

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>th</sup> DAY OF MARCH 2022

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

**R.S.A. No.5 OF 2017(DEC/INJ)**  
**C/w. R.S.A. No.6 OF 2017 (POS)**

**In R.S.A. No.5/2017:**  
**BETWEEN:**

SMT.P.C.PADMAMBA,

**... APPELLANT**

(BY SRI. KRISHNAMURTHY.G. HASYAGAR, ADVOCATE)

**AND:**

1. CHANNAVEERAMMA R.,

2. MISS.R.BAGIRATHAMMA,

**... RESPONDENTS**

(SERVICE OF NOTICE TO R-1 AND R-2 IS HELD SUFFICIENT  
VIDE ORDER DATED:19.12.2019)

**... RESPONDENTS**

(SERVICE OF NOTICE TO R-1 AND R-2 IS HELD SUFFICIENT  
VIDE ORDER DATED:19.12.2019;  
BY SMT. PUSHPAKANTHA, ADVOCATE FOR R-3)

THIS APPEAL IS FILED UNDER SECTION 100 OF CPC,  
AGAINST THE JUDGMENT AND DECREE DATED:29.08.2016  
PASSED IN R.A. No.983/2010 [OLD No.887/2010] ON THE  
FILE OF THE VII ADDITIONAL DISTRICT JUDGE, MYSURU,  
ALLOWING THE APPEAL AND MODIFYING THE JUDGMENT AND  
DECREE DATED 06.09.2010 PASSED IN O.S. No.461/1999 ON  
THE FILE OF THE IV ADDITIONAL SENIOR CIVIL JUDGE,  
MYSURU.

THESE APPEALS HAVING BEEN HEARD AND RESERVED  
FOR JUDGMENT ON 08.02.2022, COMING ON FOR  
*PRONOUNCEMENT* THIS DAY, THE COURT DELIVERED THE  
FOLLOWING:

**JUDGMENT**

1. The facts leading to the filing of these appeals are  
as follows:
2. On 15.02.1982, R.Chennaveeramma and  
R.Bhagirathamma—daughters of C.Rudraiah filed a suit  
seeking for a decree of injunction to restrain Y.Chikkanna  
from interfering with their possession over the house

property bearing Door No.42, situated at N.G.O's Colony, Rajendra Nagar, Mysuru.

3. It was stated that the suit house property had been allotted to their father Rudraiah on 01.02.1967 and all the municipal records stood in his name. It was stated that Rudraiah had passed away on 06.01.1982 and during his lifetime, he had executed a registered Will dated 20.11.1973 (registered on 23.11.1973) bequeathing the house in their favour and they had thus succeeded to the property. They stated that they were in continuous possession and enjoyment of the house property and as the defendant was contending that he had purchased the suit property and had come near the suit property and tried to interfere with their possession, they were constrained to file the suit.

4. This suit was resisted by Chikkanna stating that Rudraiah had been allotted with the site by the Karnataka Housing Board under a Hire-Purchase Agreement, but he

was not in a position to pay the installments and in addition, he had decided to leave Mysuru and return to his native place and he had therefore decided to sell the suit house in favour of the defendant. He stated that Rudraiah had executed a sale deed on 03.05.1979 in his favour for a total sale consideration of Rs.22,000/-.

5. According to him, as per the terms of the sale deed, he had paid a sum of Rs.3,612=77 to the Karnataka Housing Board on behalf of Rudraiah, which was the entire balance due to the Board. He stated that he had also paid a sum of Rs.6,800/- to Rudraiah in the presence of the witnesses and Rudraiah had agreed to receive the balance consideration at the time of the registration of the sale deed.

6. Chikkanna, however, stated that since Rudraiah failed to ensure registration of the sale deed, he had presented the document for registration, but the Sub-Registrar had refused to register the sale deed and he was

therefore constrained to prefer an appeal to the District Registrar, who by an order dated 23.06.1981, directed the registration of the said sale deed and accordingly, the sale deed was registered on 27.06.1981.

7. Chikkanna also stated that thereafter, he had issued a legal notice on 09.08.1981 to Rudraiah calling upon him to receive the balance sale consideration of Rs.11,587=23 and to hand-over the vacant possession to him and to secure the necessary documents from the Karnataka Housing Board. He stated that after obtaining the sale deed, he had got the Khata registered in his name, and he was entitled to be in possession of the house property.

8. He stated that Rudraiah had died on 06.01.1982 and that his daughters who were not residing with him in the suit house, subsequently, in connivance with Rudraiah's son, began to stake a claim that they were the legatees under the registered Will dated 20.11.1973 (registered on 23.11.1973). Chikkanna stated that he was not admitting

the genuineness, execution and validity of the Will and the plaintiffs were put to strict proof of the same. It was also stated that even if the Will was duly proved, the plaintiffs could not have derived any title under the will, since Rudraiah had himself sold the property during his lifetime. He also stated that in the light of a registered deed of conveyance executed in his favour, the execution of the Will or the payment of taxes was of no consequence.

9. It was also stated that after the Khata was registered in his name, he had applied to the Karnataka Housing Board for execution of the requisite documents in his favour and the said claim was still pending and he had also learnt that the plaintiffs had approached this Court by way of a writ petition and had obtained a stay order. He, therefore, sought for dismissal of the suit.

10. It is to be stated here that during the pendency of the suit, the plaintiffs made an application for amendment

of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 in I.A. No.5 on 24.05.1988 seeking to incorporate the prayer of the declaration that they were the owners of the suit property and for a declaration that the alleged sale deed dated 03.05.1979 said to have been executed by their father was null and void. This application was rejected by the Trial, as against which, the plaintiffs preferred a Civil Revision Petition No.2687 of 1994 to this Court, which came to be allowed on 23.02.1999.

11. It may be pertinent to state here that while allowing the amendment, this Court did not state that the amendment would be effective only from the date of the order and that it would not relate back to the filing of the suit. Thus, by way of the amendment, at the time of institution of the suit itself, the plaintiffs are deemed to have sought for a declaration that they were the owners of the suit property and that the sale deed obtained by

the defendant from Rudraiah dated 03.05.1979 was null and void. The defendant filed an additional written statement denying the entitlement of the plaintiffs to make the said claim.

12. The Trial Court after considering the evidence adduced before it concluded that the plaintiffs had proved that they were in possession of the suit property and their possession was interfered with by the defendant. The Trial Court, however, held that the plaintiffs had been unable to prove that the sale deed dated 03.05.1979 executed by Rudraiah in favour of the defendant was void and was not binding on them. The Trial Court, accordingly, decreed the suit in part and while refusing the prayer of the plaintiffs for a declaration that they were the owners and the sale deed was null and void, it proceeded to grant them a decree restraining the defendant from interfering with their possession. Liberty



was, however, reserved to evict them in accordance with law. The plaintiffs, being aggrieved, preferred an appeal.

13. At that stage, pursuant to the liberty granted by the Trial Court to evict the plaintiffs in accordance with law, Chikkanna proceeded to file O.S. No.461 of 1999 seeking for possession. The Trial Court, in this suit, after contest, concluded that Chikkanna had established that he was the owner of the suit property and was therefore entitled for possession. The Trial Court also held that the suit was not barred by limitation. The Trial court, accordingly, decreed the suit filed by Chikkanna for possession.

14. As against the refusal to declare that they were the owners of the house property and that the sale deed obtained by Chikkanna was null and void in O.S. No.1114 of 1989, Chennaveeramma and Bhagirathamma had already preferred R.A. No.976 of 2009 and was pending before the Appellate Court.

15. As against the decree for possession, granted in favour of Chikkanna in O.S. No.461 of 1999, Chennaveeramma and Bhagirathamma preferred R.A. No.983 of 2010.

16. The Appellate Court consolidated both the appeals and after hearing, by a common judgment, concluded that the dismissal of the suit seeking for declaration was not justified and it proceeded to decree the suit filed by Chennaveeramma and Bhagirathamma in its entirety and declared them to be the owners in possession of the suit property. It also declared that the sale deed obtained by Chikkanna pursuant to the order of the District Registrar, Mysuru, in R.A. No.3/1979-80 was null and void.

17. The Appellate Court also set aside the decree of possession granted in favour of Chikkanna and dismissed his suit filed by him for recovering possession from Chennaveeramma and Bhagirathamma.

18. It is against this common judgment and decree, these two second appeals have been preferred.

19. R.S.A. No.5 of 2017 arises out of O.S. No.1114 of 1989 filed by the daughters of Rudraiah, while R.S.A. No.6 of 2017 arises out of O.S.No.461 of 1999 which was filed by Chikkanna.

20. Sri.Krishnamurthy G.Hasyagar, learned counsel appearing for the appellant, put forth the following contentions:

(a) Once the sale deed had been registered and the registration was not challenged by Rudraiah, the sale deed could not have been invalidated by the Appellate Court.

(b) Since the daughters of Rudraiah had challenged the order directing the sale deed to be registered by filing a writ petition but had thereafter chosen to withdraw same, they had also accepted the

conveyance and as a necessary consequence, the suit filed for declaration that the sale deed was null and void, could not be maintained.

- (c) The prayer for cancellation of the sale deed, which had been registered on 27.06.1981, was made in the suit only by way of an amendment(I.A. No.5)and that too in the year 1988 and this prayer was thus clearly time-barred. He submitted that, even if the amendment was allowed in the year 1999, the very claim having been made beyond the prescribed period and being time-barred, could not have been entertained.
- (d) The non-payment of the balance sale consideration did not, in any way, invalidate the sale deed since the sale deed had been duly registered in accordance with law.
- (e) The judgment of the Appellate Court was vitiated since the application filed for production of

additional evidence was not decided along with the appeal.

(f) He relied upon the following decisions:

<b>Sl.No.</b>	<b>Case Law</b>	<b>For the proposition</b>
(i)	<b><i>State of Rajasthan vs. T.N.Sahani and others, [(2001) 10 SCC 619]</i></b> (T.N.Sahani);	That the application for additional evidence should have been decided along with the appeal.
(ii)	<b><i>Sri.Venkatakrishna Bhat vs. State of Karnataka and others, [Writ Petition No.12605/2011 (GM-CPC) D.D. 27.03.2013]</i></b> (Sri.Venkatakrishna Bhat);	That the consideration of the application under Order XLI Rule 27 CPC before hearing the appeal would be improper.
(iii)	<b><i>Dahiben vs. Arvindbhai</i></b>	That once the document is executed and thereafter

	<b><i>Kalyanji Bhanusali (D) through L.Rs. and others, [(2020) 16 SCC 366] (Dahiben);</i></b>	registered, the sale would be complete, and the title would pass to the transferee under the transaction and non-payment of a part of the sale price would not affect the validity of the sale.
(iv)	<b><i>Devikarani Roerich vs. M/s.K.T. Plantations Pvt. Ltd. [ILR 1994 KAR 1788] (Devikarani Roerich);</i></b>	That the failure of the executant to appear before the registering officer could be constructively treated as denial of execution.

21. I have considered the submissions of the learned counsel and have also perused the entire records including the original Trial Court records.

22. The following facts are not in serious dispute and are admitted by Chikkanna:

a] Chikkanna claimed that Rudraiah, the owner of the suit property, had executed a sale deed conveying the suit property in his favour on 03.05.1979 for a sum of Rs.22,000/- and he had paid a sum of Rs.6,800/- to Rudraiah as advance and Rudraiah had agreed to receive the balance sale consideration at the time of registration of the sale deed.

b] Rudraiah, the executant, did not come forward to get the sale deed registered and hence Chikkanna presented the sale deed for registration on 04.09.1979. On the sale deed being presented, in view of the non-appearance of Rudraiah, the Sub-Registrar issued a summons to Rudraiah whereupon Rudraiah appeared before the Sub-Registrar on 18.09.1979. On enquiry by the Sub-Registrar, Rudraiah admitted the execution of the document but refused to sign the endorsement and refused to give a statement. The Sub-Registrar, therefore, on 25.09.1979, took the view that the attitude

of Rudraiah Tanta mounted to denial of execution and refused to register the sale deed under Section 35 of the Registration Act, 1908 (read with Rule XI of the Rules).

c] As against the refusal to register, Chikkanna made an application under Section 73 of the Registration Act to the District Registrar. An Order was passed on this application on 13.03.1981 but thereafter Chikkanna had filed a review petition and requested for restoration of the case. The District Registrar acceded to the said request and restored the case and fixed the matter for hearing on 26.05.1981.

d] Rudraiah, in these proceedings, remained absent and was placed *ex parte*. Chikkanna examined the two attestors to the sale deed—the scribe of the sale deed apart from examining himself. He stated that Rudraiah had signed the document and had also received Rs.6,800/- towards the sale consideration. The attestors also stated that Rudraiah had signed the document and



received Rs.6,800/- towards sale consideration. The District Registrar, thereafter, by his order dated 23.06.1981, took the view that Rudraiah had executed the sale deed and in the exercise of the powers vested in him under Section 75(1) of the Registration Act, ordered for registration of the sale deed.

e] The sale deed was then re-presented before the Sub-Registrar on 27.06.1981 and the sale deed was registered on the same day.

f] Thus, the admitted case of Chikkanna was that the sale deed which had been signed by Rudraiah was presented for execution by Chikkanna and thereafter Rudraiah was summoned by the Sub-Registrar and Rudraiah appeared and admitted the execution of the sale deed but refused to sign the endorsement and to give a statement, and the Sub-Registrar, therefore, refused to register the document on the ground of denial of execution.

g] Thereafter, Chikkanna approached the District Registrar against the refusal of registration and the District Registrar after conducting an enquiry (in the absence of Rudraiah, who was placed *ex parte*) ordered the Sub-Registrar to register the document and accordingly the sale deed was registered.

23. The Appellate Court has taken the view that as on the day the sale deed was registered, Rudraiah did not possess title to convey the same to Chikkanna. It has been noticed that the title as on that day was with the Karnataka Housing Board and Rudraiah was in fact yet to pay the amount due to the Board. The Appellate Court has also found that, as per the sale deed executed by the Housing Board to the daughters of Rudraiah, it is they who are stated to have paid the outstanding amounts due to the Housing Board and after the completion of the lease-cum-sale period, resulting in the Housing Board conveying title to them, and it was thus the daughters of

Rudraiah who had acquired the title from the Housing Board.

24. It is not in dispute that Rudraiah was yet to acquire absolute title over the house property when he had executed the title and thus, this view of the Appellate Court that the title could not have passed to Chikkanna on the basis of such a sale deed, cannot be found fault with.

25. It is, no doubt, true that after the death of Chikkanna, the Housing Board had executed a sale deed in favour of Rudraiah's daughters by virtue of them being his legal heirs and an argument was thus made that the conveyance would enure to Chikkanna by virtue of Section 43 of the Transfer of Property Act, 1882.

26. It will have to be stated here that Chikkanna cannot seek benefit available under Section 43 because under

Section 43 of the Transfer of Property Act<sup>1</sup>, it is only if a person fraudulently or erroneously represents that he is authorised to transfer the immovable property and transfers it for consideration, the purchaser would get the benefit of any interest that the transferor may acquire subsequently.

27. Admittedly, in the present case, Chikkanna himself pleaded in his written statement that Rudraiah had been allotted the house by the Housing Board and he was unable to pay the installments and that was the reason for him to sell the house. Thus, the fact that Rudraiah had yet to acquire title over the house property by paying the balance due to the Housing Board was known to Chikkanna and was accepted by him. It, therefore, follows

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<sup>1</sup>Section 43. **Transfer by unauthorised person who subsequently acquires interest in property transferred.**—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

that it was not the case of Chikkanna that a fraudulent or erroneous representation had been made by Rudraiah to him at the time of transfer.

28. In fact, the sale deed dated 03.05.1979 itself contains a recital that Rudraiah was allotted the house by the Housing Board under a lease-cum-sale basis and he was selling the land for his personal needs, one of which was to clear the dues to the Housing Board which was to the tune of Rs.5,000/-.

29. There is also a further recital in the sale deed that Chikkanna had paid a sum of Rs.6,800/- as advance to Rudraiah and this was required to be utilised by Rudraiah to repay the outstanding dues to the Housing Board and thereafter register the sale deed. Thus, one of the essential conditions of the sale deed was that Rudraiah was required to repay the outstanding dues to the Housing Board and thereafter register the sale deed and,

at the time of registration, he would be receiving the balance sale consideration of Rs.15,200/-.

30. Chikkanna, in his examination-in-chief, has stated that he had paid a sum of Rs.3,612=77 to the Housing Board on 20.08.1979 in the name of Rudraiah and he produced the receipt for making the said payment. This indicates that Rudraiah had not repaid the outstanding dues to the Housing Board to entitle him to a transfer of title from the Housing Board.

31. It is thus clear that it was not the case of Chikkanna that a fraudulent or erroneous representation had been made by Rudraiah that he was authorised to transfer the immovable property. On the other hand, it was represented to Chikkanna that the house had been allotted to Rudraiah under a Lease-cum-sale agreement and there were still outstanding sums liable to be paid to the Housing Board and thereby the title was still with the Housing Board.

32. The intent behind enacting Section 43 of the Transfer of Property Act is to essentially protect the interests of the transferee when the transferor misleads him and transfers the property knowing fully well that he had no authority to transfer. To ensure that the transferor does not get any benefit by virtue of a subsequent acquisition of rights over the transfer and with a view to keep him bound by his earlier contract with the transferee, Section 43 has been enacted. Section 43 ensures that the transferee will acquire rights over the subject matter of the transfer, even though he had not acquired any rights at the time of transfer, upon the transferor acquiring an interest after the subject matter of transfer. Since, admittedly, Rudraiah did not mislead Chikkanna regarding his entitlement over the house property, the benefit available under Section 43 of the Transfer of Property Act would not be available to Chikkanna.

33. The Appellate Court was therefore justified in concluding that Rudraiah had no title to convey the house on 03.05.1979 and the basis of Chikkanna's claim of acquiring title was itself untenable, notwithstanding the registration of the sale deed.

34. Though the view of the Appellate Court is legal and proper and requires affirmation, in my view, the rather crucial and important role of the buyer and seller in the matter of registration of a sale deed in respect of an immovable property, would also have to be expounded in detail.

35. Section 55 of the Transfer of Property Act enumerates the right and liabilities of the Buyer and Seller in cases where there is no specific agreement in that regard. Under Section 55(1)(d) of the Transfer of Property Act<sup>2</sup>, a seller, on payment or tender of the

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<sup>2</sup>Section 55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:



amount due in respect of the price, is bound to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place.

36. Thus, in law, the deed of conveyance is required to be executed by the seller as and when the payment of the amount due in respect of the price is made or tendered to him and when the document is tendered to him for execution. In other words, the law does not require the buyer to execute the deed of conveyance and it is only the seller who is required to execute the deed of conveyance.

37. The liability of the seller does not, however, come to end on the mere execution of the deed of conveyance after the receipt of the sale price, because the transfer of

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(1) The seller is bound—

x x x x

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

an immovable property can be achieved only by way of a registered instrument.

38. The registration of a document under the Registration Act, 1908 envisages three stages. The first stage is the time of presentation of a document, which is governed by the provisions of Part IV of the said Act. The second stage is the place of registration, which is governed by the provisions of Part V of the said Act and the third stage is the presenting of documents for registration, which is governed by the provisions of Part VI of the said Act. While Section 32(a) of the Registration Act<sup>3</sup>, stipulates the persons who can present the

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<sup>3</sup>**Section 32. Persons to present documents for registration.**—Except in the cases mentioned in sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office,—

- (a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
- (b) by the representative or assign of such a person, or
- (c) by the agent of such a person, representative or assign, duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

documents and states that the person executing the document or claiming under the same can present the document. Section 34 provides for the enquiry to be conducted by the registering officer, before registration of the document. The said Section categorically states that no document shall be registered unless the persons executing the document (or representatives, assign or agents, with which we are not concerned in this case) appear before the Registering Officer within the time allowed for presentation under Sections 23, 24, 25 and 26 of the Act. Thus, though S. 32 of the Act provides for presentation of a document by the person executing the document or claiming under the same, under S. 34 of the Act, personal appearance of the persons executing the document before the registering officer is a must<sup>4</sup>.

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<sup>4</sup>**Section 34. Enquiry before registration by registering officer.—(1)** Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23,24, 25 and 26:

39. The only exceptions to this personal appearance of the executant is in the case of registration of Wills (Section 41), Deposit of wills (Section 43), Proceedings on the death of depositor of wills (Section 45), Power of Inspector-General to superintend registration offices (Section 69), Order by Registrar to register (Section 75), Direction of the Court to register (Section 77), Registration of Documents executed by Government Officers (Section 88) and Copies of certain orders, which

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Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that onpayment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered.

(2) Appearances under sub-section (1) may be simultaneous or at different times.

(3) The registering officer shall thereupon—

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
- (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.

are required to be sent to the Registering Officers for filing (Section 89). It can be discerned from these exceptions that in those specified instances, the persons presenting the documents are under no legal obligation to execute or admit the execution of the documents.

40. On the personal appearance of the executant, the registering officer is required to enquire upon three aspects. Firstly, whether the document is executed by the persons by whom it purports to have been executed. Secondly, whether the registering officer is satisfied about the identity of the persons who have appeared before him and claim that they have executed the document. Thirdly, if the presentation is by a representative, assign or agent, he is required to satisfy himself that such a person has a right to appear.

41. In the case on hand, the document was not presented by a representative, assign or agent and hence

the third aspect envisaged under Section 34 of the Registration Act would not be applicable.

42. Thus, under Section 34 of the Registration Act, the Registering Officer, on the personal appearance of the person executing the document before him, firstly, is required to enquire whether the document was indeed executed by the person who asserts that he has executed the document and secondly, he is required to satisfy himself as to the identity of the person who has appeared before him. The enquiry, thus, contemplated under Section 34 is limited only to these two aspects and for conducting such an enquiry, unquestionably, the personal appearance of the person executing the document is an absolute must.

43. If a person executing the document does not personally appear before the registering officer, then, obviously, the Registering Officer cannot conduct the prescribed enquiry regarding "admission of execution"

and “the identity”, and he cannot therefore proceed to the next step i.e., the registration of the document.

44. Section 35(1)(a) of the Registration Act<sup>5</sup> then deals with the next step in the process of registration. It states that if all the persons executing the document appear personally before the registering officer and if he is satisfied with their identity and that they are the persons

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<sup>5</sup>**35. Procedure on admission and denial of execution respectively.—(1)** (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61 inclusive.

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3) (a) If any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the State Government may, by notification in the Official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.

who have executed the document and they also admit the execution of the document, he is obliged to register the document as directed in Sections 58 to 61 of the Registration Act.

45. Once again, the statute pointedly emphasizes the personal appearance of the executant before the registering officer and satisfying the registering officer of his identity followed by an admission of the execution of the document presented for registration.

46. Thus, a combined reading of Section 34 and Section 35 of the Registration Act leaves no room for any doubt that a document cannot be registered unless the executant personally appears and thereafter establishes his identity to the registering officer and finally admits the execution of the document before the registering officer.

47. It may also be noted here that Section 35(1)(b) of the Registration Act covers the situation where the person appearing for registration is the representative or assign



or agent of the person executing the document, in which case, the admission of the execution is to be made by those persons, subject to them satisfying the registering officer of their identity and their right to appear on behalf of the executant.

48. Section 35(1)(c) of the Registration Act deals with a situation where the executant is dead in which event a provision is made for the representative or the assign of the dead to appear and admit the execution of the document.

49. The underlying objective of Sections 34 and 35 of the Registration Act is plain and unambiguous, which is, that the executant of a document is bound to appear personally. Obviously, this personal appearance can only be voluntary as the admission of execution has to be voluntary.

50. Section 35(2) of the Registration Act empowers the Registering officer to examine anyone present in his office

to satisfy himself as to the identity of the persons who have appeared before him and represent to him that they are the persons whom they claim to be. This sub-section also states that he may examine anyone present for any other purpose provided under the Act.

51. Section 35(3) of the Registration Act provides for the registering officer to refuse registration (a) if the person executing the document denies its education or (b) if the person appearing before him is a minor, lunatic or an idiot, or (c) if the person appearing before him is the representative, assign of the executant, who is dead who appears and denies its execution.

52. A combined reading of Sections 34 and 35 of the Registration Act would therefore clearly indicate that the personal appearance of the executant and his admission of execution is the most vital part of the registration. The only power conferred on the registering officer when the document is presented for registration is to enquire

whether the document has been executed and to enquire and satisfy himself regarding the identity of the person appearing before him.

53. Of course, this power stands enlarged in case the presentation of the document is by a representative, assign or agent, whereby a registering officer can enquire regarding the right of such persons to appear, with which however, we are not concerned in this case.

54. It is to be noticed here that if a person executing the document does not appear before the registering officer to present the document and admits its execution, the Registering officer cannot be held to have the power to summon the executant to satisfy himself as to whether the document was indeed executed by the executant or not. The fact that Section 35(2) specifies that the registering officer is empowered to examine anyone present in his office to satisfy himself regarding the identity of the person who has appeared before him to

present the document is a clear pointer to the fact that only a limited power of ensuring and satisfying himself about the identity of the person appearing before him and presenting the document has been conferred on the Registering Officer.

55. If, however, it is to be held that the Registering Officer has the power to summon an executant and enquire from him as to whether he had in fact executed the document or not, that would essentially mean that the registering officer was being clothed with the power to enforce the registration of a document in the same manner as is available to a Civil Court. That is, obviously, impermissible and amounts to conferring the powers of a Civil Court to enforce a contract on the registering officer.

56. It is, no doubt, true that the person presenting the document for registration or claiming under any document, may request the Registering officer to secure the presence of any person whose presence is necessary

or testimony is necessary for the registration of the document under Section 36 of the Registration Act. However, this power cannot be held to mean that power is available to summon an executant to appear before him in order to conduct an enquiry and determine whether the document has been executed or not.

57. It is to be stated here that the power conferred on the registering officer under the Registration Act is fundamentally to enable him to satisfy himself about the identity of the person who has presented the document and enquire with him as to whether he has executed the document so presented by him. This limited power to enquire into certain specified things cannot be enlarged to bring within its ambit the power to enquire and determine whether the document was executed by the executant by examining the witnesses, scribe etc.

58. It is to be kept in mind that an executant of a document is required to voluntarily appear and admit

execution of the document. This voluntary act is a reflection of the acceptance of a concluded contract. The requirement of appearing voluntarily to accept the conclusion of a contract cannot be substituted by use of "power to summon" available in a Registering officer to force the appearance of an executant to ascertain the execution and admission of the document i.e., the record of the conclusion of the contract.

59. If, for example, the executant appears on being summoned and denies the execution of the document and the registering officer thereafter goes on to hold an enquiry and determines that the document was executed and is therefore required to be registered, he would be basically granting a decree of specific performance, which is wholly beyond his jurisdiction.

60. It is always to be kept in mind that the whole object of getting a document registered, especially a sale deed of an immovable property which is a compulsorily

registrable document, is to ensure that there is a record of a concluded contract between a seller and a buyer.

61. If a seller, for instance, admits the execution of the document but states that he is yet to be paid the entire consideration or that there is some other term of the contract which is yet to be fulfilled or that he is having second thoughts about concluding the transaction, the registering officer using his powers available under Section 36 of the Registration Act cannot conduct an enquiry and determine whether there is a concluded contract. A registering officer on the mere admission of execution of the sale deed by an executant who has been summoned cannot order its registration.

62. The registration of a sale deed is the final act required for transfer of ownership of an immovable property and this final act is not a mere formality that can be left to the discretion of the registering officer. A registering officer has a limited role to play in the

registration of the document and conferring judicial powers on him would lead to serious and disastrous consequences, especially in this age and time when prices of immovable properties have seen an exponential increase.

63. In a case relating to the sale of an immovable property, such as this very case, if a purchaser presents a signed deed of conveyance for registration and thereafter demands the Registering Officer to summon the executant to conduct an enquiry regarding the execution of the document, that would virtually amount to the creation of a scenario where the office of the Registering Officer is converted into a Civil Court, which is clearly impermissible and fraught with danger.

64. Indeed, if this position were to be accepted to be the true legal position, in a case where the executant does not appear despite the summons, the Registering officer can nevertheless proceed to hold an enquiry



regarding the execution of the document and record a finding that the document has been executed and ought to be registered. This would most definitely be beyond the scope of the powers of the Registering Officer.

65. It is also to be noted here that in this case, the Registering Officer has actually recorded a finding that Rudraiah had admitted execution but was evading the registration of the document by refusing to sign the endorsement and to make a statement. This finding is fundamentally an inference based on Rudraiah's non-appearance voluntarily and his refusal to sign the endorsement on being summoned. It is not clear as to what was the enquiry conducted by the Sub-Registrar on the appearance of Rudraiah and in whose presence an enquiry was conducted. In fact, to accept only the order of the registering officer as proof regarding admission of execution of a person who has been summoned by him, would not only be a risky proposition but would also be

susceptible to various kinds of malpractices. The question as to whether the statement of the executant, who had been summoned, was voluntary or was under compulsion cannot be left to the discretion and judgment of the Registering Officer. These kinds of anomalous situations which are likely to arise if an executant is allowed to be summoned to enquire into the admission of execution of the document, indicate the dangers that may visit the registration of a document and which could be easily exploited by unscrupulous persons in connivance with registering officers, which is to be avoided at all costs.

65. The net result of this discussion is that, in the case of a sale of an immovable property, even if a purchaser were to present the document for registration in the absence of the executant (seller), the registering officer does not possess the power to summon the executant in order to satisfy himself as to whether the executant (seller) had executed the document and whether he

admits the execution of the document. In the event, an executant does not appear personally and voluntarily to present and admit execution of the sale deed, the only option available to the buyer would be to approach the Civil Court and seek for enforcement of the contract of sale of the immovable property.

67. In this case, though the registering officer refused to register the sale deed on the ground of denial of execution, the District Registrar, on an application made to him under Section 73 of the Registration Act, has proceeded to issue a notice to Rudraiah and since according to the District Registrar, Rudraiah did not appear, he has proceeded to place Rudraiah *ex parte*. The District Registrar has thereafter gone on to hold a trial by examining the witnesses to the sale deed, the scribe of the sale deed and the purchaser, and has gone on to record a finding that Rudraiah had indeed executed the sale deed and the sale deed was therefore required to be

registered. Thus, the District Registrar has virtually acted like a Civil Court and enforced the contract by rendering a judicial decision regarding the execution of the sale deed and its consequential necessity of registration.

68. As already held above, under Section 35(1) of the Registration Act, only if a person appears personally and admits execution of a document, the registering officer can register the document. If an executant appears before the registering officer and denies the execution of the document, under Section 35(3)(a) of the Registration Act, he is legally obliged to refuse to register the document. In both such cases, however, the voluntary and personal appearance of the executant is an absolute must.

69. It is only if an executant appears voluntarily and personally and denies the execution of the document, would the remedy contemplated under Section 73 of the Registration Act be available.

70. If an executant does not appear voluntarily to either admit or deny execution of the document, the remedy available under Section 73 of the Registration Act would not be available.

71. If an executant is summoned by the registering officer and on being summoned, the executant denies the execution of the document and the officer refuses to register the document, the remedy provided under Section 73 of the Registration Act would not be available.

72. The consequences of permitting a contrary course of action would be quite dangerous, as could be seen in this very case.

73. Admittedly, Chikkanna—the purchaser was yet to pay the agreed balance sale consideration of Rs.15,200/- though he claimed that a sale deed had been executed by Rudraiah. In fact, Chikkanna even after the registration of the sale, pursuant to the order of the Registrar, issued a legal notice calling upon Rudraiah to receive the balance

sale consideration and hand over possession. Thus, though the purchaser himself admitted that the sale transaction was yet to be concluded, at least in terms of receipt of the sale consideration, by the intervention of the order of the District Registrar, the sale transaction has been concluded and the sale deed has been registered.

74. This essentially means that the Registrar has enforced a contract which had only been partly performed and some of the admitted terms of the contract were yet to be fulfilled. Furthermore, a sale deed executed by a person, who had no title over the property as on the date of the presentation of the sale deed, has been ordered to be registered, thereby purporting to convey the title to the buyer. This is, in fact, a power which is not available or conferred on a Civil Court even under the provisions of the Specific Relief Act. This is, thus obviously, beyond the purview of the Registration Act itself and the resultant

registration of a document would have to be necessarily a complete nullity in the eye of law.

75. Since, the registration of the sale deed was a complete nullity in law, the same can have no significance at all and would also confer no rights. In fact, such a null and void act, even if validated by consent of parties would not transform it into a legal act. It is settled law that an act, which is nullity, does not have to be impugned by way of a suit.

76. A few other situations may also be considered in this context:

77. In a given case, if an executant appears either voluntarily or on being summoned and states that he has executed the document on the promise that he would be paid the balance sale consideration and that he is yet to be paid the balance sale consideration, the question would arise whether the registering officer possesses the power to conduct an enquiry and determine whether any

money was still due to the seller and thereafter, order it to be paid by the buyer.

78. Carrying this analogy further, suppose, thereafter on such determination, the buyer refuses to pay, can the registration of the document be refused on that score, despite the fact that execution of the document was admitted.

79. As a corollary, suppose in a case where the seller appears and admits execution of the document but refuses to sign the endorsement on the ground that some money is still due to him and the registering officer holds an enquiry and determines that certain sums are due to the seller and calls upon the buyer to pay the outstanding sum and the buyer refuses to pay the sum so ordered, whether the registering officer can refuse the registration on this ground despite the admission of the execution of the document.



80. These illustrations are being made only to highlight the implied limitations of the powers conferred on the registering officer and the District Registrar in the matter relating to registration of sale deeds of immovable properties, when the seller does not appear voluntarily to admit the execution of the sale deed and the consequential complications that may arise in myriad ways.

81. It will therefore have to be held that if an executant does not appear voluntarily and does not admit execution of a sale deed relating to an immovable property, the registering officer cannot summon the executant to ascertain whether the sale deed was indeed executed or not. In fact, in such cases, it would be a case of an invalid presentation of the sale deed and such an invalidly presented sale deed cannot be ordered to be registered.

82. By the same analogy, the remedy contemplated under Section 73 of the Registration Act to the Registrar

would be unavailable and even if such a remedy is invoked, the Registrar cannot hold an enquiry to determine whether the executant admitted the execution of the sale deed and order its registration.

83. The judgment of the Apex Court in ***Dahibhen's*** case relied upon by the learned counsel for the appellant, to contend that once the sale deed is registered, the sale would be complete and the title would pass on to the transferee cannot really apply to the facts and circumstances of the present case.

84. In that case, the executant i.e., the seller had admittedly appeared before the registering officer voluntarily and had also executed the sale deed notwithstanding the fact that a part of the sale consideration was yet to be paid and had been promised to be paid through cheques, which subsequently turned out to be bogus cheques. In the context of that case and having regard to the fact that the sale of an immovable

property can be made even on payment of a part of the sale price with the promise to pay the remaining at a later date, the Hon'ble Supreme Court held that the registration of the sale deed would complete the conveyance and non-payment of the sale consideration would not invalidate the sale.

85. In fact, the Hon'ble Apex Court has held that to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either *in praesenti*, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record. As noticed above, in the present case, the evidence on record clearly indicates that Rudraiah was to be paid Rs.15,200/- as on the date it was presented for registration. It is, therefore, clear that as the terms of the sale were not adhered to and Rudraiah by his absence indicated his unwillingness to sell his house and yet the

sale deed has been compulsorily ordered to be registered by the Registrar, would go against the dicta laid down in that judgment. The aforesaid decision would therefore not assist the appellant.

86. The decision relied upon by the learned counsel in ***Devikarani Roerich*** would also be of no consequence since the said decision only states that the non-appearance of a person could be constructively treated as the denial of execution. In the instant case, on being summoned, Rudraiah did appear before the Registering officer and is stated to have admitted the execution but he however refused to sign the endorsement that was required to be made as per Section 58 of the Registration Act. It is thus clear that the aforesaid decision would have no bearing on this case.

87. The argument of the learned counsel that the suit was barred by limitation since an amendment was granted only in the year 1999 and therefore, the suit was

to be dismissed as being time-barred, cannot also be accepted.

88. It has to be stated here that the application in I.A. No.5 seeking for amendment had been rejected by an order dated 27.06.1994 by the Trial Court. This Court, however, in Civil Revision Petition No.2687 of 1994 set aside the said order and allowed the application for amendment. This order granting amendment did not specify that the amendment would be effective only from the date of the order. As a consequence, the amendment would relate back to the filing of the suit and since the suit had been filed within three years of the registration of the sale deed, the suit would be within time.

89. Furthermore, in view of the fact that the amendment was granted after hearing the appellant and the appellant has accepted the said order, the plea of limitation cannot be raised by the appellant.

90. The argument that the plaintiffs had filed a writ petition challenging the order of compulsory registration but had withdrawn it and therefore, the registration of the document had become final, cannot also be accepted.

91. As already held above, the registration of the sale deed in this case is a nullity in the eye of law and therefore requirement of there being a challenge to it, would not arise at all. Further, even if a challenge had been made and was withdrawn, that withdrawal of the challenge would not transform an act that was a nullity into a valid and legal act which binds the petitioners. The challenge in the writ petition was to the order of the Registrar directing registration and since it has been held that the registration done pursuant to the said order was a nullity, the withdrawal of the writ petition would be of no consequence.

92. The final argument of the learned counsel for the appellant that the application for production of additional

evidence could not be considered prior to the disposal of the appeal cannot also be accepted. The plaintiffs by the said application had merely produced the sale deed executed in their favour by the Housing Board and the tax paid receipts in respect of the said property and also certain other related municipal records. These documents were in no way necessary for the pronouncement of the judgment by the Appellate Court and they merely were proof of certain subsequent events, which did not have a real bearing on the decision of the Appellate Court. It is only if these documents were the reasons for allowing the appeal, the argument advanced by the learned counsel would be of some relevance.

93. As stated above, the Appellate Court has allowed the appeal solely on the ground that the outstanding dues to the Housing Board had also not been paid by Rudraiah, thus he had no title to the property when the sale deed

was executed and also that the balance consideration had not been paid to Rudraiah.

94. For all the reasons stated above, in my view, no question of law, much less, a substantial question of law arises for consideration in these appeals. The appeals are accordingly ***dismissed***.

**Sd/-  
JUDGE**

CT:SN  
RK/-