



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

REGULAR SECOND APPEAL NO.193 OF 2011 (DEC)

BETWEEN:

1. SRI. CHANNEGOWDA
S/O KEMPAIAH,
AGED ABOUT 34 YEARS,
R/AT NO.2/A, 3RD BLOCK,
8TH CROSS, 7TH 'A' MAIN ROAD,
NANDINI BADAVANE,
BANGALORE - 560 096.

2. SRI GANGADHARA MURTHY,
S/O KEMPAIAH,
AGED ABOUT 39 YEARS,
R/AT NO.2/A, 3RD BLOCK,
8TH CROSS, 7TH 'A' MAIN ROAD,
NANDINI BADAVANE,
BANGALORE - 560 096.

...APPELLANTS

(BY SRI. S.BASAVARAJU., SENIOR ADVOCATE FOR
SRI.L.SRINIVASA BABU., ADVOCATE)



AND:

1. SRI N.S.VISHWANATH
S/O S.SUNDARARAJ,
AGED ABOUT 51 YEARS,
R/AT 200, 2ND MAIN ROAD,
INDUSTRIAL TOWN, RAJAJINAGAR,
BANGALORE - 560 004.

2. SMT.G.RAMAMANI
W/O S.KUMAR,
AGED ABOUT 45 YEARS,
R/AT NO.49, HOUSING BOARD,



ASTAGRAMA BADAVANE,
BANGALORE - 560 079.

3. SMT.MUNIYAMMA,
W/O LATE KRISHNAPPA,
SINCE DECEASED :
R4(a) TO R4(d) ARE TREATED
AS LR_s OF DECEASED R3.

4. SRI VENKATESH
S/O LATE KRISHNAPPA,
SINCE DECEASED BY LR_s.

4(a) SMT.JAYAMMA
W/O LATE VENKATESH,
AGED ABOUT 48 YEARS.

4(b) MISS LAKSHMAMMA
D/O LATE VENKATESH,
AGED ABOUT 25 YEARS.

4(c) MISS REKHA
D/O LATE VENKATESH,
AGED ABOUT 23 YEARS.

4(d) SRI CHANDRASHEKAR
S/O LATE VENKATESH,
AGED ABOUT 20 YEARS,

R4(a) TO R4(d) ALL ARE
R/AT GURUVE BOVI PALYA,
BYCHAGUPPE, TAVARAKERE HOBLI,
BANGALORE SOUTH TALUK,
BANGALORE DISTRICT.

5. SRI NARAYANA
S/O LATE KRISHNAPPA,
SINCE DECEASED :

R4(a) TO R4(d) ARE
TREATED AS THE LR_s OF DECEASED R5
VIDE ORDER DATED:12.07.2013.



6. SRI K.RAMESH
S/O KALE GOWDA,
AGED ABOUT 38 YEARS,
R/AT KADABAGERE VILLAGE,
MAGADI MAIN ROAD,
DASANAPURA HOBLI,
BANGALORE NORTH TALUK - 560 039.

...RESPONDENTS

(BY SRI.R.VIJAYAKUMAR., ADVOCATE FOR
SRI.M.R.RAVEENDRA., ADVOCATE FOR R1 & R2;
R4(a), (b), (c), (d) AND R6 ARE SERVED)

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF THE CPC., SEEKING CERTAIN RELIEFS.

THIS REGULAR SECOND APPEAL HAVING BEEN HEARD
AND RESERVED FOR JUDGMENT ON 21.11.2023, COMING ON
FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THIS COURT
DELIVERED THE FOLLOWING:

JUDGMENT

Sri.Basavaraju., learned Senior counsel on behalf of
Sri.L.Srinivasa Babu., for the appellants and Sri.R.Vijaya
Kumar., learned counsel on behalf of Sri.M.R.Raveendra., for
respondents 1 & 2 have appeared in person.

2. For convenience's sake, the ranking of the parties
shall be referred to as per their status and ranking before the
Trial Court.



3. This is an appeal from the Court of ADHOC, District and Sessions Judge, FTC-I, Bangalore Rural District, Bangalore.

4. The plaint averments are these:

It is stated that defendants 1 to 3 were the original owners of the suit schedule property. It is said that they sold the property to the second plaintiff on 01.03.1991. Due to the Fragmentation Act, they executed an affidavit in favor of the second plaintiff regarding receipt of consideration and transfer of their vested right with possession regarding the scheduled property on 01.03.1991. The affidavit cum sale of the scheduled land was duly sworn before the Notary Advocate Sri.Sangameswara and Advocate by name B.Gangappa identified the signatures of defendants 1 to 3 and the execution of the affidavit and sale transaction entered in favor of the second plaintiff. The contents of the affidavit is very clear that defendants 1 to 3 received the full consideration of Rs.20,000/- (Rupees Twenty Thousand only) and that apart, gave an undertaking that at no point of time, the said property will be sold or transferred to any third parties. They also agreed that they would come and execute the sale deed in favor of the



second plaintiff or at her discretion at any point of time. It is stated that the defendants also executed an irrevocable General Power of Attorney in favor of the second plaintiff on 01.03.1991 and a liberty was given to the second plaintiff to deal with the property as per her will and wish either to sell or to develop the same. As such the second plaintiff continued her possession of the property and she has paid the requisite taxes. It is also said that the second plaintiff entered into an agreement of sale in favor of the first plaintiff on 05.04.1991 and hence she requested defendants 1 to 3 to execute the absolute sale deed in her favor.

It has been specifically pleaded that the second plaintiff sold the property in favor of the first plaintiff under a registered sale deed dated 20.05.2004. Thus, it is contended that the first plaintiff is in possession and enjoyment of the suit schedule property. The first plaintiff also contended that when he started to put up construction on the suit property, defendants 5 & 6 obstructed the construction work contending that they were the owners of the property in question. On verification, it was found that defendants 1 to 3 sold the suit schedule property in favor of defendant No.4, who in turn sold it to defendants 5 and 6.



Hence, the plaintiffs filed the suit to declare that plaintiff No.1 is the absolute owner of the suit scheduled property and to declare that the sale deed executed by defendants 1 to 3 in favor of defendant No.4 was void and for a permanent injunction restraining defendants 1 to 6 or their agents from interfering in the affairs of the suit schedule property.

On the service of the suit summons, defendants 1 to 4 remained absent and did not contest the suit. They were placed *ex-parte*. Defendants 5 and 6 appeared through their counsel, filed a written statement, and denied the plaint averments. They contended that defendants 1 to 3 who were the original owners of the suit schedule property sold the same in favor of defendant No.4 under a registered sale deed dated 08.10.2003. In turn, the fourth defendant being the absolute owner executed two registered sale deeds in favor of defendants 5 and 6 on 26.04.2004. Hence, they contended that the fifth defendant purchased a portion of the suit schedule property bearing Assessment No.19/165, Site bearing No.21 of Andrahalli Village, Yeshwanathpura Hobli, Bangalore North Taluk measuring East to West 30 feet and North to South 40 feet from the fourth defendant under a registered sale deed



dated 26.04.2004 for valuable consideration and the sixth defendant - the brother of the fifth defendant purchased the remaining portion of the suit scheduled property bearing Assessment No.19/165, Site bearing No.12 of Andrahalli Village, Yeshwanathpura Hobli, Bangalore North Taluk measuring East to West 30 feet and North to South 40 feet from the fourth defendant under a registered sale deed dated 26.04.2004 for valuable consideration and they are in possession of the same. Among other grounds, they prayed for the dismissal of the suit.

Based on the above pleadings, the Trial Court framed issues; parties led evidence and got marked documents. On the trial of the action, the suit came to be decreed vide Judgment and Decree dated 13.03.2009. Aggrieved by the Judgment and Decree of the Trial Court, defendants 5 and 6 preferred an appeal before the First Appellate Court. On appeal, the First Appellate Court vide Judgment and Decree dated:14.09.2010 dismissed the appeal and confirmed the Judgment and Decree of the Trial Court. Hence, this Regular Second Appeal is filed by defendants 5 & 6 under Section 100 of CPC.



5. Learned counsel for the appellants and respondents 1 & 2 have urged several contentions. Heard the contentions urged on behalf of the respective parties and perused the appeal papers and the records with utmost care.

6. This Court vide order dated:23.07.2019 admitted the Second Appeal and framed the following substantial questions of law:

1. Whether the doctrine of priority of interest as contemplated under Section 48 of the Transfer of Property Act, 1882 is applicable to the case on hand?
2. Whether the power of attorney was inadmissible in evidence?

7. Learned Senior Counsel Sri.Basavaraj in presenting his argument strenuously urged that both Courts failed to consider the interpretation of the documents Ex.P1 and Exhibits.D1 to D3. He argued by saying that the alleged affidavit, irrevocable General Power of Attorney cannot confer the right of ownership over the suit schedule property. Learned Senior Counsel vehemently contended that the first plaintiff purchased the property from a person who had no subsisting



right, title or interest to sell the property as such the same will not have any consequence on the right of defendants 5 and 6 who had a valid right of ownership over the suit schedule property. He drew the attention of the Court to Section 48 of the Transfer of Property Act. To substantiate his contentions learned Senior counsel relied on the following decisions:

1. NARAYAN MADHAVRAO WARKHINDE
DECEASED THROUGH LR'S MATHURABAI W/O
NARAYANRAO WARKHINDE AND OTHERS VS
MOGIYA LALYA - 2010(4) MH.L.J 986.
2. SURAJ LAMP AND INDUSTRIES PRIVATE
LIMITED THROUGH DIRECTOR VS STATE OF
HARYANA AND ANOTHER - (2012) 1 SCC 656.
3. STATE OF ANDHRA PRADESH AND OTHERS VS
STAR BONE MILL AND FERTILISER COMPANY -
(2013) 9 SCC 319.

By way of answer to this contention learned counsel Sri.R.Vijaya Kumar., appearing on behalf of the first plaintiff firstly contended that Section 48 has no application to the facts and circumstances of the present case. Secondly, he argued by saying that based on the General Power of Attorney coupled with interest, the second plaintiff sold the property in favor of



the first plaintiff. Thirdly, he contended that defendants 1 to 3 had executed the power of attorney in favor of the second plaintiff earlier to the sale deed dated 26.04.2004 and the power of attorney is not compulsorily registrable. Learned counsel, therefore, submitted that both Courts extenso referred to the material on record and were justified in decreeing the suit; the scope to interfere with the concurrent finding is very much limited. Accordingly, he prayed for the dismissal of the appeal. He relied on the following decisions.

1. SYED ABDUL KHADER VS. RAMI REDDY AND OTHERS - AIR 1979 SC 553.

2. MOHAMMAD @ PODIYA VS ASSISTANT COMMISSIONER - ILR 1993 KAR 2306.

3. ICICI BANK LTD (SINCE SUBSTITUTED BY STANDARD CHARTERED BANK) VS SIDCO LEATHERS LTD AND OTHERS - (2006) 10 SCC 452.

8. The facts are sufficiently stated and do not require reiteration. It is an admitted fact that defendants 1 to 3 were the original owners of the property in question. To answer the substantial questions of law, it is relevant to refer to the documents namely, the affidavit dated 01.03.1991 (Ex.P6), the



General Power of Attorney dated 01.03.1991 (Ex.P5), the agreement of sale dated 05.04.1991 (Ex.P7), the sale deed dated 08.10.2003 (Ex.D3), Two sale deeds both dated 26.04.2004 (Exs.D1 and D2) and another sale deed dated 20.05.2004 (Ex.P1).

Defendants 1 to 3 have sworn to a declaration of facts that they have sold the property for a consideration of Rs.20,000/- (Rupees Twenty Thousand Only) to the second plaintiff. In the General Power of Attorney, the power of alienation is conferred on the second plaintiff. It is relevant to note that the declaration of facts or statement of facts in the form of an affidavit and the General Power of Attorney both were executed on the 1st day of March, 1991 and after one month four days, i.e., on the 5th day of April, 1991, the second plaintiff appears to have entered into an agreement of sale with the first plaintiff for the sale of the property based on the General Power of Attorney.

The first plaintiff was examined as PW1. In his evidence, he states that his vendor purchased the property on 01.03.1991. The second plaintiff was examined as PW2. In her



evidence, she states that she purchased the scheduled property for a valuable consideration of Rs.20,000/- (Rupees Twenty Thousand only) on 01.03.1991.

In this background, what is required to be considered is whether the sale of immovable property could be made by way of a declaration of facts, and by General Power of Attorney. The law is well-settled that there are only two modes of transfer by sale, and they are (1) transfer by a registered instrument, or (2) transfer by delivery of property when the value thereof is less than one hundred rupees and a sale cannot be affected in any way. An agreement of sale is not a document of transfer, nor because of execution of a power of attorney, can the right, title or interest of an immovable property be transferred.

Reverting to the facts of the case, it is the specific contention of the plaintiffs that defendants 1 to 3 sold the suit property in favor of the second plaintiff on 01.03.1991. But it is relevant to notice that there is no sale deed. The plaintiffs placed reliance on two documents viz., the declaration of facts (affidavit) and the General Power of Attorney both dated



01.03.1991. They are marked as Ex. P6 and P5. Both are unregistered instruments.

An attempt is made on behalf of the plaintiffs to contend that the second plaintiff has sold the property as a General Power of Attorney Holder and not as a title holder. It is argued that the Power of attorney is not compulsorily registrable. The submission is noted with care. Suffice it to note that a deed of power of attorney is not one of the instruments specified under Section 17 of the Registration Act compulsorily registrable. However, if a power has been created empowering the attorney to sell the property i.e., if a document that gives a right to the attorney holder to sell the immovable property, then it would be a document creating an interest in immovable property, which would require compulsory registration. In the present case, the General Power of Attorney alleged to have been executed by defendants 1 to 3 in favor of the second plaintiff is coupled with interest i.e., power of alienation is conferred but it is not registered. The Apex Court in the **SURAJ LAMP'S** case has held that the General Power of Attorney Sale, or Sale Agreements/ Will do not convey title and do not amount to transfer, nor can they be considered valid modes of transfer of



immovable property. Therefore, it can be safely concluded that the declaration of facts/ statement of facts (affidavit) and General Power of Attorney do not convey title. They are inadmissible in evidence.

Next, let me consider the argument about Section 48 of the Transfer of Property Act. One of the substantial questions of law relates to Section 48 of the Transfer of Property Act of 1886. An attempt is made on behalf of the plaintiffs that Section 48 has no application to the facts and circumstances of the case.

Let us quickly glance at Section 48 of the Transfer of Property Act.

**"SECTION 48. PRIORITY OF RIGHTS
CREATED BY TRANSFER.** - *Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created."*



This section is based upon the principle enunciated by the maxim '*qui prior est tempore potior est jure*'- he has a better title who was first in point of time. The section lays down the general rule regarding the priority of rights created by transfer by a person at different times in or over the same immovable property and provides that as between such rights each later created right is subject to the rights previously created.

The concept of priority is regulated by Section 48 of the Transfer of Property Act of 1882. In a case where the Court has conflicting interests, this doctrine helps the Court determine which party's rights must take priority over the other. The need for this notion arises when the property transferor subsequently deals with the same property with two different people. Section 48 of the Transfer of Property Act of 1882 is based on the essential principle that no one can impart a title greater than what he has.

The essentials of the doctrine of priority are – The property should have one owner or transferor and more than one transferee. It is only applicable to real immovable property. The transfer should be made at various times, and in each of



these instances, this right cannot be fully exercised at the same time.

In this background, let me consider what facts I have here. The first plaintiff claims ownership based on the sale deed dated 20.05.2004 executed by the second plaintiff based on an unregistered General Power of Attorney and affidavit. Already answered that the General Power of Attorney and the declaration of facts in the form of an affidavit are inadmissible in evidence. Now the question of priority between two registered documents is required to be considered. Where there is a competition between two registered documents (relating to the same property) both of which are registered, the question of priority between them is to be determined with reference to the provisions of Section 47 of the Registration Act. If there are successive transfers of the same property, the later transfer is subject to the prior transfer.

Reverting to the facts of the case, the sale deed in favor of the fourth defendant is dated 08.10.2003 and the sale deeds in favor of defendants 5 and 6 are dated 26.04.2004. Whereas the sale deed in favor of first plaintiff is dated:20.05.2004. The



registered sale deeds in favor of defendants 4, 5 and 6 were first in time than the sale deed in favor of the first plaintiff. The first plaintiff purchased the property already sold, he cannot question the sale deed to be void and hence to have a mileage on the situation. Furthermore, there is no prayer regarding the cancellation of the sale deeds dated:26.04.2004. It is pivotal to note that Section 48 of the Transfer of Property Act ordains to accept supremacy on the former sale deed in all the terms of the latter. The transferor cannot prejudice the rights of the transferee by any subsequent dealing with the property. Taking note of the settled proposition of law, the successive transfer of the same property i.e., transfer by the second plaintiff in favor of the first plaintiff is subject to the prior transfer that was made in favor of defendants 4, 5 and 6.

If the foregoing analysis of the relevant law is correct, it can be summarized by stating that both Courts are not right in accepting the plaintiff's contention. They overlooked the settled principles and erroneously went ahead and decreed the suit. I may venture to say that both Courts failed to have regard to relevant considerations and disregarded relevant matters. The



judgments and decrees passed by the Trial Court and the First Appellate Court are unsustainable in law.

Counsel for the appellants and respondents have cited several cases, but I do not think that the law is in doubt. Each decision turns on its facts. The present case is also evaluated considering the aforesaid decisions.

The substantial questions of law framed by this court are answered accordingly.

9. The Judgment and Decree dated:13.03.2009 passed by the Court of I Additional Civil Judge (Sr.Dn), Bangalore Rural District, Bangalore in O.S.No.784/2004 and the Judgment and Decree dated:14.09.2010 passed by the Court of ADHOC, District and Session Judge, FTC-I Bangalore Rural District at Bangalore in R.A.No.83/2009 are set-aside.

10. As a result, the Regular Second Appeal is ***allowed***.

**Sd/-
JUDGE**

TKN,MRP
List No.: 1 Sl No.: 31