

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JULY 2015

BEFORE

THE HON'BLE MR.JUSTICE A.V.CHANDRASHEKARA

WRIT PETITION NOS.18445-447 OF 2014(GM-CPC)

BETWEEN :

1. A V MANJUNATH
S/O. LATE A.N.VISHVANATHAIAH,
AGED ABOUT 50 YEARS,
R/AT NO.25, 6TH CROSS, I MAIN ROAD,
KRISHNA NAGAR,
KOTHANUR VILLAGE,
BENGALURU-560 076.

2. SMT. A.V. GOWRI,
W/O. CHENNAKESHAHA,
AGED ABOUT 47 YEARS,
R/AT NO.1150, 26TH MAIN,
9TH BLOCK, JAYANAGAR,
BENGALURU-560 069.

3. SMT. SAMPALAKSHMI,
W/O. SRI LATE A.N. VISHWANATHAIAH,
AGED ABOUT 81 YEARS,
R/AT MUGLUR, ANEKAL TALUK,
BENGALURU URBAN DISTRICT -560 105.

... PETITIONERS

(By Sri: T K RAJAGOPALA- ADV.,)

AND

SMT SUMANA V BABU
W/O. K.V. VENKATESH BABU,
AGED ABOUT 47 YEARS,
R/AT NO.10, PAMPA MAHAKAVI ROAD,
SHANKARAPURAM,
BENGALURU-560 004.

... RESPONDENT

(By Sri : MAKAM NAGARAJA GUPTA- ADV.)

THESE W.P.S ARE FILED UNDER ARTICLE 226
AND 227 OF THE CONSITUTION OF INDIA PRAYING
TO SET ASIDE THE IMPUGNED ORDER DATED
14.11.2013 PASSED BY THE COURT OF XLIII ADDL.
CITY CIVIL & SESSIONS JUDGE, BANGALORE IN
O.S.NO. 3549/2005 AT ANN-E AND ALLOW I.A. NOS.
18 & 19.

THESE PETITIONS COMING ON FOR
PRELIMINARY HEARING THIS DAY, THE COURT
PASSED THE FOLLOWING:

ORDER

Heard the learned counsel for the parties.

2. Petitioners in these petitions are plaintiffs in O.S.No.3549/2005. The suit is filed for the relief of declaration to the effect that the registered sale deed dated 24.3.2005 executed by the plaintiffs 2 and 3 as Power of Attorney of plaintiff No.1 in favour of the defendant does not bind the plaintiffs and for permanent injunction.

3. After the closure of the evidence, an application came to be filed under section 151 of CPC to reopen the case and to issue summons to the notary public who is said to have notarized the General Power of Attorney dated 23.3.2005. This document according to the first plaintiff has not been executed in favour of plaintiffs 2 and 3. The plaintiffs have denied the execution of the sale deed in favour of the defendant. The whole case rests on the execution of the Power of Attorney and consequently, the sale deed said to have flown in favour of the defendant.

4. While dismissing the said application, the learned Judge has come to the conclusion in para-13 that PW1 was not diligent to file this application when the evidence was commenced on his behalf. Other than this no tenable reasons are forth coming in the impugned order. Application could have allowed by imposing suitable costs. It would not be advisable to shut out the important evidence leading to the foundational document of this suit. Therefore, the approach adopted by the trial court is incorrect and need to be corrected in terms of the supervisory jurisdiction vested in this court under Article 227 of the constitutions of India.

5. Petitions are allowed and consequently, I.A.No.18 and 19 are allowed on payment of costs of Rs.2000/- to be payable to the defendant.

Since the matter is of the year 2005, the learned trial Judge to dispose of the case as early as possible and court shall keep in mind earlier direction given by this court in W.P.No.53123/2013 and W.P.No.346/2014.

Sd/-
JUDGE

Psg*