defendants. She also deposed that present market value of suit property was Rs.20,00,000/- and plaintiff intended to grab suit property illegally.

31. In cross-examination, she admits that defendant no.3 had executed Ex.P1 - GPA in her favour. She admits her signature on it. Though, initially she denied signature on vakalath, she later admitted it. She admits receipt of Rs.2,50,000/- from plaintiff as loan, but denies her signature on Ex.P2. She also denies suggestions about plaintiff being ready and willing to perform his part of agreement and calling upon her to perform her obligations. She however stated that possession of suit property was not handed over to plaintiff.

32. Re.Points no.1 to 5: Admittedly, as per defendants suit property belonged to defendant no.3, who executed Ex.P1 - registered GPA in their favour putting them in possession of suit property and authorizing them to execute agreement of sale or sale deed. But they denied execution of Ex.P2 - agreement of sale.

33. Interestingly, however, original of Ex.P1 is produced by plaintiff, without explanation by defendants. In fact, admission by DW- 1 about receipt of Rs.2,50,000/- as loan from plaintiff and failure to establish existence of any financial transaction with plaintiff would probabilise that such receipt was as sale consideration, in pursuance of Ex.P2. Therefore, burden would shift upon defendants to establish their case. Except self-serving oral deposition, there is no material placed by defendants to support their claim.

34. Trial Court on consideration of evidence on record has concluded that plaintiff had established Ex.P2 - agreement of sale and though plaintiff was ready and willing to perform her part of contract, defendants failed to come forward to perform their obligations and therefore, plaintiff was entitled

for relief of specific performance.

35. Further, on perusal of written statement, it is seen that same is not signed by defendant no.2, but, signed only by defendants no.1(b) to (e). Therefore, defendant no.2 could not have deposed as witness due to non-filing of written statement. She could not depose as witness of other defendants. Even her conduct in going to extent of denying her signature on vakalath would require disbelieving her defence and entire deposition as per ratio in Mahabaleshwar Gurunath Hegde's case (supra).

36. Further, except insofar as issuance of notice prior to filing suit, nothing material is elicited to hold that Ex.P2 was illegal. Indeed contention regarding transaction with plaintiff being loan transaction was not even pleaded and therefore rightly rejected by trial Court.

37. Hon'ble Supreme Court in Alka Gupta's case (supra) has held:

"This Court in Gurbux Singh v. Bhooralal [AIR 1964 SC 1810] held:

"6. In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out: (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar."

Unless the defendant pleads the bar under Order 2 Rule 2 of the Code and an issue is framed focusing the parties on that bar to the suit, obviously the court cannot examine or reject a suit on that ground. The pleadings in the earlier suit should be exhibited or marked by consent or at least admitted by both parties. The plaintiff should have an opportunity to explain or demonstrate that the second suit was based on a different cause of action.

14. In the instant case, the respondent did not contend that the suit was barred by Order 2 Rule 2 of the Code. No issue was framed as to whether the suit was barred by Order 2 Rule 2 of the Code. But the High Court (both the Trial Bench and the Appellate Bench) have erroneously assumed that a plea of res judicata would include a plea of bar under Order 2 Rule 2 of the Code. Res judicata relates to the plaintiff's duty to put forth all the grounds of attack in support of his claim, whereas Order 2 Rule 2 of the Code requires the plaintiff to claim all reliefs flowing from the same cause of action in a single suit. The two pleas are different and one will not include the other. The dismissal of the suit by the High Court under Order 2 Rule 2 of the Code, in the absence of any plea by the defendant and in the absence of an issue in that behalf, is unsustainable."

(emphasis supplied)

38. Admittedly, there is no plea regarding bar under Order II Rule 2 of CPC, raised in written statement. Further, in Rathnavathi's case (supra), Hon'ble Supreme Court has held that, where two suits filed were on two different cause of actions, bar under Order II Rule 2 of CPC, non-suit plaintiff from seeking relief of specific performance due to filing of suit for relief of permanent injunction earlier would not be justified.

39. Further, Hon'ble Supreme Court in P. Daivasigamani's case (supra), after referring to earlier legal position and also taking note of amendment to S.R.Act, held that mere delay in filing suit for specific performance as long as it was within period of limitation would not be justification for denying specific performance, without reference to conduct of parties. In instant case, plaintiff established payment of substantial portion (90%) of sale consideration as advance. Hon'ble Supreme Court in P.Ramasubamma's case (supra), has held once execution of agreement of sale and payment of substantial sale consideration was established, relief of specific performance would be justified.

40. On other hand, defendants led evidence by examining defendant no.2, who had not even signed written statement, denied execution of agreement of sale and though claiming existence of financial transaction with plaintiff, failed to substantiate same with any credible evidence. Therefore, on overall consideration of conduct of parties, trial Court found justification to decree plaintiff's suit for specific performance. On re-appreciation, I do not find any justification to hold that same is capricious or perverse.

41. Contention urged by learned counsel for appellants that as defendant no.1(c) was shown as minor at time of execution of Ex.P2, it would be invalid, illegal and null and void, would have to be rejected out rightly as same was neither specifically pleaded in written statement nor any evidence led to substantiate same.

42. Insofar as contention regarding time being essence of contract, plaintiff pleaded that despite oral request calling upon defendants to perform their part of contract, defendants failed to come forward. PW.1 reiterated same in examination-in-chief. Though there is detailed cross-examination, nothing is elicited to disprove same. There is no specific suggestion about said assertion being false. Therefore, it cannot be concluded that finding of trial Court on said aspect while answering issue no.3 was unjustified or perverse. Entire tenor of cross-examination was in establishing that there was financial transaction between plaintiff and defendants and blank stamp papers were signed and handed over as security. Said contention has been held to be not proved.

43. Even insofar as alteration of contract, by insertion of two additional lines at end of page no.2 of Ex.P2, it is seen that basis for said contention is, portion of sentence overlapping thumb impression. On careful perusal of deposition of PW.1, it is seen that there is absolutely no cross-examination on this aspect. In fact allegation of material alteration is serious and requires to be established with specific and unflinching evidence and no finding merely on basis of contention can be given. Therefore, ratio laid down in Saradamani's case (supra) would not apply.

44. Insofar as scope for interference with judgment and decree of trial Court in an appeal under Section 96 of CPC, ratio laid down in B.V.Nagesh's case (supra), reiterating principles in Santosh Hazari v/s Purushottam Tiwari¹⁰, is well settled.

45. However, on examination of material available in record in light of contentions urged, I am unable to conclude that any finding of 2001 (3) SCC 179 trial Court was erroneous, capricious or perverse. Trial Court on examination of evidence on record decreed suit. Same is fully justified.

46. Insofar as locus-standi of appellants herein, admittedly they were appointed as attorneys by defendant no.3 under Ex.P1 - GPA to deal with suit property. Though, clause 4 and 5 of Ex.P1 indeed authorised them to alienate or encumber suit property on behalf of principal. Careful reading of clause 5 of Ex.P1 would reveal that attorneys were authorised to alienate suit property, receive consideration on behalf of principal and keep account of same on behalf of principal, there is neither any recital for appropriation of consideration by attorneys, nor there is mention about execution of GPA for consideration. Hon'ble Supreme Court in V.N. Krishna Murthy v/s Ravikumar¹¹, has held:

"19. The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised (vide Shanti Kumar R. Canji v. Home Insurance Co. of New York [Shanti Kumar R. Canji v. Home Insurance Co. of New York, (1974) 2 SCC 387] and State of Rajasthan v. Union of India[State of Rajasthan v. Union of India,(1977) 3 SCC 592]).

20. In K. Ponnalagu Ammani v. State of Madras [K. Ponnalagu Ammani v. State of Madras, 1952 SCC OnLine Mad 300 : (1953) 66 LW 136] , this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in the following words: (SCC OnLine Mad) "Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a (2020) 9 SCC 501, proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."

21. Applying the above tests, we are of the considered opinion that the appellants can neither be said to be aggrieved persons nor bound by the judgment and decree of the trial court in any manner. The relief claimed in the suit was cancellation of agreement to sell. On the other hand, the sale deeds which were the basis of the claim of the appellants were executed on the basis of general power of attorney, and had nothing to do with the agreement to sell which was subject-matter of the suit. The judgment and decree of the trial court is in no sense a judgment in rem and it is binding only as between the plaintiffs and the defendants of the suit, and not upon the appellants.

22. Though it has been vehemently contended before us and also pleaded before the High Court that the judgment and decree of the trial court affects the appellants adversely, the appellants have failed to place any material or demonstrate as to how the judgment and decree passed by the trial court adversely or prejudicially affects them. Mere saying that the appellants are prejudicially affected by the decree is not sufficient. It has to be demonstrated that the decree affects the legal rights of the appellants and would have adverse effect when carried out. Facts of the case clearly demonstrate that the suit which has been decreed is confined only to a declaration sought in respect of an agreement to sell. Injunction was also sought only against the defendant society or its officers or assigns. There is not even a whisper in the entire plaint or in suit proceedings about the sale deed executed in favour of the appellants by the power-of-attorney holders or even for that matter in the judgment and decree of the trial court.

47. Since as per recitals in Ex.P1, appellants were appointed only as agents without consideration, they would not answer meaning and description of 'aggrieved person'. Even in memorandum of appeal, there is no pleading how they are aggrieved by impugned decree.

48. In view of aforesaid discussion, points no.1, 2 & 4 are answered in affirmative, points no.3 & 5 are answered in negative. Hence following:

ORDER Appeal is devoid of merits and is accordingly dismissed with costs.

Impugned judgment and decree dated 01.03.2019 passed by XXXV Addl. City Civil and Sessions Judge, Bengaluru (CCH-36), in O.S.No.7663/2003 is confirmed.

Sd/-

JUDGE GRD