

Mr. P. Venkata Ravi Kishore And Another vs M/S Jmr Developers Pvt. Ltd., And 6 ... on 10 June, 2022

Bench: P Naveen Rao, G.Radha Rani

HONOURABLE SRI JUSTICE P.NAVEEN RAO
AND
HONOURABLE DR. JUSTICE G.RADHA RANI

CITY CIVIL COURT APPEAL NOS.111 & 112 of 2021

Date: 10.06.2022

CCCA No.111 of 2021:

Between:

Mr.P.Venkata Ravi Kishore, s/o. P.Subba Rao,
Aged about 66 years, occu; Business,
r/o.H.No.8-3-977/9-12, Yellareddyguda,
Hyderabad and another.

..... Appellants/
defendants

And
M/s.JMR Developers Pvt.Ltd.,
Rep.by its Managing Director,
Sri K.Jagan Mohan Rao,
Having its Regd.Office at Plot No.149,
Road No.72, Jubilee Hills, Hyderabad
and others.

..... Respondents/
Plaintiffs

This Court made the following:

PNR,J & Dr.GRR,
CCCA Nos.111 & 112 of 20

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HONOURABLE SRI JUSTICE P.NAVEEN RAO
AND
HONOURABLE DR. JUSTICE G.RADHA RANI

CITY CIVIL COURT APPEAL NOS.111 & 112 of 2021

COMMON JUDGMENT:

(per Hon'ble Sri. Justice P.Naveen Rao) Appellants herein are defendants in O.S.No.719 of 2009 and plaintiffs in O.S.No.173 of 2015 on the file of XIV Additional Chief Judge (F.T.C.), City Civil Court at Hyderabad. For convenience, parties are referred to as plaintiffs and defendants as arrayed in O.S.No.719 of 2009.

2. The prayers sought in both suits read as under:

O.S.No.719 of 2009:

- a) Declaring that the cancellation of the document bearing No.2635 of 2007 dated 12.-07.2007 by impugned document No.3573 of 2009 dated 25.11.2009 executed by defendant no.1 unilaterally as null and void and not enforceable against the plaintiffs 1 and 2;
- b) Declaring that the purported cancellation of the document No.9194 of 2007 dated 12.07.2007 by impugned document No.2870 of 2009 dated 25.11.2009 executed by the defendant no.2 unilaterally as null and void and not enforceable against the plaintiffs;
- c) Grant consequential relief of permanent injunction restraining the defendants 1 and 2 and their men, agents, servants from interfering with the peaceful possession and enjoyment of the schedule property by the plaintiffs; and
- d) Costs of the suit; and
- e) to grant any other relief or reliefs as may deem fit and proper by the Hon'ble Court in the circumstances of the case.

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 O.S.No.173 of 2015:

- a) To declare that the plaintiffs are the owners of the flats bearing No.102-A, Flat No.203-A, Flat No.104-A, Flat No.401-B, Flat No.302-C, and Flat No.501-C, and to extent of 1951 Sqft in Flat No.404A and 2054A which are more fully described in schedule here under;
- b) To direct the Defendant No.1 to deliver the possession of six flats bearing No.102-A, Flat No.203-A, Flat No.104-A, Flat No.401-B, Flat No.303-C, and Flat No.501-C and to extent of 1951 Sqft in Flat No.404A and 204A more fully described in the schedule here under completed in all aspects together with parking areas in favour of the plaintiffs;
- c) To declare the sale deed dated 16.02.2015 bearing registered document No.2048 of 2015 executed by 1st defendant in favour of defendant no.7 in respect of the flat no.302-C as null and void;
- d) To direct the 1st defendant to pay an amount of Rs.1,17,73,440/- to the plaintiffs towards compensation for loss of rents w.e.f. 20.11.2009 to till the date of filing suit together with interest @

18% per annum;

e) to grant permanent injunction restraining the defendant Nos.1 & 7 herein from alienating, conveying and transferring the suit schedule properties in favour of any third parties;

f) to ward costs of the suit; and to grant any such other relief or further reliefs as the plaintiffs are found to be entitled to in law and deems fit and proper in the circumstances of the case and in the interest of justice.

3. As the issue involved in both the appeals concerns the same suit schedule property, by this common judgment both appeals are considered and decided.

4. Heard learned senior counsel Sri V.Ravinder Rao appearing for Smt. Divya Rai learned counsel for appellants in both appeals and Sri PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 Tarum G.Reddy, learned counsel for respondent Nos.1 to 6 in both appeals.

5. Case of the plaintiffs:

5.1. Plaintiff No.1 (hereinafter referred to as P1) is a Private Limited Company while Plaintiff No.2 (hereinafter referred to as P2) is the Managing Director of P1 having registered office at Hyderabad.

Defendant No.1 (D1) and P2 in their personal capacity purchased a property to the extent of 2380 sq. yards, house bearing H.No.8-1- 293/A/1, in ward No.8, Block No. 1 of Shaikpet Village and Mandal, Hyderabad, vide registered sale deed document No.2595 of 2006 dated 04.04.2006 registered at Office of the Sub-Registrar, Banjara Hills, Hyderabad. P2 and D1 also entered into an Irrevocable Development Agreement-cum-General Power of Attorney with P1 Company, vide Document No.2635 of 2007 dated 12.07.2007 with the object of enabling P1 company to develop the said property by constructing residential apartments and then to sell the apartments. As per the terms of the said agreement, P1 has to develop the purchased property into a residential complex, making the entire investment necessary for the purpose, sell the constructed flats, realize the sale proceeds and share the proceeds between them, i.e. P1 Company, P2 and D1 in the proportion of 60:40. This means that P1 is entitled to 60% of sale proceeds, P2, 20% and D1 20%.

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 5.2. P1 Company also entered into a near similar Irrevocable GPA- cum-Development Agreement, dated 12.07.2007, vide Document No.9194 of 2007 with P3, P4, P5, P6 and Defendant No.2 (wife of Defendant No.1), who are the owners of the adjacent house property bearing Nos.1-86/9/1, 1-86/10/1 and 1-86/11/1 in parts of Sy.Nos.10 and 11 admeasuring 3,223.50 square yards situated at Durgah Hussain Shawali Village, Serilingampally Mandal and Municipality, Ranga Reddy District. The terms and conditions of the agreement are nearly similar to the previous GPA and provided for division of sale proceeds as 60% to P1's share and all the owners put together being entitled to the balance of 40%, which they would be dividing among themselves in proportion to their contribution of land paid accordingly by P1. On 28.11.2009, D1 issued a letter to P1 Company along with a deed of cancellation of the GPA-cum- Development

Agreement. After receiving both it was brought to the knowledge of P1 that D1 has executed a cancellation deed to the extent of his proportionate share under Document No.3573 of 2009 cancelling GPA Document No. 2635 of 2007 between D1, P2 and P1 and registered accordingly. Similarly, D2 also executed Cancellation Deed bearing Document No.2870 of 2009 dated 25.11.2009 cancelling GPA bearing Document No.9194 of 2007 that also has P3, P4, P5 and P6 as parties to the Agreement. It is the case of the plaintiffs that such cancellation is unilateral, unlawful and illegal, and without both the PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 cancellation deeds being declared as void plaintiffs are bound to suffer serious injuries.

5.3. Plaintiff sought to explain that condition No.20 of the Development Agreement stipulates that "owners are entitled to receive only the consideration for their share of the complex set forth in clause (4) of this agreement and are not entitled to any share in the other amounts received by the Developer, 1st Plaintiff from the intending purchasers." He also stated that condition No.24 of the Agreement stipulates that "That the space constructed by the Developer excluding the shares of the owners, shall belong to it (the 1st plaintiff Company) and the owners shall neither have any interest in the said residential apartments nor shall have the right to occupy or otherwise enjoy residential apartments". 5.4. Plaintiffs assert that D1 does not own any specific area of 1190 square yards, but only an undivided share out of 2380 square yards of land jointly purchased with P2. Similarly, D2 jointly purchased 3223.50 square yards along with P3 to P6. As per the investment made by her, she claims to own 711 square yards. They are not owners to any specified part of the land. The properties covered under the two documents are situated adjacent to each other. P1 with an intention to develop both the properties under common venture (common venture was accepted by the defendants in written statement) entered into two development agreements only because the PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 owners were different however it was treated as one property for the purpose of developing the land as it would achieve greater built-up area with the consent of all owners. Post completion of construction work, plaintiff submits that, only one building exists which cannot be divided into individual shares and as such is a joint venture in every sense of the term. It is also submitted that defendants issued No Objection Certificate dated 11.06.2009 along with the other land owners, P2 to P6 expressing their consent to the P1 company for selling the owners share of the flats on behalf of the owners as per the stipulated shares.

5.5. Plaintiffs also contend that after execution of the GPA-cum- Development Agreement and as per the terms of the said agreement, the agent appointed has an interest in the immoveable property and the agency is not terminable under Section 202 of the Indian Contract Act. Rights have been created in favour of all the Plaintiffs who are party to the agreement and as per the terms of the agreement, the agency is both in letter and law, irrevocable, incapable of termination by the principal, D1 or D2, for any reason whatsoever.

6. Case of the defendants 1 and 2:

6.1. Defendants primarily contend that as per clause (4) of the Agreement and other clauses, the developer is obligated to divide, distribute and allocate all the residential flats in the complex towards PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 the respective entitled shares of the Developer as well as the landowners including

defendants 1 and 2 with specific flat numbers and floor numbers and only after such allotment and allocation of flats is made, subject to D1 exercising his option, the developer, i.e. P1 is entitled to sell the flats that fell towards D1 and D2's share to prospective buyers and the entire sale consideration realized thereof shall be paid only to D1 and D2. It is submitted by the defendants 1 and 2 that so far no such distribution and allocation is made under the terms of the Agreement and residential flats to the share of D1's and D2's 20% have not been allotted by flat and floor numbers.

Without carrying out such exercise developer has alienated four flats which first plaintiff admittedly sold and sale proceeds were paid to the Bank in liquidation of the debt in part. This has been the reason for execution of cancellation deeds.

6.2. Defendants 1 and 2 based their assertions on the rationale that GPA powers in respect of 40% share of theirs was conferred and the same becomes operative only after the allocation and allotment of residential flats with specific flat and floor numbers towards their share. The GPA powers conferred in respect of sale of constructed portion of share belonging to these defendants was only subject to option of these defendants and that too can be exercised only after allocation and allotment of the flats with specific flat and floor numbers towards their proportionate share.

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 6.3. Defendants deny the venture as a joint venture in every sense of the term as claimed by plaintiffs as no such transaction took place between the parties or specific JV Agreement executed. 6.4. Defendants deny plaintiffs assertion that entire property was treated as one and that constructed structure is a single building that cannot be divided into shares and instead assert that it is a residential complex that can be divided into shares and in terms of the Development Agreement, defendants are entitled to clearly specified residential flats towards their entitled share. It is further asserted that merely on account of them being undivided owners of the land and there being other undivided share owners of the land and parties to GPA apart from the defendants, nothing prohibits in law, to cancel the Development Agreement cum GPA only to the extent of these defendants interests.

6.5. Once the GPA is cancelled, the agent cannot convey a valid title on behalf of the principal in favor of any prospective purchasers and if any sales are made even after cancellation of GPA, the same will be illegal, fraudulent and further such documents cannot confer valid title to them and such illegal sales will not be binding on the defendants.

7. Based on the above pleadings, the trial Court settled following issues for consideration:

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 "1. Whether the plaintiffs in O.S.No.719/2009 are entitled for declaration as prayed for?

2. Whether the plaintiffs in O.S.No.719/2009 are entitled for permanent injunction as prayed for?

3. Whether the plaintiffs in O.S.No.173/2015 are owners of suit schedule item Nos.1 to 8 ? If so, whether the plaintiffs are entitled for declaration as prayed for?

4. Whether the plaintiffs in O.S.No.173/2015 are entitled for recovery of possession of suit schedule item Nos.1 to 8 as prayed for?

5. Whether the plaintiffs in O.S.No.173/2015 are entitled for declaration to declare the sale deed dated 16.02.2015 bearing document No.2048/2015 executed by defendant in favour of defendant No.7 in respect of flat No. 302(c) as null and void?

6. Whether the plaintiffs in O.S.No.173/2015 are entitled to recover an amount of Rs.1,17,73,440/- from defendant No.1 together with interest as prayed for?

7. Whether the plaintiffs in O.S.No.173/2015 are entitled for perpetual injunction as prayed for?

8. To what relief? "

8. The plaintiff was examined as P.W.1 and exhibits A1 to A61 were marked on behalf of plaintiff. Defendant No.1 was examined as D.W.1 and got marked Exs.B1 to B30.

9. On assessing the oral and documentary evidence, the trial Court recorded the following findings:

(i) Issue No.1 is answered in favour of the plaintiffs and against the defendant. The lower Court concluded that the plaintiff proved PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 that the cancellation of the GPA was unilateral and as such the cancellation deeds executed by D.1 and D.2 are null and void.

Considering evidence placed on record it held that P.1 has to give sale proceeds to only in respect of shares of D.1 and D.2 and they are ready to give sale proceeds as per the terms and conditions mentioned in the GPA-cum-Development Agreement.

(ii) In view of the findings in Issue No.1, issue No.2 is answered in favour of the plaintiffs.

(iii) Issue Nos.3 to 6 were clubbed and answered together. The court found that since the 1st plaintiff is authorized to sell the property to prospective purchasers and has to pay the sale consideration, i.e. 40% to the owners of the property, being D1, D2 and plaintiffs 2 to 5, issue Nos.1 to 4 in O.S.No.173/2015 were answered in favour of the plaintiffs in O.S.No.719/2009 and against the plaintiffs in O.S.No.173/2015.

(iv) With regards to Issue No.7, the lower court observed that D1 and D2 are undisputedly not in possession of the schedule property and when they are not in possession of the property question of granting perpetual injunction does not arise. The court held, "In view of the findings in Issues. No. 3 to 6 in O.S. No. 173/2015, this Issue No.7 is also answered in favour of the plaintiffs in O.S. No.

719/2009 and against the plaintiffs in O.S. No. 173/2015.

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(v) In view of the findings recorded in Issue Nos.1 to 7, lower Court granted decree to the plaintiffs in O.S.No.719 of 2009 and dismissed O.S.No.173 of 2015. Thus, answering Issue No.8.

10. Submissions of learned senior counsel Sri V.Ravinder Rao for defendants:

10.1. Learned senior counsel V.Ravinder Rao contended that the trial Court grossly erred in setting aside the deed of cancellation dated 25.11.2009 cancelling the Development Agreement-cum-General Power of Attorney executed in favour of plaintiff no.1. The trial Court erred in setting aside the cancellation deed by referring to Registration Rules made under the Indian Registration Act, whereas relationship of the agency and principal is governed by the Indian Contract Act.

10.2. Learned senior counsel further submitted that even if deed of cancellation is held to be illegal, the first plaintiff cannot continue to deal with constructed area fallen to the share allocated to the defendants after the notice of cancellation of agency was issued on 28.11.2009. By this notice as well as earlier cancellation deed, the principal terminated the agency granted in favour of plaintiff no.1 to sell the flats fallen to the share of the defendants and, therefore, after 28.11.2009, the plaintiff no.1 is no more competent to act as agent of the principal. Thus, the sale executed in favour of 7th defendant in O.S.No.173 of 2015 is also illegal. But without appreciating this fact, PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 the prayer sought in O.S.No.173 of 2015 is not granted erroneously by the trial Court. All transactions undertaken by the agent after cancellation of agency are not legal and valid, and cannot be enforced against the principal. He submitted that the Development Agreement entered into on 12.07.2007 fixed time limit of 18 to 21 months to complete the entire project, which ended on 22.11.2009. As the plaintiffs did not complete the construction within the time specified in the agreement, causing lot of hardship and suffering to the defendants, they have cancelled the Development Agreement-cum-

GPA and, therefore, after 22.11.2009 the developer is no more competent to deal with suit schedule property. 10.3. Learned senior counsel further submitted that as per the Development Agreement, 40% of constructed area in the apartment complex fallen to the share of the owner and 60% to the developer. The terms of the Development Agreement clearly require developer to allot the constructed area in each of the floors in the ratio of 40:60 and earmark 40% share to the owner. Without undertaking this exercise, the developer resorted to selling the flats. The whole exercise is without jurisdiction and competence of the developer. 10.4. He further submitted that trial Court erred in setting aside the deed of cancellation only on the ground that unilateral cancellation of Development Agreement and GPA is not permissible in law. The document executed on 12.07.2007 has different components dealing PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 with Development

Agreement, GPA and Agency. Though it is a comprehensive document dealing with all these aspects each of three aspects are independent to each other and have to be looked into in that manner. Even if the developer is entitled to act on behalf of the owner to secure various permissions from statutory authorities and even if Development Agreement-cum-GPA subsists, the principal is entitled to cancel the agency at any time and cancellation of agency cannot be tagged with the Development Agreement-cum-GPA merely because same document also deals with agency. 10.5. Learned senior counsel readout various clauses in the Development Agreement. He would submit that the developer was not having financial resources to complete the project and, therefore, the project was not completed within the time schedule prescribed in the Development Agreement. This is the reason why, the defendants resorted to cancellation of the document. Violation of terms of Development Agreement-cum-GPA is valid reason to cancel the agreement.

11. Submissions of learned counsel Sri Tarum G.Reddy for plaintiffs:

11.1. Per contra, learned counsel for the plaintiffs submitted that Development Agreement-cum-GPA is a comprehensive document and it is coupled with interest of the developer. Such document cannot be PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 unilaterally cancelled by one party. The law is well settled. This very issue was considered by the learned single Judge of this Court in W.P.No.21925 of 2019, dated 16.10.2019. Said judgment applies in all fours to the facts of these cases. It is settled principle of law that unilateral cancellation of Development Agreement-cum-GPA is not permissible and is ex facie illegal. Following the law laid down by this Court and the Hon'ble Supreme Court, the trial Court declared the deed of cancellation as illegal and no exception can be carved out to the said decision of trial Court. He would further submit that cause in O.S.No.719 of 2009 did not survive for consideration by the time it was heard as the developer sold 42 flats which fell to his share and share of co-owners and what remained was the portion of the property fallen to the share of the defendants. Therefore, suit ought to have been dismissed on that ground alone.

11.2. In response to the contention that even if cancellation of Development Agreement-cum-GPA is not valid, on account of notice issued by the principal on 28.11.2009, the agency stood terminated, learned counsel would submit that Section 206 do not come to the aid of the defendants to justify their action of unilateral cancellation.

According to the learned counsel, Section 202 of the Act prohibits termination of the agency, where agent has an interest in the subject matter. In the instant case, the document executed on 12.07.2007 is PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 comprehensive and deals with various aspects of developing the suit schedule property and created interest in the developer/agent. 11.3. The defendants herein were owners of 1190 square yards (1st defendant) and 711 square yards (2nd defendant). Adjacent properties were pooled together to make a composite block of 5603 square yards including the land owned by defendants. The Development Agreement-cum-GPA covers the composite block covering several owners with different individual extents. Therefore, there cannot be unilateral cancellation of Development Agreement- cum-GPA by part owner of composite block.

11.4. Refuting the allegation that no construction activity was taken up learned counsel pointed out that as can be seen from the written statement, even according to the defendants, the construction was nearing completion by then.

11.5. He would further submit that though extensive reliance is placed on alleged legal notice dated 28.11.2009 cancelling the agency and paper publication informing public at large about cancellation of agency, the legal notice and the paper publication were not marked as documents before the trial Court. This was also noticed by the trial Court. There was no pleading also on this issue and therefore, it is not permissible for the defendants to raise such a plea at the appellate stage.

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 11.6. Learned counsel for the plaintiffs relied on following judgments:

- i) Seth Loon Karan Sethiya vs. Ivan E.John and others¹;
- ii) Shankar Chakravarti vs. Britannia Biscuit Co.Ltd. and another²;
- iii) V.Rajeshwari (Smt) vs. T.C.Saravanabava³;
- iv) Tashi Delek Gaming Solutions Ltd. and another vs. State of Karnataka and others⁴;
- v) State Bank of India and others vs. S.N.Goyal⁵;
- vi) Samir Chandra Das vs. Bibhas Chandra Das and others⁶;
- vii) Gaddam Laxmaiah and others v. Commissioner and Inspector General, Registration and Stamps, Hyderabad and others⁷;
- viii) Dashamma vs. State of Telangana, rep.by its Prl.Secretary, Revenue Department and others⁸;
- ix) Ediga Chandrasekar Gowd and others vs. State of Andhra Pradesh and others⁹; and
- x) Thota Ganga Laxmi and another vs. Government of Andhra Pradesh and others¹⁰;

12. Following issues arise for consideration:

1. Whether unilateral cancellation of Development Agreement-cum-GPA is legal and valid ?
2. Whether the Principal can unilaterally cancel the agency by taking recourse to The Indian Contract Act,1872?

(1969) 1 SCR 122:AIR 1969 SC 73 (1979) 3 SCC 371 (2004) 1 SCC 551 (2006) 1 SCC 442 (2008) 8 SCC 92 (2010) 6 SCC 432 2016 SCC Online Hyd 815 2019 SCC Online TS 2474 MANU/AP/0198/2017: 2017 (4) ALD 12 (2010) 15 SCC 207 PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021

3. Whether defendants are entitled to seek declaration as owners of particular flats in the buildings constructed in pursuant to Ex.A1 and A2 documents as part of their 40 % share of the constructed area?

4. Whether the trial Court committed error in granting decree to the plaintiffs in O.S.No.719 of 2009 and in dismissing O.S.No.173 of 2015 ?

5. To what relief ?

Issue Nos.1, 2 and 3 :

13. 2380 square yards of land bearing Municipal House No.8-1-293/A/1 in Ward No.8, Block No.1, in Sy.No.332 (part) of Shaikpet village was owned by D1 and P2. 3223.5 square yards of land bearing Municipal House Nos.1-86/9/1, 1-86/10/1 and 1-86/11/1 in Sy.Nos.10 (part) and 11 (part) of Dargah Hussain Shawali village, Serilingampally Mandal is owned by D2 and P3 to P6.

Plaintiff No.1 entered into two separate Development Agreements- cum-GPA with the owners covering two sets of above properties to form as a composite block and to construct residential building. In both sets of properties, they are joint owners and there was no division of property among the owners with separate demarcation as per individual share. The Development Agreements-cum-GPA envisage division of constructed area into 60:40 ratio between developer and owners. These documents also authorize the developer to sell all the PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 units of the constructed space earmarked for owners and developer and to pay the sale proceeds, to the extent 40%, to the owners. The defendants 1 and 2 challenge the decision of the developer to sell the entire constructed area without first identifying the owner's share floor-wise and apportioning the constructed flats. They want the developer to inform them the price at which flats are being sold. Alleging that the developer is behaving in highhanded manner, not consulting them on price at which flats are being sold and being sold without their consent, they have unilaterally cancelled the Development Agreements-cum-GPA. In the above factual background, it is necessary to consider the issues.

14. Chapter-X of the Indian Contract Act deals with Agency. Section 182 defines terms 'Agent' and the 'Principal'. A person is called 'agent' when he is authorized to represent the 'principal' in dealing with third persons. The definitions are flexible enough to include a person to act as 'agent' to more than one 'principal'. The provisions on which there was extensive debate are Sections 202 to

206. Section 201 deals with termination of agency in general. Sections 202 to 204 deal with specific instances of revocation. Section S.182. "Agent" and "principal".-- An "agent" is a person

employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

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201. Termination of agency.--An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 206 deals with notice of revocation or renunciation. Section 20213 deals with contingency when agent has interest in the property that is subject matter of agency. Unless terms of contract provide otherwise, it prohibits termination to the prejudice of agent's interest.

15. Power of Attorney is defined under Section 1A of the Powers of Attorney Act, 1882 and Section 2(21) of the Indian Stamp Act, 1989. It is a delegation of authority in writing by which one person is empowered to do an act in the name of the other. The person who acts on behalf of another person ('principal') by his authority, express or implied, is called an 'agent' and the relation between 'principal' and 'agent' is called 'agency'. In general, a POA or GPA is a document of convenience. Where circumstances require appointing an 'agent' formally to act for the 'principal' in a particular transaction, or a series of transactions, or to manage the affairs of the 'principal' generally, the necessary authority is conferred by 'a power of attorney'. The position of law is then different when an agency is formed between the Executant and the GPA holder where the agency is coupled with interest in the subject matter of the agency as defined by the above extracted provisions of the Indian Contract Act. S.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.

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16. Plaintiffs placed on record several judgments for the consideration of this Court. It is the contention of the plaintiffs that as per the terms of the Agreement as an agent, the first plaintiff has an interest in the property being developed and the agency is not terminable owing to section 202.

17. In Seth Loon Karan Sethiya (supra), the Hon'ble Supreme Court held:

"5. 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."

18. In Dashamma (supra) also neighboring land owners pooled their individual extents to construct residential building comprising of stilt plus five upper floors. Together they have executed Development Agreement-cum-GPA. Owners to get 45% of constructed area. Not satisfied with the progress of work and complaining lack of cooperation from co-owners, petitioner intended to cancel the Development Agreement-cum-GPA unilaterally. The registering authority refused to receive and register on the ground that it was unilateral. Aggrieved thereby, this writ petition was filed.

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 18.1. Following the opinion expressed by the Division Bench on a reference the decision of the registering authority was upheld and the writ petition was dismissed. Paragraphs 5 and 7 read as under:

"5. Briefly noted, in Vasudeva Realtors Private Limited v. Government of Andhra Pradesh (2012 (6) ALD 178) , learned single Judge of this Court held that provision in Rule 26

(i)(k)(i) of the Rules is applicable to unilateral cancellation of development agreement-cum-general power of attorney. Another learned single Judge of this Court disagreed with the view taken in Vasudeva Realtors (supra).

According to the learned single Judge, as Rule does not contemplate the prohibition against presentation of deed of cancellation of development agreement-cum-general power of attorney, the view taken in Vasudeva Realtors is not correct and referred the decision to the Division Bench to settle the question. On extensive consideration of the issue, Division Bench answered the reference upholding the view taken by the learned single Judge in Vasudeva Realtors. In terms thereof, unilateral cancellation of Development Agreement-cum-General Power of Attorney is not permissible. The operative portion of the order of the Division Bench reads as under:

"29. Thus, having regard to the law laid down by the Supreme Court and provisions of the Act, in our opinion, whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party to the deed/document, sought to be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating there from. In any case, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both the parties to the document sought to be cancelled, such power would tantamount to

conferring the power to decide disputed questions between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject matter of the document.

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30. In the result, we answer the question in the negative. In other words, we hold that registration and unilateral cancellation of documents such as Development Agreement-cum-General of Power of Attorney under the Registration Act is not permissible in law.

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7. In view thereof, the contention of learned counsel for petitioner that the decision of Sub-Registrar in refusing to register the document on the ground that it was executed unilaterally and does not contain the signature of the developer for cancellation of previously registered development agreement- cum-general power of attorney cannot be said as illegal warranting interference. In the facts of this case, it is also appropriate to notice that the development agreement was jointly executed by four owners of adjacent properties by pooling their respective properties to build a common residential complex. Therefore, the issue of inter se relationship between the owners and the developer is a common issue concerning all the owners of property and the developer. Further, cancellation of a portion of the development agreement may have an impact on the other owners also. They are not parties to the cancellation deed." (emphasis supplied)

19. In Thota Ganga Laxmi (supra), Hon'ble Supreme Court held:

"4. In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law."

20. In Gaddam Laxmaiah (supra), on elaborate consideration of the matter, Division Bench held:

"28. Thus, having regard to the law laid down by the Supreme Court and provisions of the Act, in our opinion, whenever registered documents such as Development

Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party to the deed/document, sought to be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating therefrom. In any case, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both the parties to the document sought to be cancelled, such power would tantamount to conferring the power to decide disputed questions between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject-matter of the document. In the result, we answer the question in the negative. In other words, we hold that registration and unilateral cancellation of documents such as Development Agreement-cum-General of Power of Attorney under the Registration Act is not permissible in law."

(Emphasis supplied)

21. From the settled position of law it is clear that the Registered GPA-cum-Development Agreement cannot be cancelled unilaterally. That being so, can the cancellation of agency take a different colour and shape and mould into one under the Indian Contract Act, 1872 to sustain such decision.

22. It is settled law that mere use of irrevocable in a POA will not make the power of attorney irrevocable unless the terms of agreement disclose that it created an agency coupled with interest in favour of the agent. The agents interest in the subject matter property has to be established or the powers conferred are subject to revocation.

23. Having regard to the statutory scheme and precedential decisions, it is necessary to consider terms of agreement. The relevant Clauses are 4, 7, 17, 20, 22, 24, 25, 30-II & VIII. They read as under:

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 "4. That in consideration of the Irrevocable GPA granted by the Owners, the Developer had agreed to give 40% of the total constructed area (inclusive of proportionate common areas and parking space) proportionately distributed in all the floors in the Residential Apartments, proposed to be constructed to the Owners free of cost including parking space.

7. The Developer shall construct and deliver the constructed areas referred to in the clause (4) as per the specifications mentioned in the Annexure within 18 months from the date of approval from the concerned authorities with a grace period of 3

months.

17. That the Developer is entitled to offer for sale all the units of the constructed space earmarked for both Owners and Developer in Residential Apartments to third parties on such terms and conditions as it deems fit in its description and also entitled to receive the sale consideration from intending purchaser/s and the Owners will receive their share of proceed from the Developer as per ratios agreed upon. All the considerations so received by Developer shall be treated as per the ratio of the Developer and the Owners for the purpose of Income Tax.

20. It is hereby mutually agreed between the parties that the Owners is entitled to receive only the consideration for their share of the complex set forth in clause (4) of this Agreement and is not entitled to any share in the other amounts received by the Developer from the intending purchasers.

22. That the Developer shall execute such deeds, documents or agreements for proper and effective conveyance of the Residential Apartments or proportionate un-divided share in the land in favour of prospective Purchasers.

24. That the space constructed by the Developer excluding the share of the Owners, shall belong to it and the Owners shall neither have any interest in the said Residential Apartments nor shall have the right to occupy or otherwise enjoy Residential Apartments.

25. That the Developer after completing construction is entitled to deliver vacant physical possession of the Residential Apartments to the prospective Purchasers and the Owners or anybody claiming through them shall not interfere with the possession of the prospective purchasers.

30. The Owners hereby appoint

M/s. JMR Developers Private Ltd., Rep.by Sri K.Jaganmohan Rao, r/o.Plot No.149, Road No.72, Jubilee Hills, Hyderabad.

As their attorney and authorize it to do the following acts, deeds and things on their behalf and in their name in respect of the 40% shares of the Owners along with 60% of its share.

(I). xxxx II. The Owners hereby authorized the Developer to sell their 40% proposed area in the proposed residential complex on their behalf, along with its 60% proposed area in the proposed complex, and to receive sale consideration and execute Sale Deed or Deeds in favour of the prospective purchaser or purchasers on behalf of Owners.

(III) to (VII) xxxxx VIII.To enter into agreement or agreement of sale with prospective purchasers in respect of the proposed entire Residential Complex, and to execute Sale Deed or Deeds in favour of the prospective purchases after receiving the full sale consideration, and the sale consideration will be distributed as per the ratio agreed upon vide Clause (4) above between the Developer and the

Owners. And to present the said Sale Deed for registration before the concerned Registration Office."

24. From these clauses, the following aspects are noticed. The constructed area including common areas and parking space is divided in the ratio of 60:40 for developer and owners of the land PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 respectively, to be distributed proportionately in all the floors (clause-4). The developer is authorized to offer for sale all the constructed units earmarked for himself and owners, decide terms of disposal, receive sale consideration and settle the share of owners in the agreed proportion (clauses-17 and 20). He is also authorized to execute all deeds/documents/agreements for proper and effective conveyance to prospective buyers (cluse-22) and deliver vacant possession to the buyer (clause-25). Clause-25 further restrains the owners from interference with the possession by the buyers. Clause-30 is more emphatic in granting full authority to the developer to act as agent of owners to deal with their 40% share. Clause-II again clearly authorizes developer to sell the owners' 40% share, to receive sale consideration and execute sale deeds on behalf of owners. Clause-VIII is also emphatic on this aspect. Thus, interest of the developer is deep and all pervading. It is a comprehensive document dealing with all aspects of development of suit schedule land.

25. It is also observed that no termination clause exists in the said agreement.

26. It is clear from the terms and tenor of the development agreement that the powers conferred to the respondent is coupled with interest. The developer is authorized to sell 100% of constructed area. He is required to share the profits earned in the ratio of 60:40.

PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 As 60% share holder of the completed residential flats, the developer is to sell these flats to recover not only its costs singularly borne for the construction and development and sale proceeds were to devolve towards its proportionate share. Clause-30 of the development agreement cum GPA clearly declares the respondent as the attorney on their behalf in respect of their 40% share. This is in addition to it's 60% share.

27. Appellants' assertion that the GPA powers conferred in respect of sale of share belonging to these defendants was subject to option of these defendants and that too can be exercised only after allocation and allotment of the flats with specific flat and floor numbers towards their proportionate share, has no merit on two counts. Firstly, no such term or condition seems to have been prescribed in the Agreement either directly or implied. A careful reading of the Agreement reveals distribution ratio of shares between all the parties and that the sale is to be executed by the plaintiff company, but nothing points towards allocation of flats, specifically floor and flat number wise, prior to any alienation. Secondly, even if it were true such violation of agreement terms would still not legitimize unilateral cancellation of a registered Development Agreement-cum-GPA where agent has an interest in subject matter property and no express termination clause is incorporated in Exs.A1 and A2. As noticed in the earlier paragraphs, the documents in issue (Exs.A1 and A2) are PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 comprehensive documents. They unequivocally authorize the developer to sell the property fallen to the share of the land owners and pass on the proceeds of sale to the land owners.

28. As noticed above, the terms of agreement are clear as crystal and there is no ambiguity. Further, pieces of adjacent land owned by several persons was pooled together to make it a composite block. The Exs.A1 and A2 are entered into by the developer with the owners of pieces of land. The buildings were constructed on this composite block. On joining together and making it as a composite block, the individual identity of land is lost. It became a common property and continues to be a common property. Owners have not agreed to divide the constructed area between them. On this common property 60% of constructed area goes to the developer and 40% goes to the owners. Owners to share proportionately from out of the proceeds of sale. That being so, the cancellation of the comprehensive document is only by two owners owning parcel of land out of composite land.

29. As noticed above, various clauses authorize the developer to sell his share and share of the owners without individual demarcation and then share the sale proceeds with the owners in the ratio of 60:40. It does not envisage demarcation of specific flats to individual land owners before entering into agreements of sale with prospective buyers. Thus, by its very nature, it is not possible to deal with constructed area separately with individual owners. In other words, it PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 is an agreement by all the owners and all the owners have to sail together or sink together. Termination of the agreement by one owner in a property having undivided ownership between D1 and P2 and D2 and other plaintiffs, even to the extent of their share clearly prejudices the interest of the developer and also affects the interest of other owners who are not signatories to the cancellation deed. Exs.A1 and A2 are tripartite agreements, binding all three parties to the terms of contract. Thus, it is not a simple agency agreement between agent and principal but it also involves other owners who are independent of defendants 1 and 2.

30. Appellants assertion that construction was not completed on time and hence it violated agreement terms has no bearing either as it does not legitimize cancellation. No condition exist in the agreements stating that floor and flat wise allocation and allotment to the defendants has to be undertaken and only after which GPA powers conferred to the plaintiff company can be exercised on behalf of the principal.

31. Finally, the appellant states that once the GPA is cancelled, the agent cannot convey a valid title on behalf of the principal in favour of prospective purchasers and if any sales are made even after cancellation of GPA, the same would be illegal, fraudulent and further such documents cannot confer valid title to them and such illegal sales will not be binding on the defendants. This contradicts PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 appellants own assertion that cancellation was only to the extent of both the defendants shares and does not concern the remaining shares.

32. First Plaintiff still holds 60% of the residential complex as well as other shares by Plaintiffs 3 to 6 which can be sold by the plaintiff company as per terms of the agreement. It is admitted that ownership of subject property is undivided. Therefore, as agent of other owners the first plaintiff can deal with the property as agreed upon. As there was no division of flats to individual owners, the defendants 1 and 2 can not assert that a particular flat belongs to them and oppose sale.

33. Assuming that Indian Registration Act has no application and/or independently the principal can terminate the agency at any time, even Section 202 of Indian Contract Act does not come to the aid of the defendants 1 and 2.

34. Section 202 keeps a small window to terminate the agency. But, its doors are automatically closed, when agent has an interest in the subject property and when no termination clause is incorporated in the agreement. By virtue of Exs.A1 and A2, agreements, interest is created to first plaintiff and the agreements have not provided for unilateral termination of agency. Therefore, the principal cannot cancel the agency unilaterally when the agent has interest in the suit schedule properties.

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35. Further, Section 202 of the Contract Act in general terms regulates the relationship of principal and agent. It does not impinge upon the parties to enter into written agreements and to register those agreements. Section 202 presupposes existence of a written agreement. If such agreement requires registration, it has to be registered under the Indian Registration Act. There is no overlapping of area covered by Section 202 of Indian Contract Act and Section 17 of the Indian Registration Act. They are in harmony with each other. At no stretch it can be assumed to override the statutory prescription of the Indian Registration Act and the Registration Rules made there under. The Registration Act and the Rules made there under, as held by the Constitutional Courts, prohibits unilateral cancellation of any document by one party without the consent of other party. Once an agreement is registered under the Indian Registration Act, such agreement cannot be cancelled unilaterally by one party to the detriment of other party even when it deals with agency and when no clause is incorporated in the registered document authorizing principal to unilaterally cancel the agency affecting the interest of the agent.

36. Further, accepting the contention of learned senior counsel that the Principal can terminate agency at any time would lead to incongruous situation. As consistently held by the Constitutional Courts, no Development Agreement-cum-GPA can be cancelled PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 unilaterally by one party to the detriment of another party. Therefore, Ex.A1 and A2 are in force and plaintiffs can seek their enforcement. As long as these documents bind both parties, giving a notice to cancel the agency and by taking recourse to Chapter-X of Indian Contract Act, the principal cannot terminate the principal and agency relationship.

37. In Samir Chandra Das (supra), Shankar Chakravarti (supra) and State Bank of India (supra), Hon'ble Supreme Court held that if a question was not raised nor argued before the trial Court, nor raised in the memorandum of appeal, the High Court should not entertain such question. In civil cases, in the absence of appropriate pleadings on a particular issue, there can be no adjudication.

38. Based on this principle, it is vehemently contended by the learned counsel for plaintiffs that as defendants have not raised the plea of termination of agency by taking recourse to the Indian Contract Act in the written statement, during the course of trial and in the memorandum of grounds, they are precluded from raising this plea during the course of hearing of first appeal. We

agree with the objection raised by the learned counsel. However, as this submission is a submission in law, we have considered the said plea of defendants extensively to test whether it has merit. For the reasons recorded above, we reject the said submission on merits also.

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39. For the aforesaid reasons, we hold issues 1 to 3 against defendants 1 and 2, and in favour of plaintiffs. Issue No.4 :

40. The trial Court has gone into all aspects. Has analyzed the oral and documentary evidence to reject the plea of defendants 1 and 2. We see no perversity in the opinion expressed by the trial Court and in the findings recorded on the issues formulated for consideration. Issue No. 5:

41. In the result, both Appeals are dismissed. Pending miscellaneous applications, if any, stand dismissed.

----- J U S T I C E P . N A V E E N R A O

Dr.JUSTICE G.RADHA RANI Date: 10.06.2022 Kkm
PNR,J & Dr.GRR,J CCCA Nos.111 & 112 of 2021 HONOURABLE SRI JUSTICE P.NAVEEN RAO
AND HONOURABLE DR. JUSTICE G.RADHA RANI CITY CIVIL COURT APPEAL NOS.111 & 112
of 2021 Date: 10.06.2022 kkm