

**(2021) 07 TEL CK 0072**  
**In the Telangana High Court**  
**Case No : Contempt Case No. 1779 Of 2015**  
**M/ S. Kumar And Co VsA. Anjaneyulu**

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**Date of Decision :** 26-07-2021

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2  
Urban Land (Ceiling And Regulation) Act, 1976 — Section 20(1)(a)  
Indian Contract Act, 1872 — Section 2(d), 25  
Limitation Act, 1963 — Section 59  
Transfer Of Property Act, 1882 — Section 52

**Citation :** (2021) 07 TEL CK 0072

**Hon'ble Judges :** M.S.Ramachandra Rao, J;T. Vinod Kumar, J

**Bench :** Division Bench

**Advocate :** P Sri Ram, Kuriti Bhaskara Rao

**Final Decision :** Allowed

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## Judgement

C.M.A.

No.",I.A. No.,O.S. No.,Date,"Registered Agreement  
of sale- cum-GPA Doc.

No. & Date","Registered sale

deed Doc. No. &

Date

470,523/17,369/17,17.10.2019,"Doc.No.3337/08 dt.25-

06-2008","1770/2017 dt.28-

02-17

473,488/17,331/17,17.10.2019,"Doc.No.3938/2008

dt.29.07.2008","1755/2017

dt.28.02.2017

503,489/17,332/17,17.10.2019,"Doc.No.1843/2008

dt.09.04.2008","1704/2017

dt.28.02.2017

504,488/17,330/17,17.10.2019,"Doc.No.3938/2008

dt.29.07.2008","1755/2017

dt.28.02.2017

507,523/17,369/17,17.10.2019,"Doc.No.3337/08 dt.25-

06-2008","1700/2017 dt.28-

02-17

508,408/17,266/17,17.10.2019,"Doc.No.1603/2008

dt.25.03.2008",

509,489/17,332/17,17.10.2019,"Doc.No.1843/2008

dt.09.04.2008","1704/2017

dt.08.02.2017

510,524/17,370/17,17.10.2019,"Doc.No.4709/2008

dt.17.09.2008","1756/2017

dt.28.02.2017

511,490/17,333/17,17.10.2019,"Doc.No.1796/2008

Dt.02.04.2008","1701/2017

Dt.28.02.2017

512,407/17,267/17,17.10.2019,"Doc.No.1645/2008

Dt.27.03.2008",

517,490/17,333/17,17.10.2019,"Doc.No.1796/2008

Dt.02.04.2008","1701/2017

Dt.03.03.2017

518,524/17,370/17,17.10.2019,"Doc.No.4709/2008

dt.17.09.2008","1756/2017

dt.28.02.2017

The I.A.s filed under Order XXXIX Rules 1 and 2 of C.P.C.,,,,,,

10. The plaintiffs filed different Interlocutory Applications under Order XXXIX

Rules 1 and 2 of Civil Procedure Code, 1908 in each of the suits for" ,,,,,

grant of temporary injunction restraining the respondents from alienating the plaint schedule property to third parties, pending disposal of the suit. The" ,,,,,

plaintiffs reiterated the contents of the plaint and contended that they have prima facie case, balance of convenience is in their favour, and irreparable" ,,,,,

loss would be caused to them if temporary injunction sought by them was not granted. ,,,,,

Counter- affidavit of the Firm â?" M/s. Kumar and Co. (defendant in each of the suits) : ,,,,,

11. It is the case of the Firm M/s.Kumar and Co. that A. Maisaiah was the family head and looked after the family of the plaintiffs; that all the ,,,,,

existing rights of family members including the plaintiffs were transferred title of the subject property of the suits to the Firm after receiving valuable ,,,,,

consideration in 1985 itself, and after that, the plaintiffs have no right over the land and they are not in possession thereof. It is contended that the" ,,,,,

plaintiffs voluntarily executed Agreements of Sale â?" cum â?" General Power of Attorneys and had never raised any issue about it. They contended ,,,,,

that the suit is barred by limitation and the plaintiffs have no prima facie case, and are not entitled to relief of temporary injunction." ,,,,,

The orders dt.17.10.2019 in the I.A.s filed under Order XXXIX Rules 1 and 2 of C.P.C. ,,,,,

12. In the Court below, the plaintiffs marked documents in each of the I.A.s in each of the suits." ,,,,,

13. By separate order dt.17.10.2019, the Court below allowed all the I.A.s filed for temporary injunction and restrained the defendants from alienating" ,,,,,

the plaint schedule properties. ,,,,,

14. After referring to the contentions of the plaintiffs, it opined that the documents i.e., Agreements of Sale â?" cum â?" General Power of Attorneys" ,,,,,

were executed in 2008, and since they mentioned that sale consideration was paid on 20.04.1985 and it appears to be meagre, it suggests that fraud" ,,,,,

was played upon the plaintiffs. It then observed that the circumstances prima facie show that the plaintiffs have raised triable issues which have to be ,,,,,

decided after full-fledged trial; prima facie, the points raised by them prove their claim over the plaint schedule property; contentions of parties show" ,,,,,

that alienations are being made; and so, they have balance of convenience and

irreparable would be caused; and so they are entitled to temporary",,,,,  
injunction till disposal of the suit.,,,,,

The present CMAs,,,,,

15. Challenging the same, M/s. Kumar and Co, one of the defendants in the suits filed these Appeals." ,,,,,

16. Sri Y.Chandra Sekhar, learned Senior Counsel appearing for Sri M.D.Phaneendra, learned counsel and Sri P.Sriraghu Ram, learned Senior" ,,,,,

Counsel appearing for Sri P.Sri Ram, learned counsel for the appellant/defendant and Sri Kuriti Bhaskara Rao, learned counsel for the respondents /" ,,,,,

plaintiffs in each of the suits.,,,,,

17. It is the contention of the learned counsel for the appellants/defendants that the execution by respondent Nos.1 to 4/plaintiffs of the agreements of,,,,,

sale-cum-General Power of Attorney in 2008 in favour of A. Maisaiah who was Managing Partner of the Firm M/s.Kumar & Co., their relative being" ,,,,,

an admitted fact, the suits filed in 2017 for cancellation of the said agreements of sale-cum-G.P.As. are hopelessly barred by limitation; the plea of the" ,,,,,

plaintiffs that plaintiffs continued to be in possession and enjoyment of the land is false and the defendants are in possession of the same; that it is not,,,,,

true to say that the plaintiffs are illiterates and innocent and did not have worldly knowledge; there was no fraud in the execution of the agreements of,,,,,

sale-cum-G.P.As. in favour of the Firm; till 13-02-2014, the date of death of A. Maisaiah, the plaintiffs never questioned the agreements of sale-cum-" ,,,,,

G.P.As. on the ground of being fraudulent or that they were sham; the appellants invested huge amounts to develop the land and to extract more,,,,,

money from the defendants, the plaintiffs have filed the suit. It was denied that the plaintiffs did not know about the contents of each of the" ,,,,,

agreements of sale-cum-G.P.As.; that the said documents are irrevocable powers of attorney and death of A. Maisaiah /Managing Partner of the,,,,,

Firm does not effect the rights already passed on to the defendants. It is also contended that the Court below did not properly appreciate the facts,,,,,

while granting the interim order in the I.As. filed under Order 39 Rules 1 and 2 C.P.C.,,,,,

18. Sri Kuriti Bhaskara Rao, learned counsel for the plaintiffs/respondents refuted the above contentions, and supported the orders passed by the" ,,,,,

Court below.,,,,,

Consideration by the Court,,,,,

19. It is the admitted case of the plaintiffs that pursuant to G.O.Ms.No.348 dt.20-03-2007, the State Government exercised powers under Section" ,,,,,

20(1)(a) of the Urban Land (Ceiling and Regulation) Act, 1976 and granted exemption of excess land in favour of 54 persons including the plaintiffs." ,,,,,

20. As per annexure to the said G.O., separate parcels of extents of land admeasuring 300 sq. mts each were exempted for each of the individuals" ,,,,,

and only for A.Maisaiah, the relative of the plaintiffs, 1000 sq. mts was exempted in Sy.No.1011/10 part situated at Kukatpally village." ,,,,,

21. Prima facie a reading of the said G.O. does not indicate that the land parcels are undivided shares and that the plaintiffs and other persons who ,,,,,

were given exemption under the said G.O. were holding the land jointly, though the recital in the agreements of sale-cum-G.P.As. is otherwise." ,,,,,

22. The contents of each of the registered agreements of sale-cum-G.P.A. show that each of the plaintiffs had admitted receipt of sale consideration ,,,,,

in cash in 1985. Clause (j) of the said documents specifically stated that the right, title and interest, easement, liberties, enjoyment and possessions are" ,,,,,

transferred in favour of the Firm absolutely and forever. Clause (1) stated that there is Agency coupled with interest in favour of the purchaser and he ,,,,,

was entitled to transfer title in favour of prospective buyers, Clause (2) empowered him to handover possession of the property to the prospective" ,,,,,

purchaser, and Clause (4) entitled the purchaser as an Attorney to enter into agreements with any third parties with respect to the property and to" ,,,,,

receive consideration thereof from time to time. Clause (16) recorded that the plaintiffs have delivered vacant possession of the property to the ,,,,,

purchaser. ,,,,,

23. These clauses prima facie bind the plaintiffs and it is not open to them to contend that they are in possession of the property, and that the General" ,,,,,

Power of Attorney ceases to have effect on the death of A. Maisaiah, because it creates an agency coupled with interest." ,,,,,

24. Their plea that they were not aware of the nature of the transaction when they executed the Agreements of Sale cum General Power of Attorney ,,,,,

as they were illiterate, innocent and not having worldly knowledge will have to be established during the trial." ,,,,,

25. Admittedly, during the life time of A. Maisiah, who died on 13-02-2014, the

plaintiffs never questioned the agreements of sale-cum-G.P.As. on the" ,,,,,,  
ground of being fraudulent or that they were sham. This silence prima facie  
indicates their acquiescence to the said documents transferring title to the ,,,,,,  
Firm. ,,,,,,

26. The fact that all the plaintiffs are selling milk indicates that they are familiar  
with ordinary business concepts such as "consideration" for a ,,,,,,  
sale, and they cannot prima facie be presumed to be unaware of the same." ,,,,,,

27. Under Section 2(d) of the Contract Act, 1872, a thing done in the past can  
also be good consideration for a contract. It states : " ,,,,,,

"Section 2. Interpretation clause ,,,,,,

2. Interpretation clause. "In this Act the following words and expressions are  
used in the following senses, unless a contrary intention" ,,,,,,

appears from the context: " ,,,,,,

(a) " ,,,,,,

(b) " ,,,,,,

(c) " ,,,,,,

(d) When, at the desire of the promisor, the promisee or any other person has  
done or abstained from doing or does or abstains from doing, " ,,,,,,

or promises to do or to abstain from doing, something, such act or abstinence or  
promise is called a consideration for the promise; " ,,,,,,

" (emphasis supplied) ,,,,,,

28. Under Indian Law, thus even past consideration is good for the purpose of a  
contract, and the mere fact that in the instant cases, the plaintiffs had" ,,,,,,

received payments in 1985, by itself cannot be a ground prima facie to contend  
that the Agreements of sale " cum " General Power of Attorney, " ,,,,,,

are not supported by consideration. ,,,,,,

29. Inadequacy of consideration would not render a contract void as per  
Explanation 2 to Section 25 of the Contract Act, 1872 and it is not open to  
the" ,,,,,,

plaintiffs to seek cancellation of the Agreements of Sale " cum " General  
Power of Attorney on the said ground. ,,,,,,

30. Under Section 59 of the Limitation Act, 1963, the limitation for filing a suit to  
cancel an instrument or for rescission of a contract is three years" ,,,,,,

when the facts entitling the plaintiff to have it cancelled or rescinded first became

known to him. The burden of proof would lie on each of the,,,,,  
plaintiffs in the suits to establish that the suits, filed nine years after the  
Agreements of sale â?" cum â?" General Power of Attorney were executed,",,,,,  
were within time.,,,,,,

31. Whether proper stamp duty was paid on the Agreements of sale â?" cum â?"  
General Power of Attorney at the time of their execution is an issue,,,,,

which is required to be gone into at the time of trial since the Sub-Registrar,  
Kukatpally has not disputed the stamp duty and registration fee paid" ,,,,,,

thereon.,,,,,,

32. In our opinion, the Court below overlooked the above circumstances and  
erred in allowing the applications for temporary injunction merely because" ,,,,,,

some triable issues are raised by the plaintiff, which require a full-fledged trial. In  
our opinion, there is no prima facie case made out by the plaintiffs" ,,,,,,

for grant of temporary injunction pending suits restraining the firm or the  
purchasers from the firm from alienating the suit schedule properties.,,,,,,

33. That apart, any alienation made in the subject properties pending the suits  
will attract the doctrine of lis pendens under Section 52 of the Transfer" ,,,,,,

of Property Act, 1882, and so, no serious prejudice is thereby caused to the  
plaintiffs." ,,,,,,

34. Accordingly, all the Civil Miscellaneous Appeals are allowed; the orders -  
dt.17.10.2019 passed in I.A.No.523 of 2017 in O.S.No.369 of 2017;" ,,,,,,

dt.17.10.2019 passed in I.A.No.488 of 2017 in O.S.NO.331 of 2017;  
dt.17.10.2019 passed in I.A.No.489 of 2017 in O.S.No.332 of 2017; order,,,,,

dt.17.10.2019 passed in I.A.No.488 of 2017 in O.S.No.331 of 2017; order  
dt.17.10.2019 passed in I.A.No.523 of 2017 in O.S.No.369 of 2017; order,,,,,

dt.17.10.2019 passed in I.A.No.408 of 2017 in O.S.No.266 of 2017; order  
dt.17.10.2019 passed in I.A.No.489 of 2017 in O.S.No.332 of 2017; order,,,,,

dt.17.10.2019 passed in I.A.No.524 of 2017 in O.S.N.o.370 of 2017; order  
dt.17.10.2019 passed in I.A.No.490 of 2017 in O.S.No.333 of 2017; order,,,,,

dt.17.10.2019 passed in I.A.No.407 of 2017 in O.S.No.267 of 2017; order  
dt.17.10.2019 passed in I.A.No.490 of 2017 in O.S.No.333 of 2017; and,,,,,

order dt.17.10.2019 passed in I.A.No.524 of 2017 in O.S.No.370 of 2017 on the  
file of XV Additional District Judge â?" cum â?" II Additional Family,,,,,

Judge, Ranga Reddy District, at Kukatpally are all set aside, and the said I.A.s  
are dismissed." ,,,,,,

35. It is made clear that any alienations made by the appellants / defendants pending the suits, shall abide by the result of the suits. The Court below is",,,,,

directed to decide the suits, uninfluenced by any observations made in its order dt.17.10.2019 in each of the I.A.s or in this order of this Court allowing",,,,,

the Appeals. No costs.,,,,,

36. As a sequel, miscellaneous petitions pending if any in these Appeals, shall stand closed.",,,,,