
(2007) 04 KAR CK 0001

In the Karnataka High Court

Case No : Regular First Appeal No. 809 of 1997

Binny Mill Labour Welfare House building Co-operative
Society Limited

APPELLANT

Vs

D.R. Mruthyunjaya Aradhya

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Contract Act, 1872 — Section 2 (g), 2 (h), 2 (i)
Specific Relief Act, 1963 — Section 31

Citation : (2008) ILR (Kar) 2245 : (2009) 2 KarLJ 291

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : M.N. Pramila, for the Appellant; R. Pushpahasa, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This is a defendant's Regular First Appeal.

2. This appeal along with other six connected appeals were heard by this Court and by a common order dated 15.4.1999 they were allowed and the suit of the plaintiff was dismissed. Aggrieved by the said common judgment and decree dated 15.4.1999 the aggrieved persons, preferred SLP to the Hon'ble Supreme Court of India. In the Supreme Court, the counsel for the parties agreed for setting aside the impugned judgment of this Court and remitting the appeals to the High Court for fresh disposal in accordance with law. Accordingly, the judgment and decree passed by this Court on 15.4.1999 was set aside and the appeals were remitted back to this Court for fresh decision in accordance with law with a request to dispose of the appeals as expeditiously as possible. It is thereafter, this appeal is heard along with other six connected appeals. Though the parties are different, the question of law involved in all these appeals are one and the same. For a proper appreciation of the legal issues all the advocates appearing in these appeals were heard and the legal issues have been answered. However, as the factual position differed from appeal to appeal, in the light of the

finding recorded on legal issues, these appeals are decided by writing separate judgments relating to the facts of each appeal. For the sake of convenience, the parties are referred to as they are referred to in the suit.

3. The subject matter of the suit is a site bearing No. 79, 1st Phase of Kempapura Agrahara, Hosahalli extension, Bangalore-40, measuring East to West 30" and North to South 50" which is more fully described in the schedule and hereinafter referred to as the "schedule property". The case of the plaintiff is that the defendant is the owner of the schedule property. The defendant sold the schedule property to one Sri C. Janardhan Rao under a registered sale deed dated 11.3.1974 and the purchaser was put in possession on 15.10.1975 under a possession certificate. The said Sri C. Janardhan Rao sold the schedule property to one P. Noorulla Bhasha through a registered sale deed dated 1.8.1974 and put him in possession of the same. The plaintiff purchased the schedule property from the said P. Noorulla Bhasha under a registered sale deed dated 22.11.1980 and he was put in possession of the same. Thus, the plaintiff is in peaceful possession and enjoyment of the schedule property. Katha of the schedule property was transferred in his name by the Bangalore Development Authority and he is paying taxes. The plaintiff had purchased this schedule property for putting up a house and for residing therein. When he made arrangements to start the foundation work, he was obstructed by the defendant on the ground that the plaintiff has no right in the property and by a registered cancellation deed dated 5.6.1981, the defendant has cancelled the sale deed dated 11.3.1974 which was executed in favour of Sri C. Janardhan Rao. Therefore, immediately, the plaintiff got issued a legal notice u/s 125 of the Co-operative Societies Act, to the Registrar of co-operative Society and requested him to advise the defendant suitably. The notice is duly served. However, the defendant continued his illegal activities. Therefore, the plaintiff was constrained to file the suit for the relief of declaration.

4. After service of summons, the defendant entered appearance, filed a written statement contesting the claim. They contended that the plaintiff is neither the owner nor is in the possession of the suit schedule site. The cancellation deed was registered on 5.6.1981. The suit for cancellation of the said document had to be brought within six years from the date of the document and therefore, the suit brought for the declaratory relief is barred by time. The suit is not properly valued. It was contended that the defendant society has formed a layout, to provide house sites to its employees. It is impermissible under the bye law of the Society, to sell the sites to a person other than the employee of the Binny Mills who has become a member. The plaintiff was not an employee of the Binny Mill and not a member of the defendant Society. The Purchaser Sri C. Janardhan Rao was also not an employee or member of the defendant - Society. The Defendant - Society has not sold the said site in favour of Sri C. Janardhan Rao and put him in possession of the same under a registered sale deed dated 11.7.1974. The sale deed stated to have been executed in favour of Sri C. Janardhan Rao is a void document. He cannot claim any legal right, or title over the same. He could

not transfer title in favour of P. Noorulla Bhasha under the alleged sale deed dated 1.8.1974. Therefore, P. Noorulla Bhasha could not have sold the property in favour of the plaintiff under the registered sale deed dated 22.11.19 80. They denied the transfer of katha in favour of the plaintiff and contended that the document produced is a created document and it has no validity in the eye of law. Notice issued u/s 125 of the Karnataka Co-operative Societies Act to the Registrar of Societies is not in accordance with law. Therefore, they sought for dismissal of the plaintiff's suit.

5. The plaintiff filed a rejoinder reiterating the allegations made in the plaint and also contending that the suit is not barred by time and the market value of the property is correctly given and the market value of the property mentioned in the written statement is false.

6. On the aforesaid pleadings, the Trial Court has framed the following issues:

- (1) Whether the plaintiff proves that he is the owner of the suit property?
- (2) Whether the plaintiff proves that he is in possession of the suit property?
- (3) Whether the plaintiff proves that defendant interfered with his possession of the suit property?
- (4) Whether the plaintiff proves that he has issued notice to the Registrar of Co-operative Societies in conformity with Section 125 of the Karnataka Co-operative Societies Act, 1959?
- (5) Whether the defendant proves that sale deed in favour of the plaintiff relating to the suit property is void?
- (6) Whether the defendant proves that it is entitled to unilaterally cancel the sale deed in favour of C. Jagannath Rao?
- (7) Whether the plaintiff proves that he is entitled to the relief sought for by him?
- (8) What relief the parties are entitled to?

In pursuance of the amended written statement, the following additional issues were framed on 2.3.1995:

- (1) Whether defendants prove that the suit is barred by time?
- (2) Whether defendants prove that the court fee paid is insufficient? If so, what is the court fee properly payable?

7. The plaintiff in support of his case examined himself as PW-1, produced 14 documents which are marked as Ex.P-1 to P-14. On behalf of the defendants, Vice President of the Society one K. Beeraiah is examined as DW-1. They have produced 4 documents which are marked as Ex.D-1 to D-4.

8. The Trial Court on consideration of the oral and documentary evidence on record, held that the plaintiff has proved that he is the absolute owner of the suit

property. He is in possession of the property. The defendants are interfering with the possession of the plaintiff. The plaintiff has proved that he has issued notice u/s 125 of the Karnataka Co-operative Societies Act as required under law. The defendant has failed to prove, that the sale deed of the plaintiff is void, the defendant also failed to prove that they are entitled to unilaterally cancel the sale deed in favour of Sri C. Janardhan Rao. It held the suit is not barred by time, the suit is properly valued and the court fee paid is sufficient and thus, it decreed the suit of the plaintiff as prayed for. Aggrieved by the said Judgment and decree, the Society has preferred this appeal.

9. The Learned Counsel for the appellant, assailing the Judgment and decree, contended that Sri C. Janardhana Rao was not an employee of the Binny Mills or a member of the defendant society. As per the bye laws, the society could not have sold the property in favour of a non member. Therefore, the said sale is void. He further contended as per Clause 36 of the bye laws, the President, Secretary, Treasurer and three directors of the Society are authorised to sell the sites of the society.

10. Admittedly, the three Directors of the Society have not joined in executing the sale deed in favour of Sri C. Janardhan Rao. The amendment to the bye-laws, sought to be brought about in 1973 by the Secretary Sri Annayappa, was not approved by the Asst. Registrar of Co-operative Societies. Similarly, the permission sought by the Society for sale of site to non members was refused by the Asst. Registrar of Co-operative Societies and therefore the sale deed on the basis of which, the plaintiff claims title is void and plaintiff has no right to the suit schedule site. The General body meeting authorised the new office bearers in the meeting held on 28.9.1980 to cancel the sale deeds executed in favour of non members. It is in pursuance of the said authorisation, the impugned cancellation deed came to be executed by the Society. It is valid and legal. The courts below committed a serious error in ignoring the aforesaid material facts and in passing the impugned Judgment and decree which cannot be sustained.

11. Per contra, the Learned Counsel appearing for the respondent - plaintiff contended that there is no prohibition in the bye-laws for execution of a sale deed in favour of a non-member. Even if it is to be held that a non-member is not entitled to a sale deed from the society, the sale deed executed by the society would be voidable at the instance of the society. Admittedly no steps are taken in accordance with law for cancellation of such sale deed. Therefore, until and unless the said sale deed is cancelled in a manner known to law, the said sale deed is valid in the eye of law. The society ceases to be the owner of the site having conveyed absolute title in favour of non-members. If the society is held to be entitled to get the sale deed executed in favour of a non-member cancelled, such a cancellation cannot be done by the society unilaterally executing the cancellation deed and getting it registered. The cancellation of the sale deed has to be by a Court as contemplated u/s 31 of the Specific Relief Act, 1963. The bye-laws of a society cannot be equated to law, rules or regulations. It is only an

agreement between the society and its members. It would not partake the character of law. Therefore, even if the sale deed executed by the society is held to be contrary to bye-law 36 it does not fall within the mischief of Section 23 of the Contract Act as contended and is not void.

12. In order to appreciate the rival contentions, the three resolutions of the society passed on 09.12.1973, 25.12.1973 and 25.09.1980, are relevant and also assumes significance.

13. In a meeting of the Board of Directors of the society held on 09.12.1973, President, Secretary and Treasurer have been specifically authorised to execute the sale deed in favour of outsiders who may be admitted as nominal members in terms of Section 18 of the Mysore Co-operative Societies Act, 1959. After the aforesaid resolution was passed by the Board of Directors, the Secretary wrote a letter to the Assistant Registrar of the Co-operative Societies on 10.12.1973, requesting permission to sell the surplus building sites owned by the society to outsiders. By a letter dated 13/14.12.1973 the Assistant Registrar declined to grant permission.

14. Thereafter, in the Special General Body meeting convened on 25.12.1973 R. Annayappa, the Secretary informed the members that the progress cannot be made in the layout work due to non-availability of funds. He therefore, requested the members to pay the balance amount due from them towards the value of the sites allotted to them. In this connection, he also informed the members that the State Housing Corporation has not only refused to give any more loan to the society but also is pressing the society to return Rs. 3,00,000/-, which it had lent to the society earlier.

15. In reply to the question of a member Sri. Rajagopal, the Secretary Sri Annayappa answered that if all the members pay the amounts due to the society, the society will be in a position to pay the loan to the Corporation and avoid payment of interest. It is because of the members' non-cooperation, the society is unable to pay the loan to the State Housing Corporation. Few others suggested that instead of charging interest from the members for delay in payment of the site value, the society may sell those excess 51 sites to non-members for higher value and adjust the same towards interest payable by members and by such method even the loan of the Corporation may be reduced. This suggestion was fully supported by members including Sri. Rajagopal. Then, the Secretary explained that if the society were to sell sites to non-members, then they have to amend the Bye-laws and admit those outsiders as nominal members and sell those sites as provided in Co-operative Societies Act. It was agreed by the large number of members who were present in the meeting. Therefore, it was unanimously resolved to amend the Bye-laws, to admit outsiders as nominal members and to allot sites to them on payment of Rs. 32/- per sq.yard. After the Special General Body meeting approved the amendment of Bye-laws, the society forwarded the said proposal for the approval of the Assistant Registrar of the Co-operative Societies, by a letter dated 12.08.1974. The Assistant Registrar

informed the society that the proposal for the amendments cannot be approved as it was not submitted within thirty days from the date of passing of the resolution and he also pointed out certain procedural irregularities and called upon the society to comply with the procedural requirements and then get the amendment passed in the general body and then submit the same for approval. However, no steps were taken by the society.

16. Thereafter, the society was superseded and an administrator was appointed. The administrator did not take any steps. However, after elections were conducted the new office bearers took over on 25.04.1980 and the very same proposals were sent to the Assistant Registrar of the Co-operative Societies, who by a letter dated 03.09.1980 declined to approve the proposed amendments on the ground that the approval is sought after seven years from the date of passing of the resolution and informed the society to re-examine all the Bye-laws and bring a fresh amendment proposal before the General Body and submit the same for necessary action.

17. Thereafter a General Body Meeting was conducted on 28.09.1980. On the day of this meeting, Annayappa was not the Secretary, but still he participated in the General Body Meeting. It was Rajagopal who was the Secretary on that day. The aforesaid letter dated 03.09.1980 was placed before the General Body. In fact, in the said meeting, Sri. Annayappa spoke in support of the amendment. However, the General Body opposed the said amendment and passed a resolution that persons who are not the employees of Binny Mills should not be admitted as members of the society. Further it resolved to cancel the membership of such persons who are not the employees of the Binny Mills. Further it was resolved that the allotment of sites to them without the approval of the Bye-law is not in accordance with law and the Secretary at that point of time had no right to sell the properties and therefore, even if such an allotment has been made, such nominal members do not acquire any title to the property. Therefore, President was authorised to initiate suitable proceedings against such illegal allottees and further he was authorised to take steps even against such allottees, who have put up constructions on such sites. It is in pursuance of the said resolutions, the society has executed the sale deeds to its members, the very same sites which were sold to such nominal members without taking steps to cancel the same. But, after execution of the sale deed, they have executed cancellation deed cancelling the earlier sale deeds and got the same registered.

18. In this background the points that arise for consideration are as under:

(1) Whether the sale deed executed by the Society in favour of a non-member is void or voidable?

(2) Whether the sale deeds executed by the Society represented by its office bearers contrary to bye law 36 is valid or void?

(3) Whether the sale deed executed by the Society in favour of its member in respect of the sites for which the society had already executed sale deed in

favour of non-member is void or voidable?

(4) Whether the cancellation deeds executed unilaterally by the Society is void or voidable?

19. In order to answer these questions one should have clear distinction between the legal terms such as valid, invalid, void and voidable.

20. Section 2 of the Indian Contract Act, 1872, states that in what sense the aforesaid expressions are used in the Act. Section 2(h) states that an agreement enforceable by law is a contract. Section 2(i) states that an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. Section 2(g) states that an agreement not enforceable by law is said to be void. Section 2(J) states that contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. Chapter II of the Act deals with contracts, voidable contracts and void agreements. Section 19 of the Act provides that, when consent to an agreement is caused by coercion, fraud, misrepresentation or undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. However, if both the parties are under a mistake as to a matter of fact the said agreement is void.

21. Section 23 of the Act declares what considerations and objects are lawful, and what not and about the contract being void, reads as under:

23. What considerations and objects are lawful, and what not.- The consideration or object of an agreement is lawful, unless-

it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law;

or

is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Sections 24 to 30 deals with void agreements. Certain types of contingent agreements are also declared to be void under the Act.

22. These statutory provisions have been the subject matter of interpretation by jurists as well as courts, and these concepts are now well crystallized.

Salmond on Jurisprudence, 12th Edition:

In respect of their legal efficacy agreements are of three kinds, being either valid, void, or voidable. A valid agreement is one which is fully operative in accordance with the intent of the parties. A void agreement is one which entirely

fails to receive legal recognition or sanction, the declared will of the parties being wholly destitute of legal efficacy. A voidable agreement stands midway between these two cases. It is not a nullity, but its operation is conditional and not absolute. By reason of some defect in its origin it is liable to be destroyed or cancelled at the option of one of the parties to it. On the exercise of this power the agreement not only ceases to have any efficacy, but is deemed to have been void ab initio. The avoidance of it relates back to the making of it. The hypothetical or contingent efficacy which has hitherto been attributed to it wholly disappears, as if it had never existed. In other words, a voidable agreement is one which is void or valid at the election of one of the parties to it.

23. De Smith, Woolf and Jowell in their treatise *Judicial Review of Administrative Action*. Fifth Edition, paragraph 5-044, has summarised the concept of void and voidable as follows:

Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is ultra vires in the sense of outside jurisdiction, it was said to be invalid or null and void. If it is intra vires it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record.

24. Cilve Lewis in his works *Judicial Remedies in Public Law* at page 131 has explained the expressions "void and voidable" as follows:

A challenge to the validity of an act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant.

25. This question was examined by Court of Appeal in the case of *R. v. Paddington Valuation Officer and Anr. Ex parte Peachey Property Corporation, Ltd.* (1965) 2 All ER 836, where the valuation list was challenged on the ground that the same was void altogether. On those facts, Lord Denning, M.R. laid down the law observing at page 841 thus:

It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more ado. The other kind is when the invalidity does not make the list void altogether, but only voidable. In that case it stands unless and until it is set aside. In the present case the valuation list is not, and never has been, a nullity. At most the first respondent-acting within his jurisdiction - exercised that

jurisdiction erroneously. That makes the list voidable and not void. It remains good until it is set aside.

26. In the case of *Inre Mec. (A. Minor)*, 1985) 1 AC 528, the House of lords followed the dictum of Lord Coke in the *Marshalsea* case quoting a passage rendered in (1613), 10 CO rep 68b at P.76a where it was laid down that where the whole proceeding is coram Non-judice which means void ah initio, the action will be without any regard to the precept or process. The court laid down at page 532 thus:

When a Court has jurisdiction of the cause, and, proceeds in verso ordinal or erroneously, there the party who sues, or the officer or minister of the Court who executes the precept or process of the Court no action lies against them. But when the Court has no jurisdiction of the cause, there the whole proceeding is coram Non-judice, and actions will lie against them without any regard of the precept or process....

27. In another decision, in the case of *Director of Public Prosecution in v. Head* 1959 AC 83, House of Lords observed at pill while considering validity of an order passed in a criminal case, the Court of criminal appeal quashed the conviction on the ground that the aforesaid order of secretary was null and void and while upholding the decision of the Court of criminal appeal thus:

This contention seems to me to raise the whole question of void or voidable for if the original order was void, it would in law be a nullity. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because you cannot continue a nullity.

28. The Supreme Court in the case of *Dhurandhar Prasad Singh Vs. Jai Prakash University and Others*, had an occasion to consider these expression. It held that the expressions "void and voidable" have been subject-matter of consideration on innumerable occasions by Courts. The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, abinitio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceedings the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is

given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.

29. Therefore, the law on the point could be summarised as under:

A valid agreement is one, which is enforceable by law as a contract, by the parties to the agreement. A void agreement is one, which does not exist in the eye of law, and therefore fails to receive any legal recognition or sanction. In legal parlance it is a nullity or non-est. It is not a contract at all. It would be automatically null and void without more ado. Its existence or continuation has no value, as one cannot continue a nullity. If a statute specifically provides that a contract contrary to the provisions of the statute would be void, it is no contract in the eye of law, it is void ab initio, and the said agreement is unenforceable in law. In between these two extreme positions, lies the voidable agreement. In law it exists and also recognized. It is a contract. It can also be enforced. But because of some defect in its origin, at the option of the party to the agreement, it is liable to be cancelled or set aside. In other words, a voidable agreement is one which is void or valid at the election of one of the parties. However, it is valid, till it is declared void by a competent court of law, in a manner known to law. Therefore, it is not a nullity or non est. It is valid and good unless avoided. It requires to be set aside.

30. Unless the statute specifically provides that a contract contrary to the provisions of the statute would be void, the contract would remain binding between the parties and could be enforced between the parties themselves. The question whether a particular thing is prohibited by the statute must in every case depend upon the true construction of the contract. One has to know the clear distinction between the word "excess of authority" or "wholly without jurisdiction or power" as well as "something illegal which is prohibited by law" and "exercising jurisdiction erroneously". These things are substantially different. If the transaction is tainted with any illegality and consequently the contract is not avoided, the title under the said contract passes. If the object of the agreement is not shown to be illegal there is no impediment to the enforcement of the said agreement. The idea of illegality is different from the idea of excess of authority, or wholly without jurisdiction or power.

31. It is in the light of this settled legal position, the point that arise for consideration in this appeal are to be answered.

Point No. I

32. Binny Mills Employees Cooperative Society is a society registered under the provisions of the Karnataka Cooperative Societies Act, 1959. It is a body corporate by the name under which it is registered having perpetual succession and a common seal and with power to hold property, enter into contracts,

institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. The management of the said society vests with the Board of Directors constituted in accordance with the Act, Rules and Bye-laws of the society. The Board of Directors exercise such powers, discharge such duties and perform such functions as are conferred upon it by the Act, Rules and the Bye-laws. The society has a President, Secretary, Treasurer who are elected in accordance with the provisions of the Act, Rules or Bye-laws. The Board of Directors of the society in the meeting held on 9.12.1973 authorised the President, the Secretary and the Treasurer to execute the sale deeds in favour of outsiders who may be admitted as nominal members in terms of Section 18 of the Mysore Cooperative Societies Act, 1959.

33. It is in pursuance of the said authorisation, the President, the Secretary and the Treasurer of the society have executed the sale deeds in favour of non-members. A registered society under the Co-operative Societies Registration Act is a Corporation or a quasi Corporation capable of entering into contracts. The registration confers on it a legal personality and consequently any contract entered into by it would be legally enforceable unless it is vitiated by an illegality or is shown to be void for any other reason. In the entire Bye-laws of the society there is no express prohibition prohibiting the society from selling the sites belonging to the society in favour of non-members. Till today the said resolution of the society is not challenged or annulled by the society. In the special General Body Meeting held on 25.12.1973 the Secretary Rajagopal also participated and supported the proposal to sell the sites to outsiders at a higher price. The object of selling the sites to the non-members is to raise money to pay the loan to the Corporation which the society had borrowed for the formation of the layout and also to avoid payment of interest as the members of the society were not co-operating in contributing funds for the said purpose. Therefore, the object behind the sale of the sites to non-members at the market price is neither illegal nor against the interest of the members of the society.

34. In so far as the non-members who have purchased the property are concerned have dealt with the society represented by its President, Secretary and Treasurer. All the three of them have executed the sale deeds in their favour. The sale was for a valid consideration. There is no prohibition in the bye-laws to sell the sites in favour of non-members. Therefore, the sale deed executed by the society in favour of the non-members cannot be said to be void, the said agreement is not forbidden by law or is of such a nature that it would defeat the provisions of any law or it is immoral or opposed to public policy. Therefore, the said agreement is lawful and not void. It is a valid contract, which is enforceable.

Point No. 2

35. In so far as the contention that the sale deed executed is contrary to bye-law 36 and, therefore, it is void is without any substance. Clause 36 of the bye-law reads as under:

36. Powers of President: The President shall have general control over the working of the society and he shall whenever present, preside over the meetings of the Board as well as the general meeting.

The President, Secretary and three other Directors shall sign all documents executed on behalf of the society.

36. It is true under the aforesaid bye-law the sale deed on behalf of the society is to be executed by the President, the Secretary, and three other Directors. In the instant case it is executed only by the President. Secretary and Treasurer, who is one of the Director and two other Directors have not executed the said sale deed. The question is whether it renders the sale void. In this regard it is useful to refer to a judgment of the Supreme Court in the case of Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, wherein it has been held as under:

The bye-laws of a co-operative society framed in pursuance of the provisions of the Act cannot be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of Statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They are of the nature of the Articles of Association of a company incorporated under the Companies Act. They may be binding between the persons affected by them, but they do not have the force of a statute.

37. In view of the aforesaid authoritative pronouncement of the Supreme Court the said bye-law cannot be equated to law, rules or regulations. The said bye-laws only govern the internal management, business or administration of a society. They are in the nature of Articles of Association of a Company incorporated under the Companies Act. It has no statutory force. Any act of the society contrary to the said bye-law ipso facto do not render the said act void and without authority. When the society enters into a contract with third parties or outsiders those outsiders are in no way bound by the said bye-law. The society is a body corporate by name having a perpetual succession and a common seal and when a contract is entered into by the office bearers of the society i.e., the President, the Secretary and the Treasurer on behalf of the society with the third parties, it is binding on the society even though it is contrary to the bye-law. In fact on that ground till today no steps are taken by the society to get the sale deed annulled. On the contrary, the society has executed the cancellation deed.

38. The defence taken by the society clearly shows that it is under the impression that the sale deed in favour of a non-member is executed only by the Secretary and he has misappropriated the said amount and he had no

authorization to execute the sale deed. But, the material on record demonstrates that before the execution of the sale deed, there was resolution dated 9-12-1973 authorizing the President, the Secretary and Treasurer to execute the sale deed in favour of non-members for the purpose of raising finance to complete the layout work as well as to pay interest due by the society which the members of the society were incapable of discharging. In pursuance of the said resolution, the President, Secretary and the Treasurer have executed the sale deed. Neither the subsequent sale deed executed by the society in favour of member nor the cancellation deed executed by the society is executed by the President, Secretary and Treasurer. It is only the Secretary who has executed the said documents. If the argument of the society is to be accepted, then the cancellation deed as well as sale deed in favour of a member also becomes void. The allegations made against the previous Secretary Sri Anniyappa is without any basis as is clear from the aforesaid three resolutions. Therefore, in the light of the aforesaid discussion, there is no merit in the said contention. The sale deed executed by the society represented by the President, Secretary and the Treasurer in favour of a non-member is valid and binding on the society and it is not void.

Points No. 3 and 4

39. When the owner of a property sells/conveys the property to - the purchaser under a written document and get the same registered, the right and the title to the said property is transferred from the owner to the purchaser on registration of the said documents. After such registration the owner of the property ceases to have any interest and all his rights in the property gets extinguished. He would not have any right to meddle with the property thereafter. If such a person were to execute one more sale deed and get it registered in respect of the said property the said sale deed has no value in the eye of law. The reason being on the date of the second sale deed, he is not the owner of the property. Therefore, the purchaser would not get title to the property as the vendor could convey only that title which he has in the property on the date of execution and registration of the sale deed. Similarly, if after execution and registration of the sale deed, the owner wants to get back the property, it has to be done by canceling the sale deed on any of the grounds which are available to him under the provisions of the Indian Contract Act. Unilaterally he cannot execute what is styled as a deed of cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property. Normally what can be done by a Court can be done by the parties to an instrument by mutual consent. Even otherwise if the parties to a document agree to cancel it by mutual consent for some reason and restore status quo ante, it is possible to execute such a deed. An agreement of sale, lease or mortgage or partition may be cancelled with the consent of the parties thereto. Because in the case of agreement of sale, lease, mortgage or partition, each of the parties to the said document even after the execution and registration of the said deed retains interest in the property and, therefore, it is permissible for them to execute one more document to annul or cancel the earlier deed. However, it would not apply

to a case of deed of sale executed and registered. In the case of a sale deed executed and registered the owner completely loses his right over the property and the purchaser becomes the absolute owner. It cannot be nullified by executing a deed of cancellation because by execution and registration of a sale deed, the properties are being vested in the purchaser and the title cannot be divested by mere execution of a deed of cancellation. Therefore, even by consent or agreement between the purchaser and the vendor, the said sale deed cannot be annulled. If the purchaser wants to give back the property, it has to be by another deed of conveyance. If the deed is vitiated by fraud or other grounds mentioned in the Contract Act, there is no possibility of parties agreeing by mutual consent to cancel the deed. It is only the Court which can cancel the deed duly executed, under the circumstances mentioned in Section 31 and other provisions of the Specific Relief Act, 1963. Therefore, the power to cancel a deed vests with a Court and it cannot be exercised by the vendor of a property. In this context it is necessary to see Section 31 of the Specific Relief Act, which reads as under:

31. When cancellation may be ordered.-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

40. A reading of the aforesaid provision makes it clear that both void and voidable instruments can be cancelled by the Court. The cause of action for such an action is an apprehension, if such an instrument is left outstanding may cause serious injury to the person against whom the written instrument is void or voidable. Such a person has the discretion to approach a competent Civil Court for adjudging the said instrument to be delivered up and cancelled. Even though in law a void instrument is unenforceable, has no value in the eye of law, void ab initio, the very physical existence of such a document may cause a cloud on the title of the party or cause injury or one can play mischief. Therefore, the law provides for cancellation of such instruments which are also non est, but which are in existence as a fact physically to get over the effect of such instrument. Once such an instrument is registered, the said registration has the effect of informing and giving notice to the World at large that such a document has been executed. Registration of a document is a notice to all the subsequent purchasers or encumbrances of the same property. The doctrine of constructive notice is attracted. Therefore, the effect of registration of an instrument not only affects the rights of the parties to the instrument but also affects parties who may claim under them. Therefore, once such an instrument is ordered to be delivered up

and cancelled an obligation is cast upon the Court to send a copy of its decree to the officer in whose office the instrument was registered, so that such an officer shall note on the copy of the instrument contained in his books the fact of its cancellation. Once such an entry is made in the books of the Sub-Registrar about the cancellation of the registered instrument, it also acts as a notice of cancellation to the whole World and it is also a constructive notice of cancellation of the said instrument.

41. Part X of the Indian Registration Act, 1908 deals with effect of registration and non-registration of an instrument. A combined reading of Sections 47, 48 and 49 makes it clear that an instrument which purports to transfer title to the property requires to be registered, the title does not pass until registration has been affected. The registration by itself does not create a new title. It only affirms a title that has been created by the deed. The title is complete and the effect of registration is to make it unquestionable and absolute. Section 47 of the Act makes it clear that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. The Section however does not say when a sale would be deemed to be complete. However, Section 47 of the Registration Act makes it clear that, though a document is registered on a particular date, the effective date would be the date on which the said document was executed and not from the date of registration. If the document is not registered but is compulsorily registerable, though the document is duly executed, it has no legal effect and it does not affect the immovable property comprised in the said document in view of Section 49 of the Act. The registration of such a duly executed document comes into operation, the moment it is duly registered, not from the date of registration but from the date of execution of the said document. Section 54 of the Transfer of Property Act, 1882, which deals with sales of immovable property mandates emphatically the transfer of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument.

42. Thus, without registration there is no transfer of ownership of the property. Therefore, it is clear that the act of registration in the scheme of things is not a mere instance of the State collecting some registration fee and providing authenticity to a written instrument. It is by the act of registration, the title in the property passes to the transferor, from the date of execution of the deed of transfer. Once such sale takes place, transfer is complete, the vendor of the property ceases to be the owner of the property. Thereafter if he executes one more sale deed in respect of the same property or a cancellation deed in respect of the property already sold, in law it has no value, and it in no way affects the sale deed already executed. It is invalid, void, and non-est.

43. In the instant case, the plaintiff is seeking declaration that the cancellation deed dated 5.6.1981 executed by the defendant unilaterally canceling the sale deed dated 11.3.1974 executed in favour of Sri. C. Janardhana Rao, the

predecessor in title of the plaintiff, is illegal and not binding on the plaintiff and his predecessor in title. 40. Ex. P1 is the sale deed in the name of the plaintiff executed by Sri. P. Noorulla Basha on 22.11.1980. In Ex. P1 there is a recital to the effect that the purchaser was put in possession on 22.11.1980 upon receipt of Rs. 10,000/-. Ex. P2 is the sale deed executed by C. Janardhana Rao in favour of Sri. P. Noorulla Basha for a sum of Rs. 6,000/- and C. Janardhana Rao put Noorulla Basha in possession of the property. The sale deed dated 11.3.1974 executed by the society in favour of C. Janardhana Rao refers to C. Janardhana Rao being admitted as a nominal member by virtue of the resolution of the general body meeting on 25.12.1973. Ex. P6 is the katha certificate in the name of the plaintiff issued by the revenue officer on 7.7.1981. Exs. P7 to P9 are the tax paid receipts. Ex. P12 is the certified copy of the deed of cancellation. The said cancellation deed sets out the reasons for cancellation. The resolution passed in the general body meeting held on 28-9-1980 is the basis for cancellation. In the said resolution there is no whisper about the cancellation of the sale deed as per Ex. P3. The various reasons mentioned in Ex. P12 do not find a place in the said resolution. A careful scrutiny of the resolution shows that Secretary of the defendant-society was not empowered to execute the deed of cancellation of the sale deed executed by the defendant-society in favour of nominal members of the defendant-society. Defendant has not produced the extracts of the meeting held on 2.3.1980. The defendant-society has not issued notice to the previous owners of the suit property in question as per Ex. P2.

4. DW-1 has admitted that the sale deed Ex. P3 was executed by the President, Secretary and Treasurer of the defendant-society in favour of C. Janardhana Rao. Exs. P4 and P5 are the receipts which show payment of money by Sri C. Janardhana Rao to the defendant society. Ex. P14 is the possession certificate issued by the defendant-society to C. Janardhana Rao. He was giving evidence in his capacity as Vice President of the society. He has pleaded his ignorance about the resolution passed in the Board of Directors meeting on 9.12.1973 and what was decided in the special general body meeting held on 25.12.1973. He also admits that society did not give any notice to the nominal members before cancelling the allotment and sale of sites made in favour of those persons. The society has not refunded a sum of Rs. 4,175/- or any such amount to C. Janardhana Rao when his sale deed was cancelled. He was unable to answer whether the society after cancellation called upon the allottees to surrender the sale deeds and possession certificates. He was unable to give the boundaries of the suit property. He was also unable to say whether the society took back possession of the suit property from C. Janardhana Rao after cancelling his sale deed.

45. From this undisputed material on record it is clear that the sale deed executed in favour of C. Janardhana Rao by the society was unilaterally cancelled without notice to him, without due authority of law. On the date of cancellation the plaintiff was in possession of the suit schedule property. He was in lawful possession of the suit schedule property and the society did not take possession

from the plaintiff or from C. Janardhana Rao. It is after execution of the cancellation deed unilaterally the defendant tried to interfere with the plaintiff's lawful possession over the suit property. In those circumstances, the plaintiff had no option except to file the suit. Before filing of the suit he has issued notice to the Registrar of Cooperative Societies, u/s 125 of the Karnataka Co-operative Societies Act, 1959.

46. The trial Court on careful appreciation of the oral and documentary evidence rightly held that the plaintiff has established his title to the property. Plaintiff is in lawful possession of the property. The unilateral cancellation deed has no legal effect. The suit is not barred by time. Suit is not hit by Section 125 of the Karnataka Cooperative Societies Act. Court fee paid is sufficient and it rightly granted the declaration that the cancellation deed dated 5.6.1981 brought into existence by the defendant unilaterally purported to cancel the sale deed dated 11.3.1974 executed by it in favour of C. Janardhana Rao is illegal and not binding on the plaintiff and his predecessor in title and it rightly granted an order of injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the suit schedule property. The said judgment and decree of the trial Court is in accordance with law and do not suffer from any legal infirmity which calls for interference. Under these circumstances, I do not find any merit in this appeal. Accordingly, the appeal is dismissed.

No costs.