

Sri. Thammannagowda Vs. Ramegowda

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SooperKanoon Citation : sooperkanoon.com/1234540

Court : Karnataka

Decided On : Mar-27-2023

Judge : H.P.Sandesh

Appeal No. : RSA 1082/2022

Appellant : Sri. Thammannagowda

Respondent : Ramegowda

Judgement :

- 1 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE27H DAY OF MARCH, 2023 BEFORE THE HON'BLE MR JUSTICE H.P.SANDESH REGULAR SECOND APPEAL NO.1082 OF2022(INJ) C/W REGULAR SECOND APPEAL NO.1087 OF 2022 SP) IN R.S.A.NO.1082/2022: BETWEEN: SRI THAMMANNAGOWDA, S/O KALEGOWDA, AGED ABOUT66YEARS, R/O KIRAGADALU VILLAGE, KASABA HOBLI, ALUR TALUK, HASSAN DISTRICT - 571 424. APPELLANT (BY SRI G. BALAKRISHNA SHASTRY, ADVOCATE) AND: RAMEGOWDA, S/O MALIGEGOWDA, AGED ABOUT66YEARS, R/O MAVINAKERE VILLAGE, HALEKOTE HOBLI, HOLENARASIPURA TALUK, HASSAN DISTRICT - 573 211. RESPONDENT (BY SRI SANGAMESH R.B., ADVOCATE) THIS R.S.A. IS FILED UNDER SECTION100OF CPC, AGAINST THE

JUDGMENT

AND DECREE DATED 04.01.2022 PASSED IN RA.NO.26/2018 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, HASSAN DISMISSING - 2 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 THE APPEAL AND CONFIRMING THE

JUDGMENT

AND DECREE DATED 05.03.2018 PASSED IN O.S.NO.160/2012 ON THE FILE OF THE CIVIL JUDGE, ALUR. IN R.S.A.NO.1087/2022: BETWEEN: SRI THAMMANNAGOWDA, S/O KALEGOWDA, AGED ABOUT 66 YEARS, R/O KIRAGADALU VILLAGE, KASABA HOBLI, ALUR TALUK, HASSAN DISTRICT. ...APPELLANT (BY SRI G. BALAKRISHNA SHASTRY, ADVOCATE) AND: SRI RAMEGOWDA, S/O MALIGEGOWDA, AGED ABOUT 66 YEARS, R/O MAVINAKERE VILLAGE, HALEKOTE HOBLI, HOLENARASIPURA TALUK, HASSAN DISTRICT. ...RESPONDENT (BY SRI SANGAMESH R.B., ADVOCATE) THIS R.S.A. IS FILED UNDER SECTION 100 OF CPC, AGAINST THE

JUDGMENT

AND DECREE DATED 04.01.2022 PASSED IN RA.NO.5/2018 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE, HASSAN DISMISSING THE APPEAL AND CONFIRMING THE

JUDGMENT

AND DECREE DATED 16.12.2017 PASSED IN O.S.NO.191/2012 ON THE FILE OF THE CIVIL JUDGE, ALUR. THESE APPEALS COMING ON FOR ADMISSION THIS DAY, THE COURT DELIVERED THE FOLLOWING: - 3 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022

JUDGMENT

These matters are listed for admission today. Heard the learned counsel for the appellant and the learned counsel for the respondent after securing the TCRs.

2. R.S.A.No.1082/2022 is filed challenging the judgment and decree dated 05.03.2018, passed in O.S.No.160/2012, wherein the suit filed for the relief of permanent injunction by the original owner is decreed with cost restraining the

defendant from interfering over the suit schedule property and the judgment and decree dated 04.01.2022 passed in R.A.No.26/2018 confirming the judgment of the Trial Court.

3. R.S.A.No.1087/2022 is filed against the dismissal of the suit filed by the plaintiff, who is an agreement holder and power of attorney holder, dated 16.12.2017 passed in O.S.No.191/2012 and the same is confirmed by the First Appellate Court by its judgment and decree dated 04.01.2022 passed in R.A.No.5/2018.

4. The plaintiff in O.S.No.160/2012 in the plaint has contended that the suit schedule property bearing - 4 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 Sy.Nos.94 and 95 measuring 2 acres 9 guntas situated at Kirugadalu Village was granted to the plaintiff on 08.11.1978. As per the grant, khatha has been changed in the name of the plaintiff and from the date of grant, the plaintiff is in possession and enjoyment of the suit schedule property. The defendant has created some documents and trying to interfere with the plaintiffs possession and also tried to destroy the crops standing in the schedule property and hence without any alternative, the plaintiff was constrained to file the suit for the relief of permanent injunction. In pursuance of the suit summons, the defendant appeared and filed the written statement contending that he had entered into the agreement of sale with the plaintiff on 03.07.1987. On the date of agreement itself, the possession of the suit schedule properties was delivered to the defendant and thereafter the defendant had handed over the possession to his brother and his brother is in possession of the suit schedule property. Even though the plaintiff is not in possession of the suit schedule property, he has filed the - 5 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 frivolous suit only to dispossess the defendant from the schedule property and to harass the defendant.

5. Based on the pleadings of the parties, the Trial Court framed the issues in a suit for bare injunction. The plaintiff in order to prove his case examined four witnesses as P.W.1 to P.W.4 and got marked the documents at Exs.P.1 to 21. The defendant examined one witness as D.W.1 and produced 51 documents as Exs.D.1 to 51 and also examined three witnesses as D.W.2 to D.W.4. The Trial Court having considered both oral and documentary evidence placed on record, decreed the

suit against the defendant and hence the defendant filed an appeal in R.A.No.26/2018, wherein it is contended that the possession is with the defendant consequent upon the sale agreement and the Trial Court failed to appreciate the material on record. The First Appellate Court on considering the grounds urged in the appeal memo, formulated the points whether the plaintiff proves that he is in possession and enjoyment of the suit properties as on the date of the suit and the alleged - 6 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 interference by the defendant and whether the plaintiff is entitled for the relief of permanent injunction. The First Appellate Court on re-appreciation of both oral and documentary evidence placed on record, dismissed the appeal and hence R.S.A.No.1082/2022 is filed before this Court.

6. The main contention of the learned counsel for the appellant in this second appeal is that both the Courts failed to take note of the sale agreement and though the defendant denied the very execution of the sale agreement, admitted in the connected suit that they have executed the sale agreement and inspite of it, the Trial Court committed an error and also fails to take note of the document of sale agreement and power of attorney and also the witnesses who have been examined as D.W.1 to D.W.4. P.W.2 categorically admitted that the appellant Thammannagowda was cultivating the land in dispute and the same has been over looked by the Trial Court by holding that the appellant was not in possession of the suit schedule - 7 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 property and hence prayed this Court to frame the substantial question of law that both the Courts below erred in not appreciating the evidence and material on record before passing the impugned judgment and decree.

7. The plaintiff in O.S.No.191/2012 filed a suit for the relief of specific performance based on the sale agreement dated 03.12.1987, wherein it is contended that the defendant agreed to sell the same in favour of the plaintiff for total sale consideration of Rs.7,000/- and on the same day, the defendant has received the entire sale consideration and on the same day the defendant has executed the sale agreement and general power of attorney having received the entire sale consideration. It is contended that the plaintiff was always ready and willing to perform his part of contract. The defendant appeared and filed the written

statement denying the execution of the sale agreement and power of attorney and contended that the suit is barred by limitation. The very contention of the defendant in the suit is that the - 8 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 plaintiff has manipulated the documents and come up with a frivolous suit and hence he is not entitled for any relief.

8. Based on the pleadings of the parties, the Trial Court framed the issues with regard to the execution of the sale agreement and power of attorney and also whether the plaintiff was always ready and willing to have the sale deed and also framed an issue with regard to whether the suit is barred by limitation and whether the plaintiff has manipulated the documents and entitled for the relief. The plaintiff in support of his case examined himself as P.W.1 and examined another witness as P.W.2 and got marked the documents at Exs.P.1 to 43. The defendant examined himself as D.W.1 and examined two witnesses as D.W.2 and D.W.3 and got marked the documents at Exs.D.1 to 18. The Trial Court on appreciation of both oral and documentary evidence placed on record, answered issue Nos.1 to 3 in the negative, issue No.4 in the affirmative in coming to the conclusion that the documents are created and - 9 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 manipulated and comes to the conclusion that the plaintiff is not entitled for the relief of specific performance and dismissed the suit.

9. Being aggrieved by the judgment and decree of dismissal of the suit, an appeal is filed by the plaintiff in R.A.No.5/2018, wherein grounds are urged that the Trial Court committed an error in dismissing the suit. In spite of there was an admission on the part of the plaintiff for having executed the sale agreement, the Trial Court committed an error in not accepting the document of Ex.P.2 power of attorney, which was executed on the same day and there was a reference in the document of Ex.P.1 that on the same day, power of attorney was executed consequent upon the sale agreement. There is a recital in the sale agreement that there was a non-alienation clause in the saguvali chit and hence the Court has to take note of the documents of Exs.P.1 and 2. The First Appellate Court on considering the grounds urged in the appeal memo and also on re-appreciation of both oral and documentary evidence placed on record, formulated - 10 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 the points whether the impugned judgment of the Trial

Court is illegal, improper, perverse and against the well settled principles of law and whether the Trial Court blindly dismissed the suit without proper appreciation of facts and material on record and committed an error in answering issue Nos.1 to 3 in the negative and issue No.4 in the affirmative. The First Appellate Court also formulated the point whether the Trial Court has not given any findings with respect to Article 54 of Limitation Act and also in respect of Exs.P.1 to 43 and the respondent has admitted the signature in Ex.P.1 and inspite of it, whether the Trial Court ignored the basic relevant documents as contended. The First Appellate Court on re-appreciation of both oral and documentary evidence placed on record answered the point Nos.1 and 2 in the negative and answered point No.3 in the affirmative and point Nos.4 to 6 in the negative and confirmed the judgment and decree of the Trial Court. Hence, R.S.A.No.1087/2022 is filed before this Court.-.

11 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 10. The main contention of the learned counsel for the appellant in R.S.A.No.1087/2022 is that both the Courts have committed an error and the findings given by the Trial Court is opposed to the evidence on record and the First Appellate Court overlooked the evidence of P.W.2 Shivarudrappa, wherein he has stated that the possession of the schedule property was handed over to the appellant since the respondent was not residing in Kiragadalu Village. The Trial Court erred in not appreciating the cross-examination of D.W.1, wherein he admits the suggestion put to him by stating that the signature found on Ex.P.1 is his own signature. The Trial Court overlooked the evidence of D.W.2 wherein in his cross-examination he admits that the respondent does not reside in Kiragadalu and resides in Mavinakere Village. D.W.1 also tells that he was in possession of the schedule property and was cultivating maize. D.W.2 admits that the revenue officials have made spot verification and then changed the revenue records into the appellants name and inspite of all these admissions, - 12 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 both the Courts committed an error and ignored the material on record. The learned counsel would submit that this Court has to frame the substantial question of law whether the Courts below have committed an error in denying the relief of specific performance. The learned counsel contended that the First Appellate Court committed an error in coming to the conclusion that the suit is barred by limitation and the very approach of the Court is erroneous and fails to take note of

the contents of Ex.P.1 i.e. clause 1 to 4 and the same has to be read together and not taking only clause No.3. Hence, the very approach of both the Courts are erroneous and hence it requires interference.

11. Per contra, the learned counsel for the respondent in R.S.A.No.1082/2022 would contend that the Trial Court while granting the relief of permanent injunction in favour of the plaintiff in O.S.No.160/2012 discussed in detail that as on the date of filing of the suit, the plaintiff was in possession of the suit schedule property and the documents produced by plaintiff in - 13 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 Exs.P.1 to 21 shows his possession over the suit schedule property. In the cross-examination, the defendant has not elicited anything from the mouth of P.W.1 regarding the possession is concerned and in a suit for injunction, the plaintiff must prove his possession of the suit schedule property as on the date of the suit. The witnesses examined on behalf of the plaintiff, the documents produced by the plaintiff and oral evidence clearly shows that the plaintiff is in possession of the suit schedule property and hence the Trial Court rightly granted the relief of permanent injunction. The First Appellate Court on re-appreciating both oral and documentary evidence placed on record, rightly comes to the conclusion that the plaintiff has established the possession in respect of the suit schedule property. Hence, no grounds are made out to invoke Section 100 of CPC to reverse the finding of the Trial Court.

12. The learned counsel for the respondent in R.S.A.No.1087/2022 would contend that even assuming that there was a sale agreement and the same was - 14 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 executed in the year 1987, the Trial Court also taken note of that the land was granted in the year 1978 and at the most 15 years non-alienation clause comes to an end in the year 1983 and the suit is filed in 2012 and there is a delay in filing the suit. Though the Trial Court has not considered the same, the Appellate Court taken note of the said fact into consideration and when the suit is barred by limitation, the question of granting relief in favour of the plaintiff does not arise. The learned counsel submits that the first proviso to Article 54 of the Limitation Act is applicable to the case on hand. The learned counsel submits that there is a recital in the sale agreement that even after completion of 15 years of non- alienation clause, within a period of one month

both the parties have to issue notice and get the sale deed and non-issuance of the notice itself starts limitation and hence Article 54 applies. When the suit itself is barred by limitation, the question of granting any relief does not arise. The learned counsel submits that the revenue documents which have been produced by the plaintiff - 15 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 disclose that even prior to the sale agreement, the name of Doddegowda, brother of the plaintiff is entered in the revenue records and it clearly shows that even prior to the transaction, name has been entered and M.R.No.12/1983-84 is mentioned in all the documents and hence it is clear that with a highhandedness the plaintiff got changed the documents based on the sale agreement and power of attorney and the same is illegal and hence in a case for specific performance, the Court has to exercise the discretion and the same should be judicious and not arbitrary and hence the learned counsel submits that the plaintiff is not entitled for any relief.

13. In reply to the arguments of the learned counsel for the respondent, the learned counsel for the appellant would contend that M.R. number is M.R.No.12/1987-88 and the same is not M.R.No.12/1983-84 and the document Ex.P.13 discloses M.R.No.12/1987-88 and not M.R.No.12/1983-84 and other documents Exs.P16 and 17 also disclose M.R.No.12/1987-88 and not M.R.No.12/1983-84 and by - 16 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 mistake it was mentioned. The very contention that prior to sale agreement the documents are changed in the name of Doddegowda cannot be accepted.

14. The learned counsel for the appellant in support of his arguments relied upon the judgment of the Apex Court in the case of WALI MOHAMMAD CHAUDHARI AND OTHERS v. JAMAL UDDIN CHAUDHAR reported in AIR 1950 ALLAHABAD 524 and referring this judgment, the learned counsel brought to the notice of this Court the principles relied upon by the Allahabad High Court with regard to Section 85 of Evidence Act. The authentication under the section is not merely attestation, but means that the person authenticating has assured himself of the identity of the person who has signed the instrument as well as the fact of execution. It is for this reason that the presumption under the section, unless rebutted, stands and the document can be admitted in evidence as a document executed by the person alleged to have executed it without any further proof.-. 17 -

RSA No.1082 of 2022 C/W RSA No.1087 of 2022 15. The learned counsel also relied upon the judgment of the Apex Court in the case of JUGRAJ SINGH v. JASWANT SINGH reported in LAWS(SC)- 1970-3-16 wherein in paragraph No.7 discussed with regard to presumption under Section 85 of the Evidence Act, wherein it is observed that power of attorney is also duly authenticated in accordance with out laws. The only complaint is that the Notary Public did not say in his endorsement that Mr. Chawla had been identified to his satisfaction. But that flows from the fact that he endorsed on the document that it had been subscribed and sworn before him. There is a presumption of regularity of official acts and we are satisfied that he must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person.

16. The learned counsel also relied upon the decision of this Court in the case of T.MOHAN v. KANNAMMAL AND ANOTHER reported in ILR 2003 KAR3533 and brought to the notice of paragraph - 18 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 No.10, wherein it is held the question of readiness and willingness to pay the balance consideration money is not of much importance in view of the admitted factual position that the vendor had parted with possession of the property in favour of the purchaser even before expiry of the period stipulated in the agreement. In that view of the matter, no exception can be taken to the finding of the High Court that the plaintiff duly satisfied the requirement of law of readiness and willingness to perform her part of the contract.

17. The counsel also relied upon the judgment of this Court in the case of SOMANAGOUDA VS. SHAMSHIDDIN reported in AIR (KAR)-2012-141 and brought to notice of this Court Para Nos.6 and 7, wherein discussion is made with regard to the plaintiff having been put in possession and the balance amount to be paid being only a sum of Rs.2,000/-, an inference that the plaintiff was not ready and willing to perform his part of the contract is more an illusory than a realistic finding and the Lower Appellate Court has rightly reversed such - 19 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 decision of the Trial Court. Even the question of limitation having been answered against the defendant, when there being no period of limitation and more importantly an agreement-holder having been put in possession of the property and having remained in possession of the

property, the question of limitation recedes to the background and this question having been rightly answered by the Courts below, there is no scope for inference by this Court also invoking Section 100 of CPC.

18. Per contra, learned counsel for the respondent in both the appeals brought to notice of this Court the judgment passed by this Court in R.S.A.No.6217/2012 dated 11th February, 2016, wherein with regard to the limitation is concerned, in Para No.11, discussed with regard to the contention of the appellant and in Para No.12, discussed with regard to the contention of the respondent and having considered the material on record, in Para No.15, observed that, on the basis of Article 54 of the Limitation Act, the Trial Court held that, - 20 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 suit filed was hit by the said Article as three years had lapsed from the date fixed for performance of contract. Even if it is considered that there was no time period fixed, plaintiff had notice of performance being refused by defendant and also there was an endorsement by the plaintiff that he consents for defendant to sell plot Nos.198 and 199, which he had intended to purchase.

19. The counsel also brought to notice of this Court the judgment of the Apex Court in the case of KATTA SUJATHA REDDY AND ANR. VS. SIDDAMSETTY INFRA PROJECTS PVT. LTD. AND ORS. reported in AIR Online 2022 SC1332 and brought to notice of this Court the applicability of Article 54 of the Limitation Act as to first part of agreement provides for purchasers obligation to make payment of entire sale consideration within 3 months from date of agreement. The clause further mandates forfeiture of advance amount if payment obligation is not met within the time period stipulated and fixed time period was clearly mandated for performance of contract and time - 21 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 period for filing suit had commenced from date fixed for the performance, suit filed by plaintiff after expiry of three years from date fixed for performance, the suit is barred by limitation.

20. Having considered the grounds urged in both the appeals, the substantial questions of law which arises for consideration of this Court are: (1) Whether both the Courts committed an error in ignoring the material on record and the finding

amounts to perversity?. (2) Whether the suit is barred by limitation for the relief of specific performance as contended by the defendant and whether Article 54 of the Limitation Act applies?. (3) Whether both the Courts committed an error in not granting the relief of specific performance as sought in O.S.No.191/2012?. (4) Whether both the Courts have committed an error in granting the relief of injunction in favour of the plaintiff in O.S.No.160/2012?. (5) What order?. - 22 -

RSA No.1082 of 2022 C/W RSA No.1087 of 2022 Point No.(2) 21. Having considered the material on record, in a suit for specific performance, the plaintiff has pleaded that there was a sale agreement dated 03.12.1987 and sale consideration was Rs.7,000/- and entire sale consideration was paid and there was a non-alienation clause when the property was granted in favour of the defendant and hence, he had executed the sale agreement as well as power of attorney and also delivered possession in favour of the plaintiff and the defendant did not come forward to execute the sale deed. Hence, without any other alternative, suit is filed for the relief of specific performance. In pursuance of the suit summons, the defendant appeared and filed the written statement, wherein he denied the very execution of the sale agreement and power of attorney and contended that, no sale consideration was received and the plaintiff has created those documents. However, admitted that there was a non-alienation clause while granting the land for a period of 15 years and the other - 23 -

RSA No.1082 of 2022 C/W RSA No.1087 of 2022 averments made in the plaint are denied. The Trial Court, while considering the material on record and the pleadings of the parties, framed six issues and appreciated the evidence available on record i.e., the evidence of P.Ws.1 and 2 and D.Ws.1 to 3 and also the documentary evidence. Though the defendant denied the very execution of the sale agreement, in the cross- examination, the defendant categorically admitted that the property was granted by the Government and there is a non-alienation clause and he had not instituted any suit to cancel the agreement but, he admits that the signature found in Ex.P1 belongs to him but, denied the signature found in Ex.P2-general power of attorney. Hence, it is clear that sale agreement was executed by the defendant in favour of the plaintiff on 03.12.1987 and both the Courts failed to take note of the document of Exs.P1 and P2.

22. In Ex.P1, in Clause No.2, it is specifically mentioned that, as on the date of entering into sale agreement, the defendant also executed a power of - 24 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 attorney and the said reference is also found in Page No.1 of the sale agreement and also, it is specific in Clause No.2 that power of attorney will be in existence till the execution of the sale deed. No doubt, in Clause No.3, it is mentioned that there was non-alienation clause for a period of 15 years, it is also mentioned therein that, over a period of 15 years and within one month, both the parties shall give notice in writing and execute the sale deed. In Clause No.4 also, it is mentioned that the agreement will be in force till the execution of sale deed and after execution of the sale deed, it automatically stands cancelled.

23. Having considered the contents of the document, it is clear that there was prohibition i.e., non- alienation clause in the grant itself. Hence, sale agreement came into existence and no time is stipulated but, it is only mentioned that, after expiry of the non- alienation period, both the parties shall give notice before one month and execute the sale deed and the said clause is applicable not only to the plaintiff but, also to the - 25 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 defendant. Apart from that, both the Courts lost sight of Clause No.2, wherein it is specifically mentioned that power of attorney will be valid till execution of the sale deed and Clause No.4 is also very clear that sale agreement is valid till execution of the sale deed and both the Courts failed to take note of the documents and the Clauses mentioned in toto and the First Appellate Court committed an error in only relying upon Clause No.3 and failed to take note of other clauses i.e., Clause Nos.2 and 4.

24. When such being the material on record, no doubt, the suit was filed in 2012 by issuing legal notice in terms of Ex.P3 and notice was also served on the defendant in terms of Ex.P4-postal acknowledgement, the defendant has not given any reply. It is the specific case of the plaintiff that, when the defendant made an attempt to get the revenue entries changed in his favour, there was refusal of the sale agreement and power of attorney. Both the Courts failed to compare the signatures available in Exs.P1 and P2 and though the - 26 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 plaintiff admits signature in Ex.P1, failed to compare

the signature found in Ex.P2-power of attorney and signatures available in Exs.P1 and P2 are one and the same and both the Courts ought to have exercised the powers under Section 73 of the Evidence Act to compare the signatures available in Exs.P1 and P2. When the document of Ex.P1-sale agreement is admitted and Ex.P2-power of attorney was denied, both the Courts not exercised the powers under Section 73 of the Evidence Act.

25. Apart from that, there is a reference in the document at Ex.P1-sale agreement itself that power of attorney was executed on the same day and in the sale agreement, there was a reference of the document Ex.P2-power of attorney and no explanation is given by the defendant with regard to the recitals found in Ex.P2 and Ex.P1. However, the First Appellate Court, while confirming the judgment of the Trial Court, discussed with regard to the date mentioned in the stamp paper by the District Treasury, more importance is given to the - 27 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 date of issuance of the stamp paper by the District Treasury i.e., on 27.11.1987 and observed that the power of attorney was executed on 17.11.1987 prior to the date of issuance of the stamp paper. When the plaintiff admits the signature found in Ex.P1, the First Appellate Court failed to take note of the same and merely because there was two different dates of stamp paper in the document of Ex.P2-general power of attorney and sale agreement, doubted the same and the very approach of the First Appellate Court is erroneous.

26. No doubt, in the judgment referred by the learned counsel for the respondents, principles are laid down with regard to the limitation is concerned, the Apex Court, while discussing the same, taken note of the fact that time is fixed for specific performance of contract. But, here is a case where no such time is fixed and admittedly, the entire sale consideration was paid and apart from that, there was a non-alienation clause in the grant made in favour of the defendant and only on the expiry of non-alienation period only, the time is - 28 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 mentioned as one month and the said condition is applicable to both the plaintiff and the defendant and not only to the plaintiff. When the entire sale consideration is paid, this Court also in the judgment referred (supra) by the learned counsel for the appellant, taken note of payment of entire sale consideration and whether Section 16(C) of the Specific Relief Act applies or

not.

27. In the case on hand, when there was a non- alienation clause and entire sale consideration is paid, the question of readiness and willingness to pay the balance consideration money is not of much importance in view of the admitted factual aspects of the judgment reported in ILR 2003 KAR3533 and the said judgment aptly applies to the facts of the case on hand and there is no obligation on the part of the plaintiff either by making any payment of balance sale consideration, since already paid the entire sale consideration and possession was also delivered in favour of the plaintiff as on the date of execution of the sale agreement and the recitals in the power of attorney is also very clear that, all powers are - 29 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 given to the agreement-holder even for cultivating the property. The judgment relied upon by the learned counsel for the respondent that is the unreported judgment of this Court in R.S.A.No.6217/2012 is not applicable to the facts of the case on hand having considered the discussions made in Para No.15 of the judgment, wherein there was an endorsement by the plaintiff himself that he consents for defendant to sell plot Nos.198 and 199 which he had intended to purchase. When such materials are available before the Court, the very contention of the learned counsel for the respondent that Article 54 of the Limitation Act applies cannot be accepted and Article 54 of the Limitation Act applies when no time period is fixed in the agreement to have the sale deed and time was already fixed for execution of the document and not performing any part of contractual terms.

28. When such being the case, when there is refusal on the part of the defendant, only on issuance of legal notice, he had refused to execute the sale deed and - 30 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 even, not given any reply with regard to execution of the sale deed and power of attorney and only in the written statement, he denied the execution of the said documents. But, the defendant categorically admitted during course of cross-examination that he had executed the sale agreement but, denied the general power of attorney.

29. I have already pointed out that, there was a reference in the sale agreement with regard to very execution of the general power of attorney. The learned

counsel for the appellant also relied upon the judgment of the Allahabad High Court and also the judgment of the Apex Court from Punjab and Haryana High Court with regard to presumption under Section 85 of the Evidence Act for having attested the document. Hence, I do not find any force in the contention of the learned counsel for the respondent that suit is barred by limitation. Hence, I answer point No.(2) as negative.-. 31 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 Point Nos.1, 3 and 4:

30. The parties and the issue between the parties are one and the same in the said suits and the appellant- defendant in the original suit filed by the respondent-plaintiff while seeking the relief of permanent injunction set out the defence that there was a sale agreement and possession was also delivered in favour of the agreement-holder. No doubt, in the other suit also, the appellant-plaintiff while seeking the relief of specific performance pleaded the same but, nothing is stated in the suit filed by the respondent/plaintiff in his suit while seeking the relief of permanent injunction with regard to the sale agreement as well as the execution of the general power of attorney.

31. Having considered the material on record, though the original owner has denied the very execution of the sale agreement, but during the course of cross-examination, he categorically admitted the very execution of the sale agreement and this Court also, taken note of the same while answering point No.2 with - 32 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 regard to the limitation is concerned that both the Courts ought to have taken note of the signatures found in the documents of Exs.P1 and P2 i.e., sale agreement as well as the power of attorney and both the Courts ought to have invoked Section 73 of the Evidence Act to compare the signatures and no doubt, the Court cannot act as an expert, however, can compare the signatures and powers are vested with the Court to compare the same and this Court also comes to the conclusion that both the signatures are one and the same. When such being the case, it is also important to note that, when the original documents are also handed over to the prospective purchaser and those documents are also in the custody of agreement-holder, no explanation is given for the same and it is only stated that originals were lost but, no such pleadings or explanation with regard to the delivery of the original

documents in favour of the prospective purchaser or that the original owner lost the same.

32. Apart from that, though it is contended that no amount was received in respect of the sale - 33 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 consideration, specific defence is taken in the written statement that no consideration was paid and that is not the case of the respondent-defendant in a suit for specific performance and he categorically admits his signature found in Ex.P1-sale agreement during the cross- examination. I have already pointed out with regard to the execution of the power of attorney and also delivery of possession. No doubt, the documents are also transferred in favour of the prospective purchaser based on the sale agreement and power of attorney and in Ex.P13, there is a reference to that effect but, original mutation register extract is not produced before the Court.

33. It is also not in dispute that original owner also challenged the entries made by the prospective purchaser before the revenue authority contending that transfer of property in the name of prospective purchaser is not in accordance with law and the same is illegal and revenue authority also set aside the same and merely because the entries are found in the name of the original - 34 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 owner, when there was a sale agreement between the parties, the Trial Court also ought not to have granted the relief of permanent injunction in favour of the original owner only on the ground that entries are found and failed to take note of the recitals in Exs.P1 and P2 i.e., sale agreement and general power of attorney and possession was delivered as on the date of the sale agreement itself and original documents were also handed over to the prospective purchaser.

34. When such being the case, no doubt, while granting the relief of specific performance, the Court has to consider the material on record, particularly readiness and willingness, in the case on hand, the entire sale consideration has been paid and possession was also delivered. When such being the case, the readiness and willingness is nothing but illusory as observed in the judgment referred (supra) by the learned counsel for the appellant and possession was also

delivered and there was non-alienation cause for a period of 15 years and the same is also admitted by the defendant in the written - 35 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 statement itself. While executing the sale agreement, specific clause is mentioned that land was granted by the Government and there is a non-alienation clause for 15 years. It is also mentioned that, after expiry of non-alienation period, within one month, both the parties shall give notice to each other and execute the sale deed. But, in the case on hand, immediately after expiry of 15 years of non-alienation period, notice was not given and the Trial Court has discussed in detail with regard to the said fact considering the grant of the year 1978 but, though application was given in the year 1978, the saguvali chit was issued in terms of Ex.P22 in the year 1985 and while issuing the saguvali chit, non-alienation clause was put in the said document and expiry of period of non-alienation clause in 2002 and not as observed by the Trial Court. No doubt, notice was given in the year 2012, no time period was stipulated for enforcement of agreement and the same is for executing the sale deed and there was no refusal of the execution of the sale deed in the meanwhile and no correspondence has also - 36 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 taken place between the parties as mentioned in Clause- 3 of the sale agreement and notice was issued only in 2012 and only when the defendant-original owner tried to change the document in his favour, filed the review appeal before the Assistant Commissioner.

35. When such being the material on record, these are the factors which ought to have been considered by the Trial Court as well as the First Appellate Court when the relief is sought for the specific performance and the sale agreement was also entered in the year 1987 itself and the plaintiff had not approached the Court since, there was a non-alienation clause in the very grant itself. These are the materials which have not been considered by the Trial Court and also the First Appellate Court and both the Courts lost sight of the same. Hence, I am of the opinion that the Trial Court as well as the First Appellate Court have committed an error in not appreciating the material available on record when the defendant categorically admitted in the cross- examination with regard to the execution of the sale - 37 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 agreement, though he denied that no such sale agreement and power of attorney was executed and

signature found in the documents ought to have been compared and the same has not been considered by the Trial Court as well as the First Appellate Court and erroneously doubted the very transaction in not relying upon the document of power of attorney and failed to consider the material on record and the very non-consideration of the material on record amounts to perversity in exercising the discretion and the discretion ought to have been exercised judiciously and not arbitrarily. Therefore, the plaintiff is entitled for the relief of specific performance as sought in the suit in O.S.No.191/2012 and consequently, the prospective purchaser, who is in possession of the property in terms of the sale agreement as well as general power of attorney is entitled for the relief as sought. The suit filed by the original owner for the relief of permanent injunction requires to be interfered with and consequently, the suit filed by the original owner in - 38 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 O.S.No.160/2012 requires to be dismissed and the judgment and decree of the Trial Court passed in O.S.No.191/2012 requires to be set aside. Consequently, the judgment passed in both the appeals in R.A.Nos.26/2018 and 5/2018 requires to be set aside. Accordingly, I answer point Nos.1, 3 and 4 as affirmative. Point No.5

36. In view of the discussions made above, I pass the following:

ORDER

(i) The appeals are allowed with cost throughout. (ii) The judgment and decree of the Trial Court passed in O.S.No.160/2012 is hereby set aside and consequently, the said suit is dismissed. (iii) The judgment and decree of the Trial Court in O.S.No.191/2012 is set aside and the said suit filed by the appellant-plaintiff is decreed. Consequently, the judgment passed in R.A.Nos.26/2018 and 5/2018 are hereby set aside.-. 39 - RSA No.1082 of 2022 C/W RSA No.1087 of 2022 (iv) The defendant in O.S.No.191/2012 is directed to execute the sale deed within a period of two months and if the defendant fails to execute the sale deed within the stipulated period, the appellant-plaintiff is entitled to have the sale deed in accordance with law. (v) The Registry is directed to send the TCRs to the concerned Court, forthwith Sd/- JUDGE MD,ST List No.:

1. SI No.:

2.

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