

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

APPEAL SUIT No.1569 OF 2018

Between:

... Respondent.

DATE OF JUDGMENT PRONOUNCED: 05.01.2024

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
Fair copy of the judgment? Yes/No

A.V.RAVINDRA BABU, J

*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

+ APPEAL SUIT No.1569 OF 2018

% 05.01.2024

Between:

Versus

! Counsel for the Appellant: Sri V. Venugopala Rao.

^ Counsel for the Respondent :
Sri Sunkara Rajendra Prasad.

< Gist:

> Head Note:

? Cases referred:

(2012) 1 Supreme Court Cases 656

This Court made the following:

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU**Appeal Suit No.1569 OF 2018****JUDGMENT:-**

Challenge in this appeal suit is to the judgment, dated 24.07.2018 in O.S.No.213 of 2017, on the file of VII Additional Senior Civil Judge, Vijayawada ("Additional Senior Civil Judge" for short), whereunder the learned Additional Senior Civil Judge, dismissed the suit of the plaintiff, which was filed with a prayer to declare that the plaintiff is the absolute owner of the plaint schedule property having right, title and possession and to grant perpetual injunction restraining the defendant, her agents and other men from ever interfering with the plaintiff's right, title and peaceful possession and further restraining the defendant not to encumber or to alienate the plaint schedule property.

2) The parties to this Appeal Suit will hereinafter be referred to as described before the learned Additional Senior Civil Judge for the sake of convenience.

3) The case of the plaintiff, in brief, according to the plaint averments is that the plaintiff is no other than the elder brother of the defendant. He purchased the plaint schedule property from one Rajagiri Balarama Murthy and others vide a deed of sale on 19.12.1978 bearing registered document No.5772/1978. The plaint schedule property is vacant site,

described in the plaint schedule. Since the date of purchase, the plaintiff has been in possession and enjoyment of the same. Recently, the plaintiff learnt that the defendant with the active connivance of her henchmen, fabricated, cooked up and manufactured an illusory document of sale, dated 26.12.2016, on the file of Sub-Registrar Office, Mangalagiri, bearing Document No.13636/2016, alleged to have been executed by one Pamulapati Kanchaiah of Vijayawada, alleged to be the General Power of Attorney Holder of the plaintiff. In the aforesaid sale deed, it was alleged that the defendant paid the entire consideration of Rs.38,40,000/- to the alleged vendor in installments prior to the date of alleged sale deed. It was also alleged that the original document of title was lost and could not be traced out though a report was lodged to Patamata, Autonagar Police Station. It was also alleged in the sale deed that possession was delivered by the vendor to the vendee, but in fact there was no delivery of possession and there is no oral sale in favour of Mandapu Venkateswara Rao as alleged in the document of sale, dated 26.12.2016. The alleged G.P.A. bearing document No.2447/1994, on the file of Joint Sub-Registry, is nothing but fabricated, manufactured and illegal document and the contents thereof are not true. The contents of the sale deed, dated 26.12.2016, are false and collusive and there is no iota of truth in it. The defendant has no financial capacity to pay huge

amount of Rs.38,40,000/- either to the alleged vendor or to Mandapu Venakteswara Rao at any point of time, even in installments. So, basing on the alleged sale deed, dated 26.12.2016, no right, title and possession was flown to the defendant. After came to know about the illegal sale deed, dated 26.12.2016, the plaintiff lodged a report to the Commissioner of Police, Vijayawada, on 23.02.2017 against acknowledgement. Hence, the suit.

4) The defendant got filed her written statement denying the averments in the plaint and the contention of the defendant, in brief, is that the suit filed by the plaintiff is not at all maintainable. The plaintiff suppressed the facts willfully and filed the present suit with an intention to grab the property of the defendant by hook or crook. The plaintiff executed a General Power of Attorney on 21.09.1994 in favour of Pamulapati Kanchaiah, S/o Venkateswara Rao and got it registered as document No.2447/1994 before the Sub-Registrar Office, Vijayawada. In the said document, it was categorically stated that the plaintiff sold the plaint schedule property to one Mandapu Venkateswara Rao, S/o Ramaiah on 21.09.1994 and an agreement of sale was executed in favour of Mandapu Venkateswara Rao. It was further stated that as the plaintiff has some inconvenience in executing the registered sale deed in favour of Mandapu Venakteswara Rao or his nominees, he

executed a G.P.A. The G.P.A. Holder is having rights to execute a sale deed in favour of Mandapu Venkateswara Rao and also signed on behalf of the plaintiff on all the required documents and presented the same before the Registrar Office to execute necessary documents. The schedule property was also categorically mentioned in the G.P.A. The plaintiff also used to be called as Veera Venkateswara Rao and he used to sign as Veera Venkata Subba Rao. The plaintiff signed on the G.P.A. as V.V.V. Subba Rao even though his name was mentioned as Veera Venkateswara Rao S/o Puli Raju. The plaintiff himself signed on the G.P.A. and he got it registered and put his thumb impressions. He is well aware about the said fact. If he did not execute the said document, he ought to have filed the original document of the property. As he sold the property to Mandapu VenakteswaraRao and executed a G.P.A. in favour of Kanchaiah, he is not entitled to file the present suit to declare him as absolute owner. The plaintiff, who already sold the property and received total consideration is not entitled to claim any relief.

The defendant is a bonafide purchaser for valuable consideration and she purchased the property for Rs.38,40,000/- from the plaintiff, being represented by G.P.A. Agent, Pamulapati Kanchaiah and Mandapu Venkateswara Rao and obtained a registered sale deed, dated 26.12.2016. She paid the total consideration and took possession and she has

been enjoying the same as absolute owner. The G.P.A. Holder, Pamulapati Kanchaiah and Mandapu Venkateswara Rao are also necessary and proper parties and the suit is not maintainable in the absence of them. The plaintiff is not entitled to claim the relief without claiming any relief against the G.P.A. Holder. Without challenging the G.P.A., the plaintiff cannot maintain the suit. The G.P.A. Holder of the plaintiff, Pamulapati Kanchaiah, is entitled to execute the sale deed, as such, the defendant is the absolute owner of the property. She is entitled to protect her possession. Even in the report said to have been given by the plaintiff to the Police Commissioner, he admitted the execution of G.P.A. in favour of Pamulapati Kanchaiah. As the contents of the report are false, police did not initiate any action. Hence, the suit is liable to be dismissed.

5) Basing on the above pleadings, the learned Additional Senior Civil Judge settled the following issues for trial:

- (1) Whether the plaintiff is entitled for declaration and consequential relief of permanent injunction as prayed for?
- (2) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
- (3) Whether the defendant is a bonafide purchaser for valuable consideration?
- (4) To what relief?

6) During the course of trial, on behalf of the plaintiff, P.W.1 was examined and Ex.A.1 to Ex.A.4 were marked. The defendant examined herself as D.W.1 and further examined D.W.2, her husband and got marked Ex.B.1 to Ex.B.4.

7) The learned Additional Senior Civil Judge on conclusion of trial and on considering the oral evidence as well as the documentary evidence dismissed the suit of the plaintiff. Felt aggrieved of the same, the unsuccessful plaintiff filed the present appeal.

8) Now, in deciding the present appeal, the points that arise for consideration are as follows:

(1) Whether the plaintiff proved his entitlement before the learned Additional Senior Civil Judge to seek declaration of title and consequential relief of permanent injunction under two counts as prayed for?

(2) Whether the judgment of the learned Additional Senior Civil Judge is sustainable under law and facts and whether there are any grounds to interfere with the same?

Point Nos.1 and 2:

9) P.W.1 before the learned Additional Senior Civil Judge was no other than the plaintiff, who got filed his chief examination affidavit. In chief examination affidavit, the plaintiff put forth the facts as averred in the plaint averments. During his examination in chief, Ex.A.1 to Ex.A.4 were marked. Ex.A.1 was

registered extract of the sale deed, dated 19.12.1978 standing in his name. Ex.A.2 was copy of report given by him to the Commissioner of Police, Vijayawada. During cross examination of D.W.2, the husband of the defendant, Ex.A.3-the registration extract of the sale deed, dated 21.04.1995 in respect of Krishnalanka property and further Ex.A.4-the registration extract of the G.P.A., dated 21.09.1994 with regard to Krishnalanka property were marked.

10) The defendant got filed her chief examination affidavit as D.W.1 putting forth the facts in tune with the contents of the written statement and through her examination, Ex.B.1 to Ex.B.3 were marked. Ex.B.1 was registration extract of sale deed, dated 26.12.2016 executed by GPA Holder of the plaintiff. Ex.B.2 was registration extract of GPA executed by the wife of plaintiff in favour of Kanchaiah, dated 21.09.1994. Ex.B.3 was paper publication published in Prajasakthi, dated 15.11.2016.

11) The defendant got filed the chief examination affidavit of D.W.2, who is no other than her husband and his chief examination affidavit is in tune with the defence of the defendant as averred in the written statement.

12) Sri V. Venugopala Rao, learned Senior Counsel, appearing for the plaintiff, would canvass the facts as averred in the pleadings. He would contend that the plaintiff instituted the

suit for declaration of his title, possession and rights over the plaint schedule property. There was no dispute that originally the plaintiff purchased the property under Ex.A.1 from its vendors. The defendant set up a sale deed, dated 26.12.2016 alleged to be executed by the G.P.A. holder of the plaintiff and the alleged G.P.A. was of the year 1994. The plaintiff explained the circumstances in Ex.A.2, the report lodged to police, in which the said G.P.A. was brought into existence fraudulently. To know the case of the plaintiff in proper perspective, one has to look into his version in Ex.A.2 report lodged with police. He categorically explained the circumstances in which he was compelled to sign as many as papers and thumb marks at the compulsion made by some persons and to protect the interest of the defendant and her husband only, the plaintiff signed number of documents. The so-called G.P.A. alleged to be executed by the plaintiff was not at all voluntary and it was brought into existence under threat and coercion, etc. On account of various reasons and on account of inability, the plaintiff could not challenge the validity of the alleged registered G.P.A., as such, he kept quiet. However, in a suit for declaration of title, the Court has to investigate the title comprehensively. There is no need for the plaintiff to challenge the validity of the alleged G.P.A. which was alleged to be registered. In a suit for declaration of title, the Court can go through the validity of the

alleged G.P.A. According to the case of the plaintiff, the so-called G.P.A. set up by the defendant was not valid and it was obtained by fraud and coercion. The Hon'ble Supreme Court in **Suraj Lamp and Industries Private Limited vs. State of Haryana and another**¹ clearly deprecated the practice of conveying the properties under the cover of G.P.As. The effect of the judgment in *Suraj Lamp's case (supra)* can be considered by this Court to ascertain the validity or otherwise of the G.P.A. pleaded by the plaintiff. When the plaint schedule property was said to be located in Gollapudi area, the sale deed in the name of the defendant was registered in Mangalagiri Sub-Registrar Office, for the reasons best known. D.W.2, the husband of the defendant, had no personal knowledge whatsoever even according to him in support of the case of the defendant. Absolutely, according to the answers spoken by D.W.1 and D.W.2, there is every discrepancy as to the manner in which consideration was paid by the defendant to the alleged vendor. The defendant had no financial capacity to pay the alleged consideration that too in various installments. The learned Additional Senior Civil Judge ignored the serious discrepancies in the evidence of D.W.1 and D.W.2 as to the manner in which they were alleged to have paid the consideration for purchasing the property. During cross examination of D.W.1, Plaintiff

¹ (2012) 1 Supreme Court Cases 656

brought into evidence Ex.A.3 and Ex.A.4 and it reveals that though there was a G.P.A., the vendee ventured to purchase the property from the wife of P.W.1 and the G.P.A. Holder Kanchaiah kept quiet. All these goes to show that purposefully on account of inability of the plaintiff for not challenging the G.P.A., it was used to grab the property of the plaintiff. The defendant is no other than the blood relative of P.W.1 and in spite of help rendered by the plaintiff, the defendant and her husband ultimately thought to grab the property, as such, brought into existence the sale deed, dated 26.12.2016. As the evidence on record reveals that the sale deed set up by the defendant was not supported by consideration, it is nothing but invalid. According to Ex.B.2, the so-called copy of G.P.A., it was averred that the plaintiff sold the property to one M. Venkateswara Rao under an agreement of sale. However, the said agreement of sale has not seen the light of the day. Apart from this, in the sale deed, dated 26.12.2016 i.e., Ex.B.1, it was alleged that there was an oral sale and that the defendant paid the amounts prior to Ex.B.1 in installments. The sale deed was executed showing the defendant as nominee of M. Venkateswara Rao. All these goes to show that the said sale deed was brought into picture to grab the property of the defendant. With the above submissions, the learned Senior Counsel would contend that the learned Additional Senior Civil Judge did not appreciate

the evidence in proper perspective, as such, appeal suit is liable to be allowed so as to grant the relief in favour of the plaintiff.

13) Sri Sunkara Rajendra Prasad, learned counsel appearing for the respondent, would canvass the facts in accordance with the written statement. He would contend that P.W.1 is well educated. In the year 1994 he executed registered G.P.A. in favour of one P. Kanchaiah stating that he sold the plaint schedule property in favour of M. Venkateswara Rao and because of his inability to execute a further sale deed conferred power on the G.P.A. to execute sale deed in favour of M. Venkateswara Rao or to any other person as suggested by M. Venkateswara Rao. He kept quiet since 1994 till the date of filing of the suit. The case of the defendant is that she paid the amounts to M. Venkateswara Rao in installments prior to the execution of sale deed and she got the sale deed from G.P.A. Holder as well as M. Venkateswara Rao. Her contention is that the defendant is a bonafide purchaser of the plaint schedule property. Plaintiff did not spell out any circumstances whatsoever as to how he kept quiet when the alleged registered G.P.A. was obtained by him with coercion and force. According to Section 201 of the Indian Contract Act, 1872, the G.P.A. has been in force because the authority is not terminated. It is not the case of the plaintiff that though he was forced to execute alleged G.P.A., he ventured to execute any other document so

as to terminate the authority of the said G.P.A. No prudent man would keep quiet for about 22 years when alleged G.P.A. was obtained by him by playing fraud. Plaintiff averments did not whisper that alleged G.P.A. is on account of any fraud by coercion or undue influence. The plaintiff did not seek to declare the G.P.A. as null and void or invalid. He allowed elapsing of time of 22 years, though he was forced to execute the alleged registered G.P.A. for no fault of him. On the other hand, in Ex.A.2, he alleged several things explaining certain circumstances in which he was allegedly subjected to pressure to put his signatures on the stamps and also put signatures before the Registrar. The conduct of the plaintiff is not that of a man of reasonable prudence. The plaintiff did not plead any fraud with necessary particulars. There is no bar to register the property in anywhere in the State. The G.P.A. in the name of P. Kanchaiah is perfectly valid. The relief of declaration is a discretionary one. The plaintiff did not approach the Court with clean hands. The decision in *Suraj Lamp's case (supra)* has nothing to do with the present case on hand. It is not that under the guise of G.P.A., the property was sold. On the other hand, the G.P.A. was given to P. Kanchaiah with an authorization to execute sale deed. The sale deed in the name of the defendant was duly stamped and registered. The G.P.A. was not brought into picture to evade any stamp duty or registration

charges. The registered G.P.A. in the name of P. Kanchaiah was duly stamped and registered. The decision of the Hon'ble Supreme Court in *Suraj Lamp's case (supra)* has no application. The learned Additional Senior Civil Judge rightly appreciated the evidence on record and with sound reasons, he dismissed the suit of the plaintiff, as such, there are no grounds to interfere with the judgment of the learned Additional Senior Civil Judge. With the above said contentions, the learned counsel for the respondent prays to dismiss the suit.

14) There is no dispute that the plaintiff purchased the plaint schedule property under the original of Ex.A.1 on 19.12.1978 and the plaint schedule property is vacant site in an extent of 240 sq. yards in Gollapudi Village with specific boundaries. The plaintiff sought to declare his title over the plaint schedule property on the ground that he purchased the same under the original of Ex.A.1 and that the defendant claimed that she purchased the property on 26.12.2016 and the document set up by the defendant is fabricated, cooked up and manufactured and further the defendant claimed that she purchased the property under the registered GPA Holder of the plaintiff and that such a document is also a fabricated and manufactured document. This is the substance of the pleadings.

15) Admittedly, there is no pleading in the plaint that the registered GPA bearing Document No.2447/1994 is on

account of any forgery. When the plaintiff branded the registered GPA fabricated, manufactured and illegal, there are no proper pleadings as to in which circumstances the above said registered GPA was brought into existence. It is the contention of the learned senior counsel for the appellant that to know the better the case of the plaintiff, one has to look into Ex.A.2, the report lodged by P.W.1. Admittedly, there is a reference in the plaint that the plaintiff lodged a report with concerned police against his grievance with regard to the sale deed set up by the defendant and further so-called registered GPA.

16) As seen from Ex.A.2, it is a tailored report and it is lodged by the plaintiff on 23.02.2017 with the Commissioner of Police, Vijayawada City. The substance of its allegations are that Borra Padmaja Rao (defendant) is his younger sister. Borra Jaganmohana Rao is the husband of Borra Padmaja Rao. On 08.09.1994 Borra Jaganmohana Rao came to him and told him that Mandapu Venkateswara Rao is pressuring him to repay the amount borrowed by him and he requested him to accompany him (Jaganmohan Rao) to the house of Mandapu Venkateswara Rao at 10-00 a.m. Accordingly, he accompanied Borra Jaganmohana Rao. On seeing them, Mandapu Venakteswara Rao slapped Jaganmohana Rao for which he intervened. Mandapu Venakteswara Rao abused him (brother-in-law of plaintiff) and asked him (P.W.1) to give a promissory note for

Rs.5,00,000/- with empty cheques. Then he went to his house and brought 10 empty cheques each for Rs.50,000/- and handed over to Mandapu Venakteswara Rao. Then they were released. Later, they asked him as to how he would repay the amount, for which he replied that he has house in Krishnalanka, a site in Gollapudi and another site in Mangalagiri and he will get money by mortgaging the same. After 10 days, Mandapu Venakteswara Rao asked to him to pay the amount. He asked him to grant time, for which he refused. As demanded by him on 20.09.1994, he took the documents of title of his house and vacant site of Gollapudi and the site in the name of his wife at Mangalagiri and handed over to Mandapu Venakteswara Rao. Mandapu Venakteswara Rao asked him to accompany a person and introduced one Pamulapati Kanchaiah and asked him to sign the GPA document, as such, he signed the same in the Registrar Office. They were demanded to get the GPA registered and they obliged it. Subsequently, on 01.05.1995 Mandapu Venakteswara Rao came to him and told him that his brother-in-law did not pay the amount and asked him to pay the amount by selling away the properties and he left Kanchaiah with him and Kanchaiah abused them in filthy language. As demanded by them, they completed the registration of a document pertaining to their house and paid Rs.3,25,000/- and went to their house. Later, Mandapu Venakteswara Rao did not release the

documents. When they questioned Jaganmohan Rao and his wife, they did not give proper answer. Later, they came to know that his sister got the sale deed on 26.12.2016. Hence, his son and daughter sent a report with Prime Minister of India on 16.01.2017, but there is no response. So, they decided to file complaint. This is the substance of the allegations.

17) As evident from Ex.A.2 when the so-called episodes were occurred on 08.09.1994, 20.09.1994 and 01.05.1995, the plaintiff could cause sending the so-called report to Prime Minister of India on 16.01.2017. Ultimately they lodged a report with police on 23.02.2017. There is no dispute that police did not take any action on Ex.A.2. It is a case where there was silence throughout on the part of the plaintiff till the year 2017 without bothering about the fate of so-called GPA, especially, when it was allegedly obtained due to compulsion. Now, it is pertinent to look into the cross examination part of P.W.1.

18) As evident from the evidence of P.W.1 in cross examination, he deposed that he is working as Air Conditioned Engineer. He studied Diploma in Mechanical and Diary Engineering. The defendant is his sister. He gave Ex.A.2 personally. He scribed it. In the month of September, 1994 his signatures were obtained forcibly in the office of the document writer. Three days thereafter he went to the Registrar Office where a document was registered. He obtained certified copy of

document in the month of January, 2017. It reveals that as if he sold the plaint schedule property to Mandapu Venakteswara Rao and appointed one Pamulapati Kanchaiah as his GPA Holder. He did not give any notice to them till today. At request of his brother-in-law, he signed the document. Till today he did not issue any legal notice to his brother-in-law for cancellation of GPA or gave any report to the police. No crime was registered on the basis of Ex.A.2, but, he filed a private complaint against the defendant, her husband, Mandapu Venakteswara Rao and Pamulapati Kanchaiah and it is not registered so far, though he filed it 45 days back before his evidence. He denied that he sold the property to Mandapu Venakteswara Rao and executed a GPA in favour of Kanchaiah and the defendant has no role to play in the said transaction. He denied that he is not entitled for declaration and that he is deposing false.

19) It is to be noted that Ex.B.2, the GPA, was dated 21.09.1994. The property purchased by the defendant was on 26.12.2016. The contents of Ex.B.2 were such that the plaintiff sold the plaint schedule property to one Mandapu Venakteswara Rao under agreement of sale on 21.09.1994 and as he was not in position to execute a sale deed, he authorized Kanchaiah so as to execute the sale deed in favour of Mandapu Venakteswara Rao or to any person suggested by him. Ex.B.2 was a registered document. A man of reasonable prudence would not have kept

quiet for a considerable period of 22 years having signed document in the Registrar Office. The plaintiff had knowledge that the so-called document which he allegedly signed either at the compulsion of Mandapu Venakteswara Rao or his brother-in-law was registered in the Sub-Registrar Office. He would not have kept quiet without enquiry as to the nature of the document. His evidence that he obtained the copy of document in the year 2017 is nothing but improbable and against natural course of human conduct. The knowledge of the contents of Ex.B.2 can as well be attributed to the plaintiff. If really plaintiff signed Ex.B.2 either at the compulsion of Mandapu Venakteswara Rao or his sister or brother-in-law, he would not have kept quiet without raising his little finger for 22 years. The contents of Ex.A.2 were not at all pleaded properly in the plaint. Even according to the plaintiff, the episode came to an end on 01.05.1995 where the plaintiff developed any amount of despondency having paid a sum of Rs.3,25,000/- but taken back Rs.5,000/- and Rs.5,00,000/- promissory note and 10 cheques alone from Mandapu Venakteswara Rao. Even after 01.05.1995 the plaintiff kept quiet without bothering anything till the year 2017. In the considered view of this Court, the conduct of the plaintiff was not that of a man of reasonable prudence. When his close relatives i.e., his sister and brother-in-law did not respond properly though he allegedly helped them he would not have

kept quiet without looking into the contents of the so-called registered GPA.

20) Having regard to the natural course of conduct of a man of reasonable prudence, this Court is of the view that if really the contents of Ex.B.2 were on account of any threat or coercion, plaintiff would not have kept quiet. In the light of the above, the plaintiff had every knowledge about the contents of Ex.B.2, registered GPA and it has to be inferred ultimately that if the plaintiff did not voluntarily execute Ex.B.2, the registered GPA in favour of Kanchaiah, he would not have kept quiet.

21) The plaintiff during the course of trial at the time of cross examination of D.W.2 got marked Ex.A.3 and registration extract of sale deed, dated 21.04.1995 and Ex.A.4 registration extract of GPA, dated 21.09.1994. Having looked into the cross examination part of D.W.2, the obvious intention of the plaintiff in marking those documents is such that when his wife executed Ex.A.4 registered GPA in favour of Kanchaiah so as to sell the property at Krishnalanka, but the vendee under Ex.A.3 purchased the property directly from the wife of the plaintiff. So, by filing those documents, contention of the plaintiff appears to be that when his wife executed Ex.A.4 in favour of Kanchaiah to sell the property covered under Ex.A.4, but Kanchaiah allowed the same to be purchased by the vendee directly from the wife of the plaintiff under Ex.A.3. In the considered view of

this Court, the above said contention has nothing to do with Ex.B.2. Ex.B.2 is a separate GPA pertaining to vacant site at Gollapudi. By relying upon Ex.A.2 and Ex.A.4, the case of the plaintiff cannot be supported in anyway. According to Section 201 of the Indian Contract Act, 1872, one of the modes of termination of agency is termination by the principal revoking his authority. Here, the contents of Ex.B.2 can be attributed to the plaintiff since 21.09.1994. So, he did not choose to terminate the authority of Kanchaiah. Under the circumstances basing on Ex.A.3 and Ex.A.4, the plaintiff cannot contend that Ex.B.1 and Ex.B.2 are invalid.

22) It is also the contention of the appellant that when Ex.B.2, the registered GPA, speaks of the agreement of sale executed by the plaintiff in favour of Mandapu Venakteswara Rao, the defendant did not produce the same in support of their contention. It is very difficult to accept such a contention. As this Court already pointed out, the evidence on record reveals that execution of Ex.B.2, GPA in favour of Mandapu Venakteswara Rao was not in the manner as pleaded by the plaintiff. So, it is within the well knowledge of the plaintiff as to what happened to the so-called agreement of sale between him and Mandapu Venakteswara Rao. Under the circumstances, on account of non-production of so-called agreement of sale between the plaintiff and Mandapu Venakteswara Rao, the case

of the plaintiff cannot be substantiated. Under the circumstances, the plaintiff cannot defeat the contention of the defendant on the ground that the agreement of sale as referred in Ex.B.2 was not produced. May be a fact that in Ex.B.1 sale deed, there was a reference as to the existence of agreement between Mandapu Venakteswara Rao and the plaintiff as oral one. On that count, the plaintiff cannot substantiate his contention so as to get a declaration of title. It is a case where according to Ex.B.2, Kanchaiah was authorized to execute a sale deed either in the name of Mandapu Venakteswara Rao or in the name of a person suggested by him. According to the defence of the defendant, Mandapu Venakteswara Rao having received the amount from the defendant in installments authorized Kanchaiah to execute a sale deed in favour of defendant along with him. According to the defence of defendant, she was the nominee by Mandapu Venakteswara Rao having paid the consideration of Rs.38,40,000/- in various installments prior to the sale. Under the circumstances and when Ex.B.2 was a registered document authorizing Kanchaiah to execute sale deed either in the name of Mandapu Venakteswara Rao or to his nominee, the plaintiff cannot contend that the sale deed cannot be executed in the name of the defendant without production of original agreement of sale between him and Mandapu Venakteswara Rao.

23) Coming to the case of *Suraj Lamp's case (supra)*, it is a case where the Hon'ble Supreme Court took cognizance of certain things referring transfer of immovable properties under the guise of General Power of Attorney sales. The Hon'ble Supreme Court dealing with the situation held that the immovable property can be transferred or conveyed only by deed of conveyance i.e., sale deed duly stamped and registered as required by law. The Hon'ble Supreme Court further held that the judgment will not affect validity of sale agreements and powers of attorney executed in genuine transactions prior to its judgment.

24) Coming to the present case on hand, Ex.B.2 was on 21.09.1994. It is not a sale deed. It was an authorization given to Kanchaiah to execute a sale deed duly in favour of Mandapu Venakteswara Rao or to his nominee. Even Ex.B.2 was a registered document. Apart from this, pursuant to the authorization under Ex.B.2, Kanchaiah and Mandapu Venakteswara Rao executed a registered sale deed under the original of Ex.B.1 in the name of the plaintiff. Under the circumstances, the judgment in *Suraj Lamp's case (supra)* has nothing to do with the present facts and circumstances.

25) It is to be noted that the plaintiff, admittedly, did not seek to declare the so-called GPA under Ex.B.2 as null and void or vitiated by fraud and undue influence. On the other

hand, the plaintiff sought for declaration of title in respect of the plaint schedule property. As this Court already pointed out the plaintiff had every knowledge about the nature of the document and the contents of the document and he kept silence throughout. As rightly contended by the defendant, the plaintiff did not mould his prayer properly. He did not seek to declare Ex.B.2 document as null and void or vitiated by fraud and undue influence. When the very execution of such a document as per the evidence available on record appears to be voluntary his prayer to declare his title deserves no merits. In the view of this Court, the plaintiff should have pleaded proper facts in the plaint in tune with allegations in Ex.A.2 and should have made proper pleading so as to seek appropriate relief but the plaintiff miserably failed to do so.

26) It is to be noted that the contention of the defendant is that she purchased the plaint schedule property for a sum of Rs.38,40,000/- and she paid the amount in various installments to Mandapu Venakteswara Rao. Admittedly, as evident from the evidence of D.W.1 and D.W.2, there appears to be some discrepancy with regard to the manner in which the consideration was paid to Mandapu Venakteswara Rao. D.W.1 during cross examination deposed that the amount was settled for Rs.38,40,000/-. She gave advance amount of Rs.4,00,000/-. There is no recital in Ex.B.1 about the payment of advance of

Rs.4,00,000/- . Total consideration was paid in installments. First installment started about 10 days prior to Ex.B.1. Last payment was made on 26.12.2016 on which date she paid Rs.20 lakh. She also deposed that both her children are working in States and they used to send money to her.

27) Coming to the cross examination of D.W.2, the husband of D.W.1, he has no personal knowledge about the facts of the case as regards the GPA executed by the plaintiff. He deposed that plaint schedule property was purchased by his wife from Mandapu Venakteswara Rao for Rs.38,40,000/-. While he gave Rs.15,00,000/-, the remaining amount was secured by his son and daughter. The amount sent from 2015 to him and his wife, were utilized for purchase of the property. He further deposed that by the time of registration of Ex.B.1, an amount of Rs.20 lakh was paid.

28) Basing on these answers the contention of the plaintiff is that there is no consistency with regard to the manner in which an amount of Rs.38,40,000/- was paid by the defendant in favour of Mandapu Venakteswara Rao. If evidence of D.W.1 and D.W.2 is considered together, in the considered view of this Court, there is some consistency with regard to getting of the amounts from their children who are working in States. These answers are spoken by D.W.1 and D.W.2 consistently. The only discrepancy appears to be that when

D.W.2 stated that he gave Rs.15,00,000/- to the defendant but it is not deposed by D.W.1. Whatever the reason may be on account of some discrepancy in the evidence of D.W.1 and D.W.2 as to the manner in which the consideration under Ex.B.1 was paid, the case of the defendant cannot be thrown out. The consideration was a matter between Mandapu Venakteswara Rao and the defendant. When the evidence on record reveals that the plaintiff miserably failed to probabalize his contention that Ex.B.2 was vitiated as it was not executed voluntarily, he cannot support his contention basing on the so-called small discrepancy between the evidence of D.W.1 and D.W.2 as to the manner in which consideration under Ex.B.1 was paid. The relief of declaration sought for by the plaintiff is discretionary one. It is a case where he kept quiet all through for about 22 or 23 years having executed Ex.B.2. Under the circumstances, the plaintiff cannot succeed basing on the weakness of the defendant. It is the plaintiff who approached the Court seeking declaration of title without making proper pleadings so as to brand Ex.B.2 as vitiated by fraud or undue influence or coercion.

29) In the considered view of this Court, the learned Additional Senior Civil Judge on thorough appreciation of evidence on record, declined to grant the relief of declaration and perpetual injunction. Under the circumstances, this Court

does not find any grounds to interfere with the judgment of the learned Additional Senior Civil Judge.

30) In the result, the appeal suit is dismissed with costs confirming the judgment and decree, dated 24.07.2018 in O.S.No.213 of 2017, on the file of VII Additional Senior Civil Judge, Vijayawada.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 05.01.2024.
PGR

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

Appeal Suit No.1569 of 2018

Date: 05.01.2024

PGR