Reserved on : 25.10.2025
Pronounced on : 22.01.2026

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JANUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CIVIL REVISION PETITION No. 446 OF 2025

BETWEEN:

1 . SRI ANJINAPPA
SON OF LATE SRI POOJAPPA
AGED ABOUT 71 YEARS

2 . SMT. DODDAGANGAMMA @ GANGAMMA
WIFE OF SRI ANJINAPPA
AGED ABOUT 66 YEARS

3 . SMT. MANJULA
D/O SRI ANJINAPPA
AGED ABOUT 42 YEARS

4 . SMT. MAMATHA
D/O SRI ANJINAPPA
AGED ABOUT 37 YEARS

5 . SMT. PUSHPA
D/O SRI ANJINAPPA
AGED ABOUT 33 YEARS

6 . SRI VENUGOPAL
S/O LATE SRI POOJAPPA
AGED ABOUT 29 YEARS

ALL ARE RESIDING AT
KUDUVATHI VILLAGE, NANDI HOBLI
CHIKKABALLAPURA TALUK
CHIKKABALLAPURA DISTRICT – 562 101.

... PETITIONERS

(BY SRI BIPIN HEGDE, ADVOCATE)

AND:

1. SRI MAREGOWDA
S/O LATE SRI B.NARAYANAPPA
AGED ABOUT 50 YEARS
RESIDING AT BUDHIHALA VILLAGE
YALIYUR POST, DEVANAHALLI TALUK
BENGALURU RURAL DISTRICT
DEVANAHALLI – 562 110.

2. M/S ONE WOLF VENTURES PVT. LTD.,
OFFICE AT NO.169/3, 1ST FLOOR
9TH CROSS, 1ST PHASE
INDIRANAGAR
BENGALURU – 560 038
REPRESENTED BY ITS
MANAGING DIRECTOR
SRI SAJID AGA ALI.

... RESPONDENTS

(BY SRI BHASKAR BABU H. J., ADVOCATE FOR THE C/R1;
NOTICE TO R2 IS DISPENSED WITH VIDE ORDER
DATED 25.10.2025)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CIVIL PROCEDURE CODE 1908, AGAINST SET ASIDE THE IMPUGNED ORDER DATED 16.04.2025 PASSED BY THE I ADDL. SENIOR CIVIL JUDGE AND J.M.F.C AT CHIKKABALLAURA IN O.S.NO.578/2023 BY ALLOWING THE APPLICATION (I.A.NO.12) FILED BY THE PETITIONERS UNDER ORDER VII, RULE 11 (A) (D) THEREBY REJECTED THE PLAINT.

THIS CIVIL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.10.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are before this Court calling in question the order dated 16-04-2025 passed by the concerned Court rejecting the application filed under order VII Rule 11(a) and (d) of the CPC.

2. Facts in brief, germane, are as follows:

2.1. Before embarking upon the consideration of the issue, I deem it appropriate to notice the protagonists in the *lis*. Petitioners 1 to 6 are defendants 1 to 6 who are grantees of land. The 1st respondent is the plaintiff and the 2nd respondent is M/s. One Wolf Ventures, the defendant No.7. On 06-09-2000 land measuring 2 acres and 21 guntas in Sy.No.168 of Kuduvathi Village, Nandi Hobli, Chikkaballapura Taluk and District is granted in favour of the 1st petitioner/defendant No.1 imposing condition in the grant certificate dated 06-09-2000 that the property should not be alienated for a period of 15 years from the date of grant. On 16-06-2014, the petitioners purportedly execute a sale agreement and a registered power of attorney in favour of the 1st respondent/plaintiff and a sale consideration of Rs.27,50,000/- is also determined in the agreement of sale. The petitioners allegedly received Rs.20,00,000/- which was projected as a security deposit for the development of the subject property.

2.2. On 06-10-2023, the petitioners executed a deed of cancellation to cancel the registered General Power of Attorney dated 16-06-2014. The cancellation deed was executed on the score that the 1st respondent/plaintiff did not develop the schedule property as was promised. The 1st respondent/plaintiff was not a party to the cancellation deed; it was executed by the petitioners only. The 1st respondent/plaintiff institutes a suit for specific performance on 21-10-2023 in O.S.No.578 of 2023 seeking a direction for execution of a sale deed in furtherance of the sale agreement dated 16-6-2014. The petitioners were made defendants 1 to 6 before the concerned Court. The defendants file written statement and an application in I.A.No.12 under Order VII Rule

11(a) and (d) of the CPC seeking rejection of the plaint. The concerned Court rejects the application seeking rejection of the plaint by the impugned order dated 16-4-2025. The petitioners are before the Court calling in question the said order.

3. Heard Sri Bipin Hegde, learned counsel appearing for petitioners and Sri Bhaskar Babu H.J., learned counsel appearing for respondent No.1.

4. The learned counsel appearing for petitioners Sri Bipin Hegde would contend that the land was granted to the petitioners on 06-09-2000 with a condition of non-alienation for a period of 15 years until 05-09-2015. The sale agreement and the general power of Attorney are executed on 16-06-2014, which would be one year prior to the expiry of the period of non-alienation. He would submit that Section 4(1) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (hereinafter referred to as 'the Act' for short) stipulates that transfer of granted land made in contravention of the terms of the grant is null and void, which renders the sale agreement or the

General Power of Attorney as null and void. He would further contend that Section 4(2) of the Act stipulates permission to be taken for transfer of the land even after the non-alienation period. The sale agreement and the General Power of Attorney are executed without prior permission of the Government. All these facts would render the transaction void. He would further refer to Section 3(1)(e) of the Act, to contend that Section 3(1)(e) includes a sale agreement within the definition of transfer under the Act. Therefore, the entire transaction is void *ab initio* and the suit to that effect could not have been filed seeking specific performance of the agreement of sale which by itself was void.

5. Learned counsel appearing for the 1st respondent would contend that the non-alienation clause would not become applicable to a transaction that happens after the period of non-alienation. According to the learned counsel, the sale deed, even as on today, has not been executed. Therefore, there cannot be any violation of the provisions of the Act, unless the sale deed is executed. He would seek to place reliance upon certain judgments rendered by

the Division Bench, which would bear consideration in the course of the order.

6. Learned counsel for the petitioners would join issue in contending that Section 3(1)(e) has been interpreted by the Apex Court, wherein it is clearly held that transfer includes an agreement of sale. Therefore, would contend that the petition be allowed and the plaint be rejected.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts, dates and link in the chain of events are all a matter of record. The admitted dates in the case at hand are a few, which would require reiteration. The land measuring 2 acres and 21 guntas, as noted hereinabove, is granted to the 1st petitioner under a condition that the petitioner shall not alienate the property prior to the expiry of 15 years from the date of grant, which would admittedly expire on 05-09-2015. Before the

expiry of the said period, the petitioners execute an agreement of sale and a registered Power of Attorney in favour of the 1st respondent/plaintiff. The relevant clauses of the agreement read as follows:

"…. …. ….

IV) **NOW THIS AGREEMENT OF SALE WITNESSETH AS FOLLOWS**:

That in pursuance of the foregoing and in consideration hereby agreed, the Vendors are agrees to convey all their right, title and interest in respect of Schedule Property, in favour of the Purchaser, subject to the following terms and conditions.

1) **CONSIDERATION**

The consideration payable by the Purchaser to the Vendors for the sale of the Schedule Property shall be **Rs. 27,50,000/- (Rupees Twenty Seven Lakhs Fifty Thousand only)**, calculated @ Rs 27,500 per gunta, based on the actual area available, post joint survey to be conducted by both the parties.

2) **PAYMENT OF CONSIDERATION**

The Purchaser shall pay the total sale consideration **of Rs. 27,50,000/- (Rupees Twenty Seven Lakhs Fifty Thousand only)** to the Purchaser in the following manner

a) **Rs. 20,00,000/-** **(Rupees Twenty Lakhs Only)** paid to the Vendors made up of i) Rs.10,00,000/-by way of cheque bearing No. 030235, ii) Rs. 5,00,000/- by way of cheque bearing No.

030236/- and iii) Rs. 5,00,000 by way of cheque bearing No. 030237, all Drawn on IDBI Bank, Devanahalli Branch, Devanahalli, the receipt of which the Vendors hereby accept and acknowledge the same.

b) **Rs 7,50,000/-** **(Rupees Seven Lakhs Fifty Thousand Only)** to be paid by the Purchaser to the Vendors, subject to the Vendors complying all terms of this agreement of sale. including the permission being obtained from the Government, as prescribed under Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978

3) <u>TIME FOR COMPLETION OF SALE</u>

The Vendors and the Purchaser hereby specifically understand that the execution and registration of the Sale Deed. shall be only upon permission being obtained from the Government, as prescribed under Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978.

4) **VENDOR'S OBLIGATIONS**

4.1) That the Vendor shall make out good and marketable title of the Schedule Property to the satisfaction of the Purchaser's Attorney and in this regard shall answer all the queries and requisition raised by the Purchaser's Attorney.

4.2) That the Vendor, shall convey the Schedule Property, free from all kind of encumbrances, charges, minor claims, liens, mortgages, litigations, claims, etc.,

4.3) That the Vendor shall be responsible for payment of all taxes, cess and all other outgoings with regard to the Schedule Property, upto the date of sale, 4.4) That the Vendor hereby undertakes to bring necessary parties/family members to join the execution of the sale deed in favour of the Purchaser/his nominee/s.

4.5) That the Vendor hereby undertakes that, they shall make good and settle the issues, if any objections arises from the third parties, after the public notice is published.

4.7) that the Vendors shall obtain permission being obtained from the Government, as prescribed under Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act 1978

5) **POSSESSION**

The possession of the Schedule Property shall be delivered to the Purchaser on the date of execution of the Sale Deed.

6) **DOCUMENTS OF TITLE**

The Vendors shall deliver all available original documents of title of the Schedule Property to at the time of the sale.

7) **BREACH OF TERMS**

In the event of breach of any terms of this Agreement by the Vendors, the Purchaser, shall without prejudice to other available remedies, shall be entitled to recover all such amounts due and payable to them with interest at 18% within a period of 15 days from the date of breach as liquidated damages, which shall constitute first charge on the Schedule Property.

8) **INDEMNITY**

The Vendors shall indemnify and keep indemnified, the Purchaser, against all losses, claims and expenses, arising out of want or defect in title of the Vendors or their predecessors-in-title.

9) **ARBITRATION**

In case of any dispute arising in respect of this Agreement, the matter shall be referred to arbitration in consonance with the provisions of the Indian Arbitration and Conciliation Act, 1996, as may be amended from time to time, by a sole arbitrator to be appointed by the Purchaser and the Vendor. The decision of the Arbitrator shall be binding upon the Vendor and the Purchasers. The law governing the arbitration proceedings shall be Indian law and the proceedings shall be held at Bangalore and conducted in the English language.

10) The Vendors hereby confirm that the contents of this Agreement of sale have been readout and explained to them in their mother tongue and the language known to them by Mr. Narayanappa Son of Muniswamappa, and the Vendors have executed this Agreement with complete knowledge and consent.

SCHEDULE PROPERTY

All that piece and parcel of agricultural land bearing Survey No. 274, old Sy No. 168/p measuring 2 Acres 20 Guntas, plus 01 Gunta kharab, situated at Kuduvathi Village, Nandi Hobli, Chikkaballapur Taluk and District and bounded as follows:-

On or towards the East by : Sy.No.244

On or towards the West by : Sy. No.257 belonging to Mare Gowda

On or towards the North by : Sy No.270 belonging to Anche Muniyappa

On or towards the South by : Sy No. 162/2 belonging to Sree Holdings

Together with all easement rights, water courses and right of access, etc."

The clauses of the agreement of sale quoted *supra* would indicate that the determination of the total consideration was Rs.27,50,000/-, out of which, Rs.20,00,000/- was paid at the time of execution of the agreement of sale. The sale deed would be executed only after necessary permission was obtained from the Government in terms of the Act and possession of the schedule property would be transferred after execution of the sale deed. With these conditions, the two documents emerge, one the agreement of sale and the other the General Power of Attorney. 9 years pass by. The petitioners then seek to cancel the General Power of Attorney so executed, on the score that the 1st respondent had not developed the property. The 1st respondent then institutes a suit for specific performance against the agreement of sale dated 16-06-2014.

9. The averments in the plaint in O.S.No.578 of 2023 indicates that the petitioners/defendants 1 to 6 are attempting to sell the property to respondent No.2/defendant No.7 during subsistence of the contract; the petitioners through a common friend in the month of May 2014 offered to sell the schedule

property for a sale consideration of Rs.27,50,000/- to the 1st respondent. The sale transaction was sought to be completed only after the petitioners sought the required permission from the Government. However, the petitioners have not applied for required permission in terms of the Act and have constantly been postponing the completion of the sale transaction. The defendants/petitioners file their written statement and an application under Order 7 Rule 11(a) and (d) of the CPC for rejection of the plaint filed by the 1st respondent, on one solitary ground that the schedule property of which the sale agreement was executed is a granted land from the hands of the State and is governed by the provisions of the Act. The schedule property was granted to the petitioners with a condition that they shall not alienate the property for a period of 15 years and the agreement of sale is void *ab initio*, as it is executed prior to the expiry of the period of non-alienation.

10. Objections are filed to the said application taking recourse to the fact that it is only an agreement of sale, there is no sale deed

executed within the completion of non-alienation period. The concerned Court rejects the application on the following reasons:

"…. …. ….

13. On the other hand, the learned counsel for the plaintiff argued that, the suit is not hit by the provision of KPTCL Act. The agreement of sale which is executed by the defendants No.1 to 6 in favour of plaintiff is maintainable. As per the agreement of sale, the sale transaction was agreed to be completed only after defendants No.1 to 6 getting permission from concerned government authority to sell the suit schedule property as per the provision of KPTCL Act and time is not fixed in the agreement for performance of the contract. But the defendants No.1 to 6 have not completed all the obligations casted upon them as per the terms of the agreement of sale dated 16.06.2014 till this day. The defendants have not provided all title deeds and revenue documents to the plaintiff. The defendants No.1 to 6 did not come forward to file application for getting permission from concerned Government authority to sell the suit schedule property.

14. I have perused the alleged agreement of sale executed by defendants No.1 to 6 in favour of plaintiff. In the said agreement of sale, time is not fixed for performance of contract. Further it reveals that, there is a condition in the agreement of sale that, the defendants shall obtain permission from the Government to sell the suit schedule property as prescribed under Karnataka Schedule Castes and Schedule Tribes Act. Further it reveals from the agreement of sale that, possession of the suit schedule property has not been handed over to the plaintiff under the agreement of sale. Since the possession of the land in question has not been handed over under the agreement of sale, the transaction in question would not amount to transfer within the meaning of PTCL Act. In support of his argument, the learned counsel for the plaintiff has relied upon following judgments:-

a) Judgment passed in **RFA.No.191/2020** in between **Sri. Rathnakar Hegde v/s Shri. Seenappa & Ors**, wherein it is held that:-

> **"14. Defendant No. 1 had sought for permission from the Government and by order dated 30.03.2005 the Government accorded permission to defendant No.1 to sell the land.**
>
> **Section 3(e) of the PTCL Act reads as follows:**
>
> **"Transfer" means a sale, gift, exchange, mortgage with or without possession), lease or & any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction."**

As could be seen from the said definition, a transfer does include an Agreement of Sale.

Section 4 of the PTCL Act reads as follows:

"Prohibition of transfer of granted lands.-(1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-sections(1) and (2) shall apply also the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority."

15. As could be seen from Section 4 of the PTCL Act, the law bars only those transfers of granted land which were being made in contravention of the terms of

the grant of such land. It, therefore, follows that if the transfer is not in contravention of terms of grant of such land, such a transfer is not barred. In other words, there is no absolute bar for transfer of granted land and it is open for a grantee to transfer the granted land as provided under the terms of the grant itself or under the law providing for the grant and in case of a transfer being made after the Act had come into force, it could be done only after securing permission from the Government.

16. In the instant case, since the Agreement of Sale, though deemed a transfer by itself, indicated that transfer would happen only on the Government granting permission, it becomes clear that the transfer was essentially a transfer in adherence to the terms of the grant and the law relating to the grant. In other words, since the parties to the transaction agreed to abide by the terms of the grant and the law relating to the grant, by agreeing to seek permission of the Government to transfer the granted land, it cannot be said that such an Agreement of Sale was null and void and required the permission of the Government."

b) WP.No.16/2020 (SC/ST) in between **Sri. M.Suresh Kumar & Ors v/s The Deputy Commissioner, Bengaluru Urban District & Ors,** wherein it is held that:-

> **"5. It is not in dispute that the transaction in question in this case is the agreement of sale dated 23.03.2011. A perusal of the said agreement, which is available at Annexure-A to the writ petition, would go to show that under the said agreement, the third respondent has received an advance sale consideration of Rs.10,00,000/- and has agreed to execute the sale deed in respect of the land in question to the appellants herein after obtaining necessary Permission from the State Government and it is further agreed that the balance sale consideration would be paid within three months from the date of obtaining such permission for sale from the government. Admittedly, the possession of the land has not been handed over to the appellants under the said sale agreement. Since the possession of the land in question has not been handed over under the agreement of sale, the transaction in**

question would not amount to transfer within the meaning of PTCL Act."

15. The above judgments relied by the plaintiff are applicable to the case on hand. **As per the above decisions, if the party to the transaction agreed to abide by the terms of the grant and the law relating to the grant by agreeing to seek permission of the Government to transfer the granted land, it cannot be said that such an agreement was null and void and required the permission of the Government. Here in this case as per the terms of the agreement of sale dated 16.06.2014 it is clear that, the defendants have agreed to execute the sale deed in respect of suit schedule property after obtaining necessary permission from the Government. Further as stated above, possession of the suit schedule property has not been handed over to the plaintiff under the alleged agreement of sale dated 16.06.2014. It is pertinent to note that, in the decision relied upon by the learned counsel for the defendants, the possession of the property handed over to the plaintiff. In the instant case, possession of the suit schedule property has not been delivered in favour of the plaintiff herein. Therefore the facts of Smt. Narayanamma & Anr v/s Sri. Govindappa & Ors's case relied by the learned counsel for the defendants No.1 to 6 is totally different from the present facts of the case. Therefore with due respect to the above decisions relied by the learned counsel for the defendants No.1 to 6 it is held that, the above decisions relied by the defendants are not applicable to the case on hand. The facts and circumstances of the present case and facts and circumstances of the aforesaid decisions relied by the defendants are different.**

16. **Further it is pertinent to note that, as per agreement, the suit schedule property is not yet transferred but, agreed to be transferred after obtaining necessary permission to sell from the Government. Hence, the said contract is in accordance with Section 4 of KPTCL Act.**

17. Further it is noted that, at Para No.22 of the plaint the plaintiff has clearly stated that, when the cause of action

arose to file this suit. Therefore the contention taken by the defendants to reject the plaint is not sustainable.

18. The ratio laid down by the Hon'ble Supreme Court reported in **AIR 2008 SC 3174** in between **Kamala v/s Eshwara sa** is that while invoking order 7 Rule 11(d) of the Code of Civil Procedure, 1908, the Court has to see the averments made in the plaint only and not the defense of the defendants. In the present case, on perusal of the plaint averments, this Court does not find that, the suit is barred by law and there is no cause of action for the plaintiff to file the suit. Hence it is held that the defendants have not made out sufficient grounds to allow the application. Hence, I have answered **Point No.1 in the Negative.**

19. **Point No.2**:- In view of findings on Point No.1, I proceed to pass the following:-

ORDER

IA.No.12 filed by the defendants No.1 to 6 U/o VII Rule 11(a) and (d) R/w Sec. 151 of CPC is hereby dismissed.

No order as to cost."

(Emphasis added)

11. The issue now would be, whether the agreement of sale or the General Power of Attorney executed one year prior to the completion of the non-alienation clause is void or otherwise?

12. Before embarking upon the consideration, I deem it appropriate to notice certain provisions of Section 3 of the Act, in

particular, Section 3(1)(e), which defines what is transfer and it reads as follows:

> "Section 3: …. …. ….
>
> (1).. (*e*) **"transfer" means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction.**"
>
> (Emphasis supplied)

Section 3(1)(e) encompasses within itself an agreement also to be a transfer. The purport of the provisions of the Act is considered by the Apex Court in the case of **DHARMA NAIKA v. RAMA NAIKA**[1], which reads as follows:

> "…. …. ….
>
> **7.** The only question that needs to be decided in this appeal is whether the sale deed, which was executed and registered after the commencement of the Act but in respect of which, the agreement for sale was executed before the commencement of the Act, would be hit by the provisions of Section 4 of the Act. In order to decide this question and before considering the relevant provisions of the Act with which we would be associated for a proper decision in this case later, it would be appropriate to reproduce the Statement of Objects and

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[1] **(2008)14 SCC 517**

Reasons of the Act which was introduced by the Karnataka Gazette, Extraordinary, dated 30-6-1978, which reads as under:

> "**The non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants where the land is alienated in contravention of the abovesaid provision are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they have become the victims of circumstances. To fulfil the purposes of the grant, the land even if it has been alienated, should be restored to the original grantee or his heirs.**
>
> The Government of India has also been urging the State Government for enacting a legislation to prevent alienation of lands granted to Scheduled Castes and Scheduled Tribes by Government on the lines of the model legislation prepared by it and circulated to the State Government."

8. A plain reading of the Statement of Objects and Reasons, for which the legislature has introduced this Act, would show that the non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants where the land was alienated in contravention of the abovesaid provisions were found insufficient to help the Scheduled Castes and Scheduled Tribes grantees. From the objects and reasons of the Act, it is evident that ignorance and poverty of the Scheduled Castes and Scheduled Tribes were exploited by persons belonging to the affluent and powerful sections to get sales or mortgages, either for a nominal consideration or for no consideration at all and on account of this, the Scheduled Castes and Scheduled Tribes had become the victims of circumstances. It is for this reason and to fulfil the purposes of the grant, it was thought fit by the legislature that the land, even if it has been alienated, must be restored to the original grantee or his heirs and legal representatives who are admittedly Scheduled Castes and Scheduled Tribes.

9. It is also evident from the objects and reasons of the Act that the Central Government was also urging the State Government to enact a Legislation to prevent alienation of lands granted to the Scheduled Castes and Scheduled Tribes by the State Government on the lines of the model Legislation prepared by it and circulated to the State Government. It is in that background, the Act was introduced providing for prohibition of transfer and restoration of lands granted by the Government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State. However, it is also evident from the relevant provisions of the Act with which we would be dealing with later that total prohibition of transfer by Scheduled Castes and Scheduled Tribes was also not intended by the Legislature. It is provided that in respect of transfers after the commencement of the Act, it would be open to transfer the land granted to Scheduled Castes and Scheduled Tribes if prior permission is obtained from the State Government.

…. …. ….

11. Next is the definition of "transfer" under Section 3(1)(*e*) of the Act:

> "3. (1)(*e*) 'transfer' means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or *an agreement to sell*, exchange, mortgage or lease or enter into any other transaction."
>
> (emphasis supplied)

12. A bare reading of the definition of "transfer" as defined in Section 3(1)(*e*) of the Act would show that an "agreement for sale" of any "granted land" is included within the meaning of "transfer". That being the position, the word "transfer" as defined under the Act is an inclusive definition. That is to say, it includes "sale" as well as "agreement for sale", although an agreement for sale under the Transfer of Property Act is not a transfer and the right, title or interest in the land does not pass until the sale deed is executed and registered. "Sale" has been defined in Section 54 of the Transfer of Property Act

which means "transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". As noted hereinearlier, an agreement to sell does not by itself create any interest of the proposed vendee in the immovable property but only creates an enforceable right in the parties. (See *RambhauNamdeo Gajre* v. *Narayan Bapuji Dhotra* [(2004) 8 SCC 614] .) Therefore, it is clear that under the general law, that is, under the Transfer of Property Act, an "agreement for sale" is not the same as "sale" and in the case of an agreement for sale, the title of the property agreed to be sold still remains with the vendor but in the case of "sale", title of the property is vested with the vendee. Therefore, an agreement for sale is an executory contract whereas sale is an executed contract.

....

19. Having heard the learned counsel for the parties and after examining the objects and reasons and the relevant provisions of the Act, as noted hereinearlier, in depth and in detail, we have no hesitation to hold that the submissions of the learned counsel for the appellant cannot at all be accepted. It is true that the agreement for sale in respect of the granted land was executed before the commencement of the Act. **It is also an admitted position that "transfer" under the Act includes an agreement to sell as well. Keeping this fact in mind, let us now see whether in view of Section 4 of the Act, the transfer of the land, in respect of which the agreement for sale was executed before the commencement of the Act but which was effected after the commencement of the Act by execution and registration of the sale deed, could be said to be null and void. Section 4(1) of the Act in clear terms provides that notwithstanding anything contained in any law, agreement, contract or instrument, any transfer of granted land made *either before or after the commencement of the Act* in contravention of either (*a*) the terms of grant of such land; or (*b*) the provisions of the law providing for such grant; or (*c*) sub-section (2) of Section 4 of the Act, shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer. Therefore, under Section 4(1) of the Act, it can be safely**

concluded that this provision declares any transfer of granted land made either before or after the coming into force of the Act, to be null and void if it is in contravention of the conditions specified therein.

…. …. ….

22. As noted hereinearlier, it is true that in this case, admittedly, the parties had entered into an agreement for sale in respect of the granted land before the commencement of the Act. **It is also an admitted position that the respondents belong/belonged to the Scheduled Caste community. As already noted hereinearlier, for the purposes of this Act, "transfer" has been defined to include an "agreement for sale" although under the general law, an "agreement for sale" will not by itself transfer the granted land automatically to the appellant purchaser. From an overall consideration of the objects and reasons for which this Act was introduced viz. to protect the right and interest of the Scheduled Castes and Scheduled Tribes in respect of the granted lands and the relevant provisions of the Act, it is pellucid that the definition of "transfer" under Section 3(1)(*e*) of the Act includes an agreement for sale also and "transfer" has been so defined to protect the right, title and interest of the Scheduled Castes and Scheduled Tribes so that possession of the lands could be restored to them even if they had entered into an agreement for sale.**

…. …. ….

24. Let us, therefore, consider whether any of the conditions is satisfied in the present case and thereby, whether, the transfer shall be null and void conveying or deeming ever to have conveyed no right, title or interest of such land by such transfer. **So far as the first condition, namely, transfer in contravention of the terms of the grant of such land is concerned, it cannot be disputed in the facts of this case that there was no contravention of the terms of the grant of such land as the transfer was admittedly made after 15 years of the date of certificate, which was the only condition regarding prohibition of transfer in the grant. It is also not in dispute that there is no contravention of any law providing for such grant. Therefore, so far as these two conditions are concerned, it cannot be disputed that**

they are not satisfied. Now, let us take into consideration the third condition i.e. transfer made in contravention of sub-section (2) of Section 4 of the Act. In respect of this condition, a transfer of any granted land made after the commencement of the Act in contravention of sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.Sub-section (2) of Section 4 clearly says that:

> **"4. (2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government."**

Therefore, sub-section (2) of Section 4 prohibits transfer or acquisition by transfer, either by the transferor or by the transferee of any granted land without the previous permission of the Government.Therefore, after the commencement of this Act, if any transfer is effected or any person acquires any granted land by transfer, without the previous permission of the Government, such transfer shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

…. …. ….

26. As argued and noted hereinearlier, the learned counsel for the appellant submitted that in view of the admitted fact that the agreement for sale, which is also a transfer within the meaning of Section 3(1)(*e*) of the Act, was made before the commencement of the Act, it cannot be held that such transfer was null and void and that no right, title or interest shall be conveyed by such transfer. We are unable to agree with this submission of the learned counsel for the appellant. **As noted hereinearlier, it is true that by virtue of Section 3(1)(*e*) of the Act, "transfer" includes an agreement for sale. We have to keep in mind that in order to protect the right, title and interest of the Scheduled Castes and Scheduled Tribes, this Act was promulgated as it was found that some affluent and influential persons of the society, either by payment of a mere consideration or by no**

payment at all, sought to get the property transferred in their favour from the Scheduled Castes and Scheduled Tribes community. In our view, it is for this reason and in order to protect the Scheduled Castes and Scheduled Tribes community, "transfer" has been defined to include an agreement for sale under the Act so that even if an agreement for sale is executed by a Scheduled Caste or Scheduled Tribe and possession is delivered to the vendee, it would be open to the authority under Section 5 of the Act to take steps for resumption of the land from the vendee. Otherwise, there can be cases where merely by entering into an agreement for sale, possession of the land is delivered to the vendee and supposing "transfer" as defined in this Act does not include an agreement for sale, then in such cases, it would not be open to the authority under the Act to take steps for the resumption of the granted land as, merely by executing an agreement for sale, no transfer is effected."

(Emphasis supplied)

A little earlier to the judgment so rendered by the Apex Court, a coordinate bench of this Court in the case of **VENKATANARAYANAPPA v. SIDDAPPA**[2], has held as follows:

"…. …. ….

11. This court in the case of *Rame Gowda* v. *Assistant Commissioner* [ILR 1995 Kar 259] dealing with a question of resumption of land by the Assistant Commissioner for violation of the terms of the grant, after quoting Section 3(e) of the Act, delivery of possession coupled with an agreement for sale, amounts to transfer, prohibition under Section 4 of the said Act comes into operation whereby transaction became null and void. Under Section 5 of the Act the Assistant

[2] **2007 SCC Online KAR 49**

Commissioner becomes competent to take possession of such land after evicting all persons in possession thereof and restore the same to the original grantee or his legal heirs. Relying on the aforesaid judgment, it was contended by the learned counsel as admittedly possession was not delivered under the agreement of sale, it would not constitute a "transfer" as defined under the Act and only when an agreement of sale coupled with delivery of possession, the agreement of sale entered into between the parties falls within the definition of transfer. A bare reading of the Section makes it clear 'transfer' means not only a sale, but also an agreement to sell. It does not speak anything about delivery of possession. It speaks about delivery of possession only in case of mortgage as there can be simple mortgage or mortgage with possession. It does not make any difference between agreement to sell without possession and agreement to sell coupled with possession. In that view of the matter, the aforesaid judgment does not support the case of the plaintiff to any extent.

12. While interpreting the Act and its provisions, it is also useful to notice the background of the legislation. The non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants, where land is alienated in contravention of the above said provision were found not sufficient to help the Scheduled Castes and Scheduled Tribes, whose ignorance and poverty has been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they have become the victims of circumstances. To fulfill the purposes of the grant, it was thought that the land even if it has been alienated, should be restored to the original grantee or his heirs. In fact the Government of India was also urging the State Government for enacting a legislation to prevent alienation of lands granted to Scheduled Castes and Scheduled Tribes by Government, on the lines of the model legislation prepared by it and circulated to the State Government. It is in that back ground the Act was enacted providing for the prohibition of transfer and for restoration of lands granted by the Government to

persons belonging to scheduled castes and scheduled tribes in the State.

13. The Act is applicable to any land granted by the Government to a person belonging to any of the scheduled castes or scheduled tribes in any manner other than that relating to hereditary offices or rights. The word 'Transfer' defined under the Act is an inclusive definition. It includes "sale" as well as "agreement to sell". The legislature in its wisdom, keeping in mind the mischief which one may indulge, has consciously included the agreement to sell also in the definition of transfer after including the word "sale". They made known their intentions clear even in respect of mortgages, whether the mortgage is with or without possession, it amounts to transfer.

14. Section 4 which deals with prohibition of transfer of granted lands starts with an non-obstante clause. It states notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer. Sub-section (2) of Section 4 provides for the permission of the Government for such transfer. But the way the said sub-section is worded makes it clear that no person shall, after the commencement of this Act transfer or acquire by transfer any granted land without the previous permission of the Government. Sub-section 4(1) deals with transfer of lands being in violation of the terms of the grant before the Act came into force. But sub-section (2) deals with transfer of lands after the Act came into force. In other words, even if the transfer is not in contravention of the terms of the grant, but if that transfer takes place after the Act came into force, such transfer requires previous permission of the Government. Therefore for all transfers subsequent to the passing of the Act, previous permission of the Government is a must. Otherwise it would be null and void. In this context, the word previous assumes importance. It is not mere permission to transfer. **Keeping in mind the legislative intent, the object sought to be achieved and the simple words used in these provisions, it is clear though there is no complete prohibition for alienation of the granted lands even after coming into force of this Act, a case is to be made out before the Government for granting such permission. In the Scheme of the Act, it is clear whether to sell the property by way of a sale or to enter into an agreement to purchase a granted land previous permission of the Government is a must. It is a condition precedent. If previous permission is not obtained prior to the agreement of sale, then it amounts to transfer under Section 3(d)of the Act and thus it is null and void. While interpreting this provision the courts have to keep in mind the legislative intent. When the legislature declares that the transfer in contravention of Section 4(2) of the Act is null and void, no contract in the eye of law has come into ex stence. The legislature did not stop there. It made its intentions explicitly clear by further declaring that "no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer". An agreement to sell the granted land under the Act, is opposed to Section 4(2) of the Act, and therefore is not a contract. It is also opposed to public policy. Therefore, it is not enforceable in Court of law.** The suit agreement entered into between the parties is contrary to express provision contained in law and therefore it is hit by Section 4(2) of the Act and *it is void ab initio*. The said agreement is not a contract which could be enforced in a court of law. In that view of the matter, granting a decree for specific performance subject to the permission to be obtained by either of the parties from the Government to complete the sale transaction would not arise. Therefore, the view taken by the lower Appellate Court is in accordance with law and do not call for interference."

(Emphasis supplied)

Again, in the case of **NARASAMMA v. K.V. RAMPRASAD**[3]**,** another coordinate bench has held as follows:

"…. …. ….

12. Before proceeding to consider the validity of the impugned orders, it is also necessary to consider as to whether the Act contains a bar to enter into a contract for sale of Granted Lands without previous permission of the Government?

Section 4 of the Act contains a bar for transfer of Granted Lands, which is as under:

"4. Prohibition of transfer of granted lands.

(1) Notwithstanding anything contained in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant, or sub-Section (2) shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer.

(2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.

(3) The provisions of sub-Sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a Civil Court or of any award or order of any other authority."

13. For better understanding the above provision, it is also necessary to notice the statutory definitions provided for the expressions 'Granted Land' and 'Transfer' in Section 3(b) and 3(e), which are as under:

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[3] **2012 SCC OnLine KAR 8667**

> **"Sec. 3(b) "Granted Land"** means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such person under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, other than that relating to hereditary offices or rights and the word **"Granted"** shall be construed accordingly.
>
> **Sec. 3(e) "Transfer"** means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction."

14. It is well settled that when an expression is defined in a statute, unless there is anything repugnant in the subject or context, the expression has to be construed as having the same meaning assigned to it in the dictionary clause of the statute. The object of such a definition is to avoid the necessity of frequent repetition in describing the subject matter to which a word or expression so defined is intended to apply. In these cases, we are considering the effect of entering into an agreement to sell in respect of Granted Land without the previous permission of the Government. If Section 3(b) is read into Section 4(2), it is clear that no person shall after commencement of the Act, enter into an agreement to sell any Granted Land without the previous permission of the Government.

15. The State, consistent with the Directive Principles of the Constitution has made it a policy to preserve, protect and promote the interest of the Scheduled Castes and Scheduled Tribes, which by and large form weaker and poorer sections of the people in our country. In pursuance of this policy, the lands have been granted to the persons belonging to the Scheduled Castes and Scheduled Tribes which includes the lands allotted or granted to such person under the relevant law for the time beingin force relating to agrarian reforms or land ceiling or abolition of inams. The condition regarding prohibition of transfer of Granted Land had been

introduced in the interest of grantees for the purpose of upkeep of the grants and for preventing the economically dominant sections of the community from depriving the grantees, who belong to the weaker sections of the people of their enjoyment and possession of these lands and for safeguarding their interests against any exploitation by the richer sections in regard to the enjoyment and possession of these lands granted essentially for their benefit. This prohibition on transfer has not proved to be sufficiently strong safeguard in the matter of preserving grants in the hands of grantees belonging to the Scheduled Castes and Scheduled Tribes and in violation of the prohibition on transfer of the Granted Land, transfers of such lands on a large scale to serious detriment of the interests of these poorer sections of the people had taken place. **Therefore, the Act was enacted to provide for the prohibition of transfer and for restoration of lands granted by the Government to the persons belonging to the Scheduled Castes and Scheduled Tribes in the State.**

16. The Hon'ble Supreme Court in *Manchegowda* v. *State of Karnataka*, while upholding the Constitutional validity of the Act has held as under:

> "Non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation of grants where the land is alienated in contravention of the above said provision are found not sufficient to help the Scheduled Castes and Scheduled Tribes grantees whose ignorance and poverty have been exploited by persons belonging to the affluent and powerful sections to obtain sales or mortgages either for a nominal consideration or for no consideration at all and they have become the victims of circumstances. To fulfill the purpose of the grant, the land even if it has been alienated, should be restored to the original grantee or his heirs."

17. In *Dharma Naika* v. *Rama Naika*, the Apex Court explained the objects of the Act as under:

> "8. Aplain reading of the Statement of Objects and Reasons, for which the Legislature has introduced this Act, would show that the non-alienation clause contained in the existing Land Grant Rules and the provisions for cancellation

of grants where the land was alienated in contravention of the abovesaid provisions were found insufficient to help theScheduled Castes and Scheduled Tribes grantees. From the objects and reasons of the Act, it is evident that ignorance and poverty of the Scheduled Castes and Scheduled Tribes were exploited by persons belonging to the affluent and powerful sections to get sales or mortgages, either for a nominal consideration or for no consideration at all and on account of this, the Scheduled Castes and Scheduled Tribes had become the victims of circumstances. It is for this reason and to fulfil the purposes of the grant, it was thought fit by the Legislature that the land, even if it has been alienated, must be resorted to the original grantee or his heirs and legal representatives who are admittedly Scheduled Castes and Scheduled Tribes.

9. It is also evident from the objects and reasons of the Act that the Central Government was also urging the State Government to enact a Legislation to prevent alienation of lands granted to the Scheduled Castes and Scheduled Tribes by the State Government on the lines of the model Legislation prepared by it and circulated to the State Government. It is in that background, the Act was introduced providing for prohibition of transfer and restoration of lands granted by the Government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State. However, it is also evident from the relevant provisions of the Act with which we would be dealing with later that total prohibition of transfer by Scheduled Castes and Scheduled Tribes was also not intended by the Legislature. It is provided that in respect of transfers after the commencement of the Act, it would be open to transfer the land granted to Scheduled Castes and Scheduled Tribes if prior permission is obtained from the State Government."

18. Keeping in mind the back ground of the Legislation, we have to interpret the provisions of the Act. Sub-Section (2) of Section 4 states that no person shall, after commencement of the Act, transfer or acquire by transfer any Granted Land without previous permission of the Government. An extensive definition has been used to define the expression 'transfer'. Thus, 'transfer' not only means a sale, gift, exchange or mortgage with or without possession, lease or any other transaction not being a partition among members of a family of a testamentary disposition but also the creation

of a charge or agreement to sell, exchange, mortgage or lease or enter into any other transaction.

19. Section 54 of the Transfer of Property Act, 1882 defines a contract for sale. It states that a contract for sale of immovable property is a contract that a sale of such property takesplace on terms settled between the parties. It does not, of itself, create any interest or charge on such property. Thus, contract for sale is only a document creating right to obtain another document of sale on fulfillment of terms and conditions specified therein. On the strength of such an agreement, a buyer does not become the owner of the property. The ownership remains with the seller. It will be transferred to the buyer only on the execution of sale deed by the seller. The buyer obtains only a right to get the sale deed executed in his favour. There is no bar for the parties to enter into an agreement to sell with or without delivery under Section 54 of the Transfer of Property Act. It depends upon the terms and conditions settled between the parties. However, a contract for sale with or without delivery of possession of the property makes no difference for the purpose of Section 4(2) of the Act.

20. Learned Senior Counsel for the first respondent has laid emphasis on the expression 'acquire by transfer' employed in Section 4(2) and submits that mere agreement to sell without delivery of possession will not come within the ambit of sub-Section (2) of Section 4 of the Act. In my opinion, that is not the Legislative intent. The Legislative intent is clear that previous permission of the Government is a condition precedent for the agreements for sale of Granted Lands. This Court in *Sri Venkatanarayanappa* v. *Sri Siddappa*, wasconsidering a similar case where possession was not delivered in part performance of the agreement to sell. It has been held as under:

> **"............Sub-Section (2) of Section 4 provides for the permission of the Government for such transfer. But the way the said sub-section is worded makes it clear that no person shall, after the commencement of this Act transfer or acquire by transfer any granted**

> **land without the previous permission of the Government. Sub-Section 4(1) deals with transfer of lands being in violation of the terms of the grant before the Act came into force. But sub-Section (2) deals with transfer of lands after the Act came into force. In other words, even if the transfer is not in contravention of the terms of the grant, but if that transfer takes place after the Act came into force, such transfer requires previous permission of the Government. Therefore for all transfers subsequent to the passing of the Act, previous permission of the Government is a must. Otherwise it would be null and void."**

It has been further held as under:

> **"In the Scheme of the Act, it is clear whether to sell the property by way of a sale or to enter into anagreement to purchase a granted land previous permission of the Government is a must. It is a condition precedent. If previous permission is not obtained prior to the agreement of sale, then it amounts to transfer under Section 3(e) of the Act and thus it is null and void. While interpreting this provision the Courts have to keep in mind the Legislative intent. When the Legislature declares that the transfer in contravention of Section 4(2) of the Act is null and void, no contract in the eye of law has come into existence. The Legislature did not stop there. It made its intentions explicitly clear by further declaring that "no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer". An agreement to sell the granted land under the Act, is opposed to Section 4(2) of the Act, and therefore is not a contract. It is also opposed to public policy. Therefore, it is not enforceable in Court of law."**

21. In *Dharma Naika's case* (supra), the Apex Court has held that Section 4(1) of the Act declares any transfer of Granted Land made either before or after the coming into force of the Act, to be null and void if it is in contravention of any one of the conditions specified therein i.e., (a) the terms of grant of such land; or (b) the provisions of the law providing for such grant; or (c) Section 4(2). It has been further held as under:

> **"It is true, the word "transfer" as defined in Section 3(1)(e) of the 1978 Act is an inclusive definition. That is to say, it includes 'sale' as well as 'agreement for sale', although an agreement for sale under the Transfer of Property Act, 1882 is not a transfer and the right, title or interest in the land does not pass until the sale deed is executed and registered. An agreement to sell does not pass until the sale deed is executed and registered. An agreement to sell does not by itself create any interest of the proposed vendee in the immovable property but only creates an enforceable right in the parties. Thus, under the general law, that, is under the Transfer of Property Act, 1882 an 'agreement for sale' is not the same as 'sale' and in the case of an agreement for sale, the title of the property agreed to be sold still remains with the vendor but in the case of 'sale', title of the property is vested with the vendee. Therefore, an agreement for sale is an executory contract whereas sale is an executed contract."**

22. In *Bhemanna* v. *Deputy Commissioner, Chitradurga District*, a Division Bench of this Court has held as under:

> **"A conjoint reading of sub-Sections (1) & (2) of Section 4 of the Act shows that if the transfer of granted land is made in violation of the terms of the grant of such land or the law providing for such grant whether such transfer is before or after the Act came into force, the same is rendered null and void. Whereas, in the case of transfer of land after the commencement of the Act even though the said transfer is not in contravention of the terms of the grant or the law providing for such grant, the same is rendered null and void.**
>
> **It is thus clear that the intention of the Legislature is that, after the commencement of the Act, there shall be prohibition for transfer of granted land even though the period of non-alienation had expired and the grantee was otherwise entitled to transfer. It is therefore clear that the term 'granted land' as defined under Section 3(1)(b) of the Act cannot be given a**

> **restricted meaning to say that the land losses the characteristic of a granted land after the expiry of non-alienation period**."
>
> …. …. ….
>
> **28.** As has been noticed above, there is a clear bar for entering into an agreement to sell of the Granted Lands without previous permission of the Government. **If an agreement is entered into in respect of the Granted Land in violation of Section 4(2), it is *void-ab-initio*. Section 23 of the Indian Contract Act, 1872 bars the enforcement of a contract if it is forbidden by law. An agreement offending a statute or public policy or forbidden by law is not merely void but it is invalid from nativity**. The term 'law' in this section must be understood in the sense of the term explained in Article 13(3) of the Constitution. **Thus, what is done in contravention of the provisions of any law cannot be made the subject matter of an action. If the contract is expressly prohibited by law, it is *void-ab-initio* and cannot be enforced. In the circumstances, Courts cannot grant a decree for specific performance subject to the permission, which may be obtained by one of the parties from the Government.** I am of the view thatthe suits filed by the plaintiff for enforcement of the void agreements cannot be entertained by the Civil Court."

(Emphasis supplied)

The Apex Court considers that the agreement of sale would come within the sweep of the word transfer as defined under Section 3(1)(e) of the Act and therefore, any agreement of sale in contravention with the provisions of the Act would undoubtedly become void. The coordinate benches of this Court while considering the issue have clearly held that, any transfer of a granted land done in contravention of Section 4(2) of the Act, would be a contract that is forbidden in law.

13. In the teeth of the aforesaid judgment of the Apex Court and the coordinate Benches of this Court, what is now required to be considered is, whether the subject agreement of sale and the General Power of Attorney executed thereon can be acted upon? Therefore, it is necessary to notice the agreement of sale and the General Power of Attorney. The relevant clauses of the agreement of sale are already quoted hereinabove. What remains to be noticed is the General Power of Attorney. The General Power of Attorney is as follows:

"**GENERAL POWER OF ATTORNEY**
(Pertaining to Sy.No.274, measuring 2 Acres 21 Guntas)

THIS POWER OF ATTORNEY executed on this the SIXTEENTH day of JUNE TWO THOUSAND AND FOURTEEN (16.06.2014):

BY : 1) Sri. ANJINAPPA
Son of late Poojappa
Aged about 60 years.

2) Smt. DODDAGANGAMMA @ GANGAMMA
Wife of Anjinappa
Aged about 55 years.

3) Smt. MANJULA
Daughter of Anjinappa
Aged about 31 years

4) Smt.MAMATHA
Daughter of Anjinappa
Aged about 26 years

5) Smt. PUSHPA
Daughter of Anjinappa
Aged about 22 years

6) Sri. VENUGOPAL

Son of Anjinappa
Aged about 18 years
(All are at Kuduvathi Village,
Nandi Hobli, Chikkaballapur Taluk
And Dist)

IN FAVOUR OF: Sri. N. MARE GOWDA
Aged about 38 years
Son of Sri. B. Narayanappa
Residing at Budhihala Village, Yaliyuru Post,
Devanahalli Taluk, Bangalore Rural District.
PAN No: ANOPM7962N

WITNESSES AS FOLLOWS

1) **WHEREAS**, the above named Sri. Anjinappa and others, all at Kuduvathi Village, Nandi Hobli, Chikkaballapur Taluk, Chikkaballapur Dist, desirous of selling, all that piece and parcel of agricultural land measuring 2 Acres 20 Guntas, Plus 1 Gunta kharab, bearing Sy No. 274, old Sy No.168/p, situated at Kuduvathi Village, Nandi Hobli, Chikkaballapur Taluk, Chikkaballapur District (which is morefully described in the Schedule given below and hereinafter referred to as the SCHEDULE PROPERTY) has entered into an Agreement of sale of even date with Sri. N Mare Gowda, for sale of the Schedule property and in terms of the aforesaid Agreement of sale and in compliance thereof, we hereby executing this Power of Attorney in favour of Sri. N Mare Gowda, to do all such acts, deeds and

things as set out herein below in regard to the Schedule Property.

II. NOW KNOW ALL MEN BY THESE PRESENTS THAT, the Sri. Anjinappa and others, all at Kuduvathi Village, Nandi Hobli, Chikkaballapur Taluk, do hereby nominate, constitute and appoint, **Sri. N. MARE GOWDA**, Aged about 38 years, Son of Sri. Narayanappa, at Budhihala Village, Yaliyuru Post, Devanahalli Taluk, Bangalore Rural District, as our true and lawful Attorney, in our name and on our behalf, to do all or any of the following acts, deeds and things, with regard to the Schedule Property:-

(a) to apply change of land use and obtain conversion order converting the Schedule Property from agricultural to non-agricultural purpose from the jurisdictional Deputy Commissioner and to complete all formalities of change in land use and conversion of the land

(b) to represent, us before all Government, Statutory, Local and other Authorities as also Courts and Tribunals in regard to or in connection with the Schedule Property:

(c) to have the plans prepared for construction of new building/s in the Schedule Property by engaging architects and structural engineers and other consultants;

(d) to make representation, file affidavits, applications, documents, necessary for the purposes of obtaining permission, clearances, exemptions, sanctions required under any statute for the construction and development on the Schedule Property before the Government of Karnataka, Central Government or any other appropriate Authority under any state or central statute;

(e) to pay all rates/taxes/cesses in regard to the Schedule Property as also the charges for electricity / water consumed and pay all deposits/charges/fees/contributions and other levies required for obtaining Licenses / Sanctions/Clearances/Permissions and to obtain receipts therefore;

(e) to apply for and obtain Commencement Certificate, Completion / Occupancy Certificates and other permissions, required for construction, completion and occupation of any Building's in the Schedule Property;

(f) to apply for and obtain necessary clearances, permissions, consents required for the development of the Schedule Property:

(g) to apply for and obtain plan sanctions from the concerned authority that is required for Sanctions, Licenses, Consents / Permissions / No Objection Certificates Commencement Certificates / Occupancy Certificates/Amendments/ Modifications, for such demolition and construction of buildings in the Schedule Property and to apply for and obtain electrical, water and sanitary connections, and in that behalf, to sign and execute all applications, affidavits, declarations, indemnities, plans and other documents;

(h) to construct buildings, structures as per the Sanctioned Plans and execute any projects in the Schedule Property at the cost of the Attorney,

(i) to submit applications, affidavits, statements, returns to the government of Karnataka and/or the Authorities under any state or central statue, to obtain necessary clearances, Exemptions, Sanctions and permissions required under any of the Act for the purpose sanction of plan and construction on the Schedule Property and to apply for and obtain any quotas / permits in regard to Building Materials, if necessary:

(j) to appear for and represent us before any Government, Statutory, Local, Revenue, Tax and other Authorities as also Courts and Tribunals in regard to the Schedule Property;

(k) to apply and obtain layout sanction plan from jurisdictional Planning Authority including the Power to release/relinquish areas forming part of Roads, Civic Amenities and Parks etc including the presentation and completion of registration process.

(l) to enter into assignment agreements/agreements for sale Schedule Property or any portions/shares thereof or enter into any kind of agreement/s on such terms as my attorney deems fit and to get the Agreement/s registered as well to cancel the said registration:

(m) to transfer and convey by way of sale or gift, release, exchange or otherwise on the Schedule Property or any portions/shares thereof and execute necessary deeds of sale/Conveyance in favour of the intending purchasers/transferees and to everything necessary for completing the sale/ conveyance/ transfer/ gift/ release/exchange of the same including execution of such deed/s and for the presentation of the sale deed/s or any other gifts as required for this clause and admitting execution thereof as well as to sign and execute all forms, affidavits, applications / statements / declarations / forms /returns, subject to conversion of land for non-agricultural use.

(n) to receive the consideration for sale/transfer/conveyance, as also advances, earnest money deposits, part payments and balance payments in regard to the sale/conveyance/transfer of Schedule Property or portions/shares therein and issue receipts and acknowledgements thereof;

(0) to apply for and obtain bifurcation, transfer and registration of Khata in regard to Schedule Property to the name of the purchaser or its nominee/s

(p) to rectify any document executed under this power of attorney, ratify any document executed by and to get the same registered by presenting and admitting the execution of the document mal to complete and comply all the formality of the registration;

(q) to take loans and financial facilities of any kind on the Schedule Property against the security of the Schedule Property at their own risk as to cost and consequences and the building to be constructed thereon, without, however, making us liable or responsible therefore in any manner whatsoever;

(r) to execute any deeds for lease, tenancy, license for Schedule Property or any portions/shares thereof with or without constructed area and give possession to such lessee, licencee, tenant. For the registration of such lease deed, tenancy and licence do everything necessary for completing thereof including presentation and admitting execution thereof as well as to sign and execute all forms, affidavits/applications/statements/declarations/forms/retu rns.

(s) to hand over possession of Schedule Property with or without the constructed area to any of the lessees, licensees or person authorised to occupy the Schedule Property or any part thereof,

(t) to renew a lease already granted and to terminate such lease or renewal and take buck the possession of the Schedule Property

(u) to institute, prosecute and defend all legal, revenue, tax and other proceedings relating to Schedule Property and to settle, withdraw, compromise, compound any suit or proceedings thereof;

(v) to sign and execute pleadings, applications, petitions, affidavits, declarations, Memoranda of Appeal, Revision and Review to be filed before any Court, Tribunal or Authority or Arbitration/s relating to Schedule Property,

(w) to produce documents and obtain return thereof, to give evidence and to instruct counsel in regard to any proceeding relating to Schedule Property;

(x) to present and admit for execution any document executed by us with regards to the Schedule property with or without constructed area and complete all the formalities of registration of such executed document by us including signing any Forms etc for such registration;

(y) generally to do all other acts, deeds and things necessary in regard to the management, maintenance, and disposal of Schedule Property;

(z) to do all or any other acts, deeds and things which are not specifically stated herein and which may be necessary and incidental as per the Agreement to Sell with reference to the Schedule Property and executants hereby undertakes to rectify all such acts, deeds and things made and executed by the aforesaid Attorneys pursuant to this indenture with reference to the Agreement to Sell;

(aa) to further delegate any of these powers to any person or persons as may attorney may deem fit, authorizing such person's to do and make all acts and things which my attorney is authorized to do under these presents except the power of sub-delegation,

WE HEREBY AUTHORISE and empower our said Attorney to delegate all or any of the aforementioned powers granted to any other person and to cancel / revoke such delegated powers to other person.

WE HEREBY AGREE AND UNDERTAKE TO RATIFY AND CONFIRM all and whatsoever our said Attorney may lawfully do pursuant to this Power of Attorney.

SCHEDULE PROPERTY

All that piece and parcel of agricultural land bearing Survey No. 274, old Sy No.168/p measuring 2 Acres 20 Gantas, plus 01 Gunta kharab, situated at Kuduvathi Village, Nandi Hobli, Chikkaballapur Taluk and District and bounded as follows:-

On or towards the East by : Sy.No.244

On or towards the West by : Sy.No.257 belonging to Mare Gowda

On or towards the North by : Sy No.270 belonging to Anche Muniyappa

On or towards the South by : Sy No.162/2 belonging to Sree Holdings

> Together with all easement rights, water courses and right of access, etc.”

The Special Power of Attorney is also executed on the same day in favour of the 1st respondent. The clauses in the Special Power of Attorney are as follows:

“**SPECIAL POWER OF ATTORNEY**

BY THIS SPECIAL POWER OF ATTORNEY, WE

1) Sri. ANJINAPPA
Son of late Poojappa
Aged about 60 years.

2) Smt. DODDAGANGAMMA @ GANGAMMA
Wife of Anjinappa
Aged about 55 years.

3) Smt. MANJULA
Daughter of Anjinappa
Aged about 31 years

5) Smt.MAMATHA
Daughter of Anjinappa
Aged about 26 years

5) Smt. PUSHPA
Daughter of Anjinappa
Aged about 22 years

6) Sri. VENUGOPAL
Son of Anjinappa
Aged about 18 years

(All are at Kuduvathi Village,
Nandi Hobli, Chikkaballapur Taluk
And Dist.)

Do hereby appoint, nominate and constitute, jointly and severally, **Sri. M.Maregowda** Aged about 38 years, Son of Sri. B.Narayanappa, Residing at Budhihala Village, Yaliyuru Post Devanahalli Taluk, and Bangalore Rural District, to be our true and lawful Attorney/s to do and execute all or any of the following acts, deeds, things, jointly or severally, that is to say:

1. To present for registration, any Agreement of Sale, Sale Deed/s, Lease Deed/s, Memorandum of mortgage by deposit of title deeds, Mortgage Deed/s, Partition Deed/s Rectification Deed/s, Deed of Release, Gift, Confirmation/Ratification or Re-conveyance and/or any other documents of conveyance/s executed by us and admit execution of the same in the presence of the concerned Sub-Registrar:

2. To appear for and represent us before the Sub-Registrar, to present and to admit execution of all or any agreement, documents and/or deeds executed by us;

3. To also present for registration, all or any other document duly executed by us from time to time without any limitation, before the Sub-Registrar having authority to register such deeds/documents and admit the execution of all or any of such document/s and or deeds in the manner required under law;

4. To present and admit, execution all such documents of sale transfer/conveyance/rectification/ratification, in regard to the sale of the property, before the concerned Sub-Registrar and attend to the formalities of the registration thereof;

5. To accept and acknowledge the receipt of any consideration shown to have been received by us in such documents/deeds and to do all other acts, deeds and things required for completion of registration of such documents/deeds;

6. To sign and execute necessary forms, declarations, affidavits and other papers required in law for registration of such documents and to take delivery of the documents so registered by giving appropriate receipts therefore;

7. Generally to do all such lawful acts, deeds and things in connection with the above matters as our attorney shall deem fit and proper as fully and effectually as we could do ourself notwithstanding no express power of authority in that behalf as hereunder provided without any sale powers.

8. We hereby agree and undertake that we will duly ratify all actions taken by our said Attorney/s and further state that all such actions in pursuance of this Special Power of Attorney shall be treated as if personally done by us.

SCHEDULE PROPERTY

All that piece and parcel of agricultural land bearing Survey No. 274, old Sy No.168/p measuring 2 Acres 20 Guntas, plus 01 Gunta Kharab, situated at Kuduvathi Village, Nandi Hobli Chikkaballapur Taluk and District and bounded as follows:-

On or towards the East by : Sy.No.244

On or towards the West by: Sy.No.257 belonging to Mare Gowda
On or towards the North by: Sy No.270 belonging to Anche Muniyappa
On or awards the South by: Sy No.162/2 belonging to Sree Holdings

Together with all easement rights, water courses and right of access, etc.

IN WITNESS WHERE OF WE, the above said have signed and executed this Special Power of Attorney on this **NINETEENTH day of JUNE TWO THOUSAND AND FOURTEEN (19.06.2014)**"

In the agreement of sale, the consideration that has passed through is ₹27,50,000/- which is calculated at ₹27,500/- per gunta. Time for completion of sale is only when permission is granted by the Government. In the General Power of Attorney, the conditions are that the 1st respondent was entitled to apply for change of land use; obtain conversion order converting the schedule property from agriculture to non-agricultural purposes; to represent before the State for all purposes; to apply and obtain completion certificate required for construction and occupation of any buildings in the schedule property; apply and obtain licence for any construction to construct buildings, structures as per the sanctioned plan and execute any projects in the schedule property and to apply and obtain a layout sanctioned plan; enter into assignment agreement/s of any kind; to transfer and convey by way of sale or gift, release or exchange or otherwise of the schedule property. After all this, only as an eyewash it is indicated to hand over possession of the schedule property with or without the constructed area to any of the lessees, licensees or person authorized to occupy the schedule property thereon and the Special Power of Attorney permits registration of the properties that are constructed on the schedule property.

14. If the three documents i.e., agreement of sale, General Power of Attorney and Special Power of Attorney are read in tandem, what would unmistakably emerge is, nothing was left for the grantee even to seek permission from the hands of the Government. Everything was handed over to the purchaser/1st respondent. The clause in the agreement of sale that permission has to be taken from the Government was only an eye wash. It becomes all the more clear that it was an eyewash for the reason that no permission is applied for, till the date of filing of the suit. The 1st respondent was happy with the possession that was handed over of the property to him. Therefore, till a legal notice is caused there was no warrant of any disturbance from the hands of these petitioners, as entire possession has already been handed over.

15. A three Judge Bench of the Apex Court, in the case of **SMT. NARAYANAMMA v. SRI GOVINDAPPA**[4]**,** while referring to the prohibition against transfer of possession under Section 61 of the Karnataka Land Reforms Act, 1961 holds as follows:

"…. …. ….

[4] (2019) 19 SCC 42

11. The short question that arises for consideration in the present appeals is, as to whether the agreement to sell dated 15-5-1990 executed by Bale Venkataramanappa in favour of the plaintiff would be enforceable in law or not.

…. …. ….

16. It could thus be seen, that this Court has held that the correct position of law is that, what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. This Court further held, that if the illegality is trivial or venial and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. It has further been held, that a strict view must be taken of the plaintiff's conduct and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. However, if the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose is achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail.

…. …. ….

18. This Court held that, which principle is to be applied in the facts of the case would depend upon the question, as to which principle is more consistent with public interest. The Court finds that, when both the parties before the Court are confederates in the fraud, the Court will have to find out which approach would be less injurious to public interest. The Court observed that, whichever approach is adopted, one party would succeed and the other would fail and, therefore, it is necessary to enquire as to which party's success would be less injurious to public interest. The Court in the facts of the said case finds that if the decree was to be passed in favour of Respondent 1 (who was the plaintiff), it would be actively assisting Respondent 1 to give effect to the fraud to which he was a party and it has been held that in that sense the Court would be allowed to be used as an instrument of fraud and that is clearly and patently inconsistent with public interest.

…. …. ….

20. It could thus be seen that, although illegality is not pleaded by the defendant nor is relied upon by him by way of defence, yet the court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action *ex turpi causa non orituractio*. It has been held, that no polluted hand shall touch the pure fountain of justice. It has further been held, that where parties are concerned in illegal agreements or other transactions, courts of equity following the rule of law as to participators in common crime will not interpose to grant any relief, acting upon the maxim *in pari delicto potior est conditiodefendetis et possidentis*.

…. …. ….

24. The transaction between the late Bale Venkataramanappa and the plaintiff is not disputed. **Initially the said Bale Venkataramanappa had executed a registered mortgage deed in favour of the plaintiff. Within a month, he entered into an agreement to sell wherein, the entire consideration for the transfer as well as handing over of the possession was acknowledged. It could thus be seen, that the transaction was nothing short of a transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Sub-section (1) of Section 61 of the Reforms Act begins with a non-obstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale, etc. would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1983, as such, the transfer in question in the year 1990 is beyond any doubt within the prohibited period of 15 years. Sub-section (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of sub-section (1) shall be**

invalid and it also provides for the consequence for such invalid transaction.

25. Undisputedly, both, the predecessor-in-title of the defendant(s) as well as the plaintiff, are confederates in this illegality. Both, the plaintiff and the predecessor-in-title of the defendant(s) can be said to be equally responsible for violation of law.

26. However, the ticklish question that arises in such a situation is:"the decision of this Court would weigh in side of which party"? As held by Hidayatullah, J. in *Kedar Nath Motani* [*Kedar Nath Motani* v. *Prahlad Rai*, (1960) 1 SCR 861 : AIR 1960 SC 213] , the question that would arise for consideration is as to whether the plaintiff can rest his claim without relying upon the illegal transaction or as to whether the plaintiff can rest his claim on something else without relying on the illegal transaction. Undisputedly, in the present case, the claim of the plaintiff is entirely based upon the agreement to sell dated 15-5-1990, which is clearly hit by Section 61 of the Reforms Act. There is no other foundation for the claim of the plaintiff except the one based on the agreement to sell, which is hit by Section 61 of the Act. In such a case, as observed by Taylor, in his "*Law of Evidence*" which has been approved by Gajendragadkar, J. in *Immani Appa Rao* [*Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370] , although illegality is not pleaded by the defendant nor sought to be relied upon him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action *ex turpi causa non orituractio* i.e. no polluted hand shall touch the pure fountain of justice. Equally, as observed in *Story's Equity Jurisprudence*, which again is approved in *Immani Appa Rao* [*Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370] , where the parties are concerned with illegal agreements or other transactions, courts of equity following the rule of law as to participators in a common crime will not interpose to grant any relief, acting upon the maxim *in pari delicto potior est conditiodefendentis et possidentis*.

27. It could thus be seen that, the trial Judge upon finding that the agreement of sale was hit by Section 61 of the Reforms Act, had rightly dismissed the suit of the plaintiff.

> **28.** Now, let us apply the other test laid down in *Immani Appa Rao* [*Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370] . **At the cost of repetition, both the parties are common participator in the illegality. In such a situation, the balance of justice would tilt in whose favour is the question. As held in *Immani Appa Rao* [*Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370] , if the decree is granted in favour of the plaintiff on the basis of an illegal agreement which is hit by a statute, it will be rendering an active assistance of the court in enforcing an agreement which is contrary to law. As against this, if the balance is tilted towards the defendants, no doubt that they would stand benefited even in spite of their predecessor-in-title committing an illegality. However, what the court would be doing is only rendering an assistance which is purely of a passive character.** As held by Gajendragadkar, J. in *Immani Appa Rao* [*Immani Appa Rao* v. *Gollapalli Ramalingamurthi*, (1962) 3 SCR 739 : AIR 1962 SC 370] , the first course would be clearly and patently inconsistent with the public interest whereas, the latter course is lesser injurious to public interest than the former."

(Emphasis supplied)

The afore-quoted judgment of the Apex Court *albeit* rendered in the context of the bar created under Section 61 of the Karnataka Land Reforms Act, 1961 still becomes relevant to the case at hand in answering whether possession of the granted land could be transferred during the period of non-alienation. The Apex court formulates a question as to whether the agreement to sell executed by one Bale Venkataramanappa in favour of the plaintiff would be enforceable in law or not. It is answered by the Apex Court by holding that the possession of the granted land could not have been transferred within the non-alienation period.

16. A coordinate Bench of this Court in **SMT.SATYAM LAKSHMI v. SRI K.M. KRISHNA MURTHY**[5] has held as follows:

> "…. …. ….
>
> 5. The application was contested by the plaintiff who contended that there was no provision in the PTCL Act that prohibited the filing of a suit for specific performance of an agreement of sale, more particularly when the agreement of sale mandated that the sale would be completed after obtaining the permission of the State Government. The Trial Court posted the case for issues by 05.11.2012.
>
> … … …
>
> 8. The learned counsel appearing for the petitioner/defendant No.11 contended that an agreement of sale is in respect of a granted land which amounts to transfer under Section 3(e) of the PTCL Act and therefore, the agreement set up by the plaintiff is unenforceable in law. He submitted that if the suit is not maintainable on the face of it, this Court should exercise power under Order VII Rule 11(d) of CPC to reject the plaint. He relied upon the Judgment of the Hon'ble Supreme Court in the case of **SOPAN SUKHDEO SABLE AND OTHERS vs. ASSISTANT CHARITY COMMISSIONER AND OTHERS [(2004) 3 SCC 137]**. He further invited the attention of this Court to the judgment of a Co-Ordinate Bench of this Court in the case of **SMT. NARASAMMA AND OTHERS vs. K.V.RAMPRASAD [ILR 2012 KAR 4261]**. He also relied upon the Judgment of this Court in the case of **SMT. P.VASANTHI vs. SMT. VIMALA MARTIN AND ANOTHER [ILR 1997 KAR 1127]** as well as the judgment in the case of **SRI.**

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[5] C.R.P.No.509 of 2012 dated 7-03-2022

> **VENAKATANARAYANAPPA vs. SRI. SIDDAPPA [ILR 2007 KAR 1323]** and contended that the suit for specific performance was liable to be rejected.
>
> … … …
>
> 14. **A meaningful reading of the entire plaint in the present case makes it clear that the suit property is a granted land and that the agreement was entered into without obtaining the prior permission of the Government under Section 4(2) of the PTCL Act. Thus, the agreement in question is void and unenforceable in the Court of law. Hence, the plaintiff cannot pursue the suit for the relief of specific performance.**
>
> 15. However, there is no impediment for the plaintiff to sue for any other relief, as provided in Section 22 of the Specific Relief Act, 1963. The plaintiff in the present case has now filed an application for amendment of the plaint to seek the relief of refund of the advance sale consideration."

(Emphasis supplied)

17. Another coordinate Bench of this Court in **MUSTAF v. GANGADHAR**[6] sets aside an identical transaction which had happened prior to the expiry of non-alienation period. The coordinate Bench holds as follows:

> "…. …. ….
>
> 13. **The trial Court has considered that there is a prohibitory clause in the grant order (hakkupatra) issued by Bagalkote Town Development Authority, in the name of the defendant, in which one of the condition at clause No.6 is that the allottee shall not alienate or transfer the property by way of sale or by way of rent and shall not**

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[6] **M.S.A.No.100012 of 2025 decided on 17-06-2025**

transfer the rights to any third party except for mortgaging to the scheduled banks, co-operative societies, LIC of India, for raising loan. Therefore, as per this clause there is a prohibitory clause not to sell the property within a period of 10 years from the date of issuance of 'hakkupatra'. Admittedly in the present case the agreement of sale dated 21.09.2004 is within a period of 05 years from the date of 'hakkupatra'. Thus, the question arises is, whether is it hit by section 23 of the Indian Contract Act. Section 23 of the Indian Contract Act reads as follows:

> 23. **What considerations and objects are lawful, and what not.**- The consideration or object of an agreement is lawful, unless—
>
> it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or
>
> involves or implies, injury to the person or property of another; or
>
> the Court regards it as immoral, or opposed to public policy.
>
> In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.
>
> ... ...

15. **Therefore, in this context, the agreement of sale made in this case dated 21.09.2004 is opposed to public policy. Hence, as per Section 23 of the Indian Contract Act, the agreement would not be said to be lawful, since it is within the prohibitory period of 10 years as opposed to public policy.**

16. In the similar circumstances, the Hon'ble Supreme Court in the case of Smt. Narayanamma and another Etc. Etc., V/s Govindappa and others Etc. Etc.,(AIR 2019 SC 4654) has held at paragraph Nos.23 to 25 as under:

"23. **The transaction between the late Bale Venkataramanappa and the plaintiff is not disputed. Initially the said Bale Venkataramanappa had executed a registered mortgage deed in favour of the plaintiff. Within a month, he entered into an agreement to sell wherein, the entire consideration for the transfer as well as handing over of the possession was acknowledged. It could thus be seen, that the transaction was nothing short of a transfer of property. Under Section 61 of the Reforms Act, there is a complete prohibition on such mortgage or transfer for a period of 15 years from the date of grant. Sub-section (1) of Section 61 of the Reforms Act begins with a non-obstante clause. It is thus clear that, the unambiguous legislative intent is that no such mortgage, transfer, sale, etc. would be permitted for a period of 15 years from the date of grant. Undisputedly, even according to the plaintiff, the grant is of the year 1983, as such, the transfer in question in the year 1990 is beyond any doubt within the prohibited period of 15 years. Sub section (3) of Section 61 of the Reforms Act makes the legislative intent very clear. It provides, that any transfer in violation of sub-section (1) shall be invalid and it also provides for the consequence for such invalid transaction.**

24. Undisputedly, both, the predecessor in-title of the defendant(s) as well as the plaintiff, are confederates in this illegality. Both, the plaintiff and the predecessor-in title of the defendant(s) can be said to be equally responsible for violation of law.

25. However, the ticklish question that arises in such a situation is:"the decision of this Court would weigh in side of which party"? As held by Hidayatullah, J. in Kedar Nath Motani [AIR 1960 SC 213 (supra)], the question that would arise for consideration is as to whether the plaintiff can rest his claim without relying upon the illegal transaction or as to whether the plaintiff can rest his claim on something else without relying on the illegal transaction. Undisputedly, in the present case, the claim of the plaintiff is entirely based upon the agreement to sell dated 15-5-1990, which is clearly hit by Section 61 of the Reforms Act. There is no other foundation for the claim of the plaintiff except the one

based on the agreement to sell, which is hit by Section 61 of the Act. In such a case, as observed by Taylor, in his "Law of Evidence" which has been approved by Gajendragadkar, J. in ImmaniAppa Rao [AIR 1962 SC 370 (supra)], although illegality is not pleaded by the defendant nor sought to be relied upon him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence, will take notice of it, and will dismiss the action ex turpi causa non orituractio i.e. no polluted hand shall touch the pure fountain of justice. Equally, as observed in Story's Equity Jurisprudence, which again is approved in ImmaniAppa Rao (supra), where the parties are concerned with illegal agreements or other transactions, courts of equity following the rule of law as to participators in a common crime will not interpose to grant any relief, acting upon the maxim in pari delicto potiorestconditiodefendantis et possidentis."

… … …

18. **Further, for considering the provision under Order VII Rule 11(d), it is invoked as plaint is barred by law. The law declared by legislature could not alone be considered as law but also the judicial pronouncement be considered as law declared for the purpose of considering Order VII Rule 11(d) of CPC.** The Hon'ble Apex Court in the case of Bhargavi Constructions and another V/s KothakapuMuthyam Reddy and others (2018) 13 SCC 480, has observed at paragraph Nos.24 to 32 reads as under:

24. In our considered view, the aforesaid law laid down by this Court is binding on all the courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court for challenging the award dated 22-8-2007 passed by the Lok Adalat. It was then for the writ court to decide as to whether any ground was made out by the writ

petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

25. The High Court was, therefore, not right in by-passing the law laid down by this Court on the ground that the suit can be filed to challenge the award, if the challenge is founded on the allegations of fraud. In our opinion, it was not correct approach of the High Court to deal with the issue in question to which we do not concur.

26. We also do not agree with the submissions of Mr Adinarayana Rao, learned Senior Counsel for the respondents when he urged that firstly, the expression "law" occurring in clause (d) of Rule 11 Order 7 does not include the "judicial decisions" and clause (d) applies only to bar which is contained in "the Act" enacted by the legislature; and secondly, even if it is held to include the "judicial decisions", yet the law laid down in State of Punjab cannot be read to hold that the suit is barred. Both these submissions, in our view, have no merit.

27. Black's Law Dictionary (9th Edn.) defines the expression "law". It says that "law" includes the "judicial precedents" (see at p. 962). Similarly, the expression "law" defined in Jowett's Dictionary of English Law (3rd Edn., Vol. 2, (pp. 1304/1305) says that "law is derived from judicial precedents, legislation or from custom. When derived from judicial precedents, it is called common law, equity, or admiralty, probate or ecclesiastical law according to the nature of the courts by which it was originally enforced".

28. **The question as to whether the expression "law" occurring in clause (d) of Rule 11 of Order 7 of the Code includes "judicial decisions of the Apex Court" came up for consideration before the Division Bench of the Allahabad High Court in Virendra Kumar Dixit v. State of U.P. The Division Bench dealt with the issue in detail in the context of several decisions on the subject and held in para 15 as under : (SCC OnLine All)**

> **"15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the courts including higher judiciary is also law."**

29. This very issue was again considered by the Gujarat High Court (Single Bench) in Hermes Marines Ltd. v. Capeshore Maritime Partners FZC The learned Single Judge examined the issue and relying upon the decision of the Allahabad High Court quoted supra held in para 53 as under : (Hermes case, SCC OnLineGuj)

> **"53. In the light of the above discussion, in the considered view of this Court, it cannot be said that the term "barred by any law" occurring in clause (d) of Rule 11 of Order 7 of the Code, ought to be read to mean only the law codified in a legislative enactment and not the law laid down by the courts in judicial precedents. The judicial precedent of the Supreme Court in Liverpool & London Steamship Protection and Indemnity Assn. Ltd. v. M.V. Sea Success I has been followed by the decision of the Division Bench in Croft Sales & Distribution Ltd. v. M.V. Basil. It is, therefore, the law as of today, which is that the Geneva Convention of 1999 cannot be made applicable to a contract that does not involve public law character. Such a contract would not give rise to a maritime claim. As discussed earlier, the word "law" as occurring in Order 7 Rule 11(d) would also mean judicial precedent. If the judicial precedent bars any action that would be the law."**

30. Similarly, this very issue was again examined by the Bombay High Court (Single Judge) in Shahid S. Sarkar v. Mangala Shivdas Dandekar. The learned Judge placed reliance on the decisions of the Allahabad High Court in Virendra Kumar Dixit v. State of U.P. and the Gujarat High Court in Hermes Marines Ltd. and held as under : (Shahid case, SCC OnLine Bom paras 18 & 19)

> **"18. … The law laid down by the highest court of a State as well as the Supreme Court, is the law. In fact, Article 141 of the Constitution of India categorically states that the law declared by the Supreme Court shall be binding on all courts within the territories of India. There is nothing even in CPC to restrict the meaning of the words "barred by any law" to mean only codified law or statute law as sought to be contended by Mr Patil.**

> **In the view that I have taken, I am supported by a decision of the Gujarat High Court in Hermes Marines Ltd. [Hermes Marines Ltd. ...**
>
> **19. One must also not lose sight of the purpose and intention behind Order 7 Rule 11(d). The intention appears to be that when the suit appears from the statement in the plaint to be barred by any law, the courts will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a defendant is able to establish that the plaint ought to be rejected on any of the grounds set out in the said Rule, the Court would be duty-bound to do so, so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation, which in the opinion of the court, is doomed to fail would not further be allowed to be used as a device to harass a defendant."**

31. Similarly, issue was again examined by the High Court of Jharkhand (Single Judge) in Mira Sinha v. State of Jharkhand. The learned Judge, in para 7 held as under: (SCC OnLineJhar)

> **"7. In the background of the law laid down by the Hon'ble Supreme Court, it is apparent that Order 7 Rule 11(d) CPC application is maintainable only when the suit is barred by any law. The expression "law" included in Rule 11(d) includes the law of limitation and, it would also include the law declared by the Hon'ble Supreme Court."**

32. We are in agreement with the view taken by the Allahabad, Gujarat, Bombay and Jharkhand High Courts in the aforementioned four decisions which, in our opinion, is the proper interpretation of the expression "law" occurring in clause (d) of Rule 11 of Order 7 of the Code. This answers the first submission of the learned counsel for the respondents against the respondents.

19. Therefore, when application is filed under Order VII Rule 11(d) of CPC, the wordings used in the said provision "barred by law" also includes judicial pronouncements declared by Hon'ble Apex Court. Accordingly, I answer the point framed in this case "in the affirmative". Therefore, when this being the factual matrix and law involved in the present case, the trial Court is correct in

> rejecting the plaint invoking Order VII Rule 11(d) of CPC. The first Appellate Court has committed error in remanding the matter to the trial Court for fresh consideration. The purpose of remanding the case for trial Court is for enabling the plaintiff to make claim of refund of earnest amount. Only for this purpose for refund of earnest amount, if the case is remanded, then, it would take some more time. Therefore, what would happen in future if the same is granted here, then it would meet the ends of justice to both parties and is also in the interest of equity. Therefore, the defendant is directed to refund the earnest amount of Rs.6,00,000/- received by the plaintiff along with interest at the rate of 9% p.a. from the date of the agreement till realization."

(Emphasis supplied)

The coordinate Bench holds that one must not lose site of the fact that the intention of Order VII Rule 11(d) CPC is not to protect transaction barred by law. The application filed under Order VII Rule 11(d) uses the terminology barred by law. The coordinate Bench holds that since the transaction was barred by law, no fault can be found with the order of the concerned Court rejecting the plaint invoking Order VII Rule 11(d) of the CPC and holds that the first Appellate Court committed an error in remanding the matter to the trial Court for fresh consideration.

18. In the light of the judgments rendered by the Apex Court and that of coordinate Benches of this Court what would

unmistakably emerge is, that the agreement of sale entered into between the petitioners and the 1st respondent one year prior to the completion or expiry of the non-alienation period is an action that is barred by law.

19. The learned counsel for the 1st respondent seeks to place reliance upon two judgments of the Division Benches of this Court, which have considered the very provisions of the Act and have held that since sale deed is executed only after completion of non-alienation period after requisite permission is granted, it would not render the transaction as void, and have protected such agreements that have been entered into between the grantees and subsequent purchasers. The said judgments of the Division Benches would not become applicable to the facts of the case, though they have interpreted the very provision, for the sole reason that the agreements in each case are different.

20. The agreement in the case at hand did not remain as agreement, but travelled a step forward by execution of a General Power of Attorney and a Special Power of Attorney. In the General

Power of Attorney and the Special Power of Attorney nothing is left for imagination. The transfer is complete, construction is permitted and the purchaser is permitted to treat the granted land as his own property, at which point in time neither the 15-year period was over nor permission was sought from the hands of the Competent Authority, as obtaining under sub-section (2) of Section 4 of the Act. In that light, the concerned Court ought to have applied its mind and not mechanically rejected the application under Order VII Rule 11 (d) of CPC. In the light of the transaction itself being void, the plaint could not have been entertained. The rejection of the plaint was the inevitable conclusion that the concerned Court ought to have arrived at. In that light, the application filed by the petitioner in I.A.No.12 under Order VII Rule 11(d) of the CPC merits acceptance and the resultant order would be rejection of the plaint.

23. For the aforesaid reasons, the following:

O R D E R

(i) Civil Revision Petition is **allowed**.

(ii) The order dated 16-04-2025 passed by the I Additional Senior Civil Judge & JMFC, Chikkaballapura in O.S.No.578 of 2023 stands quashed.

(iii) The application filed by the petitioners/defendants in I.A.No.12 in O.S.No.578 of 2023 is allowed and the plaint in O.S.No.578 of 2023 is rejected.

(iv) The petitioners shall now refund the amounts that they have received as consideration from the hands of the 1st respondent in the year 2014 within 12 weeks from the date of receipt of a copy of this order along with 6% interest.

SD/-
(M.NAGAPRASANNA)
JUDGE

BKP
CT:SS