

(2014) 01 KAR CK 0135

In the Karnataka High Court

Case No : Regular Second Appeal No. 1197 of 2011 (Res.)

Sri Shivakumar

APPELLANT

Vs

Nanjamma

RESPONDENT

Date of Decision : 18-01-2014

Acts Referred:

Contract Act, 1872 — Section 208

Karnataka Court Fees and Suits Valuation Act, 1958 — Section 24(a), 26(a), 27, 28, 29

Citation : (2014) 3 KCCR 2226

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : K.P. Asokumar, Advocate for the Appellant; Sanjiva V. Belagalli, Advocate for R-2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—The unsuccessful plaintiff in O.S. No. 2108/2006 on the file of II Additional Senior Civil Judge, Bangalore Rural District, Bangalore, has come up in this second appeal impugning the concurrent finding of both the Courts below in dismissing his suit filed seeking cancellation of Sale Deed dated 01.08.2006 which is registered on 03.08.2006 as document No. BNG(U) YLNK/10107/2006-07 and for the relief of permanent injunction restraining the defendants, their agents from interfering with the alleged possession of suit schedule property by the plaintiff and other reliefs which was sought initially and subsequently amended to seek additional prayer of delivery of vacant possession of suit schedule property from the second defendant. For the sake of brevity, parties herein are referred to by their rank in the trial court.

2. Brief facts leading to this second appeal are as under:

Plaintiff in the original suit, who is appellant herein is younger brother of second defendant, N. Mallaiah, who is husband of first defendant, Smt. Nanjamma. Admittedly the suit property was the ancestral property of plaintiff-Shivakumar and second defendant, Mallaiah, which has fallen to the share of Shivakumar in

the partition between himself and his brother. It is further not in dispute that pursuant to partition, Shivakumar was put in exclusive possession of the suit schedule property. However, it was contended that the plaintiff was in possession of the suit schedule property till the date of filing of suit against the defendants for the aforesaid prayer. The case of plaintiff is that during the month of July, 2006, he came to know about an attempt being made by his brother in utilizing some of the documents, which was executed in favour of his brother to create certain documents regarding his title to the suit schedule property and encumbering the same. Hence, it is stated that he issued a notice on 31.07.2006 to second defendant calling upon him not to deal with the property on the basis of any of the documents, which he is purported to have secured on some stamp paper for the purpose of securing loan in his favour. It is stated that subsequent to issue of notice on 31.07.2006, defendant Nos. 1 and 2 collusively prepared a Sale Deed dated 01.08.2006 and got the same registered on 03.08.2006, wherein the first defendant relying upon a fabricated Power of Attorney conveyed the suit schedule property in favour of her husband, second defendant and the present suit is filed seeking cancellation of the said document in conveying the suit schedule property in favour of second defendant. It is necessary to mention that while filing the suit, plaintiff produced copy of the registered Sale Deed and also copy of the Power of Attorney under which suit property was sold by the first defendant in favour of second defendant.

3. In the said suit, after service of summons, defendants entered appearance and set up a defence to the effect that the suit schedule property was nodoubt the property of the plaintiff, which had fallen to his share in a partition between himself and his brother, plaintiff. It is their case that in the year 1993, plaintiff approached second defendant offering to sell the suit schedule property for valuable consideration of Rs. 40,000/- and in that behalf he executed two documents, one General Power of Attorney dated 15.02.1993, which he executed in favour of first defendant authorizing her to deal with the property in whatever manner she deems fit to do so and also executed another document in the form of an affidavit, wherein he has received the entire sale consideration of Rs. 40,000/- for sale of the suit schedule property in favour of second defendant and on the date of execution of General Power of Attorney, he has given an undertaking by way of an affidavit delivering possession of suit schedule property in favour of first defendant and that the Power of Attorney which was executed is irrevocable in nature coupled with the consideration shown in the affidavit, which accompanied the Power of Attorney and as such the first defendant was in possession and enjoyment of suit schedule property as bona fide purchaser for value and in the said written statement, allegations of misusing the blank documents which is said to have executed by the plaintiff in favour of second defendant were denied.

4. With these rival pleadings, suit went for trial, wherein based on the pleadings, following issues were framed:

1. Whether the plaintiff proves that the alleged GPA dt. 15.2.1993 and sale deed dated 1/8/2006 are null and void?
2. Whether the plaintiff further proves that unnecessarily the defendants are trying to interfering with his possession and enjoyment of the property?
3. Whether the defendant No. 2 proves that he is owner of the property as per sale deed and bona fide purchaser?
4. Whether the plaintiff is entitle for the relief of declaration and injunction as sought for?
5. What order or decree?

Additional Issues:

1. Whether the plaintiff proves that they are entitled for the relief of possession?
2. Whether the defendants prove that the Court fee paid on the plaint is insufficient?

On behalf of plaintiff, he examined himself as P.W. 1 and relied upon seven documents, i.e., Exs. P-1 and P-2 are RTC Extracts, Ex. P-3, copy of notice dated 31.07.2006 which was sent by him to second defendant, Ex. P-4 is the sealed cover which has come back with an endorsement that "notice is refused", Ex. P-5 is the receipt for having sent the notice under registered post, Ex. P-6 is the acknowledgment for having sent a copy of notice under certificate of posting and Ex. P-7 is certified copy of the Sale Deed issued by the office of the Sub Registrar.

5. Per contra, on behalf of the defendants, the first defendant, Nanjamma adduced evidence as D.W. 1 and N. Mallaiah, her husband and second defendant in the suit, who is beneficiary of Sale Deed, which is sought to be declared as null and void, as D.W. 2 and examined other three independent witnesses, i.e., D.W. 3, who is one of the witnesses to Ex. D-1 and D.Ws. 4 and 5 are the owners of land situated adjacent to suit schedule property, who have spoken regarding possession of suit schedule property with the defendants from the date of Exs. D-1 and D-7, i.e., original General Power of Attorney and as well as consideration receipt in the form of affidavit.

6. The trial Court on appreciation of the pleadings, oral and documentary evidence available on record proceeded to dismiss the suit by answering issues 1 and 2, which were framed to consider whether General Power of Attorney (GPA for short) dated 15.2.1993 and sale deed dated 1.8.2006 are null and void, alleged interference with the possession and enjoyment of plaintiff over suit schedule property by defendants, were answered in the negative. Similarly, 4th issue which was framed to consider the entitlement of plaintiff to seek the relief of cancellation of sale deed and permanent injunction was also answered in the negative. So far as additional issues are concerned, first additional issue which was framed subsequently to consider the prayer of plaintiff for the relief of possession, was also answered in the negative. While doing so, issue No. 3,

which was regarding second defendant's ownership over the suit schedule property pursuant to sale deed as bona fide purchaser, was answered in the affirmative and the second additional issue framed based on the defence raised by defendants regarding court fee was also answered in the affirmative in favour of defendants holding that court fee paid is insufficient. Being aggrieved by the same the plaintiff preferred appeal in R.A. No. 300/2010 challenging the finding of trial court regarding GPA-Ex. D1 and the sale deed, which is executed by first defendant in favour of second defendant vide Ex. P7 as invalid documents and also the finding of trial Court in holding that the court fee paid is insufficient, as erroneous.

7. The lower appellate court after hearing the counsel for parties proceeded to frame the following points for consideration:

1. Whether the plaintiff/appellant proves that the General Power of Attorney dated 15.2.1993 (Ex. D1) and the registered Sale Deed dated 1.8.2006/3.8.2006 (Ex. P7) are null and void?

2. Whether the defendant No. 2 proves that he is the bona fide purchaser of the suit property by virtue of the Sale Deed in question?

3. Whether the plaintiff is entitled for the reliefs of declaration and possession as sought?

4. Whether the Court fee paid by the plaintiff is insufficient?

5. Whether the impugned Judgment and Decree requires any interference?

6. What order?

8. The points framed by lower appellate court are more or less similar to the issues which were framed in the trial court and answered them on similar lines for the reasons given in the judgment impugned. While dismissing the appeal, the lower appellate court held that the court fee which is paid by the plaintiff while filing the suit for cancellation of sale deed and permanent injunction is insufficient and he is required to pay ad valorem court fee on the market value and also observed that until the court fee is paid, decree shall not be drawn. Being aggrieved by the concurrent finding of both the courts below regarding aforesaid two documents i.e., Ex. D1-GPA and sale deed-Ex. P7 executed by first defendant in favour of second defendant pursuant to GPA-Ex. D1 and also holding that court fee paid is insufficient and that plaintiff is required to pay the same as per section 38(1) of the Karnataka Court Fees and Suits Valuation Act 1958 by paying required court fee on the basis of ad valorem is challenged in this second appeal.

9. When this second appeal came up for admission, initially the judgment rendered by the lower appellate court, so far as it pertains to payment of court fee, was stayed and payment of court fee was kept in abeyance to be decided at the time of final disposal of this appeal by order dated 10.6.2011. Thereafter on

14.6.2011 this appeal was heard and admitted to consider the following substantial questions of law:

1. Whether the Courts below are legally correct in holding that mere admission of signature on a blank stamped paper amounts to due execution of the document, that is Ex. D1-the Power of Attorney?
2. Whether the Courts below are justified in holding that the sale of schedule property in favour of defendant is valid without the proof of payment of sale consideration?

Thereafter, lower court records are received and the matter is heard at length on behalf of counsel for appellant and respondents. However, before deciding the substantial questions of law as above, this Court would take up the finding of lower appellate court so far as court fee that was required to be paid by the plaintiff on the suit filed by him for the relief of cancellation of sale deed dated 1/3.8.2006 as null and void and for other consequential reliefs, is taken up for consideration.

10. Admittedly, the property involved in this proceeding is agricultural land measuring to an extent of 15 guntas. The fact that it continues to be agricultural land even as on the date of sale deed and the same is not alienated for any purpose other than agricultural activity, is not in dispute. It is further not in dispute that question of payment of court fee in respect of any dispute arising, wherein the market value of the property falling u/s 24(a) and (b), 26(a), 27 to 29, 31, 35(1) to (3), 36, 38, 39(1) and 45 is covered u/s 7(2) of the Karnataka Court Fees and Suits Valuation Act 1958. In the instant litigation, the prayer of the plaintiff is for cancellation of sale deed dated 1.8.2006 which is presented and executed on 3.8.2006 and registered as document No. BNG(U)YLNK/10107/2006-2007 and related prayer of permanent injunction, which is later converted into the relief of possession. The said prayer attracts payment of court fee u/s 38(1) of the Karnataka Court Fees and Suits valuation Act, 1958, which reads as under:

38(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit, and such value shall be deemed to be-

If the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or to her document was executed;

If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

11. So far as payment of court fee in respect of prayer with reference to agricultural land where the relief is for cancellation of sale deed, counsel for

appellant has relied on the decision of this Court in a matter between Mohaboobsab Vs. Goudappa in CRP. No. 739/1974), which is in Short Note No. 305, reported in 1974 (2) KLJ 80, wherein under similar circumstances this Court relying on the judgment reported in J.M. Abdul Aziz and Another Vs. The Commissioner of Income Tax, , has held as under:

The value of the property in S. 38(1) must be understood as the market value of the property and not the amount of consideration mentioned in the deed sought to be cancelled. Thus in a suit for cancellation of a sale deed, the plaintiff is justified in valuing the suit on the basis of the market value of the property which was the subject matter of the sale deed.

Since the ratio laid down in the aforesaid matter cover the facts and circumstances of the case on hand, the contention of the appellant that court fee payable u/s 38(1) in respect of agricultural land is covered u/s 7(2) of the Karnataka Court Fees and Suits Valuation Act, is just and proper. In that view of the matter, the finding of the trial court as well as lower appellate court in holding that plaintiff will have to pay ad valorem court fee on the market value of the suit schedule property, is erroneous and the same is set aside.

12. Now coining to the substantial questions of law, which are framed by this Court at the time of admission of this appeal, this Court answer the same in the affirmative for the following:

REASONS

In the present litigation, in the peculiar facts and circumstances and also considering the nature of relationship between the parties, the courts below have threadbare gone in to the pleadings as well as defence raised by the defendants while deciding the correctness or otherwise of execution of Ex. D1 and the consequential execution of sale deed at Ex. P7 by first defendant in favour of second defendant and held that first defendant has conveyed valid and subsisting title in favour of second defendant. Admittedly, plaintiff is not denying his signature on Ex. D1-GPA. It is his case that in the month of July 2006 for the first time he came to know that there is an attempt on the part of his elder brother-DW. 2 in creating certain documents to appropriate suit property in his favour by utilizing the blank stamp paper on which his signature was taken. It is also his case that his brother-second defendant is a government employee, well placed in the society and that, he is an agriculturist and was always being guided by his brother in all the transactions. In that regard when plaintiff approached his brother for the sake of borrowing certain money for the purpose of agricultural activity, he was made to sign on certain blank papers and said blank papers which were taken some time during 1990 was utilized for the purpose of creating GPA in the year 2006 and by utilizing the same his property is tried to be knocked off by his brother in connivance with his wife-first defendant. The challenge to Ex. D1-GPA is commenced by issuing notice in Ex. P3. Admittedly, Ex. P3 is addressed to second defendant. In said document, he does not clearly

state, what is the nature of document, which document he is revoking, what kind of documents were created and for what purpose documents were created. It is bald and vague. It refers to some document alleged to have been executed by plaintiff in favour of second defendant with reference to suit property and there is allegation of same is likely to be misused by him in order to seek vengeance. Though allegation of vengeance is made, why such vengeance is required to be carried by his brother against him is not mentioned and for what reason the differences have arisen between them, which would necessitate second defendant to carry any kind of vengeance against plaintiff, is also not explained. The entire notice is vague. Though it refers to revocation of document, what document was to be revoked is not mentioned except stating that it is in respect of suit property with a rider that any conveyance deed made pursuant to said document would not bind him.

13. Now coming to Exs. D1 and D7, which are the documents which are said to have come in to existence in the year 1993, if these two documents are looked in to, they are GPA dated 15.2.1993, which is at Ex. D1 and affidavit in form of declaration which is at Ex. D7. The stamp papers, on which these two documents are executed, are issued as one unit bearing serial Nos. 3501 to 3503. The first two pages of this set are utilized for preparing GPA and the third one is utilized for preparing the affidavit/declaration. Though much is said by plaintiff to state that it is a created document, leaving certain space in a portion of first and second page and congesting the matter in some place to see that said document is prepared within the space available in a pre-signed stamp paper, the said aspect appears to be false. As rightly observed by the trial court as well as lower appellate court, there is no scope for any such document being prepared in the space which is left after the stamp paper is signed in blank. On going through these two documents i.e., Ex. D1 and D7, Ex. D1-GPA would disclose that plaintiff, who is principal in the said document, has created the agency in favour of first defendant, his sister-in-law authorizing her to deal with the property in whatsoever manner she decides in respect of said property. In the preamble, he says that the property which was hitherto in his possession and enjoyment is not being able to be looked after by him, hence, he is giving power to maintain the same to first defendant under Ex. D1. Under Ex. D1 certain specific rights are given to first defendant; first one is to get the change of katha in her name and to pay the tax; second one is to sell, gift away, encumber suit property in favour of any person at her discretion; third one is to execute the right of ownership in developing said property by taking up any construction thereon; fourth one is to secure necessary permission, plan and licence from competent authority; fifth one is to protect the said property by engaging the services of an advocate and to protect the same from any litigation. The most relevant portion is sixth one and eighth one, wherein, under clause 6 it is made clear that in the event of land being acquired either by BDA, BDO, KHB or any other authority, first defendant-agent is entitled to receive the compensation and appropriate the same for herself. Eighth clause authorizes her to borrow loan and repay the same by

herself. While concluding the document, an assurance is also given that first respondent is authorised to carry out all the activities by herself under said GPA-Ex. D1, which would not be revoked at any point of time, for any reason. The said document is followed with description of schedule of property, which is not in dispute, which is similar to the one in suit schedule.

14. It is also seen that, out of three papers, which are purchased in a set under the serial number 3501 to 3503, the third paper, which is left out is utilized for the purpose of executing affidavit in the form of declaration. The said document clearly discloses that, it is evenly typed. There is nothing to indicate that this document was executed in blank and thereafter, the contents are filled up to demonstrate that the same is specifically created. In the said affidavit, there is also reference to GPA executed on the same day. In the said declaration, there is confirmation of acceptance of Rs. 40,000/- as sale consideration and in return, the possession of schedule property being given in favour of first defendant authorising her to be in possession and enjoyment of said property and also clarifying that utilising the GPA, which is executed on the same day, she is entitled to sell the said property for valuable consideration and to appropriate the same with a further undertaking that, in case, if first defendant so desires to get the sale deed executed directly from plaintiff she can call upon him to come and execute the sale deed in favour of the person to whom she intends to sell the said property and at the time of executing such sale deed either in favour of first defendant or her nominee, he would do so without expecting any consideration for executing the said document. Based on these two documents, entire defence of defendants has rested.

15. It is seen that, though plaintiff contends that he has executed blank stamp papers instead of duly typed GPA and affidavit, as observed by trial court and lower appellate court while reassessing the pleadings and evidence the documents were fully prepared when the same were executed by plaintiff in favour of first defendant. First and foremost thing which confirm the sale is, presentation of plaint along with Xerox copy of GPA, which is at Ex. D1, as 8th document. Though in the plaint there is an explanation to the effect that after plaintiff came to know about the sale deed being executed by first defendant in favour of second defendant, he approached the office of Sub-Registrar, secured the certified copy of sale deed and thereafter, got all these documents. If that has to be believed, the xerox copy of GPA which is produced along with plaint and not marked is still available on record. Indeed, there is nothing on record to show that said document is a copy, which is issued by the office of Sub-Registrar as against Ex. P7, which is certified copy of sale deed dated 1.8.2006 and registered on 3.8.2006. Therefore, at the first instance itself, plaintiff has failed to demonstrate that he was not aware of GPA being prepared and executed by him, as it was produced and marked in Ex. D1. The said submission is incorrect. It is further seen that, as rightly observed by both the courts below, assuming for a moment if some document is prepared in the year 1993, no sensible person would allow that to continue with third person without verifying the fate of such

document, which was executed by him about 12 to 13 years prior to filing of suit. In the entire records there is nothing to show that subsequent to alleged execution of blank stamp paper in the year 1993, anything is done by the plaintiff to ascertain what has happened on said document. Though in the notice it is stated that certain documents are executed by him in blank, in his notice, which is at Ex. P3, under what circumstance said document was executed by him in blank and at whose instance, is not properly explained.

16. It is further seen that, there is improvement while filing the suit, wherein he states that GPA, which is at Ex. D1 is prepared on a stamp paper executed by him in blank for the purpose of securing bank loan, for which he sought the assistance of his elder brother, a government employee. Nothing on record would disclose, what is the educational qualification of second defendant. However, the evidence on record would disclose that plaintiff has studied up to 10th standard and he is a businessman, running a hotel. A person who has studied up to 10th standard cannot be expected to execute blank stamp paper on the premise that he is not in a position to approach the bank by himself to secure the loan. More so, when he is running the business of hotel by himself, to say that he was in need of help of his brother to approach the bank for loan to meet his need for agricultural activity, is rightly not accepted by both the courts below for the reason that, same is an excuse to get over the documents at Exs. D1 and D7, which is GPA and declaration regarding receipt of consideration for sale of suit property in favour of first defendant.

17. Though a GPA can be revoked, in the instant case, it is coupled with interest as could be seen from the declaration, which is at Ex. D7 and incidentally Exs. D1 and D7 are prepared on one set of papers, which is jointly issued and said two documents are executed on the same day, wherein while accepting receipt of consideration there is also reference to possession being delivered to first defendant and GPA being executed in her favour. If both the documents are looked in to, the intention of plaintiff in conveying suit property in favour of first defendant is clearly seen in unequivocal terms as explained in detail supra. When plaintiff has clearly accepted that first defendant has right to sell, mortgage, gift and encumber suit property in favour of any person of her choice under Ex. D1, it is not open for him to challenge the sale deed, which is executed subsequently on 1/3.8.2006. Even assuming that there is a notice issued by him in revoking GPA, for that, the observation of both the courts below in holding that said GPA was coupled with interest and therefore, it was rightly not revocable, appears to be just and proper in the facts and circumstances of the case.

18. In this behalf, the learned counsel for appellant would rely on the following judgment in the matter of Sri. N.M. Ramachandraiah and Smt. M.A. Vinoda Vs. The State of Karnataka, Department of Revenue, to the effect that GPA-Ex. D1 was not in existence as on 1/3.8.2006 and therefore, based on that, the sale deed could not have been executed by first defendant in favour of second defendant. He also relied on the provisions of Section 208 of the Indian Contract

Act, 1872 to state that the termination of the authority of an agent takes effect when it becomes known to him. So far as the third parties, it will take effect from the date they come to know about the said termination. By relying on this provision he tried to explain that the notice under Ex. P3 which was sent under certificate of posting is presumed to have reached his brother on 1.8.2006, which has prompted him to get the sale deed prepared on the same day and presented on 3.8.2006. Therefore, since he had notice of revocation under Ex. P3, sale deed at Ex. P7 would not be valid document, inasmuch as, GPA which is at Ex. D1 stood revoked by virtue of notice under Ex. P3.

19. This Court is not in agreement with aforesaid line of argument in the facts and circumstances, as stated supra since GPA is coupled with interest, inasmuch as, plaintiff having executed the same after agreeing to sell the suit property in favour of first defendant for valuable consideration of Rs. 40,000/- and making a clear recital in GPA that she is at liberty to sell, gift and encumber in whatever manner she deems fit and further, in the event of property being acquired by any of the statutory bodies, to receive compensation and to appropriate for herself, he has made it clear that said power is backed-up by consideration, therefore, she is not accountable for any of the amounts received from said transaction. In the said background the decision in Sri. N.M. Ramachandraiah and Smt. M.A. Vinoda Vs. The State of Karnataka, Department of Revenue, would not be of any benefit to him and also Section 208 of India Contract Act, inasmuch as, as on 31.7.2006 or on subsequent date the plaintiff had no right to revoke the GPA and even if a notice is sent, it was not binding either on first defendant or second defendant, who had secured certain rights over suit property and it was undisputed for a period of more than 13 years from 1993 to 2006 by virtue of Ex. D1 and D7. In that view of the matter, this Court find that the conduct of first defendant in executing the sale deed relying on GPA executed in her favour by plaintiff, appears to be just and proper and the finding of both the courts below also appears to be just and proper, which does not call for interference by this Court.

20. Now coming to second substantial question of law i.e., whether the finding of both the courts below regarding sale deed is justifiable without proof of payment of sale consideration, if at all, any person, who has to raise that objection is, it is first defendant. As stated supra, she has secured GPA from plaintiff to deal with the property as if she is owner of said property and the recital in GPA would indicate that any consideration received by her could be appropriated by herself without reference to plaintiff. Under such circumstance, if the sale deed, which is executed by first defendant in favour of second defendant vide Ex. P7 is looked in to, the entire sale consideration which she would receive under Ex. P7 is required to be appropriated by herself. In the said circumstance, whether the sale deed at Ex. P7 is with consideration or without consideration or executed gratuitously or the consideration on said sale deed is received subsequently from her husband, is not a matter of consequence so far as plaintiff is concerned. As could be seen from Exs. D1 and D7, he has parted with his right in the suit property in favour

of first defendant under two documents i.e., Ex. D1-GPA, which is coupled with interest and Ex. D7, which is declaration regarding receipt of consideration as well as delivery of possession of suit schedule property.

21. As could be seen from the finding of both the courts below, the execution of documents in Exs. D1 and D7 by plaintiff in favour of first defendant cannot be set aside based on the ground, which is raised in the suit as well as in the notice at Ex. P3 since they are all self-serving and being contrary to each other and so much so, plaintiff in his anxiety to deny execution of Exs. D1 and D7 has gone to the extent of denying his very notice, which is at Ex. P3 as well as his signature on vakalath and on other documents, which clearly shows the dishonest intention of plaintiff, which is rightly attributed by the lower appellate court to the raise in price of property, which could have sown greed in the mind of plaintiff to turn around and deny the very same document, which he has executed in favour of his brother and sister-in-law. Merely because second defendant is a government employee and in whatsoever status he is working there, to utilize the same to make allegation that plaintiff is believed to be cheated and by coercion put signature on blank paper and using the same Exs. D1 and D7 being prepared are all rightly denied by trial court by going through entire pleadings and evidence threadbare. While deciding that both the courts below have come to the conclusion that probably the greed of plaintiff has made him to take this extreme step of issuing notice in Ex. P3 as well as pursuing this suit for cancellation of Ex. P7 and denying execution of Exs. D1 and D7 in favour of first defendant.

22. Keeping that aside, now coming to second substantial question of law, as stated supra, when execution of Exs. D1 and D7 is proved, nothing survives for plaintiff to claim that second defendant has not paid sale consideration to first defendant and first defendant has not passed on the same to him when there is no legal right subsisting in him as on the date of filing of suit. Indeed, to seek for payment of sale consideration for sale of suit schedule property by first defendant to second defendant, there is no legal right subsisting with him to insist that first defendant ought to have sold the property only after receiving sale consideration from second defendant. In view of plaintiff having executed Exs. D1 and D7, GPA and declaration and having received full sale consideration parted with the possession of suit schedule property in favour of first defendant in investing right in her to deal with the property in whatever manner she deems fit to, it is not open for him to challenge the sale deed on the ground that consideration has not passed on to vendor. In support of his case, learned counsel for appellant has also relied on few other judgments, which are as under:

1. Company Bank, Bangalore Vs. Lalitha H. Holla and Others, .
2. H. Siddiqui (dead) by L.Rs. Vs. A. Ramalingam, .
3. Gurbaksh Singh Vs. Nikka Singh, .
4. Abdul Raheem Vs. The Karnataka Electricity Board and Others, .

23. Though ratio laid down by the Apex Court in the aforesaid judgments is valid law, same would not enure to the benefit of plaintiff, in the present suit, in the particular facts and circumstances of the case, which is rightly discussed by both the courts below while dismissing his suit for cancellation of sale deed and also for the relief of permanent injunction initially and subsequently converted in to the suit for the relief of possession of suit property. On going through the judgment of both the courts below, it is clearly seen that both the courts below have rightly held that plaintiff is not entitled for the said relief.

24. In that view of matter, the aforesaid substantial questions of law which are framed at the time of admission are answered in the affirmative and consequently, the appeal filed by plaintiff is dismissed confirming the concurrent finding of both the courts below in dismissing his suit.