

(2007) 10 KAR CK 0014

In the Karnataka High Court

Case No : Regular First Appeal No. 1208 of 2007

Smt. Vasanthi and W/o P. Karunakar Alva

APPELLANT

Vs

Smt. Jayashree V. Shetty

RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:

Contract Act, 1872 — Section 200, 208, 226

Citation : (2008) 4 KarLJ 537

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : M.J. Alva and Nagaraja Hegde, for the Appellant; K. Chandranath Ariga, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—R.F.A. No. 1209/2007 is by the defendants in O.S. No. 464/1995 against the judgment and decree dated 26.2.2007 R.F.A. No. 1208/2007 is by the plaintiff in O.S. No. 138/1995 against the judgment and decree dated 26.2.2007.

2. Parties will be referred to as per their ranking in O.S. No. 4646/1995.

3. Defendant No. 1 in the said suit is the plaintiff in the other suit and the plaintiff in this suit is the defendant in the other suit. In both the suits, except the defendant No. 2, plaintiff and defendant No. 1 are the common and the subject matter is also same the trial court considering both the suits has passed a common judgment.

4. O.S. No. 4646/1995 is for declaration, declaring that the lease agreement dated 1.2.1995 in respect of ABCD portion marked in the rough sketch produced along with the plaint executed by second defendant in favour of first defendant by virtue of the purported General Power of Attorney dated 17.7.1985 executed by the plaintiff as null and void.

5. The plaintiff's case is that, she is a Bank employee and absolute owner of property bearing No. 3155/B, BDA Division No. 67 situated in IT Stage, HAL, Bangalore. The said property was allotted by the BDA under allotment letter dated 9.7.1935. On 17.7.1983, a lease-cum-sale agreement was executed by BDA. On 18.7.1985, possession certificate was issued. On 22.7.1986, BDA permitted the plaintiff to mortgage the suit schedule property including "A" schedule property, khata was changed in the name of the plaintiff, a special notice was issued by the Bangalore City Corporation on 9.7.1986. Plaintiff has paid the taxes from 1986 to 1994. Plaintiff's name is encumbered in the encumbrance register and plaintiff has been in lawful possession of "A" schedule property.

6. Second defendant is the husband of first defendant and he is a distant relative of the plaintiff, and was staying with the plaintiff's family in Mysore so long as he was bachelor on 1.7.1985, plaintiff got transfer order to Delhi. As per travelling expenses bill dated 15.7.1985 along with the transfer order dated 1.7.1985 and relieving order dated 16.7.1985, plaintiff was transferred and was required to leave Bangalore on 17.7.1985 by 4.15. p.m. train. At 2.30 p.m. on the said day, the second defendant prepared a document and got the signature of the plaintiff without even explaining the contents. Since the plaintiff was in hurry to catch the train at 4.45 p.m. she trusted the defendant No. 2 and signed the papers. She believed defendant No. 2 and signed the document for the purpose of collecting the possession certificate on her behalf, thinking that it is an authorisation in favour of the defendant No. 2.

7. The malafide intention with which the document was got signed by the defendant No. 2 on 17.7.1983 came to the knowledge of the plaintiff only on 31.1.1995 when the second defendant threatened the plaintiff to break compound wall, she immediately filed a complaint. Subsequently, she issued notice to the defendant No. 2. Defendant No. 2 evaded the notice and that the second defendant criminally trespassed into the eastern portion marked as ABCD in the rough sketch and demolished the compound wall of the plaintiff by taking law into his own hands. In this regard, the plaintiff also filed another complaint and it was registered as Crime No. 90/1995 for offence punishable under Sections 443 and 447 of I.P.C. It is alleged that the defendants are husband and wife residing in the neighbouring property bearing No. 3156 on the eastern side of "A" schedule property. When the plaintiff had gone to meet the Senior Police Officer on 10.3.1995 at 8 p.m., the defendants demolished the compound wall. It is alleged that the first defendant has filed a suit in O.S. No. 1381/1995 and had obtained exparte temporary injunction on false ground, alleging that, ABCD property has been leased to her for a period of 99 years on a monthly rent of Rs. 25/-. Farther alleged that, the second defendant taking undue advantage of the alleged GPA dated 11.7.1985, has got created a lease deed in favour of his wife, the first defendant. On these allegations and the others, plaintiff Bought for declaration and injunction,

8. Defendants resisted the suit inter alia, alleging that, they have filed a suit in O.S. No. 1381/1995 for permanent injunction and the said suit is pending for disposal and the present suit is not maintainable in view of Section 11 of CPC. Defendants denied the allegations of the plaintiff, and contended that, defendant No. 2 is in possession and enjoyment of the suit schedule property in pursuance of the lessee agreement dated 1.12.1985 executed by defendant No. 2 and defendant No. 1 has got the registered lease deed dated 1.2.1995 in her favour, which is for a period of 99 years and the plaintiff has no right to dispossess the defendant No. 1. It is alleged that the plaintiff is trying to misguide the Hon'ble Court with a mala fide intention by not disclosing the correct and true facts. It is also alleged that the defendants have filed a suit in O.S. No. 1381/1993 and there is a temporary injunction granted in their favour and plaintiff has appeared on 29.3.1995 and has filed written statement and it is thereafter, the plaintiff has filed the present suit. It is also alleged that the plaintiff has executed a General Power of Attorney on 17.7.1985 and by virtue of which, the power is conferred on defendant No. 2 has legally executed the lease deed in favour of defendant No. 1 and thereafter, the defendant No. 1 developed "B" schedule property. The suit for declaration and injunction is not maintainable.

9. In O.S. No. 1381/1995, the defendant No. 1 has alleged that, she is the lessee and lease has been executed by defendant No. 2 in exercise of power under the General Power of Attorney and there is a valid registered lease deed in her favour for 99 years, the plaintiff has no right to dispossess her. The other allegations are denied in toto.

10. Based on these pleadings, the trial court framed 7 issues in O.S. No. 4646/1995 and 3 issues in O.S. No. 1381/1995 as under:

Issues In O.S. No. 4646/1995

1. Whether the plaintiff proves that she has been in lawful possession over the suit schedule property?
2. Whether the plaintiff further proves that the lease agreement dated 1.12.1985 and lease deed dated 1.2.1995 in respect of portion of "A" schedule property between first defendant and second defendant is void and not binding on the plaintiff?
3. Whether the plaintiff proves any interference by the defendants to her possession over the suit schedule property?
4. Whether the defendant No. 2 proves that he is the legally constituted attorney of the plaintiff under GPA dated 18.7.1995 and the lease deed entered into between 2nd and 1st defendant is valid one?
5. Whether 1st defendant proves that he is in possession of the suit schedule property?
6. Whether plaintiff is entitled to suit remedies?

7. What order or decree?

Issues In O.S. No. 1381/1995

1. Whether the plaintiff proves her lawful possession over the suit schedule property?

2. Whether the plaintiff proves the cause of action as alleged in the plaint?

3. What order or decree?

In support of the plaintiff's case, plaintiff got herself examined as PW-1 and she got marked Exs.P1 to P24 whereas, the daughter of first defendant/ who is also GPA Holder/ was examined as DW-1 and defendant No. 2 was examined as DW-2, EXS.D1 to D14 were marked in their evidence.

11. The trial court on appreciation of the evidence, held that, the plaintiff is in lawful possession and enjoyment of the suit schedule property. Further held that the plaintiff has proved that, the lease agreement dated 1.12.1985 and 1.2.1995 in respect of "A" schedule property between the first defendant and the second defendant are void, not binding on the plaintiff and further held that the plaintiff has proved the interference with the enjoyment of suit schedule property and further held that, the second defendant has failed to prove that, he is a legally constituted attorney of the plaintiff. Further, first defendant has not proved her possession in respect of suit schedule property. On these findings, the trial court decreed the suit in O.S. No. 4646/1995 and dismissed the suit in O.S. No. 1381/1995.

12. Sri. M.J. Alva, learned Counsel appearing for the defendants relied on Ex.D1 and submitted that, Ex.D1 is a General Power of Attorney, executed by the plaintiff in favour of defendant No. 2. He relied on para-3 of the General Bower of Attorney and submitted that, defendant No. 2 as a Power of Attorney Holder is entitled to exercise his power and to do all such things, which the principal is entitled to do with the suit schedule property including letting out. He further submitted that, all the acts done by the Power of Attorney Holder are binding on the principal. Relying on the said document, he further submitted that, defendant No. 2 executed a lease deed on 1st December 1985 as per Ex.B4 in favour of defendant No. 1, which is a lease for 99 years, on advance amount of Rs. 19,500/-and monthly rent of Rs. 25/-. He further submitted that, since the BDA had only executed a lease-cum-sale agreement and absolute sale deed was not executed in favour of the plaintiff, the registered lease deed was not executed, only the lease agreement was entered into by the defendant No. 2 and defendant No. 1. Thereafter, as per Ex.D5, a registered lease deed was executed by defendant No. 2 on 1.2.1995 in favour of the defendant No. 1 fox a period of 99 years w.e.f. 1.12.1985 on monthly rent of Rs. 25/- with advance amount of Rs. 10,500/-. In this regard, he relied on EXS. D8 to D12, the rent receipts issued to defendant No. 2. He further relied on Ex.D13, a letter addressed to the plaintiff by the Deputy Director of BDA wherein, the Deputy Director of BDA had called

upon the plaintiff to furnish khata certificate, bifurcation plan with its blue print for the purpose of bifurcating the suit schedule property. He relied on the said document and to the reference made in the said document to the letter written by the plaintiff on 9.7.1986. He also relied on EX.D14, a letter addressed to the defendant No. 2 wherein the BDA has informed that, the bifurcation of the property or khata is not permissible. Relying on these documents, he further submitted that, when the execution of General Power of Attorney by the plaintiff is not disputed, the power vested with the attorney to act on behalf of the principal also cannot be disputed.

13. He submitted that, the defendant No. 1 has been put in possession of the suit property and she being a lessee of the said property under a registered lease deed for a period of 99 years, the plaintiff has no right to dispossess the defendant No. 1. He further submitted that, once the defendant No. 1 is a tenant in respect of the suit schedule property, the plaintiff cannot forcibly take possession except in accordance with law.

14. In support of his contention, he submitted that, a presumption arises that every document purporting to be a power of attorney and has been executed before a notary public or court, Judge or Magistrate is an authenticated document. He further submitted that, unless the Power of Attorney is legally terminated or revoked, the authority given to the attorney to exercise such power vest in him and revocation has to be in accordance with the provisions of Section 208 of the contract Act. Referring to Section 200 of the Contract Act, he further submitted that, termination of the authority of an agent takes effect only when it becomes known to holder of attorney, and he also relied on the provisions of Section 226 of the Contract Act and submitted that, the contracts entered into through an agent, and obligations arising from the acts done by an agent, are enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person. Relying on these provisions, he submitted that, there is no notice of revocation of the General Power of Attorney and the defendant No. 2 as a General Power of Attorney has executed the registered lease deed in favour of defendant No. 1, as such, the act done by the agent is binding on the principal in terms of the provisions of Section 226 of the Contract Act. He also submitted that, since there is no notice of revocation, it cannot be presumed that the General Power of Attorney has been revoked.

15. As an agent, defendant No. 2 has executed a registered lease deed, the said registered lease deed is binding on the plaintiff and in case of registered document, the presumption of validity of the transaction arises u/s 114 of the Evidence Act. In this regard, he relied on a judgment reported in 2006(5) SCJ 802 in the matter of Prem Singh and Ors. v. Birbal and Ors. and submitted that, once a document is registered, the presumption of validity arises unless the contrary is proved by rebuttal evidence. The onus is on the person, who alleges against the said presumption.

16. In support of his other contention that the transactions and the acts done by the agent on behalf of the principal in pursuance of the authority are binding on the principal, he relied on two decisions reported in 1985 (2) KARLJ 188 in the matter of Doddarajappa K.B. and Ors. v. C.R. Venkoba Rao and Ors. and Syndicate Bank, Bangalore Vs. I.K. Amitha and Others, Relying on these two decisions, he submitted that, an agent has the right to convey the proper title and act on behalf of the principal and all the liabilities arising under the contract are binding on the principal. He further submitted that, in the case of General Power of Attorney, the power vested with the agent to exercise all such power that could be exercised by the principal in the absence of an express prohibition of exercise of any power. Relying on these decisions, he submitted that, Ex.D1, a General Power of Attorney confers all powers on the attorney to act on behalf of the principal including letting and dealing with the property and all such acts are to be rectified by the principal. He further submitted that, after the registered lease deed, the defendant No. 1 is in possession and enjoyment of the suit schedule property.

17. He further submitted that, once the defendant No. 1 is put in possession of the property as a tenant, she cannot be dispossessed except in accordance with law and not by seeking injunction. He also submitted that, suit for injunction against the defendant No. 1 is not maintainable. He also submitted that, admittedly, defendant No. 1 is in possession as a tenant of the suit schedule property, she cannot be dispossessed. He further submitted that, Section 34 of the Specific Relief Act does not permit the plaintiff to seek declaration and injunction in respect of suit schedule property, unless the plaintiff seeks for cancellation of the Power of Attorney and cancellation of the registered lease deed. He further submitted that the suit as brought for by the plaintiff is not maintainable.

18. He also relied on. EX.D3, a photograph and explained that, though the plaintiff seeks declaration in respect of schedule property has admittedly constructed the main building without any entrance to the schedule property from the eastern side. He also submitted that, on the northern side, he has blocked the entry to the schedule property by constructing a garage and there is only 4 feet set back on the southern side. Photograph is not in dispute and the photograph clearly establishes that, plaintiff admittedly has left the suit space open without any access knowing full well that this property is leased to defendant No. 1. In this regard, he also submitted that, on the eastern side of the schedule property, the defendants have got property, as such, the plaintiff did not make any construction on the said property. Relying on the photograph, he further submitted that, from the photograph and also from the transaction between the plaintiff and defendant No. 2 and between defendant No. 2 and defendant No. 1, it is clear that the suit schedule property was never intended to be used by the plaintiff and the plaintiff admitted the possession of the defendant No. 1 and accordingly, he did not put up any construction on the said portion of the property. He also submitted that, if really the plaintiff wanted to use that

schedule property, he would have kept opening on the eastern side of his building. Fact that no openings are fixed on the eastern side of his building, it is clear and as an after thought, the plaintiff has filed the suit.

19. He further submitted that the fraud has not been established by the plaintiff. Mere allegation of fraud in the pleading, that itself will not constitute fraud, unless proper pleading and evidence is led in support of the allegation of fraud. He further submitted that, there cannot be any fraud when the plaintiff has admitted the execution of the General Power of Attorney and if the Power of Attorney Holder exercises his power under the said authority, it cannot be alleged that, a fraud committed by the defendant No. 2.

20. He further submitted that the trial court by overlooking the provisions of law and overlooking the evidence on record has erroneously dismissed the suit filed by the defendant No. 1 and erroneously decreed the suit filed by the plaintiff.

21. Sri. Chandranath Ariga, learned Counsel appearing for the plaintiff submitted that, the plaintiff is an employee working in union Bank. The plaintiff was under order of transfer. Plaintiff's husband is also working in the Bank and he was transferred to Delhi and in order to join plaintiff's husband, plaintiff also got transferred to Delhi. As per Ex.P1, the plaintiff was transferred on 1.7.1985 to Zonal Office. New Delhi. On 15.7.1985, the plaintiff was issued with travelling expenses order to travel to Delhi on 17.7.1985 and was to report on 19.7.1985 as per Ex.P2 and she was to travel by K.K. Express on 17.7.1985 at 4.15 p.m. On 16.7.1985, plaintiff was relieved from duty from Bangalore branch as per EX.P3. The BDA had allotted a site as per the allotment letter issued by the BDA, the possession certificate was not issued and in this regard, she intended to authorise defendant No. 2 to collect the possession certificate on her behalf and accordingly, at 2.30 p.m., the defendant No. 2 prepared some documents and he was knowing that the plaintiff was in hurry, taking advantage, he asked her to sign at the places where the defendant No. 2 wanted, plaintiff in good faith signed accordingly and left to Delhi. She was unaware of the contents of the document and she was not even knowing the intention of the defendant No. 2. She was in Delhi for 2 years i.e., till 1987. In 1987 she came back, she applied for the sanction plan for the purpose of construction of the residential house on the suit property and got constructed a residential house on the suit property.

22. Till 31.1.1995, plaintiff was not aware of the malafide intention of the defendant No. 2. On 31.1.1995 defendant No. 2 started threatening to demolish the compound wall on the eastern side of her property, in this regard, she filed a complaint before the jurisdictional police. Immediately the defendant No. 2 in order to grab the suit schedule property, got executed a registered lease deed on 1.2.1995 in favour of his wife-defendant No. 1 and further, based on the same, he filed a suit in O.S. No. 1381/1995 and obtained an ex parte temporary injunction, which was subsequently vacated and a statue-quo order was passed. Relying on Exs.P1, P2 and P3, he submitted that, plaintiff had never intended to execute the General Power of Attorney in favour of the defendant No. 2.

Defendant No. 2 taking advantage of plaintiff's urgency to go to Delhi, he got the document created in his favour in the manner he wanted. In 1988, after the return, plaintiff applied for sanction plan and she got the sanction plan. Since there were two coconut trees on the eastern side, the plaintiff left the space as she felt that cutting of coconut tree is against the religious sentimental feeling and in order to protect those trees, the portion of Bite was kept open. The plaintiff got registered absolute sale deed in her favour in terms of Ex.P23 on 22.12.1995.

23. He further submitted that, in the alleged lease deed produced by the defendant at Ex.D4, the defendant No. 1 in whose favour the lease deed is executed, the defendant No. 2 deliberately has not even described the full name of the defendant No. 1 except mentioning her name without even mentioning the name of her husband i.e., the name of defendant No. 2 and this is done with intention to hide the identity of this defendant No. 1. He submitted that, normally lease deeds are executed by the lessor in favour of lessee. But the manner in which the Ex.D4 is executed clearly shows that, defendant No. 2 with intention to hide the transaction has shown the defendant No. 1's name as a lessee without even disclosing her husband's name and got the said document prepared. He submitted that, reading of the terms of the lease not only establishes the malafide intention, but the intention to commit fraud by the defendant No. 2. He referred to Clause-2 of the said lease deed and pointed out that the husband of the defendant No. 1 executes a lease deed for a period of 99 years on a monthly rent of Rs. 25/- in respect of the suit schedule property, and in Clause-10, even in case of failure of payment of rent, the aggrieved party will have to recover the rent and there is no clause for recovery of possession. He further submitted that, DW-1 in her evidence has stated that the registered lease deed was not executed by defendant No. 2 in favour of defendant No. 1 on 1st December 1965, as the plaintiff did not had the absolute sale deed in her favour. In this connection, he relied on Ex.D5, a registered lease deed and pointed out that, this registered lease deed is executed on 1.2.1995 whereas, the absolute sale deed was executed in favour of plaintiff only on 22nd December 1995 as per Ex.P23. He further submitted that, after she came back from Delhi in 1987, she applied for plan and after getting a plan sanctioned, she constructed a house. In this regard, she had sought for permission from the BDA for obtaining loan for construction purpose and the said loan was also sanctioned. He referred to rent receipts at EKS.D8 to D12 and. pointed out that, Exs.D8 to D12 are the alleged rent receipts received by none other than defendant No. 02, who is the husband of defendant No. 1. He further pointed out that, Ex.D13, though it is an original letter addressed to the plaintiff, but it is produced by the defendant and it never reached the plaintiff. He submitted that, no explanation is offered by the defendant No. 2 as to how this letter came in his possession and how he produced it. He further submitted that, he had no knowledge of the alleged letter nor he had made any correspondence with the BDA for bifurcation of the khata.

24. He further submitted that, under Ex.D4, an advance amount of Rs. 19,500/-

was received by defendant No. 2. If really the plaintiff wanted to put defendant No. 1 in possession as a lessee and had authorised the defendant No. 2, the defendant No. 2 would have deposited the said amount in the account of the plaintiff or would have handed over the said money. However, defendant No. 2 except saying that he had paid money, no document is produced nor it is established that, the defendant No. 1 credited that amount in the account of plaintiff or paid the same. Though rent was fixed under the lease deed at Rs. 25/-, not even at an undisputed point of time, the receipt was obtained by the plaintiff and even the alleged receipts, which are produced at EXS.D8 to D12, they pertain to period of September 1994, October 1994, November 1994, December 1994 and January 1995 and all these receipts are signed only by the defendant No. 2. If the lease deed was given effect to by the defendant No. 2 in 1965, from 1985 till the filing of the suit, at least one document should have been produced by the defendant No. 2 to show that, plaintiff had the knowledge of the alleged lease deed or plaintiff had intended to part her possession in favour of defendant No. 1. By relying on these documents, he submitted that, at no point of time, the plaintiff had any intention to part with the property in favour of defendant No. 1 nor she had executed the Power of Attorney with intention to permit the defendant No. 2 to let out the suit schedule property in favour of defendant No. 1.

25. Though defendant No. 1 is a party, she had not entered the witness box and in turn, she has executed a Power of Attorney in favour of her daughter and daughter is examined as DW-1. Admittedly, the daughter has no knowledge of the alleged transaction, Despite the serious allegation made against the defendant No. 1, defendant No. 1 has not stepped into the witness box and deliberately defendant No. 1 has not entered the witness box. He also submitted that, the registered lease deed was executed on 1.2.1995, since the plaintiff had filed a complaint on 31.1.1995, immediately, the defendant No. 2 has hatched a plan to create a registered document and on the next day itself, he created a registered lease deed.

26. As far as photograph at Ex.D3 is concerned, learned Counsel for the plaintiff submitted that, 4 feet set back is left on the southern side of the property and northern side set back is left for car parking and north-east portion of the suit schedule property was fixed for garage, since the coconut trees were there, the plaintiff being a religious person, did not intend to cut the coconut trees and she shifted the garage abutting to main building. He further submitted that, the entry is from the southern side of the property. There is approach from the southern side to the eastern side of the property. The door was not fixed on the eastern side, as it would have worked out inconvenience to the plaintiff. He pointed out that, on the northern side, there is main entrance to the main building. That being so, there is no reason to doubt regarding not fixing of the doors on the eastern side. He submitted that, as per Ex.D4, the property is mentioned as measuring 20 feet x 50 feet whereas, the existing available property is 16 feet East-West on the southern side and 20 feet East-West on the northern side and

50 feet on North-South. The fact that, 20 feet is mentioned in the lease deed clearly shows that, the defendant was not aware of the property available on the eastern side. If the plaintiff wanted to lease the schedule property in favour of defendant No. 1, she could have left 20 feet x 50 feet, which is alleged to have been leased.

27. Plaintiff on knowing the malafide intention on 31.1.1995, she issued a notice of cancellation of the Power of Attorney as per Ex.214. Ex.P15 is the cover, which is properly addressed to defendant No. 2 and properly stamped containing the document and also acknowledgement due. However, despite being correctly addressed to the defendant No. 2 and defendant No. 2 having come to know, has not claimed the said notice. Revocation notice was addressed on 31.1.1995 itself. 31.1.1995, on which day the defendant No. 2 tried to encroach upon the property of the plaintiff by demolishing the compound wall on the eastern side, and the postal shara as "not claimed" is deliberate. He submitted that, once the notice is properly issued, a presumption arises u/s 27 of the General Clauses Act and also Section 114 of the Evidence Act that the document has properly reached and refusal is a presumption of service of such notice and once such a notice is deemed to have been served on defendant No. 2. As far as Ex.D3 is concerned, since defendant No. 2 himself had no right, the said document is inadmissible in law, as the lease is sought to be created for a period of 99 years. As far as Ex.D5 is concerned, Ex.D5 is created after the notice is sent to the defendant No. 2 as per Ex.P14 and P15 and further, though the said deed is a registered document, the plaintiff (sic) had not got the absolute title to the property, question of defendant No. 2 executing registered lease deed for 99 years does not arise.

28. By relying on these documents and the evidence, he further submitted that, any transaction entered into by the parties by means of fraud, the fraud sets at naught all such transactions and action including an action by the agent. In this regard, he further submitted that, defendant No. 2 has committed fraud on the plaintiff by creating an alleged lease deed in favour of defendant No. 1, who is none other than his wife. He submitted that the pleadings in this regard clearly establish that, how fraud is committed by defendant No. 2 on the plaintiff and if fraud is established, all the transaction result of fraud will be void. He further submitted that, if the position of the defendant No. 2 is as an agent, he cannot claim any independent right and he would be claiming possession only through principal, and he cannot have any right over the suit schedule property. In this regard, he relied on the decision reported in Madras Bolts and Nuts (P.) Limited Vs. The Presiding Officer, Labour Court and Another, and submitted that, a person in possession as an agent cannot be permitted to assert adverse to his own principal. He also relied on another decision of the Apex Court reported in Lillykutty v. Scrutiny Committee, SC & St and Ors. and submitted that, fraud vitiates every solemn act, fraud and justice never dwell together. He submitted that, in case of allegation of fraud, it has to be viewed seriously. A collusion or conspiracy with a view to deprive the plaintiff of his property is clearly

established by the plaintiff by the conduct and the acts of the defendant No. 2. He also submitted that, defendant No. 2 in collusion with defendant No. 1, conspired to deprive the legitimate right of the plaintiff and such act of the defendants is nothing but a fraud, fraud and collusion, vitiate even the most solemn proceedings in any civilized system of jurisprudence and further submitted that, even assuming that the defendant No. 2 has created lease deed in favour of defendant No. 1, it will have no legal effect and the defendant No. 1 cannot claim any right, title and interest under the alleged deed. He also relied on another decision of the Apex Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and submitted that, "fraud avoids all judicial acts, ecclesiastical or temporal" as observed by Chief Justice Edward Coke of England about the fraud and further submitted that, all such acts have to be treated as a nullity, whether in the same proceedings or in the collateral proceedings. He relied on para-8 of the said judgment. He further submitted that, the trial court on appreciation of the entire evidence and the material, has found that the defendant No. 2 has committed a fraud and has decreed the suit of the plaintiff.

29. In the light of the rival contentions of the parties, the points that arise for consideration in these appeals are:

- 1) Whether the plaintiff has established the fraud against the defendant No. 2?
- 2) Whether Ex. D1 is duly constituted Power of Attorney?
- 3) Whether the trial court was justified in decreeing the suit of the plaintiff and dismissing the suit of the defendants?

30. Plaintiff in her pleadings at para 6 has stated; "the 2nd defendant is the husband of the 1st defendant who is a distant relative of the plaintiff was staying with plaintiff's family in Mysore so long he was a bachelor, after marriage also, the 2nd defendant used to regularly visit the plaintiff's house as a well-wisher."

31. 2nd defendant has not filed written statement, but he has adopted the written statement filed by the 1st defendant. Admittedly, the 1st defendant cannot have any knowledge of the life of the 2nd defendant as a bachelor prior to his marriage. Even otherwise also, the defendant No. 1 in her written statement at para 7 has admitted that, the plaintiff and 2nd defendant are the distant relatives. However, denied that, the 2nd defendant lived with the plaintiff prior to his marriage. From the averments in para 6 of the plaint and the written statement at para 7, it is clear that, there is a relationship between the plaintiff and the 2nd defendant and to this effect even PW. 1 in her evidence at para 5 has stated that, "2nd defendant was staying in their house prior to the marriage". The 2nd defendant is examined as DW2 and in his examination-in-chief, it is stated that, Jayashree V. Shetty is his distant relative. Thus, from the pleadings and the evidence, the parties have not disputed their close relationship. In the light of the relationship, the facts and circumstances are required to be understood and appreciated.

32. EX. P1 is an order of transfer of the plaintiff dated 1.7.1985. By the said order, the plaintiff was transferred from Bangalore to zonal Office at New Delhi and she was given T.E. and Tour Programme on 15.7.1985 as per Ex. P2, the tour programme was scheduled, inter alia the plaintiff was to leave on. 17.7.1985 by 4.15 p.m. K.K. Express train. It is also clear that, she was to reach Delhi on 19.7.1985. In this regard, the plaintiff is also averred in her pleadings at para 4, wherein she has stated that, the plaintiff's husband who was working in Vijaya Bank was transferred to Delhi in the year 1984 and in order to join her husband, she also got transferred to Delhi and she was relieved from duty on 16.7.1985 and on 17.7.1985 both husband and the plaintiff went to the office of the BDA to collect the papers in respect of site allotted to her. Accordingly, they reached the sub-registrar's office, Mayo-hall and got the lease-cum-sale agreement registered in their favour on 17.7.1985. However, they could not collect the possession certificate from the BDA. The defendant No. 2 being a close relative and person of confidence, he agreed to collect the possession certificate and in this regard, he requested for authorization letter. Since on the same day, the plaintiff was to leave Bangalore at 4.15 p.m. train, defendant No. 2 informs the plaintiff that, he would keep all the records ready and in this regard, he requested the plaintiff to sign the document informing that it is an authorization. According to the averments in the plaint it was around 2.30 p.m. on 17.7.1985. Plaintiff reposing the confidence on the defendant No. 2 signed the said document. However, the plaintiff's specific case is that, as she was in hurry to reach the railway station to catch the train at 4.15 p.m., she did not even look into the contents of the document and same was got signed by defendant No. 2. In support of these averments, Exs. P1 to P3 are produced by the plaintiff showing the order of transfer, relieving letter and the tour programme. It is clear that, on 17.7.1985, the plaintiff got lease-cum-sale agreement registered in her favour from the BDA and she was to travel on the very same day by 4.15 pm train which is also evident from tour programme as per Ex. P2. Ex. D1 which is a power of attorney is also dated 17.7.1985, It is pertinent to note that, the stamp papers of Ex. D1 were also purchased on the same day. From these evidence, it is clear that, the plaintiff did sign Ex. D1 and she signed in the circumstances narrated above.

33. It is the case of the plaintiff that, she and her husband got transferred to Bangalore and Mysore in the year 1987 and they got constructed a residential house from 1989 to 1991 and they have been residing in the said house.

34. The plaintiff further avers that, in January 1995, the son-in-law of the defendant attempted to interfere with the possession and enjoyment of the suit schedule property of the plaintiff. In this regard, she filed a police complaint on 31.1.1995 as per Ex. P13 and thereafter she also filed another complaint on 10.2.1995 in Crime No. 90/1995 for the offences punishable under Sections 443 and 447 of the IPC. The complaint was registered in Crime No. 1514/1995 and FIR was also filed. The 1st defendant alleged that, she has filed a suit in O.S. No. 1381/1995 and obtained a temporary-injunction and in this regard, the police

informed that, the dispute is civil in nature and accordingly she filed a present suit for declaration and injunction.

35. These facts have been denied by the defendant No. 1 who has filed written statement and alleged that defendant No. 1 had filed a suit in O.S. No. 1381/1995 and in the said suit, the plaintiff was served with the summons and she appeared on 29.3.1995.

36. From these facts it is clear that, the dispute started on 31.1.1995 which is evident from Ex. P13. Plaintiff alleged that, she came to know the alleged execution of the lease deed only after she was served with the summons in the suit filed by defendant No. 1 and on verification she noticed that, the 2nd defendant had executed a registered lease deed in favour of the 1st defendant on 1.2.1995.

37. In the light of these facts, whether the plaintiff has proved the allegation made against the defendant No. 2 is required to be appreciated.

38. It is not in dispute that, the plaintiff is an allottee of site as per Ex. D2. It is shown that, the plaintiff has been allotted site bearing No. 3155/B measuring 13.72 meters x 18.29 meters. It is also evident that, as per Ex. P21 a registered lease deed has been executed on 17.7.1985. The possession certificate is issued as per Ex. P22 on 18.7.1985 showing the possession of site bearing No. 3155/B is handed over to GPA holder i.e. defendant No. 2 showing the measurement also. From this evidence, it is clear that, the plaintiff did travel on 17.7.1985 and the defendant No. 2 did collect the possession certificate on 18.7.1985 on behalf of plaintiff.

39. As regards to the averments of the plaintiff, she came back in 1987 by way of re-transfer to Bangalore and her husband by way of re-transfer to Mysore is not in dispute. Thereafter, the plaintiff got constructed a residential building in the suit property is also not in dispute and it is also not in dispute that, the property is encumbered in the name of the plaintiff as per Ex. P7. Ex. P7 shows the name of the plaintiff in the Encumbrance Register and plaintiff has paid the tax to the entire property till 1994. It is only in January 1995, the dispute started.

40. Facts which are not in dispute are that, 2nd defendant is none other than the husband of the 1st defendant. The defence of the 2nd defendant is that, an area measuring 20 feet East- West and 50 feet North-South bounded by on the eastern side site No. 3156 on the western side portion of site No. 3155/B, on the northern side site No. 3157 and on the southern side site No. 3155 is leased to defendant No. 1 in terms of Ex. D4, EX. D4 is dated 1.12.1985 and it shows that the defendant No. 1 has leased the property to defendant No. 1 for a period of 99 years and has received Rs. 19,500/- towards advance and the rent is fixed at Rs. 25/- per month. It is not in dispute that, this document is executed by the Power of Attorney holder, and also the subsequent registered lease deed as per Ex. D5 dated 1.2.1985, 1st defendant claims that, she is in possession of the suit schedule property as a lessee and the 2nd defendant claims that, he has executed registered lease deed in favour of the 1st defendant.

41. In this background, it is necessary to appreciate the evidence of defendant No. 1 and defendant No. 2. Defendant No. 1 is not examined in the case and her daughter is examined as DW1 who is also power of attorney. In her evidence, two circumstances are narrated as regard to the lease is concerned.

It was agreed between the parties that, the plaintiff shall execute a G.P.A. in favour of the 2nd defendant to get the necessary documents from the BDA and also to got the khata bifurcated and to collect all the documents from the BDA. Since, there was the lease period of 10 years imposed by the BDA on the property it was agreed between the parties that, the deed of perpetual lease for a period of 99 years shall be registered at the later stages after collecting all the necessary documents from the BDA including the bifurcation of the Schedule "B" property from the Schedule "A" property in their revenue records. In furtherance of this understanding between the parties, the plaintiff had executed G.P.A. in favour of the 2nd defendant on 17.7.1985. In furtherance of the execution of the said G.P.A., the plaintiff had got the lease Agreement executed in favour of this defendant on 1.12.1995. the original lease agreement is marked as Ex. D5.

42. DW1 in categorical terms admits that, perpetual lease deed would be executed only after bifurcation of khata of "B" schedule property from "A" schedule property and after expiry of the lease period and after getting necessary documents from the BDA. DW2 also in his evidence admits that, since there was a lease period for 10 years imposed by the BDA on the property, it was agreed that, the deed of perpetual lease for a period of 99 years will be registered at a later stage after collecting necessary documents from the BDA including bifurcation of "B" schedule property from W schedule property in the revenue records. The regular sale deed is produced by the plaintiff as per Ex. P23 which is dated 22.12.1995. Both defendant No. 1 and defendant No. 2 admit that, the deed of perpetual lease would be executed only after bifurcation of khata and regular sale deed. Ex. D14 is produced by defendants, wherein the planning member of the BDA has informed defendant No. 2 that, bifurcation cannot be granted. The perpetual lease is produced at Ex.D5 which is dated 1.2.1995.

43. Defendant No. 2 is only a Power of Attorney Holder and it is not in dispute that, defendant No. 1 is his wife. Both defendants admit that, the plaintiff wanted to executed perpetual lease in favour of defendant No. 1 and i.e. after regular sale deed and as well as bifurcation of khata. However, registered lease deed Ex. D5 is dated 1.2.1995, whereas, the absolute sale deed is executed by BDA only on 22.12.1995. One another circumstances is required to be noticed is that, on 31.1.1995 as per Ex. P13, plaintiff had given a police complaint before the jurisdictional police alleging interference by the defendants and their relatives. When there was a serious dispute between the plaintiff and defendants, and when both the defendants admit that, the lease was to be executed only after the bifurcation and collection of necessary documents. Getting the registered lease deed executed by the power of attorney holder in favour of his wife on

1.2.1995 clearly shows that, defendant No. 2 wanted to create a document in favour of defendant No. 1. It is also necessary to notice that, the portion mentioned as "B" schedule property is on the eastern side of the plaintiff's property and is abutting the western boundary of the 2nd defendant's property.

44. The other circumstance which is also clear from Exs. D4 and D5 is that, defendant No. 1 stated, that he had paid the advance amount of Rs. 19,500/- and in this regard both DW1 at para 4 of her evidence in examination-in-chief has stated, as under:

1st defendant has paid a sum of Rs. 19,500/- to the plaintiff as a deposit.

DW2 also in para 3 of his evidence has stated that;

The plaintiff had received a sum of Rs. 19,500/- from the 1st defendant on 17.7.1985 itself and transferred the possession of schedule "B" property to the 1st defendant on the same day.

In this regard, defendant No. 2 further states in para 4 of his examination-in-chief that;

The 1st defendant had paid a sum of Rs. 19,500/- to the plaintiff as deposit and the same was acknowledged by her in the agreement itself at Ex. D4.

45. From the evidence of DW1 it is clear that, DW1 in categorical terms states that, she has paid the advance of Rs. 19,500/- to the plaintiff. Defendant No. 2 also states that, the plaintiff has acknowledged the receipt of the said amount in Ex. D4. Ex. D4 is not executed by plaintiff herself, but it is by the power of attorney holder and there is no acknowledgement of receipt of amount of Rs. 19,500/- by the plaintiff. It is not stated by both defendant No. 1 and defendant No. 2 that, defendant No. 2 collected the amount on behalf of the plaintiff. Defendant No. 2 himself in the evidence states that, plaintiff received the amount of Rs. 19,500/-. Most important part of the lease agreement Ex. D4 is that, the stamp paper is purchased on 19.10.1980 and the lease is executed on 1.12.1985 and the stamp paper is in the name of the 1st defendant. In Ex. D4, name of the 1st defendant is shown. But reason best known to the defendant No. 1 that, the name of husband is omitted in the said deed. Even though, the power of attorney 2nd defendant being the husband, it is not even shown, in the said lease agreement. Defendant No. 2 has stated that, the plaintiff has acknowledged the receipt of the amount and admitted that, he has not produced any material to show that the plaintiff has received the said amount. No doubt the power of attorney would act on behalf of the principal, when the power of attorney himself gives a statement that, he has paid the amount to the plaintiff and the plaintiff has received the same, then there has to be a receipt to evidence the same.

46. The rent is fixed under Ex. D4 and to evidence the same, EXS. D8 to D12 are produced to show that, the rent was paid by defendant No. 1. These receipts are signed by defendant No. 2 and they pertain to the rent for few months. In both the lease deeds at Exs. D4 and D5, even in case of default of payment of rent,

the aggrieved party has only right to recover all the loss, damages and there is no clause of recovery of possession, Ex. D4 clearly shows that, the power of attorney wanted to part possession in favour of defendant No. 1. No doubt, the power of attorney as an agent can exercise his rights on behalf of the principal. If the plaintiff really wanted to execute a lease deed in favour of defendant No. 1, nothing prevented defendant No. 1 to get the lease deed from the plaintiff herself, as from 1987 onwards, the plaintiff has been in Bangalore and she resided in the same premises. Neither DW1 nor DW2 has stated that, the lease deed was within the knowledge of the plaintiff. In view of EX. P13 dated 31.1.1995, when the plaintiff has filed a complaint against the defendant, inter alia alleging that, she has constructed a compound wall to her property on the eastern side and the 2nd defendant threatened to demolish the compound wall and trying to interfere with her possession. The said complaint is also acknowledged by the concerned police. In such circumstances, defendant No. 2 executing the lease deed in favour of his wife on 1.2.1995 only shows that, defendant No. 2 wanted to get the property by taking advantage of the alleged GPA.

47. Learned Counsel for the appellant has strongly relied on provisions of Section 85 of the Evidence Act, inter alia to submit that, it creates a presumption of authentication of power of attorney, if it is executed before the Notary Court, Judge, Magistrate, counsel and the counsel representative of the Central Government.

48. It is not in dispute by the plaintiff that, she has signed the document. But the allegations are of fraud committed by the defendant No. 2. It is admitted case that, the plaintiff is an allottee of the site and she had left Bangalore for couple of years and she came back and constructed a residential house. There is no material or evidence to show that, any consideration is shown in favour of the plaintiff nor the defendant has shown reason as to why the plaintiff wanted to give it to defendant No. 1. If power of attorney is given to the defendant No. 2, the same is based on trust and confidence reposed on him, and not for misusing the same for his own benefit. In this case, the evidence is very clear that, the power of attorney was executed at a time when the plaintiff was leaving Bangalore. It is also clear that, after the return from Delhi, plaintiff has exercised her right over the property and constructed residential house. It is also clear that, she applied for a plan in respect of not only "A" schedule property, including "B" schedule property, during the course of the argument, I had directed the learned Counsel for the plaintiff to produce the plan. The plan was produced before me and it clearly shows that, the plan was for construction of the main building and the garage on the north-east corner of the site which is over the suit schedule property. The plan is of 1988. If really the plaintiff had intended to part possession of 1.12.1985 in favour of defendant No. 1 at the undisputed point of time, in the plan she could not have sought for construction of a garage on the north-east corner of the suit schedule property, which is portion of leased property.

49. The other circumstance sought to be pointed out by the learned Counsel for the defendants is that, in the entire area there is no door on the eastern side to the main building of the plaintiff and further the garage is not constructed on the suit property, but it is constructed abutting to the main building and there is no entrance to the vacant area. It is in the evidence of PW1 that, there are two coconut trees on the eastern side of the property and the plaintiff being religion, she construct the building leaving the coconut tree. The plan shows that, the main entry is on the northern side and on the southern side, 4 feet passage is left to reach the eastern portion of the property. If the northern side main door is fixed, I do not find there is no reason to keep the door on the eastern side on the main building. The construction would be for the convenience of the inmates and not to their disadvantage. However, in order to appreciate the contention of the learned Counsel for the defendants, I had perused the plan and looking on the plan, the plaintiff would not have sought for sanction of the plan inclusive of the disputed property.

50. It is also necessary to appreciate that, why the plaintiff should part the portion of the property in favour of defendant No. 1. Neither in the written statement filed by the defendant No. 1, nor in the evidence of DW.2, it is stated as to why the plaintiff wanted to part with the property. In the DW. 2's evidence, in para 2, it is stated that, it is a margin land. But from the possession certificate as well as registered sale deed it is clear that, the entire property is allotted to the plaintiff, Even if the defendant No. 1 wanted to have it, he cannot take by using the power of attorney of the plaintiff. Even as a power of attorney, the defendant cannot act in detrimental to the interest of the plaintiff. It is pertinent to note that, though plaintiff came back to Bangalore in 1987, not a single document to show that plaintiff has acted in furtherance of the alleged lease deed of 1985, and there is no explanation by the defendants. It is established that, taking advantage of the absence of the plaintiff, two documents i.e. one in the year 1985 and another in 1995 were got created and the circumstances also clearly established that, it is immediately after the plaintiff filed a complaint, the defendant has registered the lease deed in favour of his wife for a period of 99 years treating it as a perpetual lease. In my opinion, these circumstances and evidence established a fraud played by the defendant No. 2 on the plaintiff.

51. If really there was a lease as alleged by the defendants on 1.12.1985, defendant could have done some act as a lessee, evidence disclosed that, not one act of exercise right as lessee by defendant No. 1 is shown from 1985 to 1995.

52. One other circumstance to be noticed is that, DW-1 in her evidence at para-3 states that, in furtherance of the General Power of Attorney, lease agreement was executed on 1.12.1985. As already noticed, Ex. D1, the Power of Attorney is executed on 17.7.1985 and prior to the execution of the Power of Attorney, no party had contemplated of the execution of the lease deed. Neither DW-1 nor DW-2 has stated as to when the stamp paper was purchased. Ex. D4, a lease

agreement is on ten rupees stamp paper and the said stamp paper is purchased on 19.10.1980. On 19.10.1980, neither the plaintiff was the owner nor could have contemplated of leasing any property nor it is explained as to why the stamp paper was purchased in the name of defendant No. 1 as to why the lease deed is executed on the said paper. It is not explained in the evidence why the name of the husband of defendant No. 1 is also not disclosed in the said lease deed. Normally, the lease deed starts with lessor executing the lease in favour of lessee, but this lease deed starts with lessee making an agreement with lessor.

53. The other circumstance is that, what is leased is 20 feet x 50 feet. It has come in the evidence of PW-1 and also as per the plan, on the southern side, the East-West measurement is 16 feet and on the northern side, it is 20 feet. The dimension of the area is not 20 feet x 50 feet. Plaintiff on noticing the existence of the continuation of the Power of Attorney by her letter dated 18.1.1995 as per Ex. P12 had informed the Commissioner, BDA that the defendant No. 2 may misuse the document or which are signed by her in a hurry and she requested the Commissioner not to act upon any of the letters given by the Power of Attorney. This shows that, from January 1995 itself, when it is noticed that there is an alleged General Power of Attorney in favour of defendant No. 2, immediately she issued a letter dated 31.1.1995, which is posted on 2.2.1995, cancelling the Power of Attorney. No doubt, the said registered letter is not claimed by defendant No. 2. One thing to be noticed is that, the cover and acknowledgement are properly addressed, sufficiently stamped and contains a document with acknowledgement due. There was no reason for defendant No. 2 to refuse to accept the same. Merely not accepting the cover does not validate the Power of Attorney. This only shows the intention of defendant No. 2 to avoid all correspondence coming from the plaintiff.

54. The facts narrated above clearly establish that the defendant No. 2 has acted detrimental to the interest of the plaintiff by misusing the trust reposed on him. In such circumstances, anything that is done by misrepresentation or by concealing or by suppressing or by fraud, such acts are not sustainable in law.

55. The legal position is that, one who comes to court must come with clean hands. A man, who suppresses the material facts or withholds such information, that will amount to a fraud. In terms of Chief Justice Edward Coke of England, who spoke three centuries ago, as observed above, has said that, fraud avoids all judicial acts, ecclesiastical or temporal. In the case of S.P. Chengalvaraya Naidu (supra), the Apex Court has observed:

8. ...A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage....

Thus, from the observation of the Apex Court, it is clear that, one who act deliberately with the design of securing something by taking unfair advantage of another, is a case of fraud. The facts, which are narrated above, clearly establish

that, the defendant No. 2 has taken advantage of the situation as existed on 17.7.1985 and for his personal gain particularly getting a perpetual lease of plaintiffs property for 99 years in the name of his wife. It is well settled law that, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. Fraud and collusion vitiate even the most solemn proceedings in any civilised, system of jurisprudence. No court will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order can be allowed to stand if it has been obtained by fraud and fraud unravels everything. If the facts establish that fraud is committed, the Court will not hesitate to set at naught all such acts, which are result of the misrepresentation or a fraud. In this case, defendant No. 2 on whom faith was reposed by the plaintiff because of the circumstances and the relation, who takes unfair advantage of the situation and gets the perpetual lease deed in favour of his own wife for no consideration, much less not to the benefit of the plaintiff, is a clear case of fraud.

56. No doubt, the provisions of Section 208 require a termination of the authority by proper notice. However, the facts revealed in this case show that, as on 18.1.1995 itself, it is noticed that the defendant No. 2 is taking advantage of the EX. D1-General Power of Attorney, plaintiff informed the Commissioner of BDA as per Ex. P18. On 31.1.1995 when an attempt was made by the defendants to interfere with the possession, a complaint was filed as per Ex. P13, immediately cancellation of Power of Attorney notice was also issued, the Power of Attorney is not given to an agent to act detrimental to the interest of the principal, but it is given to act on behalf of the principal. But the evidence discloses that, it is not used for the benefit of the principal, but detrimental to the interest of the principal. It is submitted that, all acts done by the Power of Attorney Holder are deemed to have been done on behalf of principal in terms of Section 226 of the Contract Act. There cannot be any dispute on this question, but if it is clothed or covered by fraud, no matter whether through the Power of Attorney or not, all such, acts would come to an end automatically.

57. Learned Counsel had relied on the provisions of Sections 208 and 226 of the Contract Act and in support of his submission, had relied on two decisions of this Court viz., *Syndicate Bank, Bangalore Vs. I.K. Amitha and Others*, and 1985(2) KARLJ 188 in the matter of *Doddarajappa K.B. and Ors. v. C.R. Venkoba Rao and Ors.* This Court interpreting the provisions of Section 226 of the Contract Act held that, the acts of Power of Attorney Holder are acts of the principal. The principles enunciated in these cases would be applicable only in such circumstances, where the Power of Attorney Holder exercises his right under the said authority, fairly and reasonably as an attorney, but not to a person who, with intention to commit a fraud, has used his authority. In this case, it is found that the alleged General Power of Attorney itself is obtained by fraud. Hence, the decisions are not applicable to the facts and circumstances of these cases. The provisions of Sections 226 or 208 of the Contract Act will not come to the aid of defendant No.

2. Exs. D4 and D5 having come into existence at the instance of defendant No. 2 and having noticed the circumstances under which they have come, it cannot be held that the defendant No. 1 was put in possession by the plaintiff and even exercise of authority by defendant No. 2 is not binding on the plaintiff and the lease deeds created by defendant No. 2 are not enforceable. Hence, the question of recognising the possession of the defendant No. 1 does not arise. Further, defendant No. 1, who filed a suit for permanent injunction and obtained temporary injunction, the said order was modified by this Court into an order of status-quo. It is on record that the suit schedule property is a vacant space and the possession follows the title. The suit property being a vacant land, the question of possession of either defendant No. 2 or defendant No. 1 also does not arise and fact that the plaintiff has proved her title to the property, I do not find there is any justification in the contention that the defendants are in possession and same is not acceptable.

58. The trial court has at length considered the evidence and on appreciation has found that the plaintiff is entitled for the decree. I am convinced that the plaintiff is entitled for the decree. Under these circumstances, I do not find any justification to interfere with the judgment and decree of the trial court.

59. Accordingly, R.F.A. NO. 1208/2007 fails and same is dismissed. Consequently, R.F.A. No. 1209/2007 is also dismissed.