
(2022) 12 TEL CK 0014

High Court For The State Of Telangana:: At Hyderabad

Case No: Appeal Suit No. 242 Of 2009

Shanti Potluri,
Yellareddyguda,
Hyderabad And
Another

APPELLANT

Vs

Gautami Society

RESPONDENT

Date of Decision: Dec. 5, 2022

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 6 Rule 2, Order 6 Rule 4
- Indian Contract Act, 1872 - Section 25
- Transfer of Property Act, 1882 - Section 3
- Telangana Socieites Registration Act, 1971 - Section 23
- Specific Relief Act, 1963 - Section 31

Hon'ble Judges: P.Sree Sudha, J

Bench: Single Bench

Advocate: K Suryanarayana

Final Decision: Allowed

Judgement

1. This appeal suit is filed against the judgment of the trial Court in O.S.No.19 of 2001 dated 13.03.2009.

2. The Goutami Society vide registration No.1833 of 1991 represented by the President filed O.S.No.19 of 2001 against Shanti Potluri/first defendant

for declaration that the plaintiff is absolute owner of the suit schedule property measuring an extent of Ac.1 1/4, 24 gts or 0.2495 Hect in Sy.No.s.190,

197 and 198 at Kondapur village of SherilingampallyMandal, R.R.District and also for cancellation of the sale deed vide document No.9202 of 1996

dated 20.11.1996 executed by the plaintiff in favour of the defendant and for perpetual injunction. During the pendency of the proceedings one

K.Ramaiah, Ex-President of the Society who executed the sale deed in favour of the first defendant was added as the second defendant vide

I.A.No.2586 of 2005 in O.S.No.19 of 2001 dated 01.08.2005.

3. Plaintiff, stated, that, their, Society, was, registered, on 27. 07.1991 under A.P (Telangana) Public Societies Registration Act, 1350

fasli. The Society was formed by NRIs with an objective to provide facilities for accommodation to NRIs on preference basis, to develop civic

consciousness and ideal environment for healthy living and also to develop Play Grounds, parks, Library and other facilities for the benefit of the

members. With the said objective Society intended to acquire land to develop lay-outs, to provide house sites without any profit motive and to develop

decent Township with adequate infrastructure. In pursuance to the objective of the Society plaintiff acquired the land to an extent of Acs.31 ½, -" 00

gts in Sy.No.190, 197 and 198 at Kondapur village, SherilingampallyMandal, R.R.District under four separate registered sale deeds vide No. 4326,

4327, 4328 and 4329 of 1991 dated 21.05.1991 in the office of the District Registrar, R.R.District. He also obtained a sanctioned layout from HUDA

vide No. 9355/HUDA/MP2/91 dated 05.06.1996 to divide the total extent of land into convenient plots. In the said layout to an extent of Ac.0 ½, -" 24

gts or 0.2495 Hect or 3020 Sq. yrds was earmarked for the purpose of school. The then President of the Society one V.V.Rao was authorized to

execute registered sale deeds in favour of the members as per the resolutionNo. G.S ½, -" 9/1993 and accordingly he executed all the sale deeds in

favour of the members in and around 1993.

4. After the term of the earlier body presided over by V.V.Rao, a new body came into effect and it was presided over by one K.Ramaiah as

President with other managing committee members i.e., B. Ram Kumar/Secretary, B.S.Chalapathy/Vice President, K. RajeshwarRao/Treasurer and

C.P.Krishna/Joint Secretary, started running one man show disregarding the Managing Committee and its authority. He executed registered sale deed

dated 20.11.1996 in favour of his sister " in law with dis-honest intention to usurp the area of 3020 Sq. yards which was earmarked for school

purpose. Plaintiff stated that as per Bye-laws of the Society, the management of the Society vests in the Managing committee and all the decisions

relating to property of the Society shall be taken by the said committee. The objective of the Society is that Society shall develop benefits for the

welfare of its members, as such managing Committee or the then President was not competent to sell the property to the third parties. The President

never informed the same to the Society and he executed the sale deed unanimously without any authorization, hence it is void ab-initio, inoperative and

isultravires and in breach of Bye-laws, as such it is not binding on the plaintiff Society. The present President of the Society proposed a resolution in

the Annual General Meeting held on 04.03.2001 to approve the alienation of land in favour of the defendant, but the General Body Meeting rejected

the proposal of K.Ramaiah and resolved to cancel the sale deed dated 20.11.1996 as it is nonest in law and also a void document, therefore requested

for declaration.

5. He further stated that Ramaiah has not handed over records to the newly elected body. He further stated that the defendant No.1 tried to

dispossess them on 05.03.2009 and 09.03.2001 in a highhanded manner. The cause of action arose on 24.12.2000 only when plaintiff came to know

about the fraud played against them and resolved to cancel the sale deed in favour of the defendant No.1 on 04.03.2001 when there was General

Body Meeting and when defendant tried to interfere with their possession. Therefore, requested the Court for declaration and for cancellation of the

sale deed and also for injunction.

6. In the written statement filed by the defendant No.1 she stated that as per the Bye-laws, President cannot alienate the property at his discretion and

can act only under the guidance of members of the committee. He executed sale deed by duly following Bye-laws and she purchased the same by

paying the valuable sale consideration as per the prevailing market rate and she also became the member of the Society. She further stated that Bye-

laws are silent regarding the responsibility of the Society to develop facilities for the welfare of the members and hence property allocated for school

purpose can be developed by any individual by becoming owner of the property. It is true that property cannot be used for any other purpose other

than the purpose situated under the sanctioned layout. Society decided to sell the property in her name with a condition that it should be used only for

construction of the school and she undertakes that it will be used only for the said purpose which was mentioned in the layout, as such there is no

malafide intention in selling the property by the Society and she became the member of the Society and procured title and possession over the suit

schedule property and the suit is filed only to settle the personal scores with the then President. She also stated that the document held by her is the

legally enforceable instrument and it requires no approval. As she was in possession of the property from 20.11.1996 question of interfering with the

property of the plaintiff does not arise. Plaintiff issued a letter to her on 15.11.1996 informing that her application for membership was accepted and

allotted 3020 Sq. yards land for construction of a school for sale consideration of Rs.3,02,000/-. She paid the said amount by Cheque bearing 102024

dated 19.11.1996 and the registered sale deed was executed by the Society vide document No.9202 of 1996 dated 20.11.1996, from then onwards she

is in actual possession of the property. She also approached the Commissioner, Sherilingampally and obtained permission for construction of compound

wall and it was agreed vide proceedings No.G-560/BP/294/96-97 dated 27.02.1997. After obtaining permission, she raised compound wall up to

basement level covering 3020 Sq. yards and also constructed a room with measurement 10'x12' as sanctioned and it is still in existence as

shown in the Photographs filed by her. As the rightful owner, she is enjoying the property but the plaintiff filed suit after 5 years, therefore requested the Court to dismiss the same.

7. The trial court after hearing arguments of both sides and evidence on record decreed the suit in favour of the plaintiff Society. Aggrieved by the

said Judgment defendants preferred an appeal and mainly contended that there is no prayer in the plaint regarding return of sale consideration, but the

Court directed the plaintiff to return the sale consideration with interest. She also stated that President of the Society is examined as P.W.1, but he

was convicted as per his cross-examination and is not eligible to become a member of the Society as he undergone imprisonment for more than 6

months and thus, suit filed by him is not maintainable as per clause 6 of the Rules and Regulations of the Society, conviction by foreign Court does not

bind him is unsustainable. It is further stated that the issue of disqualification of a President of the Society is governed by the statute and the bye-laws

should be inconsonance with the statute. Therefore, the statute prevails over the bye-laws. She also disputed the resolution filed under Ex.A18 on

04.03.2001 and Ex.A19 and further stated that only 14 members attended the meeting but not 15. D.W.2 is the Founder President of the Society and

he stated that he has not received any notice regarding conducting of Annual General meeting on 04.03.2001 and thus conducting of the meeting on

that date is in serious dispute. Defendants further stated that as per Order 6 rule 4 of C.P.C the allegation of fraud needs to be pleaded and proved by

the parties, but there was no specific allegation of the fraud in the plaint, as such in view of the citations reported in AIR 2006 SC 1971, (2005) 4 ALT

547 and 1977 SC 615, the trial Court failed to appreciate the same properly. When P.W.1 admitted regarding passing of consideration under Section

31 of Specific Relief Act, it is to be proved that whether written instrument is void or voidable. As the first appellant was in possession of the property

the question of granting injunction does not arise, therefore requested the Court to set aside the Judgment.

8. Respondent counsel absent on 02.11.2022, 04.11.2022 and on 15.11.2022. Heard arguments of appellant counsel on 15.11.2022 and in order to give

sufficient opportunity to the respondent counsel listed on 22.11.2022 for respondent arguments, but he did not turn up and advance arguments and

failed to comply the conditional order dated 15.11.2022, hence his arguments are treated as nil and reserved for Judgment.

9. Defendant No.2 remained exparte in the suit. Plaintiff was examined as P.W.1 and marked Exs.A1 to A25, defendant No.1 was examined as

D.W.1 and the Founder President was examined as D.W.2 and marked Exs.B1 to B12. The trial Court held that Ex.B10 was not executed for

residential purpose, as it was earmarked for school purpose and the sale consideration was @ Rs.100/- per Sq.yard though the market rate at that

time was Rs.400/- per Sq. yard and the President with malafide intention executed sale deed in favour of defendant No.1 without the consent of the

Managing Committee. As the second defendant remained exparte, she failed to establish that Managing Committee gave consent and ratified his

action. Admittedly, the first defendant is the sister "in law" of the second defendant and she has not filed any evidence to show that she was a

member of the Society. Ex.B5 and B6 signed by defendant No.2 in favour of defendant No.1 cannot be believed. Ex.B11 and B12 are notices

between both the advocates for filing of the suit. As such, the sale deed executed by defendant No.2 in favour of the defendant No.1 under Ex.B10 is

voidable. Regarding the conviction of P.W.1 the trial Court held that the conviction of the Foreign Court is binding on the members of the Society, it

was not taken up seriously by the governing body as such they have not terminated him. As the Society authorized him to represent before the Court

on 07.03.2001 though he was convicted in the year 1992 under Ex.A24, the suit filed by him is maintainable. He also relied upon the resolution passed

in Annual General Meeting on 04.03.2001 and publication given in the news paper clipping and the bye-laws of the Society executed in the year 1991

and held that plaintiff is entitled for declaration that they are the absolute owners and sale deed executed on 20.11.1996 is to be cancelled. As the

plaintiff is in possession of the property they are entitled for perpetual injunction.

However, as defendant already paid Rs.3,02,000/-, plaintiff was

directed to pay the same @ 12% per annum.

10. After passing of the Judgment the respondents herein addressed e-mails to the administrators of the several schools, some of them also responded

positively, in the meanwhile in view of the pendency of the appeal stay was granted. The copies of the e-mails are also filed before the court.

I.A.No.544 of 2001 is filed by the Society for grant of temporary injunction restraining defendants from alienating the suit schedule property in favour

of third parties and I.A.No.653 of 2001 was filed for the grant of temporary injunction restraining the defendant No.1 and his men from interfering

with the peaceful possession till the disposal of the suit. The trial Court by order dated 30.08.2001 dismissed the I.A.No.653 of 2001 and allowed

I.A.No.544 of 2001. Against the said order C.M.A.No.469 of 2002 was preferred before the Hon'ble High Court and the same was allowed by

order dated 22.07.2008 and the trial Court was directed to dispose of the suit within 6 months.

11. Now it is for the Court to decide that the Judgment of the trial Court is on the proper appreciation of facts or not and is liable to be set aside.

12. The parties herein are referred as plaintiff and defendants as they are arrayed in the trial Court for the sake of convenience.

13. Admittedly, the Society was registered on 27.07.1991 and acquired land under four registered sale deeds and four rectification deeds are also

entered between parties on 12.11.1992. Plaintiff himself in the plaint stated that he obtained sanctioned layout from HUDA on 05.06.1996 to divide the

total extent of Acs.31 " 00 gts into convenient plots and also layout to an extent of Ac.0 " 24 gts was earmarked for the purpose of school. He

also stated that V.V.Rao President of Society authorized to register the sale deeds on 09.06.1993 and he executed sale deeds in favour of the

members of the Society in and around 1993. It clearly shows that all the sale deeds were executed by the Founder President even prior to the

sanctioning of the layout from the HUDA. No one raised objection against him, for executing sale deeds for residential plots even without sanctioning

of layout though it is a glaring mistake on his part.

14. As per the bye-laws tenure of the President is 3 years, as such after completion of the tenure of V.V.Rao, one K.Ramaiah was elected as the

President along with Managing Committee as mentioned above. He executed sale deed in favour of the defendant No.1 on 20.11.1996 after receiving

valuable sale consideration, it was questioned by the next President one S.K.S.N.Prasad when he along with other members formed into entire

committee on 18.08.2000 he stated that he came to know about the execution of the sale deed only in the 3rd week of December, as such they

obtained certified copy and confronted the same in the meeting held on 04.03.2001 as the present body came into effect in March 2001, himself as

President along with other Managing Committee members. The Managing Committee came to know about the execution of sale deed on 24.12.2000

and also about the fraud played by the defendant No.2 against the Society. Even as on the date of knowledge the Society was in possession and

occupation of the school site and defendant No.2 also executed several other sale deeds. They filed O.S.No.886 of 2006 against him and sent notices

to all the members of the Society for holding General Body Meeting on 04.03.2001, in which it was resolved to cancel the sale deed executed by

defendant No.2 in favour of defendant No.1.

“Resolved that the sale deed executed by the Society represented by its President, Sri K. Ramaiah in favour of Smt. ShanthiPotluri in respect of

area earmarked for School admeasuring 3020 Sq. yds of land in the layout in Letter No.9355/MP2/HUDA/91 dated 05.06.1996 covered under

registered sale deed No.9202/1996 dated 20.11.1996 registered at the office of the Joint Sub Registrar II, Ranga Reddy District is hereby

approved and ratified.

The said proposal of the defendant No.2 was "rejected as wrongful action in all respects" unanimously. They also cancelled many resolutions of

defendant No.2 including the above sale transaction and gave paper publication on 16.12.2001 in Deccan Chronical and Eenadu. The defendant No.2

issued notice to 31.12.2001 through their counsel. Admittedly, even as per the version of the plaintiff as per the resolution No.G.59/1993 dated

09.06.1993, President of the Society is authorized to execute the sale deed in favour of the members and accordingly, the Founder President executed

all the sale deeds way back in the year 1993 itself, after completion of his tenure next President/Defendant No.2 assumed the charge and he also

executed certain sale deeds including the disputed transaction herein i.e., sale deed dated 20.11.1996. The said transactions were disputed by the next

President, P.W.1 in Ex.A13 dated 18.08.2000 when their committee was formed in para 4, P.W.1 stated as follows:

"4. We place on record our grateful thanks to the out going committee especially to Mr.K.Ramaiah, whose untiring efforts have brought the

Society to this current stage."

15. The main contention of P.W.1 is that defendant No.2 executed the sale deed without any authority unanimously and it was not approved by the

then Managing Committee. It is true that Management of Society shall be vested in the Managing Committee. But in the above extracted portion it

was clearly stated that the said transaction was approved and ratified, but who approved and ratified was not explained by both parties obviously it

should be approved by the then managing committee. None of the then Managing Committee members were examined before the Court. Though they

accepted certain resolutions executed by the second defendant during his tenure, they rejected this resolution "as wrongful action in all aspects"

unanimously, but how it became wrongful action was not explained anywhere. They also resolved to reclaim the site meant for the school which was

sold without the knowledge of the single member of the Society and resolved to cancel the unauthorized sale deed executed on 20.11.1996 in the said

meeting.

16. Admittedly, the sale deed was executed in the year 1996 and the resolutions were passed by P.W.1 along with his team on 04.03.2001 that is after

5 years. P.W.1 simply stated that they came to know about the fraud played by the defendants only on 24.12.2000. But, defendant No.1 stated that

after execution of the registered sale deed, she applied for permission from the Commissioner, Sherlingampally for construction of compounding wall

and one room on 27.02.1997 and after getting permission, she also raised the same and constructed one room. This clearly shows that there was

construction in the site earmarked for the school by the defendant No.1 in the year 1997 itself during the tenure of the defendant No.2. But, it was

neither objected nor resisted and no steps were taken by any of the Managing Committee members during the tenure of defendant No.2 for the

reasons best known to them, even the suit is filed only in the year 2001 by the next President of the Society. In view of the above discussion the

argument of the plaintiff that he came to know about the sale deed dated 20.11.1996 only on 24.12.2000 is not tenable. In a citation reported in (2007)

2 SCR 980 between LachhmanDassVs. Jagat Ram it was held that execution of a sale deed is also to be treated as a notice as per Section 3 of the

Transfer of Property Act, 1882. As Society is party to the sale deed can't plead ignorance of sale deed, Society ought to have filed suit within 3

years but filed after 5 years. It appears that he filed the suit only after the completion of tenure of defendant No.2 for his personal scores.

17. In fact, even in Annual General Meeting held on 04.03.2001, he along with his Managing Committee approved certain actions of the defendant

No.1 and rejected only two transactions made by the second defendant during his tenure. One is in favour of the first defendant and another in favour

of the Chandana Society, merely because defendant No.1 is related to defendant No.2, it cannot be said that registered sale deed was executed in her

favour with the malafide intention unanimously without the approval of the Managing Committee. Relationship of D.1 and D.2 does not ipso facto

make the sale invalid and no presumption of collusion can be drawn.

18. The competency of P.W.1 was also disputed by the defendant. Admittedly, as per the bye-laws of the Society under clause 6(b) membership can

be terminated on conviction for any offence. In this case, admittedly P.W.1 was convicted in the year 1992 in Gulf countries, but he was elected as

the President of the Society in the year 2001. When he is not eligible to become member how he became President of the Soccity is not known, even

afterwards when they came to know about the conviction, they never took steps for terminating him. Admittedly his membership is not in accordance

with the terms of the bye-laws of the Society, as such he is not entitled to be elected as the President and thus the maintainability of the suit filed by

him is also in serious dispute, as he is not competent to depose credibility of his evidence is to be assessed with great care and caution. He himself

examined as P.W.1, he has not examined any other witness on his behalf, there is no corroboration to his testimony and thus the trial Court erred in

relying on the testimony of P.W.1 in arriving to the conclusion, moreover he has not turned up before the appellate Court and contested the matter.

P.W.1 obtained certificate of market value on 29.10.2008, in which it was stated that the market value of the suit schedule property was Rs.400/- per

Sq.yard on 20.11.1996.

19. As per Ex.B2, letter addressed by the President of the Society to defendant No.1 stating that he accepted the membership of the defendant No.1

and also allotted the land earmarked for the school for sale consideration of Rs.3,02,000/-, accordingly they received Rs.3,02,000/- on 20.11.1996 and

the certificate of receipt filed under Ex.B3, shows that amount was remitted vide Cheque No.102024 dated 19.11.1996. In the sale deed executed by

defendant No.2 in favor of defendant No.1, it was mentioned that the land was allotted for the residential purpose. Admittedly, the land was

earmarked for the construction of the school and as per bye-laws of the Society it should be used only for the said purpose mentioned in the bye-laws,

but not for any other purpose. Therefore, defendant No.1 addressed a letter to the President of the Society on 05.12.1996 for rectification of the sale

deed and the defendant No.2 agreed on 10.12.1996 for rectification, but rectification deed was not executed by the Society in favour of defendant

No.1. Defendant No.1 in the written statement clearly agreed that they want to construct a school in the said premises as the said site was earmarked

only for the purpose of the school. No doubt, she obtained permission for compound wall and for construction of a room under Ex.B8 on 27.02.1997.

As the sale deed was executed in her favour only for residential purpose, she could not apply for permission for constructing the school as on the date

of getting Ex.B8. Moreover, until and unless the rectification deed is executed by the Society she cannot obtain permission for construction of the

school, and thus she applied for permission only for the construction of compound wall and room.

20. The sale deeds which were executed by the Founder President in favour of all the plot members are for residential purpose, as per the layout land

earmarked for the school and park was not allotted to anybody. As such when the next President executed sale deed in favour of defendant No.1 in a

routine manner it was executed for the residential purpose. But, immediately after noticing the same, defendant No.1 requested for rectification deed

and the President of the Society agreed for it in the year 1996 itself. In the year 1992, even when the Society acquired land under four registered sale

deeds there was mistake in the sale deeds and four rectification deeds were entered between the parties. Therefore, allotting the land for residential

purpose when it was earmarked for the purpose of constructing school can also be treated as mistake.

21. As the founder President was authorized to execute registered sale deeds and also even as per the bye-laws framed in the year 1991 "all

contracts and deeds shall be in the name of the President". The then President defendant No.2 executed sale deed in favour of defendant No.1

after duly receiving the sale consideration as per the prevailing market rate, therefore the argument of the plaintiff in the suit that it was executed by

him unanimously without any authority is not sustainable. The trial Court erred in appreciating the facts properly and arrived to the wrong conclusion.

The first appellate Court is empowered to re-appreciate the entire evidence as the appeal is the continuation of the proceedings of the original Court

and it is the valuable right of the appellants that all the questions of facts and law decided by the Trial Court are open for reconsideration.

22. Counsel of the appellant submitted that title of suit schedule property transferred to defendant No.1 under Ex.A12 on 20.11.1996 and it vests with

her till decree of cancellation is granted in favour of Society as Society pleaded that the sale deed is void, unless it is declared as invalid title vests with

defendant No.1 and the principle possession follows title is applicable to defendant No.1 and not to the plaintiff.

23. The plaintiff has no clarity, at one point he stated that the sale deed executed by the defendant No.2 is voidable and again stated that it is void and

asked for declaration to cancel the same, though he simply stated that he came to know about the fraud played by defendant No.2 against the Society

on 24.12.2000, he has not explained the particulars of the fraud alleged by him. Plaintiff must set forth the particulars of the fraud alleged by him. It is

not enough to use such general words as fraud, deceit without any particulars, as per Order 6 rule 4 r/w Order 6 rule 2 of the C.P.C it is required to

be separately pleaded with specificity, particularity and precision and thus it can be held that there is no pleading of fraud by the defendant No.2,

without any pleading any amount of evidence adduced by him cannot be considered. But, in this case except the evidence of P.W.1 no other evidence

is available on record to substantiate their version, plaintiff failed to prove the fraud played by defendant No.2 against Society and thus there is no

cause of action to file the suit. In the entire plaint inadequacy of the sale consideration was not raised. In the year 2008, he obtained the certificate

regarding the market value for the year 1986 and raised objection. P.W.1 in his cross-examination clearly observed as per bye-laws of 1991, to

become a member of the Society there is no necessity to be a N.R.I. He particularly admitted that they have not issued any notice to defendant No.1

after passing of resolution in Ex.A18 for cancellation of sale deed executed in her favour. He further stated that in the year 1991 V.V.Rao executed

several sale deeds, but they were not ratified and he has not filed any such ratification proceedings before the Court. He has also agreed that he

purchased one plot in favour of his son and another in favour of his daughter in the year 1991 at Rs.30/- per Sq.yard. It was admitted fact that the

plots were sold at the reduced price on the basis of "No loss and No gain".

24. After the Judgment of the trial Court the Society requested the popular schools to establish school in their premises, it clearly shows that the third

party is authorized to establish school in the earmarked area. As defendant No.2 executed sale deed in favour of defendant No.1 and she is ready and

willing to establish school in the said area and also sought for rectification deed for the mistake crept in the sale deed executed in the year 1996, she is

entitled for rectification and no qualification is required for running a school as argued by the plaintiff in the trial Court. As such, defendant No.1 is

competent for construction of a school in the land earmarked for the school. The counsel for the appellants argued that inadequacy of the

consideration is not a ground to cancel the same and also relied upon the Judgment passed by the Delhi High Court in the case of Trilok Nath v/s

Khem Chand &ors RSA No.165/2017 dated 03.07.2017 2017 (3) Cur CC 11 (Del), in which it was held as follows:

"Unfortunately undervaluing of immovable properties so as to either pay less stamp duty or for other reasons of concealment of income etc, is ripe

in this country, however, the appellant/plaintiff cannot take any benefit of the same in view of the provision of Section 25 of the Indian Contract Act,

1872 and which specified that inadequacy of consideration is not a ground for cancelling of a contract. In any case, it is very much possible that the

declared consideration need not have been the actual consideration, and which of course this Court does not deal with or is not concerned with in view

of the categorical provision of Explanation II to Section 25 of the Indian Contract Act.

25. There was an amendment to the bye-laws of the Society under Ex.A20, as the revised bye-laws were approved by the Annual General Meeting

on 31.07.2002, the old bye-laws executed in the year 1996 are applicable to the facts of the case and it cannot be said that the sale executed by

defendant No.2 in favour of defendant No.1 is not in consonance with the bye-laws of the Society.

“FUNCTIONS, OF THE, MANAGING, COMMITTEE, AND OFFICE BEARERS:

i) PRESIDENT:

He presides over all the meetings of the both General Body and Managing Committee and may exercise his casting vote in case of equality. He can

supervise all the branches of the Society and activities of the Society. All contracts and deeds shall be in the name of the President.

26. D.W.2 was the founder President of the Society. He stated in his evidence before the Court that he is not related to D.W.1. He worked as the

President of the Society from 1991 to 1995, as there were no elections till 1995. He also stated that it is for the Society either to run the school by

itself or by selling the site for the school purpose. The Society will not lose its right in constructing the school building if the site exists. In order to

purchase the school site one need not become member of the Society. He also stated that as per bye-laws of the Society, the person who is convicted

in a criminal case will automatically cease his membership in the plaintiff's Society. The bye-laws of the Society also extend beyond the limits of

Indian Border. He further stated that the President of the Society shall execute the sale deed in favour of the allottee after authorization to do so by

the Managing Committee. The counsel for the appellants argued that if at all defendant No.2 has resorted to mismanagement as alleged by the

plaintiff, it comes within the purview of Section 23 of the Telangana Societies Registration Act, 1971 and he also contended that the sale deed was

executed in the year 1996, but suit filed in the year 2001 i.e., after 5 years and it is barred by limitation, as it is the question of law it is for the Court to

consider the same, but the trial Court erred in not considering the same.

27. Admittedly possession was handed over to the defendant No.1 immediately after execution of the sale deed in her favour and she also obtained

permission for construction of compound wall and room in it and constructed the same and thus it can be said that she was in peaceful possession and

enjoyment of the suit schedule property. She sought for rectification of the sale deed and she is ready and willing to construct a school in the said site

as it was earmarked for the purpose of school in accordance with the bye-laws.

Therefore, the trial Court erred in granting injunction against

defendant No.1.

In the result, the appeal is allowed, the Judgment of the Trial Court is set aside and Society is directed to execute rectification deed in favour of the

appellant to facilitate her for construction of school as the land was allotted to her only for the said purpose. Appellant counsel stated that as per the

direction of the trial Court respondents deposited the sale consideration with interest before the appellant Court and thus they are entitled for the

refund of the said amount from the Court if it is deposited in the Court or from the appellant herein if it was withdrawn by her.

Miscellaneous petitions pending, if any, shall stand closed.