

**THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

CCCA.Nos.85 and 111 of 2007

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COMMON JUDGMENT: (Per Hon'ble Sri Justice M.Seetharama Murti)

These two first appeals arise out of a common judgment dated 28.12.2006 passed in OS.Nos.1 of 1999 and 40 of 1999 by the learned I Additional Chief Judge, City Civil Court, Secunderabad.

2. In these appeals, the parties shall hereinafter be referred to as the appellants and the respondents 1 to 4 as arraigned in these appeals for convenience and clarity.

3. The respondents 1 to 4 in these appeals i.e., the plaintiffs and the 2nd defendant in OS.No.1 of 1999 (hereinafter referred to as 'the former suit' for brevity) brought that suit against the appellants and respondent No.5 herein for declaration of title and recovery of possession and also for damages for use and occupation of a portion of a house property situated at Mothilal Nagar, Begumpet, Hyderabad which is more fully described in the schedule annexed to the plaint in the said suit. While so, the defendants therein/the appellants and the respondent No.5 herein brought the other suit OS.No.40 of 1999 (hereinafter referred to as 'the latter suit' for brevity) against the respondents 1 to 4 herein for partition of the entire house property (including the schedule of the property in the former suit) into two equal shares and allotment of one such separated share to the appellants/the plaintiffs therein and for grant of other incidental reliefs. Both the said suits were consolidated and common evidence was recorded in the former suit OS.No.1 of 1999.

4. The issues and additional issue in OS.No.1 of 1999 and the issues in OS.No.40 of 1999 which were framed on the respective

pleadings of the parties are as follows:

Issues and Additional Issue in OS.No.1 of 1999:

1. Whether the plaintiffs and the second defendant are the owners of the plaint schedule property and, if so, whether they are entitled for declaration of their title to it?
2. Whether the plaintiffs are entitled for possession of the plaint schedule property after ejecting the defendants 1 and 3 to 5?
3. Whether the plaintiffs are entitled for damages. If so, to what amount?
4. Whether the first defendant executed the release deed dated 01.07.1998 against his will and as was forced, and if so, whether he is not entitled to deliver possession of the suit property to the plaintiffs and the second defendant?
5. To what relief?

Additional issue:

Whether the cancellation deed dated 31.08.1998 is valid or not?

ISSUES in OS.No.40 of 1999

1. Whether the plaintiff is entitled for partition and for separate possession of his share in it?
2. Whether the plaintiff is entitled for perpetual injunction as prayed for?
3. Whether the plaintiff executed the release deed dated 01.07.1998 in favour of the defendants in respect of the house bearing No.1-11-251/18, Motilal Nagar and if so, whether the said property could not be partitioned?
4. Whether this suit has been filed as a counter blast to OS.No.1 of 1999 filed by the defendants?
5. Whether the suit is properly valued and if so, whether the court fee paid is correct?
6. To what relief?

5. During the course of the trial, the 2nd respondent i.e., the 2nd plaintiff in the former suit and his supporting witnesses were examined as PWs1 to 3 and exhibits A1 to A29 were marked on the side of the respondents 1 to 4 herein. The 1st appellant (Smt.Ranjan A. Patel), who is the 3rd defendant in the former suit and the 2nd plaintiff in the latter suit for partition, and her supporting witness were examined as DWs1 and 2 and exhibits B1 to B9 were marked on the side of the appellants. Exhibit X1 was also marked.

6. On merits, the trial court had decreed the former suit of the respondents 1 to 4 which is filed for declaration of title and recovery of possession and had dismissed the latter suit of the appellants filed for partition. Since the appellants, who are the plaintiffs in the latter suit for partition and the contesting defendants in the former suit for declaration of title and possession, are unsuccessful in both the suits, they had brought these two appeals against the common judgment of the trial court. Therefore, both the appeals were heard together and are being disposed of by this common judgment.

7. We have heard the submissions of the learned counsel for the appellants and the learned counsel for the respondents 1 to 4. We have carefully perused the pleadings in both the suits and also the oral and documentary evidence.

8. This Court of first appeal being the last court of fact, it is necessary to under score and highlight the crucial aspect of the matter, the determination of which would result in disposal of these two appeals.

8. (a) The relationship between the parties is undisputed. One Dullabha Bai had two sons by names Dayabhai Patel and Nathu Bhai Patel. Amruthlal Patel and Govind Bhai Patel are the two sons of

the said two brothers Daya Bhai Patel and Nathu Bhai Patel respectively. Amruthlal Patel (since died) (hereinafter referred to as 'Amruthlal Patel/the deceased 1st plaintiff' for brevity) had instituted the latter suit for partition during his life time. He had died during the pendency of the suit and hence, his second wife (the 1st appellant) and the children of the second wife through her first husband are impleaded as plaintiffs 2 to 4 in that suit for partition. They are the appellants and the respondent No.5 in both these appeals. The legal representatives of the deceased Govind Bhai Patel namely his wife and three sons are the respondents 1 to 4 in these two appeals. Though the respondents 1 to 4 had originally contended that the property is an ancestral property, it is fairly conceded by both the sides that it is not necessary to go into that aspect in view of the admitted and established fact that Daya Bhai Patel claiming himself to be the absolute owner of the entire house property had executed a registered gift deed dated 20.12.1968 i.e., the original of exhibit A2 and had gifted that property in equal shares to his son Amruthlal Patel, the deceased 1st plaintiff, and Govind Bhai Patel, the son of his brother. Therefore, by virtue of the said Gift deed under the original of exhibit A2 executed by Daya Bhai Patel, the appellants and respondent No.5 are entitled to a 50% share and the respondents 1 to 4 are entitled to a 50% share in the entire house property (hereinafter referred to as 'subject house property' for brevity). Basing on that said Gift deed, the appellants had filed their suit for partition claiming their half share. However, the respondents 1 to 4 who are all admittedly the owners of half share in the subject house property had *inter alia* claimed that Amruthlal Patel i.e., the deceased 1st plaintiff during his life time had executed a registered release deed dated 01.07.1998 under exhibit A29 (=A3) releasing his interest in the half share in the subject house property in favour of the respondents 1 to 4 herein and that therefore, by virtue of that release deed, they have become owners of the subject

house property in entirety. Since the appellants are in possession of a portion of the subject house property, the respondents 1 to 4 had brought their suit for declaration of title and recovery of a portion of the house property, which is in the possession of the appellants. Thus, these two suits have come to be filed.

8. (b) What is to be noted is that by virtue of the gift deed dated 20.12.1968 under the original of exhibit A2 executed by Daya Bhai Patel, the appellants and the respondent No.5 are entitled to a half share and the respondents 1 to 4 are entitled to a half share in the subject house property is not in dispute. However, according to the respondents 1 to 4, Amruthlal Patel, who is the predecessor-in-interest of the present appellants, by virtue of the release deed dated 01.07.1998 under the exhibit A29 (=A3) had released his 50% share in the subject house property in favour of the respondents 1 to 4 and that therefore, the respondents 1 to 4 have become absolute and exclusive owners of the entire house property. The appellants, in reply, would contend that the release deed is not true, valid and binding on them and that by the year 1998, the said Amruthlal Patel was aged about 62 years and that by that time his first wife had died and that they had no issues and that therefore, he was dependant upon the respondents 1 to 4 due to his old age and ill health and that taking advantage of his said situation, the respondents 2 and 3 and others had taken control of him and confined him to the house and hatched a plan to grab his share of property in the subject house property and had coerced him and threatened his life and the lives of his family members at the point of knife and got executed the release deed by forcibly taking him to the Sub-Registrar's office, Vallabh Nagar, Secunderabad and got it registered. The appellants would further contend that the deceased 1st plaintiff with the help of his sympathisers had managed to lodge a complaint dated 25.07.1998 against the respondents 2 and 3 and others with the SHO, Begumpet

Police Station with great difficulty and that on that a case in Crime No.152 of 1998 was registered for the offences punishable under Sections 452, 327 and 384 of the IPC and that the deceased 1st plaintiff (the releasor) had also executed a registered cancellation deed dated 31.08.1998 under exhibit B1 cancelling the deed of release and had also issued a public notice in Deccan Chronicle, Hyderabad dated 18.09.1998 under exhibit B2 (=A19) bringing to the notice of the public the execution of cancellation deed cancelling the release deed dated 01.07.1998. In this back drop, notices were exchanged and the suits have come to be filed.

9. In view of the contentions, it is necessary to mention that as rightly contended by the learned counsel for both the sides, the central issue is – ‘whether the release deed dated 01.07.1998 under exhibit A29 (=A3) executed by the deceased 1st plaintiff in favour of the respondents 1 to 4 in respect of his half share in the subject house property is true, valid and binding on the appellants? And, the answer to the said question determines finally the rights of the parties in this *lis*. As rightly contended and fairly submitted by both the sides, if the release deed is to be upheld, both these appeals are liable to be dismissed. On the contrary, if the release deed is to be held to be not true, valid and binding on the appellants, the appellants’ appeals are to be allowed and the suit for partition is liable to be decreed and the suit of the respondents 1 to 4 for declaration of title is liable to be dismissed. In the light of the discussion, the following point no.1 is the central issue.

POINT No.1:-

‘Whether the release deed dated 01.07.1998 under exhibit A29 (=A3) executed by the deceased 1st plaintiff in favour of the respondents 1 to 4 releasing his half share in the subject house property in their favour is true, valid and binding on the appellants?’

However, the other points which arise for determination in these first appeals are as under:

POINT Nos.2 to 5:

2. **Whether the cancellation deed by virtue of which the release deed was cancelled is true, valid and binding on the respondents 1 to 4?**
3. **Whether the respondents 1 to 4 are entitled to the relief of declaration of title and recovery of possession as claimed in the former suit OS.No.1 of 1999 and other incidental reliefs like damage for use and occupation?**
4. **Whether the appellants are entitled to the relief of partition and a preliminary decree for partition as prayed for in the latter suit os.no.40 of 1999?**
5. **Whether the judgment impugned is liable to be set aside as contended by the appellants in these appeals?**
6. **To what relief?**

Since the issue involved in point Nos.1 and 2 supra is the central issue, to answer the said issue, which is the central issue, it is necessary for us to analyse the chronology of events as borne out by the pleadings, oral and the documentary evidence, as that would be of help to answer the pivotal points 1 and 2.

10. POINTS 1 and 2:

10. (a) To begin with, the admitted and established facts, which are relevant, are as follows: - 'Daya Bhai Patel as per the submissions made before this court, is the absolute owner of the subject house property. During his life time, he had executed a registered gift deed dated 20.12.1968 under the original of exhibit A2 and had gifted equally one half share each to his son Amruthlal Patel and Govind Bhai Patel. The appellants and respondent No.5 are the legal representatives of Amruthlal Patel. The respondents 1 to 4 are the legal representatives of Govind Bhai Patel. Thus, the appellants and respondent No.5 together and the respondents 1 to 4 together were originally entitled to 50% share

each in the entire subject house property is an admitted, undisputed and established fact.

10. (b) On the strength of the above admitted facts, the appellants and respondent No.5 claim a half share in the subject house property and pray that their suit for partition based on the said deed of Gift be decreed and the suit of the respondents 1 to 4 for declaration of title and recovery of possession be dismissed, while allowing both the appeals. Per contra, the respondents 1 to 4 claim not only their half share gifted to them under the deed of Gift but also the other half share by virtue of the aforementioned release deed and pray for decreeing their suit for declaration of title and recovery of possession and dismissal of the two first appeals and confirmation of the judgment of the court below.

10. (c) The pleaded case of the respondents 1 to 4, which is relevant for a decision on these two points, in brief, is as follows: - 'On 30.12.1996 Sharada Ben Patel, the first wife of the deceased 1st plaintiff, had died issueless. With her demise, the deceased 1st plaintiff was very much affected. Because of his advanced age a sense of loneliness overcame him. Therefore, he had decided to wind up his business activities and had communicated his wish to his partners in the business. He had issued a notice dated 15.02.1997 under exhibit A10 expressing his intendment to retire with effect from 31.03.1997. On 31.03.1997 the deceased 1st plaintiff had thus retired from the partnership firm M/s. United Motors Parts Company and the accounts of the firm were settled to his satisfaction, who is the retiring partner. The firm was reconstituted by execution of a deed of partnership dated 05.04.1997 under exhibit A12 with respondents 2 to 4 as partners having a 1/3rd share each. On 06.11.1997 under exhibit A13 the Registrar of Firms had acknowledged the retirement of the deceased 1st plaintiff from

the firm. In July, 1997 the deceased 1st plaintiff happened to visit Khadsupa in Navasari District of Gujarat State. By then, he was in a depressed state of mind. He came into contact with the 1st appellant and married her in August 1997 as his second wife. He had returned to Hyderabad along with his second wife i.e., the 1st appellant with a view to wind up his affairs at Hyderabad namely to dispose of his joint share in the subject house property at Mothilalnagar and return to Khadsupa in Gujarat State to start a life afresh with his second wife. Towards that end, he had voluntarily and in all sincerity decided to release his joint share in the subject house property in favour of the respondents 1 to 4 and had therefore, executed the registered deed of release dated 01.07.1998 under exhibit A29 (=A3) in the presence of his second wife (1st appellant) and his trusted employee (by name B.N.Ramulu) and his advocate Sri P.Bhikshapathi. The deceased 1st plaintiff had signed the release deed with full knowledge and understanding of his actions and the said release deed was attested by his second wife and the said B.N.Ramulu and was registered at the Sub-Registrar's Office, Vallabhnagar in the presence of the said attestors and his advocate. The said attestors also had figured as identifying witnesses. On 13.07.1998 the Sub-Registrar, Vallabhnagar visited the deceased 1st plaintiff in the house and collected Rs.1,075/- towards deficit registration charges. However, on 25.07.1998 the deceased 1st plaintiff had submitted a written complaint to the Station House Officer, Begumpet Police Station alleging that the respondents 2 and 4, Murali Krishna and B.N. Ramulu, had conspired to knock away and deprive him of his property and that on 01.07.1998 at the point of knife and with threats to his life and the life of his wife, he was forcibly taken to Vallabhnagar Sub-Registrar's Office and his signatures were obtained and the release deed was got registered against his consent and free will and under coercion and threats. On that complaint, a case in Crime No.152 of 1998 was

registered by the said police. On 18.09.1998 a paper publication in Deccan Chronicle was given informing the public about the cancellation of the release deed and the execution of the cancellation deed and warning the public not to enter into any transactions with the respondents 1 to 4 in respect of the said property. The respondents 1 to 3 had issued a notice dated 05.10.1998 to the deceased 1st plaintiff demanding delivery of possession of the portion of the subject house property and as the demand in the notice was not complied, the respondents 1 to 3 had filed the former suit for declaration of title and recovery of possession, by impleading the 4th respondent as defendant no.2 as he was by then not available to sign the plaint.

10. (c) The case of the appellants, which is relevant to these points may be stated, in brief, as follows: - 'The release deed is not true, valid and binding on them and that by the year 1998, the said Amruthlal Patel, the deceased 1st plaintiff was aged about 62 years and that by that time his first wife had died and he had no issues and that therefore, he was dependant upon the respondents 1 to 4 due to his old age and ill health and that taking advantage of his said situation, the respondents 2 and 3 and others took control of him and had confined him to the house and hatched a plan to grab his share of property in the subject house property and had coerced him and threatened his life and the lives of his family members at the point of knife and got executed the release deed by forcibly taking him to the Sub-Registrar's office, Vallabhanagar, Secunderabad and got it registered.'

11. The learned counsel for the appellants had first reiterated the above pleadings of the appellants to the effect that Amruthlal Patel was of advanced age and that his first wife died and that they had no issues and hence, he was dependant upon the respondents 1 to 4 and that taking advantage of his loneliness the respondents 2 and 3 had

taken control over him and that the release deed was obtained at the point of knife and under threat and coercion and that the same was not executed with free will and consent and that immediately after execution of the release deed on 01.07.1998, as stated in the evidence of DW1 he and his second wife (DW1) left for Gujarat and on their return the police complaint was filed against the respondents 2 and 3 and others and that on that a crime was registered and was later closed for lack of evidence and that it is borne out by evidence that a protest petition was lodged though the same was not pursued and no private complaint was filed and that PW3/the advocate who was said to have prepared the draft of release deed did not prepare the same as stated by him on the instructions of Amruthlal Patel (the deceased 1st plaintiff) and that the said advocate had acted as an advocate for Amruthlal Patel in only one matter and that he is a close associate of the respondents 2 and 3 and that at the time of visit of Sub-Registrar to the house Amruthlal Patel was not in the house and that he did not pay the deficit stamp duty and that he also did not collect the registered release deed from the Sub-Registrar's Office and did not hand it over to the 2nd respondent and that later Amruthlal Patel had executed the cancellation deed cancelling the release deed and that in the circumstances he was placed, the legal burden to show that the release deed is true and valid is on the respondents 1 to 4 and that the evidence brought on record in the circumstances of the case would show that the release deed is not true, valid and binding and that therefore, the court below ought to have answered all the issues in both the suits in favour of the appellants and ought to have decreed their suit for partition.

12. On the other hand, the learned counsel for the respondents 1 to 4 would contend as follows: - 'As stated in the pleadings, after the death of his first wife, Amruthlal Patel was in a depressed state for some time and wanted to wind up his business and other activities in

Hyderabad and therefore, he had voluntarily retired from partnership firm having addressed a letter and that thereafter a retirement deed was entered into and the firm was reconstituted with the respondents 2 to 4 and that later the said Amruthlal Patel went to Gujarat and having come into contact with the 1st appellant, had married her as his second wife and that they both came down to Hyderabad and that with a view to wind up his activities, the said Amruthlal Patel had voluntarily and with free will had executed the release deed in favour of the respondents 1 to 4 releasing his 50% share in the subject house property in their favour and that the said release deed was executed in the presence of his second wife and his trusted employee-Ramulu (since died) and that they both had attested the release deed and also figured as identifying witnesses before the Sub-Registrar and that the deed was prepared by PW3/the advocate of late Amruthlal Patel and that the contentions that the deed was obtained under threat and coercion and at the point of knife are all false and that the police report was belatedly lodged as an after thought after change of mind for reasons best known and that Amruthlal Patel was transacting his business and doing transactions worth lakhs of rupees on his own at the relevant time and that on coming to know of the unilaterally executed cancellation deed through the paper publication given by Amruthlal Patel in Deccan Chronicle, a notice was got issued by the respondents 1 to 4 for delivery of the portion of the house property as per the terms of release deed and that as there was no reply, the suit for declaration of title and recovery of possession and for other reliefs was filed and that there is no consistency in the stand of the appellants and that their stand was improved from stage to stage and since Amruthlal Patel was only aged 62 years and as he had married the 1st appellant and had executed the release deed in her presence, it cannot be said that he was in a depressed state of mind by then and that to take him and his second wife and have the release deed executed and registered in the Sub-Registrar's office forcibly under the threat of knife

is impossible and that the said pleading is vague and highly improbable and that therefore, the court below had rightly appreciated the facts and the evidence on record and had rightly decreed the suit of the respondents 1 to 4 and dismissed the suit for partition filed by the appellants. He placed reliance on the exhibits A14 and A15 to show that the deficit stamp duty was collected by the Sub-Registrar from Amruthlal Patel and that the registered release deed was received by him from the Sub-Registrar's Office after registration.'

13. Both the sides had adduced evidence in support of their respective pleaded cases. We have given earnest consideration to the respective pleadings and the oral and documentary evidence brought on record. On such consideration, we are of the considered view that the release deed is true, valid and binding on the appellants and that the cancellation deed under the original of exhibit A2, which was unilaterally executed by Amruthlal Patel, is of no avail to the appellants and it will not affect the rights that had accrued to the respondents 1 to 4 under the release deed dated 01.07.1998. The reasons for our above findings are as follows:

Firstly, the release deed was executed by the deceased 1st plaintiff is admitted. It was attested by his second wife (1st appellant) and one Ramulu (since died) is also admitted. After the death of the first wife of the deceased 1st plaintiff on 30.12.1996, he had married the 1st appellant as his second wife. PW1, the second respondent, in his affidavit filed in lieu of examination-in-chief, had asserted the pleaded case of the respondents 1 to 4 in regard to the truth and genuineness of the release deed. He spoke about the due attestation and registration of the release deed and also about the subsequent collection of deficit stamp duty by the Registrar after making an inspection of the subject house property of the deceased 1st plaintiff. Admittedly, by the date of

execution of the release deed, the deceased 1st plaintiff was aged 62 years which cannot be said to be an advanced age. According to PW1, the health of the deceased 1st plaintiff was average by 30.12.1996. He had denied the following suggestions. 'It is not true to say that after second marriage of defendant no.1 our relationship with the defendant no.1 was strained and tense. It is not true to say that on 01.07.1998 I and other plaintiffs and the 2nd defendant, my friends and servant forcibly took 1st defendant and his second wife at knife point to Sub-Registrar's Office, Vallabh Nagar and got forcibly executed a release deed in our favour and the 2nd defendant.' From the suggestion given it is clear that the appellants are specific in their defence that the execution of the release deed was done not at the residence but at the Sub-Registrar's office. A reading of the suggestion given to PW1 would show that the deceased 1st plaintiff and his second wife were taken at knife point to the Sub-Registrar's office and the release deed was got forcibly executed. But the pleading is to the following effect: 'The respondents 2 and 3 and others coerced the deceased 1st plaintiff by threatening him and his family of their lives at knife point and got executed a release deed on 01.07.1998 and forcibly took the deceased 1st plaintiff to the office of the Sub-Registrar.' Therefore, as per the pleading the execution was complete at the house at the knife point and later, the deceased 1st plaintiff and his second wife were taken to the Sub-Registrar's office but, the suggestion given to PW1 does not support the said pleaded case. The deceased 1st plaintiff is a businessman and was worldly wise. Nothing prevented him from disclosing to the Sub-Registrar that he did not execute the release deed with free will and consent as by that time it is not his case that any other member of his family was confined and was a subject of threat. If really there was any coercion or threat, he could have disclosed about the same to the Sub-

Registrar and ought not to have admitted the execution and ought to have refused to co-operate for registration of the release deed as by then he and his second wife are in a public office and as no other family member was under threat as per the case of the appellants. He did not do so. Be that as it may. DW1, the 1st appellant who is the second wife of the deceased 1st plaintiff, had admitted that she had attested the release deed as one of the attestors. In her cross examination she had categorically admitted that she had signed as the first witness on page 6 and reverse of page 1 of the release deed i.e., as attesting witness and also as identifying witness. In her evidence only the original release deed is exhibited as exhibit A29 while its copy was already exhibited as exhibit A3. She had also admitted the signature of Ramulu, the second attesting witness on page 6 and reverse of page 1 of the said release deed. It was also brought out in her cross examination that the said Ramulu had died. There is no material on record to show as to when that Ramulu died. Therefore, the only available attesting witness is the 1st appellant who is the second wife of the executant of the release deed. She had admitted her signatures and also proved the signature of the second attesting witness who is no more. The evidence brought on record particularly exhibits A14 and A5 would show that the deceased 1st plaintiff having paid the deficit registration fee/stamp duty had collected the registered release deed from the Sub-Registrar's office. The original release deed is produced by the respondents and therefore, it follows that the deceased 1st plaintiff having collected the document had handed over the same to the 2nd respondent as contended by the respondents 1 to 4. PW3 is a practising advocate of 16 years standing as on the date of his deposition. He had testified that the deceased 1st plaintiff executed the release deed in favour of the respondents 1 to 4 and that the deceased 1st plaintiff and the respondents 1 to 4 and their family members called him on that day and that the deceased 1st plaintiff/the

releasor had expressed his willingness to relinquish his right in the subject house property in favour of his brother's sons and that as per his desire he had drafted the release deed. In his evidence, he had identified exhibit A29-the original release deed as the one prepared by him. He had further testified that the releasees and also the releasor i.e., the deceased 1st plaintiff, the 1st appellant and other persons were present at the time of registration of exhibit A29-release deed in the Sub-Registrar's office and that the document was not handed over on the same day and that Amruthlal Patel had paid deficit registration fee and had obtained a receipt for the same and that on the next day, Amruthlal Patel had collected the document from the registrar's office and had handed it over to the 2nd plaintiff/respondent no.2 herein. Thus, the advocate who had drafted the release deed and who was present at the time of registration was also examined. He also spoke about the due execution of the document by the deceased 1st plaintiff. In his cross examination, it was brought out that he had appeared for the deceased 1st plaintiff in one case before the MRO, Malkajgiri and in no other cases and that in that connection he came to know about the deceased 1st plaintiff for the first time and that Ramulu the other attester was the employee of the deceased 1st plaintiff as per the information furnished to him by the deceased 1st plaintiff. He had denied the suggestion that the deceased 1st plaintiff had never instructed him to draft exhibit A3 release deed and that the same was drafted on the instructions of PW1 and that he had never read out the contents of exhibit A29 (=A3) to the deceased 1st plaintiff and that he along with PW1 and others forcibly entered the house of the deceased 1st plaintiff on 01.07.1998 and took their signatures on exhibit A29 (=A3) by force. He had further denied the suggestion that he was engaged by PW1 in the said case before the MRO and not by the deceased 1st plaintiff and asserted that he had

contested the case before the MRO on behalf of the deceased 1st plaintiff and 1st respondent in regard to agricultural lands in Yapral which were in their joint names. He had also denied the suggestion that the deceased 1st plaintiff did not voluntarily execute the exhibit A29 document. The suggestions given would show that the appellants are not denying his presence at the time of the execution of the release deed. It is important to note that, to this witness, it is not suggested that at the point of knife, the execution of the document by the releasor and the attestation by the 1st appellant was got done. Further, it was not suggested to PW1 that PW3 was also present when the signatures were obtained under threat and coercion at the point of knife and that they all entered the house of the deceased 1st plaintiff forcefully on that day. Though it is stated that PW3 is not the advocate of the deceased 1st plaintiff, the evidence is silent as to who was the advocate of the deceased 1st plaintiff in his matters. It is not even suggested to PW3 that he was not the counsel for the deceased 1st plaintiff and that any other advocate was his counsel. Therefore, from the evidence discussed supra, it can *ex facie* be said that the initial onus of proof which is upon the respondents 1 to 4 to prove the truth and validity and the due execution of the release deed stood discharged.

Secondly, the release deed was executed on 01.07.1998. If really the release deed was got executed under a threat and coercion and at a point of knife, one would expect the appellants and the releaser under the document to immediately lodge a police report either on their own or with some assistance from friends/relatives or legal assistance. The same was not done. It is not their case that even after the execution and registration of the release deed, the threat had continued and that they were under confinement and were prevented from taking any action in that regard. Their pleadings are silent as to why they did not lodge a

police report promptly after 01.07.1998 either on that day or within a few days thereafter. For the first time in the cross examination of the 1st appellant/DW1 had stated that during the period between the release deed and the police complaint under exhibit A16, they had been to Gujarat and that on their return they had lodged the police report. However, this statement for the first time made in the cross examination does not find support from the pleadings. Even if the said explanation is to be accepted as true, it is not in accordance with normal conduct expected of the deceased 1st plaintiff and his second wife (1st appellant). In the normal course of events, if really the release deed was obtained under threat and at the point of knife, one would expect them to lodge a report promptly and then leave for Gujarat rather than leave for Gujarat and lodge a report belatedly on return. The delay in lodging the police report is a circumstance which belies the contentions of the appellants.

Thirdly, according to the appellants, the first opportunity for the appellants to complain against the release deed is the police report under exhibit A16 dated 26.07.1998. In the police complaint, it is alleged as follows: - 'The persons by name Jagadish Patel (R2), Rajesh Patel (R4), both sons of Govind Bai Patel, along with a person by name Murali Krishna and an abettor and instigator for the cause of offence by name B.N. Ramulu, a clerk working in M/s.United Motor Parts Company, Ranigunj, Secunderabad have planned with common intention and conspired together to deprive me with my property and have trespassed into my premises wrongfully and confined me and my wife by cutting off the telephone line and made us to suffer mental tension at the point of knife since last 22 days. On 01.07.1998 I was forcibly taken at the point of knife and threat to the life of me and my wife to the Sub-Registrar's Office, Vallabhnagar and took my signatures on release deed and got it registered without my consent and against my free will under coercion

and threat.’ In the police complaint he had stated that the telephone line was cut off at the time of the incident and that he was kept under mental tension for the last 22 days i.e., for 20 days prior to 26.07.1998 which comes to 04.07.1998 whereas from the date of execution of the release deed till the police complaint, he (deceased 1st plaintiff) and his wife (1st appellant) were in Gujarat according to the evidence of the 1st appellant/DW1. In the plaint, it is not stated that the telephone line was cut off. Further, in the police complaint the delay in lodging the complaint by stating that he and his wife went to Gujarat after 01.07.1998 was not pleaded. Admittedly, the crime that was registered was closed for lack of evidence as is evident from exhibit A18 final report filed in that crime by the police before the Magistrate concerned. Therefore, the serious inconsistencies in the case of the appellants and the non explanation in the police complaint for the delay in lodging the report and the attempt for the first time in the evidence of DW1 to explain away the delay by stating that they were in Gujarat till the police complaint is lodged make the pleaded case of the appellants highly improbable. Even assuming a moment that they were in Gujarat during the relevant period, nothing prevented them from even giving a telegraphic notice or a written notice from Gujarat complaining about the obtaining of the release deed under coercion and under threat of a knife. They did not do so.

Fourthly, the next document which emanated from the appellants after the police report is a paper publication in Deccan Chronicle dated 18.09.1998 under the original of exhibit A19 (=B2). In this paper publication, it is stated as follows: ‘Through a registered cancellation deed bearing No.2157 dated 31.08.1998, our client has cancelled the Release Deed bearing No.1797/1998 which, earlier, was executed under threat, duress and coercion. The original Release Deed is in possession of Jagdish Patel and others and taking advantage of the above said void release deed, they may alienate the property bearing No.1-11-251/18, 1-

11-251/18A and 1-11-251/18B by misleading the public.....'. In this paper publication, it is baldly stated that the release deed was obtained under threat, duress and coercion. No other details are stated. Even this paper publication was issued two and a half months after the execution of the release deed and nearly two months after the police report.

Fifthly, the deceased first plaintiff had an opportunity to state in the cancellation deed, the circumstances in which the release deed was come to be executed and the necessity for its cancellation. In the cancellation deed, while mentioning the reasons for cancellation, it is *inter alia* stated to the following effect: - 'The executant of the release deed had executed the same under coercion, duress and threat of life and subsequently, he had lodged a complaint before the Begumpet Police Station, Hyderabad and that his complaint has been duly registered by the police vide Crime No.152 of 1998 and that at no point of time the executant or releasor of the document intended to execute the said document with free will but has been compelled and forced to execute the document and that moreover at the time of execution of the registration of the document, the executant was not in a sound mind and that apart he had been under continuous and constant threat by the releasees in the said document.' Therefore, in this document, there is no mention that he and his wife were threatened at the point of knife, but, on the other hand, there is an improvement that when the document was executed he, the deceased 1st plaintiff, was not in a sound mind and that he had been under continuous and constant threat of the releasees. However, in the pleadings it was stated that after the death of his first wife, he was in a depressed state of mind for some time and there is no mention in the pleadings that he was not of sound mind and that he was under constant threat. This aspect of constant threat was also not mentioned in the police report. The fact remains that the release deed

was executed after the second marriage of the deceased 1st plaintiff with the 1st appellant. Therefore, the improvements in the version of the appellants from time to time and the versions which are inconsistent would lay bare that the deceased 1st plaintiff is somehow trying to get over the release deed for reasons best known.

Sixthly, it was pleaded in the written statement that the first appellant was of very advanced age and physically not so strong and that he needed assistance and therefore, he had married one divorcee on 15.09.1997 and had also adopted her sons and daughter and that when they were living happily the respondents 1 to 4 cast an evil eye on the subject house property. This defence that the deceased 1st plaintiff was of advanced age and physically not strong and was in need of assistance was not advanced at any stage earlier but was introduced for the first time in the written statement filed by the appellants in the former suit filed by the respondents 1 to 3 for declaration of title and recovery of possession and other reliefs. The deceased 1st plaintiff admittedly was of 62 years of age at the time of execution of the release deed and there is no pleading about his ailments, if any. After recall of DW1 exhibits B5 to B9 medical records and receipts are filed which on a perusal would show that they are of the period of November 1997 whereas the present release deed was executed on 01.07.1998.

Seventhly, after the cancellation deed was executed a paper publication under exhibit A19 (=B2) was given. The respondents 1 to 3 got issued a notice to the deceased 1st plaintiff under the original of exhibit A27 calling upon the deceased 1st plaintiff to vacate the portion of the subject house property in his possession and deliver vacant possession of the same. The said notice was received by the deceased 1st plaintiff under exhibit A28. Subsequently, the suit for declaration of title and recovery of possession was filed. It is to be recalled that the

release deed was executed on 01.07.1998. Originally the firm M/s.United Motor Parts Company was registered on 13.09.1986. Exhibit A25 is the Form A certificate issued by the Registrar of Firms showing the list of partners. As per the said document, the deceased 1st plaintiff/Amruthlal Patel and the respondents 2 to 4 and some others are partners of the said firm. On 04.04.1997 a deed of retirement was executed between the respondents 2 to 4 on one hand and the deceased 1st plaintiff on the other and by virtue of the said retirement deed the deceased 1st plaintiff had retired from the partnership and a new deed of partnership dated 05.04.1997 was entered into between the respondents 2 to 4 under the original of exhibit A12 and by that deed a new firm was constituted with the respondents 2 to 4 to the exclusion of the deceased 1st plaintiff who had retired by giving exhibit A10, the notice dated 15.02.1997 expressing his intention to retire from the partnership and requesting to relieve him from the firm at the close of 31.03.1997. This deed of retirement under the original of exhibit A11 was signed on each page by the deceased 1st plaintiff and was attested by two witnesses. Therefore, the contention of the respondents 1 to 4 that the deceased 1st plaintiff intended to wind up his activities in Hyderabad and therefore, he had retired from partnership and had executed a release deed in favour of the respondents 1 to 4 in respect of the subject house property while intending to leave for good for Gujarat is well established. Further, the case of the respondents 1 to 4 is that during that relevant period when the release deed was executed the deceased 1st plaintiff was also dealing with the other properties and other transactions. It is borne out by record that on 13.10.1998 the deceased 1st plaintiff had executed an agreement of sale cum irrevocable general power of attorney in favour of M/s.Kalyan Constructions for a consideration of Rs.60 lakhs in respect of a property of about 24,000 square yards which is well laid out into plots in survey no.193/AA western part Yaprala village of Alwal of

Malkajgiri Mandal under exhibit X1. DW1 had also admitted that the deceased 1st plaintiff received payments as shown in exhibit X1. PW2 is the GPA holder cum vendee under exhibit X1. He had testified that he is the managing partner of Kalyan constructions and that he knows the deceased 1st plaintiff since 1995 and that the deceased 1st plaintiff's first wife had agreed to sell Ac.8.8 ½ guntas in Sy.No.193 of Yapral village in the year 1996 and that the remaining half of the land in the said survey no. belongs to the 1st respondent and that the deceased 1st plaintiff after the death of his first wife had entered into a development agreement with him(PW2) and had executed the agreement of sale-cum-GPA dated 25.06.1998 and that on 13.10.1998 the deceased 1st plaintiff has registered the same in favour of Kalyan constructions and that his second wife and M.P.Prakash signed as attesting witness on the said registered document. He had further testified that the deceased 1st plaintiff had complained against him also alleging that they had obtained his signatures forcibly but the police have closed the case as a false case. In his cross examination, he had maintained his stand stating that initially the deceased 1st plaintiff and his first wife along with the first respondent entered into development agreement for the land in Yapral village and that the first respondent told him about the death of the first wife of the deceased first plaintiff and that thereafter he went to the house of the deceased 1st plaintiff and the respondents and that subsequently, the deceased first plaintiff and 1st respondent had executed an agreement of sale in his favour. When it was suggested to him that the 1st respondent is alone following the execution of agreement of sale, he denied the said suggestion. Thus, just a week before the execution of the release deed, the deceased 1st plaintiff and the 1st respondent together had executed an agreement of sale on 25.06.1998 in favour of PW2 is borne out by record. He had also asserted in his

evidence that at the time of registration of agreement of sale on 13.10.1998 he had issued post dated cheques towards balance of sale consideration to the deceased 1st plaintiff and the said cheques were realised by the deceased 1st plaintiff and that he can produce the passbook in proof thereof. When it was suggested to him that the 1st respondent and his family members along with him had taken signatures forcibly on the documents and that exhibit X1 which was registered on 13.10.1998 was not executed on 25.06.1998 he had denied the said suggestions. These transactions were not questioned in any legal proceeding by the deceased 1st plaintiff during his life time or till this date by his legal representatives is undisputed. If really the release deed was obtained under threat and coercion the deceased 1st plaintiff ought not to have dealt with the subsequent transactions referred to supra. The fact that the agreement executed one week before the release deed was not questioned by initiating any legal proceeding and that at the relevant time the deceased 1st plaintiff was dealing with his transactions and properties worth lakhs of rupees would lay bare the falsity of the claim of the appellants. The fact that the deceased 1st plaintiff dealt with several transactions during that relevant period in which the release deed was executed would lay bare that the contention of the appellants that because of his advanced age and his depressed state on account of the death of his first wife he was not of sound mind and that the respondents 1 to 3 had taken control over him and the release deed was brought into existence under threat and coercion cannot be countenanced.

14. Therefore, a harmonious consideration of the entire evidence would show that the release deed was executed with free will and consent but not in the circumstances stated by the appellants and that the executant of the release deed had later changed his mind and

filed a false complaint as an after thought and had made improvements in his stand from time to time to somehow get over the release deed executed by him voluntarily and with free will. The points are accordingly answered against the appellants and in favour of the respondents 1 to 4 holding that the release deed dated 01.07.1998 under exhibit A29(=A3) executed by the deceased 1st plaintiff releasing his half share in the subject house property in favour of the respondents 1 to 4 herein is true, valid and binding on the appellants and that the cancellation deed under exhibit B1 is not valid and binding on the respondents 1 to 4.

15. Before concluding the discussion on the issues involved, it is necessary to refer to the decisions relied upon by the learned counsel for the appellants. The learned counsel for the appellants placed reliance on a decision in **Krishna Mohan Kul @ Nani Charan Kul and another v. Pratima Maity and others**^[1] in support of the proposition that when an executant of a document is old, ailing and was unable to comprehend the nature of the document and is in a fiduciary relationship with the beneficiary of the document and that where an active confidential or fiduciary relation exists between the parties the burden of proof to prove the truth and validity of the document executed would be on the beneficiary of the document to show that the transaction under the document executed by such person is fair and honest and that there was a mental act of the executant in executing the document. On the same proposition, reliance was also placed on the decision in **Murat Ram v. Bhadar Singh**^[2] wherein the facts show that a sister, who is old and illiterate, challenged the truth and validity of a release deed said to have been executed by her in favour of her brother on the grounds of fraud and misrepresentation. In that factual matrix, it was held that fraud and misrepresentation can be gathered from the facts and circumstances of

the case and that it is for the brother to prove that his sister was aware of the true nature of the transaction she was entering into. There is no dispute with these propositions of law laid down in the cited decisions; but, in the case on hand, the appellants could not show that the executant of the release deed was old and ailing and is not able to comprehend the nature of the document which he was executing. On the other hand, the evidence on record would show that the executant is a literate and is a businessman and that he had performed not only one transaction under the release deed but also certain of his other transactions at the same time. Even assuming for a moment that the burden is on the respondents 1 to 4, the evidence on record is sufficient to hold that the burden is discharged and the truth, validity and binding nature of the release deed is established as required under the facts and in law. It is not disputed that the appellants, in their suit for partition, did not claim a relief of declaration specifically that the release deed is not true, valid and binding upon them. Therefore, the following decisions in **Shiv Dayal Kapoor and others v. Union of India, New Delhi and another**^[3]; **Jagabandhu Naik and another v. Gouri Bandha and others**^[4]; **JP Builders and another v. A.Ramadas Rao and another**^[5]; and **Hindalco Industries Ltd., v. Union of India and others**^[6] were relied upon in support of the contentions that the necessary pleadings questioning the validity of the release deed are already there in the pleadings of the appellants and that therefore, if the substance of the pleadings is looked at and regard is had to the substantive relief of partition claimed and also the substance of the case pleaded and not the form, it follows that it is not necessary to specifically ask for the relief of declaration in regard to the release deed in the prayer portion and that it is always within the discretion of this court to grant the declaration based on the facts and circumstances as the relief not

specifically asked for is as of right included in the cause of action for the suit for partition and hence, the said relief cannot be denied merely because the relief is not specifically asked for and can be granted if the facts and circumstances so warrant. The substance of the contentions is that the appellants who are the plaintiffs in the partition suit ought to be given the relief of declaration that the release deed is not true, valid and binding upon them even if their plaint does not contain a specific relief in that regard. There is no dispute with the settled legal propositions relied upon by the appellants. Further, the law is well settled that any relief cannot be denied merely on the ground that the plaint does not contain a specific prayer for that relief; but, such relief not prayed for can be granted on the facts otherwise pleaded and established upon the evidence. In the case on hand, in the discussion coupled with the reasons supra, this Court already found on merits that the appellants could not establish upon the evidence that the release deed was obtained in the circumstances stated by them. Therefore, the decisions are of no avail in view of the fact that the facts and circumstances of the case do not warrant granting the relief to the appellants. The decision

Kuppuswami Chettiar v. ASPA Arumugam Chettiar and another^[7]

was relied upon in support of the proposition that though the document was styled as release deed, the document operates as a transfer by way of gift as no consideration was passed and hence, it is a compulsorily attestable document and the document being a deed of gift on its true construction, the respondents 1 to 4 are required to prove the document in accordance with the provision of Section 68 of the Indian Evidence Act. In the case on hand, there is no foundation in the pleading of the appellants that the release deed on its true construction took effect as a gift and it is compulsorily attestable. Be that as it may, the 1st appellant, who is the second wife of the executant of the release deed, attested the deed and had admitted her signatures as an attesting witness and also

as an identifying witness on the deed and had further identified the signature of the other attestor who is no more. The appellants could not show that the other attesting witness was alive and was available for examination during the course of trial before the trial court. On consideration of the evidence, this court already recorded satisfaction that the evidence on record is sufficient to prove the due execution and attestation of exhibit A29 (=A3) release deed.

16. POINTS 3 & 4:

The remaining issues under these points are in regard to the entitlement or not of the respondents 1 to 4 to the reliefs of declaration of title and recovery of possession as claimed in the former suit OS.No.1 of 1999 and other incidental reliefs including damages for use and occupation and the appellants entitlement or not to the relief of partition and a preliminary decree for partition as prayed for in the latter suit OS.No.40 of 1999. As already noted, the issue in regard to the truth, validity and binding nature of the release deed is the pivotal issue and the answers to these issues are dependant upon the answer to the said issue. Under point nos.1 and 2 this court held that the release deed is true and valid. Therefore, it follows that the appellants are not entitled to any relief in their suit for partition. As a sequel to the said finding it must be held that the respondents 1 to 4 are entitled to the relief of declaration of title and recovery of possession of the schedule property in OS.No.1 of 1999 and also the relief of recovery of damages for use and occupation ie., mesne profits at the rate of Rs.3,000/- per month from the date of suit till the date of delivery of possession. Though the award of mesne profits at the rate of Rs.3,000/- per month is not seriously disputed by the appellants, we have incidentally examined the said aspect also. Considering the nature and extent of property in the occupation of the appellants, mesne profits at the rate of Rs.3,000/- per month as awarded by the trial Court are just and fair in the facts and

circumstances of the case. The points are accordingly answered against the appellants and in favour of R1 to R4.

17. POINT No.5:

We have gone through the judgment of the trial court. For the reasons assigned in the judgment impugned and for the reasons now assigned by us and the findings recorded under points 1 to 4 supra, we find that the judgment impugned does not suffer from any infirmities calling for interference and is, therefore, sustainable both under the facts and in law. Accordingly, we hold that the judgment impugned decreeing the suit OS.No.1 of 1999 of the respondents 1 to 4 and dismissing the suit OS.No.40 of 1999 of the appellants deserves to be confirmed.

18. POINT No.6:

In the result, the appeals are dismissed, however, without costs confirming the common judgment of the trial court. The appellants and the respondent No.5 herein i.e., the defendants 3 to 5 in OS.No.1 of 1999 are granted two weeks time from the date of receipt of a copy of this judgment to deliver vacant possession of the property, more fully described in the schedule annexed to the plaint of the said suit, to the respondents 1 to 4 herein. On failure of the said defendants to do so, the respondents 1 to 4 are at liberty to recover possession of the same in accordance with the procedure established by law.

Miscellaneous petitions, if any, pending in these appeals shall stand closed.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

23rd February 2015
Vjl

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- [\[1\]](#) AIR 2003 SC 4351
- [\[2\]](#) AIR 2014 Himachal Pradesh 36
- [\[3\]](#) AIR 1963 PUNJAB 538 (V 50 C 151) (1)
- [\[4\]](#) AIR 1985 ORISSA 126
- [\[5\]](#) (2011)1 SCC 429
- [\[6\]](#) (1994) 2 SCC 594
- [\[7\]](#) AIR 1967 SC 1395