(2015) 03 KAR CK 0132

In the Karnataka High Court

Case No : Regular First Appeal No. 472 of 2014

M.G. Shanthkumar and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 11
Companies Act, 1956 — Section 108
Evidence Act, 1872 — Section 114(g), 3, 58
Karnataka Land (Restriction on Transfer) Act, 1991 — Section 3, 4, 8, 9
Land Acquisition Act, 1894 — Section 48(1)
Penal Code, 1860 (IPC) — Section 120-B, 201, 34, 409, 465
Registration Act, 1908 — Section 20, 59

Citation : (2015) 03 KAR CK 0132

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : R.V.S. Naik, for the Appellant; I. Tharanatha Poojary, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The appeal is filed on behalf of the plaintiff

2. The parties are referred to by their rank before the trial court for the sake of convenience.

3. The suit was for cancellation of eight sale deeds, dated 25.2.1999, which are marked as Exhibits P.31 to P.38, presented for registration by defendants 3 to 6 claiming to be the purchasers thereunder of the suit schedule property and registered before the Sub-Registrar, Bangalore South Taluk, defendant No. 2.

The plaintiff, M.G. Shanthkumar (now deceased) was said to be the sole and absolute owner of the suit schedule property measuring 8 acres 1 gunta comprised in land bearing Survey Nos. 74 and 135 of Nayanappa Setty Palya (N.S. Palya) village, Begur Hobli, Bangalore South Taluk. The suit schedule property is now part of BTM Layout as developed by the Bangalore Development Authority (BDA).

The suit schedule property is said to have been notified under the Bangalore Development Authority Act, 1976 (Hereinafter referred to as the ''BDA Act'', for brevity) for acquisition vide final notification dated 7.2.1978. The plaintiff is said to have challenged the acquisition in a civil suit in OS 4279/1989 before the court of the II Additional City Civil Judge, Bangalore, whereunder he claimed to have produced the original sale deed of the suit schedule property executed by his mother, registered as Document No. 2244/1970-71 dated 3.8.1970. The above suit was eventually dismissed by the court on 30.9.1995.

It then transpires that vide Government Order dated 17.11.1995, the State Government had announced a new policy, whereunder in cases where Final Notification for acquisition of land under the BDA Act had been issued, but the acquisition proceedings had not been completed for a long time, the owners were allowed to develop such property under a Group Housing Scheme, subject to such owners surrendering 12% of the built up area in such Group Housing Project to the BDA, or where the owners preferred to lay sites in such land, 30% of the sites so laid were to be released to the BDA.

It was claimed that the plaintiff chose to develop the suit schedule property into a Group Housing Project and therefore he did not take any further steps to challenge the judgment dismissing OS 4279/1989, or the said acquisition proceedings.

In this background, it was claimed that defendant No. 7, one Zahir Ahmed claiming himself as a land broker is said to have befriended the plaintiff and offered to arrange finance from lenders to enable the plaintiff to develop the suit schedule property as proposed.

On 28.2.1997, defendant No. 7 is said to have asked the plaintiff to meet him in Avalahalli, off Kanakapura Road, Bangalore on the pretext of arranging a meeting with prospective financiers. It was said that the plaintiff had in good faith proceeded to Avalahalli, from where he was said to have been kidnapped and was detained overnight in some place by the defendant No. 7 and his associates and was forced to sign and affix his thumb impressions on many documents under coercion and threat to his life and then is said to have been released on the next day, namely, on 1.3.1997. Thereupon, the plaintiff is said to have lodged a complaint on the same day, namely, 1.3.1997 with the Siddapura Police which complaint is said to have been transferred to Challaghatta Police Station, on the ground that the place of occurrence of the crime was within the jurisdiction of that Police Station. The complaint was said to have been registered as Crime No. 47/1997.

It was claimed that the plaintiff was advised to file a suit against defendant No. 7 and the Sub-Registrar, Bangalore South Taluk within whose jurisdiction the suit schedule property were situated, restraining the Sub-Registrar from registering any document, pertaining to the suit schedule property, that may be presented either by Zahir Ahmed or his agents. Accordingly, the plaintiff is said to have filed a civil suit in OS 3409/1997 before the City Civil Court, Bangalore for the said reliefs on 23.4.1997. An application in IA-3 for temporary injunction during the pendency of the suit was filed and the same was granted on 25.4.1997. This was said to have been extended until further orders on 27.10.1997. Both the defendants therein are said to have entered appearance in the suit.

It is stated further that on 28.5.1998, the plaintiff came to know through the BDA officials that in a writ petition in WP 37551/1997 filed in his name, there was an order of status-quo passed by this court. Since it was claimed that he had not filed any such petition, he had filed a complaint with the Registrar, High Court of Karnataka, on 1.6.1998, to state that the petition in WP 37551/1997 had been falsely filed in his name. The complaint was said to have been placed before the court for orders and this court had directed an inquiry in to the matter by the Registrar (Vigilance). The Registrar is said to have recorded the statement of the plaintiff Defendant No. 7 who claimed to have instructed the counsel to file the writ petition in the name of the plaintiff was summoned and his statement was recorded. The statement of his counsel was also recorded. Zahir Ahmed is said to have stated before the Registrar that he knew the plaintiff and that defendant No. 7 had negotiated the purchase of the suit schedule property and had entered into a Memorandum of Understanding with him for the purchase of the suit schedule property at the rate of Rs. 100/- per square foot. He had also stated that the plaintiff had also signed the vakalath in favour of Shri A.S. Karamadi and that he had signed the verifying affidavit to the writ petition.

The Registrar is said to have verified the plaintiffs specimen signature with those on the vakalath and the affidavit and found innumerable differences between the same and came to the conclusion that the vakalath and the affidavit did not contain the plaintiff s signature. A report was said to have been placed before the court for further proceedings.

In view of the finding of the Registrar as above, defendant No. 7 is said to have changed his stand taken by him before the Registrar and admitted his guilt and sought pardon from the court.

This court in its proceedings dated 19.2.1999 in the above writ petition took the affidavit on record and permitted the withdrawal of the writ petition and directed that the defendant pay Rs. 2000/- as costs to the Registry and granted pardon to defendant No. 7.

Thereafter, one N. Jayaram is said to have filed a civil suit in OS 4498/1998 on the file of the City Civil Judge, Bangalore, wherein defendant No. 7 and the plaintiff herein were defendants 1 and 2, respectively. The prayer in the suit was for a judgment and decree permanently restraining the said defendants from alienating, or in any way interfering with his alleged possession and enjoyment of the suit schedule property, namely, the said 8 acre 1 gunta comprised in Survey

Nos. 74 and 135 of N.S. Palya village, on the ground that the defendants had executed an agreement of sale agreeing to sell the suit schedule property to him on 22.11.1996 and 6.2.1997 and that he had paid to defendant No. 2 (the plaintiff herein) Rs. 30,00,000/- as advance. Zaheer Ahmed is said to have entered appearance through counsel on 12.6.1998 in that suit and is said to have filed objections to I.A.I admitting the execution of the alleged agreements of sale in favour of the plaintiff therein.

Defendant No. 2, therein and the plaintiff in the present proceedings, on the other hand, is said to have filed a written statement denying the plaint allegations in entirety and contending that the alleged agreement of sale was a got up document and were apparently prepared using the documents signed by him during his illegal detention by Zahir Ahmed as alleged above and that the suit was a collusive one between N. Jayaram and Zaheer Ahmed. The plaintiff herein is said to have brought to the notice of the court a notice having been received by him from the Registrar of Undervaluation of properties pertaining to a General Power of Attorney in favour of one Syed Hyder on 2.11.1998 registered as Document No. 703/1998-99 wherein his signature had been forged and an enquiry was said to be in progress. It is stated that the plaintiff had filed a civil suit in OS 4320/2001 before the City Civil Court, Bangalore, seeking cancellation of the said power of attorney. The said suit is said to have been decreed vide judgment dated 17.6.2001.

The suit in OS 4498/1998 filed by N. Jayaram was said to have been dismissed on 16.10.2003, for non-prosecution. N. Jayaram had not filed any application to set aside the order of dismissal. Significantly, the original sale deed dated 29.7.1970 executed by the plaintiffs mother in respect of the suit schedule property is said to have been produced by the plaintiff as Ex. P2 before the City Civil Court, in OS 4279/1989 filed by him against the BDA challenging the acquisition. The said suit was said to have been dismissed on 30.9.1995 as stated above, but the plaintiff had not taken back the original sale deed. On 22.1.1997, that is much after the dismissal of the suit he is said to have applied to the Civil Court for a certified copy of the sale deed. The Registry is said to have returned his application and made the following note in the order sheet:

"SUBMITTED

Verified the record as per Index Sheet. Ex. P-2 is not forthcoming. Hence copy application may be returned."

The loss of this document was said to have been brought to the notice of the Registrar on 15.3.1997. However, the plaintiff had found that N. Jayaram had produced the very original Sale deed in OS 4498/1998 on 9.6.1998. The plaintiff is therefore said to have filed a letter dated 19.6.1998 with the Registrar, City Civil Court, Bangalore requesting him to investigate as to how N. Jayaram came into the possession of the original Title Deed produced by him in OS 4279/1989. A letter was also said to have been sent to the Principal Judge, City Civil Judge, Bangalore on 30.7.1998.

In pursuance of the above, the XI Additional City Civil and Sessions Judge is said to have issued a Notice dated 19.12.1998 to the plaintiff and the matter was said to be under enquiry.

It is then stated that on 21.4.1999 at about 12.05 p.m., when the plaintiff was said to be traveling in an auto rickshaw near Ashoka Pillar, I Block, Jayanagar, he was said to have been forcibly dragged from the auto by three persons, blindfolded, transferred to another vehicle and taken to an unknown building where he was made to sit on a chair. He was said to have been relived of his wrist watch, pen, cash, key, hand kerchief and footwear. When his blind fold was removed, defendant No. 7 was also said to be present with the said three unknown persons. Defendant No. 7 and the said three persons are said to have made the plaintiff sign and affix his thumb impression on many documents, blank papers, blank vakalath forms, some statutory forms, under coercion and threat to his life. Thereafter the plaintiff was again blind folded and taken by a car to some other place. When the car stopped, the blind fold was removed and two persons took his signature and thumb impression on documents and a register. Thereafter, he was brought back in the same car where many more of his signatures and thumb impressions were said to have been taken again. After dark, his personal belongings were said to have been replaced, he was blind folded again and taken in the car and was released near St. Johns Medical College Hospital around 7.36 p.m. in utter shock from these happenings, the plaintiff reached home around 8.30p.m., by an auto rickshaw and upon collecting himself, at about 11.30p.m., on the same day, is said to have filed a complaint with the Siddapura Police Station which was registered as Crime No. 109/1999.

On 22.4.1999, the plaintiff is said to have made enquiries with the Sub-Registrar and had found that eight sale deeds were presented for registration before him, all of which pertained to the schedule property. He was said to have been informed by the Sub-Registrar that the said eight sale deeds had not been registered but kept pending to be referred to the District Registrar for undervaluation. The plaintiff is then said to have narrated the happening on the previous day to the Sub-Registrar and had requested him not to register the sale deeds. On 28.4.1999, he filed a representation to the Sub-Registrar with copies of the complaint filed by him with Siddapura Police Station and also the court order in OS 3409/1997. He is also said to have simultaneously taken action to amend OS 3409/1997 and to implead the purchasers under the said eight disputed sale deeds. Despite the representation dated 28.4.1999 at Exhibit P.21, the Sub-Registrar (defendant No. 2) is said to have registered the sale deeds on 30.7.1999 without holding any enquiry and released the said sale deeds to defendants 3 to 6 after payment of deficit stamp duty of Rs. 2,00,000/- per acre as stated by D.W. 4 in his cross-examination.

It is in the above background that the present comprehensive suit was said to have been filed, after withdrawing the earlier suit with leave to file the present suit.

The defendants 1 and 2 are said to have entered appearance on 1.6.2001. And pursuant to the substituted service, defendant no. 7 is said to have appeared in person on 25.7.2001 and prayed for time to engage counsel. Defendants 3 to 6 were set ex-parte. On 1.9.2001, it transpires that defendant No. 7 did not appear and was placed ex parte. Again on 8.10.2001, defendants 3 to 6 are said to have appeared through counsel and the ex parte order was set aside.

Defendants 1 and 2 (the Government and the Sub-Registrar) are said to have filed their common written statement merely denying the plaint allegations. Defendants 3 to 6 filed a common written statement also denying the plaint allegations and the averments and contending that the plaintiff had voluntarily and willingly come to the Sub-Registrar''s office on 21.4.1999 and executed the sale deeds and admitted execution thereof.

On the basis of the pleadings, the following issues were framed:

"(1) Whether the plaintiff proves that on 28.2.1997, the 7th defendant took him to Avalahalli under the pretext of arranging finance to implement Group Housing Project in the schedule property that there he was abducted, detained till next day and that his signatures and thumb impressions were taken on many documents and papers under coercion and threat to life?

(2) Does he further prove that on 21.4.1999 he was kidnapped near Ashoka Pillar, Ist Block, Jayanagar, that his signatures and thumb impressions were taken on many documents, blank papers, blank vakalath forms and other forms by the 7th defendant and others?

(3) Does he further prove that on the same day, he was taken blindfolded in a car to some other place and that his signatures and thumb impressions were taken on documents and a register?

(4) Whether the plaintiff proves that on 22.4.1999, on enquiry, he came to know that eight sale deeds were presented for registration to Koramangala Sub-Registrar''s office, in respect of suit property and that on 30.7.1999, those sale deeds were registered?

(5) Does he further prove that those sale deeds were not duly executed by him and that they were not supported by considerations?

(6) Whether the eight sale deeds mentioned in the plaint were obtained by fraud/ coercion and they are liable to be cancelled.

(7) Whether defendants 3 to 6 prove that suit is not maintainable for the reasons stated in paras 14,15,16 and 17 of their written statement?

(8) Whether the plaintiff is entitled for the relief of cancellation of eight sale deeds dated 25,2.1999 registered on 30.7.1999?

(9) What decree or order?

Additional Issues:

(1) Whether the court fee paid by the plaintiff is proper and correct?

(2) Whether the defendants prove that the suit is not maintainable for non-compliance of the Order on I.A. No. 14 in OS 3409/1997?"

The trial of the suit is said to have commenced on 19.12.2005. The plaintiff was examined in chief as P.W. 1 on 19.12.2005. He was cross-examined by Counsel for D1 and D2 and D3 to D6 on 7.2.2006. In his examination-in-chief, the plaintiff asserted that defendant No. 7 had forcibly taken him captive on 28.2.1997 and detained him until the next day and during the course of his detention, he had been made to sign papers and impress his thumb impression on various documents. He had also narrated the events regarding his second abduction and all the events that transpired thereafter, until the filing of the present suit.

In the meanwhile, on 22.2.2006 defendant No. 6 died and his legal representatives, namely, respondents 7 to 11 herein, were brought on record.

On 1.8.2011, it transpires that the plaintiff was fatally attacked outside the Anekal Court premises by unknown assailants and he succumbed to the injuries on the spot. At the hearing on 10.8.2011, the defendants'' counsel is said to have brought to the notice of the court the death of the plaintiff The legal representatives of deceased plaintiff had then come on record.

On 25.6.2012, defendant No. 7 is said to have appeared before the court through his counsel and the order placing him ex-parte passed by the court on 1.9.2001 was set aside. Thereupon, he is said to have filed a written statement, wherein he is said to have denied the plaint averments and the allegations and had contended thus:

"(a) That he was not aware of OS 4498/1998 filed by N. Jayaram; though he had entered appearance in that suit and filed his objection statement to IA No. 1 supporting N. Jayaram''s case for the relief sought by him in the suit.

(b) That the Police had filed ''B'' Report after conducting investigation in regard to the complaint filed by the plaintiff pertaining to the first and second instances of the alleged kidnapping.

(c) That the plaintiff himself executed the said eight disputed sale deeds before the Sub-Registrar and also presented them for registration before the Sub-Registrar and therefore the plaint allegation that the plaintiff came to know about the execution and presentation of the sale deeds only on 22.4.1999 was false.

(d) That the plaintiff disputed the execution of the sale deeds only after the purchasers converted the land from agricultural to non-agricultural purposes consequent to which the market value of the suit schedule property increased manifold.

(e) That defendants 3 to 6 did not commit any fraud."

On behalf of the plaintiffs, the following witnesses were also examined, after the death of the plaintiff:

(a) P.W. 2 - M.G. Dattatreya, Plaintiff No. 1(a) - brother of the plaintiff;

(b) P.W. 3 - Vinay M. Jagadish, plaintiff No. 1(m) - nephew of the plaintiff, and

(c) P.W. 4 - Wesley Mammen, Manager, State Bank of Travancore, Chamarajpet, Bangalore."

P.W. 2, the brother of the plaintiff had stated in his examination-in-chief, inter alia, that the plaintiff had plans only to develop the property and not to sell the same and would discuss these plans with him and his other brothers and sisters.

He had also stated that pursuant to the matter being remanded to the trial court by this court, the plaintiff was again brutally attacked on 18.6.2011 at his residence by strangers and he was beaten till he lost his consciousness and regarding certain events that followed.

P.W. 4, Manager of State Bank of Travancore, Chamarajapet, Bangalore, was examined on 3.8.2012 pursuant to witness summons issued by the trial court. He had deposed regarding the Demand Drafts each for Rs. 1,00,000/- all dated 9.4.1999 and bearing consecutive numbers, which have been shown in the eight disputed sale deeds. He is said to have stated that the said Demand Drafts had not been encashed and that they were still outstanding and that the said amounts had been transferred to an "Unclaimed Balance Account". He had further stated that till date, there had been no claim for the said instruments and that the said amounts were still lying with the Bank. P.W. 4 has stated that the records showing the particulars of the person who had purchased the Demand Draft should be available in the Bank and could be produced if necessary.

Defendant No. 7 is shown to have filed his examination-in-chief by way of affidavit as D.W. -1 on 30.10.2012. He had stated that he was deposing on his own behalf and also on behalf of defendants 3 and 5. However, he did not make himself available for cross-examination by the plaintiffs counsel. His evidence was therefore closed on 13.11.2012.

The following witnesses were shown to have been examined on behalf of the defendants:

"(a) D.W. 2 - Mohammed Asadulla, legal representative of deceased Mohammed Yousuff, defendant No. 4

(b) D.W. 3 - A. Shafiulla, legal representative of deceased Defendant No. 6 H.V. Abdul Wahab,

(c) D.W. 4 - D. Noorulla, defendant No. 5

(d) D.W. 5 - B. Gangadhar, Sub-Registrar

(e) D.W. -6 M. Maheshwar (witness to the said disputed eight sale deeds)"

DW-2 Mohammed Asadulla, legal representative of defendant No. 4 Mohammed Yousuff has generally denied the plaint averments. He had stated that he had no first hand information about the transaction about the sale and purchase of the land between the plaintiffs and the defendants 3 to 6 and he was deposing on the basis of the information given to him by his father.

D.W. 3, A. Shafiulla, has filed his examination-in-chief by way of affidavit. In his cross-examination, he had also stated that his evidence is on the basis of the information given to him by his deceased father H.V. Abdul Wahab and A. Khaleel, defendant No. 3.

In his cross-examination D.W. 4 had stated that defendant Nos. 3 to 6 were relatives. D.W. 4 had stated that he was a permanent resident of Venkatagiri Kota of Chitoor District, Andhra Pradesh and he had no house in Bangalore and that he had never lived in Bangalore, whereas his address shown in all the disputed sale deeds at Exhibits P.35 and P.36, wherein his address shown as the Purchaser is the same, as the address shown for the other purchasers viz., defendants 3,4 and 6.

D.W. 4 had admitted that defendant No. 7 was a friend of Defendant No. 6 and that he was known to him.

The other surviving defendant A. Khaleel, one of the purchasers did not tender any evidence. The only surviving purchaser who gave the evidence was D.W. 4.

D.W. 5, B. Gangadhar, was the Sub-Registrar of Bangalore South Taluk, at the relevant time when the said eight disputed sale deeds were registered and was examined by defendant Nos. 3 to 6 as their witness. In his cross-examination, it is contended that he is seen to have specifically admitted that he received the representation given by the plaintiff on 28.4.1999, which is at Exhibit P.21, requesting him not to complete the registration of the said eight disputed sale deeds, which were kept pending registration and he also admits that he did not take any action on that representation. He has admitted that any document containing any corrections or overwriting requires the signatures of the executants. This was with reference to several corrections, overwriting and insertions found in the disputed documents, which were not signed by the plaintiff

D.W. 5 did not remember that the plaintiff met him on 22.4.1999 on which date he brought to his notice the kidnapping and the other incidents but claimed to remember various other details.

D.W. 6, M. Maheswar, claimed to have signed all the eight disputed sale deeds as the second witness at the instance and request and on behalf of the plaintiff in his examination-in-chief, he had claimed that he was acquainted with the defendant No. 7 from 1995 onwards being in real estate business. It is pointed out that he also claimed that he was acquainted with defendants 3 to 6 because those defendants had asked him to fill in the statutory forms required for registration.

4. In the light of the above material on record, the learned Counsel, Shri R.V.S. Naik appearing for the counsel for the appellants would contend that having regard to the pleadings and the evidence on record several significant circumstances have been overlooked by the court below. He would point out the following instances:-

"N. Jayaram is said to have filed a civil suit in OS 4498/1998 on the file of the City Civil Judge, Bangalore, wherein defendant No. 7 and the plaintiff herein were defendants 1 and 2, respectively. The prayer in the suit was for a judgment and decree permanently restraining the said defendants from alienating, or in any way interfering with his alleged possession and enjoyment of the suit schedule property, namely, the said 8 acre 1 gunta comprised in Survey Nos. 74 and 135 of N.S. Palya village, on the ground that the defendants had executed an agreement of sale agreeing to sell the suit schedule property to him on 22.11.1996 and 6.2.1997 and that he had paid to defendant No. 2 (the plaintiff, Shantakumar) Rs. 30,00,000/- as advance. Defendant No. 1 Zaheer Ahmed had entered appearance through counsel on 12.6.1998 and had filed objections to I.A.I admitting the execution of the alleged agreements of sale in favour of the plaintiff therein and had stated thus:

"4. The affidavit sworn to in support of the LA. at para 2 is concerned, it is submitted that this defendant has executed the sale agreement in favour of the plaintiff as a G.P.A. Holder of the 2nd defendant herein and this defendant has attested the signature to the memorandum of undertaking dated 6.2.1997 and the 2nd defendant has received a sum of Rs. 30-00 lakhs as an advance and executed the said documents in favour of the plaintiff and further this defendant has also attested his signature to the G.P.A. which was executed by Zd defendant in favour of the plaintiff. The other allegations made in the said paragraph are hereby denied as false and incorrect".

"6. It is relevant to state that 2nd defendant has executed G.P.A. in favour of this defendant to deal with the suit property dated 6.2.1995 and memorandum of undertaking agreeing to purchase the suit property by paying Rs. 100/- per sq.ft. but this defendant has paid a sum of Rs. 5-00 lakhs advance to the 2nd defendant. Thereafter the 2nd defendant has enhanced the rate from Rs. 100 to Rs. 150 per sq.ft. the same is agreed between the defendant No. 1 and defendant No. 2. Thereafter, the plaintiff came forward to purchase the property by offering advance from Rs. 5-00 lakhs to Rs. 25-00 lakhs and rate Rs. 150/- to Rs. 200/- per sq. ft. Hence this defendant has given up his claim over the suit property and he is entitled to his claim of Rs. 150/- per sq. ft. and he has signed as an attesting witness to the General Power of Attorney and agreement to sell. It is submitted that vide agreement dated 22.11.1996 executed by this defendant and plaintiff it is agreed to between them that plaintiff has to pay Rs. 300/- per sq.ft. out of which this defendant is entitled to Rs. 150/- Sq.ft. and remaining amount of Rs. 150/- per sq. ft. has to be paid to the 2nd defendant, who is the owner of the suit property This is because the defendant No. 1 has agreed to purchase the suit property from 2nd defendant has agreed to sell the said property to the plaintiff through 2nd defendant because this defendant has entered into a memorandum of understanding has General Power of Attorney. There afterwards this defendant has not claimed any right whatsoever the property since he has no interest over the property, except he is entitled to claim a sum of Rs. 150 per sq.ft. Hence all other allegations made in the plaint as well as in the LA. are hereby denied as false and in correct. Hence the plaintiff is put to strict proof of the same".

It is pointed out that the above stand of Zaheer Ahmed clearly indicated that he was in active collusion with Jayaram.

Significantly, the original sale deed dated 29.7.1970 executed by the plaintiffs mother in respect of the suit schedule property has been produced by the plaintiff as Ex. P2 before the City Civil Court, in OS 4279/1989 filed by him against the BDA challenging the acquisition. The said suit was dismissed on 30.9.1995 as stated above, but the plaintiff had not taken back the original sale deed. On 22.1.1997, that is much after the dismissal of the suit. He is said to have applied to the Civil Court for a certified copy of the sale deed. The Registry had returned his application and made the following note in the order sheet:

"SUBMITTED

Verified the record as per Index Sheet. Ex. P-2 is not forthcoming. Hence copy application may be returned."

The loss of this document was brought to the notice of the Registrar on 15.3.1997. However, the plaintiff had found that N. Jayaram had produced the very original Sale deed in OS 4498/1998 on 9.6.1998, which is inexplicable.

That the order of temporary injunction granted by the City Civil Court in OS 3409/1997 filed by the plaintiff against the Sub-Registrar, Bangalore South Taluk from registering any documents purporting to be executed by the plaintiff and presented for registration either by defendant No. 7 or his agents in respect of the schedule property was in force as on 21.4.1999.

That the order of temporary injunction granted by the City Civil Judge on 12.6.1998 in OS 4498/1998 restraining the defendant No. 7 and the plaintiff from alienating the suit schedule property till the disposal of IA No. 1 was also in operation as on 21.4.1999, namely, the date of second abduction and presentation of the sale deeds for registration.

That the defendant No. 7 and N. Jayaram colluded and managed to remove the original sale deed dated 29.7.1970 executed by the plaintiffs mother in his favour in respect of the schedule property from the records of suit OS 4279/1989 filed by the plaintiff against the BDA challenging the proceedings and produced the same in OS 4498/1998 filed by N. Jayaram.

That it is clear from the facts of the case that defendant No. 7 and N. Jayaram conspired with each other for the first abduction of the plaintiff and obtained his signatures and thumb impressions on the blank papers and other documents under coercion and threat to life.

Even assuming, without admitting, that N. Jayaram had indeed paid Rs. 30,00,000/- to the plaintiff as advance under the alleged agreement, he would not have allowed O.S. 4498/1998 to be dismissed for non-prosecution. The above clearly establishes that the said suit was collusive as contended by the plaintiff in his written statement, therein.

That the reprehensible conduct of the plaintiff in forging the plaintiffs signature on the vakalath and the verifying affidavit in support of WP 37551/1997 clearly demonstrates his character and proves beyond all reasonable doubt that he was bent upon knocking off the suit schedule property from the plaintiff at any cost by hook or crook and that he would go to any length to achieve his object.

The plaintiff was identified by Defendant No. 7 in all the said eight disputed Sale Deeds and not by M. Maheshwar (DW-6), who was alleged to be the witness on his behalf.

The plaintiff has been made to affix his signature and his thumb impression on every page of the said eight Sale Deeds, which is an unknown practice and not done under normal circumstances. This establishes that the Defendants wanted to be doubly sure that the plaintiff would not be able to deny the execution of the said disputed Sale Deeds.

It is pointed out that the plaintiff also took the following steps:

"He had filed W.P. No. 13363/2000 on 07.04.2000 seeking cancellation of the said eight disputed Sale Deeds which was dismissed with liberty to agitate his grievances before the Civil Court. (Ex. P-22);

He had approached the Revenue Authorities protesting the grant of Conversion Order and change of Khata in favour of the purchasers under the said 8 Sale Deeds (Exs. P-24 to P-29);"

After pursuing the remedy against Defendant No. 7 and the other defendants by amending O.S. No. 3409/1997 and impleading new defendants thereunder and challenging the orders passed by the Trial Court on various I.As in W.P. No. 13363/2000 and W.A. No. 4813/2000, in pursuance of the orders passed by the Civil Court on 01.02.2001 on I.A. No. 11, the plaintiff filed the present Comprehensive Suit on 17.04.2001 with prayer for the relief of cancellation of the said 8 disputed Sale Deeds.

It is pointed out that defendant No. 7''s averment in his written statement that the plaintiff had presented the said eight disputed Sale Deeds for registration has been virtually accepted by the learned trial judge without any verification of the disputed documents. This is contrary to the record. On the reverse of the first page of each of these documents, the presentation of the documents is shown to have been made by the respective purchasers, and not by the plaintiff

The suit schedule property was got converted from agricultural to non-agricultural purposes by defendants 3 to 6 only in August 2000 whereas the plaintiff had instituted the case of kidnapping, coercion and forcible execution of his signature and thumb impression on the very same day of the kidnapping.

That defendant No. 7, did not dispute that there was an interim order granted by the Civil Court restraining defendant No. 2, the Sub-Registrar, from registering any document pertaining to the Schedule Property.

It was only in the background of the plaintiffs plans to develop the property that defendant No. 7 approached him. The evidence of PW-2 did support this fact.

The learned Counsel would point out that one of the reasons on which the learned trial judge dismissed the suit is the following:-

"... Therefore, although the circumstances which learned counsel for plaintiff has submitted give rise to the court to believe that in a normal circumstances, he could not have signed the sale deeds in question as explained in the plaint, fact remains established that no compliant filed either against Sub-Registrar and his staff alleging their hand in glove in the criminal actions, destroy foundation as to plea of coercion set out in the plaint to execute sale deed marked as per Ex. P-31 to P-38 ". It is contended that having made the above observation which is founded on the basis of the evidence placed by the plaintiffs before the court, the learned trial judge on a very strange reasoning proceeded to dismiss the suit.

That as per Section 3 of the Evidence Act, 1872, a fact is said to be proved when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

Therefore, the plaintiffs case can be proved either by direct evidence or by circumstantial evidence, both of which exist in support of the plaintiffs case before this court.

''Direct Evidence'' in this case would mean evidence to show that the plaintiff was kidnapped on 21.04.1999 and that his signatures and thumb impressions were obtained on the said disputed sale deeds under coercion and threat to his life. The registration of the deeds thereafter was clearly with the complicity of the Sub-Registrar.

''Circumstantial Evidence'' in this case would mean the evidence and circumstances that would show that under the circumstances as on 21.04.1999 and the events that occurred prior to that date and the conduct of the parties subsequent to that fateful day, it was highly improbable that any person of reasonable prudence would have executed the said sale deeds. In other words, it is contended that the preponderance of probabilities that lie heavily in favour of the plaintiff, would have to necessarily be considered. This includes the conduct of the plaintiff vis-a-vis the conduct of the defendants, the events leading up to the fateful day i.e. 21.4.1999 and various other circumstances as set out herein.

Re. Direct Evidence:

"The only persons who could give evidence on the incident that occurred on 21.04.1999 are the plaintiff and defendant No. 7;" The plaintiff examined himself as PW-1 and tendered himself for cross-examination. He was not cross-examined by defendant No. 7''s Counsel. He has deposed regarding the abductions both on 28.02.1997 and on 21.4.1999 and regarding all the events and happenings on the fateful day as also regarding the steps he has taken immediately upon happening of the incident on 21.04.1999 and having produced all documents in this regard. Nothing contrary to his case has been elicited in his cross-examination.

On the other hand, defendant No. 7, even though had filed his evidentiary affidavit as D.W. -1, did not tender himself for cross-examination and consequently, his evidence was closed. Therefore, his evidence cannot be considered.

None of the other defendants have adduced any evidence or produced any material to controvert the evidence of the plaintiff regarding the incidence of his abduction on 21.04.1999 or regarding any other material allegations made by him.

The plaintiff, by adducing evidence as above and producing materials in support of his case, has discharged the burden of proof cast on him. Thereupon, the onus shifted to the defendants who have miserably failed to discharge the burden of proof by leading rebuttal evidence to controvert the plaintiffs case. Most importantly, defendant No. 7 had failed to adduce any evidence. Therefore, adverse inference was to be drawn under Section 114(g) of the Evidence Act.

The ''B'' report filed in Crime No. 109/1999 was of no avail to disprove the plaintiffs evidence regarding the abduction and other events. The ''B'' Report only stated that the Police could not investigate further for want of more material particulars. Most importantly, there is no finding regarding the event itself. The trial Court had thus erred in attaching undue significance to the above ''B'' Report.

Circumstantial Evidence:

"It is trite law that issues in civil suits may be proved by circumstantial evidence. In this regard, reliance is sought to be drawn from a decision of the apex court, in Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay, .

It is contended that the sequence of events pleaded and the circumstances, coupled with the conduct of the parties, would establish the plaintiffs case beyond reasonable doubt and would show that the preponderance of probabilities lie heavily in his favour, which is summarized hereunder:

(a) The first abduction and illegal detention of the plaintiff on 28.02.1997 by defendant No. 7, where he was made to sign several documents and papers under coercion and threat to life and was released the next day;

(b) A complaint filed by the plaintiff immediately upon his release on 1.3.1997 with Siddapura Police Station (Crime No. 168/1997), which was later transferred to Thalaghattapura Police Station and registered as Crime No. 47/1997;

(c) The documents and papers, on which the plaintiff was made to sign were used by defendant No. 7 and N. Jayaram, to fabricate the General Power of Attorney and Agreements dated 22.11.1996 and 6.2.1997, purporting to be Agreements of Sale executed by the plaintiff and the defendant No. 7;

(d) Defendant No. 7, in his objections to the application in I.A. 1 in OS 4498/1998, admitted the execution of the above alleged agreements of sale in favour of N. Jayaram;

(e) The order of temporary injunction in OS 3409/1997 filed by the plaintiff against the Sub-Registrar, Bangalore South Taluk, restraining him from registering any documents purported to be executed by the plaintiff in respect of the suit schedule property was in force as on 21.04.1999 (please see Ex. P-23);

(f) The order of temporary injunction dated 12.6.1998 in OS 4498/1998 was also in operation as on 21.4.1999;

(g) Defendant No. 7 and N. Jayaram colluded and managed to remove the original sale deed dated 29.7.1970 executed by the plaintiffs mother in his favour in respect of the suit schedule property from the records of OS 4279/1989 filed by the plaintiff and produced the same in OS 4498/1998 filed by N. Jayaram;

(h) N. Jayaram would not have allowed OS 4498/1998 to be dismissed for non-prosecution if he had indeed paid Rs. 30,00,000/- to the plaintiff as advance under the alleged agreement. The same clearly establishes that the suit was collusive between N. Jayaram and defendant No. 7, as contended by the plaintiff therein;

(i) Defendant No. 7 filed a writ petition in WP 37551/1997 in the name of the plaintiff by impersonation and by forging his signature on the Vakalath and the verifying affidavit, in respect of which, an enquiry was held by the Registrar (Vigilance) of this Court, on a complaint by the plaintiff, whereupon it was found that the signatures on the Vakalath and verifying affidavit were not those of the plaintiff And consequently, defendant No. 7 made a complete ''U'' turn and filed an affidavit before this Court admitting his guilt and sought pardon. Whereupon, the petition was permitted to be withdrawn and defendant No. 7 was ordered to pay cost of Rs. 2,000/-.

(j) The plaintiff was kidnapped on 21.4.1999 and was made to sign and affix his thumb impressions on various documents, papers, registers etc. by defendant

No. 7 under coercion and threat to life and was thereafter released at around 7.36p.m., and he reached home around 8.30 p.m.;

(k) On the same day, namely, 21.04.1999, at about 11.30 p.m., the plaintiff had filed a complaint with the Siddapura Police Station, which was registered as Crime No. 109/1999;

(l) On the very next day i.e. 22.04.1999, the plaintiff had visited the office of the Sub-Registrar and made enquiries and came to know that the said disputed eight sale deeds had been presented for registration, but were kept pending to be referred to the District Registrar for Undervaluation. The plaintiff had narrated the happenings of 21.04.1999 and requested the Sub-Registrar not to register the sale deeds;

(m) Immediately thereafter on 28.04.1999, the plaintiff submitted a representation to the Sub-Registrar, with copies of the complaint filed by him with the Siddapura Police Station and also the court orders in OS 3409/1997 and OS 4498/1998. The Sub-Registrar has admittedly received this representation, but admits to not taking any action thereon. This clearly establishes the complicity of the Sub-Registrar in the present case;

(n) Despite the above representation and the orders of the court, in OS 3409/1997 and OS 4498/1998, the Sub-Registrar registered the said eight disputed sale deeds on 30.7.1999, after the purported purchasers paid the deficit stamp duty of Rs. 2,00,000/- per acre. The registration done in violation of the court orders are non-est and void and on this ground alone, the suit of the plaintiff deserves to be decreed;

(o) The plaintiff simultaneously also took steps to amend OS 3409/1997 and implead the purported purchasers under the said eight disputed sale deeds;

(p) The plaintiff had also filed a petition in WP 13363/2000 on 7.4.2000 seeking cancellation of the said eight disputed sale deeds, which was dismissed with liberty to agitate his grievances before the Civil Court.

(q) He had also approached the Revenue authorities protesting the grant of Conversion Order and change of Khata in favour of the Purchasers under the said eight disputed sale deeds;

(r) All the eight disputed sale deeds have been presented for registration by the respective purported purchasers and not by the plaintiff;

(s) In the said eight disputed sale deeds, the plaintiff has been identified by defendant No. 7 and not by M. Maheshwar, who was allegedly the witness;

(t) In the said eight disputed sale deeds, there is no endorsement by the executants against the handwritten alterations by insertion and there is no endorsement by the Sub-Registrar against the handwritten insertions, regarding payments allegedly made to the plaintiff, as required under the Registration Act and Rules. It is contended that in this regard, reference can be made to Rule 42 of the Karnataka Registration Rules, 1965, read with Section 20 of the Registration Act, 1908, Rule 81 of the Karnataka Registration Rules, 1965 and Rule 103 read with Sections 58C and 59thereon.

(u) The plaintiff has been made to sign and also affix his thumb impression on every page of the said eight disputed sale deeds, which is an unknown practice and not done under normal circumstances by literate persons. This establishes that the defendants wanted to be doubly sure that the plaintiff would not be able to resile from the fact of execution.

(v) The said eight disputed sale deeds, all dated 25.02.1999, were stereotyped, except for the names of the purported purchasers and the schedule to the respective deed. They make no mention of N. Jayaram''s suit, the injunction order in the said suit and the alleged agreements in favour of N. Jayaram and defendant No. 7;

(w) The demand drafts all dated 9.4.1999 referred to in the said eight disputed sale deeds are serially numbered and therefore appeared to have been obtained at the same time and by the same person. In the circumstances of the case, it may be inferred without any doubt that they were obtained by defendant No. 7, being the kingpin, who had engineered the entire episode. As per PW-4''s uncontroverted evidence, the demand drafts have not been encashed and are lying unclaimed in the Bank.

(x) Haring regard to the strained relationship between the plaintiff and the defendant No. 7 and in view of the first abduction, the events following the same and the plaintiff having argued before this Court on 19.02.1999 in WP 37551/1997, that contempt proceedings be initiated against defendant No. 7, it was impossible and improbable that any reasonable person would within a week therefrom i.e. on 25.02.1999, sign and execute the said eight disputed sale deeds;

(y) It may be noticed that the eight disputed sale deeds are all dated 25.02.1999 and the demand drafts purported to have been handed over to the plaintiff are all dated 9.4.1999 and they were purportedly presented for registration only on 21.4.1999;

(z) After pursuing the above remedies, the plaintiff had filed the present comprehensive suit on 17.4.2001 in pursuance of the orders passed by the trial court on 01.2.2001 on I.A. No. 11, as stated hereinabove;

(aa) In the present suit, defendant No. 7 had failed to appear and was placed ex-parte. He rematerialized only on 25.6.2012 i.e. after the death of the plaintiff on 1.8.2011 after he was fatally attacked outside the Anekal Court premises;

(bb) The written statement of defendant No. 7 is highly evasive and does not traverse into the pointed allegations made by the plaintiff in the Plaint. In any case, as defendant No. 7 has failed to adduce any evidence to rebut the evidence of the plaintiff, the case of the plaintiff stands proved beyond any doubt;

(cc) Although Defendants 1 and 2 submitted that they had no evidence, the Sub-Registrar (DW-5) appeared at the instance of Defendants 3 to 7 and gave evidence in the case. His evidence though does not advert to any of the plaint allegations pointedly. He admits that he received the plaintiffs representation dated 28.4.1999, but that he did not take any action thereon. All this establishes the complicity of the Sub-Registrar in the matter;

(dd) There are innumerable contradictions and lacunae in the evidence of D.W. -2 to D.W. -4, as stated hereinabove and the evidence of D.W. -2 and D.W. -3 is highly unreliable;

(ee) Further, D.W. -6, namely, Maheshwar M has been examined by the Defendants claiming that he was the other witness to the said eight disputed sale deeds apart from defendant No. 7. A perusal of the said eight disputed sale deeds clearly shows that there are no particulars of the witnesses mentioned therein. He claims that he acted as a witness on behalf of the plaintiff, whereas the evidence clearly shows that he was an old acquaintance of defendant No. 7 in the real estate business and had no connection with the plaintiff Moreover, as stated above, the plaintiff has been identified by defendant No. 7 in the eight disputed sale deeds;

(ff) Pertinently, defendant No. 7 does not state before the Court as to how he received his alleged due of Rs. 150/- per square foot by virtue of his alleged agreements with the plaintiff and N. Jayaram, as contended by him in N. Jayaram''s suit. This would also support the case of the plaintiff regarding the abduction and fabrication of documents after getting him to sign and affix thumb impressions under coercion and threat to life;

(gg) In the Notification dated 25.11.2002, Exhibit P-30, issued by the Government of Karnataka under Section 48(1) of the Land Acquisition Act, withdrawing from acquisition, a part of the suit schedule property bearing Survey No. 74 measuring 4 acres 1 gunta, the name of the plaintiff is shown, but represented by D. Noorulla, General Power of Attorney holder.

The Trial Court has failed to consider how and why the name of D. Noorulla appears as the General Power of Attorney holder. It is not the case of the defendants that the plaintiff executed any General Power of Attorney in their favour;

(hh) There can be no doubt that defendant No. 7''s interference is visible throughout the case right from the beginning commencing prior to the first abduction on 28.2.1997 and even as recently as in the year 2013 when he has represented defendant Nos. 3 (A. Khaleel) and 5 (D. Noorulla) as their General Power of attorney holder in WP 26130/2013 filed before this Court in respect of the suit schedule property;"

At this juncture, Shri. Naik also draws reference to I.A. No. 2/2015 filed by the appellants under Order XLI Rule 27 of the Code of Civil Procedure, 1908, whereunder the appellants have produced certified copies of the charge sheets filed by the Fraud Squad, Corps of Detectives, Bangalore, before the IV Additional Chief Metropolitan Magistrate, Bangalore in C.C. Nos. 12078, 12079, 12080 and 12083/2006 in a private complaint filed by the President, Amanath Co-operative Bank, wherein Mohammad Asadulla (Respondent No. 4 and D.W. -2) and A. Shafiulla (Respondent No. 10 and D.W. -3), have been charged for various offences under the Indian Penal Code, 1860, relating to fraud and financial wrongdoing in Amanath Co-operative Bank when they were employed therein. The offences also pertain to fraudulently opening of fictitious accounts and availing loans in the names of defendants 3 to 6 by mortgaging the suit schedule property. In view of the same, which is reflective of the conduct and character of D.W. -2 and D.W. -3, their evidence is highly reliable and cannot be considered.

From the above circumstances and considering the conduct of the plaintiff vis-a-vis defendant No. 7 and the other defendants including the Sub-Registrar, it is clear beyond doubt that the preponderance of probabilities and circumstantial evidence heavily support the plaintiffs case.

5. The following legal propositions are canvassed by Shri. Naik:

"(a) Preponderance of probabilities: From the facts of the case and the evidence on record, it is clear that the preponderance if probabilities lies heavily in favour of the plaintiff The belief regarding the existence of the fact must be founded on a balance of probabilities. The Court applies this test to find out whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. In this regard, the appellants rely on a judgment of the Supreme Court in Dr. N.G. Dastane Vs. Mrs. S. Dastane, .

(b) Circumstantial evidence: The issues in civil suits can be proved by circumstantial evidence. Under Evidence Act and as held by the Supreme Court, the evidence required to shift the burden need not necessarily be direct evidence i.e., oral or documentary evidence or admissions made by the opposite party; It may comprise circumstantial evidence or presumptions of law or fact. In this regard, reliance is placed on a judgment of the Supreme Court in Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay, .

(c) Burden of proof of the plaintiff stands discharged if the defendant fails to shift the onus back to the plaintiff:

In the present case, the plaintiff has adduced his evidence both oral and documentary, which prove beyond doubt his case regarding kidnapping/ abduction and obtaining of his signatures and thumb impressions under coercion and threat to his life. On the other hand, Zahir Ahmed has failed to adduce any evidence. The evidence of D.W. -2 to D.W. -6 do not rebut the plaintiffs evidence. Therefore, the plaintiffs case stands proved and the burden of proof cast on him stands discharged. The Supreme Court in this regard has held that where the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lying on the plaintiff shall be held to have been discharged. Reference can be drawn to a judgment of the Supreme Court in R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, . (d) Averments in the plaint are deemed to be admitted and proved if not denied by the defendant:

The Supreme Court has held that if a plea which was relevant for the purpose of maintaining a suit has not been specifically traversed, the court is entitled to draw an inference that the same has been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved. In this regard, please see the judgment of the Supreme Court in the case of M. Venkataramana Hebbar (D) by L.Rs. Vs. M. Rajagopal Hebbar and Others, . (e) Proof of Execution and Effect of Attestation: The Supreme Court has held that the act of attestation testifies or certifies the genuineness of the documents. Attestation and execution are different acts, one following the other. Execution includes delivery and signing of the documents in the presence of the witnesses and also the whole series of acts or formalities which are necessary to render the document valid. Attestation of sale deeds is imperative. It is a settled legal proposition that the document may be admissible, but the probative value of the entries contained therein may still be required to be examined in the facts and circumstances of a particular case. Further, the endorsement made in a sale deed must disclose that they are in accordance with the mandatory requirements of Section 59 of the Registration Act. The Sub-Registrar is also required to comply with the same and his attestation must be found at the requisite places in the document. If these mandatory requirements are not complied with, then the documents is void and no binding.

Execution of a document does not mean merely signing, but signing by way of ascent to the terms of the contract embodied in the document. Execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. It is a solemn act of the Executant who must own up the recitals in the instrument and there must be clear evidence that he put the signature after knowing the contents of the documents fully. Mere proof or admission that a person''s signature appears on a document cannot be itself amount to execution of a document. Registration does not dispense with the necessity of proof of execution when the same is denied. Thus, execution of document is not mere signing of it. In this regard, reliance is placed on the judgment of the Supreme Court in the case of D.R. Rathna Murthy Vs. Ramappa, and also the judgments of this Court in Kenchawwa Vs. Amagonda, and Sri. N.M. Ramachandraiah and Smt. M.A. Vinoda Vs. The State of Karnataka, Department of Revenue, .

(f) Filing of ''B'' Report is not a relevant fact to be considered in a civil suit:

The acquittal of an accused for an offence in a criminal case is not relevant or binding on the civil court. In the present case, the trial court has proceeded merely on the basis of the ''B'' Report filed in Crime No. 109/1999 and has disregarded all the material evidence placed by the plaintiff on record. The ''B'' Report only states that the Police could not investigate further for want of more material particulars. There is no finding regarding the incident in question. Needless to say, filing of ''B'' Report is at a far more preliminary stage as compared to an acquittal which comes about after trial. Therefore, if an acquittal is not relevant or binding on the civil court, ''B'' Report cannot be looked into or considered. In this regard, reliance is placed on the judgment of the High Court of Andhra Pradesh in Sardar Prahlad Singh Vs. Syed Ali Musa Raza and Others, . (g) Acts done in violation of an injunction are non-est and void:

As on 21.4.1999, when the said eight disputed sale deeds were presented for registration and even as on 30.07.1999, when they were registered, the order of temporary injunction passed in OS 3409/1997 filed by the plaintiff, restraining the Sub-Registrar from registering any documents in respect of the suit schedule property, was in force. Similarly, the temporary injunction granted in OS 4498/1998 was also in force. The Sub-Registrar proceeded to register the sale deeds despite admittedly having received the plaintiffs representation and despite being aware of the orders of the Court. The Supreme Court has held that where a transaction is in clear violation of an order of injunction by a Court, the consideration or object of such a transaction is unlawful and every agreement/ Sale Deeds executed with such an object or consideration which is unlawful, is void. A sale deed, which is executed in the teeth of an order of injunction is unlawful. In this regard, reliance is placed on the judgments of the Supreme Court in Surjit and others Vs. Harbans Singh and others etc. etc., ; Vidur Impex and Traders Pvt. Ltd. and Others Vs. Tosh Apartments Pvt. Ltd. and Others, and Jehal Tanti and Others Vs. Nageshwar Singh (dead) through L.Rs., . (h) Registration of transfer of land notified for acquisition void as per the Karnataka Land (Restriction on Transfer) Act, 1991:

The suit schedule property had been notified for acquisition under the provisions of the BDA Act. As such, transfer and registration of such land is prohibited under the provisions of the Karnataka Land (Restriction on Transfer) Act, 1991. Sections 3, 4 and 8 of the said Act are couched in negative terms and are mandatory in nature. Section 8 imposes a bar on the Sub-Registrar from registering such transfers and Section 9 provides for penal consequences for contravention of the provisions of the Act. This Court has held that as per Section 3 of the Act, transfer of such land is prohibited and therefore, registration of any such conveyance is superfluous and void. In this regard, reliance is placed on the judgment of this Court in Shantinagar House Building Co-operative Society Limited Vs. State of Karnataka and Others--> .

In this regard, reference is also made to Section 108 of the Companies Act, 1956, regarding restriction on transfer of shares, which is couched in similar terms as the above provisions of the Karnataka Land (Restriction and Transfer)

Act, 1991. In the context of Section 108, the Supreme Court has held that negative language is worded to emphasize the insistence of compliance with the provisions of the Act and depict the mandatory character of the provisions. It has been held that if a particular act is prohibited under a Statute, the same becomes unenforceable and no Court will end its assistance to give effect to such act. Reliance is placed on the judgment of the Supreme Court in Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, .

In the light of the above submissions, it is contended that the impugned judgment is bad in law and on facts of the case and is liable to be set aside by this Court. The suit of the plaintiff deserves to be decreed as prayed for and the said eight disputed sale deeds are liable to be cancelled, as sought for."

6. The learned Counsel for the respondents 3 and 5 to 11 contends that the trial court had overlooked a significant circumstance that there was a serious doubt about the identity of the legal representatives of the deceased plaintiff in that, defendants 3 to 6 and their legal representatives had taken up a specific contention that the persons who had come on record as the legal representatives of the deceased plaintiff were not his true legal representatives. And that the trial court had not given any finding on this aspect.

It is pointed out that in the said sale deed, the deceased plaintiff is shown as the son of M.L. Gopala Shetty born to his mother, Smt. M.G. Bhagyalakshmi, in wedlock with M.L. Gopala Shetty. The fact that the deceased plaintiff was born to M.G. Bhagyalakshmi in wedlock with M.L. Gopala Shetty is not disputed and is admitted.

It is then pointed out that P.W. 2 had produced his passport issued by the competent Passport Authority in his name and the said document is produced as Exhibit P.48. Admittedly, in the said document, the name of the mother of the plaintiff 1(a) and appellant 1(a) herein is shown as Rukamma and not M.G. Bhagyalakshmi, but the name of the father is shown as M.L. Gopala Swamy. No explanation is forthcoming regarding the fact that the name of the mother of P.W. 2, who claims to be one of the legal heir of deceased plaintiff, is shown as Rukamma and not M.G. Bhagyalakshmi in Exhibit P.48 except stating that by mistake the said name is mentioned.

Since a serious doubt is cast on the fact that whether the persons who had come on record are the legal representatives of the deceased plaintiff, the persons who claim to be the legal representatives of the deceased plaintiff ought to have produced cogent evidence to prove that they are the legal representatives of the deceased plaintiff

It is also pointed out that P.W. 3, who claims to be the son of M.G. Jagadish, who is the attesting witness to Exhibit P.1 and a legal representative of the plaintiff, admitted that Exhibit P.1 is signed by M.G. Jagadish, who is dead. Further, it was stated in the cross-examination that he was in possession of the said death certificate and the same would be produced before the court. But P.W. 3 had not produced the said death certificate. Hence, it could not be said that there was proof that P.W. 3 was a legal representative of the plaintiff it is also contended that the other persons, who claimed to be the legal representatives of the deceased plaintiff had not stepped into the witness box to give evidence and prove the said fact.

Therefore, it is contended that this court has to consider this aspect and come to a conclusion that the persons who had come on record as the legal representatives of the deceased plaintiff were genuinely his legal representatives.

It is contended that the institution of the suit by the plaintiff is hit by Section 11 of the CPC and it is barred by res judicata since permission is granted by the court on the application in IA No. 14, to initiate a fresh suit on the same cause of action, subject to the payment of cost, which was never deposited and more significantly, the present suit was filed even before an order was passed on IA No. 14. It is contended that the suit is liable to be dismissed on the said ground alone.

It is further contended that in so far as issue No. 1 was concerned, it arises out of an allegation made by the plaintiff against defendant No. 7 and no allegations were made against defendants 3 to 6. Further, defendants 3 to 6 are not referred to in the said allegations. Hence, the same did not concern these defendants.

In so far as issues No. 2 and 3 are concerned, the burden to prove the same was on the plaintiff.

It is contended that as found at Paras 21 and 22 of the plaint, it is the case of the plaintiff that it was defendant No. 7, who had played fraud on the plaintiff as stated in Paragraphs 8, 10 and 12 of the plaint and there were no specific allegations against defendants 3 to 6 that they had played fraud and as such, there were no allegations against them. In view of the said averments made in the plaint, this court could safely conclude that no coercion or fraud is played by defendants 3 to 6.

It is contended that it was incumbent on the plaintiff to prove that the sale deeds in question were got executed by coercion, as claimed by him - there were admittedly no witnesses to prove the allegations in that regard.

It is contended that apart from the fact that there is no evidence, a mere reading of the allegations would indicate that the case of the plaintiff is stranger than fiction.

Admittedly, an investigation was made by the jurisdictional Police in respect of the complaint in respect of the alleged kidnapping in Crime No. 109/1999; thereafter, the jurisdictional police had filed a ''B'' Report stating that no such offence had taken place, as alleged by the plaintiff The plaintiff had not challenged the said ''B'' Report and as such, the said ''B'' Report has become final and conclusive.

It is pointed out that the plaintiff had not pursued the criminal complaint in respect of a serious incident occurring, for the second time and said to have been committed by the same Zaheer Ahmed, defendant No. 7 and his accomplices.

No explanation is forthcoming in the pleadings in the suit by the plaintiff as to why the ''B'' Report was not challenged. Hence, the plaintiff has miserably failed to prove that the eight sale deeds were obtained by coercion.

It is contended that the plaintiff had failed to prove that the eight registered sale deeds executed in favour of defendants 3 to 6 are executed under coercion. It is however proved that the defendants have purchased their respective portions in the suit schedule property and that they are put in possession of their respective portion in the schedule property by the deceased plaintiff.

The plaintiff could not seek declaration for cancellation of the eight registered sale deeds, without seeking for possession of the property. It is proved that they are and continue to be in possession of their respective portions in the schedule property.

Since the plaintiff had not sought for possession of the schedule property from the defendants, merely seeking the relief of cancellation of eight registered sale deeds is not maintainable and the suit is liable to be dismissed on this ground.

It is contended that insofar as issue No. 4 is concerned, the plaintiff had not produced any documents in support of the said allegations, except producing a letter dated 28.4.1999 purported to have been written to the defendant No. 2 as per Exhibit P.21.

According to the plaintiff, he had given a complaint to the jurisdictional Police on 21.4.1999 as per Exhibit P.19, but no evidence was lead by the plaintiff in that regard.

In so far as issue No. 5 is concerned, it is contended that it is proved that the demand drafts for Rs. 1,00,000/- mentioned in the eight sale deeds were purchased in the name of the deceased plaintiff and further, D.W. 6, one of the attesting witness, having also spoken to the fact that cash of Rs. 80,000/- was paid before him along with the demand drafts of Rs. 1,00,000/- in respect of each of the eight sale deeds to the deceased plaintiff, it could be concluded that the sale consideration had passed to the deceased plaintiff. Further, if the demand drafts are not encashed by the deceased plaintiff for reasons best known to him, it cannot be construed that no sale consideration had passed.

In so far as issue No. 6 is concerned, the burden of proof was heavy on the plaintiff to establish the allegations of fraud. However, the pleas of fraud are vague and are made only against the defendant No. 7 and not against defendants 3 to 6.

It is also pointed out that the trial court, by its well reasoned order, particularly at paragraphs 39, 41, 44, 48, 49, 50, 52 has held against the plaintiff and hence, the appeal ought to be dismissed.

In so far as issue No. 7 was concerned, it is contended that the defendants 3 to 6, in para 13, had emphatically asserted that it is false that the cause of action arose on 21.4.1999 or on 30.7.1999. As far as 21.4.1999 is concerned, since the plaintiff had failed to prove that the eight sale deeds dated 21.4.1999 were obtained by coercion, the said cause of action did not survive.

It is asserted that in so far as the contention that the preponderance of probabilities lies heavily in favour of the plaintiff and the reliance placed on the decisions is concerned, it is pointed out that the case in Dr. N.G. Dastane Vs. Mrs. S. Dastane, was decided on entirely different facts in a matrimonial petition and had no application to the facts of the present case.

The further contention that issues arising in civil suits can be proved by circumstantial evidence, is concerned, reliance is placed on the judgment of the Supreme Court in Kundan Lal Rallaram Vs. Custodian, Evacuee Property, Bombay, , which did not also apply to the facts of this case.

It is thus generally denied that all the decisions cited on behalf of the plaintiff did not apply to the facts of this case.

It is contended that there could be no quarrel with the law laid down in the cases cited, to prove the legal propositions, but those propositions apply only to given situations, where facts are established during the trial. But not as in this case, where the trial court has with sound reasoning discredited the false case set up by the appellants on direct or circumstantial evidence. Therefore, it is contended that all the cases cited by the appellants in support of their untenable case had no application whatsoever to the facts in this case.

It is contended that the material brought on record must be germane and relevant to the facts in issue. In grave cases of forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. The trial court was satisfied on the facts established before it that inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial, from which to infer the other fact, which it ought to establish. In some cases the other facts can be inferred, as if they had been actually observed; In other cases, the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial, from which the inferences could be made, the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established, there must be some material facts or circumstances on record, from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt but, the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straight Jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged form facts and circumstances in a given case.

It is contended that in the totality of the above circumstances and having regard to the fact that the trial court has examined all aspects of the matter and minutely looked into various facets of the case set up by the plaintiff and by the defendants, including the evidence adduced at the trial, the impugned order dated 22.02.2014 passed by the trial court, deserves, to be upheld and that the appeal be dismissed.

7. In the light of the above contentions and on a perusal of the record, it is seen that it is not in dispute that the plaintiff had acquired the suit schedule property under a Sale deed dated 29.7.1970. The plaintiff has urged that the sale transactions under challenge had been engineered as early as in the year 1997 when the plaintiff had proposed to develop the suit schedule property, to avail the benefit of a Scheme floated by the BDA, in respect of lands notified for acquisition and where there was no further action taken in furtherance thereof and the suit schedule lands falling in that category. The plaintiff had alleged that when the plaintiff went to Avalahalli, on 28.2.1997, at the instance of Zaheer Ahmed, defendant No. 7, who had invited him there to meet prospective financiers - for the proposed project, he is said to have been illegally detained there by the said defendant and his associates and made to sign several documents and papers under coercion and threat to his life. He is said to have been released from such illegal custody only on 1.3.1997. It is seen that the plaintiff had, immediately upon his release, had lodged a complaint with the Siddapura Police Station (Crime No. 68/1997), which is later transferred to Thalaghattapura Police Station and registered as Crime No. 47/1997. The copy of the FIR is produced and marked as Exhibit P-8.

Apart from lodging the complaint, the plaintiff is also seen to have filed a civil suit in OS 3409/1997, on the file of the City Civil Court, Bangalore, against the Sub-Registrar, Bangalore South Taluk, and Zaheer Ahmed as on 20.4.1997, for an injunction restraining the Sub-Registrar from registering any documents presented by Zahir Ahmed in respect of the suit property. There was an order of temporary injunction, restraining the Sub-Registrar from registering any document in terms of the prayer, which had been duly communicated to the Sub-Registrar. (Exhibits P-12 and P-13). That order incidentally, had continued to be in force as on 21.4.1999. (Exhibit P-23)

The possible misuse of the papers and documents, on which signatures of the plaintiff had been obtained by coercion, is shown to be strongly probable by the following circumstances.

The plaintiff had learnt that a writ petition in WP 37551/1997 had been filed in his name against the BDA, before this court in its writ jurisdiction, challenging the acquisition proceedings in respect of the suit property and that there was an order of status quo, granted by this court. He had immediately complained to the Registrar General of this court that the petition was not filed by him nor authorized to be filed by him. This was on 1.6.1998. An enquiry having ensued, eventually, defendant No. 7, Zaheer Ahmed had confessed to having filed the petition, impersonating the plaintiff This court had accepted the apology tendered on payment of penalty of Rs. 2,000/- and the said petition was dismissed. With regard to the above episode, the trial court has expressed its opinion, at paragraph 42 of its judgment that the affidavit filed by defendant No. 7, before this court, admitting his guilt and seeking pardon as not being a significant circumstance, thus:

"....It is important to note here that the disputed signatures found on vakalath were not sent for examination by handwriting expert and Registrar (Vigilance) himself has compared signatures to record finding which of course not challenged by Mr. Zahir Ahmed but as per Ex P.16 filed affidavit tendering his unconditional apology having regard to the report of the Registrar Vigilance, cannot be a conclusive proof as to the events stated in the said matter if they are looked at the angle of real estate business." It is also seen that one N. Jayaram had filed a civil suit in OS 4498/1998 against the plaintiff and Defendant No. 7, as on 9.6.1998, restraining them from alienating the suit properties on the footing that an agreement to sell the same had been executed by defendant No. 7 as the General Power of Attorney holder of the plaintiff it was claimed that the plaintiff had received Rs. 30 lakh as advance consideration. The court had directed the parties to maintain status quo in respect of the suit properties.

And significantly the original sale deed of the plaintiff, which was found missing from the file in the suit that he had filed in OS 4279/1989 and in respect of which, an enquiry had been ordered, had mysteriously surfaced in the suit filed by Jayaram.

It is also noticed that Zaheer Ahmed had readily conceded the case of Jayaram in the above suit in OS 4498/1998. The relevant statements made in response to the application for temporary injunction in that suit, are extracted herein above in the narration of the case of the plaintiff

The said suit having been dismissed for non - prosecution and the said Jayaram having disappeared from the scene, though he claimed to have paid a substantial sum of Rs. 30 lakh to the plaintiff, is certainly a pointer to a unholy nexus between defendant No. 7 and the said Jayaram.

The trial court however, has again glossed over the circumstance that there was material on record of the plaintiff having complained of the original sale deed having been found missing from the file of the suit filed by him and the same reappearing in the suit filed by Jayaram at Paragraph 42 of the judgment thus:

"It is therefore, one Mr. N. Jayaram has filed O.S. 4498/98 on the file of Cch-13 against plaintiff M.G. Shanthkumar for injunction in respect of the property, which is the subject matter of the sale deed Ex. P-2 marked in O.S. 4279/89 filed by plaintiff against B.D.A. Special Addl. L.A.O and State of Karnataka which could be seen from Ex. P-5 certified copy of the judgment and according to P.W. 1, Ex. P-2 sale deed marked in O.S. 4279/89 was missing. When he requested for return of the said document from court, an endorsement issued about missing of Ex. P-2 as per Ex. P-7 and he has filed complaint with Registrar, Civil Court as per Ex. P-9 and he alleged in Ex. P-10 complaint made to Principal Civil Judge, City Civil Court, Bangalore that N. Jayaram - plaintiff in O.S. No. 4498/98 has committed offence of theft of Ex. P-2 from the file of 4279/89 and the offence of forgery of his signature on some documents in O.S. 4498/98 which require necessary action and in the said matter, as per Ex. P-11 a notice was issued to plaintiff to appear before 12th Addl. City Civil and Sessions Judge in person to submit his say in the enquiry conducted on 30.12.1998 at 2.00p.m." Apart from noticing the circumstance, the trial court has not found anything amiss.

Hence, the illegal detention and documents having been obtained by Zaheer Ahmed and his associates, from the plaintiff under duress is shown as established and the documents being misused, as seen from the above proceedings and the possible collusion between Jayaram and Zaheer Ahmed, is writ large in the sequence of events that have unfolded thereafter. The pleadings and evidence in this regard by the plaintiff is not challenged in his cross examination. Zaheer Ahmed who had been set ex parte in the suit, entered appearance almost a year after the death of the plaintiff, during the pendency of the suit. The plaintiff was brutally murdered outside the court premises, of Anekal town by unknown assailants on 1.8.2011, in full public view. The said defendant had sought to enter appearance on 25.6.2012. He had then filed his written statement and had contended that the allegations of illegal detention in the year 1997 were false. And though he had filed an affidavit in evidence again to vaguely meet the plaintiffs case, but never offered himself for cross-examination and again withdrew from the scene. He has not participated in this appeal.

In so far as the case of the plaintiff that he was abducted while travelling in an auto rickshaw near Ashoka Pillar in Jayanagar and that Defendant No. 7 and his associates had then obtained his signatures and thumb impressions on various documents, as on 21.4.1999 and had been set free at about 7-30 PM and that he had lodged a complaint with the Siddapur Police Station in that regard is evidenced by the Complaint, Exhibit P-19 and the FIR, Exhibit P- 20, filed on the same day at 11.30 P.M.

The plaintiff having approached the Sub-Registrar on 22.4.1999, he had found that the disputed sale deeds had been presented on 21.4.1999 and that the same were kept pending to be referred to the District Registrar for Undervaluation. The plaintiff claimed to have requested the Sub-Registrar not to register the sale deeds, in view of the manner in which his signatures were said to have been obtained. A written representation having been made on 28.4.1999, producing a copy of the criminal complaint of the incident aforesaid and also enclosing a copy of the injunction order granted in respect of the suit properties, is on record as Exhibit P-21. This has been admitted by the Sub-Registrar concerned, who had appeared as a witness, D.W. -5.

Despite the representation and the Orders of the civil court having been brought to the attention of the Sub-Registrar, the sale deeds had been registered.

It is seen that the eight disputed sale deeds have been presented for registration by the respective purported purchasers and not the plaintiff The plaintiff has been purportedly identified by Zahir Ahmed and not by M. Maheshwar as claimed. There is no endorsement by the Executants against the handwritten interlineations and there is also no endorsement by the Sub-Registrar against the hand written insertions regarding payments said to have been made to the plaintiff in this regard, Rule 42 of the Karnataka Registration Rules, 1965, read with Section 20 of the Registration Act, 1908, and Rules 81, 103 read with Sections 58C and 59 are relevant.

It was also unusual to have the plaintiff affix his signature and his thumb impression on every single page of the sale deeds.

There is no reference in the sale deeds to the existence or otherwise of the alleged sale agreement with N. Jayaram executed by Zaheer Ahmed and the injunction order in the suits that were pending.

Though the sale deeds were purportedly executed in favour of different individuals, the demand drafts in payment towards the sale consideration, are all obtained at the same time and are seen to be numbered serially. Significantly, the said drafts had never been encashed as stated by the Manager of the bank, that had issued those demand drafts, who was examined as PW-4.

Having regard to the allegations made against Zahir Ahmed in the year 1997 and the succeeding events and the fact that there was a strained relationship between the plaintiff and Zahir Ahmed even as late as 19.2.1999, when the plaintiff was before this court in WP 37551/1997, urging that contempt proceedings be initiated against the said person, it would be unnatural to expect that the plaintiff would cordially join Zahir Ahmed in executing eight sale deeds, on 25.2.1999.

The trial court, in its judgment, having addressed the additional issues 1 and 2 and issue No. 7 in favour of the plaintiff, has then addressed Issues No. 1 to 6 together and having regard to the findings thereon, has held that the plaintiff was not entitled to the relief prayed for and has dismissed the suit, thereby answering issues No. 8 and 9.

Since the trial court has considered issues No. 1 to 6 together, it has become necessary to address the reasoning of the court below with closer attention, in order not to overlook details, which would necessarily overlap and possibly justify the findings.

It is seen that the trial court has at once commenced to address the case of the plaintiff with reference to alleged abduction in the year 1999, as seen from paragraph 27 of the impugned judgment. The earlier instances involving Zaheer Ahmed and N. Jayaram, referred to hereinabove, which clearly discloses that all was not well with the transactions, is not referred to. The said events were relevant in comprehending the conduct of Zaheer Ahmed subsequently and the negative picture that emerges in him having kept a low profile in the suit till after the demise of the plaintiff and thereafter having entered appearance only to file his written statement, without any serious objection to allegations of crime against him, preferring to fall back on the police report, which stated that the police had no leads to proceed with further investigation and that the allegations could not be readily accepted -and after having filed an equally laconic affidavit by way of evidence, not tendering himself for cross-examination, and withdrawing into the shadows.

The court below has held that having regard to the definition of "Coercion", "Undue influence" and "fraud" as found in the Indian Contract Act, 1872, and having regard to the serious allegations of criminal acts made by the plaintiff, he was required to prove the allegations beyond all reasonable doubt.

In this regard, the trial court has observed that the plaintiff had not chosen to lodge any complaint against the concerned Sub-Registrar or other officials, who are said to have abetted the commission of fraud in having got executed eight sale deeds on papers, on which the plaintiffs signatures and thumb impressions had been obtained by defendant No. 7 and his associates by coercion after having abducted him. It is also observed by the trial court that the plaintiff has not lodged any complaint against defendants No. 3 to 6, who are the purchasers under the sale deeds.

The trial court has then proceeded to hold that the evidence of PW-1, the plaintiff and PW4, the manager of State Bank of Travancore, from which bank, the demand drafts which were said to have been tendered as the sale consideration for the sale deeds, and which had remained outstanding without being encashed and the evidence D.W. -5, who was the Sub-Registrar at the relevant point of time and D.W. -6, an attesting witness to the sale deeds, was of Vital importance'' to decide the issues, coupled with the documentary and circumstantial evidence.

It is noticed by the trial court that D.W. -6 was an associate of Zaheer Ahmed and that he was also familiar with defendants 3 to 6. There is a finding that the said witness had identified the signatures and thumb impression of the plaintiff and that it was very relevant.

DW-5, the erstwhile Sub-Registrar had worked in that capacity in Bangalore South Taluk from 1997 to 2000 and had retired as a Senior Sub-Registrar in the year 2006 and he was examined as a witness on 16.2.2013 and further cross-examined on 21.2.2013. The said witness has identified his signatures on the disputed sale deeds. Though he had stated that he did not recall, the plaintiff having made any oral requests not to register the sale deeds, in the light of the events that he had alleged, the witness did acknowledge the written representation in that regard submitted later and even admitted that he had ignored it. The witness had also admitted that there were interlineations in the sale deeds, which were indeed required to be attested by the executants, but which were not. It was elicited in his evidence that one Boraiah, a group ''D'' employee would normally obtain signatures and thumb impressions on documents to be registered as well as in the thumb impression register.

In addressing the evidence of PW-1, after briefly reiterating the evidence tendered by him, the trial court has held that the FIR lodged by the plaintiff in the year 1997 as regards his illegal detention and the alleged documents, on which his signatures had been obtained etc., was not of much significance as no further documents were before the court as to the final result of the said FIR.

In so far as the FIR in respect of the abduction in the year 1999, the trial court has observed that the plaintiff had not chosen to file the ''B'' Final Report, that was filed by the police in regard to the same. And that the same had been produced by the defendants. And further that the plaintiff had allowed the same to attain finality. The trial court had then observed that the plaintiff was a law graduate from the Bombay University and a seasoned real estate business man and that it was unusual for him to have allowed a serious case to flicker out.

It is also observed that it was not conceivable that a well educated, business man would tamely affix his signatures and thumb impressions to innumerable documents without any protest. It is also presumed by the trial court that the plaintiff was brought blind folded to the parking lot of the BDA complex, where the Sub-Registrar''s office at Koramangala was situated in the second floor of the complex, in broad daylight, and where Boraiah, the Attender in the Sub-Registrar''s Office had brought the thumb impression register to secure the plaintiffs thumb impression and further that the plaintiff could have raised a hue and cry.

The trial court has held that it was significant that the plaintiff had not filed any complaint against the Sub-Registrar and Boraiah in so far as the said individuals had played a major part in the execution and registration of the disputed sale deeds. The trial court has also held that the plaintiff had also not filed any complaint against defendants 3 to 6, who were the purchasers of the property.

The trial court has reproduced the ''B'' Final Report, filed in respect of the criminal case registered as Crime No. 109/99, which was instituted at the instance of the plaintiff on his complaint of his abduction in the year 1999, in its entirety (from page 65 to 82 of the judgment). And has opined that from the said report and having regard to the background of the plaintiff, it was difficult to digest that the plaintiff would have tamely allowed the matter to rest, if the allegations were indeed true.

In relation to the incident as claimed by the plaintiff, the trial court has taken a dim view of the probability of the incident having occurred at all.

The trial court has placed total reliance on the ''B'' Final Report filed by the police and has echoed the opinion expressed therein that the plaintiff ought to have furnished better particulars of the places at which he was confined. The colour and the kind of vehicle he was carried in; the vehicle registration numbers etc.

It is also opined by the court below that the plaintiff has not explained how he could be taken to a busy place like the BDA Complex in Koramangala, blind folded, and how he could tamely affix his signatures and thumb impressions on documents and the thumb impression register brought to the parking lot by Boraiah, the Attender at the Sub-Registrar''s office. This opinion is expressed when the plaintiff has not stated that he was brought to the BDA complex and his thumb impressions were obtained there. (See Paragraph-12 of the plaint). He had also not stated that Boraiah had brought the register. This is possibly expressed by the court on the basis of the surmise expressed by the police in the ''B'' Report The plaintiff had not named Boraiah. Hence, the trial court having further opined that the plaintiff not having filed a complaint against the Sub-Registrar and Boraiah as being fatal to his case cannot be readily accepted.

In so far as the evidence that is accepted by the trial court as regards the due execution and registration of the sale deed is concerned, the evidence of the Sub-Registrar, D.W. 5 could hardly be held to be conclusive. He had retired from service several years ago. He was speaking of a routine registration of documents that had taken place long ago and it would have been one amongst dozens of transactions on the same day. Though he would certainly be able to identify his signature, which he had, and assert as to what was apparent from the document. He had candidly stated he did not recollect the plaintiffs oral complaint. But he has naturally admitted the written representation and that he had not chosen to act on it as it was part of the record. But there was no explanation for not having heeded the orders of temporary injunction that were in force in earlier matters.

The admitted circumstance that the attender would normally obtain signatures and thumb impressions and the Sub-Registrar''s awareness of the presence of the executants and their identity being ascertained fleetingly can very well be visualized. As is the case in any busy Sub-Registrar''s office. It would be stretching one''s imagination to attribute such a sense of recall to a Sub-Registrar to recount the presence or absence of the executants - in respect of the transaction that had taken place on the previous day of the plaintiffs oral complaint on 22.4.1999 or seven days prior to his written complaint on 28.4.1999.

The further finding on the due execution and registration of the disputed sale deeds on the strength of the evidence of D.W. 6 -who was admittedly an associate of Zaheer Ahmed can hardly be held to be credible. This witness was said to have identified the signature of the plaintiff - when it was Zaheer Ahmed who is found to have done so. The trial court was not justified in accepting the evidence of this witness in disbelieving the case of the plaintiff.

The trial court has also suspected that the plaintiff as well as the defendants were apparently not revealing their true affairs, especially their financial details for obvious reasons. And the trial court has even suspected that there may have been other transactions in which the plaintiff and defendants 3 to 7 were engaged, which has not been brought to light. (paragraph 40 of the judgment)

It is also observed by the trial court that the plaintiff owned several properties apart from the suit properties and even in respect of those properties, the plaintiff had made similar allegations of coercion and fraud, as for instance, in matters pending before the Anekal court, where the plaintiff was murdered. And further that in respect of one property in particular, which was subject matter of acquisition proceedings namely, land in Survey No. 74 of Nayanappashettypalya, Begur Hobli, Bangalore South Taluk, which was said to belong to the plaintiff, the State had chosen to withdraw from the acquisition proceedings and the same was duly notified in the Gazette (Exhibit P-30) and it is found therein that one D. Noorulla, was shown as the Power of Attorney holder of the plaintiff The trial court has thus formed a strong opinion that the plaintiff and the defendants 3 to 7 were closely associated and possibly had fallen out leading to the spate of cases, including the present one on hand. But has also opined that it was possible the plaintiff had equally quickly forgiven the past and had actually willingly executed the sale deeds - as in the opinion of the trial court, the plaintiff seemed to be as shady as his alleged torments (see paragraph 49 at page 103 of the Judgment).

The said presumptions based on notions that the parties were engaged in real estate business and irregularities in transactions would be common and hence the suit of the plaintiff should be viewed as an attempt to thwart genuine sale deeds can hardly be justified.

It is indeed a naive approach of the trial court in not having noticed the want of bona fides on the part of Zaheer Ahmed, defendant No. 7, every step of the way. And if it was the opinion of the trial court that the parties involved were of the same feather -how could the transactions be held to be genuine when the actions of Zaheer Ahmed were exposed even before this court.

Incidentally, the counsel for the appellant has filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, seeking to produce additional documents, namely, the certified copies of charge sheets filed in four pending criminal cases in CC 12078, CC 12079, CC 12080 and CC 12083 of 2006, pending on the file of the Court of the IV Additional Chief Metropolitan Magistrate, Bangalore, to assert that the same were filed on the basis of a complaint by the President, Amanath Cooperative Bank, Shivajinagar, Bangalore, against Mohammed Asadulla, defendant No. 4(a) and Shafiulla, defendant No. 6(d) for offences punishable under sections 409, 465, 468, 471, 477A, 201 read with Sections 120-B and 34 of the Indian Penal Code, 1860, pertaining to acts of fraud and other offences including the offences pertaining to the suit properties.

Though the applications are not found relevant at this stage -as there is no conviction of those accused in the said pending cases - it is only demonstrated that there are possible criminal antecedents on the part of the purchasers.

For the above reasons, this court finds that the court below has overlooked certain glaring circumstances and has even brushed aside circumstances even after noticing the same - as pointed out herein above.

The preponderance of probabilities that lie heavily in favour of the plaintiff, would have to necessarily be considered. This includes the conduct of the plaintiff vis-a-vis the conduct of the defendants, the events leading up to the fateful day i.e. 21.4.1999 and various other circumstances as set out herein.

The only persons who could give evidence on the incident that occurred on 21.04.1999 are the plaintiff and defendant No. 7. The plaintiff examined himself as PW-1 and tendered himself for cross-examination. He was not cross-examined by defendant No. 7''s Counsel. He has deposed regarding the abductions both on 28.02.1997 and on 21.4.1999 and regarding all the events and happenings on the fateful day as also regarding the steps he has taken immediately upon happening of the incident on 21.04.1999 and having produced all documents in this regard. Nothing contrary to his case has been elicited in his cross-examination.

On the other hand, defendant No. 7, even though had filed his evidentiary affidavit as D.W. -1, did not tender himself for cross-examination and consequently, his evidence was closed. Therefore, his evidence cannot be considered.

None of the other defendants have adduced any evidence or produced any material to controvert the evidence of the plaintiff regarding the incidence of his abduction on 21.04.1999 or regarding any other material allegations made by him.

The plaintiff, by adducing evidence as above and producing materials in support of his case, has discharged the burden of proof cast on him. Thereupon, the onus shifted to the defendants who have miserably failed to discharge the burden of proof by leading rebuttal evidence to controvert the plaintiffs case. Most importantly, defendant No. 7 had failed to adduce any evidence. Therefore, adverse inference was to be drawn under Section 114(g) of the Evidence Act.

The ''B'' report filed in Crime No. 109/1999 was of no avail to disprove the plaintiffs evidence regarding the abduction and other events. The ''B'' Report only stated that the Police could not investigate further for want of more material particulars. Most importantly, there is no finding regarding the event itself. The trial Court had thus erred in attaching undue significance to the above ''B'' Report.

The sequence of events pleaded and the circumstances, coupled with the conduct of the parties, would establish the plaintiffs case beyond reasonable doubt and would show that the preponderance of probabilities lie heavily in his favour.

Consequently, the appeal is allowed. The judgment of the court below is set aside. The suit is decreed as prayed for.

A copy of this decree shall be sent to the office of the second defendant, who shall note on the copies of the said instruments contained in his books, the fact of their cancellation.

The application in IA 2/2014 filed by M/s. Amanath Cooperative Bank Limited, to come on record, is rejected. It is neither a proper nor a necessary party to the suit.