2026 INSC 82

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6640 OF 2010

HEMALATHA (D) BY LRS. ..... APPELLANTS

VERSUS

TUKARAM (D) BY LRS. & ORS. .....RESPONDENTS

J U D G M E N T

MANMOHAN, J.

1. Present appeal has been filed challenging the impugned judgment and order dated 04th February 2010 passed by the High Court of Karnataka, Circuit Bench at Gulbarga in R.S.A. No. 163 of 2000, whereby the High Court allowed the appeal filed by Respondent-Plaintiff Tukaram (now deceased) and set aside the judgment dated 13th December 1999 passed by Additional District Judge, Bidar in R.A. No. 12 of 1986. By virtue of the impugned judgment and order passed by the High Court, the suit filed by Respondent-Plaintiff seeking relief of injunction and declaration to declare the Sale Deed and Rental Agreement dated 12th November 1971 as sham and not to be acted upon, has been decreed.

FACTUAL BACKGROUND

2. Briefly stated, the relevant facts are that the Respondent-Plaintiff Tukaram (now deceased) mortgaged his house bearing House No. 2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar (hereinafter referred to as "suit house") in favor of one Mr. Sadanand Garje vide registered Mortgage Deed dated 7th September 1966 for a sum of ₹ 8,000/- (Rupees Eight Thousand only). On the same date, the Respondent-Plaintiff's brother Mr. Ramakrishnappa-Defendant No.3 (now deceased) executed another Mortgage Deed in favour of Mr. Sadanand Garje for an amount of ₹ 2,000/- (Rupees Two Thousand only) for another property bearing House No. 2-5-9/1.

3. It is the case of Appellants-Defendant Nos.1 and 2 that when the Respondent-Plaintiff was unable to comply with Mr. Sadanand Garje's demand for repayment of mortgage amount, the Appellant-Defendant No.2 Mr. Bharatraj was approached by the Respondents to discharge the mortgage amount to Mr. Sadanand Garje and in consideration of the said discharge, the suit house was agreed to be sold to Appellant-Defendant No.1.

4. Admittedly, a registered Sale Deed dated 12th November 1971 was executed in favour of Appellant-Defendant No.1 Smt. Hemalatha (wife of Appellant-Defendant No.2) for a consideration of ₹10,000/- (Rupees Ten Thousand only). In the said Sale Deed, there is no term which can be construed

as mortgage by conditional sale. The registered Sale Deed dated 12th November 1971 is reproduced hereinbelow: -

"SALE DEED

SALE DEED EXECUTED ON THIS 12TH DAY OF NOVEMBER 1971, AT M. BIDAR BY:

1. Tukaram Bandi, aged 60 years, S/o late Manikappa Bandi, Occ: Business hereinafter called the VENDOR NO.1;

2. Ramakrishnappa Bandi, aged 55 years, Late Manikappa, occupation cloth business hereinafter called the VENDOR NO.2;

3. Sathyanaryan Bandi, aged 29 years, S/o Ramkishtappa Bandi, Occ: Librarian, B . Bhoomreddy College M, Bidar, hereinafter called the VENDOR N0.3.

4. Manohar Bandi, aged 27 years, S/o Ramkishtappa Bandi, Occ: Divisional Representative M.S.l.L. Bangalore, hereinafter called the VENDOR N0.4.

5. Hari Bandi, aged 24 years, S/o Ramkishtappa Bandi, Occ: Business, hereinafter called the VENDOR N0.5.

All residents in H. No. 2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, hereinafter called the "VENDORS". Which each terms of vendor or vendors, shall mean and include their respective heirs, executors, administrators and assigns.

IN FAVOUR OF

Smt. Bacha Hemlatha wife of B. Bharatraj, Hindu, aged 25 years, occupation household, r/o Brahamanwadi, M. Bidar, hereinafter called the "PURCHASER". Which terms shall mean and include her heirs, executors, administrators and assigns.

WHEREAS the Vendor No.1 is the sole and absolute owner of H. No. 2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, and whereas Vendor No.2 to 5 no right, title or interest in the said house, whereas the said house stands in the name of Vendor No.1 only in the Municipal, Records of M. Bidar as per their certificate No. BMC/Tax/2167 /71-72 dt. 16.10.1971.

WHEREAS the Vendors 2 to 5 are added to execution of this sale deed as abundant caution so that even if they have any right, title or interest, they may also pass on the Vendee: ·

WHEREAS Vendor No.1 had mortgaged the said house with possession to Sri Sadanand Son of Narayan Rao Garje for a sum of Rs.8000/- (Rs. Eight thousand only) under a registered Mortgage deed dated 7.9.1966, duly registered in the office of Sub-Registrar Office, M. Bidar as serial No. 1863 of 1966 on pages 36-37, of Book No. I, Vol.6 (2) of 1967 dated 3.6.1967.

WHEREAS the Vendor No.1 has no means to redeem the said house and therefore decided to sell away the said house and offered to sell the same to the Vendee for a consideration of Rs.10,000/. (Rs. Ten Thousand only) and whereas the Purchaser has agreed to purchase the said house for the said consideration:

WHEREAS Vendor No.1 has requested the Purchaser to pay the said Mortgage amount of Rs.8000/- (Rs. Eight thousand only) to the said mortgage Sri Sadanand and redeem the Mortgage on his behalf, and accordingly the Purchaser has at the instance of Vendor No.1 had paid the said sum of Rs.8000/- to the said Mortgage Sri Sadanand on 3.11.1971 and redeemed the said mortgage duly registered in the Sub- Registrar Office, M. Bidar as serial No. 2107/71-72/Book I. dated 12th Nov. 1971.

WHEREAS the Purchaser has paid the balance consideration of Rs.2000/- (Rs. Two thousand only) to Vendor No.1 on the same day in cash i.e. on 3.11.1971 the receipt of which the Vendor No.1 hereby admits and acknowledges, and thus the entire consideration of Rs.10,000/- (Rs. Ten thousand only) has been paid to the Vendor No.1 by the purchaser, in the above said manner, the receipt of which the Vendor No.1 hereby admits and acknowledges.

NOW THIS SALE DEED WITNESSETH:

1. ***That in pursuance of the said agreement and in consideration of the said sum of Rs.10,000/- (Rs. Ten thousand only) well and truly paid by the Purchaser to the Vendor No.1 as stated hereinabove, duly receipted by the Vendor No.1, the Vendors hereby jointly and severally, hereby sell, transfer, alienate, and convey the said H. No. 2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, in favour of the Purchaser, absolutely free from all encumbrances of whatsoever nature to HOLD AND ENJOY the same as her absolute property without any let or hindrance either from the Vendors or anyone else claiming thought them. Hereafter the Vendors have ceased to be the Owners of the said house and that the Vendee has become its sole and absolute owner thereof.***

2. ***The Vendors have delivered symbolic possession of the said house to the Vendee by executing a separate rental agreement· in her favour and thus converting their status from that of Owner to that of Tenants of the Vendee****.*

3. The Vendors have delivered the redeemed mortgage deed cited above to the Vendee.

4. The Vendors 2 to 5 hereby declare that they have no right, title or interest in the said house and that Vendor No. 1 alone is the sole and absolute owner and that they have joined only by way of abundant caution.

5. The Vendor No.1 hereby declares that he has not created any encumbrances of whatsoever nature except the Registered Mortgages cited above and that there are no arrears of taxes on the said house upto the date of his sale and that if there be any arrears of taxes found to be due on the house upto this date of sale the Vendor No.1 alone shall bear and pay the same.

6. The Vendor No.1 hereby undertakes to indemnify and keep indemnified the Vendee (Purchaser) against any loss or damages or expenses to which she may be put to due to any defect in his title to the said house or due to any rival claim.

7. The Well situate in backside of the said house is common to the Vendee (purchaser) and the neighbour Haribandi.

8. There are two latrines behind House No. 2.5.9/1 belonging to Hari Bandi, out of which eastern side latrine shall be exclusively belong to the Purchaser herein.

9. The Vendors undertake to co-operate with the Purchaser for mutation of ownership of the said house and perfecting the title thereof including the common usage of the well and the passage on Eastern side of the said house, and the exclusive usage of the Eastern side latrine.

DESCRIPTION OF HOUSE HEREBY SOLD

All that house bearing Municipal No.2-5-9, measuring built up area 2616 sq. ft. situate at Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar bound on the:-

North	*:*	*Road*
South	*:*	*House belonging to Hari Bandi.*
East	*:*	*Common passage and house of M/d. Ismail.*
West	*:*	*Lane and house of Ramanna Phulari and Kallappa phulari's house*

as shown in RED in the enclosed plan with all easementary rights appurtenant thereto.

The lane on the eastern side of the said house is common."

(emphasis supplied)

5. It is also the case of Appellants-Defendant Nos.1 and 2 that as the Respondent-Plaintiff and his family had no place to reside, he requested the Appellants-Defendant Nos.1 and 2 to lease the suit house to him. As the husband of Appellant-Defendant No.1 i.e. Appellant-Defendant No. 2 Mr. Bharatraj was a government servant in a transferable job, the suit house was leased to the Respondent-Plaintiff by way of a registered Rental Agreement dated 12th November 1971. The said Rental Agreement is reproduced hereinbelow:

"RENTAL AGREEMENT

THIS RENTAL AGREEMENT EXECUTED ON THIS THE 12TH DAY OF NOVEMBER 1971, BY:

1. *Tukaram Bandi, aged 60 years, S/o late Manikappa Bandi, Occ: Business;*
2. *Ramakrishnappa Bandi, aged 55 years, Late Manikappa, occupation cloth business;*
3. *Sathyanaryan Bandi, aged 29 years, S/o Ramkishtappa Bandi, Occ: Librarian, B. Bhoomreddy College M, Bidar.*
4. *Manohar Bandi, aged 27 years, S/o Ramkishtappa Bandi, Occ: Divisional Representative M.S.I.L. Bangalore.*
5. *Hari Bandi, aged 24 years, S/o Ramkishtappa Bandi, Occ: Business.*

All residents of H. No.2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, hereinafter called the TENANTS:

IN FAVOUR OF

Smt. Bacha Hemlatha wife of B. Bharatraj, Hindu, aged 25 years, occupation household, r/o Brahamanwadi, M. Bidar, hereinafter called the "LANDLADY", Whereas the Tenants herein have sold their H. No.2-5-9, Pansal Taleem, near Fathedarwaza Darwaza, M. Bidar, to the landlady under separate Registered sale deed executed by them in her favour today; and the tenants being unable to secure alternative accommodation and therefore requested the landlady to let out the said house to them on a monthly rent of Rs.200/- (Rs. Two hundred only) to which the landlady has agreed on the following terms and conditions:

NOW THIS RENTAL AGREEMENT WITNESSETH:

1. *That the Tenants have taken on rent from the landlady the said H.No.2-5-9, Pansal Taleem, near Fathedrwaza Darwaza, M. Bidar, belonging to the landlady, a monthly rent of Rs.200/- (Rs. Two hundred only) and agree to pay the said monthly rent regularly every month on or before 15th of each English Calendar month and obtain her receipt.*
2. *That the Tenancy shall be for a period of (5) months from today, subject to extension on mutual consent.*
3. *That the Tenants shall bear and pay the electricity and water consumption charges separately apart from the rent herein agreed direct to the concerned department.*
4. *That the Tenants shall not sublet either the portion or whole of the said house to any other person or persons without the written prior permission of the landlady.*
5. *That the tenant shall not make any additions or alterations to the existing a structure without the prior written consent of the landlady.*
6. *That the Tenant shall not damage the said house in any manner whatsoever and shall not do any act whereby the value of the house be reduced.*

7. *That the Tenants shall keep the said house in good and habitable condition and shall allow the landlady or her agent inspect the same at all reasonable hours.*

8. *That the Tenants are liable for eviction if they fail to pay any two months rent during the Tenancy of commits breach of any of the terms herein above mentioned."*

6. After fourteen months, the Respondent-Plaintiff defaulted in making payments of monthly rents i.e. after January 1973. Accordingly, Appellants-Defendant Nos.1 and 2 issued a legal notice dated 19th April 1974 to the Respondents to pay the arrears of rent as well as deliver vacant possession of the suit house. The said legal notice is reproduced hereinbelow: -

"From:-
Law Office,
Sri Balwanth Rao Kehanapurkar,
B.A.L.L.B. Advocate,
M. Bider,

Under the instructions of my client Smt. Bacha Hemalatha w/o of Bacha Bharat Raj, r/o of Brahmanwadi, M. Bidar this notice is given to you as under.

All of you, jointly took on lease the house No.3-5-9- situated at Pansal Taleem near Fateh Darwaja, M. Bidar from my said client on 12th November 1971 for residential purpose at the rate of Rs.200/- p.m. on the following terms and conditions.

1. You agreed to pay the monthly rent regularly every month on or before 15th of each English month and obtained receipt.

2. The tenancy was for five months in the beginning subject to extension on mutual consent.

3. You agreed to pay, the Electricity and Water consumption charges separately to the concerned departments.

4. You undertook not to sublet either the portion or the whole of the said house to any other person without consent of my client.

5. You have no rights to make any alterations and additions to the existing structure without prior permission of the client.

6. You should not damage the said house any manner what so ever and shall not do any act whereby the value of the house be reduced.

7. *You shall keep the said house in good and habitable conditions and shall allow the client or her agent to inspect the said house at all reasonable hours.*

8. *You are liable to for eviction if you fail to pay any two months rent during the period of tenancy or commit any breach of the terms referred above.*

9. As per the above said agreement of tenancy, you occupied the house as tenants of my client from the date of 12th November 1971, you have paid monthly fixed rent from the said date for the period of 14 months i.e. upto 12th January 1973. After that you discontinue to pay the rent and you have not paid upto now. Any rent of the remaining period i.e. from 13th January 1973 to August 1974 which amounts to Rs.3,8000/- so, the above said amount is due to my client till the date of issue of notice.

My client demanded, several times the due rent amount orally and every time you put forth one or another lame excuses. My client waited for sufficient period and has decided to take legal steps against you for recovery of rent and also for your eviction.

As you have been defaulter for the payment of due rent amount and also contravened the terms of agreement. So you are entitled to continue the tenancy and my client is entitled to file a suit for recovery of the due rent amount and for your eviction.

Before filing this suit I thought it is better issue a notice to you, so that you may settle the disputed applicably and for this purpose one week's time is given to you. If you fail to pay the rent due amount within one week from receipt of this notice the suit will be filed to competent court for eviction as well as for recovery of due rent amount. After that you will be held responsible for the cost and consequences jointly and severally.

Dt/- 19-4-1974....."

7. In response to the legal notice, Respondents wrote a letter dated 5th October 1974 expressing regret for default in payment of rent and promised to pay arrears of rent by Diwali 1974 and also conceded the right of Appellants-Defendant Nos.1 and 2 to take legal action. The reply to the legal notice dated 5th October 1974 is reproduced hereinbelow: -

"To

Sri Balwant Rao Khanapurker.
Advocate
Rider.
Sub: Notice for your Law Office.
Sir,
With reference to the above we want beg to state following few lines for your kind consideration and sympathetic action. It is a grave mistake on our part that we did not pay the rent. To be very true we went financially bad to worse. Once it was so difficult to make the livelihood.

However, we have overcome that and now we are making definite attempts and we will pay entire rent by Dipawali November 1974.

Failing which you have every right to take any legal action. But kindly give this a let clause and oblige.

Thanking you we remain"

(emphasis supplied)

8. Subsequently, Respondents paid rent for one month only and, thereafter, did not make any payment.

9. Due to Respondents' failure to pay arrears of rent and vacate the suit house, Appellants-Defendant Nos.1 and 2 initiated proceedings under Karnataka Rent Control Act (HRC 16/1975) before the Court of Munsiff at Bidar to vacate and deliver the vacant possession of the suit house.

10. It is the Appellants-Defendant Nos.1 and 2's case that as a counterblast to the suit for eviction filed by Appellants, the Respondent-Plaintiff Tukaram filed the subject suit i.e. O.S. No. 39 of 1977 on 21st June 1977 against Appellants-Defendant Nos. 1 and 2 seeking relief of declaration and injunction to declare the Sale Deed bearing document No. 2109/71-72 dated 12th November 1971 in respect of House No. 2-5-9 situated at Pansal Taleem, Bidar as nominal and sham

and not to be acted upon. The prayer clause in the aforesaid suit is reproduced hereinbelow:-

> *"The suit of the plaintiff be decreed as under:-*
>
> *a) It be declared that the sale deed bearing document no. 2109/71-72 dated 12.11.1971 in respect of the House no. 2-5-9 of Pansal Taleem, Bidar executed by the plaintiff and the defendant nos. 3 to 6 in nominal, sham and not to be acted upon;*
>
> *b) The defendant Nos. 1 and 2 be perpetually restrained from evicting the plaintiff by continuing the proceedings of eviction in H.R.C. 16/75 in the Hon'ble Munsiff Court, Bidar, showing the plaintiff as lessee on the basis of the above said sale deed;*
>
> *c) Costs of the suit, to be awarded against all the defendants;*
>
> *d) Any other relief to which the plaintiff is legally and equitably entitled to, may also be awarded."*

11. The aforesaid suit was decreed by the Court of Additional Civil Judge, Bidar vide judgment and decree dated 10th March 1986 whereby the Sale Deed dated 12th November 1971 was held to be nominal and sham document. The trial court observed as under:

> *"29…It is clear from this decision (Gangabai v. Chhabubai (1982) 1 SCC 4) that the objection raised by the learned advocate for the Defendants that oral evidence of Plaintiff which is contrary to the recitals of the document, hit by sec. 92 cannot be accepted.*
>
> *xxx xxx xxx*
>
> *31… Anyhow, the evidence of the Plaintiff and his witnesses that Plaintiff was of simpleton nature is neither disputed nor proved otherwise. Hence I come to conclusion that Plaintiff is a man of simple nature, who is not educated, who had no sons and for family matters he was mainly relying his brother Defendant No.3 and his sons.*
>
> *32… If we see all the documents in juxtaposition and its coming into existence on 12.11.1971, it is sufficient to conclude that Rs.10,000/- were received from the Defendants No. 1 and 2 and not only by Plaintiff, but by the Plaintiff and Defendants NO. 3 to 6 together. It is also clear from the evidence of the Sadanand Garje, PW5 Ramkrishanappa and DW 4 Satyanaryan that the entire alleged sale proceeds of Rs.10,000/- were utilized for redemption of both the mortgages.*
>
> *xxx xxx xxx*
>
> *35…the third and important circumstance is satisfactorily proved by the Plaintiff to the effect that the value of the suit property in the year 1971 was some bigger than the alleged sale price of Rs. 10,000/ -.*

36… If the value of the house was only Rs.10,000/- Plaintiff ought to have preferred to sell the suit house to the mortgagee himself. There was no need for the 'Plaintiff to search for another purchaser and sell the property merely for an additional amount of Rs. 2000/- in the year 1971. This indicates that the nature of transaction was some thing else than it is shown in Ex.D1.

37… actual possession of the suit property was never delivered to the Defendant No.1 and 2, under the alleged sale-deed, Ex.D1.

38… Much reliance was placed by the learned advocate for the Defendants- on the alleged admission of Plaintiff and his brother in a reply notice given on 5.10.1974. Here again it is necessary to mention that Defendants No.1 and 2 were aware that Plaintiff alone is the owner of the suit house. Why they have obtained the rent agreement from the Plaintiff, his brother and brother's son, is not clear. One more circumstance is that the tenancy was only for a period five months, which expired in the month of April 1972. But for the first time, the notice was allegedly issued in the year 1974, as per Ex.D6. I have to see whether the alleged reply at Ex.D3 operates as an admission against the present Plaintiff. Plaintiff is, admittedly, an illiterate person. He does not know English. Similarly Defendant No.3 is also not knowing English and he signs in Modi. Ex.D3 which is reply to the legal notice is not given through any Advocate. It is in the form of a letter written in English that rent was not paid due to mistake and they will make an attempt to pay the rent upto November 1974. The signature of the Plaintiff is allegedly obtained in two places, below and above the word 'yours faithfully'. Who has written the document is not clear. Whether this document was sent by post or by what method, is not clear. It is not known whether the recitals were explained to the Plaintiff. PW1 states that after receiving the notices he informed Defendant No.4 Satyanarayan and he has not given any reply. So the reliance which is placed by the Defendants on Ex.D5 cannot operate as an admission. Even otherwise, admission is a conclusive piece of evidence, but it is to be seen under the circumstances which will be proved before the Court. The non claiming of rent for a long period also acts as an additional circumstance in favour of the Plaintiff…

39… No man will continue to pay the taxes in the hands of a tenant for more than 10 years. It is admitted by DW 1 that he never attempts to get his name entered in the municipal register as a owner, from the date of alleged purchase in the year 1971, till the suit is filed. This suit is filed in the year 1977. There is no satisfactory explanation given by the Defendant No.1, for such a long delay in getting his name entered in the revenue records. lnfact, he purchased the property for his residence and he would not have kept quiet if it was a real sale transaction between the parties. So this circumstances also goes in favour of the Plaintiff.

40. The eight circumstances is that the Plaintiff states that he has repaired the suit house, he has leased out various portions of the suit house to various tenants. DW1 shows his ignorance about such lease. PW1 categorically states that one Arjun Rao of D.C.C. Bank was residing as his tenant. DW1 is not able even to tell the actual accommodation available in the suit house. He has not produce any material to show that he has effected any repair from the year 1971 onwards. PW1 to 5 categorically states in their evidence that the Plaintiff is residing in the suit house along with his six daughters and wife. This is also admitted by the Defendant No.2.

This, act of the Defendant will disclose that he never attempted to exercise his right of ownership over the suit house.

41. The ninth circumstances in the present case is the payment of Rs.8426/- on 2.1.1974 by the Plaintiff and Defendant No.4 in account of Defendant No.1 through the Defendant No.7…

… when DW 2 was not at all knowing any transaction between the parties, why he dared to receive an amount of Rs.8426/- under Ex.P2 is not made clear. The wordings of Ex.P2 are necessary to be seen:

"received Rs. 8426/- only as part, payment towards dues of Bharatraj account."

It is clear that it was not the full payment, but part payment. The transaction of the Defendant No.1 all the while was dealt by the Defendant No.2 Bharatraj himself. Even DW1 is not able to explain to which account he adjusted this amount and how much is the balance. The learned advocate for the Defendants vehemently argued that the Defendant No.2 has filed a separate suit before the court of Munsiff and there were other hand loan transaction between the parties. When there is definite and positive evidence on record, that mere such assertion on the part of the Defendant No. 2 is of no use. The learned advocate for the Defendants further submitted that the reply was given on 5.10.1974 after this amount was received. As already observed by me, the said reply notice is not proved to be an admission against the Plaintiff. In this context, the evidence of PW1 to the effect that he pressed his brother and sons of brother to make this payment, thereafter part amount was paid towards the suit loan account, is more believable and acceptable. This is much so, because of the corroborating documentary evidence and the shaky evidence of the DW2 and 3. This itself clearly indicates that the transaction under Ex.D1, was not intended to be acted upon by the parties as sale transaction."

12. Aggrieved by the judgment and decree of the Additional Civil Judge, Bidar, the Appellants herein preferred a Regular Appeal before the Court of Additional District Judge, Bidar which was numbered as R.A. No. 12 of 1986. The aforesaid appeal filed by the Appellants herein was allowed vide judgment dated 13th December 1999 and Respondent-Plaintiff's suit was dismissed observing that oral evidence could not have been adduced in the presence of a written document in view of Section 92 of the Indian Evidence Act, 1872. The lower Appellate Court observed as under:

"40. On a detailed and anxious consideration of the entire evidence, both oral and documentary, and attending circumstances brought out in the evidence, I have no hesitation to hold that the intention of the parties while entering into transaction as per Ex.D-1 was to have an outright sale of suit house in favour of Defendant No. 1 for valuable consideration of Rs.10,000/-. There is evidence to show that out of the said sale consideration the Plaintiff who had earlier mortgaged the suit house in favour of Sadanand Garje had paid the mortgage money to Sadanand Garje and had redeemed the property. The claim of Plaintiff that he has not gained the benefit of even the balance of Rs.2000/- cannot be accepted as basis to set aside Ex.D-1. ***There is clear collusion between Plaintiff and D-4, if not D-3 to D-6 in this proceeding. One of the Plaintiff's witnesses' has admitted that Plaintiff and D-3 to D-6 are on cordial terms****. Therefore, the court cannot extend its helping hand to an unscrupulous person to set aside the legitimate transaction that took place very many years ago. Accordingly, I hold that the impugned document was a real and genuine sale deed, and was intended to be acted upon, and that it was not a nominal or sham document or was not intended to be acted upon. Accordingly, point No.1 is answered in the negative and point No.2 in the affirmative."*

13. Thereafter, the Respondent-Plaintiff filed a second appeal before the High Court of Karnataka, Circuit Bench at Gulbarga, challenging the judgment dated 13th December 1999 passed by the Additional District Judge, Bidar. By impugned order, the High Court set aside the judgment and decree passed by the lower Appellate Court and restored the judgment passed by the Trial Court, thereby decreeing Respondent-Plaintiff's suit. The High Court observed as under:

"13. In view of the law declared by the Supreme Court in the decisions referred to above, the Plaintiff is entitled to adduce oral evidence to show that the transaction in a particular document/set of documents is sham fictitious, nominal or not intended to be acted upon. Further the facts in GANGABAI'S case are identical to the facts in the instant case. In GANGABAI'S case, the Plaintiff executed a nominal sale deed and a rent note and they were never intended to be acted upon and rent paid by her was in fact interest on the loan. The Plaintiff further contended that she continued to be in possession of the house property throughout and carried on repairs from time to time. The Plaintiff further stated that the Defendants made an attempt to enforce the document as a sale deed by filing a suit for recovery of rent. Therefore, the Plaintiff filed a suit against the Defendants to declare the sale transaction as nominal, sham and not intended to be acted upon. On the basis of these facts, the Supreme Court held that oral evidence is admissible to show that the document executed was never intended to operate as an agreement, but some other agreement altogether not recorded in the document was entered into between

the parties. Therefore the trial court rightly held that Plaintiff is entitled to adduce oral evidence to establish that the sale transaction dated 12.11.1971 as nominal, sham and not intended to be acted upon. The lower appellate court committed. an error in holding that there is a bar under Section 92 of the Evidence Act for the Plaintiff to lead oral evidence contrary to unambiguous and clear sale deed Ext. D1.

14. The reasoning of the lower appellate court is not only contrary to the facts of the case but also to the law laid down by the Apex Court in the decisions referred to above. It is not the case of the Plaintiff that there is ambiguity in the terms of the sale deed Ext.D1 and therefore, he wants to adduce oral evidence. On the other hand, it is the case of the Plaintiff that the transaction in the sale deed Ext. D1 is nominal, sham and not intended to be acted upon and as such, he is entitled to adduce oral evidence under Section 92 of the Evidence Act. Therefore, the finding of the lower appellate court that there is a bar under Section 92 of the Evidence Act for the Plaintiff to lead evidence is liable to be set aside. Accordingly, the substantial question of law framed by this court is answered."

14. The present appeal has been filed by the Appellants-Defendant Nos.1 and 2 challenging the judgment dated 04th February 2010 passed by High Court in R.S.A. No 163 of 2000.

SUBMISSIONS ON BEHALF OF APPELLANTS-DEFENDANT NOS. 1 AND 2

15. Mr. Bhardwaj S. Iyengar, learned counsel for Appellants-Defendant Nos.1 and 2 stated that the High Court failed to notice that there is no ambiguity in the language employed in the Sale Deed dated 12th November 1971. He submitted that if the terms of the written document are clear and unambiguous, extrinsic evidence to ascertain true intention of the parties is inadmissible under Section 92 of the Indian Evidence Act, 1872 as it mandates that in such cases, the intention must be gathered from the language employed in the document.

16. He stated that the Respondent-Plaintiff failed to produce any document or evidence to show that the sale transaction was never intended to be a sale and was rather a mortgage transaction. He submitted that to prove that the agreement was

executed only as a security for the amount advanced as loan by Appellants-Defendant Nos.1 and 2 to Respondents, the Respondents ought to have produced a registered mortgage agreement as the law requires a mortgage transaction to be reduced in writing and to be mandatorily registered. He, however, emphasised that the parties had never executed any mortgage agreement.

17. He further stated that the documents produced and relied upon by the Respondent-Plaintiff viz. house tax receipts, water tax receipts and electricity bills to prove his ownership of the suit house, were from 1975 onwards i.e. after the suit for eviction was filed by the Appellants herein. He contended that no explanation was forthcoming from the Respondents with respect to non-payment of aforesaid taxes between 1971 to 1975.

18. He submitted that Respondent-Plaintiff had not taken any of the pleas and defences, taken in his plaint, in his reply to the legal notice dated 5th October 1974. He emphasized that on the contrary the Respondent-Plaintiff had categorically admitted his liability to pay rent in his reply dated 5th October 1974 and he had undertaken to clear the arrears of rent by November 1974.

SUBMISSIONS ON BEHALF OF RESPONDENTS

19. Mr. S.N. Bhat, learned senior counsel for Respondents stated that the consideration received on execution of Sale Deed dated 12th November 1971 was utilised towards clearance of debts incurred by Defendant Nos.3 to 6 and Respondent-Plaintiff did not receive a single penny from Appellant-Defendant

No.1. He contended that had the Respondent-Plaintiff wanted to sell the suit house for a meagre sum of ₹10,000/- (Rupees Ten Thousand only), the Respondent-Plaintiff would have sold it to the mortgagee i.e. Mr. Sadanand Garje himself.

20. He further stated that the value of the suit house was more than ₹50,000/- (Rupees Fifty Thousand only) on the date of execution of Sale Deed i.e. 12th November 1971 and therefore, the Respondent-Plaintiff could not have entered into a transaction of sale with Appellant-Defendant No.1 for a sum of only ₹10,000/- (Rupees Ten Thousand only).

21. He also stated that the actual possession of the suit house was never delivered to Appellant-Defendant No.1 and the Respondent-Plaintiff continued to be in possession of the suit house from 1971 onwards without any interference from the Appellants-Defendant Nos.1 and 2.

22. He pointed out that all the municipal records in respect of the suit house stand in the name of the Respondent-Plaintiff and he had been paying water tax, property tax, electricity bills, etc. with respect to the suit house as an owner.

23. He stated that the Respondent-Plaintiff had categorically averred in the plaint that the said Sale Deed was nominal, sham and not intended to be acted upon. He further stated that the intention of the parties was to create a mortgage under the transaction dated 12th November 1971 and not to execute a true and real Sale Deed.

24. He submitted that in view of the principles laid down by this Court in ***Gangabai w/o Rambilas Gilda (Smt.) vs. Chhabubai w/o Pukharajji Gandhi (Smt.), (1982) 1 SCC 4***, the Respondent-Plaintiff was very much entitled to adduce oral evidence to establish that the said transaction dated 12th November 1971 was never intended to operate as a true and real Sale Deed and it was a sham and nominal transaction. The relevant portion of the judgment in ***Gangabai*** (supra) is reproduced hereinbelow: -

> *"The bar imposed by sub-sec. (1) of Section 92 applies when a party seeks to rely upon the document embodying the terms of the transaction. In that event the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The subsection is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose, oral evidence is admissible to show that the document executed was never intended to operate as an agreement; but that some other agreement altogether, not recorded in the document was entered into between the parties."*

25. He further submitted that this Court in ***Ishwar Dass Jain (Dead) Through Lrs. vs. Sohan Lal (Dead) By Lrs., (2000) 1 SCC 434*** has observed as under:

> *"16. This Court has held in Gangabai v. Chhabubai [(1982) 1 SCC 4] that in spite of Section 92(1) of the Evidence Act, it is permissible for a party to a deed to contend that the deed was not intended to be acted upon but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. In the above case, it was observed by D.A. Desai, J. as follows: (SCC Headnote)*
>
> > *"The bar imposed by Section 92(1) applies only when a party seeks to rely upon the document embodying the terms of the transaction and not when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a*

sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties."

26. He stated that the transaction was never intended to be a Sale Deed and the same is evident from the fact that the Respondent-Plaintiff had paid an amount of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) to Defendant No.7/Respondent No.11 for the dues of Appellants-Defendant Nos.1 and 2 in respect of the loan of ₹10,000/- (Rupees Ten Thousand only). He emphasised that pursuant to the same, Defendant No.7/Respondent No.11 had issued a receipt acknowledging part payment towards dues of Appellants-Defendant Nos.1 and 2.

27. He further stated that the reply to the legal notice dated 5th October 1974 was issued by the Counsel for Respondent-Plaintiff without any instructions by the Respondent-Plaintiff. He emphasised that Respondent-Plaintiff was an illiterate man of simple nature who could not understand the contents of the reply as the same was written in English.

28. He submitted that the lower Appellate Court reversed the finding of the Trial Court without adverting to the reasoning given by the Trial Court and without assigning any reason itself.

29. He lastly submitted that since the impugned order of the High Court is based on cogent materials and grounds, the same does not call for any interference by this Court.

QUESTION OF LAW THAT ARISES FOR CONSIDERATION

30. Having heard learned counsel for the parties, this Court is of the opinion that a seminal question of law arises for consideration in the present proceedings, namely, what is the threshold for declaring that a registered Sale Deed is a sham.

REASONING

COURTS SHOULD NOT CASUALLY DECLARE A REGISTERED DEED A "SHAM", AS REGISTRATION CREATES A STRONG PRESUMPTION OF VALIDITY & GENUINENESS

31. It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually declare a registered instrument as a "*sham*". Adopting the principles enunciated in ***Prem Singh and Ors. vs. Birbal and Ors.***, ***(2006) 5 SCC 353*** [1], ***Jamila Begum (Dead) Through Lrs. vs. Shami Mohd. (Dead) Through Lrs. and Anr., (2019) 2 SCC 727*** [2], and ***Rattan Singh and Ors. v. Nirmal Gill & Ors.***, ***(2021) 15 SCC 300*** [3], this Court

[1] *"**27.** There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption....."*

[2] *"**16.** Sale deed dated 21-12-1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law....."*

[3] *" **33.** To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered....."*

reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the Deed was never intended to operate as a *bona fide* transfer of title.

32. The grounds typically accepted to challenge a registered Deed at the instance of the vendee/executant are fraud or want of capacity in any party or mistake of fact or fundamental illegality like where the Deed was executed under deceit or sold by a fraudster who did not own the land or where the Deed was executed without consideration, namely, if no money or value was actually exchanged despite recitals in the Deeds or where there was coercion or intimidation like where the seller was forced to sign without free consent.

33. While the aforementioned grounds are illustrative and not exhaustive, this Court must caution against the growing tendency to challenge registered instruments '*at the drop of a hat*'. If the sanctity of registered documents is diluted, it would erode public confidence in property transactions and jeopardize the security of titles. In a society governed by the Rule of Law, registered documents must inspire certainty; they cannot be rendered precarious by frivolous litigation.

PLEADING STANDARDS AND THE RULE AGAINST CLEVER DRAFTING

34. The person alleging that a registered Deed is a sham must satisfy a rigorous standard of pleading by making clear, cogent, convincing averments and provide material particulars in his pleadings and evidence. This Court is of the view that the test akin to a test under Order VI Rule 4 CPC is applicable to such a pleading and clever drafting creating illusion of cause of action would not be permitted and a clear right to sue would have to be shown in the plaint.

35. As pointed out by this Court in ***I.T.C. Limited vs. Debts Recovery Appellate Tribunal and Ors., (1998) 2 SCC 70***, the ritual of repeating a word like '*fraud*' or creation of an illusion in the plaint can certainly be unraveled and exposed by the Court at the nascent stage of litigation without waiting for a full trial. Mere suspicion or nebulous averments without material particulars would not be sufficient to dislodge the presumption under Sections 91 and 92 of the Indian Evidence Act, 1872.

36. Additionally, even if the suit is allowed to proceed to trial, like in the present case, the level of proof required to be produced by the Plaintiff would have to be extremely strong.

37. This Court may mention that in none of the judgments cited by the Respondent-Plaintiff, this Court has held that strong presumption of validity and genuineness of a registered document and/or test of Order VI Rule 4 CPC is not

applicable. To be fair, the judgments cited by the learned senior counsel for the Respondent-Plaintiff do not consider the said issues and are sub silentio to that extent. **[See: *State of U.P. & Anr. v. Synthetics & Chemicals Ltd. & Anr., (1991) 4 SCC 139***[4]]. In any event, even if the said judgments are read to lay down a proposition that an averment in the plaint that the registered document is sham, is good enough to entitle the Plaintiff to lead evidence, that would make the judgments cited by the Respondent-Plaintiff *per incuriam* being contrary to Sections 91 and 92 of the Indian Evidence Act,1872 and binding judgments of this Court.

38. Keeping in view the aforesaid, this Court is of the view that as both the Sale Deed and Rental Agreement in question are registered, there is a very strong presumption about the validity and genuineness of the documents in question.

39. The pleadings in the present suit do not satisfy the test of Order VI Rule 4 CPC as despite averring in the plaint that the Respondent-Plaintiff had executed

---

[4] *"**41.** Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."*

the initial mortgage in favour of Sadanand Garje and the impugned Sale Deed as security mortgage in lieu of loan of ₹10,000/- (Rupees Ten Thousand only) in order to help Defendant Nos. 3 to 6 to pay off their debts and that all the Defendants had *'conspired against the Respondent-Plaintiff*', yet no relief had been sought in the plaint against Defendant Nos. 3 to 6 and no material particulars of the indebtedness of Defendant Nos. 3 to 6 had been mentioned. On the contrary Defendant No.3 was produced as Plaintiff's witness! Consequently, this Court agrees with the finding of the First Appellate Court that Respondent-Plaintiff was in collusion with Defendant Nos. 3 to 6 which proves that the case set up by the Respondent-Plaintiff is unbelievable.

40. Further, the averment in paragraph 12 of the plaint that upon repayment of alleged loan of ₹10,000/- (Rupees Ten Thousand only), the Appellants-Defendants No.1 and 2 were to execute a suitable reconveyance deed is contradictory and self-defeating because if the parties had really agreed and intended to treat the impugned document as a mortgage deed, as is the *'burden of song'* in the plaint, there is no question of Sale with repurchase option at a later date.

41. Also, the Respondent-Plaintiff at the first opportunity i.e. while replying to the legal notice did not take any of the pleas/defences mentioned in the plaint. Additionally, in the plaint there is no averment that reply to the legal notice had been issued without understanding its contents. Consequently, the present plaint

was liable to be rejected at the initial stage as it was nothing more than a clever drafting creating an illusion of cause of action and further as the terms of the registered documents were clear and unambiguous, extraneous evidence to ascertain true intention of the parties was inadmissible under Sections 91 and 92 of the Indian Evidence Act, 1872.

42. However, as the matter has been disposed of by the Courts below on merits after recording evidence, this Court considers it appropriate to deal with the arguments advanced on merits also.

INTENT WHILE ENTERING INTO THE SALE DEED WAS TO CONDUCT AN OUTRIGHT SALE AND NOT A MORTGAGE BY CONDITIONAL SALE

43. Further as all the recitals and the covenants in the Sale Deed are clear, categorial and admit of no ambiguity, this Court has no doubt that the intent of the parties while entering into the said Deed dated 12th November 1971 was to conduct an outright sale of suit house in favour of Appellant-Defendant No.1 for a valuable consideration of ₹10,000/- (Rupees Ten Thousand only).

44. It is pertinent to mention that in the impugned Sale Deed, there is no clause which effects or purports to effect the sale as mandated in proviso to Section 58(c) of the Transfer of Property Act, 1882 which reads as under:-

> *"(c) **Mortgage by conditional sale**.—Where the mortgagor ostensibly sells the mortgaged property—*
>
> *on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or*
>
> *on condition that on such payment being made the sale shall become void, or*
>
> *on condition that on such payment being made the buyer shall transfer the property to the seller,*

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale*."*

(emphasis supplied)

45. The Special Committee, at whose instance Section 58(c) of the Transfer of Property Act, 1882 was amended, had stated in its Report[5] as under:-

"Section 58(c) contains the definition of a mortgage by conditional sale. It is with the greatest difficulty in many cases that such mortgages can be distinguished from sales with a condition for repurchase; As clause (c) of section 58 indicates, the real point of difference between the two kinds of transactions, is that in the case of a mortgage by conditional sale, the sale is only ostensible, whereas in the case of an out and out sale, it is real. The ostensible or real nature of transaction can, however, be only determined by finding out the intentions of the parties. In order to escape the liability of accounting for the profits of the property and other liabilities imposed on a mortgage, and also to escape the provisions of some of the local laws enacted for the benefit of agriculturists, creditors resort to the mode of having a mortgage which is in form an out and out sale. ***Since the decision of the Privy Council in Balkishen Das v. Legge [(1900) I.L.R. 22 All. 149.] it has been a well-settled rule that it is not open to courts to allow any extraneous evidence in order to find out the intention of the parties. Such intention must, therefore, be gathered from the document itself which purports to effect the transaction.*** *These transactions have given rise to a great deal of litigation and Courts are compelled to enumerate and consider all the various criteria which have been laid down for the purpose of determining whether a transaction is a mortgage or an out and out sale. In order to avoid the difficulties indicated above, we think, it desirable to lay down a statutory test by which the intention is to be gathered.* ***We, therefore, propose that no transaction should be deemed to be a mortgage by conditional sale unless the condition is embodied in the document which operates or purports to effect the sale."***

(emphasis supplied)

46. This Court while interpreting proviso to Section 58(c) of the Transfer of Property Act, 1882 in ***Shri Bhaskar Waman Joshi (deceased) vs. Shri Narayan Rambilas Agarwal (deceased) (1959) SCC OnLine SC 112*** observed as under:

"6. The proviso to this clause was added by Act 20 of 1929. Prior to the amendment there was a conflict of decisions on the question whether the condition contained in a separate

[5] ***Debi Singh v. Jagdish Saran Singh 1952 SCC OnLine All 188***

deed could be taken into account in ascertaining whether a mortgage was intended by the principal deed. The Legislature resolved this conflict by enacting that a transaction shall not be deemed to be a mortgage unless the condition referred to in the clause is embodied in the document which effects or purports to effect the sale. But it does not follow that if the condition is incorporated in the deed effecting or purporting to effect a sale a mortgage transaction must of necessity have been intended. The question whether by the incorporation of such a condition a transaction ostensibly of sale may be regarded as a mortgage is one of intention of the parties to be gathered from the language of the deed interpreted in the light of the surrounding circumstances. The circumstance that the condition is incorporated in the sale deed must undoubtedly be taken into account, but the value to be attached thereto must vary with the degree of formality attending upon the transaction. The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and mortgagee, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer the property within the period specified. What distinguishes the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. The definition of a mortgage by conditional sale itself contemplates an ostensible sale of the property. As pointed out by the Judicial Committee of the Privy Council in Narasingerji Gyanagerji v. Panuganti Parthasarathi and Others 1924 LR 51 IA 305 the circumstance that the transaction as phrased in the document is ostensibly a sale with a right of repurchase in the vendor, the appearance being laboriously maintained by the words of conveyance needlessly reiterating the description of an absolute interest or the right of repurchase bearing the appearance of a right in relation to the exercise of which time was of the essence is not decisive. The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect. It there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts. ***Oral evidence of intention is not admissible in interpreting the covenants of the deed but evidence to explain or even to contradict the recitals as distinguished from the terms of the documents may of course be given****. Evidence of contemporaneous conduct is always admissible as a surrounding circumstance; but evidence as to subsequent conduct of the parties is inadmissible."*

(emphasis supplied)

47. Further, this Court in ***Sopan (Dead) Through His LR vs. Syed Nabi (2019) 7 SCC 635*** observed as under:

"5. From a perusal of the proviso to Section 58(c) as emphasised, it indicates that no transaction shall be deemed to be a mortgage unless the condition is embodied in the document which effects or purports to effect the sale. Therefore, any recital relating to mortgage or the transaction being in the nature of a conditional sale should be an intrinsic part of the very sale deed which will be the subject matter…."

48. This Court in ***Tulsi & Ors. v. Chandrika Prasad & Ors. (2006) 8 SCC 322*** and ***Leela Agrawal v. Sarkar & Ors. 2024 SCC OnLine SC 3813*** observed that the condition precedent for arriving at a finding that the transaction involves mortgage by way of conditional sale is that there must be an ostensible sale and the condition that on default of payment of mortgage money on a certain date, the sale shall become absolute or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller shall be embodied in the same document.

49. One of us, (Rajesh Bindal, J[6]), while dealing with proviso to Section 58(c) of Transfer of Property Act, 1882, observed that '*a deeming fiction was added in the negative that a transaction shall not be deemed to be a mortgage unless the condition for reconveyance is contained in the document which purports to effect the sale*'. Consequently, this Court is of the opinion that the Sale Deed dated 12th November 1971 is not a mortgage by conditional sale.

CONTRADICTIONS AND OMISSIONS

50. There is no finding recorded by the Trial Court or the High Court as to the legal compulsion for the Respondent-Plaintiff to execute a Sale Deed if it was the intention to execute a mortgage with conditional sale. There is no discussion of this aspect either in the Trial Court or High Court judgments.

[6] In Prakash (Dead) By LR v. G. Aradhya & Ors., *2023 SCC OnLine SC 1025*

51. Moreover, the claim made in para 12 of the plaint clearly indicates that the intent of the parties at the time of execution of the Sale Deed dated 12th November 1971 was to treat it as a real and genuine sale deed that was intended to be acted upon.

52. Additionally, this Court finds that Appellant-Defendant No.1 initiated eviction proceedings before the Rent Controller in 1975, while the underlying suit was filed by Respondent-Plaintiff only on 21st June 1977 and allegedly the payment of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) was made by the Plaintiff-Tukaram in January 1974. If the plea of the Respondent-Plaintiff was genuine, it would have approached Appellant-Defendant No.1 immediately in January 1974 for re-conveyance. This time lag from 1974 to 1977 makes the case set up by the Respondent-Plaintiff of mortgage by conditional sale or reconveyance unbelievable and shows that the plea is false and set up to defeat the eviction proceeding.

53. In the present case, no suggestion was even put to DW-1 (Appellant-Defendant No.2) during cross-examination that on payment of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only), the suit house was to be reconveyed to Respondent-Plaintiff.

54. This Court is of the view that the Trial Court failed to consider the effect of non-challenge to the registered lease deed dated 12th November 1971 and

payment of rent for fourteen months for the period December 1971 to January 1973 and for one month in 1974 by the Respondent-Plaintiff.

55. Consequently, the Deed in question is a bonafide Sale Deed which was intended to be acted upon and not a mortgage by conditional sale.

PW-5 DEPOSED THAT AS THE RESPONDENT-PLAINTIFF WAS IN NEED OF MONEY, HE SOLD THE SUIT HOUSE

56. Pertinently, Respondent-Plaintiff's own witness, Mr. Ramakrishnappa (brother of the Respondent-Plaintiff who was arrayed as Defendant No.3) has deposed as PW-5 that in order to get the suit house redeemed from Mr. Sadanand Garje, the Respondent-Plaintiff needed money and for this purpose, he sold the suit house to Appellant-Defendant No.1 vide the impugned Sale Deed. He further deposed that since the Respondent-Plaintiff had no house to reside in after the aforementioned sale, he rented the suit house from Appellant-Defendant No.1 by executing a registered Rental Agreement dated 12th November 1971. This Court is in agreement with the aforesaid deposition of PW-5 because from the record, it is apparent that the initial mortgagee – Mr. Sadanand Garje was pressing Respondent-Plaintiff for repayment of his loan as the former had to purchase another property.

57. It is pertinent to mention that during the hearing, learned senior counsel for Respondent-Plaintiff had repeatedly emphasised that Appellants-Defendant Nos.1 and 2 were closely related to Respondent-Plaintiff. However, the said fact was denied by learned counsel for Appellants-Defendant Nos.1 and 2. This Court

finds from the evidence on record that it is an admitted position that Appellants-Defendant Nos. 1 and 2 are not related to Respondent-Plaintiff.

58. Additionally, admission of symbolic possession having been handed over to Appellants-Defendant Nos.1 and 2 is to be found in the Sale Deed dated 12th November 1971.

BY SELLING SUIT HOUSE AND BY REDEEMING THE INITIAL MORTGAGE, RESPONDENTS SAVED THE SECOND MORTGAGED PROPERTY

59. This Court is of the opinion that there is no merit in the contention of Respondent-Plaintiff that if the value of the suit house had been ₹10,000/- (Rupees Ten Thousand only) in 1971 (i.e. the consideration at which the Sale Deed was executed by Respondent-Plaintiff in favour of Appellant-Defendant No.1), the Respondent-Plaintiff would have sold the suit house to the mortgagee Mr. Sadanand Garje himself. It is pertinent to note that the Respondents had obtained a loan of ₹10,000/- (Rupees Ten Thousand only) from the mortgagee Mr. Sadanand Garje by mortgaging the suit house against a loan of ₹8,000/- (Rupees Eight Thousand Only) along with another property i.e. House No.2-5-9/1 against a loan of ₹2,000/- (Rupees Two Thousand Only). By executing the Sale Deed in favour of Appellant-Defendant No.1 for the suit house for a consideration of ₹10,000/- (Rupees Ten Thousand only), the Respondents were able to redeem and save the other property i.e. House No. 2-5-9/1.

MERE ALLEGATION OF INADEQUACY OF CONSIDERATION DOES NOT MAKE THE DEED VOID

60. Both the parties have led contrary evidence on the aspect of market price of suit house, but this Court is of the opinion that there is no conclusive evidence in the form of documentary evidence like contemporary sales or circle rates to show that the sale price mentioned in the registered Sale Deed was inadequate or below the market price. In any event, in view of Explanation 2 to Section 25 of Indian Contract Act, 1872 mere allegation of inadequacy of consideration does not make the Deed void. It is only in the absence of sale consideration being tendered that the sale deed would be void.

LACK OF MUTATION AND PAYMENT OF TAXES IS IRRELEVANT IN PRESENT CASE

61. This Court is of the view that Respondent-Plaintiff's contention that he had been paying municipal taxes for the suit house as an owner since 1971 is not correct as the Respondent-Plaintiff has failed to place on record any document to show that municipal taxes were paid by him between November 1971 (date of execution of Sale Deed) and April 1974 (date of issuance of legal notice by Appellants-Defendant Nos.1 and 2). A perusal of the receipts of municipal taxes (Exhibits P3 to P14) placed on record by the Respondent-Plaintiff reveals that the same are of the year 1975 and onwards i.e. after the date of initiation of eviction proceedings by the Appellants-Defendant Nos.1 and 2 against the Respondents.

62. Above all, Respondent-Plaintiff, PW-1 has admitted in his cross-examination that *"after filing the eviction petition by Defendant No.1* (Appellant No.1, Respondent-Plaintiff) *filed this suit as counterblast"*. Consequently, this Court is of the view that the Respondent-Plaintiff had shown that the statutory taxes had been paid by him in a bid to defeat the rightful ownership of the Appellants herein over the suit property.

63. Further, the Respondent-Plaintiff's contention that Appellant-Defendant No. 1's name was not mutated in the revenue records is of no consequence, as it is settled law that revenue entries in the municipal records do not prove ownership. [See ***Suraj Bhan & Ors. vs. Financial Commissioner & Ors. (2007) 6 SCC 186; Suman Verma vs. Union of India & Ors. (2004) 12 SCC 58***; ***Municipal Corporation, Aurangabad Through its Commissioner vs. State of Maharashtra & Anr. (2015) 16 SCC 689***; ***Ajit Kaur alias Surjit Kaur vs. Darshan Singh (Dead) through LRs. and Ors. (2019) 13 SCC 70***].

64. Additionally, there is evidence to show that immediately after execution of the impugned Sale Deed, Appellant-Defendant No.2 (husband of Appellant-Defendant No.1/buyer) was transferred from Bidar to Gulbarga and from there, he was transferred to Bellary.

65. Accordingly, when the Appellants-Defendant Nos.1 and 2 were staying away from Bidar, they could not have applied for change of mutation and in any event, such inaction in itself cannot defeat their right over the suit house.

RESPONDENT-PLAINTIFF FAILED TO PROVE THAT ₹8,426/- PAID TO DEFENDANT NO. 7 WAS TOWARDS DISCHARGE OF ALLEGED LOAN

66. This Court is of the opinion that the Respondent-Plaintiff has failed to prove that the payment of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) made to Defendant No.7/Respondent No.11 on 2nd January 1974 was towards discharge of alleged loan given by Appellants-Defendant Nos.1 and 2.

67. Defendant No.7/Respondent No.11, who runs a finance company, has categorically deposed in his evidence that the amount of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) paid by Respondent-Plaintiff was not part payment towards the alleged mortgage transaction. The relevant part of Defendant No.7's deposition is reproduced hereinbelow: -

> *"I have not mentioned in Ex.P2 (receipt of payment), that I have received the amount from the plaintiff. It is false to say that amount of Rs.8426/- is paid by defendant no.3 and 4 towards the part payment of mortgage amount."*

68. Additionally, Appellant-Defendant No. 2 (DW-1) has stated in his deposition that the amount of ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) paid by Respondent-Plaintiff on 2nd January 1974 to Defendant No.7/Respondent No.11 was towards Appellant-Defendant No.2's account and not the alleged mortgagee-Appellant-Defendant No.1's account.

69. Moreover, the Respondent-Plaintiff in the reply dated 5th October 1974 to the legal notice dated 19th April 1974 did not even take the defence that out of the

total loan amount of ₹10,000/- (Rupees Ten Thousand only), ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) had been repaid to Appellants-Defendant Nos.1 and 2 through Defendant No.7/Respondent No.11 on 2nd January 1974, i.e. as recent as ten months ago.

RESPONDENT-PLAINTIFF KNEW THE DIFFERENCE BETWEEN A MORTGAGE AND A SALE DEED AND THUS UNDERSTOOD CONSEQUENCES OF HIS ACTIONS

70. From the evidence on record, it is apparent that the Respondent-Plaintiff was admittedly running a clothing business along with his elder brother-Defendant No.3. Further, PW-4, who is a close friend of Respondent-Plaintiff has clearly stated in his evidence that the Respondent-Plaintiff had been managing affairs of his family independently without consulting anyone.

71. Moreover, the fact that the Respondent-Plaintiff had initially executed a Mortgage Deed in favour of Mr. Sadanand Garje and thereafter executed a registered Sale Deed and a Rental Agreement with the Appellant-Defendant No.1 proves that the Respondent-Plaintiff was a 'wise' man, who knew the difference between a Mortgage and a Sale Deed and who understood the consequence of his actions. Consequently, there is no merit in Respondent-Plaintiff's contention that Respondent-Plaintiff was an "*illiterate man of simple nature*", who did not understand the consequences of his actions.

THE JUDGMENT IN GANGABAI (SUPRA) HAS NO APPLICABILITY TO PRESENT CASE

72. Further, the Respondents never denied the intent, free will, knowledge and terms of the impugned sale transaction and the Rental Agreement while executing the same. Keeping in view the aforesaid reasons, this Court is of the opinion that the High Court misinterpreted the judgment of this Court in ***Gangabai*** (supra) and allowed the appeal believing it to be an identical case.

THE RESPONDENT-PLAINTIFF AT THE FIRST OPPORTUNITY i.e. WHILE REPLYING TO THE LEGAL NOTICE DID NOT TAKE ANY DEFENCE

73. Also, the Respondent-Plaintiff at the first opportunity i.e. while replying to the legal notice dated 19th April 1974 for recovery of rental dues and for eviction, did not take the stand that the Sale Deed was a sham document and that it was actually a Mortgage Deed against a loan of ₹10,000/- (Rupees Ten Thousand only). In the said reply, the Respondent-Plaintiff did not even take the defence that out of the total loan amount of ₹10,000/- (Rupees Ten Thousand only), ₹8,426/- (Rupees Eight Thousand Four Hundred Twenty Six only) had been repaid to Appellants-Defendant Nos.1 and 2 through Defendant No.7/Respondent No.11 ten months ago i.e. on 2nd January 1974. In fact, in the reply to the legal notice, the Respondent-Plaintiff categorically admitted his liability to pay arrears of rent and undertook to clear the arrears by November 1974. The said reply, admittedly, bears the signature of the Respondent-Plaintiff.

IN THE PLAINT THERE IS NO AVERMENT THAT REPLY TO THE LEGAL NOTICE HAD BEEN ISSUED WITHOUT UNDERSTANDING ITS CONTENTS

74. Even in the subject suit filed by Respondent-Plaintiff in 1977 i.e. nearly three years after issuance of reply to legal notice, there is no statement/averment that the said reply dated 5th October 1974 had been given without Respondent-Plaintiff understanding its contents and/or that the said reply had been wrongly issued by the Respondent-Plaintiff's counsel without any instructions.

75. Consequently, this Court is of the opinion that the Trial Court's finding that the reply to the legal notice dated 05th October 1974 had not been issued by the Respondent-Plaintiff, is beyond the pleadings.

RECOMMENDATIONS FOR SYSTEMIC REFORMS

76. Before parting, this Court deems it necessary to suggest to the Union and State Governments the urgent need for the digitization of registered documents and land records using secure, tamper-proof technologies such as Blockchain. Many experts believe that Blockchain, a shared, digital record book (ledger) system would ensure that once a transaction of a sale or mortgage or like nature is recorded, it becomes immutable and cryptographically secured.

77. Such reforms are essential to minimize the scourge of forgery and "clever drafting" that clogs our judicial system. Registered documents must inspire absolute confidence to ensure the ease of doing business and to uphold the sanctity of property titles in a modern economy.

CONCLUSION

78. In light of the aforesaid reasons, the present appeal is allowed. The impugned judgment and order dated 4th February 2010 passed by the High Court is set aside and the judgment dated 13th December 1999 passed by Additional District Judge, Bidar in R.A. No.12 of 1986 is restored. Consequently, the suit being O.S. No.39 of 1977 is dismissed with costs in favour of the Appellants herein.

…….J.
[RAJESH BINDAL]

…….J.
[MANMOHAN]

New Delhi;
January 22, 2026