Reserved On : 24/07/2026
Pronounced On : 11/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 423 of 2026
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/SECOND APPEAL NO. 423 of 2026
With
R/SECOND APPEAL NO. 424 of 2026
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2026
In R/SECOND APPEAL NO. 424 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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MUKESHBHAI KANTIBHAI PRAJAPATI & ANR.
Versus
VIREN RATILAL PATEL & ORS.

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Appearance in SA No.423/2026:-
MR. MIHIR THAKORE, SENIOR COUNSEL assisted by MR SHAKTI S JADEJA(5491) for the Appellant(s) No. 1,2
MR RUSI B TRIVEDI(11227) for the Respondent(s) No. 5

Appearance in SA No.424/2026:-
MR. AMAR BHATT, SENIOR COUNSEL assisted by MR. TIRTH NAYAK(8563) for the PETITIONER(s) No. 1,2
MR RUSI B TRIVEDI(11227) for the RESPONDENT(s) No. 5

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

COMMON CAV JUDGMENT

1. Since both these second appeals, filed under Section 100 of the Code of Civil Procedure (hereinafter referred to as “**CPC**”), arise out of a judgment and decree dated 27/04/2026

passed by the Principal District Judge, Gandhinagar, in Regular Civil Appeal No.66 of 2019, with the consent of learned advocates appearing for the respective parties, they are being heard and decided by way of this common judgment.

1.1 For the sake of convenience, hereinafter the parties will be referred to as per their original positions in the suit and/or appeal.

1.2 The appellants in Second Appeal No. 423 of 2026 have filed the paper-book containing the pleadings, as well as the oral, and documentary evidence led by the parties before the Trial Court.

1.3 The appellants of Second Appeal No. 423 of 2026 are the original defendants Nos.1 and 2, whereas respondents Nos. 1 to 5 are the original plaintiffs. Respondents Nos.6 and 7 are the newly added parties in the regular appeal and joined as respondents Nos.3 and 4, who are also appellants of Second Appeal No.424 of 2026 (hereinafter referred to as “third party / subsequent purchasers”).

BRIEF FACTS OF THE CASE :

2. The land bearing Block/Survey No. 952, admeasuring 0-50-59 Hectares-Are-sq.meters and bearing Block/Survey No.950/2, admeasuring 0-37-42 Hectares-Are-Sq.meters situated at village Uvarsad, Taluka and District Gandhinagar (hereinafter referred to as the "**suit property**"), was owned by one Jivabhai Mathurbhai and after his demise, it was

mutated in the name of one Naranbhai Jivabhai in the revenue records. One Jorabhai Kamabhai was cultivating the suit property as a tenant and after his demise, since his other legal heirs waived their right to claim tenancy except Parshottambhai Jorabhai, accordingly, the name of Parshottambhai Jorabhai, was mutated in the revenue records as a tenant. The record suggests that said tenant, namely Parshottambhai, had shown his willingness to purchase the suit property as per the provisions of the Gujarat Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as **"the Tenancy Act"**); thus, it was given to him at the selling price of Rs.5,689/-. Parshottambhai appears to have executed a Will in favour of Ratibhai Bhulabhai Patel (father of plaintiffs Nos.1 to 4). Parshottambhai died on 11/10/1986, thereby, the name of Ratibhai was mutated in the revenue records. Ratibhai also died on 22/07/2000 and upon his demise, plaintiffs Nos. 1 to 4 being his legal heirs, their names were mutated in the revenue records. The fact remains that said Ratibhai had received the suit property by virtue of a Will executed by said Parshottambhai in his favour. Since said Parshottambhai had purchased the suit property as an agricultural tenant as per the provisions of the Tenancy Act; thus, the suit property was a new tenure land (restricted land) when received by Ratibhai.

2.1 The said Ratibhai Bhulabhai Patel appears to have executed a notarized sale agreement and a power of attorney dated 29/11/1990 in favour of defendant No.2 in relation to the suit property. The power of attorney was titled as 'irrevocable'.

2.2 The said Ratibhai who happens to be father of plaintiff Nos.1 to 4 appears to have executed another irrevocable power of attorney in favour of defendant No.1 on 17/09/1999 in relation to the suit property whereby the attorney was required to undertake the process of converting the suit property from new tenure to old tenure and thereafter, he had to execute a sale deed in favour of defendant No.2, who happens to be his father. Again, said Ratibhai with plaintiff No.1, executed one notarized agreement to sell in favour of defendant No. 2 on 17/09/1999.

2.3 Since the suit property undisputeably a new tenure land wherein there is a restriction to sell, transfer or create any third party interest in any manner as provided under Section 43 of the Tenancy Act, the owner, i.e. Ratibhai and/or plaintiffs Nos.1 to 4, as the case may be, could not have sold/transferred the suit property in favour of defendant No.2.

2.4 As the suit property was transferred by virtue of the aforesaid unregistered sale deed in favour of defendant No.2 in the year 1990, the Mamlatdar and ALT, Gandhinagar initiated Tenancy Case No.23 of 1997 and *vide* its order dated 13/01/1998 set aside such transfer and the suit property was ordered to be vested in the Government. Defendant No.2 appears to have carried the matter up to the highest Revenue Authority which appears to have partly allowed the revision vide its order dated 06/05/2008 whereby it ordered that the suit property be restored back to its original position.

2.5 Thereafter, on 26/05/2008 (at Exhibit 129), an agreement was executed by plaintiff Nos.1 to 4 through their power of attorney, i.e., defendant No.1 with defendant No.2, in regard to the cancellation of aforesaid sale. As per the said agreement, defendant No.2 restored back the possession of the suit property to plaintiff Nos.1 to 4. The aforesaid agreement having been presented before the Mamlatdar and ALT, Gandhinagar, in Tenancy Case No.13 of 2008, the Mamlatdar concerned recorded the aforesaid agreement in his order dated 31/07/2008 and also took note of the *Panchnama* dated 12/06/2008 prepared by the Talati-cum-Mantri of village Uvarsad that the possession has been restored back to the original owners, i.e., plaintiff Nos.1 to 4. Accordingly, the Mamlatdar had ordered that the names of plaintiffs Nos.1 to 4 be mutated in the revenue records.

2.6 Plaintiff Nos. 1 to 4 executed a fresh power of attorney in favour of defendant No.1 which was duly notarized on 05/03/2007 (hereinafter referred to as "**POA**"). It was titled as an 'irrevocable power of attorney'.

2.7 Plaintiff Nos.1 to 4 appear to have executed one notarized agreement to sell in favour of plaintiff No.5 on 20/10/2008. Likewise, defendant No.1 had also executed a registered agreement to sell in favour of defendant No.2 on 15/12/2008.

2.8 Plaintiff Nos. 1 to 4 had issued a notice of termination of the POA dated 05/03/2007 to defendant No.1 on 06/01/2009, thereby they had cancelled the POA. Such notice was replied to by defendant No.1 on 12/01/2009.

2.9 Thereafter, plaintiff Nos.1 to 4 appear to have executed a registered agreement to sell in favour of plaintiff No.5 and also executed a registered power of attorney in favour of plaintiff No.5 on 10/08/2009.

2.10 The defendant No.1, upon the strength of the POA, executed the sale deed on behalf of plaintiffs Nos.1 to 4 in favour of defendant No.2 on 30/07/2009 and presented for its registration. At the time of registration of the aforesaid sale deed, undisputably, the POA was already cancelled and the suit property was new tenure land. It appears that due to a deficiency of stamp duty, the process of registration of the aforesaid sale deed could not be completed but the same was finally registered by the registering authority on 19/05/2011.

2.11 In the meantime, the process of converting the land from new tenure to old tenure was already initiated by the plaintiff Nos.1 to 4 - original owners and the Collector, Gandhinagar, *vide* its order dated 14/03/2011, appears to have converted the suit property from new tenure to old tenure, whereby the restriction of sale/transfer, etc. was lifted.

2.12 After conversion of the suit property from new tenure to old tenure, by way of a registered sale deed, plaintiff Nos.1 to 4 sold the land in favour of plaintiff No.5 on 18/06/2012.

2.13 Since defendant No.1 had executed a registered sale deed in favour of defendant No.2 on 30/07/2009 and it was finally registered on 19/05/2011, whereas plaintiff Nos.1 to 4 also executed a registered sale deed on 18/06/2012 in favour of plaintiff No.5 in relation to the suit property, the plaintiffs (plaintiffs Nos. 1 to 5) instituted Special Civil Suit No.118 of 2014 before the Principal Senior Civil Judge, Gandhinagar, seeking a declaration and injunction that plaintiff No.5 should be declared as the owner of the suit property by virtue of the aforesaid sale deed dated 18/06/2012 and to declare that the sale deed executed by defendant No.1 in favour of defendant No.2 dated 30/07/2009 and its registration dated 19/05/2011 is null and void. A permanent injunction was also sought whereby the defendants were sought to be restrained from transferring the suit property in favour of others and from interfering with the possession of the plaintiffs. The defendants appeared and contested the suit. After appreciating the oral and documentary evidence made available on record, the Trial Court dismissed the suit.

2.14 Being aggrieved and dissatisfied with the dismissal of the suit, the original plaintiffs preferred the aforesaid Regular Civil Appeal No.66 of 2019 before the District Court, Gandhinagar. It appears that during the pendency of the appeal, defendant No.2 sold the suit property by way of two registered sale deeds dated 24/12/2021 in favour of the appellants of Second Appeal No.424 of 2026 who are the respondents Nos.6 and 7 of Second Appeal No.423 of 2026; so, they were joined in the aforesaid regular civil appeal on 03/02/2026 as respondents Nos.3 and 4 – subsequent purchasers.

2.15 After hearing the parties, *vide* its impugned judgment and decree dated 27/04/2026, the Appellate Court has allowed the aforesaid appeal and set aside the judgment and decree passed by the trial Court. The operative portion of the impugned judgment of the Appellate Court reads thus:

> *"[1] Regular Civil Appeal No.66 of 2019 is hereby allowed.*
>
> *[2] The judgment and decree passed in Special Civil Suit No. 118 of 2014 vide Exh. 161 & Exh. 162 respectively, by the learned 4th Additional Senior Civil Judge, Gandhinagar is hereby quashed and set aside.*
>
> *[3] sale deed executed by respondent No.1 (defendant No.1) in favour of respondent No.2 (defendant No.2) dated 30.07.2009 vide registration No.7906, which was registered on 19.05.2011 is hereby ordered to be null and void.*
>
> *[4] sale deed executed by appellant No.1 (plaintiff No.1) in favour of appellant No.5 (plaintiff No.5), dated 08.06.2012 vide registration No.8155 is hereby declared as legal and valid. Plaintiff No.5 is declared as bonafide purchaser.*
>
> *[5] Defendants are hereby restrained from transferring. mortgaging, gifting, lease etc. the suit property in favour of any third party.*
>
> *[6] Defendants, their men, agents, assignee etc. are hereby restrained from interfering with the possession of plaintiffs over suit property and entering in the suit property.*
>
> *[7] Interim relief/stay, if any, stands vacated.*
>
> *[8] No order as to costs.*
>
> *[9] Decree to be drawn accordingly.*
>
> *[10] Copy of this judgment along with the R&P if any, be sent to the concerned trial Court, forthwith."*

2.16 Feeling aggrieved and dissatisfied with the impugned judgment and decree passed by the Appellate Court, the defendants Nos.1 and 2 as well as subsequent purchasers, have preferred these second appeals.

3. Heard Mr.Mihir Thakore, learned Senior Counsel assisted by Mr. Shakti S. Jadeja, learned advocate for the appellants in Second Appeal No.423/2026 & Mr. Amar Bhatt, learned Senior Counsel assisted by Mr.Tirth Nayak, learned advocate for the appellants in Second Appeal No.424 of 2026, as also Mr. Rusi B. Trivedi, learned advocate for respondent No.5 – Caveator.

SUBMISSIONS OF APPELLANTS - DEFENDANT NOS.1 AND 2 :

4. Mr.Mihir Thakore, learned Senior Counsel assisted by Mr.Shakti Jadeja, learned advocate for defendants Nos.1 and 2, has made the following submissions:

4.1 The Appellate Court has committed a gross error in law by reversing the well-reasoned judgment of the trial Court. The Appellate Court has completely overlooked the fact that the POA dated 05/03/2007 executed by plaintiff Nos.1 to 4 in favour of defendant No.1 was an irrevocable one and prior to its cancellation, the defendant No.1 had partly exercised his authority having executed a registered agreement to sell in favour of defendant No.2 on 15/12/2008 in relation to the suit property. Once such authority was exercised by the POA, as per Section 204 of the Indian Contract Act, 1872 (hereinafter referred to as "**the Act, 1872**"), plaintiff Nos.1 to 4 cannot revoke the POA.

4.2 The Appellate Court has completely lost sight of the fact that in view of the registered agreement to sell dated 15/12/2008 in favour of defendant No.2 by defendant No.1 as power of attorney for plaintiff Nos.1 to 4, there was a subsisting interest in the subject matter of the agency created in favour of defendant No.1 which was coupled with interest within the meaning of Section 202 of the Act, 1872 and in such a scenario, the agency (the POA) could not have been terminated by plaintiff Nos. 1 to 4, as had been done by them. Plaintiff Nos.1 to 4 were made aware about the execution of the registered agreement to sell dated 15/12/2008 vide reply dated 12/01/2009 issued by the advocate of defendant No.1. The plaintiff Nos.1 to 4 had received the part consideration of Rs.8,00,000/-, out of the total sale consideration of Rs.10,00,000/-; thus, in the absence of any challenge qua the cancellation of the POA dated 05/03/2007 and/or the registered agreement to sell dated 15/12/2008 in the suit, the sale deed dated 30/07/2009 could not have been declared null and void by the Appellate Court.

4.3 The decision of the Hon'ble Apex Court in the case of **M.S. Ananthamurthy v. J. Manjula - (2025) 10 SCC 596,** is not applicable to the facts of the present case, inasmuch as in the case before the Hon’ble Apex Court, the person who executed the power of attorney died at the time of execution of the sale deed, whereas in the case on hand, the executants of the POA are alive, i.e., plaintiffs Nos.1 to 4. Even the agreement to sell in that case was unregistered, whereas in the present case, it was a registered one. Rather, the observations made by the Hon'ble Apex Court in the aforesaid decision (paragraphs 35 and 45) are helpful to the case of defendants Nos.1 and 2. Moreover, by reading the POA, it is very much clear that it is a power of attorney coupled with interest then it was irrevocable one. As can be seen from the evidence on record, there was a principal-agent relationship between the plaintiff Nos.1 to 4 and defendant No.1 and defendant No.1’s interest created in the subject matter, such agency could not have been terminated by the principal.

4.4 The Appellate Court has wrongly placed reliance upon Section 43 of the Tenancy Act while holding sale deed null and void. Though the sale deed was executed on 30/07/2009, nonetheless, it was registered only on 19/05/2011 due to non-payment of requisite stamp duty.

4.5 The Appellate Court has completely misinterpreted Section 47 of the Registration Act, 1908 (hereinafter referred to as ***“the Act, 1908*”**) and its finding of fact recorded in this regard is not only perverse but contrary to settled position of law. As per the settled position, the transfer of the immovable property becomes effective only upon registration of sale deed and not date of its execution. The sale deed was executed in favour of defendant No.2 on 30/07/2009 but it was finally registered only on 19/05/2011. In the meantime, on 14/03/2011, the Collector had passed an order converting the suit property from new tenure to old tenure. Thus, as on the date of registration of sale deed, i.e., 19/05/2011, the suit property became old tenure land. Consequently, there was no breach of Section 43 of the Tenancy Act when the suit property transferred in favour of defendant No.2.

4.6 The relation back under Section 47 of the Act, 1908, governs the operation and priority of a registered document *inter se* competing documents; it does not advance the completion of a sale to the date of execution. The Appellate Court has committed gross error in law by holding that, the transfer of the suit property in favour of defendant No.2 occurred on 30/07/2009, instead of 19/05/2011 by placing reliance upon Section 47, is directly contrary to the decision of the Constitutional Bench of the Hon'ble Apex Court in the case of **Ram Saran Lall vs. Mst. Domini Kuer – AIR 1961 SC 1747.** It has been held that a sale which is admittedly not completed until registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is affected, after it has been registered, commences to operate from an earlier date.

4.7 Without prejudice to the aforesaid submissions, Mr.Thakore, learned Senior Counsel, has placed reliance upon the interim order dated 12/02/2025 passed by a Division Bench of this Court in the case of **Mukesh Jashvantlal Patel and others vs. Ishwarlal Bhagwandas Patel and others,** being **First Appeal No.280 of 2025**, wherein taking note of the decision of the Full Bench in the case of **Decd. Shaikh Ismailbhai Hushainbhai Through Lh. vs. Vankar Ambalal Dhanabhai - 2024 (1) GLH 222** and having so noticed that the transaction may be hit by Section 43 of the Tenancy Act, while adjudicating the aforesaid appeal, the Division Bench has directed the parties to maintain status quo, as at the relevant point of time, there were divergent views about the validity of such types of agreements which were executed in contravention of Section 43 of the Tenancy Act. Mr.Thakore, learned Senior Counsel would request this Court that upon the principle of parity, this Court may also admit the appeal and direct the parties to maintain status quo.

4.8 The learned trial Court has rightly held that Plaintiff No.5 is not a *bona fide* purchaser. The notarized agreement to sell and the registered agreement to sell dated 10/08/2009 executed by plaintiff Nos.1 to 4 in favour of plaintiff No.5 were undisputedly created when the suit property was new tenure. Merely because the sale deed in favour of plaintiff No.5 was executed on 18/06/2012, which was subsequent to the conversion of the suit property from new tenure to old tenure on 14/03/2011, the plaintiff No. 5 could not place himself on a higher pedestal than defendant No.2. The reply dated 12/01/2009 issued by lawyer of defendant No.1 disclosed the transaction between defendant No.1 and 2 in regards to suit property. Thus, the plaintiffs had knowledge of such transactions prior to execution of the registered Agreement to Sell dated 10/08/2009 and the sale deed dated 18/06/2012. Even the public notice dated 27/04/2011 (Exh.98) was issued by defendant No.2, disclosed the prior sale of the suit property and it was published much prior to the sale deed dated 18/06/2012. Plaintiff No.5 also admitted in his deposition that he had obtained a search report from the Sub-Registrar, but the same was not produced before the Court. Therefore, an adverse inference ought to be drawn against Plaintiff No.5.

4.9 By making the above submissions, Mr.Thakore, learned Senior Counsel, would request this Court to admit the second appeal on the substantial questions of law framed along with the memo of appeal.

SUBMISSIONS OF APPELLANTS-SUBSEQUENT PURCHASERS:

5. Mr.Amar Bhatt, learned Senior Counsel appearing for the subsequent purchasers, has adopted the arguments canvassed by Mr.Thakore, learned Senior Counsel appearing for the defendants Nos.1 and 2.

5.1 Yet, Mr.Bhatt, learned Senior Counsel, would submit that no reasonable opportunity was given to the subsequent purchasers (appellants of Second Appeal No. 424 of 2026). It is submitted that the subsequent purchasers were joined on 03/02/2026 in the regular civil appeal and it was adjourned to 09/03/2026 and on the very day, the matter was reserved for judgment by the Appellate Court and vide its impugned judgment dated 27/04/2026, the Appellate Court allowed the appeal. It is further submitted that the subsequent purchasers were not furnished with the copy of plaint, written statement, other documents etc., and were not allowed to submit their written statement. It is also submitted that the Appellate Court, without following the mandatory provisions of law and in complete go-by to the provisions of Order 41 Rule 23, Rule 23A or Rule 25 of the CPC, reversed the judgment of the trial Court.

5.2 By making the above submissions, Mr. Bhatt, learned Senior Counsel, would request this Court to admit the appeal of the subsequent purchasers on the substantial questions of law set out with the memo of the appeal.

SUBMISSIONS OF RESPONDENT NO.5-PLAINTIFF NO. 5:

6. *Per Contra*, Mr.Rusi B. Trivedi, learned advocate for plaintiff No.5 (Caveator), has made the following submissions:

6.1 The Appellate Court has not committed any gross error in law which requires interference by this Court while exercising its power under Section 100 of the CPC; rather, the findings of fact recorded by the Appellate Court upon re-appreciation of evidence on record are neither perverse nor grossly erroneous.

6.2 The execution of the agreement dated 26/05/2008 between the plaintiffs Nos.1 to 4 through their power of attorney defendant No.1 with defendant No.2, whereby the earlier sale and/or interest created in the suit property was cancelled, thereby the reference of the earlier sale and power of attorney in favour of the defendant Nos.1 and 2, respectively, pale into insignificance.

6.3 The POA dated 05/03/2007 was not creating any interest in favour of defendant No.1 as alleged. Paragraph 27 of the

POA would show that all the previous power of attorney as well as deeds etc. stand cancelled. The POA dated 05/03/2007, though titled as an irrevocable power of attorney, but the entire reading of the POA would not remotely suggest that any interest of defendant No.1 being the power of attorney holder was created by the POA; thereby the plaintiffs Nos.1 to 4 were well within their right to cancel the said POA.

6.4 The issues involved in these appeals are covered by the decision of the Hon'ble Apex Court in the case of **M.S. Ananthamurthy (supra)** and thereby, the defendant No.1 was not authorized to execute any sale deed in favour of defendant No.2. It is an undisputed fact that the POA dated 05/03/2007 was an unregistered document and if the defendant No.1 claimed that it was coupled with interest, as per the provisions of Section 17 of the Registration Act, 1908, such POA was required to be registered.

6.5 The Appellate Court has committed no error in observing that before the execution of the sale deed by defendant No.1 in favour of defendant No.2, the POA was cancelled by plaintiff Nos.1 to 4; thereby, the sale deed executed in favour of defendant No.2 was without any authority and was, accordingly, declared as null and void. The cancellation of the POA was well within the knowledge of defendant No.2 as can be seen from the reply dated 12/01/2009 issued by the lawyer of defendant No.1 wherein he has mentioned that his client paid Rs.8,00,000/- to plaintiff Nos.1 to 4, which means that he was referring to defendant No.2, who happens to be the father of defendant No.1. Having come to know about the cancellation of the POA, defendant No.1 could not have executed the sale deed in favour of defendant No.2 and any such act without authority was not binding to plaintiffs Nos.1 to 4.

6.6 The Appellate Court has not committed any error in law by observing that the sale deed executed in favour of defendant No.2 was hit by Section 43 of the Tenancy Act, but the appellants are wrongly placing reliance upon the decision of **Ram Saran Lall (supra),** inasmuch as the execution of the sale deed in favour of defendant No.2 was dated 30/07/2009, and on such date, the suit property was undisputably a new tenure land; thus, it was hit by Section 43. As per the decision of **Kanwar Raj Singh (Dead) through Legal Representatives v. Gejo (Dead) through Legal Representatives and Others** - (**2024) 2 SCC 416**, the Hon'ble Apex Court, after taking note of the ratio of **Ram Saran Lall (supra)**, held that the operation of a sale deed commences from the date of its execution. Thus, the sale deed in favour of defendant No.2 could not stand in law.

6.7 By making the above submissions, Mr.Trivedi, learned advocate for plaintiff No.5, would request this Court to dismiss these second appeals.

7. No other or further submissions have been advanced by learned advocates for the respective parties.

ANALYSIS AND REASONS:

8. The facts which are narrated at the outset are not in dispute. The predecessor of plaintiff Nos.1 to 4, namely

Ratibhai, initially executed a sale agreement in favour of defendant No.2 on 29/11/1990 and also executed a power of attorney in favour of defendant No. 2. By virtue of such sale agreement, it appears that defendant No.2 was put in possession of the suit property. The Revenue Authority appears to have objected to such sale agreement, whereby Tenancy Case No.23 of 1997 was initiated by the Mamlatdar and ALT, Gandhinagar, against the owner as well as defendant No.2. The Mamlatdar and ALT, vide its order dated 13/01/1998, cancelled such sale and ordered that the suit property be vested in the State. The defendant No.2 appears to have challenged the aforesaid order before the highest Revenue Authority and eventually, the Special Secretary, Revenue Department, State of Gujarat, vide its order dated 06/05/2008, partly allowed the revision application, whereby it directed to restore the original possession of the suit property and appears to have directed the parties to act accordingly. In between, plaintiff No.1 and his father namely Ratibhai, on 17/09/1999, executed an agreement to sell in favour of defendant No.2 as well as, on the very day, executed an irrevocable power of attorney in favour of defendant No.1.

9. Since the owner of the suit property, namely Ratibhai, died on 22/07/2000 and due to the aforesaid order passed by the highest Revenue Authority of the State, on 26/05/2008, defendant No.2 executed an agreement for the cancellation of sale in favour of plaintiff Nos.1 to 4, which was a duly notarized agreement between the parties. This agreement appears to have been signed by defendant No.2 as well as

defendant No.1 as the power of attorney holder of plaintiff Nos.1 to 4. The said cancellation of sale agreement was submitted before the Mamlatdar and ALT, who vide its order dated 31/07/2008 categorically recorded that possession of the suit property was restored back in favour of plaintiff Nos.1 to 4 and accordingly, ordered to mutate the names of plaintiff Nos.1 to 4 in the revenue records qua the suit property.

10. It is an undisputed fact that the suit property was new restricted tenure land, as it was received by said Ratibhai through the Will executed by one Parshottambhai - tenant who purchased the suit land as per the provisions of the Tenancy Act; thus, the suit property was new tenure land having a restriction not to transfer in any manner without prior permission of the Collector as provided under Section 43 of the Tenancy Act.

11. Thereafter, again, plaintiff Nos.1 to 4 appears to have executed a fresh POA on 05/03/2007 in favour of defendant No.1, which was titled as an irrevocable power of attorney, wherein in Clause 27, it was observed that they had not executed any power of attorney nor any agreement in relation to the suit property in favour of anyone, but even if it was executed, all such agreements would stand cancelled. Subsequent to the execution of the POA dated 05/03/2007, plaintiff Nos. 1 to 4 executed one notarized agreement to sell in favour of plaintiff No.5 in relation to the suit property on 20/10/2008. Whereas, defendant No.1, upon the strength of the POA dated 05/03/2007, executed a registered agreement

to sell in favour of defendant No.2 on 15/12/2008. Likewise, a registered agreement to sell was also executed by plaintiffs Nos. 1 to 4 in favour of plaintiff No.5 on 10/08/2009 and they also executed a registered power of attorney in favour of plaintiff No.5 on 10/08/2009. It is required to be mentioned here that none of such agreements to sell was with possession, though they were registered agreements to sell.

12. In the meantime, Plaintiff Nos.1 to 4 had cancelled the POA dated 05/03/2007 by issuing a notice to defendant No.1 on 06/01/2009. Defendant No.1, through his lawyer, replied to such notice on 12/01/2009. Having perused the reply dated 12/01/2009, wherein it was mentioned that plaintiff Nos.1 to 4 have received a part consideration of Rs.8,00,000/- from his client (the advocate's client). Although the said reply was sent on behalf of defendant No.1 who was the POA holder of plaintiffs Nos.1 to 4. It is not in dispute that defendant No.2 happens to be the father of defendant No.1, accordingly the reply was sent. It is not even the case of defendant No.2 that he was not aware about the cancellation of the POA by plaintiffs Nos.1 to 4 when defendant No.1 executed and presented the sale deed for its registration in his favour on 30/07/2009 upon the strength of said POA. The registration process of the said sale deed was completed only on 19/05/2011.

13. The plaintiff Nos.1 to 4 - original owners appears to have initiated the process of converting the suit property from new tenure to old tenure and such process was completed with the

order dated 14/03/2011 issued by the Collector, Gandhinagar, thereby the suit property was converted from new tenure to old tenure, whereby the restriction of sale/transfer, etc. was lifted. After conversion of the suit property from new tenure to old tenure, by way of a registered sale deed, plaintiff Nos.1 to 4 sold the land in favour of plaintiff No.5 on 18/06/2012.

14. Thus, in view of the aforesaid facts and circumstances, there are two sale deeds executed and registered for the suit property. The first one executed by the defendant No.1 on 30/07/2009 as POA of plaintiff Nos. 1 to 4 in favour of defendant No.2 and same was finally registered on 19/05/2011. Whereas, the second one by plaintiff Nos. 1 to 4 – owner of the suit property in favour of plaintiff No.5 on 18/06/2012.

15. The Trial Court dismissed the suit by considering that sale deed dated 30/07/2009 was validly executed by defendant No.1 as POA of plaintiff Nos. 1 to 4 in favour of defendant No.2 and they had no right to cancel it once the POA had executed an agreement to sell in favour of defendant No.2 on 15/12/2008, whereby the authority has been partly exercised by the attorney. The bare reading of the judgement of the Trial Court would not suggest that it had accepted the plea of the defendants that said POA was irrevocable one; rather, according to the Trial Court, in view of Section 204 of the Act, 1872, in said factual situation, the POA dated 05/03/2007 could not have been cancelled.

15.1 Whereas, the Appellate Court has interfered with the aforesaid reasons assigned by the Trial Court and held that since the POA dated 05/03/2007 was already cancelled by the plaintiff Nos. 1 to 4 vide their legal notice dated 06/01/2009, the sale deed dated 30/07/2009 was executed without any authority by defendant No.1 as POA of plaintiff Nos. 1 to 4 in favour of defendant No.2. Moreover, the Appellate Court has also found that execution and registration of the sale deed dated 30/07/2009 was in contravention of Section 43 of the Tenancy Act, thereby it is void. Consequently, gave the declaration in favour of the plaintiffs and against the defendants, as prayed in the suit.

16. In view of the aforesaid facts and circumstances and upon appreciation of the submissions canvassed by the learned Senior Counsels appearing for the respective parties, the following aspects need to be first examined by this Court:

16.1 Whether the agency created in favour of defendant No.1 by plaintiffs Nos.1 to 4, by virtue of the irrevocable POA dated 05/03/2007, was an agency coupled with interest or not.

16.2 Whether the plaintiff Nos.1 to 4 were entitled to cancel the said POA after the authority thereunder has been partly exercised by defendant No.1 by executing the registered agreement to sell in favour of defendant No.2 and the resulting legal effect of such cancellation.

16.3 If it is ultimately found that the POA dated 05/03/2007 was not an irrevocable one inasmuch as it was not coupled with interest in the subject matter in favour of defendant No.1 and the plaintiff Nos. 1 to 4 were entitled to cancel the said POA even after execution of the registered agreement to sell by the defendant No.1 in favour of defendant No.2, then these second appeals fail as they do not raise any substantial questions of law; in such a situation, there is no need to examine the effect of Section 43 of the Tenancy Act to the registered sale deed executed in favour of the defendant No.2, inasmuch as deciding such a question would be purely academic.

17. Before proceeding further to examine the aforementioned aspects germane to these appeals, it is necessary to refer to certain relevant provisions of the Indian Contract Act, 1872 (herein after referred as "***the Act, 1872"***), which read as follows:

> *"**201. Termination of agency.**—An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.*
>
> ***202.Termination of agency, where agent has an interest in subject-matter.**—Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.*
>
> *Illustrations*
>
> *(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.*

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. When principal may revoke agent's authority.*—The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.*

204. Revocation where authority has been partly exercised.*—The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.*

Illustrations

(a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

**** *** ****

208. When termination of agent's authority takes effect as to agent, and as to third persons.—

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revoke B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Madras, by letter, directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who

> *knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.*
>
> *(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor."*

Whether POA dated 05/03/2007 was irrevocable one and coupled with interest of POA holder - defendant No.1 in the subject matter.

18. To examine the first limb of the argument of Mr. Thakore, learned Senior Counsel, I have minutely gone through the different clauses of the aforesaid irrevocable POA dated 05/03/2007. It is true that in Clause 1, defendant No.1 was given authority to execute an agreement to sell, possession agreement, sale deed, cancellation deed etc. Likewise, in Clause 3, it was mentioned that he was authorized to take care of the possession, administration, sale etc. in relation to the suit property. Apart from the above, he was also authorized to do all the acts to safeguard the suit property and to appear before various authorities and courts. However, on a bare reading of the entire POA dated 05/03/2007, nowhere it has been mentioned that any interest was created in favour of defendant No.1 qua the suit property inasmuch as defendant No.1 was not entitled to receive any part of the sale consideration and/or any other type of interest was created in his favour.

18.1 As per Section 202 of the Act, 1872, when an agency is created by the principal where the agent has an interest in the subject matter, such agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. The illustration (a) as given below Section 202 of the Act, 1872, which is to be treated as part of the statute [***Swaminathan and Ors. Vs. Alankamony (Dead) Through Lrs. – 2022 SCC Online SC 539***], would clear the doubt in anyone's mind, which reads thus: —

> *"(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death."*

18.2 Thus, in the absence of any personal interest of the POA holder - defendant No.1 created by the principals – plaintiff Nos.1 to 4 while executing the POA dated 05/03/2007 in favour of defendant No.1, such POA cannot be treated as an irrevocable POA.

18.3 As per the settled position of law, merely because the title of the power of attorney shows that it is an irrevocable power of attorney, it would not become an irrevocable one. According to my view, after going through the POA dated 05/03/2007, it was not an irrevocable power of attorney, inasmuch as it was not coupled with interest in favour of defendant No.1, except that he was authorized to execute an agreement to sell and/or a sale deed in favour of anyone. It was a fortuitous circumstance that he had entered into a registered agreement to sell in favour of defendant No.2 on 15/12/2008, who happens to be his father. As observed above, the previous sale agreements etc. were cancelled by defendant No.2 vide agreement dated 26/05/2008 and such sale agreement was not even registered, then no interest was passed in his favour.

19. At this juncture, it would be appropriate to refer to and rely upon the recent past decision of the Honourable Apex Court in the case of **M.S. Ananthamurthy (supra)**, wherein the Honourable Apex Court has lucidly described what is meant by the creation of interest in a power of attorney and to ascertain the nature of a power of attorney in a case where it was titled as an "irrevocable power of attorney". The relevant observations made in the aforesaid decision read thus: —

> ***"(ii) Independent reading of the general power of attorney and the agreement to sell***
>
> ***(a) 'Interest' in Power of Attorney***
>
> *32. It was submitted on behalf of the appellants that the GPA read with the agreement to sell categorically states that POA was executed for a consideration, and the possession of the Suit Property was delivered to the holder. It was further submitted that since both the documents were executed on the same day, in favour of the same person, they should be read together and construed harmoniously. It is because of this reason that POA holder (agent) has an interest in the subject- matter of the agency and the POA is coupled with interest which makes the agency irrevocable by virtue of Section 202 of the Contract Act.*
>
> *33. Section 201 of the Contract Act prescribes various ways of revocation of authority given by the principal to his agent. A principal can terminate the contract of agency unless such revocation is precluded by Section 202 of the Contract Act. Section 202 of the Contract Act, as an exception to the general rule under Section 201, prescribes that where an agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot be terminated to the prejudice of such interest unless there is an express stipulation to the contrary.*

34. Illustration (a) to Section 202 of the Contract Act states that A (principal) has given authority to B (agent) to sell A's land, and to pay himself i.e., the agent, from the proceeds the debt which is due to him from A. Illustration (b) states that A (principal) has consigned 1,000 bales of cotton to B (agent), who has given an advance on the bales of cotton. Now, A wishes B to sell the cotton and recover his advance from the sale proceeds. In both the cases, A can neither revoke the authority nor agency will be terminated by his insanity or death. It is important to take a note that in both the cases, the agent has an interest vested in the subject-matter of the agency. The factum of interest or security of the agent, in both cases, does not imply that the agent's right to remuneration constitutes an interest in the subject matter of the agency; rather, it extends beyond the mere advancement of remuneration or commission. Where POA is coupled with an interest, it metamorphosizes to an irrevocable agency unless expressly stated otherwise. There an agent's right to remuneration is not an interest in the subject-matter of the agency.

35. Therefore, the essentials of Section 202 of the Contract Act are, first, there shall be a relationship in the capacity of 'principal and agent' between the parties and secondly, there shall be agent's interest in the subject-matter of the agency. If both the conditions are fulfilled the agency becomes irrevocable and cannot be terminated unilaterally at the behest of the principal. As the first condition is satisfied in the present case, we shall now proceed to examine whether from the reading of the GPA, the holder of POA had an interest in the subject matter of the agency, namely, the suit property.

36. We may quote an extract from Bowstead on Agency, 14th Edition, page 423 it stated as under:-

> *"(i) Where the authority of an agent is given by deed or for valuable consideration, for the purpose of effectuating any security, or of protecting or securing any interest of the agent, it is irrevocable during the subsistence of such security or interest. But it is not irrevocable merely because the agent has an interest in the exercise of it or has a special property in, or lien for advances upon, the subject matter of it, the authority not*

being given expressly for the purpose of securing such interest or advances;

(ii) Where a power of attorney, whenever created is expressed to be irrevocable and is given to secure a proprietary interest of the donee of the power, or the performance of an obligation owed to the donee, then, so long as the donee has that interest, or the obligation remains undischarged, the power is irrevocable;

(iii) Authority expressed by this article to be irrevocable is not determined by the death, insanity or bankruptcy of the principal, nor ......where the principal is an incorporated company, but its winding up or dissolution, and cannot be revoked by the principal without the consent of the agent."

37. As far back as 1931, in Dalchand v. Seth Hazarimal & Ors., reported in 1931 SCC OnLine MP 57, the defendant-agent claimed that he had an interest in the cloth supplied to him by the plaintiff-principal for sale because according to the agent he was entitled to keep for himself any amount obtained by him as per the assigned rates. The court held that the agent had no interest in the property being sold or in the proceeds of sale until sale is complete. The relevant observations are reproduced hereinbelow:-

"5. For the plaintiff, Vishnucharya v. Ramchandra [[1881] 5 Bom. 253.], has been cited, in which it has been held that an agent for the collection of rents cannot be regarded as having an interest in the property merely because he is authorized to take his salary out of the rents. It is objected on behalf of the defendants that this decision runs directly contrary to Illus. (a), S. 202. But I find that a similar view has been taken in Lakhmiohand v. Chotooram [[1900] 24 Bom. 403.], in which the facts more closely resemble those of the present case and it was held that the interest which an agent has in effecting a sale and the prospect of remuneration to arise therefrom is not such an interest as would prevent the termination of the agency.

6. I am in respectful agreement with the decisions in these two Bombay cases. They and the case before me are clearly distinguishable from the case stated in Illus. (a), Section 202 of the Contract Act. In the illustration, the principal was under a liability to the agent quite apart from *the contract of agency, and the authority given to him to sell the principal's land was by way of security for the discharge of that liability. In the present case, the agent had no interest in the property to be sold or in the sale proceeds thereof until a sale had been actually effected, and revocation of the agency, before sale had been effected, deprived him of nothing that had accrued to him."*

(Emphasis supplied)

38. In the case of Palani Vannan v. Krishnaswami Konar, reported in 1945 SCC OnLine Mad 119, the decree-holder had executed a POA authorizing the holder to execute the decree. Later, the executant revoked the POA through a notice. The question before the court was whether the notice revoking the authority was valid in law or not. ***The court held that the POA was not coupled with interest as the object of the POA was not securing any interest of the agent. It held that the primary object of the POA was to recover the fruits of the decree on behalf of the principal despite the fact that the agent's remuneration was fixed to be drawn from the proceeds of the decree****. The relevant observations are reproduced hereinbelow:*

"It is only necessary to refer to one further decision, Frith v. Frith [[1906] A.C. 254.], in which the Judicial Committee discuss the general position relating to these matters. Their Lordships point out that in what is known as Carmichael's case [[1896] 2 Ch. 643.]:

"… the donor of the power, for valuable consideration, conferred upon the donee, authority to do a particular thing in which the latter had an interest, namely, to apply for the shares of the Company which the donee was promoting for the purpose of purchasing his own property from him, and the donor sought to revoke that authority before the benefit was reaped." The effect of all these cases appears to be stated accurately in Bowstead on the Law of Agency, Eighth Edition, page 456. It is stated (Article 138):

"Where the authority of an agent is given for the purpose of effectuating any security, or of protecting or securing any interest of the agent, it is irrevocable during the subsistence of such security or interest."

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> *My view of this document is as follows. I think its primary object was to recover on behalf of the principal the fruits of his decree. It contained incidentally a provision for the employment of the agent, Vedavyasachar, in order to realize that decree. It provides that his remuneration is to be one-half of the proceeds. It contains an indemnity clause against any out-of-pocket expenses which he is entitled also to recover from the amount of the decree. But the object of the power-of-attorney is not for the purpose of protecting or securing any interest of the agent. I think that part of the agreement is purely incidental. There is, however, another feature of this document which seems to me to be conclusive against the appellants. The last words,*
>
> *"I shall not for any reason whatever, cancel without your permission this authority which I have given to you, without paying the amount expended by you and without giving the aforesaid relief for your trouble",*
>
> *seem to me to make express provision for the revocation of the above power. It can be done in two ways, (a) by consent, for that is what I understand "your permission" to mean, and (b) if that permission is withheld, on payment by the principal of all out-of-pocket expenses and also remuneration for his services. With regard to remuneration, the wording is vague, "without giving the aforesaid relief for your trouble".*
>
> *(Emphasis supplied)*

39. To the same effect is the decision of High Court of Delhi in Shri Harbans Singh v. Smt. Shanti Devi, reported in 1977 SCC OnLine Del 102. The High Court while dealing with the question of whether the powers of attorney executed by the appellant were cancelled validly, laid down the conditions of irrevocability of a contract of agency as, (i) authority to agent given for valuable consideration; (ii) such valuable consideration was given for the purpose of effectuating a security or protecting or securing the interest of the agent; (iii) agency not being irrevocable merely because the agent has some interest in carrying it out or holds a special right, such as a lien or advance, over its subject matter. Thus, the agency has to be specifically meant to secure the agent's benefit or interest. It further observed that the interest of the agent can be inferred from the language of *the document or from the course of business between the principal and agent. The observations are reproduced hereinbelow: -*

> *"All the conditions of irrevocability are satisfied in the present case. The authority to the agent was given for valuable consideration which proceeded from the respondent. It was given for the purpose of effectuating a security or protecting or securing the interest of the agent. For, the only purpose of the agency was to ensure and secure the performance of the contract by the appellant in favour of the respondent for whom Shri Gulati was acting as the husband and the nominee and, therefore, a representative or an agent. Where the performance of the agency is not to secure the interest or the benefit of the agent then the agency is not irrevocable merely because the agent has an interest in the exercise of it or has a special property in or lien for advances upon the subject-matter of it."*

(Emphasis supplied)

40. In the present case, it is evident from para 1 of the GPA executed by the original owner in favour of the holder that the POA was to look after, maintain, manage the Scheduled Property. Para 2 states that the attorney can enter into any agreement with any person with respect to the Scheduled Property for any amount, receive advance amount, to execute deeds in favour of such persons, issue proper discharge. Para 3 states that attorney has the power to apply for transfer of khata and to pay all future taxes and receive receipts. Further, para 4 states that the attorney can apply for sanctioning of plan for the purpose of construction, utilize the Scheduled Property as the holder deems fit and receive all profits therefrom. Para 5 states that the attorney has the power to represent the holder in all Government Offices and do all things connected. Para 6 states that the attorney can pursue matters in courts, give evidence, obtain decree, execute the same. Further, para 7 states that the Scheduled Property is in owner's peaceful possession and enjoyment. Lastly, para 8 states that the attorney is generally entitled to do all acts required in respect of the Suit Property which are not specifically mentioned and that the GPA is irrevocable.

(b) Nature of Power of Attorney

41. It is now appropriate to analyze the nature of the GPA, specifically whether it is general or special. While construing a document, a reader should not go by the title to the document or the nomenclature of the document. In such a case, the court is endowed with a duty to see the contents of the document and intention of the parties which can be gathered from the terms of the document and/or from circumstances under which the document was entered into. The intention of the parties can be ascertained from the language used by the parties. A document has to be seen as a whole.

42. The import of the word "general" in a POA refers to the power granted concerning the subject matter. The test to determine the nature of POA is the subject matter for which it has been executed. The nomenclature of the POA does not determine its nature. Even a POA termed as a 'general power of attorney' may confer powers that are special in relation to the subject matter. Likewise, a 'special power of attorney' may confer powers that are general in nature concerning the subject matter. The essence lies in the power and not in the subject-matter.

43. In Halsbury, Vol. 1, at page 151, the author defines special and general agents, the definition of general agent has been stated as follows:

> *"A general agent is one who has authority, arising out of and in the ordinary course of his business or profession, to do some act or acts on behalf of his principal in relation thereto; or one who is authorised to act on behalf of the principal generally in transactions of a particular kind or incidental to a particular business."*

44. A three-Judge Bench of this Court settled the rules of interpretation applicable to power of attorney in Timblo Irmaos Ltd., Margo v. Jorge Anibal Matos Sequeira, reported in (1977) 3 SCC 474. It was held that words used in a POA must be interpreted in the context of the whole; the purpose of the powers conferred must then be examined through the circumstances in which it was executed; and finally, necessary powers must be implied. The relevant observations are reproduced hereinbelow:-

"11. We think that perhaps the most important factor in interpreting a power of attorney is the purpose for which it is executed. It is evident that the purpose for which it is executed must appear primarily from the terms of the power of attorney itself, and, it is only if there is an unresolved problem left by the language of the document, that we need consider the manner in which the words used could be related to the facts and circumstances of the case or the nature or course of dealings. We think that the rule of construction embodied in proviso 6 to Section 92 of the Evidence Act, which enables the Court to examine the facts and surrounding circumstances to which the language of the document may be related, is applicable here, because we think that the words of the document, taken by themselves, are not so clear in their meanings as the learned Judicial Commissioner thought they were.

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13. The learned Judicial Commissioner had, in our opinion, overlooked several well-known rules of interpretation: firstly, that, a word used in a document has to be interpreted as a part of or in the context of the whole;

secondly, that, the purpose of the powers conferred by the power of attorney have to be ascertained having regard to the need which gave rise to the execution of the document, the practice of the parties, and the manner in which the parties themselves understood the purpose of the document; and, thirdly, that, powers which are absolutely necessary and incidental to the execution of the ascertained objects of the general powers given must be necessarily implied."

(Emphasis supplied)

*45. **Further, a mere use of the word 'irrevocable' in a POA does not make the POA irrevocable. If the POA is not coupled with interest, no extraneous expression can make it irrevocable**. At the same time, even if there is no expression to the effect that the POA is irrevocable but the reading of the document indicates that it is a POA coupled with interest, it would be irrevocable. The principles of construction of a POA termed as 'irrevocable' was explained in Manubhai Prabhudas Patel v. Jayantilal Vadilal Shah, reported in*

2011 SCC OnLine Guj 7028. The relevant observations are reproduced below:-

> *"12. I am of the view that while construing a document, it is necessary to determine the real intention of the parties. The mere form in which document is couched is immaterial. The intention of the parties has to be gathered from the terms of the documents themselves and from such of the surrounding circumstances, as later required to show in what manner the language of the document is related to the existing fact. It is very difficult task to know the intention of the parties on the basis of the recital of the document. But, the Court can rely safely on the language of the document, the language, which has been used by the parties to manifest the intention of the parties. If the Court goes on extraneous evidence, that may lead to more difficulty and confusion. But, there are certain principles to be borne in mind. The first principle is, the mere saying that the power of attorney is an irrevocable power of attorney coupled with interest is not the end of the matter. The Court, can clearly say that the document, though, is styled as an irrevocable power of attorney is not in substance a power coupled with interest so as to make it an irrevocable power of attorney. At the same time, even if there is no title to show that the power is an irrevocable power, but, the substance of the entire document would suggest that the same is an irrevocable power coupled with interest. Therefore, a document has to be construed as a whole. A stray sentence here and there cannot be picked out to construe a document. To understand the tenor of the document and the intention of the parties, it has to be read as a whole. The real intention of the parties has to be covered not merely from what ex-facie is stated in the document, but, from the totality of the recitals in the document. At this stage, I may quote with profit a very lucid judgment rendered by learned Single Judge of Madras High Court explaining the general principles regarding the construction of power of attorney. In case of Anantha Pillai v. Ratiinasabapatiiy Mudaliar, reported in 1968 (2) MLJ 574, Ismail, J. (as he then was), held thus:*
>
> > *"The general principles regarding the construction of power of attorney are well settled. Powers of attorney must be strictly construed as giving only such authority as they confer expressly or by necessary implication. Where an act purporting to be done under the power of attorney is challenged*

as being in excess of the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument either by express terms or by necessary implication. Some of the principles governing the construction of a power of attorney are:(1) the operative part of the deed is controlled by the recitals, (2) where an authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the performance of the particular acts, (3) the general words do not confer general powers but are limited to the purpose for which the authority is given and are construed as enlarging the special powers only when necessary for that purpose; (4) a power of attorney is construed so as to include all medium powers necessary for its effective execution. Bearing these general principles in mind the question for consideration is whether the power of attorney in this case authorised the first defendant to enter into an agreement to sell or authorised him to execute a sale-deed....""

(Emphasis supplied)

**** *** ****

53. Even from the combined reading of the POA and the agreement to sell, the submission of the appellants fails as combined reading of the two documents would mean that by executing the POA along with agreement to sell, the holder had an interest in the immovable property. If interest had been transferred by way of a written document, it had to be compulsorily registered as per Section 17(1)(b) of the Registration Act. The law recognizes two modes of transfer by sale, first, through a registered instrument, and second, by delivery of property if its value is less than Rs. 100/-.

54. This principle was recently elaborated by the High Court of Karnataka in ***Channegowda & Anr. v. N.S. Vishwanath & Ors., reported in 2023 SCC OnLine Kar 153****. The relevant portion is reproduced as under:-*

"14. An attempt is made on behalf of the plaintiffs to contend that the second plaintiff has sold the property as a General Power of Attorney Holder and not as a title holder. It is argued that the Power of attorney is not compulsorily

registrable. The submission is noted with care. Suffice it to note that a deed of power of attorney is not one of the instruments specified under Section 17 of the Registration Act compulsorily registrable. However, if a power has been created empowering the attorney to sell the property i.e., if a document that gives a right to the attorney holder to sell the immovable property, then it would be a document creating an interest in immovable property, which would require compulsory registration. In the present case, the General Power of Attorney alleged to have been executed by defendants 1 to 3 in favour of the second plaintiff is coupled with interest i.e., power of alienation is conferred but it is not registered. The Apex Court in the SURAJ LAMP's case has held that the General Power of Attorney Sale, or Sale Agreements/Will do not convey title and do not amount to transfer, nor can they be considered valid modes of transfer of immovable property. Therefore, it can be safely concluded that the declaration of facts/statement of facts (affidavit) and General Power of Attorney do not convey title. They are inadmissible in evidence."

(Emphasis supplied)

55. The High Court rightly held that even though the GPA and the agreement to sell were contemporaneous documents executed by the original owner in favour of the holder, this alone cannot be a factor to reach the conclusion that she had an interest in the POA. Thus, even though the GPA and the agreement to sell were contemporaneous documents executed by the original owner in favour of the same beneficiary, this cannot be the sole factor to conclude that she had an interest in the subject-matter. Even if such an argument were to persuade this Court, the document must have been registered as per Section 17(1)(b) of the Registration Act. In the absence of such registration, it would not be open for the holder of the POA to content that she had a valid right, title and interest in the immovable property to execute the registered sale deed in favour of appellant no. 2."

(Emphasis supplied)

20. Thus, in view of the aforesaid expositions of law laid down by the Hon'ble Apex Court, there is no scintilla of doubt that in a case where by way of document an interest is created

in an immovable property in favour of the agent by the principal, such document is required to be registered, failing which there is no valid right, title or interest created in favour of the agent by the principal.

21. So far as the case at hand is concerned, undisputably, the POA dated 05/03/2007 was not registered; rather, stated supra, no interest of defendant No.1 (POA holder) was created in the suit property (subject matter) by plaintiffs Nos.1 to 4 at the same time of execution of the said POA. Thus, by no means, it can be accepted that aforesaid POA dated 05/03/2007 was an irrevocable POA inasmuch as it was neither coupled with interest nor registered. Once it is clear that it was not an irrevocable power of attorney but a general power of attorney, the principal - plaintiffs Nos. 1 to 4 were well within their rights to cancel/terminate the POA.

Right of the plaintiff Nos. 1 to 4 to revoke POA after authority has been partly exercised by the defendant No.1 - POA holder and its effect on subsequent execution and registration of the sale deed dated 30/07/2009 by POA holder in favour of the defendant No.2:

22. The second limb of argument of appellants is that once the defendant No.1 (the POA holder) executed a registered agreement to sell in favour of defendant No.2 on 15/12/2008 upon the strength of the POA dated 05/03/2007, subsequently on 06/01/2009, plaintiffs Nos.1 to 4 had no right to cancel the POA as the authority given to the agent had been partly exercised. This argument of defendant Nos.1 and 2 is not only fallacious but is a complete misreading of Section 204 of the Act, 1872.

23. As per Section 204 of the Act, 1872, the principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency. This means that when an agent has partly exercised the authority given by the principal, and certain acts have been done or obligations have been created for the principal, the principal cannot later revoke such acts and obligations already incurred during the course of the agency.

24. To better appreciate the implications of Section 204 of the Act, 1872 in the context of the case at hand: when defendant No.1, during the subsistence of the POA dated 05/03/2007, executed a registered agreement to sell in favour of defendant No.2 on 15/12/2008, such an act and obligation of defendant No.1 bound the principal (plaintiff Nos.1 to 4), as the POA was in force as on that date. By virtue of the valid execution of the registered agreement to sell, defendant No.2 could have sued the plaintiff Nos.1 to 4 and sought specific performance of such an agreement which was executed by their agent, i.e., defendant No.1. In such circumstances, plaintiffs Nos.1 to 4 could not have revoked the acts and obligations already incurred by defendant No.1 at the time they terminated the POA on 06/01/2009. Nonetheless, no such recourse was adopted by defendant No.2.

25. The trial Court has completely misconstrued Section 204 of the Act, 1872 by not properly applying the aforesaid provision to the facts of the present case, which ultimately

resulted into a wrong conclusion on the part of the trial Court, by which it held that the power of attorney could not have been treated as cancelled. Such perverse and grossly erroneous observations and findings of fact recorded by the trial Court were correctly interfered with by the Appellate Court while exercising its appellate power under Section 96 read with Order 41 of the CPC.

26. According to my considered view, what was saved by virtue of Section 204 of the Act, 1872, was that the registered agreement to sell dated 15/12/2008 in favour of defendant No.2 was an act and obligation of the agent during the subsistence of the agency (POA) and the same was binding on the principal (plaintiff Nos.1 to 4) and such act and obligation could not have been revoked by them. Any other interpretation than the above would render Section 202 of the Act, 1872, *otiose*.

27. Apart from the above, during the subsistence of the POA, no right, title or interest in the suit property was created by defendant No.1 in favour of defendant No.2, inasmuch as the execution of a registered agreement to sell is not capable of creating any right, title or interest in the immovable property (See: Section 54 of the Transfer of Property Act, 1882). It was not even the case of the defendants that defendant No.1 executed and registered the sale deed dated 30/07/2009 as an owner of the suit property, rather the aforesaid sale deed clearly shows that it was executed/registered by defendant No.1 as the POA holder of plaintiff Nos. 1 to 4.

28. Moreover, it was not the case of defendant No.2 that he was not made aware about the cancellation of the POA by plaintiffs Nos.1 to 4 on 06/01/2009. The reply to the aforesaid cancellation though issued on behalf of defendant No.1 on 12/01/2009, but in the reply, it was mentioned by the lawyer that the part consideration of Rs.8,00,000/- paid by my client (that would be only defendant No.2) to you, i.e., plaintiffs Nos.1 to 4. This means that defendant No.2 who happens to be father of defendant No.1 (the agent) was well aware about the cancellation of the POA prior to the execution of the sale deed on 30/07/2009; notwithstanding the same, defendant No.2 procured the execution and presentation of the sale deed on 30/07/2009 through defendant No.1 and finally obtained the sale deed upon completion of its registration on 19/05/2011.

29. Thus, in view of the aforesaid facts, according to my view, the plaintiff Nos. 1 to 4 were well within their right to cancel the POA dated 05/03/2007 irrespective of execution of the registered agreement to sell dated 15/12/2008 by POA holder – defendant No.1 in favour of defendant No.2. Rather, defendant No.1 had, without any authority, executed and presented the sale deed dated 30/07/2009 for the registration in favour of defendant No.2, whereby no valid title to the suit property was conveyed to defendant No.2 on 19/05/2011, when the sale deed was registered. Accordingly, the aforesaid sale deed has been correctly declared null and void by the Appellate Court.

<u>Validity of sale deed dated 30/07/2009 which was registered only on 19/05/2011 vis-à-vis bar of Section 43 of Tenancy Act:</u>

30. So far as the last limb of the argument of the appellants is concerned, that the Appellate Court has wrongly arrived at a conclusion that the sale deed dated 30/07/2009 is hit by Section 43 of the Tenancy Act as declared it a void. According to the defendants, at the time of completion of the registration process of the sale deed on 19/05/2011, the suit property was already converted from new tenure to old tenure by the Collector's order dated 14/03/2011, thereby the sale deed was not hit by the Section 43 of Tenancy Act. It was contended that the suit property was transferred in favour of defendant No.2 only on 19/05/2011, thus, the aforesaid sale deed could not have been declared as void.

31. This aspect and argument could have been appreciated by me, but when I have found that after cancellation of the POA dated 05/03/2007, subsequently on 30/07/2009, defendant No.1 executed and presented the sale deed for registration as the POA holder of plaintiff Nos.1 to 4 in favour of defendant No.2, according to me, the aforesaid sale deed is null and void, as it was executed without any authority. Consequently, this last limb of argument is not required to be gone into and to be decided by this Court, as it becomes academic. This Court would not like to invest its time in such academic issue. Accordingly, it is left open to be decided in an appropriate case.

Effect of declaration of sale deed of defendant No.2 as null and void on the sale deeds of subsequent purchaser:

32. So far as the rights of the third parties – the subsequent purchasers (appellants of Second Appeal No.424 of 2026) are concerned, since they have purchased the suit property from defendant No.2 who has not derived a valid title in his favour, as per the settled position of law, defendant No.2 could not have passed a better title in favour of a third parties/subsequent purchasers.

32.1 As far as their argument that no reasonable opportunity was given to them by the Appellate Court is concerned, the record does not indicate that they had insufficient time to request the Appellate Court to allow them to submit their case. In fact, the Rojkam of the appeal proceeding was submitted before me by Mr. Bhatt, learned Senior Counsel during his course of arguments, would show that on 03/02/2026 when they were joined in the appeal proceedings, on very date, the Appellate Court directed the appellants-plaintiffs to supply copy of the plaint and documents to the newly added parties, i.e. subsequent purchasers. It appears that after being joined in the appeal proceedings on 03/02/2026, they had not made such request to allow them to file their pleadings until the appeal was reserved by the Appellate Court for judgment on 09/03/2026.

32.2 In any case, they cannot be said to be *bona fide* purchasers for value without notice, inasmuch as subsequent to the completion of the registration of the sale deed in favour of defendant No.2 on 19/05/2011, another sale deed came to be registered by plaintiff Nos.1 to 4 (original owners of the suit property) in favour of plaintiff No.5 on 18/06/2012. Thus, the subsequent purchasers/third party who purchased the suit property by way of a registered sale deed on 24/12/2021, must have checked the previous title documents of their vendor, i.e., defendant No.2 and could not have overlooked the aforesaid registered sale deed in favour of plaintiff No.5 executed and registered on 18/06/2012. The principle of *caveat emptor* would squarely apply to them. In such circumstances, the subsequent purchasers/third parties cannot derive a better title than their vendor, i.e., defendant No.2. There is nothing further to be added by this Court.

33. At this stage, it would be apt to refer to and rely upon the following decisions of the Hon'ble Apex Court regarding the scope and ambit of the power of this Court while adjudicating the second appeal filed under Section 100 of CPC.

33.1 In the case of **Russi Fisheries (P) Ltd. vs. Bhavna Seth - 2026 SCC OnLine SC 555**, it has been categorically held by the Hon’ble Apex Court that this Court should not interfere with findings of fact recorded by the Courts below unless they are so perverse or grossly erroneous, and / or contrary to a settled principle of law. The relevant observations of the said decision read thus:

> *"31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that*

the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

32. Long back in 1981, three judges of this Court in the case of ***Bholaram vs. Ameerchand – (1981) 2 SCC 414*** *had ruled that even if findings of facts by courts below are wrong or grossly inexcusable that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in* ***Madhavan Nair v. Bhaskar Pillai (Dead) by Lrs. - (2005) 10 SCC 553****, wherein it has been laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.*

33. In ***Kashibai w/o Lachiram v. Parwatibai w/o Lachiram – (1995) 6 SCC 213****, a similar proposition of law was laid down by this Court and it was held that the High Court cannot reappreciate the evidence and interfere with the findings of facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.*

35. Again, in ***Kulwant Kaur v. Gurdial Singh Mann (Dead) by Lrs – AIR 2001 SC 1273****, it was emphasized that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case."*

(Emphasis supplied)

33.2 It is also profitable to refer to the decision of the Hon'ble Apex Court in the case of **Jaichand (Dead) through Lrs and Others v. Sahnulal and Another - 2024 SCC OnLine SC 3864**, whereby, the Hon'ble Apex Court held thus:

"25. In ***Kshitisn Chandra Purkait v. Santhosh Kumar Purkait reported in (1997) 5 S.C.C. 438)****, this Court held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial*

question of law and not mere question of law.

*27. This Court in **Kondira Dagadu Kadam v. Savitribai Sopan Gujar reported in AIR 1999 S.C. 2213** held:-*

> *"The High Court cannot substitute its opinion for the opinion of the first Appellate Court unless it is found that the conclusions drawn by the lower Appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."*

28. It is thus clear that under Section 100, C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."

(Emphasis supplied)

34. For the reasons recorded supra, I do not find that the findings of fact recorded by the Appellate Court in its impugned judgement in arriving at its final conclusion were either perverse or grossly erroneous. On the contrary, I am in agreement with the final conclusion reached by the Appellate Court on the aspects discussed in detail above. It is a settled position of law that unless the findings of fact recorded by the Courts below are perverse or grossly erroneous and/or run contrary to the position of law, this Court should not interfere with such findings of fact while exercising its power under Section 100 of the CPC.

CONCLUSION:

35. The upshot of the foregoing discussion and reasons lead to following conclusions:

35.1 The POA dated 05/03/2007 executed by plaintiff Nos. 1 to 4 (the principal) in favour of defendant No.1 (the agent) was not an irrevocable POA inasmuch as it was not coupled with an interest in the subject matter in favour of defendant No.1 (the agent).

35.2 The plaintiff Nos.1 to 4 were well within their rights and, without any violation of the provisions of the Act, 1872 referred to supra, cancelled the aforesaid POA on 06/01/2009.

35.3 Once the POA dated 05/03/2007 stood cancelled, defendant No.1 (the agent) had no authority in law to execute and register the sale deed on behalf of plaintiff Nos.1 to 4 (the principal) in favour of defendant No.2 on 30/07/2009.

35.4 The execution and registration of the aforesaid sale deed dated 30/07/2009, in favour of defendant No.2 by defendant No.1, is null and void. Conversely, the registered sale deed dated 18/06/2012, executed in favour of plaintiff No.5 by original owners – plaintiff Nos. 1 to 4, has been correctly declared legal and valid.

35.5 Resultantly, defendant No.2 could not derive title to the suit property by virtue of the aforesaid sale deed. Consequently, the subsequent purchasers have also not derived any better title than that which defendant No.2 himself possessed.

36. In view of the foregoing conclusions, the present second appeals are found to be devoid of merit, as they do not raise any substantial questions of law. Accordingly, they are dismissed. Consequently, the impugned judgement and decree passed by the Appellate Court is hereby confirmed. No orders as to costs.

37. As a sequel, the Civil Application(s) for stay also stands rejected. The interim relief granted earlier stands vacated forthwith.

38. The Decree shall be drawn accordingly.

(MAULIK J. SHELAT, J)

FURTHER ORDER

After pronouncement of the judgment, Mr.Amar Bhatt, learned Senior Advocate would request for extension of the interim relief granted earlier, which is strongly opposed by Mr.Rusi Trivedi, learned advocate for respondent No.5.

For the reasons supra, the request is refused.

(MAULIK J. SHELAT, J)

GAURAV J THAKER