

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

APPEAL SUIT No.157 OF 2022

AND

I.A.No.1 OF 2026

IN/AND

APPEAL SUIT No.281 OF 2022

DATE: 09.10.2026

Reserved on: 23.07.2026

Pronounced on : 09.10.2026

Uploaded on : 09.10.2026

Between:

APPEAL SUIT No.157 of 2022

(CNR No.HBHC010218152022)

Kattar Jithender Rao and another

....Appellants

And

Kattar Upender Rao and others

....Respondents

APPEAL SUIT No.281 of 2022

(CNR No.HBHC010557212022)

Kattar Upender Rao

....Appellant

And

Kattar Jithender Rao

....Respondent

COMMON JUDGMENT

Since these two appeals arise out of the common judgment and decree dated 28.10.2021 passed by the learned VI

Additional District Judge, Mahabubabad, Warangal (for short 'trial Court') in O.S.No.123 of 2012 and O.S.Nos.84, 85, 86 of 2013, they are being disposed of by this common judgment.

2. Heard Sri K.V.Bhanu Prasad, learned Senior Counsel appearing for Sri Kothapalli Sai Sri Harsha, learned counsel for the appellants in A.S.No.157 of 2022 and for the respondent in A.S.No.281 of 2022; Sri A.Prabhakar Rao, learned counsel for the respondents in A.S.No.157 of 2022 and for the appellant in A.S.No.281 of 2022 and perused the record.

3. In A.S.No.157 of 2022, the appellants are the plaintiffs and the respondents are defendants in O.S.No.123 of 2012. In A.S.No.281 of 2022, the appellant is defendant No.1 and the respondent is plaintiff No.1 in the said Suit O.S.No.123 of 2012.

4. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity as they were arrayed before the trial Court.

Factual Matrix

5. Plaintiff No.1, Sri Kattar Jithender Rao, and defendant No.1, Sri Kattar Upender Rao, are natural brothers. Plaintiff No.2, Smt. Kattar Sarala Devi, is the wife of plaintiff No.1. The dispute between the parties relates to agricultural lands

situated at Ramavaram Village, Kodakandla Revenue Mandal, Mahabubabad District, formerly within Warangal District.

6. Plaintiff Nos.1 and 2 instituted O.S.No.123 of 2012 seeking a declaration that plaintiff No.1 is the owner and possessor of the plaint A-Schedule property and that plaintiff No.2 is the owner and possessor of the plaint B-Schedule property, together with a consequential relief of perpetual injunction.

7. The case of the plaintiffs, in substance, was that an oral family partition had taken place in the year 1968–69, pursuant to which plaintiff No.1 was allotted an extent of Ac.30.26½ Gts. According to the plaintiffs, out of the said extent, an extent of Ac.1.00 was sold to one Sarada, while an extent of Ac.9.26 Gts was subsequently gifted by plaintiff No.1 to plaintiff No.2 under a registered Gift Deed dated 19.07.2012.

8. The plaintiffs further alleged that defendant No.1 had taken advantage of certain blank papers signed by plaintiff No.1 during his stay in the United States and had created fictitious documents in respect of the suit properties. It was also alleged that defendant No.1 had instituted O.S.No.70 of 2009 for specific performance and O.S.No.1 of 2011 seeking an injunction in respect of the disputed properties. The plaintiffs alleged interference by defendant No.1 with their possession and

enjoyment of the suit properties and consequently sought the relief of perpetual injunction.

9. Defendant No.1 contested the suit and denied the plaintiffs' claim. His specific case was that he had purchased the suit B-Schedule property under an unregistered Sale Deed dated 25.05.1996 for a total consideration of Rs.3,10,000/-. According to defendant No.1, a sum of Rs.2,20,000/- had been paid towards the sale consideration and the balance amount of Rs.90,000/- was payable at the time of registration of the sale deed.

10. It was further pleaded that the transaction was scribed by the parties' brother, K. Narender Rao, and attested by their sister, Smt. N. Vimala Devi. Defendant No.1 claimed that possession of the property had been delivered to him pursuant to the said transaction and that he had been in continuous possession and enjoyment thereof. Defendant No.1 also relied upon revenue entries for the period from 2000-01 to 2007-08 in support of his possession.

11. Defendant No.1 further contended that the Gift Deed dated 19.07.2012 relied upon by plaintiff No.2 was hit by the Doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882, as it had allegedly been executed during the pendency of O.S.No.40 of 2009. He asserted his readiness and

willingness to pay the balance consideration of Rs.90,000/- and to complete the transaction by obtaining a registered sale deed.

12. Plaintiff No.1 also instituted a suit *vide* O.S.No.84 of 2013 seeking the relief of perpetual injunction in respect of the disputed property. The defence of defendant No.1 was substantially founded on the same unregistered Sale Deed dated 25.05.1996 and his claim of possession pursuant thereto.

13. Defendant No.1 instituted O.S.No.85 of 2013 seeking specific performance of the agreement contained in the unregistered Sale Deed dated 25.05.1996, along with the relief of perpetual injunction.

14. The plaint schedule described the suit lands as comprising Sy.Nos.337, 338/A, 340, 341 and 344, stated to be an aggregate extent of Ac.9.02 Gts. The plaintiff's case was that the total sale consideration was Rs.3,10,000/-, out of which Rs.2,20,000/- had already been paid and the balance amount of Rs.90,000/- remained payable at the time of registration. It was further pleaded that possession had been delivered to him pursuant to the transaction and that he had continued in possession and enjoyment of the property.

15. The plaintiff relied upon a legal notice dated 30.06.2009 issued through his General Power of Attorney (GPA) and the reply dated 22.07.2009 disputing the alleged contract. He

asserted that he had always been ready and willing to perform his part of the contract by paying the balance consideration of Rs.90,000/- and sought specific performance of the agreement together with an injunction.

16. The record further shows that the suit was originally instituted as O.S.No.71 of 2009 before the Senior Civil Judge, Mahabubabad, and was subsequently transferred and renumbered as O.S.No.85 of 2013.

17. Defendant No.1 also instituted a suit *vide* O.S.No.86 of 2013 seeking damages of Rs.80,000/- and a consequential injunction, alleging that the defendants had caused damage to his standing paddy crop in or about November 2010. The claim was contested and the alleged damage was denied.

18. Before the trial Court, the plaintiffs examined PW-1 and PW-2 and got marked Exs.A1 to A43. However, on the other hand the defendants neither examined anyone nor marked any exhibits.

19. Upon appreciation of the pleadings, oral and documentary evidence, the trial Court heard all four suits together and delivered a common judgment dated 28.10.2021.

20. Insofar as O.S.No.85 of 2013 and O.S.No.86 of 2013 are concerned, the trial Court observed that the plaintiff in both suits was one and the same person. However, the plaintiff did

not appear before the Court to adduce evidence in support of the plaint averments. The defendants specifically denied the material allegations made in the respective plaints. The trial Court noted that the material facts pleaded in the said suits, including the alleged agreement of sale and the plaintiff's claim of possession over the immovable property, were matters required to be established through documentary and other admissible evidence. The relevant documents were required to be exhibited before the Court in accordance with the rules of evidence. Since the plaintiff in the said Suits O.S.Nos.85 and 86 of 2013 failed to appear and no evidence was adduced or documents exhibited on his behalf, the plaint averments remained unsupported by evidence. The trial Court, therefore, held that the plaintiff had failed to prove the material facts pleaded in O.S.No.85 of 2013 and O.S.No.86 of 2013 and accordingly dismissed both suits.

21. Insofar as O.S.No.123 of 2012 and O.S.No.84 of 2012 are concerned, the trial Court examined the title and possession claimed by plaintiff No.1. It considered Ex.A.1, the original title deed, as well as the revenue records produced by the plaintiffs. The Court observed that, according to the plaintiffs' own case and the material on record, plaintiff No.1 had acquired the suit schedule properties through a joint family partition. However,

the Court further noted that plaintiff No.1 admittedly had a son and, applying the prevailing rules of Hindu law held that the son and daughters were also coparceners. Consequently, the Court held that plaintiff No.1 could not, by himself, claim an absolute right of ownership and possession over the entire suit schedule properties. On that reasoning, the claim of plaintiff No.2 to absolute ownership over the B-Schedule property on the basis of the Gift Deed executed by plaintiff No.1 was also held to be unsustainable.

22. The trial Court also examined the revenue records produced by the parties and noticed inconsistencies therein. It observed that there were no pahani records showing the plaintiffs in possession of certain lands covered by the relevant survey numbers. While the name of plaintiff No.1 was shown as pattadar in some survey numbers, the name of defendant No.1 appeared as possessor in respect of certain extents. The Court held that the revenue entries in favour of defendant No.1 could not simply be brushed aside, particularly in the absence of satisfactory material explaining the presence of his name in the revenue records or demonstrating that such entries were unlawfully made. The Court further observed that a revenue entry made by a public authority carries evidentiary significance unless displaced by tangible material. It also reiterated the

principle that a person in peaceful possession may maintain an injunction even against a true owner, leaving the alleged true owner to seek recovery of possession on the basis of title. On these grounds, the trial Court declined to grant the plaintiffs protection of possession over the suit schedule properties.

23. Accordingly, the trial Court answered the issues against the respective plaintiffs and dismissed all four suits by a common judgment dated 28.10.2021.

24. Aggrieved by the said judgment and decree dated 28.10.2021, plaintiffs preferred A.S.No.157 of 2022, while defendant No.1 preferred A.S.No.281 of 2022.

Submissions on behalf of the appellants in A.S.No.157 of 2022

25. The learned counsel for the appellants, assailing the impugned judgment and decree, advanced the following submissions:

- i. That the judgment and decree of the trial Court dismissing the suit for declaration in respect of the A and B schedule properties is contrary to the pleadings, evidence and material on record and is therefore liable to be set aside.
- ii. That the respondent No.1/defendant No.1 himself, in his written statement, admitted that the suit schedule

properties originally belonged to the appellant No.1/plaintiff No.1 and did not dispute his title. In the face of such admission, the trial Court ought not to have denied the declaration sought by the appellants by introducing, on its own, a question regarding the nature of the property and the alleged rights of the son of appellant No.1. No such claim was raised by any of the parties, the son was not a party to the proceedings, and no issue was framed in that regard. The finding of the trial Court on that basis is, therefore, contrary to the pleadings and the controversy between the parties.

- iii. That the finding that the appellant No.1, having a son, could not claim absolute rights over the properties and consequently could not validly execute the Gift Deed in favour of the appellant No.2, is contrary to the pleadings and evidence on record.
- iv. The trial Court also failed to properly appreciate the registered Gift Deed in favour of the appellant No.2, the title documents and the revenue records produced before it. The findings relating to possession and the interpretation placed upon the revenue entries are contrary to the material on record and do not

satisfactorily dislodge the appellants' claim of title and possession.

- v. That though respondent No.1 had sought specific performance against the appellant No.1 and damages against the appellants in the connected proceedings, he did not choose to adduce evidence in O.S.No.85 of 2013 and O.S.No.86 of 2013. The dismissal of those suits for want of evidence could not, by itself, furnish a basis for rejecting the appellants' claim for declaration and injunction in the present suit.
- vi. It was further submitted that the trial Court travelled beyond the pleadings and introduced the theory of coparcenary, holding that plaintiff No.1 could not claim absolute ownership merely because he had a living son. No such plea was raised by any of the parties, the son was not a party to the proceedings, and no issue was framed in that regard. The finding that plaintiff No.1 consequently lacked absolute rights over the property and could not execute the Gift Deed in favour of plaintiff No.2 was, therefore, contended to be unsustainable.
- vii. That the Gift Deed executed by appellant No.1/plaintiff No.1 in favour of appellant No.2/plaintiff No.2 was a

registered document and that the trial Court failed to appreciate the same in the proper perspective. It was also contended that the trial Court failed to properly appreciate Ex.A.1 and the revenue records while recording its findings on possession. The appellants submitted that the finding regarding their possession was contrary to the material on record and that the trial Court itself recognised the principle that a person in peaceful possession is entitled to seek protection of such possession even against a person claiming to be the true owner.

Submissions on behalf of the appellant in A.S.No.281 of 2022

26. The learned counsel for the appellant, assailing the impugned judgment and decree, advanced the following submissions:

- i. That the trial Court committed an error in dismissing O.S.No.85 of 2013, which was filed for specific performance of the agreement of sale dated 25.05.1996 and for perpetual injunction, without affording the appellant an effective opportunity to lead evidence. It was submitted that the dismissal was principally on the ground that the appellant did not appear to adduce

evidence and that his counsel reported no instructions, though the circumstances preventing the appellant from appearing were bona fide and beyond his control.

- ii. That the appellant was residing in the United States, was about 79–80 years of age and was suffering from serious ailments, including chronic lymphocytic leukemia, prostate cancer and heart ailment, besides having a pacemaker. During the COVID period and thereafter, he was advised by his doctors not to travel. Consequently, he could not come to India to give evidence.
- iii. That when the appellant visited India, he was informed by his counsel that his personal presence was not necessary. The appellant came to know of the dismissal only when he came to India on 12.02.2022. His subsequent efforts to resolve the family disputes through elders, including in the context of the undertaking dated 17.04.2022, were also bona fide. The delay in pursuing the appellate remedy was, therefore, neither wilful nor deliberate.
- iv. That the appellant had a specific case based on the agreement of sale dated 25.05.1996, under which the respondent agreed to execute a registered sale deed in

respect of the plaint schedule properties for a total consideration of Rs.3,10,000/-, of which Rs.2,20,000/- was paid, leaving a balance of Rs.90,000/-. The agreement was reduced to writing on Rs.100/- non-judicial stamp paper, scribed by Kattar Narender Rao and attested by Smt. N. Vimala Devi. It was further submitted that possession of the suit schedule properties was delivered to the appellant pursuant to the agreement and that, despite repeated requests, the respondent postponed execution of the registered sale deed on one pretext or another.

- v. That the appellant had documentary material in support of his case, including the agreement dated 25.05.1996, proof relating to payment of Rs.2,20,000/- material concerning delivery of possession, revenue entries relied upon by him, the legal notice dated 30.06.2009 and the reply dated 22.07.2009. The appellant had also taken steps for enforcement of his rights after the respondent instituted O.S.No.40 of 2009, resulting in the filing of the suit which was subsequently transferred and renumbered as O.S.No.85 of 2013.

- vi. That the dismissal of O.S.No.85 of 2013 without permitting the appellant to place his evidence on record has resulted in the appellant being deprived of an adjudication of his claim on merits. In view of the nature of the relief sought and the valuable property rights involved, the appellant ought to be granted one effective opportunity to adduce oral and documentary evidence and establish his case in accordance with law.
- vii. That the evidence in O.S.No.85 of 2013 has a direct bearing on the connected suit, particularly O.S.No.123 of 2012, as the proceedings concern the same properties and arise out of the same transaction. Therefore, learned counsel submitted that the judgment and decree in the connected suits may also require reconsideration after the appellant is afforded an opportunity to lead evidence in O.S.No.85 of 2013.

Submissions on behalf of the respondents in A.S.No.157 of 2022

27. The learned counsel for the respondents supporting the impugned judgment and decree, advanced the following submissions:

- i. That appellant/plaintiff No.1 could not claim absolute title over the suit schedule properties, as the properties formed part of the joint family property and his son had a coparcenary interest therein. On that basis, it was submitted that plaintiff No.1 could not validly gift the B-schedule property in favour of plaintiff No.2.
- ii. That the Gift Deed was executed during the pendency of O.S.No.40 of 2009 and was therefore hit by Section 52 of the Transfer of Property Act. The respondents also relied upon the revenue records to contend that defendant No.1 was shown to be in possession of certain extents and submitted that the plaintiffs failed to establish their lawful possession over the suit schedule properties.

Submissions on behalf of the respondents in A.S.No.281 of 2022

- i. With regard to O.S.No.85 of 2013, learned counsel submitted that the suit was rightly dismissed as the appellant failed to enter the witness box and adduce evidence in support of his claim. It was contended that the appellant had not satisfactorily explained his absence and that the alleged unregistered sale deed/agreement dated 25.05.1996 could not be relied

upon in the absence of proof. The respondents disputed the genuineness and legal validity of the document and contended that it was unregistered, insufficiently stamped and did not contain specific boundaries. It was also their case that the alleged agreement was brought into existence by using blank papers and that the appellant failed to establish payment of consideration, possession, and readiness and willingness to perform his part of the contract. The respondents further contended that the suit for specific performance was barred by limitation.

- ii. That no interference with the judgment and decree of the trial Court was warranted. It was contended that the scope of such remand, if any, ought to be confined to the said suit and the findings already recorded in O.S.No.123 of 2012 ought not to be disturbed and that reopening the entire matter would cause serious prejudice to the respondents.

28. I have taken note of the respective contentions urged and the material placed on record.

Consideration by this Court

29. In the present case, the trial Court dismissed O.S.No.85 of 2013 and O.S.No.86 of 2013 on the ground that the

appellant/plaintiff failed to appear and adduce evidence in support of the plaint averments. The trial Court observed that, in the absence of oral and documentary evidence, the material allegations made in the plaint remained unsubstantiated.

30. It is well settled that procedural default should not ordinarily defeat substantive rights, unless the default is deliberate or the party is guilty of contumacious conduct.

31. It is pertinent to note that the appellant/plaintiff in O.S.No.85 of 2013 was aged about 79–80 years, was residing in the United States and was suffering from serious ailments. He had engaged counsel to represent him before the trial Court, which recorded that the counsel reported no instructions. The appellant/plaintiff has stated that his counsel did not inform him about the disposal of the case and that he came to know of the dismissal only on 12.02.2022. He thereafter took steps to pursue his remedies and also attempted to resolve the family disputes amicably. These circumstances constitute sufficient cause for his non-appearance.

32. Further, the suit for specific performance of an agreement of sale relates to valuable agricultural land. In the circumstances of the present case, the interests of justice warrant consideration of the appellant/plaintiff being afforded one effective opportunity to adduce evidence, subject to

appropriate terms and to the respondents being given full opportunity to cross-examine the appellant/plaintiff and adduce rebuttal evidence. The trial Court can thereafter adjudicate the respective claims on merits. Therefore, the dismissal of O.S.No.85 of 2013 and O.S.No.86 of 2013, insofar as the suits were dismissed without the appellant/plaintiff adducing evidence in support of his claims, calls for interference.

33. Further, O.S.No.123 of 2012 was filed seeking declaration and injunction. O.S.No.85 of 2013 was filed seeking specific performance of the unregistered sale deed/agreement dated 25.05.1996 and injunction. Both suits relate to the same properties. The defence in O.S.No.123 of 2012 is that appellant in A.S.No.281 of 2022 (Kattar Upender Rao) acquired the properties under the unregistered sale deed/agreement dated 25.05.1996 and was put in possession thereof. The plaint in O.S.No.85 of 2013 proceeds on the same transaction. Therefore, the evidence to be adduced in O.S.No.85 of 2013 is directly relevant to the adjudication of the issues arising in O.S.No.123 of 2012.

34. While deciding O.S.No.123 of 2012, the trial Court considered the revenue records and recorded that appellant/defendant No.1 was shown as possessor of certain extents. However, in O.S.No.85 of 2013, the appellant/plaintiff

was not afforded an opportunity to establish, by oral and documentary evidence, the agreement dated 25.05.1996, payment of Rs.2,20,000/-, delivery of possession, readiness and willingness, and the revenue entries relied upon by him. The trial Court also recorded findings touching upon title, coparcenary rights, the validity and effect of the Gift Deed and the plea of *lis pendens*. Those findings were recorded without the benefit of the evidence which the appellant/plaintiff in O.S.No.85 of 2013 seeks to adduce in support of the transaction forming the foundation of his claim.

35. Without expressing any final opinion on the merits of the respective claims, including the validity and legal effect of the unregistered sale deed/agreement dated 25.05.1996, the plea of readiness and willingness, the plea of limitation, the effect of the Gift Deed, the plea of *lis pendens* under Section 52 and 53-A of the Transfer of Property Act, or the questions relating to title and possession and leaving all such questions open for consideration by the trial Court on the basis of the complete evidence that may be brought on record, the suits O.S.No.123 of 2012 and O.S.No.85 of 2013 are remanded to the trial Court.

36. Since, O.S.No.84 of 2013 and O.S.No.86 of 2013 are also connected suits arising out of the same common judgment, as the immediate direction is to reconsider O.S.No.123 of 2012 and

O.S.No.85 of 2013, the trial Court may, if considered necessary and convenient, restore the connected suits to its file and dispose of all the connected suits together, so as to avoid any possibility of conflicting findings. The parties shall be at liberty to adduce such oral and documentary evidence in the respective suits as may be permissible in accordance with law.

37. I.A.No.1 of 2026 is filed by the appellant in A.S.No.281 of 2022 to receive the medical record dated 07.02.2026 issued by the doctor. Failure on the part of the appellant to adduce evidence before the trial Court stated to be on account of the fact that he was advised by the doctors not to undertake travel during COVID. Hence, this Court deems it appropriate to receive the medical record submitted by the appellant for a fair and proper adjudication of the appeal.

38. Accordingly, I.A.No.1 of 2026 is allowed. The trial Court shall take into consideration the aforesaid medical record produced by the appellant.

Conclusion

39. For the foregoing reasons, this Court is of considered view that the appellant in A.S.No.281 of 2022 ought to be afforded an effective opportunity to adduce oral and documentary evidence in support of his claim in O.S.No.85 of 2013. And as such evidence may have a direct bearing on the issues arising in

O.S.No.123 of 2012, which is the subject matter of A.S.No.157 of 2022 inasmuch as the connected suits were disposed of by a common judgment and the findings therein are interrelated, the said matters require reconsideration on the basis of the complete evidence to be brought on record.

40. Accordingly, A.S.No.157 of 2022 and A.S.No.281 of 2022 are disposed of. The common judgment and decree dated 28.10.2021 passed in O.S.No.123 of 2012 and O.S.Nos.84, 85 and 86 of 2013 is set aside. O.S.No.123 of 2012 and O.S.No.85 of 2013 are restored to the file of the learned VI Additional District Judge, Mahabubabad, Warangal, for fresh disposal, uninfluenced by the findings recorded in the impugned judgment. The trial Court shall afford the plaintiff in O.S.No.85 of 2013 a reasonable opportunity to adduce evidence, subject to payment of costs of Rs.50,000/- to the defendant in the said suit and shall afford the defendant an opportunity to cross-examine and adduce rebuttal evidence and mark documents in accordance with law. The *status quo* directed by this Court *vide* order dated 28.11.2022, as existing today in respect of the suit schedule properties, shall continue until fresh disposal of the suits by the trial Court. In view of the advanced age of the plaintiff, the trial Court is requested to proceed with the trial

expeditiously and endeavour to dispose of the suit as early as possible.

As a sequel, miscellaneous applications pending if any in the appeal, shall stand closed. No costs.

G.M.MOHIUDDIN, J

Date: 09.10.2026
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