

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No.1549 OF 1995

AND

TRANSFER APPEAL SUIT No.122 OF 2009

COMMON JUDGMENT:

These two appeals are filed by the plaintiff in O.S. No.24 of 1984 on the file Subordinate Judge Court, Addanki, Prakasham District, and the defendants in O.S. No.66 of 1989 (O.S. No.29 of 1983 on the file of District Munisiff Court, Addanki) on the file of Subordinate Judge Court, Addanki.

02. Since the property involved in both the suits is one and the same, the trial court pronounced the common judgment dated 31.07.1995 whereunder the Suit filed by the plaintiff, in O.S. No.24 of 1984, who is the first appellant herein in both the appeals, for declaration and for recovery of possession was dismissed while granting permanent injunction in O.S. No.66 of 1989 in favour of the plaintiffs therein and against the appellants herein.

03. For convenience of reference, the ranks given to the parties in O.S. No.24 of 1984 will hereinafter be adopted throughout the judgment.

04. The first appellant - Kotha Venkateswarlu @ Krishna Reddy filed O.S. No.24 of 1984 claiming relief of declaration of title to the schedule property and for recovery of possession of the schedule property alleging that the schedule property originally belongs to Gogulamudi Narsireddy, who married Rama Lakshamma, who was his sister's daughter. The plaintiff is the son of another sister, by name Ankamma. Since Narsi Reddy and Rama Lakshamma were not blessed with any children, the plaintiff was brought up by Narsi Reddy and Rama Lakshamma. Thus, the plaintiff is adopted child of both Narsi Reddy and Rama Lakshamma.

05. The first defendant is the brother of Rama Lakshamma, second and third defendants are the sons of first defendant. Narsi Reddy died intestate leaving behind his wife Rama Lakshamma as sole legal heir in 1962. Thus, Rama Lakshamma became absolute owner of the property. Rama Lakshamma having succeeded the assets of Narsi Reddy, executed settlement deed dated 19.06.1965 giving the A Schedule property with absolute rights and reserving the life interest in B schedule property with vested remainder to the plaintiff. Since the date of execution

of settlement deed dated 19.06.1965, the plaintiff is in exclusive possession and enjoyment of the plaint A schedule property and assisting Rama Lakshamma.

06. The defendants are powerful and influential persons, who induced Rama Lakshamma to execute settlement deed dated 30.07.1982 in favour of defendants 2 and 3. By the date of execution of settlement deed dated 30.07.1982, the said Rama Lakshamma had no right to execute such deed settling the A and B schedule property. Thus, the settlement deed in favour of defendants 2 and 3 is not valid.

07. Narsi Reddy died due to cancer, he was not in a position to execute any Will during his last days as he was not in sound disposing state of mind, but the first defendant manipulated the Will as if it was executed by Narsi Reddy. Even assuming that Narsi Reddy executed the Will on 10.08.1962 Rama Lakshamma has become absolute owner, in view of Section 14(1) of Hindu Succession Act, 1956, as the property was given in lieu of her maintenance.

08. The plaintiff filed O.S. No.283 of 1982 on the file of District Munsiff Court, Addanki, for grant of permanent injunction and also for temporary injunction, but after hearing both sides, the suit was dismissed on the ground that the plaintiff was not in possession and enjoyment of the property.

09. The defendants filed O.S. No.29 of 1983 for grant of permanent injunction and obtained temporary injunction during the pendency of the suit. Thus, the plaintiff was dispossessed, and thereby he is entitled to recover the possession of the property as consequential relief of declaration of title by virtue of settlement deed dated 19.06.1965. Hence, the suit.

10. The first defendant filed written statement. Defendants 2 and 3 have adopted the written statement filed by the first defendant by filing a memo.

11. The defendants resisted the claim of the plaintiff on various grounds while admitting the relationship among the parties. The following are the specific grounds urged in the written statement.

A) Rama Lakshamma has no right to execute the settlement deed as she is only limited owner by virtue of the Will executed by Narsi Reddy in her favour and therefore the settlement deed executed in favour of the plaintiff dated 19.06.1965 is not valid and enforceable under law.

B) Narsi Reddy executed the Will dated 10.08.1962 in sound

disposing state of mind and he also executed a sale deed in favour of Talla Venkata Subbamma. As a legatee under the Will, Rama Lakshamma is entitled to enjoy the property during her life time, as Narsi Reddy created limited or restricted interest without right of alienation under the said Will. Narsi reddy bequeathed Ac.0.95 cents to his niece.

C) Narsi Reddy died on 03.09.1962, and after his death Rama Lakshamma, being a legatee and limited owner, enjoyed the property.

D) After the death of Narsi Reddy, there were differences between Rama Lakshamma and the first defendant. The plaintiff took advantage of the situation obtained the settlement deed and it is not enforceable in Law.

E) On 06.05.1965 the plaintiff got issued a legal notice on behalf of Rama Lakshamma, who was in the hands of the plaintiff for a short spell and after disposal of the criminal case pending against them, later Rama Lakshamma joined the first defendant and expressed her desire to surrender her life interest, agreed to give Ac.1.30 cents of land in S.No.46/82, executed settlement deed dated 30.07.1982. Therefore, defendants 1 and 2 became owners of the property and they are continuing in possession and enjoyment of the same. Hence, the plaintiff is not entitled to claim declaratory relief and consequential relief for recovery of possession.

12. After amendment of the plaint, the first defendant filed additional written statement raising the specific contention that the suit is "barred by limitation".

13. On the strength of the above pleadings, the trial court framed issues, which are extracted hereunder:

01. Whether the settlement deed dated 19.06.1965 relied on by the plaintiff is true, valid and binding on the defendants?
02. Whether the settlement deed dated 30.07.1982 relied on by the defendants is true?
03. whether the surrender of life interest in the suit properties pleaded by the defendants is true?
04. Whether the Will dated 10.08.1962 executed by late G.Narsi reddy is true, valid and binding on the plaintiff?
05. Whether the rights of Y. Rama Lakshamma in the suit properties became absolute by virtue of the provisions of Hindu Succession Act 30 of 1956?
06. Whether the suit is bad for non joinder of Y. Rama Lakshamma?
07. Whether the suit schedule is correct?
08. Whether the plaintiff is entitled for the declaration and possession of A schedule property as prayed?
09. To what relief?

14. On 04.08.1992 the following additional issue was framed,

01. Whether the suit properly valued?

02. To what relief?

15. O.S. No.29 of 1983 was filed by the defendants in O.S. No.24 of 1984 for grant of permanent injunction restraining the defendant, who is the plaintiff herein, by name Kotha Venkateswarlu @ Krishna Reddy, raising almost similar contentions raised in their written statement filed in O.S. No.24 of 1984 while contending that the defendants therein including the appellants herein made an attempt to interfere with their peaceful possession and enjoyment of the property, sought for permanent injunction.

16. Whereas the defendants filed written statement reiterating the contentions urged in O.S. No.24 of 1984. Therefore, to avoid repetition of the specific contentions raised by both the parties in O.S. No.66 of 1989 (O.S.No.29 of 1983 on the file District Munisiff, Addanki, Prakasham District) are not extracted.

17. The trial court framed only two issues which are as follows:

i) Is the plaintiff entitled to permanent injunction?

ii) To what relief?

18. During the course of common trial, on behalf of the plaintiffs, P.Ws.1 to 5 were examined and Exs.A.1 to A.15 were marked, on behalf of the defendants D.Ws.1 to 7 were examined and Exs.B.1 to B.45 were marked.

19. Upon hearing argument of both the learned counsel, considering oral and documentary evidence, the trial court dismissed the suit in O.S. No.24 of 1984 declining the declaration of title to the plaintiff/ first appellant herein for the schedule property while granting permanent injunction against the defendants in O.S. No.66 of 1989 (appellants in Tr.A.S.No.122 of 2009).

20. Aggrieved by the Decrees and common Judgment, the plaintiff in O.S. No.24 of 1984 (appellant in A.S.No.1549 of 1995) and the defendants in O.S. No.66 of 1989 (O.S. No.29 of 1983 on the file of District Munisiff Court, Addanki, Prakasham District), preferred the present appeals raising several contentions.

21. The grounds in both the appeals are almost identical. The specific contentions urged by the appellants in both the appeals are as follows:

a) The trial court considered the genuineness and validity of the Will, dated 10.08.1962 marked as Ex.B.31 without insisting the proof of the Will as required under Section 68 of Indian Evidence Act, 1872 (for short, 'the Act, 1872).

b) The trial court did not consider the mental condition of Narsi Reddy as on the date of execution of the Will, he was in unconscious state for a period of one month prior to the death. But applied Section 90 of the Act, 1872, and believed the execution of the Will, thus committed illegality.

c) The trial court totally ignored Ex.B.32 - Judgment in Calendar Case and in view of rivalry, the question of execution of settlement deed in favour of defendants 2 and 3 is improper.

d) The trial court ought to have raised the presumption that the Will was not executed by Narsi Reddy in sound disposing state of mind as he was undergoing treatment in the hospital by the date of alleged execution. Non examination of the doctor is fatal to the case of the defendants, and if the suspicious circumstances shrouded in execution of Ex.B.31 are considered, the trial court could not granted the decree, but committed serious error in accepting the Will by applying Section 90 of the Act, 1872.

e) The trial court did not consider the right of Rama Lakshamma as a legal heir of Narsi Reddy, though she is the only legal heir succeeded the asset of Narsi Reddy. When she alone was the legal heir of Narsi Reddy, she is competent to execute settlement deed in favour of the plaintiff. But the trial court did not consider the competency of Rama Lakshamma to execute the registered settlement deed, even if execution of the Will by Narsi Reddy is accepted. Even a limited interest was created in favour of Rama Lakshamma by Narsi Reddy, her restricted or limited interest was enlarged into an absolute interest thereby she is entitled to execute settlement deed. But the trial court did not appreciate this contention in proper perspective and finally requests this Court to reappraise entire evidence and pass a decree in favour of the plaintiff/ first appellant that he is the owner of the plaint schedule property and for recovery of the possession of A schedule property, setting aside the decree and judgment passed by the trial court.

22. In Transfer Appeal Suit No.122 of 2009 the appellants almost raised the same grounds, in addition to the grounds urged in A.S. No.1549 of 1995. It is contended that non-examination of doctor is fatal and that there was no infringement or invasion of legal right of the plaintiff in the said Suit. In such case, the plaintiff in the said suit is not entitled to claim permanent injunction. Apart from that, the trial court concluded that the defendants 2 and 3 are the owners of the property, but in view of the limited scope of trial in injunction suit, recording such finding is unwarranted and prayed to set aside the common Judgment and Decree of the trial court.

23. During the course of argument, learned counsel for the appellants in both the appeals, Sri G. Pedda Babu, would contend that the finding of the trial court is without any legal basis, and acceptance of the Will executed by Narsi Reddy in favour of Rama Lakshamma creating restricted or limited interest to enjoy the property during her life time and vested remainder in favour of defendants 2 and 3 itself suffice to conclude that her limited or restricted interest is enlarged into an absolute interest. In such case, she is competent to execute the settlement deed - Ex.A.1 in favour of the appellants. But the trial court did not consider these aspects in proper perspective.

24. It is further contended that the Will was allegedly executed in the hospital by Narsi Reddy, who was undergoing treatment for brain tumour (carcinoma), in such case Narsi Reddy was not expected to be in sound disposing state of mind at the time of execution of Ex.B.31.

25. Moreover, none of the witnesses were examined to prove sound disposing state of mind of Narsi Reddy at the time of execution of Ex.B.31, but the trial court applied Section 90 of the Act, 1872, accepted the Will and such approach of the trial court is erroneous and the presumption under Section 90 of the Act, 1872 would not apply to the Wills and it would not dispense with proof of Will as required under Special Rules of Evidence contained in Sections 68, 69 and 70 of the Act, 1872. Hence, finding of the trial court that the Will executed by Narsi Reddy in favour of Rama Lakshamma creating restricted or limited interest and vested remainder to Defendants 2 and 3 is unwarranted and the Will is to be rejected.

26. Finally, it is contended that non-production of the original settlement deed is not a ground to disbelieve the case of the plaintiffs in O.S.No.24 of 1984 and registration extract is suffice to prove the execution of original of Ex.A.1. Non-production of Ex.A.1 is not fatal since certified copy of Ex.A.1 is sufficient as it is secondary evidence. Therefore, finding of the trial court that the plaintiff failed to prove his title by producing original of Ex.A.1 is erroneous. The admission of Rama Lakshamma in the Calendar Case is another strong circumstance to conclude that Narsi Reddy never executed any Will. But the trial court on erroneous appreciation dismissed the suit in O.S. No.24 of 1984 and allowed O.S. No.66 of 1989.

27. Finally, the defendants in O.S. No.24 of 1984, taking advantage of dismissal of the suit filed by the plaintiff for permanent injunction in O.S. No.283/1982, filed

another suit for permanent injunction and obtained interim injunction. Since then they are continuing in possession. Therefore, their possession is not lawful. Consequently, the defendants are not entitled to claim permanent injunction in O.S. No.66/1989(O.S. No.29/1983). But the trial court did not appreciate these contentions in proper perspective and finally prayed to set aside the Decree and common Judgment passed by the trial court and to pass a Decree in favour of the plaintiff in O.S. No.24/1984 while dismissing O.S. No.66/1989.

28. Per contra, the learned counsel for the respondent, M.V. Suresh Kumar, would contend that Ex.A.1 is inadmissible in evidence since the very of execution of the Will in favour of Rama Lakshamma is denied. However she is not a party to the suit, she was examined as a witness before the trial court. In her evidence, she categorically denied the execution of Ex.A.1, that apart there was no pleading explaining what had happened to the original of Ex.A.1 - settlement deed as required under Rule 14 of Order VII of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'). Without laying any foundation in the pleadings and without obtaining any permission from the trial court, the plaintiff adduced secondary evidence. Hence, basing on Ex.A.1 the claim of the plaintiff cannot be accepted. It is further contended that the limited or restricted interest is enlarged into an absolute interest of Rama Lakshamma under the Will is without any substance for the reason that under Section 14 (2) of Hindu Succession Act, 1956 any restricted interest is created under the Will would not enlarge into an absolute interest. Therefore, Rama Lakshamma was incompetent to execute settlement deed under the original of Ex.A.1, in view of restricted or limited interest created under the Will.

29. It is further contended that the plaintiffs in O.S. No.66 of 1989 and defendants/respondents in these two appeals established their right as legatees under the Will being vested remainder holders and proved due execution of Ex.B.31 by Narsi Reddy in a sound and disposing state of mind. Therefore, application of Section 90 of the Act, 1872 by the trial court by accepting the contention of the defendants in O.S. No.24 of 1984 is not an illegality and contended in support of all the findings recorded by the trial court. Finally, prayed to dismiss both the appeals confirming the common Judgment and Decrees passed by the trial court in O.S. No.24 of 1984 and in O.S. No.66 of 1989.

30. Considering rival contentions, perusing the Decrees and common Judgment in both the Suits, oral and documentary evidence, the points that arise for

consideration are as follows:

1. Whether Narsi Reddy executed Will, marked as Ex.B.31, in sound disposing state of mind by creating limited or restricted interest in favour of Rama Lakshamma and vested remainder in favour of Defendants 2 and 3?
2. Whether the restricted or limited interest created in favour of Rama Lakshamma was enlarged into an absolute interest? If not, is she competent to execute the original of settlement deed - Ex.A.1?
3. Whether Ex.A.1 is valid and enforceable?
4. Whether the plaintiff is entitled to declaration of his title to A and B schedule property and recovery of possession of A schedule property from the defendant in O.S. No.24/1984?
5. Whether the defendants in O.S. No.24 of 1984 and the plaintiffs in O.S. No.66/1989 are in lawful possession and enjoyment of the schedule property on the date of filing of the suit? If so, whether the defendants in O.S. No.66/1989 made any attempt to infringe or invade the legal rights of the plaintiffs? If so, are they entitled to permanent injunction restraining the defendants from interfering with their possession and enjoyment of the property?

Point No.1:

31. The appellant in A.S.No.1549 of 1995 claimed right over the property based on settlement deed - Ex.A.1, but whereas the defendants therein and plaintiffs in O.S. 66/1989 set up their claim on a registered Will allegedly executed by Narsi Reddy in sound disposing state of mind, marked as Ex.B.31, creating life interest in favour of his wife Rama Lakshamma, and vested remainder to defendants 2 and 3. The defendants in O.S. No.24 of 1984 filed an independent suit claiming perpetual injunction restraining defendants and their men from interfering with their peaceful possession and enjoyment of schedule property on the strength of the Will. The trial court, while answering issue No.1 in O.S. No.66 of 1989 in paragraphs 31 and 33, held that the plaintiffs therein were found in possession and enjoyment of the property and got title over the property. Thus, the trial court recorded a finding regarding title of the plaintiffs in O.S No.66 of 1989, respondents herein.

32. In a suit for injunction simplicitor, the court is not supposed to record any finding about the title in view of the limited scope of trial. Therefore, finding recorded by the trial court regarding the validity and genuineness of the Will holding that the plaintiffs in O.S. No.66/1989 proved their title to the property is beyond the scope of trial in the suit for injunction simplicitor and it is unwarranted finding. In case any such relief is granted, it amounts to granting higher relief than they claimed, without collecting any court fee. Therefore, such finding is liable to be set aside.

33. One of the contentions raised by learned counsel for respondents/ plaintiffs in O.S. No.66/1989 is that by virtue of the Will, the plaintiffs in the said Suit became absolute owners of the property after death of Rama Lakshamma. But Rama Lakshamma is alive, however, she executed settlement deeds, in favour of defendants 2 and 3 (plaintiffs in O.S. No.66 of 1989) giving up her life interest, marked as Ex.B.33 and B.42. Thus, they became absolute owners of the property. To substantiate their contention, defendants themselves examined as witnesses, besides examining the son of the scribe, who can identify the signature and handwriting of his father Pattabi Ramaiah, as D.W.7. In his evidence, he identified the hand writing of his father, who is the scribe of Will - Ex.B.31 and also the signature of one of the attestors by name Seshaiah. Thus, the defendants herein (plaintiffs in O.S. No.66 of 1989) invoked the procedure contemplated under Sections 69 and 70 of the Act, 1872 to prove due execution of Will - Ex.B.31, as the scribe and attestors are no more. In view of limited scope of trial in O.S. No.66 of 1989, the examination of D.W.7 to identify the handwriting of scribe and attestor of Ex.B.31 is wholly unnecessary.

34. The trial court recorded the finding that the Will is of 30 years old and it is a registered document. Therefore, the presumption under Section 90 of the Act, 1872 would apply to such document, and drawing presumption under Section 90 of the Act, the trial court held that the Will was executed by Narsi Reddy in a sound and disposing state of mind. This finding is challenged before this court contending that the presumption under section 90 of the Act, 1872, about due execution of Ex.B.31, is not applicable to the Wills. Earlier this Court in **Kandadai Tirumal Acharya And Others vs Kandadai Venkatachari And Others** (decided on 10.04.2008) held that where the Will is more than 30 years old, the court can always draw presumption that the signature and other part of the Will is in the handwriting of attestor, but this view is not accepted by the Apex Court in **Bharpur Singh & Others vs Shamsheer Singh** held that presumption under Section 90 of the Act, 1872 is not available in respect of the will. The Madras High Court in **Subrathinam v. T. Govndraj** held that the provisions of Section 90 of the Act, 1872 keeping in view the nature of proof required for proving a Will have no application. A Will must be viewed in terms of provisions of Section 63(c) of Succession Act, 1925 and Section 68 of Indian

Evidence Act, 1872. In the event, the provisions thereof cannot be complied with, the other provisions contained therein, namely Sections 69 and 70 of the Act, 1872 providing for exceptions in relation thereto would be attracted. Compliance with statutory requirements for providing an ordinary document is not sufficient, as Section 68 of Indian Evidence Act postulates that execution must be proved by examining atleast one of the attesting witnesses, if an attesting witness is alive and subject to the process of the court and capable of giving evidence. In view of the law declared by the Apex Court, it is difficult to draw presumption under Section 90 of the Act, 1872 merely because the document is of 30 years old. The finding of the trial court that the Will - Ex.B.31 is presumed to be true and valid, by drawing presumption under Section 90 of the Act, 1872 is without any legal basis and it is contrary to the law declared by the Apex court in the judgments referred supra. Hence, in view of the Apex Court Judgment, finding of the trial court is liable to be set aside.

35. According to my discussion in the earlier paragraphs, the scope of trial in a suit for permanent injunction is limited and the courts at best may incidentally go into title without attaching any finality. But in the present case, the trial court recorded the finding in paragraphs 31 and 33 of the Judgment holding that the plaintiffs in O.S. No.66 of 1989 proved their title and it is an erroneous approach. Hence the finding of the trial court is hereby set aside.

Point No.2:

36. One of the contentions of the plaintiff in O.S. No.24 of 1984 and appellants herein in both the appeals is that even if Narsi Reddy executed the Will in sound disposing state of mind under Ex.B.31 creating life interest in favour of Rama Lakshmma, it is in lieu of her maintenance or pre existing right. Therefore, her restricted or limited interest in the property was enlarged into an absolute interest, thereby she is competent to execute original of Ex.A.1 in favour of plaintiff. Therefore, original of Ex.A.1 cannot said to be invalid. No doubt, any limited or restricted interest is conferred on a female in lieu of her maintenance or arrears of maintenance or towards pre existing right on the date of commencement of Hindu Succession Act or thereafter such restricted or limited interest would enlarge into an absolute interest under Section 14(1) of Hindu Succession Act, 1956 (for short, 'the Act, 1956'). But Section 14(2) of the Act, 1956 is an exception to Section 14(1) of the Act, 1956 and any restricted or limited interest is created under a Will or Gift in lieu of

her maintenance or arrears of maintenance or pre existing right in the property, such limited or restricted interest would not enlarge into an absolute interest.

37. Now the question is, whether the limited interest created under the Will would enlarge into an absolute interest in the property?

38. The learned counsel for defendants/appellants relied on a judgment of Apex Court in **V. Tulasamma and others v. Sesha Reddy (dead) by L.Rs** in support of his contentions. Before advertng to the law laid down by the Apex Court and other Courts, it is apposite to extract Section 14(1) of the Act, for better appreciation, accordingly extracted hereunder:

“Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner”.

39. A bare reading of Section 14(1) of the Act makes it clear that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. The explanation annexed to Section 14(1) clarified about the nature of classification which includes by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance etc. Therefore, taking advantage of the word ‘devise’, the learned counsel for appellants, would contend that Will is a devise, by which, a limited interest was created in favour of Rama Lakshamma, by Narsi Reddy, under Ex.A.1—Will. But sub-section (2) is an exception to sub-section (1) and according to it, the property acquired by way of Gift or under a Will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the Gift, Will or other instrument or the decree, order or award prescribes restricted interest in the property. Therefore, a bequeath under Ex.A.1, creating restricted or limited interest, will not enlarge into an absolute interest since sub-section (2) is an exception to sub-section (1) of Section 14 of the Act.

40. In **Tulasamma’s** case referred supra, the Apex Court held that even if any bequeath is made under the Will, in lieu of maintenance, would enlarge into an absolute interest in the property. If the principle laid down in the above said case is applicable to the present facts of the case, there is substance in the contention of the learned counsel for defendants/appellants. But in the latter judgment of Apex Court

in ***Shivden Kaur (dead) by LRs and another v. R.S. Grewal***, (a Division Bench of Apex Court) placing reliance on a judgment reported in ***Karmi v. Amru(AIR 1971 SC 745)***, held as follows:

“If a Hindu female has been given only a life interest through Will or Gift or any other document referred to in Section 14 of the 1956 Act, the said rights would not stand crystallized into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the provisions of Sections 14(2) and 30 of the 1956 Act would become otiose. Section 14(2) carves out an exception to the rule provided in sub section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or Gift, giving her only a “life interest”. It would remain the same even after commencement of the 1956 Act and such a Hindu female cannot acquire absolute title”.

41. The Apex Court did not place reliance on **Tulasamma’s** case referred supra since the full Bench of the Court did not even refer or consider the Full Bench Judgment of Apex Court in **Amru’s** case, which is a judgment of coordinate Bench. Thus, the law declared in **Tulasamma’s** case is contrary to **Amru’s** case referred above.

42. A similar question came up in **Sadhu Singh v. Gurdwara Sahib Narike**, wherein a Division Bench of Apex Court had an occasion to answer a similar question and held as follows:

“When he thus validly disposes of his property by providing for a limited estate to his heir, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in [Section 14\(2\)](#) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking [Section 14\(1\)](#) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of [Section 14\(2\)](#) of the Act and excluding the operation of [Section 14\(1\)](#) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of [Section 14\(1\)](#) of the Act in the case of a testamentary disposition taking effect after the Act, would make [Sections 30](#) and [14\(2\)](#) redundant or otiose. It will also make redundant, the expression “property possessed by a female Hindu” occurring in [Section 14\(1\)](#) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. [Sections 14](#) and [30](#) both have play. [Section 14\(1\)](#) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to

maintenance”.

43. In the latter judgment in **Jagan Singh (dead) through LRs. V. Dhanwanti and others**, their Lordship Justice P.Sathasivam and Justice H.L.Gokhale held in para Nos. 10 and 13 as follows:

“Section 14(1) will not apply to any property which is given by way of a gift or under a Will. Testator had made a Will and under that he had created a restricted estate in favour of his wife and thereby, it is permissible”.

44. Similarly, in **Gaddam Ramakrishnareddy and others v. Gaddam Ramireddy and others**, a Division Bench of Apex Court held as follows:

“When life estate created by donee in favour of widow was not in lieu of her maintenance as she was already managing properties. Widow’s rights are to be governed by sub section (2) of Section 14 and her right does not blossom into absolute estate as contemplated under Section 14(1)”.

45. In **Kothi Satyanarayana v. Galla Sithayya and others**, a Division Bench of Apex Court held as follows:

“Only question which was canvassed at the hearing was whether in the facts of the case, sub-section (1) or sub Section (2) of Section 14 of the Act was applicable and when it was not disputed that sub section (2) of Section 14 was an exception to Sub-section (1) thereof and if the situation was covered by sub-section (2), the transformation provided for in sub-section (1) would not take place. Settlement deed was instrument contemplated under sub section (2) and admittedly it created a restricted estate in favour of the widow. Therefore, sub-section (1) of Section 14 would not be attracted”.

46. A similar question came up before a Division Bench of this Court in **T.K. Subhash v. Smt Kamala Bhai and others** , wherein it was held in para No.15 as follows:

“Right of a female Hindu to bequeath the property given for her life, where a property is given to a female Hindu only for her life under a Will, she has no right to bequeath the property to be enjoyed by legatees after her lifetime”.

47. From the principles laid down in the above judgments, the consistent law declared by the Apex Court is that a bequeath creating limited or restricted interest under the Will would not enlarge into absolute interest and thereby Rama Lakshamma being the legatee under Ex.A.31-Will is not competent to execute Ex.A.1-Settlement Deed. Therefore, the question of conferring any title on plaintiff by virtue of Ex.A.1 does not arise and Ex.A.1-Settlement Deed is not binding on the plaintiff. Since the limited or restricted interest on Rama Lakshamma was not enlarged into an absolute interest, the Settlement Deed under Ex.A.1 is invalid and it will not confer any right on the plaintiff over the property.

48. Of course, in **V. Tulasamma's case** referred supra, the Apex Court held that such restricted or limited interest would enlarge into an absolute interest, but the Supreme Court did not take into consideration the earlier judgment of coordinate Bench in **Mst.Karmi v. Amru and others**.

49. In view of law declared by the Apex Court in recent judgments, following earliest judgments of the Apex court in Amru's case referred supra, I find that Section 14(1) of the Act, 1956 had no application to the present case since restricted or limited interest created in favour of Rama Lakshamma under a bequeath i.e. Will - Ex.B.31 would not enlarge into an absolute interest in favour of Rama Lakshamma, it would directly fall within the ambit of Section 14(2) of the Act, 1956. Thereby, I find no substance in the contention of the plaintiff in O.S. No.24 of 1984 and the appellant in both the appeals. Hence, on this ground, the settlement deed in original of Ex.A.1 cannot be upheld. Accordingly point No.2 is answered in favour of the defendants in O.S. No.24/1984 and respondents herein and against the plaintiff in O.S. No.24/1984 and appellants herein.

Point Nos.3 and 4:

50. The plaintiff in O.S. No.24 of 1984 and the appellant herein claimed declaration of title to A and B schedule of property and for recovery of possession of A schedule property on the strength of the alleged settlement deed executed by Rama Lakshamma in his favour under the original of settlement deed marked as Ex.A.1. It is the contention of the plaintiff in O.S. No.24/1984 that the property originally belongs to Narsi Reddy, who died issue less. Consequent upon his death, Rama Lakshamma, wife of Narsi Reddy, being the sole legal heir succeeded the property and later she executed settlement deed under the original of Ex.A.1. Original of

Ex.A.1 was not produced before the trial court and the defendants disputed the execution of Ex.A.1 contending that Narsi Reddy only created restricted or limited interest in favour of Rama Lakshamma permitting her to enjoy the property and vested remainder in favour of Defendants 2 and 3. Therefore, she is incompetent to execute the original of Ex.A.1 and it was never executed by Rama Lakshamma. Further, when the plaintiff claiming right and title over the property on the strength of Ex.A.1, the initial onus of proof is on the plaintiff/first appellant herein, to establish that the Will was executed by Narsi Reddy in a sound and disposing state of mind. If the plaintiff is able to discharge initial onus of proof, the burden shifts on to the defendants in O.S. No.66 of 1989 to disprove the same. There is distinction between the burden of proof and onus of proof, onus of proof shifts but not burden of proof. Therefore, the burden lies on the person who asserted any fact and it never shifts, but the onus of proof shifts. As such, shifting of onus is a continuous process in evaluation of evidence.

51. To substantiate the contentions of the plaintiff/ first appellant, he was examined as P.W.1. He did not produce the original of Ex.A.1, obviously for the reasons best known to him. On the other hand, he produced certified copy of settlement deed marked as Ex.A.1. In his cross examination, he narrated as to how Rama Lakshamma and Narsi Reddy treated him. In the examination in chief itself he invented a theory of loss of original of Ex.A.1 and specifically testified that the original settlement deed Ex.A.1 is not traced and it is found beyond recovery. But at the end of the said paragraph i.e., third paragraph of his examination in chief, the witness asserted as follows:

“ Some times later I came to know that the first defendant and Rama Lakshamma executed a settlement deed in favour of defendants 2 and 3, which was property is the part and parcel of the property given to me by Rama Lakshamma under settlement deed Ex.A.1. I don't not know the contents of the settlement deed executed by Ramalakshamma and first defendant in favour of defendants 2 and 3.”

52. In the cross examination, P.W.1 offered a different explanation for the non production of original of Ex.A.1 and testified as follows:

“I myself took return of the original of Ex.A.1 from Registrar, Narsaraopet after its registration. The receipt issued by the Registrar for taking return of the original of Ex.A.1 is also lost. After registration of the original of Ex.A.1, the District Registrar gave a notice saying that the property is undervalued. The said notice was issued by the Registrar to me. I paid penalty also. The notice issued by the Registrar and the receipt showing payment of penalty are also lost. In that connection, I took the original of Ex.A.1 to Narasaraopet and kept it in the cloth shop, by the time I went to take return of the document, the shop was wound up.”

53. Thus, the explanation for non-production of original of Ex.A.1 is that the document was kept in a cloth shop at Narsaraopet, but when he went to take back the document, the shop was wound up. The theory of loss of document is not believable for the reason that in the entire plaint, the plaintiff/ appellant did not disclose anything about the loss of original of Ex.A.1 and seeking permission to produce secondary evidence. In the list of document annexed to the plaint, registration extract was produced, but it is silent whether the document annexed to the plaint is original or registration extract. It is evident that original was not filed as it was allegedly lost when it was kept in a cloth shop by the plaintiff. In such a case, it is for the plaintiff to disclose what had happened to the original of Ex.A.1, in the pleadings itself Rule 14 of Order VII C.P.C. is relevant provision which contemplates the procedure for production of document. According to Rule 14 of Order VII C.P.C., where a plaintiff sues upon a document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint; where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is; A document which ought to be produced in the Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit, but there is an exception to the said Rule and when a document was produced in the cross examination of witness, the procedure referred above is not required to be complied. Of course, sub-rule (1) and (3) of Rule 14 of Order VII C.P.C. was amended by Act 46/99 with effect from 01.07.2002, but sub-rule (2) remained unaltered. According to sub-rule (2), it is for the plaintiff to disclose such document sued upon in whose possession or power it is in the plaint itself. Curiously, there was no mention in the list of document of the plaint strictly adhering to sub-rule (2) of Rule 14 of Order VII C.P.C., but suddenly invented a theory of loss of Ex.A.1.

54. The main endeavor of the counsel for the defendant/ respondent herein is that the plaintiff did not seek permission of the trial court to adduce secondary evidence i.e. registration extract of settlement deed, which was marked as Ex.A.1. In the absence of laying foundation in the pleadings about the loss of original of Ex.A.1,

registration extract of settlement deed cannot be received in evidence. But this objection was not raised before the trial court. However, registration extract is secondary evidence and it can be received as secondary evidence and the learned counsel for the appellant/ plaintiff contended that the registration extract is a secondary evidence and the same can be received and in support of his contention, he placed reliance on **Basant Singh and others v. Brij Raj Saran Singh and others** wherein the Privy Council held that,

"when the document was lost, it can never be proved absolutely, where there was no doubt that a document existed which purported to be a Will and from which a copy was taken, that the evidence of loss of the original Will which was not seen for many years was sufficient to satisfy the provisions of Section 65, Evidence Act, so as to make copy admissible. Further held that Section 90, Evidence Act, clearly requires the production to the Court of the particular document in regard to which the Court may make the statutory presumption. If the document produced is a copy, admitted under Section 65, as secondary evidence, and it is produced from proper custody and is over 30 years old, then the signature authenticating the copy may be presumed to be genuine, but it is not sufficient to justify the presumption of due execution of the original under Section 90 of Indian Evidence Act."

55. The same principle is reiterated in **Marwari Kumhar and others v. Bhagwanpuri Guru Ganeshpuri and another**, wherein the Apex Court held that

"the ordinary copy of the judgment which is a public document is admissible in evidence, when the case of the party that the original was no longer available in court records and the certified copy was lost has not been disbelieved. Under sub-clause (c) of Section 65, where the original has been lost or destroyed, then secondary evidence of the contents of the document is admissible. Sub-clause (c) is independent of sub-clause (f). Secondary evidence can be led, even of a public document, if the conditions as laid down under sub-clause (c) are fulfilled. Thus if the original of the public document has been lost or destroyed then the secondary evidence can be given even of a public document."

56. In earlier Judgment of the Apex Court reported in **Mst.Bibi Aisha and others v. The Bihar Subai Sunni Majlis Avquaf and others** in paragraph 3 it held as follows:

"Under Section 65(a) of the Evidence Act secondary evidence may be given of the existence, or contents of a document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, and when after the notice mentioned in Section 66, such person does not produce it. Where the case falls under Section 65(a) any secondary evidence of the contents of the document is admissible."

57. In view of the principle laid down in the above judgment, the party, who relied on a document when proved that it was lost, entitled to adduce secondary evidence. But in the present facts, the plaintiff/ first appellant did not disclose about the loss of

original of Ex.A.1 in the entire plaint as required under Rule 14(2) of Order VII CPC, but suddenly invented theory of loss of document. The legal position laid down in the above judgment is clear that if original is lost, registered extract can be secured as secondary evidence, but, unless there is a factual foundation to the plea of loss of document, secondary evidence cannot be permitted to be adduced.

58. Even assuming for a moment that Ex.A.1 is the registration extract of the settlement deed allegedly executed by Rama Lakshamma, it is for the plaintiff to prove that it was executed by Rama Lakshamma, more particularly, when the execution was denied by the defendants. No doubt, when the defendants set up a settlement deed (gift), it is for him to prove due execution of the settlement deed under the original of Ex.A.1 as required under Section 68 of Evidence Act by examining any one of the attestors, as it is compulsory attestable document, but there is an exception to this rule and according to it when execution of the gift was not denied by the donar, the document is not required to be proved by examining any one of the attesting witnesses.

59. The learned counsel for the plaintiff/ first appellant contended that he examined one of the attestors of original of Ex.A.1 and it is sufficient to prove execution of original of Ex.A.1. No doubt, the plaintiff examined two attestors of original of Ex.A.1, but the defendants denied the execution of Ex.A.1 both in their pleadings as well as in their evidence. In support of their contention that original of Ex.A.1 was not executed by Rama Lakshamma, they examined Rama Lakshamma as D.W.6. In her evidence, she asserted that her husband executed registered Will and denied in the last four lines of first paragraph of examination in chief and asserted that she never executed any settlement deed in favour of P.W.1 while asserting that she gave property to defendants 2 and 3, and first defendant is in possession and enjoyment of the schedule property. She further asserted that she sold the part of the property under original of Ex.B.33. In the cross examination, D.W.6 asserted that her husband executed the Will in the hospital. But the evidence with regard to proof of Ex.B.31 is not relevant for deciding this issue. On the other hand, she was examined as witness in the calendar case, where she testified that she executed settlement deed in favour of P.W.1. Krishna Reddy did not give evidence on her behalf. She also admitted that she got issued notice through Mr. N.V. Appa Rao Advocate. She had no dispute with Krishna Reddy, and she executed registered sale deed in favour of D.W.3 along with D.W.1. Anyway she made a stray admission about the execution

of Ex.A.1 in favour of P.W.1 in calendar case and the same is produced before the trial court marked as Ex.B.32 - CC of judgment in C.C. No.565 of 1966. The admission of D.W.6 is a stray admission which is not conclusive proof, it estops the person to contend otherwise in view of section 31 of the Act, 1872. Based on stray evidentiary admission, the court cannot decide the dispute and the court has to look into the consistent pleas from the beginning of the party, who is disputing the right of the plaintiff. From the beginning she is denying the right of the plaintiff disputing the execution of original of Ex.A.1. Rama Lakshamma, D.W.6 is the alleged executant of gift deed. Of course, the plaintiff produced the certified copy of registration extract of the settlement deed marked as Ex.A.1, but it does not bear the original signature of executant - Rama Lakshamma. Similarly the plaintiff also examined attestors of document of original of Ex.A.1. They testified about the execution of original of Ex.A.1 by D.W.6. There is no possibility for them to identify their signatures appearing on original. When they did not deny the attestation of original of Ex.A.1, still the onus of proof is on the plaintiff to prove that Rama Lakshamma executed the original of Ex.A.1 enabling her to deny when confronted the signature on the original of Ex.A.1 to the witnesses. Even otherwise assuming for a moment that the original of Ex.A.1 is lost or misplaced or beyond recovery of plaintiff, still there are other modes of proof to prove signature or thumb impression of the executant - Rama Lakshamma. If Rama Lakshamma affixed her thumb impression or signed on the document, a separate register is being maintained in the sub registrar's office, which is known as thumb impression register, where the registrar office used to obtain thumb impression of the executant in the book maintained in the regular course of business. If such thumb impression register is summoned, and took necessary steps for identifying the thumb impression or the signature of the witnesses, there is a possibility of proving the execution of the document of original of Ex.A.1 in favour of the plaintiff. But no such steps were taken to establish due execution of Ex.A.1 by D.W.6 - Rama Lakshamma. Therefore, it is difficult to accept the contention of the plaintiff that original of Ex.A.1 was executed by D.W.6.

60. The learned counsel for the plaintiff/ first appellant contended that a registration extract gives rise to a presumption that it was duly executed, but this contention is without any legal basis. Even if the party wants to rely on secondary evidence, nothing prevented him to take necessary steps calling upon the register maintained in the Registrar's office which contained the thumb impression of Rama Lakshamma - D.W.6. In the absence of any such steps taken to prove the

genuineness of original of Ex.A.1, the due execution of original of Ex.A.1 by D.W.6 cannot be accepted. Learned counsel for the plaintiff/ first appellant relied on a judgment reported in Basant Singh and others referred supra, wherein the Apex Court held that the presumption as to genuineness of the original cannot be presumed and to draw such presumption actual production is necessary. If the above principle is applied to the present case, the trial court rightly accepted due execution of Ex.B.31. Even on reappraisal of entire material on record, I find no illegality in appreciation of evidence by the trial court. Therefore, I am unable to accept the contention of the plaintiff while concurring with the finding recorded by the trial court since I find no illegality or infirmity warranting interference by this Court .

61. One of the contentions raised by the counsel for the plaintiff/ first appellant is that non joinder of proper and necessary party i.e. D.W.6 - Rama Lakshamma, who executed the settlement deed in favour of both the defendants and plaintiffs in O.S. No.66 of 1989, is fatal. In fact a specific plea was raised before the trial court about non joinder, but the trial court did not answer the same.

62. During the course of argument, learned counsel Sri. M.V. Suresh Kumar contended that Rama Lakshamma - D.W.6 is a necessary party and in her absence, the suit dispute cannot be decided effectively and finally. No doubt, the plaintiff and defendants are claiming right through Rama Lakshamma wife of Narsi Reddy and though she is alive, she was not impleaded as a party to the suit. Apart from that, even according to the allegations made in the plaint, the said Rama Lakshamma executed settlement deed under the original of Ex.A.1 with absolute rights in A schedule property while reserving life interest, conferring vested remainder on the plaintiff and claiming right in both A and B schedule property without impleading the executant Rama Lakshamma - D.W.6 the plaintiff filed O.S. No.24 of 1984. Whether she executed such settlement deed under Ex.A.1 is to be decided only in her presence. Similarly, the defendants also contended that she executed the registered settlement deed in their favour. In such case, in the absence of Rama Lakshamma the dispute between the parties cannot be effectively and finally decided.

63. According to Section 99 C.P.C., no decree shall be reversed or modified for error or irregularity not affecting merits or jurisdiction of the court, nor shall any case be remanded in appeal on account of any misjoinder or non joinder of parties or causes

of action or any error, defect or irregularity in any proceeding in the suit, not affecting the merits of the case or the jurisdiction of the Court. But the proviso annexed to Section 99 C.P.C. permits the court to reverse or modify the judgment by the appellate court for non joinder of necessary party. In the present case, the alleged executant - Rama Lakshamma is necessary party to decide the real controversy between the parties. In her absence it is difficult for the court to decide the dispute effectively and conclusively.

64. The learned counsel for the plaintiff/ first appellant while contending that non joinder of Rama Lakshamma would not affect the claim of the plaintiffs since the claim is for declaration of title under Section 34 of Specific Relief Act, 1963 and that the said decree binds only the parties to the suit under Section 35 of the Specific Relief Act. He also placed reliance on the judgment of the Apex Court reported in **Vidur Impex and Traders Private Limited and others v. Tosh Apartments Private Limited and others** wherein, the Apex Court held that a necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by Court. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues though he may not be a person in favour of or against whom a decree is to be made. But this decision will have no application to the present facts of the case, in view of the proviso to Section 99 C.P.C. Even if the principles laid down in the above judgment is applied to the present facts of the case, no effective decree cannot be passed by the court in the absence of D.W.6 - Rama Lakshamma. Therefore, I find that Rama Lakshamma is a necessary party to the suit and the plaintiffs' suit is liable to be dismissed for non joinder of necessary party to the suit.

65. The plaintiff claimed declaratory decree under Section 34 of the Specific Relief Act, 1963. It is purely discretionary and equitable relief. To claim such decree, the plaintiff must approach the court with clean hands disclosing the real facts. In the present case, the claim of the plaintiff is based on original of Ex.A.1. He did not disclose about the loss of document anywhere in the plaint as required under Rule 14 of Order VII C.P.C. But suddenly invented a theory of loss of document and did not take steps to prove the signature of the executant i.e. Rama Lakshamma.

66. More particularly, when she unequivocally denied execution of Ex.A.1 before the trial court in her examination in chief and suppressing the original, obviously for the reasons best known to the plaintiff, and in such case the court cannot exercise the discretion to grant equitable relief in favour of the plaintiff.

67. The learned counsel for the plaintiff/first appellant contending that in a suit for declaration of title, the plaintiff has to prove his ownership, he produced satisfactory evidence to prove his title to the property and that no adverse inference can be drawn for non production of document allegedly in the possession of the plaintiff. He placed reliance upon the judgment reported in **Union of India v. Ibrahim Uddin and another**. In the above judgment, the Apex Court consistently held as follows:

“Section 34 provides that courts have discretion as to declaration of status or right. However, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so. Thus it is not permissible to claim the relief of declaration without seeking consequential relief.

68. In the same judgment, the Apex Court while referring to various judgments of the Apex Court is of consistent view that the plaintiff cannot be allowed to take advantage of weakness in the case of the defendant in the defence set up by the defendant, and the plaintiff has to stand or fall on his own legs, particularly, in a suit filed for declaration under Section 34 of the Specific Relief Act, 1963. If the said principle is applied to the present facts of the case, the plaintiff is under an obligation to prove his case by producing cogent and satisfactory evidence. But no satisfactory evidence was produced before the trial court. Hence, the trial court has rightly declined grant of declaration of title of schedule property to the defendants. Even after discerning entire material on record, I find no illegality in the decree and judgment passed by the trial court in O.S. No.24 of 1984.

69. Accordingly, I hold that the plaintiff/ first appellant is disentitled to claim relief of declaration of title, consequential permanent injunction and the point is held against the plaintiff and in favour of the defendants.

Point No.5:

70. The plaintiffs in O.S. No.66/1989 claiming permanent injunction alleging that the defendants therein, including the plaintiff in O.S. No.24/1984 are trying to interfere with their peaceful possession and enjoyment of the property. The trial court having found that the plaintiffs therein and defendants in O.S. 24/1984 are in peaceful

possession and enjoyment of the property as on the date of filing of the suit and that the defendants therein made an attempt to infringe the legal right of the plaintiffs in the suit, granted permanent injunction while recording the finding that they proved title to the property. But, according to my finding on point Nos.1 and 2, in a suit for bare injunction, the court is not supposed to record any finding, except to go into title incidentally to decide lawful possession.

71. To claim permanent injunction restraining defendants from interfering with plaintiff's peaceful possession and enjoyment of schedule property i.e., immovable property, the title of plaintiff or defendants cannot be decided except for limited purpose of lawful possession as held by the Hon'ble High Court of A.P. in the judgment reported in **Alla Seshukumar and another Vs. Alla Radha Krishna**, wherein His Lordship Justice Dr.G.Yethirajulu held as follows:

"In a suit for injunction simplicitor, complicated questions of title not to be gone into. The person not having title but being in settled possession of property on the date of suit, is entitled to injunction even against true owner ".

72. In another decision reported in **Kaneez Fathima and another Vs. Samru Sultana and others**, His Lordship Justice L.Narasimha Reddy held as follows:

"The court was under impression that, unless a plaintiff in a suit for perpetual injunction proves his title, possession even if established, cannot be recognized. This is totally opposed to the settled principles of law. Basically, the finding as to the possession, must be recorded, in a suit of this nature, and the verification of title, on the limited sense, must be undertaken, if necessity arises."

73. Similar view is expressed in the judgment reported in **Surampudi Sudarsana Rao Vs. Nanduri Venkata Seetha Ramanjanaeyulu and others**, wherein His Lordship Justice P.S.Narayana held as follows:

"For grant of perpetual injunction, the finding has to be recorded as to possession and upheld injunction granted by the first appellate court."

74. In view of settled legal position laid down by this Court in the decisions referred supra, this court need not go into title of parties and not competent to record any finding regarding title to property, except for limited purpose of deciding lawful

possession as on the date of filing suit.

75. Hence the finding of the trial court in respect of title of plaintiffs in O.S. No.66/1989 is set aside while accepting that the plaintiffs in O.S. No.66/1989 proved that they are in lawful possession as on the date of filing the suit and the evidence of D.Ws.1 to 3 is supported by evidence of D.W.6, original owner of the property, and proved threat to interfere, which amounts to invasion or infringement of legal right of the defendants. Therefore, I hold that the plaintiffs in O.S. No.66 of 1989 and defendants in O.S. No.24 of 1984 are entitled to permanent injunction under Section 38 of the Specific Relief Act, 1963, which is purely discretionary while setting aside the finding of the trial court that the plaintiffs in O.S. No.66/1989 proved their title to the schedule property, accordingly the finding is modified.

76. In view of my finding in Point No.1, I find no grounds, warranting interference with the decrees in O.S. No.24/1984 and 66 of 1989 and common judgment, except to the extent of setting aside the finding of the trial court about title of the plaintiffs in O.S. No.66/1989 and the defendants in O.S. No.24/1984.

77. In the result, the appeals are dismissed confirming the decrees and common judgment in O.S. Nos.24 of 1984 and 66/1989 (O.S. No.29 of 1983 on the file of District Munisiff Court, Addanki) on the file of Subordinate Judge Court, Addanki, except to the extent indicated above.

M. SATYANARAYANA MURTHY, J

Dt.23-09-2015

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