

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

SECOND APPEAL Nos.886, 901 & 902 of 2000

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COMMON JUDGMENT:-

These three Second Appeals, under Section 100 of the Code of Civil Procedure, 1908 ('the Code', for brevity), are directed against the decrees and the common judgment dated 24.07.2000 of the learned Additional District Judge, Karimnagar passed in A.S.Nos.44 of 1995, 45 of 1995 and 46 of 1995. The learned Additional District Judge, while dismissing the said three first appeals, had confirmed the decrees and the common judgment dated 28.08.1995 of the learned Principal District Munsif, Karimnagar passed in O.S. nos. 259 of 1988, 260 of 1988 and 264 of 1988.

2. To begin with, it is necessary to mention that Gonepalli Parasuramulu-the appellant in S.A.No.902 of 2000, as plaintiff, brought a suit in O.S.No.259 of 1988 against one Mallarapu Veeraiah, the defendant therein, for perpetual injunction in respect of land admeasuring Ac.1.10 guntas in Survey No.324/B of Vedira Village of Ramadugu Mandal of Karimnagar District, more fully described in the schedule annexed to the plaint. Gonepalli Bala Goud-the appellant in S.A.No.901 of 2000, as plaintiff, brought a suit in O.S.No.260 of 1988 against the same defendant Mallarapu Veeraiah for perpetual injunction in respect of wet land admeasuring Ac.0.15 guntas in survey no.878/C of Vedira Village of Ramadugu Mandal of Karimnagar District, more fully described in the schedule annexed to the plaint. Mallarapu Veeraiah, who is the defendant in the above said two suits, brought a suit in O.S.No.264 of 1988 against the plaintiff in O.S.No.259 of 1988 and Gonepalli Veera Goud for declaration of title and perpetual injunction in respect of Ac.0.15 guntas of land in survey no.878/C and Ac.0.30 guntas in survey no. 324/B situated at Vedira Village of Ramadugu Mandal of Karimnagar

District, more fully described in the schedule annexed to the plaint.

2.1 All the three suits are consolidated and common evidence was recorded in O.S.No.259 of 1988. On merits, the trial Court had decreed the suit in O.S.No.264 of 1988 of Mallarapu Veeraiah, who is the defendant in the first mentioned two suits and dismissed the said other two suits by its common judgment. As already noted, the first appeals preferred by the unsuccessful parties were also dismissed. Hence, these second appeals are preferred.

3. At the time of admission of these second appeals, this Court has taken note of the common questions mentioned in ground no.18 of the memoranda of the grounds of appeal as the common substantial questions of law involved in these appeals. The said common questions of law read as under:-

- a) **Whether non consideration of material evidence in the shape of document which are issued by public office under Section 74 of the Indian Evidence Act will raise a presumption as to substantial question of law?**
- b) **Whether the respondent is estopped under Section 115 of the Indian Evidence Act from pleading that there was no earlier partition especially when he made a declaration that there was a partition affected earlier in proceedings before the land Reforms Tribunal?**
- c) **Whether Ex.B.1 and B.2 the alleged gift deeds dated 13.06.1958 and 10.05.1958 respectively though impounded by Revenue Divisional Officer, Karimnagar are admissible in evidence for want of registration under Section 17 and 49 of the Indian Registration Act and the Courts below were right in holding that the respondent is owner and possessor of schedule properties in pursuance of Ex.B.1 and B.2?**
- d) **Whether Ex.B.1 and B.2 are enforceable documents under the law and that the respondent can claim rights and title over the suit property especially when the said documents were not legalized by filing an application before the Tahsildar, under Sec. 50-B of A.P. (T.A.) Tenancy and Agricultural Lands Act, 1950 and if no steps were taken in that regard what is the effect and consequences of the said documents?**
- e) **Whether the alleged gift deeds Ex.B.1 and B.2 are void and unenforceable documents under the law as no permission under Section 47 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 was obtained from the Tahsildar as required under the law and if so what is the effect and consequences of the said documents?**

- f) **Whether the judgment of the first appellate Court is sustainable under the law since, the appellate Court did not frame the points for consideration of the appeal which is mandatory?**

(Reproduced verbatim)

4. I have heard the submissions of the learned senior counsel appearing for the appellants in all these three second appeals and the learned counsel for the respondent Mallarapu Veeraiah who is successful in the Courts below. I have perused the material record.

5. Gonepalli Parasuramulu, who is the plaintiff in O.S.No.259 of 1988, is the father of Gonepalli Bala Goud, who is the plaintiff in O.S.No.260 of 1988. The father and the Son brought the said two suits against Mallarapu Veeraiah, the first respondent herein, in respect of Ac.1.10 guntas of land in survey no.324/B and Ac.0.15 guntas of land in survey no.878/C respectively. The said Mallarapu Veeraiah, while resisting the said two suits, brought his suit O.S.No.264 of 1988 against the plaintiff in O.S.No.259 of 1988, i.e., Gonepalli Parasuramulu and another Gonepalli Veera Goud, who is his brother, for declaration and perpetual injunction in respect of two items viz., Ac.0.15 guntas of land survey no.878/C and Ac.0.30 guntas of land in survey No.324/B. Since the suits were disposed of by a common judgment after consolidation and after recording common evidence and as the first appeals were also disposed of by a common judgment, these second appeals are being disposed of by this common judgment.

6. The learned senior counsel appearing for the appellants would contend as follows:-

“Mallarapu Veeraiah, the successful party, filed his suit for declaration of title and perpetual injunction in respect of two items of property, namely, Ac.0.30 guntas of land in survey No.324/B and another Ac.0.15 guntas of land in survey No.878/C based on two gift deeds, i.e., exhibit B1 dated 13.06.1958 and exhibit B2 dated 10.05.1958. The

Courts below had erroneously believed the said two gift deeds under exhibits B1 and B2 as true and genuine and decreed the suit of the said Mallarapu Veeraiah in O.S.No.264 of 1988 while dismissing the other two suits in O.S.Nos.259 of 1988 and 260 of 1988 filed by Gonepalli Parasuramulu and Gonepalli Veera Goud. The Courts below have not properly appreciated the evidence of Mallarapu Veeraiah who was examined as DW1 and that of DW2 – Rajamalliah, DW3–M. Parashuram and DW4–G. Veera Goud. The evidence brought on record would show that Gonepalli Bala Goud, the father of M.Gouramma had died even prior to the date of the alleged gift deed-exhibit B2. Even M. Gouramma was not alive by the date of execution of the gift deeds-exhibits B1 and B2. The trial Court, having noticed that a suit for partition in O.S.no.56 of 1990 on the file of the court of the learned Senior Civil Judge, Karimnagar was pending, came to an erroneous conclusion that there was no partition affected between the two brothers Gonepalli Parasuramulu and Gonepalli Veera Goud. That suit in O.S.No.56 of 1990 was not pending and was dismissed for default in the year 1996. Applications for restoration and condonation of the delay in seeking restoration were filed and the said petitions were pending as on the dates of the institution of these second appeals. The evidence of DW4 is quite contrary to the admissions made by him earlier before the Land Reforms Appellate Tribunal. In fact, Gonepalli Parasuramulu had filed a declaration in C.C.No.1318/KNR/1975 under the provisions of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and in the said declaration, he had shown the land admeasuring Acs.3.33 guntas in survey no.324/B and Acs.0.30 guntas in survey no.878/C and the said lands were computed to the holdings of Gonepalli Parasuramulu and his son Gonepalli Bala Goud by an order dated 30.07.1976 and the said orders have become final. Similarly, Gonepalli Veeraiah has filed declaration in C.C.No.1321/KNR/75 and in his declaration he had not shown the land in survey No.324/B. The verification officer in his report in

C.C.No.1321/KNR/75 had stated that the lands in survey Nos.241, 324, 515, 517, 518, 519 & 520 fell to the share of Gonepalli Parasuramulu in partition with his brother Gonepalli Veera Goud. Gonepalli Veera Goud, in his oral statement given on 08.11.1975 before the Special Deputy Tahsildar, Land Reforms, Karimnagar has stated that the lands in survey Nos.241, 324, 515, 517, 518, 519 & 520 were allotted to the share of Gonepalli Parasuramulu in partition while the lands in survey Nos.567, 766, 3, 528 & 569 which are recorded in the name of Gonepalli Parasuramulu were allotted to him. The declarations clinchingly establish the partition and also the fact that Gonepalli Veera Goud was not having any right in the land in survey Nos.324/B and 878/C. Gonepalli Parasuramulu had filed an application in I.A.No.112 of 1998 before the Court below for receiving the copy of the proceedings in C.C.No.1318/KNR/75, 1319/KNR/75 and 1320/KNR/75, the copy of the declaration filed by Gonepalli Veera Goud in C.C.No.1321/KNR/75, the copy of the verification report and also the statement of Gonepalli Veera Goud as additional evidence. But the Court below did not consider the said documents while deciding the appeals on the ground that they relate to the year 1975 and the suits were filed in the year 1988 and that PW1 who is aware of the said proceedings did not file them earlier. The documents are public documents and were issued by public officers and hence, the genuineness of the said documents need not be doubted. The said documents disprove the contentions and pleas taken by Mallarapu Veeraiah, who had sought declaration of title in his suit. The said documents are important to decide the genuineness of exhibits B1 and B2. The Court below had grossly erred in not receiving the said public documents as additional evidence. Exhibits B1 and B2 are inadmissible in evidence for want of registration. The Courts below had failed to see that the title and lawful possession of Mallarapu Veeraiah in respect of the suit land was not proved by adducing necessary evidence and by filing the copies of the revenue records. The Courts below had failed to see

that even the possession of Mallarapu Veeraiah, the plaintiff, who had sought declaration of title and perpetual injunction is also not proved. Both the Courts below have not properly appreciated the documentary evidence and had erred in holding that the appellants herein are not in possession of the suits properties. The approach of the first appellate Court is erroneous. A specific plea about the enforceability and validity of exhibits B1 and B2 has been raised in the memoranda of the grounds filed in the first appeals. The said plea, being a legal plea, the Court below ought to have considered the same and ought to have seen that exhibits B1 and B2 are void and unenforceable under law in view of Section 47 and Section 50-B of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, and that there was no need for filing a rejoinder. There is no requirement under law for filing the rejoinder. Non filing of the rejoinder does not preclude the appellants from taking a legal plea. There are several contradictions in the oral evidence adduced on the side of Mallarapu Veeraiah. The Courts below did not properly appreciate the facts and the oral and documentary evidence and had arrived at incorrect conclusions contrary to the evidence and based on pleas raised on inadmissible evidence. The Courts below ought to have seen that mere marking of the documents is not the proof of the contents of the documents. Gross injustice was done in rejecting the application to receive additional evidence filed by the appellants. Mallarapu Veeraiah, the first respondent, in these appeals and the plaintiff in the suit for declaration of title and perpetual injunction is a party to the Land Reforms proceedings before the Land Reforms Appellate Tribunal and he had also given statements admitting the earlier partition and the allotment of the subject properties to the family of the appellants herein and as such, he is estopped by record and also by conduct from contending that there was no partition. The Courts below did not properly appreciate the law applicable to the facts of the case and further failed to consider the ratios in the cited decisions, which are applicable to the facts of the case. The

Courts below had cast the burden wrongly on the defendants in the suit of Mallarapu Veeraiah though the said suit is filed for declaration of title and the law is well settled that in a suit for declaration of title, the plaintiff succeeds on his own strength but not on the weakness of the case of the defendants. Exhibits B1 and B2 are void and unenforceable documents as under law, which was prevailing by then, as necessary permission under Section 47 of the A. P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, was not obtained from the Tahasildar. Hence, the appeals may be allowed and the impugned decrees and the common judgment of the Court below may be set aside and the suits of the appellants in O.S.No.259 of 1988 and O.S.No.260 of 1988 be decreed and the suit in O.S.No.264 of 1988 of Mallarapu Veeraiah, the first respondent be dismissed.”

7. *Per contra*, the learned counsel for the first respondent, while supporting the decrees and common judgments of the Courts below had contended as follows:-

The Courts below had considered the facts accurately and the evidence in proper perspective and answered all the issues in all the three suits in favour of the first respondent and decreed his suit in O.S.No.264 of 1988 for declaration of title and perpetual injunction and dismissed the suits O.S.No.259 of 1988 and O.S.No.260 of 1988 of the appellants, which are filed for perpetual injunctions, as the said appellants had failed to establish their possession over the suit lands and as on the other hand Mallarapu Veeraiah-the first respondent had established not only his title but also lawful possession over the suit lands in his suit. The suits of the appellants in O.S.No.259 of 1988 and O.S.No.260 of 1988 are only simple suits for perpetual injunction, whereas the suit O.S.No.264 of 1988 of the first respondent is for declaration of title and perpetual injunction. The Courts below had properly appreciated the principles of law applicable while recording findings supported by cogent and valid reasons and therefore, the

findings of the Courts below do not call for any interference. The concurrent findings of facts recorded need not be disturbed in these second appeals considering the narrow scope of Section 100 of the Code. None of the questions raised are substantial questions of law. The Court below has given valid reasons for not taking on record and not permitting the appellants to adduce additional evidence. The said refusal to receive additional evidence is valid and sustainable in the context of the present matter. The copies of the records sought to be produced as additional evidence have no bearing on the issues involved and do not advance the case of the appellants any further. The contentions now raised for the first time in these appeals are not pure questions of law and therefore, do not fall for consideration in these second appeals. The second appeals are devoid of merit and are liable to be dismissed confirming the decrees and the common judgments of the Court below.

8. Now the points are taken up. The successful 1st respondent herein who had filed the comprehensive suit for declaration of title in respect of the two items of property involved in the *lis* and who is also the defendant in the other two suits for perpetual injunction shall hereinafter be referred to as the Plaintiff. The appellants, who are unsuccessful in all the three suits, shall hereinafter be referred to as the appellants/defendants.

8.1 It may be restated for clarity that the suit in O.S.No.264 of 1988 filed by the plaintiff against Gonepalli Parasuramulu and Gonepalli Veera Goud is a comprehensive suit for declaration of title and perpetual injunction in respect of two items of property namely Ac.0.30 guntas of dry land in survey No.324/B and Ac.0.15 guntas of wet land in survey No.878/C. That suit was decreed and the suits of the appellants for perpetual injunctions were dismissed

8.2 In this context, it is necessary to first refer to the pleadings in the said comprehensive suit. The case of the plaintiff/1st respondent in the said

suit is this: "The plaintiff is the absolute owner and possessor of the aforementioned two items of the suit land. On 13.06.1958, Gonepalli Veera Goud (2nd defendant) had gifted Ac.0.30 guntas of dry land in survey no.324/B to Gouramma, w/o Laxmaiah. On 10.05.1958, Gonepalli Bala Goud, who is the elder father (paternal uncle) of the plaintiff's mother-Gouramma, had also gifted Ac.0.15 guntas of wet land in survey no.878/C to the said Gouramma. From the said dates of the said gifts, Gouramma-the mother of the plaintiff had continued in possession along with her husband. The plaintiff and his father had enjoyed the said properties. The plaintiff having obtained a service connection no.398/WDA had installed an electric motor to the Well in the land in survey no.324/B, and has been cultivating the lands continuously. He had raised paddy crop as on the date of filing of the suit. The defendants in the instant suit, who are the sons of Gonepalli Bala Goud, have no right whatsoever over the properties involved in the suit. They are denying the title of the plaintiff and are also interfering with the peaceful possession of the plaintiff and canvassing that they will take back the suit lands. Since the time of the gifts of the lands, the plaintiff and his father were and are in possession and enjoyment of the suit lands as lawful owners and are also paying land revenue. The plaintiff and his father had also perfected the title by adverse possession. While so, the father of the plaintiff had died in the month of November, 1987. However, as the defendants came to the suit land on 15.03.1988, the plaintiff is constrained to file the suit."

8.3 On the other hand, the defence of the contesting defendant in the said suit, in brief, is this: "The material allegations in the plaint are all false. The land in survey no.324/B is of an extent of Acs.3.33 guntas. The name of the first defendant is shown in the 'patta' column and in the 'cultivation' column of the pahani patrika in respect of the suit land. The suit land was allotted to the first defendant at the time of partition between defendants 1 and 2 and their father in the year 1956. Therefore, the first

defendant's name was shown in the 'patta' column and 'cultivation' column of the pahani patrika. The second defendant Gonepalli Veera Goud had no right whatsoever over the suit land and the second defendant has not gifted one of the items of the suit land to Gouramma, w/o lakshmaiah. The plaintiff is never in possession of the suit land and he did not install electric motor as alleged in the plaint. This first defendant had already filed O.S.No.259 of 1988 in respect of Acs.1.10 guntas of land in survey no.324/B against the plaintiff herein for perpetual injunction and had obtained an interim order in the said suit. Gonepalli Bala Goud is the owner and possessor of Ac.0.15 guntas of land in survey No.878/C, i.e., one of the two items of the instant suit land. He had also filed a suit in O.S.No.260 of 1988 against the plaintiff herein in respect of the said item of the suit land and had obtained interim order in the said suit. The plaintiff had suppressed the facts before this Court. The name of Gonepalli Bala Goud was mentioned in the 'possessor' column and 'cultivation' column of Pahani patrikas. The suit land was allotted to the first defendant in the year 1956, but the 1st defendant had given the suit land to his son Gonepalli Bala Goud. The plaintiff was never in possession of the item of this suit land and there was no hut in the suit land. The first defendant and his son Gonepalli Bala Goud obtained loans by mortgaging their lands including the suit lands with Union Bank, Kothapalli. The plaintiff is the son-in-law of the second defendant Gonepalli Veera Goud and the present suit for declaration of title is filed in collusion with the second defendant."

8.4 I have gone through the pleadings in all the three suits and the oral and documentary evidence. I have noted the submissions.

8.5 Dealing first with the contention that exhibits B1 and B2-gift deeds being relied upon by the plaintiff are void as they are not registered gift deeds and that therefore, they are unenforceable and that the claim of title based on such documents is untenable and cannot be countenanced,

what is to be noted is that the said gift deeds were executed in favour of Gouramma, the mother of the plaintiff, way back in the year 1958. Gonepalli Parshuram and Gonepalli Veera Goud, who are brothers and also the defendants in the present suit of the plaintiff are the sons of one Gonepalli Bala Goud. The said Bala Goud is the elder father (i.e., Senior Paternal Uncle) of Gouramma. A perusal of exhibits B1 and B2, gift deeds, would disclose that the said Veera Goud had executed exhibit B1-gift deed dated 13.06.1958 and that the said Gonepalli Bala Goud had executed exhibit B2-gift deed dated 10.05.1958 in favour of Gouramma, the mother of the plaintiff. These two documents were impounded and Rs.405/- and Rs.305/- respectively were collected by the R.D.O., Karimnagar towards stamp duty and penalty besides adjudication fee as per Article 29 of Schedule I-A of the Indian Stamp Act, vide challan nos.6696 and 6697 dated 21.09.1988 and a certificate each was issued on 21.09.1988, vide D.Dis.Nos.L/6826/88 and L/6827/88 certifying that the documents are impounded. Therefore, any contention that the documents are not stamped is not available to the defendants/appellants. Be that as it may. Adverting to the contention that the said documents require registration and are compulsorily registerable being documents of gift in respect of immovable properties, what is to be noted is that under Section 17 of the Indian Registration Act, instruments of gift of immovable property shall be registered. Further, under Section 49 of the said Act, no document required by Section 17 of the Act to be registered shall be received as evidence of any transaction affecting such property. A gift deed of immovable property, if it requires registration, cannot be admitted in evidence even for collateral purpose, if it is not registered because a collateral transaction is not the transaction affecting the immovable property, but a transaction which is incidentally connected with the transaction. However, instruments of gift of immovable property of the value of Rs.100/- and upwards are only compulsorily registerable. Therefore, the answer to the question whether or not the gift deeds-

exhibits B1 and B2 are compulsorily registerable depends upon the values of the lands covered by the said documents. Therefore, the question raised is not a pure question of law, let alone, a substantial question of law. The gift deeds, as already noted, were executed way back in the year 1958. No evidence was adduced and is available on record in regard to the values of the properties covered by the gift deeds in the year 1958, when they were executed. The certificates, which were issued by the R.D.O concerned, on a perusal would show that the stamp duty, penalty and adjudication fee collected on the Gift deeds, in September, 1988, was Rs.405/- and 305/- respectively. From the figures mentioned in the said certificates no inference is possible that the values of the lands covered by exhibits B1 and B2 gift deeds were more than Rs.100/- each in the year 1958. Therefore, the contention that the said gift deeds-exhibits B1 and B2 are compulsorily registerable and that they are inadmissible for the reason that they are not registered, cannot be countenanced for the reasons supra. The said question also cannot be permitted to be raised by the appellants/defendants in these second appeals, as the said question in the present *lis* is a blend of fact and law and not a pure question of law, let alone a substantial question of law.

8.6 The next contention advanced on behalf of the appellants is that in the instant case, when the gift deeds were executed in the year 1958, Section 47 of the A.P (Telangana Area) Tenancy and Agricultural Lands Act was in force and that as per the provision of the said Section 47 of the said Act, permission for alienation is mandatory and that in the absence of permission under the said Section and in the absence of sale certificate envisaged under Section 50B of the said Act, which provision was added by Act 12 of 1969, the infirmity of an invalid transaction subsists and continues and therefore, the transactions under exhibits B1 and B2 gift deeds are invalid and unenforceable. In support of this contention, reliance was placed on a decision in **K.Raji Reddy (died) & others v.**

K.Susheela Bai & Others^[1]. Though, Section 47 of the said Act ordained that permission is required from the Tahasildar for alienation of any immovable property, the said Section was deleted from the year 1969 onwards and as a consequence, the requirement of permission for alienation stood lifted and any alienation subsequent to 1969 required no permission from the Tahasildar. However, the legislature took stock of the difficulties of the persons, who had already entered into transactions without the permission of the Tahasildar; and, had introduced Section 50-B for validating transactions provided an application is made to the Tahasildar; and, for such validations, the time was extended from time to time up to 1972 to facilitate availment of the opportunity of validation of such transactions, which were entered into without the permission of the Tahasildar. However, after 1972, the validations of sales by recourse to Section 50-B cannot be made, is undisputed. In the case on hand, the gift deeds were executed in the year 1958. Therefore, the appellants/defendants would contend that the gifts are void. *Per contra*, the learned counsel for the plaintiffs would contend that under exhibits B1 and B2, the properties were gifted to Gouramma towards '*pasupu-kunkuma*' and the said transactions being gifts cannot be termed as sales or alienations. Whether permissions were necessary or not in respect of the subject gifts, and if permissions were necessary for making such gifts, whether such permissions were obtained or not at the time of making of the gifts under exhibits B1 and B2 is not borne by the evidence brought on record. In case, permissions were necessary and were not obtained, whether validation of the gift transactions was obtained by making applications to the Tahasildar concerned within the time allowed under law as per the provision under Section 50-B of the Act 12 of 1969 is also not borne out by record. This contention, though a legal contention was raised for the first time in the second appeal and was not raised before the Courts below. Had the appellants raised this contention before the trial Court, the plaintiff would have had an opportunity to adduce evidence in

regard to the necessity or otherwise of the permissions, the permissions obtained, if any, or the certificates of validation obtained under Section 50-B, if any. Since these contentions were not raised before the two courts below, the plaintiff had no opportunity to meet the said contentions and adduce the necessary evidence. Therefore, this Court is of the considered view that this contention also cannot be permitted to be raised for the first time in the second appeal when there was no opportunity to the plaintiffs to meet this contention by adducing necessary evidence.

8.7 Having regard to the reasons, this Court *ex facie* is of the view that the contention that exhibits B1 and B2-gift deeds are void and cannot be looked into cannot be countenanced in these second appeals. Without disturbing this finding and proceeding on the assumption that the gift deeds are void, what is to be first noted is that the courts below while dismissing the two suits for perpetual injunction in O.S.nos.259 of 1988 and 260 of 1988 filed by the appellants, viz., Parashuramulu and Bala Goud S/o Parashuramulu and while decreeing the instant suit of the plaintiff for declaration and perpetual injunction had recorded concurrent findings of fact that the plaintiff is in possession of the suit lands and that the said appellants are not in possession. Both the courts below held that by virtue of exhibits B1 and B2, the instant suit schedule properties in two items of Ac.0.30 guntas and Ac.0.15 guntas were in possession of Gouramma and that later, her husband-Mallarapu Lakshmaiah was in possession. The courts below also had noted that exhibits B1 and B2 were executed in favour of the mother of the plaintiff respectively by the father of Gonepalli Parashuramulu (PW1) and by DW4-Veera Goud, who is the brother of the said Parashuramulu (PW1) and held that later, the plaintiff having come into possession of the suit lands, had obtained an electricity connection and fixed an electric motor in the year 1979 and that prior to the plaintiff, his father was in possession and thereafter, the plaintiff has been in possession of the suit lands. Thus, the courts below, on appreciation of evidence, both oral and documentary, had recorded

concurrent finding of fact in regard to long and adverse possession of the plaintiff who is claiming possession through his mother, who had come into possession of the suit lands by virtue of exhibits B1 and B2-gift deeds. Therefore, even if it is to be assumed for a moment that exhibits B1 and B2-gift deeds are void, still, the plaintiff and his parents, who are his predecessors, having been in long and continuous possession of the suit lands from 1958 onwards had acquired possessory title on extinguishment of the rights of the donors under exhibits B1 and B2-gift deeds by virtue of the provision of Section [27](#) of the Indian Limitation Act. As per the provision of the said Section [27](#) of the above said Act and the legal position, which is well settled, when a person acquires title by adverse possession and the real owners fail to recover possession from such occupant of the property within the statutory period, the right of the owners to such property stands extinguished at the determination of the period limited to the owners for instituting a suit for possession of the property. Therefore, this section of law of limitation not only bars the remedy of the real owners but also extinguishes their title/right to the property. Further, in the decision in **M. Lakshmi Devamma Vs. Land Acquisition Officer** ^[2] a Division Bench of this Court had held as follows: "It is now well settled that in the case of an invalid or void sale the purchaser would be in possession and adverse to the title of the vendor and that even though the sale itself does not confer any title immediately still the vendee acquires a valid title on the expiry of 12 years from the date of sale by virtue of the provisions of Section [27](#) of the Indian Limitation Act read with Article 64 thereof. It is also well settled that the position is no different in the case of an oral sale of immovable property of a value more than Rs. 100/-. In the latter case also the vendee acquires title by adverse possession on the expiry of 12 years from the date of the oral sale." Further, in the decision in **Mohd. Kareemuddin Khan (died) and others v. Syed Azam** ^[3] a Division Bench of this Court referred to

various precedents and also the decision in **Achal Reddy v.**

Ramakrishna Reddiar^[4] wherein it was held as follows:- 'The position is different in the case where in pursuance of an oral transfer or a deed of transfer not registered the owner of a property transfers the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct, there is a total divestiture of all his right, title and interest in the property. This applies only in a case where there is clear manifestation of the intention of the owner to divest himself of the right over the property.' Having referred to the above decision, the Division Bench had summed up the proposition of law as follows: - 'The position of law being thus, we proceed on the footing that even if the sales in favour of the respondent-defendant were void for any reason, yet if he was in possession of the properties in pursuance of the invalid sale deeds his possession would be *ipso facto* adverse to the appellants.' The position is no different in the case of gifts, which are *ab initio* void. Therefore, even assuming for a moment that the gift deeds are to be considered as void, still, the said factor is not going to advance the case of the appellants any further.

9.1 The next questions to be considered are as follows:

- g) Whether non consideration of material evidence in the shape of document which are issued by public office under Section 74 of the Indian Evidence Act will raise a presumption as to substantial question of law?
- h) Whether the respondent is estopped under Section 115 of the Indian Evidence Act from pleading that there was no earlier

partition especially when he made a declaration that there was a partition affected earlier in proceedings before the land Reforms Tribunal?

9.2 The learned counsel for the appellants would contend that Gonepalli Parasuramulu, one of the defendants/appellants herein and his two sons Veeraiah and Satyanarayana had filed separate declarations under the Land Ceiling Laws and that pursuant to the said declarations, a joint enquiry was held and a common order was passed and that in those declarations they have shown the disputed lands as belonging to them and that the said lands were computed in their holdings and that the father-in-law of the plaintiff, Gonepalli Veeraiah, who is the brother of the appellant-Gonepalli Parasuramulu, had also filed declaration and that in that declaration he had shown the lands which are given to his brother Parasuramulu towards his share, and that a verification officer, after due verification, had submitted a report and that the said documents, which are public documents, would lay bare that the subject properties belong to the contesting appellants herein and, therefore, the appellants had filed an application to receive additional evidence before the Court below to receive on file as additional evidence-the CC of the order in CC.Nos.1318, 1319 and 1320/KNR/75 dated 30.07.1996, the CC of the declaration filed by Gonepalli Veeraiah in CC.No.1321/KNR/75, the CC of the statement given by Gonepalli Veeraiah in Ceiling Case and the CC of the verification report of the verification officer and that the said documents clinchingly prove the case of the appellants and that in the facts and circumstances of the case, the plaintiff is estopped by virtue of the provision under Section 115 of the Indian Evidence Act from contending contrary to the land ceiling declarations and the order, which have become final, and that any contrary contentions cannot be countenanced by this Court. However, the fact that remains is that the Court below had dismissed the said application to receive additional evidence while disposing of the batch of first appeals and had refused to grant permission to adduce additional evidence; and that the said

application was disposed of simultaneously with the first appeals as required under law. Therefore, the learned counsel for the appellants *inter alia* contends that the Court below had erroneously dismissed the application to receive the said public documents as additional evidence and that since the documents sought to be filed as additional evidence are public documents, which cannot be disputed and which needed no further proof, the Court below ought to have received the additional evidence on file in view of the provision of Section 74 of the Indian Evidence Act. He would, therefore, request this Court to consider the said documents as additional evidence. The learned counsel placed reliance on a decision in **B.L. Sreedhar and others v. K.M. Munireddy and others**^[5] in support of the proposition and contention that the declarations and the order under the land ceiling law have the effect of creating substantive rights against the plaintiff who is estopped.

9.3 The learned counsel for the plaintiff, in reply, would submit as follows: 'The property was gifted to Gowramma, the mother of the plaintiff, way back in the year 1958. Therefore, the declarations under the land ceiling laws filed, if any, by the appellants and the brother of one of the appellants, which are self serving, do not affect the rights of Gowramma and her husband Laxmaiah and the plaintiff, who had succeeded to the property, and that, therefore, the said declarations, which are self serving and which are contrary to the facts, and the orders, if any, in the said proceedings to which the plaintiff and his father are not parties do not affect the rights of the plaintiff in the suit lands.' The legal position on this aspect was settled as early as in 1936 by the Privy Council in **Venkatapathi v. Venkatanarasimha [AIR 1936 PC 264]** wherein also, on the basis of the statement made by two brothers a conclusion of existence of joint status was sought to be drawn. It was held in Paragraph 15 as under:

It sometimes happens that persons make statements which save their properties or proceed upon ignorance of true possession

and it is not their statements but their relation with the estate which should be taken into consideration in determining the issue. The vital factor in a case of this kind is the nature of interest which the members of the family have in the estate.

Another Division Bench in **Kudti Laxma Reddy v. Kudti Satya Reddy** [CCCA. No. 180 of 1997 dated 31.01.2003] also considered a similar question. Relevant portions of Paragraphs 54 and 55 are as follows:

54. However, the contention of the defendants is that on the basis of Ex.B2 partition the 1st plaintiff gave a declaration before the Land Reforms Tribunal, which was ultimately accepted under Ex.B20. The learned Counsel for the appellants while referring to Exs.B9 to B20 contended that since the plaintiffs gave statements before the authorities under the Land Reforms Act pleading partition under Ex.B2, it is not open to them to contend that Ex.B2 partition was not true and was never acted upon.

55. ...In the facts and circumstances of the case, the mere fact that before the Land Reforms Tribunal the plaintiffs gave self-serving statements basing upon Ex.B2 partition may not be of any consequence. In the light of the clinching evidence, both oral and documentary, establishing that there was no division of status of the joint family, we are unable to take a contrary view only on the basis of Exs.B9 to B20, statements and proceedings before the Land Reforms Tribunal.

It is urged on behalf of the plaintiff that it is well settled that when parties make statement for the purpose of escaping rigors of ceiling laws or tax laws, that by itself is not decisive and such statements cannot be equated to admissions so as to form basis of a status of a thing. It is finally urged that the declarations were given by the appellant-Parasuramulu and his two sons and the brother of the said appellant in about the year 1975; nevertheless, the property was already gifted in the year 1958 under exhibits B1 and B2 to the mother of the plaintiff; and since the said declarations under Land Reform Law were not given either by the mother or the father of the plaintiff or the plaintiff, for that matter, the question of estoppel does not arise; and the statements, which are self serving, if any, made in those declarations ignoring the gift deeds of the year 1958 may not be of any consequence.

9.4 I have bestowed my attention to the facts and the submissions. I

see acceptable merit in the contentions of the learned counsel for the plaintiff that since the declarations are not given either by the parents of the plaintiff or the plaintiff and were given by one of the appellants, his sons and brother, the question of estoppel does not arise for consideration both under the facts and also the law obtaining. Accordingly, this Court finds that the additional evidence being sought to be introduced *ex facie* is inconsequential. In any view of the matter, as rightly held by the Court below, any additional evidence need not be permitted to be adduced, since the additional evidence sought to be introduced, in the well considered view of this Court, is not required to enable the Court to pronounce a judgment or for any other substantial cause. Hence, and in view of the facts peculiar to the instant case, the decision in **North Eastern Railway Administration v. Bhagwan Das**^[6], wherein the scope and the broad principles to be kept in view while dealing with the applications under Order XLI Rule 27 are explained, is not helpful to the appellants.

10.1 The next contention advanced by the learned counsel for the appellants is that the judgment of the 1st appellate Court is unsustainable under facts and in law as the said Court had framed an omnibus point and had failed to frame the necessary points for determination as required under Order XLI Rule 31 of the Code. In reply, the learned counsel for the plaintiff would contend that a comprehensive point as to 'whether the judgment and decrees of the trial Court are not sustainable and are liable to be set aside' was framed and answered by the Court below and that when the Court below had dealt with in its judgment all the grounds taken in the memoranda of grounds of appeal filed before it and gave a decision supported by valid and cogent reasons, the impugned common judgment cannot be assailed on a mere procedural defect since there is sufficient compliance of the provision of Order XLI Rule 31, otherwise. Having regard to the submissions of both the sides,

what is to be noted is that the Court below had formulated a comprehensive point and had answered the same. While dealing with the said point, the Court below had dealt with in its judgment all the grounds taken in the memoranda of grounds of appeal filed before it and gave a decision supported by valid and cogent reasons. Therefore, the impugned judgment cannot be assailed on a mere procedural defect as there is sufficient compliance of the provision of Order XLI Rule 31, otherwise. The view of this court finds support from the ratio in the decision in **Gorrella Durga Vara Prasada Rao v. Indukuri Ram Raju and others**^[7]. Further, in **Vegesna Ratnamma Vs. Chinta Venateswarlu**^[8] a reference was made to the following ratios in the following precedents.

“In **Girijanandini v. Bijendra Narain** [AIR 1967 SC 1124], the Supreme Court held as follows:

We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.

In **V. Venkataswami v. G. Venkataswami** [AIR 1954 Madras 9], the Madras High Court held as follows:

where the appellate Judge had failed to frame points and discuss each point separately and record the finding separately but had adopted the easier method of stating that he agreed with the conclusions of the Subordinate Judge, that was no doubt not a very satisfactory way but on that ground the High Court would not reverse the decision of the lower appellate Court.

In **Ali Mohamood v. Special Court under A.P. Land Grabbing (Prohibition) Act** [2000(5) ALD 172] a Division Bench of this Court held as follows:

The idea behind Order 41, Rule 31 Code of Civil Procedure is that the Court while passing the judgment shall apply its mind to the evidence made available on record and secondly, whether both the parties did understand on what point they have to submit their case. While in some cases the Courts have held that non-compliance of anyone of the requirements of Order 41 R 31 C.P.C. vitiates the proceedings but in some cases the courts have taken the view that non-compliance of anyone of the requirements of Order 41 Rule 31 C.P.C. does not vitiate the proceedings. The purpose of framing the points for consideration by the lower appellate Court is to clear up the pleading and focus the attention of the Court and of the parties on the specific and rival contentions which arise for determination. Time and again it is said that it is not necessary that the judgment should record all the facts in detail and should deal mechanically with all points. It

would be sufficient if the Court renders its independent judgment.

A reading of the judgment of the lower appellate Court reflects application of mind on its part and failure to frame points for consideration at best can be said to be only a technical defect or a procedural irregularity which can be cured if the judgment is in substantial compliance of all other requirements. In other words, it is desirable that the first appellate Court should comply with all the requirements of Order 41 Rule 31 C.P.C. but if there is any slight deviation that itself is not a ground to hold that the judgment is vitiated.”

After taking note of the ratios in the decisions it was held in the cited decision that it can be concluded that if the judgment reflects the application of mind to the evidence available on record and that if the appellate court discusses various points raised by the parties by answering the rival contentions, it is not necessary that the judgment should record all the facts in detail and should deal mechanically with all points and that it would be sufficient if the court renders its independent judgment on the basis of the material available on record and that if there is slight deviation from the requirement of Rule 31 of Order XLI of the Code that itself is not a ground to hold that the judgment is vitiated. Having regard to the facts and the legal position obtaining, this Court is of the view that mere deviation from the requirement of Rule 31 of Order XLI of the Code is no ground to hold that the judgment of the Court below is vitiated as there is sufficient compliance of the provision of Order XLI Rule 31, otherwise. There is no dispute with the proposition of law in **Mani v. Batcha Sahib & others [2001(1) CCC 162 (Mad)]** wherein the Madras High Court re-iterated the settled proposition that it is the duty of the lower appellate Court to decide the entire evidence afresh, take notice of the grounds taken and the reasons advanced by the trial Court to reach its decision. However, the decision is not helpful to the appellants, as the Court below had extensively considered the evidence on record and had come to close quarters with the reasoning of the trial Court before concurring with the findings of the trial Court. Further, as the Court below did not ignore any material and important evidence on record while recording the concurrent finding of fact, the decision in

Sonawati and others v. Ram and another^[9] is also not helpful to the plaintiff.

11. Before parting with the case, let it be noted that the learned counsel for the appellants placed reliance on the following decisions:

(1) **Ram Sarup Gupta v. Bishun Naraian Inter College and others**^[10] was relied upon on the aspect of lack of pleadings in regard to adverse possession and the proposition that in the absence of pleadings, evidence, if any, produced by the parties cannot be considered and that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the party in support of the case set up by it. In the case on hand, both the Courts below have examined the pleadings and evidence in juxtaposition. This Court, keeping in view the object and purpose of pleadings and the settled principle that it is not desirable to place undue emphasis on the form and that instead it is necessary to consider the substance of pleadings, finds that there is sufficient pleading in the suit of the plaintiff to enable the adverse party to know the case it has to meet.

(2) In **Bondar Sing and others v. Nihal Singh and others**^[11] it was held that if the findings of the subordinate Courts are contrary to the evidence on record and are perverse, such findings can be set aside by the High Court in appeal. In the case on hand, the well reasoned findings of the Courts below were recorded after appreciating the facts correctly and the evidence in proper perspective. Hence, the ratio in the decision is also not helpful to the appellants.

12. Having regard to the reasoned findings, this Court finds that there is no substance in the substantial questions and that the second appeals are devoid of merit and are liable to be dismissed.

13. In the result, all the Second Appeals are dismissed. There shall be no order as to costs.

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

M. Seetharama Murthi, J

16th December, 2015
BVV

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- [\[1\]](#) 1986 ALT 44
 - [\[2\]](#) AIR 1985 AP 200
 - [\[3\]](#) 1997 (2) ALT 625 (DB)
 - [\[4\]](#) AIR 1990 SC 553
 - [\[5\]](#) (2003)2 SCC 355
 - [\[6\]](#) (2008)8 SCC 511
 - [\[7\]](#) 2002(2) ALT 589
 - [\[8\]](#) 2008 (1) ALD 113
 - [\[9\]](#) AIR 1968 SC 466
 - [\[10\]](#) AIR 1987 SC 1242
 - [\[11\]](#) (2003)4 SCC 161