

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

C.C.C.A. No.84 of 2006 and Tr.CCCA No.25 of 2015

C.C.C.A.No.84 of 2006:

Between:

Sardar Inder Singh Sokki
and others.
Appellants

...

AND

M/s.Geetha Enterprises, rep. by its
Managing Partner Sri B.Jagath Kumar.
and others.

...

Respondents

Tr.C.C.C.A.No.25 of 2015:

Between:

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...

DATE OF JUDGMENT PRONOUNCED: 30.10.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes /
No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes /

No

3. Whether His Lordship wish to
see the fair copy of the Judgment?

Yes / No

*** THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

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**^ Counsel for Appellants
Rao**

: Sri A.K.Narasimha

! Counsel for Respondents 1 and 2 : Sri Peri Prabhakar

! Counsel for Respondents 4 and 11

: Sri B.D.L.

Nirmal Kumar

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....

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^ Counsel for Appellants : Sri A.K.Narasimha Rao

! Counsel for Respondents 1 and 2 : Sri Peri Prabhakar

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 2014 SC 2326
- 2) 2000 (5) ALD Pg. 1 (DB)
- 3) AIR 2002 SC 960
- 4) AIR 1950 Supreme Court Pg.1
- 5) (1987) 4 SCC 424
- 6) AIR 1951 (Mad) 284
- 7) AIR 1925 Mad 143
- 8) AIR 1977 Supreme Court 680 (1)
- 9) AIR 1976 SC 49
- 10) 1997 (1) BLJR 851 = MANU/BH/0154/1997
- 11) AIR 2002 SC 569
- 12) AIR 1992 SC 1338

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A. No.84 of 2006 and Tr.C.C.C.A. No.25 of 2015

Common Judgment:

Aggrieved by the common judgment dt: 23.01.2006 in O.S.No.152 of 1995 and O.S.No.339 of 1993 passed by learned III Senior Civil Judge, City Civil Court, Secunderabad, the defendants 1, 2 and 4 to 6 in O.S.No.152 of 1995/plaintiffs 1 to 5 in O.S.No.339 of 1993 preferred CCCA No.84 of 2006 against the judgment in O.S.No.152 of 1995 and Tr.CCCA No.25 of 2015 against the judgment in O.S.No.339 of 1993.

2) The factual matrix of the suit O.S.No.152 of 1995 is thus:

a) The plaintiffs 2 and 3 and defendant No.7 originally formed a partnership firm and registered in 1982 under the name and style of 1st plaintiff i.e, M/s. Geetha Enterprises with 2nd plaintiff as its Managing Partner. The defendant No.7 left the partnership firm on 01.07.1985. The plaintiffs 2, 3 and defendant No.7 obtained 5000 sq.yds of open land in Sy.No.35, situated at Zamisthanpur, Seethaphalmandi, Secunderabad on lease under registered lease deed dt:27.02.1982 and registered on 11.03.1982 from defendants 1 to 6 for construction of a Cinema Theatre by name Suresh Talkies. As the Sub-Registrar of the Registration Department objected for registering lease deed for 30 years, the lease deed was accordingly executed and registered for a period of 10 years from 11.03.1982 to 10.03.1992. On 11.03.1982, the plaintiff paid a sum of Rs.30,000/- to defendants 1 to 6 towards earnest Deposit to be returned after the period of 30 years. On the same day, the defendants 1 to 6 have executed a separate agreement in favour of plaintiffs agreeing to execute a registered renewal lease deed for a further period of 20 years from the date of expiry of the original lease deed for 10 years. As per the agreement, the plaintiffs have to pay Rs.2,420/- p.m for a period of 5 years from the date of renewal and later it has to be enhanced by 10% for every 5 years for the remaining period of lease. It is further agreed between the parties that after expiry of renewal

period of lease of 20 years, defendants 1 to 6 have to take over possession of the land, theatre and structures and machinery etc.

b) The plaintiffs further submitted that they completed the construction of theatre by spending a huge amount of Rs.38,00,000/- by taking loans from different organizations. Though the agreement was executed on 11.03.1982 but as per the stipulation of the lease deed, the lease could become operative only from 05.07.1985 i.e, from the date of inauguration of the theatre.

c) The plaintiffs further submitted that the theatre was leased out by the 2nd plaintiff i.e, Managing Partner to one G.Sri Ramulu for 100 weeks from 23.08.1991 and the said G.Sri Ramulu filed a suit No.3989 of 1991 before the IV Asst. Judge, City Civil Court, Hyderabad and obtained injunction order against the plaintiff from interfering with his possession. The plaintiffs issued a legal notice to defendants 1 to 6 on 06.02.1992 calling upon them to execute a registered lease deed for the remaining period of 20 years by way of renewal as per the agreement dt: 11.03.1982 but the defendants did not come forward and replied with false allegations. Thus the plaintiffs filed the suit (O.S.No.152 of 1995) for specific performance of lease deed dt:11.03.1982. The defendants 7 to 11 who were former partners are shown as proforma parties.

d) The defendants 1 to 6 filed written statement and admitted to the extent that they leased out the suit schedule property for a period of 10 years and executed lease agreement on 27.02.1982 and registered on 11.03.1982. They denied that the plaintiffs were intended to get the registered lease deed for a period of 30 years, as the Sub-Registrar of the Registration Dept. objected for registration beyond 10 years and so the lease deed was registered for 10 years only. The defendants also denied that plaintiffs paid a sum of Rs.30,000/- to the defendants 1 to 6 at the time of registration of lease deed dt: 11.03.1982. The defendants further denied that they executed separate agreement of lease in favour of plaintiff on 11.03.1982 agreeing to execute a registered lease deed in renewal of earlier lease deed for a further period of 20 years. The defendants denied that the plaintiffs borrowed huge amount of Rs.38,00,000/- from various commercial institutions and also from friends and relatives of plaintiffs for construction of theatre and inaugurated the same on 05.07.1985. Thus defendants prayed to dismiss the suit.

3) Basing on the above pleadings, the trial Court framed following issues:

- 1) Whether the plaintiffs are entitled to get a decree directing the defendants 1 to 6 to execute a registered lease deed in respect of

the schedule property for a period of 10 years upto 10.03.2012 and to pay the stamp and registration charges?

- 2) Whether the plaintiffs are entitled to the perpetual injunction prayed for?
- 3) To what relief?

The following additional issues are settled for trial on 31.01.2005:

- 1) Whether the plaintiffs are entitled to get a decree directing the defendants 1 to 6 to execute a registered lease deed in respect of the suit schedule property for a period of 20 years upto 10.03.2012 and pay the stamp and registration charges?

- 2) To what relief?

4 a) O.S.No.339 of 1993 is filed by the plaintiffs 1 to 5 (defendants 1, 2 and 4 to 6 in O.S.No.152 of 1995) for recovery of possession and grant of permanent injunction and damages against the defendant @ Rs.10,000/- p.m towards the use and occupation of the plaint schedule property. The plaintiffs submitted that as per the terms and conditions of registered lease deed dt: 11.03.1982, the lease period is only for 10 years from the date of lease deed and after expiry of lease period of 10 years, the plaintiffs shall become absolute owner of the vacant land and super structures along with machinery, cinema Theatre and other structures etc. As the defendants failed to deliver the vacant

possession, the plaintiffs filed this suit for ejectment of the defendants from the plaint schedule property.

b) The defendants filed written statement and contended that the suit is bad for non-joinder of Sri Baldev Singh Sokki, who is one of the co-owners along with plaintiffs 1 to 5. They denied that the lease was only for 10 years. They submitted that the tenure of lease was agreed to be for 30 years but in order to tide over certain technical formalities, lease deed dt: 27.02.1982 was executed and registered on 11.03.1982 for 10 years followed by a subsequent agreement dt: 11.03.1982 for a further period of 20 years on the same terms and conditions. Thus the defendants prayed to dismiss the suit.

5) On the basis of above pleadings, the trial Court settled the following issues for trial.

- 1) Whether the plaintiff is entitled for the relief of delivery of possession of suit schedule property?
- 2) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?
- 3) Whether the plaintiff is entitled for the damages at the rate of Rs.10,000/- p.m from the date of suit till realization as prayed for?
- 4) Whether the suit is bad for non-joinder of necessary party, namely, Sardar Baldev Singh?
- 5) To what relief?

6) O.S.No.152 of 1995 and O.S.No.339 of 1993 were clubbed together and common trial was conducted and evidence was adduced in O.S.No.152 of 1995. PW.1 is examined and Exs.A1 to A.78 were marked on behalf of plaintiffs. DWs.1 and 2 were examined and Ex.B.1 was marked on behalf of defendants.

7) The trial Court basing on the entire evidence on record decreed the suit—O.S.No.152 of 1995 holding that defendants shall execute registered lease deed in renewal of earlier registered lease deed dt:27.02.1982 registered on 11.03.1982 for a period of 20 years from 12.03.1992 to 11.03.2012 within one month from the date of its judgment and dismissed the suit—O.S.No.339 of 1993 filed for recovery of possession of suit schedule property.

Hence, the present appeals.

8) The parties in both the appeals are referred as they were arrayed in O.S.No.152 of 1995 before the trial Court.

9 a) **CCCA No.84 of 2006**: This appeal is filed against the judgment in O.S.No.152 of 1995. It is to be noted that pending appeal, respondent No.3—B.Indira died and respondent No.11 is recognised as her L.R.

b) Heard arguments of Sri V.L.N.G.K.Murthy, learned counsel representing for Sri A.K.Narsimha Rao, learned counsel for appellants; Sri Vedula Venkataramana, learned

Senior counsel appearing for Sri Peri Prabhakar, learned counsel for respondents 1 and 2; Sri B.D.L. Nirmal Kumar, learned counsel for R.4 and R.11. Respondent Nos.5 to 10 are not necessary parties in the appeal vide cause title.

10 a) **Tr.CCCA No.25 of 2015**: This appeal is filed against the judgment in O.S.No.339 of 1993. Originally the appeal was filed as A.S.No.47 of 2014 before the I Additional Chief Judge, City Civil Court at Secunderabad. By order dt:05.09.2014 in Tr.C.M.P.No.338 of 2014, this Court transferred the said appeal to the High Court to be heard along with C.C.C.A.No.84 of 2006.

b) Heard arguments of Sri V.L.N.G.K.Murthy, learned counsel representing for Sri A.K.Narsimha Rao, learned counsel for appellants;

Sri Vedula Venkataramana, learned Senior counsel appearing for Sri Peri Prabhakar, learned counsel for respondent Nos.1 and 2; Sri B.D.L. Nirmal Kumar, learned counsel for R.4. Respondent Nos.5 to 9 are not necessary parties in the appeal as well as suit vide cause title.

11) As can be seen from the impugned judgment, the defendants 1 to 6 in O.S.No.152 of 1995 admitted to have executed Ex.A.1—registered lease deed on 11.03.1982 for a period of 10 years but they vehemently denied the execution of a contemporaneous agreement under Ex.A.2. In this context, the trial Court observed that the entire case of

plaintiffs rests upon the proof of execution of Ex.A.2— agreement dt:11.03.1982 whereunder the defendants purportedly agreed to execute a renewal registered lease deed for a period of 20 years and embarked upon deciding the genuinity of Ex.A.2. The trial Court in last paragraph of Page 32 of its judgment ultimately held that Ex.A.2 was contemporaneously executed with Ex.B.1 by the defendants and there were no suspicious circumstances surrounding its execution and it does not suffer from any legal disability. The trial Court came to such conclusion upon following observations:

- (i) The significant fact is that all the 12 stamp papers used for engrossing Exs.B.1 and A.2 were purchased from the same stamp vendor on the same day i.e, 26.02.1982 and by the same person i.e, S.Inder Singh (D.1) and the serial numbers of those stamp papers were also in one sequence. All those documents contain the thumb impressions of Gurudev Singh and the signatures of the remaining defendants and also the signatures of B.Jagath Kumar (P.2), the Managing Partner of P.1—firm. There is nothing to differentiate the signatures in Ex.B.1 and signatures in Ex.A.2 and they appear alike to the naked eye. Further, it is not the plea of defendants that the signatures in Ex.A.2 do not belong to them and they were forged signatures.
- (ii) With regard to the suspicion shrouded on the date of Ex.A.2 as in its first page, the date “11” was interpolated and month “March” was written in the blank space and similarly in the second page, the date of Ex.A.2 was written with ink in the blank

space and so also in the third page of Ex.A.2, the date of document is written with pen in the blank space, the trial Court it appears felt that such interpolations and writings of the date in blank space were required to be made because the other document i.e, Ex.B.1 was not executed or registered by the date of Ex.A.2 and it was quite probable that when Ex.B.1 was registered on 11.03.1982, the same date might have been noted in Ex.A.2 also. The trial Court thus held that there is no suspicious circumstance relating to the date of Ex.A.2.

(iii) The trial Court observed that DW.2—S.Baldev Singh, who is D.3 has categorically stated that on the same day of execution of Ex.B.1, they also executed Ex.A.2—agreement and himself, his father, his mother and three brothers have signed on the registered lease deed and also the agreement dt: 11.03.1982 i.e, Ex.A.2. He also admitted about Ex.A.3—receipt. From his evidence, the trial Court observed that the evidence of DW.2 lends much credence to the oral testimony of PW.1 and firmly establishes the factum of execution of Ex.A.2 by all the defendants.

(iv) Considering the terms of Ex.B.1—lease that at the end of contract period of 10 years, the lessee should deliver vacant possession of the property together with theatre building, appurtenances, machinery, furniture etc., without claiming any compensation and further considering that it took about 3 ½ years for the plaintiffs to construct the Cinema Hall and it would be difficult to get the amount invested with reasonable profit within the remaining 6 ½ years if the lease was only for a

period of 10 years, the trial Court observed that it was quite probable that there was an understanding between the parties to lease the property for a period of 30 years and in pursuance of such understanding, Ex.A.2 must have been voluntarily executed by all the defendants in favour of plaintiffs.

(v) With regard to the authentication made by the Notary Advocate long after the execution of Ex.A.2, the trial Court observed that as per the endorsement of the Notary Advocate, the document was presented for authentication on 09.09.1983 and he authenticated the same and for simple authentication the parties were not required to be present before him and therefore, his authentication on Ex.A.2 neither renders the document suspicious nor adds any value to it.

(vi) The contention of the defendants that though Ex.A.2 is taken to be true the suit for specific performance is barred by limitation because the agreement was executed on 22.03.1982 and therefore, the period of limitation for filing the suit for specific performance commences from 22.03.1982 is concerned, the trial Court with reference to the relevant clauses in Exs.B.1 and A.2 came to conclusion that though Ex.A.2 was executed on 11.03.1982, “the renewal clause” becomes operative only on the date of expiry of Ex.B.1—registered lease deed and hence the suit is not barred by limitation.

12 a) Impugning the judgment, the first argument of learned counsel for appellants is that having regard to unattested corrections and interpolations regarding date of execution of

Ex.A.2, the trial Court ought to have disbelieved and held as a fabricated document. The trial court should have rejected Ex.A.2 also for the reason that it was notarized long after the date of its alleged execution, thereby, creating a *bonafide* suspicion about its execution on 11.03.1982. Further, the trial Court should have dismissed the suit for specific performance as the claim was barred by limitation because the plaintiff has not sought for specific performance within three years from the date of its alleged execution. On these grounds, learned counsel for appellants sought to allow the appeal and dismiss the suit—O.S.No.152 of 1995.

b) Alternatively, he argued that even if this Court comes to conclusion that Ex.A.2 is a genuine document, since the renewal period of 20 years of lease as agreed under Ex.A.2 was over by efflux of time by 2012 itself i.e, during pendency of the suit and appeal, the appellants/defendants are entitled to the possession of leasehold land with superstructures thereon and hence the appeals may be allowed atleast on that count. He submitted that the Court can take into consideration the subsequent events to mould the reliefs suitably. He relied upon the following decisions:

i) ***Gaiv Dinshaw Irani and others vs. Tehmtan Irani and others***^[1]

ii) ***Krishna Ceramics and Refractories vs.Dr.V.S.Krishna Ceramics and Potteries***^[2]

13) Per contra, learned Senior Counsel Sri Vedula Venkataramana submitted the following arguments:

a) Learned Senior Counsel firstly argued that Ex.A.2 was contemporaneous to Ex.B.1 and the trial Court after giving various cogent reasons held it to be a believable document and all the contentions now raised by the appellants to impeach its credibility were already discarded by the trial Court as having no force in them and therefore, the appellants cannot raise the same grounds in these appeals.

b) Secondly, opposing the argument of appellants that during pendency of the appeal the renewal period was over by efflux of time, he submitted that the suit—O.S.No.152 of 1995 was decreed by the trial Court directing defendants to execute a renewal lease deed for a further period of 20 years but the defendants have not obliged and went in appeal and obtained stay of execution of the said decree in C.C.C.A.M.P.No.236 of 2006 in C.C.C.A.No.84 of 2006 and by virtue of the said stay, the plaintiffs though succeeded, could not execute the decree to renew for 20 years and so the extended period of lease of 20 years shall be reckoned only from the date when the lessors execute a renewal lease deed but not from 12.03.1992. He argued that the interregnum period pending suit and appeal cannot be taken for reckoning of 20 years.

He alternatively argued that even assuming that 20

years period covered by Ex.A.2 was over by efflux of time, still respondents can defend possession by virtue of Ex.A.2 against the suit for eviction filed by the appellants. On this legal aspect, he relied upon the following decisions:

- (i) ***Shrimanth Shamrao Suryavanshi and another vs. Prahlad Bhairoba Suryavanshi by LRs and others***^[3]
- (ii) ***Maneklal Mansukhbhai vs. Hormutsji Jamshedji Ginwalla and sons***^[4]

c) Then citing certain subsequent events, learned Senior Counsel challenged the maintainability of the two appeals. His argument is that the appellants are not the owners of entire 5000 sq.yds taken on lease by the respondents. Originally Mazhar Hussain was the absolute owner of land measuring 5637 sq.yds in S.No.35 of Zabisthanpur, Secunderabad, out of it, the 1st appellant—Sardar Inder Singh Sokki purchased only 2000 sq.yds under registered sale deed bearing document No.914/1969. However, the appellants by misrepresenting the facts stating that they are the owners of the entire 5637 sq.yds and that they were retaining 637 sq.yds for their business, leased out the balance 5000 sq.yds to the respondents under Ex.B.1—lease deed for 10 years and executed Ex.A.2—agreement to renew the lease for further period of 20 years. This was done by the appellants by playing fraud on the respondents. Respondents came to know this fact recently when the LRs

and sons of the original owner Mazhar Hussain approached the respondents and sought for eviction and recovery possession of 3637 sq.yds of the lands owned by them having inherited from their father. Since the respondents invested huge amounts for construction and maintenance of theatre in unavoidable circumstances, they negotiated with the LRs of the owner and inducted them into the firm of the respondents as partners and the LRs have put in 3637 sq.yds of land owned by them as stock-in-trade in the firm and in turn the respondents gave them 30% share. Subsequently, the LRs were paid the value of their shares and thereby the respondents firm now became owner of 3637 sq.yds of land and put the said land as stock-in-trade in the firm. Further, the first appellant who purchased 2000 sq.yds has filed a declaration under the provisions of Urban Land (Ceiling and Regulation) Act, 1973 and subsequently he was declared as excess land holder in respect of 400 sq.yds of land and the same was taken possession by the State and thereafter the 1st respondent firm has applied for allotment of said land under the provisions of G.O.Ms.No.747 dt: 18.06.2008 and the Government has allotted the said 400 sq.yds equivalent to 319.31 sq.mts of land by collecting Rs.8,84,900/- towards consideration. Thus the firm became owner of the said 400 sq.yds of land by virtue of allotment. So ultimately first respondent firm became owner of 4037 sq.yds (3637 + 400 sq.yds) out of total land of 5000 sq.yds which

had originally taken lease from the respondents. He thus submitted that the 1st respondent firm is in the capacity of a co-owner along with the appellants and as per the law, one co-owner cannot maintain a suit for ejectment of another co-owner.

d) Learned counsel further submitted that all these facts are subsequent events and hence for proper adjudication of the matter, the respondents have filed two applications i.e., Tr.C.C.C.A.M.P.No.354 of 2015 under Order VIII Rule 1 CPC seeking leave of this Court to file additional written statement in O.S.No.339 of 1993 and Tr.C.C.C.A.M.P.No.355 of 2015 under Order 41 Rule 27 CPC to receive certain petition mentioned documents in support of the facts stated in the proposed additional written statement. He thus submitted that though the respondents were inducted into premises as lessees, still they can challenge the title of the appellants without the necessity of evicting the leasehold premises because of misrepresentation of facts by appellants and in view of their subsequent attornment to the paramount title holder and obtaining a part of the land by way of allotment from the Government. He submitted that in such circumstances, the rule of Estoppel under Sec.116 of Indian Evidence Act will have no application. He relied upon the following decisions:

- i) ***D. Satyanarayana vs. P. Jagadish*** ^[5]

ii) ***S.Chokkalingam Pillai and another vs. M.S.S.M. Ganesa Shanmugasundaram Pillai***^[6]

iii) ***Ramaswami Thevan and others vs. Alaga Pillai***^[7]

14 a) As a reply, learned counsel for appellants argued that the suit for specific performance was decreed directing the appellants to execute a renewal lease deed for a period of 20 years from 12.03.1992 to 11.03.2012 only and therefore, even if ultimately the appellants are bound to execute a renewal lease deed, they would have to execute a registered renewal lease deed for that period and not for a period of 20 years from the date of execution. The purport of the decree is not as such and hence it is preposterous to contend otherwise.

b) With regard to the new pleas proposed to be taken by the respondents in the additional written statement, learned counsel vehemently contended that he filed his counters in the two petitions contending that the averments made in those two petitions are false and untenable. Expatiating it, he submitted that the appellants are full owners of the entire 5637 sq.yds, out of which, they leased out 5000 sq.yds to the respondents herein and having admitted their title the respondents came into possession as lessees and now they cannot question the title of the appellants as they are estopped under Sec.116 of Indian Evidence Act. He further argued that the so-called attornment to the paramount owner

in respect of 3637 sq.yds is also false to the core and all the concerned documents were created for the purpose of protracting litigation. He argued that the stamp papers of the documents relating to deed of partnership dated 27.01.2014 bearing Nos.468 and deed of retirement dated 28.03.2014 bearing No.492 would show that they were fabricated. If those documents were correct, he submitted, the respondents should have narrated about those documents in their counter filed in I.A. filed by the appellants to condone the delay in representing the AS (SR) No.2814 of 2006 before the I Addl. Chief Judge, C.C.C, Secunderabad. The respondents never raised such a plea at the relevant time which thus shows that the proposed documents are all concocted recently.

c) Learned counsel further argued that even assuming that the appellants purchased only 2000 sq.yds and the LRs of Mazhar Hussain were owners of the remaining extent, since 1969 till today they never raised any claim over that part of the property and hence their so called right was barred by limitation. Hence the respondents herein cannot make any claim through the alleged attornment. He contends, the respondents cannot be permitted to bring altogether a new case by way of additional written statement. On this aspect he relied upon the decision reported in ***Mr.Modi Spinning and Weaving Mills Co. Ltd vs. Ladha Ram and Company***^[8]. He submitted that since the proposed plea

besides being untenable, amounts to challenging the title of the owner, the respondents are estopped from doing so and on that ground also they are liable to be evicted.

15) In the light of the above rival arguments, the points that arise for consideration in these appeals are:

(i) Whether Ex.A.2 is a genuine document creating responsibility on appellants to execute renewal Lease Deed?

(ii) Whether the renewal period of lease of 20 years was over by efflux of time and lease is determined and thereby the appeals are deserved to be allowed?

(iii) To what relief?

16) **POINT NO.1:** The first contention of the appellants is that Ex.A.2 is not a genuine document. Ex.A.2 is an agreement dated 11.03.1982 purported to be executed by the appellants in favour of respondents/plaintiffs agreeing to renew the lease of the property for a further period of 20 years from the date of expiry of the initial period of 10 years mentioned in Ex.A.1—Lease Deed. The trial Court on an elaborate and exhaustive discussion came to the conclusion that Ex.A.2 is a genuine document. In para No.11 of this Judgment, I have narrated the reasons prompted the trial Court to come to such conclusion. On a careful scrutiny, I find that the observations of the trial Court in this regard are factually and legally sustainable. Besides other factors, the evidence of DW.2— S.Baldev Singh who is the son of first

appellant and one of the executants of Ex.A.2, clearly upholds the genuinity of Ex.A.2. He deposed that though his father obtained permission but could not construct the Cinema Theatre under the name and style of Suresh Talkies, the respondents/plaintiffs approached him to lease out the land for construction of Cinema Theatre and as his father does not know English, he (DW.2) assisted his father to deal with the said land and he was physically present at the time of negotiations between his father and respondents/plaintiffs. He categorically stated that the plaintiffs have obtained 5000 sq.yds on lease for a period of 30 years and the Lease Deed was executed on 27.02.1982 and got registered on 11.03.1982 for a period of 10 years and on the same day, Ex.A.2 agreement was also executed agreeing to extend the lease for 20 years and on the same day, Ex.A.3—Receipt for Rs.30,000/- was also executed by his father. He stated that as an abundant caution his father mentioned the names of his wife and children in the registered Lease Deed and in the agreement. Most importantly, he stated that himself, his father, mother and three brothers have signed on registered Lease Deed and Agreement dt. 11.03.1982, whereas Ex.A.3—Receipt was signed by his father. He stated that due to technical objection of the registering authority, lease could not be registered for 30 years and hence lease was registered for 10 years and for the balance period, agreement was obtained. He stated that entire transaction was

engineered by him. In the cross examination, he stated that on the day of execution of Ex.B.1 i.e., 27.02.1982, some of his brothers were not available and hence, it was registered on 11.03.1982. On the same day of Ex.B.1, Ex.A.2 was also executed. He stated that all the family members including himself signed on Ex.A.2 on the same day. He denied the suggestion of Defendant No.1 that Ex.A.2 does not bear the signatures of his father and brothers. He admitted that his terms are good with first plaintiff and he supports them and he has no good relationship with his mother and brothers.

a) Thus, a perusal of the evidence of DW.2 would show that no doubt he speaks against the contention of the appellants/defendants. His evidence would show also that there are some disputes among the brothers. However, in the cross examination, it is not clearly elicited as to why he has to support the respondents/plaintiffs merely there were some family disputes. He knows that his interest is also involved in the property, which will be affected by his evidence. So, it cannot be said that he was won over by the plaintiffs. Therefore, his evidence is proof positive of the genuinity of Ex.A.2. In view of this and other reasons recorded by the trial Court, the genuinity of Ex.A.2 can be upheld. Thus, this point is answered against the appellants and in favour of respondents.

17) **POINT No.2:** This point is concerned, the alternative argument of the appellants is that in case the Court does not

relish their argument on first point, the appeals may be allowed taking subsequent events into consideration i.e., the efflux of the renewal period of lease for 20 years by 12.03.2012 during the pendency of the suit and this appeal. Projecting such change of circumstances, the appellants sought to allow both the appeals. Of course, the respondents opposed the appeals, *inter alia*, on the ground of a different set of changed circumstances about which I will discuss a little while later. The respondents resisted the appeals also on the contention that the interregnum period of pending suit and appeal cannot be taken for computation of 20 years and on the other hand the extended lease of 20 years should be reckoned from the date when appellants executed a registered renewal lease deed.

18) One of the several modes of determination of lease is the passage of stipulated time of lease. Section 111(a) of Transfer of Property Act, 1882 clarifies this which reads thus:

111. Determination of lease:--

(a) by efflux of time limited thereby;

(b) to (h) xx xx xx

If Ex.B1—lease deed and Ex.A2—agreement for renewal are taken together the total lease period comes to 30 years from 27.02.1982 to 11.03.2012. This is evident from clauses 12 and 13 of Ex.B1 and clause 1 of Ex.A2. So, the contention of appellants is that even if Ex.A2 is believed, the lease period

of 30 years would be over by 11.03.2012. Hence, the point is whether the time passed in suit and this appeal can be deducted from the renewal of lease period of 20 years by taking this as subsequent turn of event.

19) In ***Gaiv Dinshaw Iraní's*** case (1 supra) Honourable Apex Court observed that the appellate Court can take note of the developments subsequent to the commencement of litigation and mould the relief suitably. It held thus:

“34. However, in the interest of justice, a court including a court of appeal Under Section [96](#) of the Code of Civil Procedure is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or one the entire purpose of the suit the Courts taking note of the same should mould the relief accordingly. “

35. Thus, when the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice.”

So, it is clear that this appellate Court can take note of the subsequent development of events i.e. efflux of time pending litigation.

20) In ***Krishna Ceramics and Refractories's*** case also (2 supra) a Division Bench of this Court happened to discuss when the changed circumstance can be taken into consideration. The facts are that the plaintiff who is the owner

of ceramic factory let it out under Ex.A1—agreement of lease for 5 years from 16.06.1978 to 15.06.1983. However, the defendants did not execute regular lease deed. So, the plaintiff filed O.S.No.146 of 1980 seeking specific performance of execution of registered lease deed which was decreed on 07.03.1983 and confirmed in appeal—A.S.No.639 of 1983 on 08.12.1985. The defendants ultimately executed Ex.B1—registered lease deed in Court execution on 28.01.1989. Be that it may, pending court execution it appears the plaintiff simultaneously filed O.S.No.123 of 1989 on 11.07.1988 against the defendants for recovery of possession and for damages since the lease period was over by 1983 and defendants did not vacate the premises. The defendants in that suit, *inter alia*, contended that the registered lease deed was executed on 28.01.1989 in court execution whereas the eviction suit was filed on 11.07.1988 on which day there was no such lease deed and hence the suit was premature. The trial Court and learned single Judge of this Court in appeal, negated the contention of defendants. Hence the defendants preferred Letters Patent Appeal before the Division Bench. The same plea was taken by the appellants before the Division Bench. On behalf of plaintiff it was *inter alia* argued even assuming by the date of suit there was no lease deed still the changed circumstances brought about after institution of suit i.e. execution of Ex.B1—registered lease deed which was only in pursuance of earlier

agreement can be taken into consideration and the appeal may be dismissed by taking such changed circumstances into consideration. It is in this context, the Division Bench approved the above argument by following the judgment of the Apex Court in ***Rameshwar vs. Jot Ram***^[9], observed that the Court can take notice of subsequent events in exceptional circumstances.

“18. It is well established principle that the Courts can take notice of the subsequent events and mould the relief accordingly, but this can be done only in certain exceptional circumstances indicated by the Supreme Court in Para (9) of the judgment. However, this equitable principle which permits the Court to take into account subsequent events in moulding the relief cannot be pressed into service by the Courts to divest the rights already vested by a Statute. That is not the position in this case.”

In ***Rameshwar***'s case (9 supra) the Apex Court observed thus:

“One may as well add that while taking cautious judicial cognizance of ‘post-natal’ events, even for the limited and exceptional purposes explained earlier, no court will countenance a party altering, by his own manipulation, a change in situation and plead for relief on the altered basis.”

21) So, when the principles laid down by the Apex Court and Division Bench of this Court are summed up—the Court can take notice of subsequent events and mould the relief accordingly, but such changed circumstances cannot be taken into consideration when the changed circumstances were brought about by the party himself by his own conduct,

over which he had a control and further when such changed circumstances if taken into consideration would divest the rights already vested by a statute in favour of other party.

a) In the instant appeals the changed circumstance i.e. efflux of lease period pending suit and appeal can be taken into consideration because such change was not brought up by the appellants but happened by natural phenomenon and such events have not divested any rights accrued to the other party. Hence, even if Ex.A2 is accepted, the renewal period of lease of 20 years was over by 11.03.2012 by efflux of time pending suit and appeal. Hence, on that ground the appellants would deserve possession of the suit premises.

22) Now, coming to the contention of the respondents against reckoning the litigation period as efflux of lease period, the same is not tenable under law. The first contention of the respondents is that the renewal period of lease of 20 years shall be reckoned only from the date of execution of renewal of lease deed pursuant to decree in O.S.No.152 of 1995. This argument is factually and legally incorrect.

a) It should be noted that what was decreed in O.S.No.152 of 1995 is that defendants shall execute registered lease deed in renewal of earlier lease for a period of 20 years from 11.03.1992 to 11.03.2012. Thus, the decree clearly mandates that the renewal period of 20 years shall lie between 11.03.1992 and 11.03.2012. Further, though the

appellants obtained stay of execution of decree in O.S.No.152 of 1995 pending appeal, respondents were not deprived of the enjoyment of leasehold premises all these years. Hence, in spite of stay of execution of the decree the respondents enjoyed the renewal period of lease during pendency of suit and appeal. Hence they cannot turn round and contend that period under litigation cannot be taken for computation. So, irrespective of the date when the appellants/defendants execute the renewal lease deed, such deed shall operate from 11.03.1992 to 11.03.2012 only and not from the date of its registration which is evident from Section 47 of 1908. It reads thus:

“47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”

So, this section says that irrespective of date of registration of document, it shall operate from the time it would have commenced to operate if no registration there of had been required. The date of commencement as per the mandate of decree being 11.03.1992, even if the document is registered at a future date, still it would operate retrospectively from 11.03.1992 for a period of 20 years.

23) Then, the next contention of Sri Vedula Venkata Ramana is that despite the fact that respondents have not obtained registered renewal lease deed still they can protect

their possession under the doctrine of part performance under Section 53A of Transfer of Property Act, 1882 (for short “TP Act”) and they can successfully resist the suit for eviction. I am afraid this argument is quite untenable. The doctrine of part performance envisaged under Section 53A of TP Act has limited application and provides a shield of protection to the proposed transferee to remain in possession against the original owner who agreed to transfer the property to the transferee if the proposed transferee satisfies the other conditions of Section 53A. The *Sine qua non* for application of doctrine of part performance is as follows:

- (i) There must be a contract to transfer for consideration any immovable property.
- (ii) The contract must be in writing, signed by the transferor, or by someone on his behalf.
- (iii) The writing must be in such words from which the terms necessary to construe the transfer can be ascertained.
- (iv) The transferee must in part performance of the contract take possession of the property, or of any part thereof.
- (v) The transferee must have done some act in furtherance of the contract.
- (vi) The transferee must have performed or be willing to perform his part of the contract.

a) As can be seen from the above, this doctrine is not intended to protect the possession of a lessee whose period

of lease is expired by efflux of time. Therefore, a lessee in a demised premises who has no right of renewal and who is bound under law to evict the premises cannot protect his possession under Section 53A of TP Act. My view is fortified by a decision of High Court of Patna in ***Ram Bilas Agarwal v. Upendra Sah***^[10]. In that case the plaintiff let out a shop to defendant for 5 years. There was a renewal clause in lease agreement to the effect that on the expiry of lease the tenancy shall be renewed within one month prior to the expiry for a further period of 5 years with fresh document subject to fulfilment of all the conditions of the present terms of tenancy and steps for getting the lease renewed shall be taken by the lessor with fresh document. The defendant though sent notice did not move the Court for extension of period of lease. Then the plaintiff laid the suit for ejectment of defendant. The defendant pleaded protection under Section 53A of TP Act. In that context it was held after expiry of lease the defendant's possession is not protected under Section 53A of TP Act. Therefore, in the instant case also the respondents cannot seek protection under Section 53A since even the renewed lease deed was expired by 2012.

b) The decisions in ***Shrimanth Shamrao Suryavanshi's*** case (3 supra) and ***Maneklal Mansukhbhai's*** case (4 supra) relied upon by the respondents will not help their cause as in those decisions no law is propounded to the effect that lessee can protect his possession under Section 53A in

respect of determined lease.

24) Then, the respondents opposed appeals by projecting certain subsequent events. As already narrated, through Tr.C.C.C.A.M.P.Nos.354 and 355 of 2015 their contention was that the appellants were not owners of entire 5,000 sq. yds. and they purchased only 2,000 sq.yds. and by misrepresentation they induced the respondents into 5,000 sq. yds. and later under the threat exerted by paramount title holders the respondents initially induced them into their partnership business and later acquired their share in the land and they also obtained 400 sq. yds. by way of allotment by the Government and hence they are the co-owners along with the appellants. The appellants challenged this version and contended that the respondents are estopped from denying their title.

25) Now, the crucial point is whether the respondents by way of additional written statement can put-forth the pleas as sought for or whether they are estopped to do so by virtue of Section 116 of Indian Evidence Act. Sec.116 reads thus:

“116. Estoppel of tenant and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such

possession at the time when such licence was given.”

The doctrine of estoppel propounded under Section 116 is a rule of evidence. It envisages that a person who has been inducted into an immovable property as a tenant admitting the title of the landlord cannot deny the title of his landlord during the continuancy of tenancy. During “continuancy of tenancy” employed in Section 116 means during the continuance of possession that was received under the tenancy in question. The doctrine of estoppel is a statutory assimilation of equitable principle that it is unjust for a person to approbate and reprobate. Certain exceptions are carved out to this general rule by way of judicial precedents.

26) In ***D.Satyanarayana***’s case (5 supra) cited by the respondents a Division Bench of the Apex Court has narrated the exceptions thus:

“Para 4: xxx

From this, the exception follows, that it is open to the tenant even without surrendering possession to show that since the date of the tenancy, the title of the landlord came to an end or that he was evicted by a paramount title holder or that even though there was no actual eviction or dispossession from the property, under a threat of eviction he had attorned to the paramount title-holder. In order to constitute eviction by title paramount, it has been established by decisions in England and in India, that it is not necessary that the tenant should be dispossessed or even that there should be a suit in ejectment against him. It will be sufficient if there was threat of eviction and if the tenant as a result of such threat attorns to the real owner, he can set up such eviction by way of defence either to an action for rent or

to a suit in ejectment. If the tenant, however, gives up possession voluntarily to the title-holder, he cannot claim the benefit of this rule.”

In simple, the exception is that when a paramount title holder evicts the landlord or even though there is no actual eviction there was a threat of dispossession of tenant by legal process by the paramount title holder the tenant under the threat of such dispossession can attorn to the title holder and deny the title of his landlord.

a) The above exception was further elaborated by the Apex Court in ***Vashu Deo v. Bal Kishan***^[11]. While referring various decisions on the subject the Apex Court has given the following guidelines for the application of exceptions. They are:

- 1) *The party evicting must have good and present title.*
- 2) *The tenant must have quitted or directly attorned to the paramount title holder against his will.*
- 3) *Either landlord must be willing or be a consenting party to such direct attornment by his tenant to the paramount title holder or there must be an event, such as change in law or passing of a decree by competent court, which would dispense with the need of consent or willingness on the part of landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly; or, in other*

words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted.

- 4) *The burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by paramount title holder, lies on the party relying on such defence.*

27) Now, the new plea sought to be introduced by the respondents in the form of subsequent events has to be tested on the anvil of above guidelines.

a) For constituting a threat of dispossession at the instance of the paramount title holder, the *Sine qua non* is that there must be a good and present title to the property. It is the plea of respondents that out of 5,000 sq. yds leased out to them the appellant had purchased only 2,000 sq. yds. under sale deed dated 08.02.1969 from Syed Mazhar Hussain and Syed Md. Khan and the remaining 3,637 sq. yds. belonged to them and recently the LRs. of the vendors approached the respondents and threatened to dispossess them in respect of 3,637 sq. yds. and due to such threat of eviction, the respondents inducted them into partnership through partnership deed dated 27.01.2014 and the LRs. have put in their 3,637 sq. yds. as stock in trade and later they retired from the partnership vide retirement deed dated 28.03.2014 leaving that land to the partnership by taking its value.

b) In the light of facts projected a genuine doubt would arise as to whether the original vendors or their legal heirs have any good and present title to the property. Admittedly, the respondents were inducted into 5,000 sq. yds. of land by the appellants in 1982 but the vendors or their L.Rs. have never questioned the act of the appellants. The respondents thereafter constructed cinema theatre in 1985 and enjoyed the same even till today. However, the vendors and their L.Rs. have not raised any dispute before the appellants till today. In this back drop the question is whether their so-called right is not extinguished by law of limitation. Therefore, it is preposterous for respondents to plead that due to threat of eviction they were obliged to induct the L.Rs. of vendors into partnership. No legal proceedings were taken by the L.Rs. either against the appellants or against the respondents claiming title over the so-called 3,637 sq. yds. Further, the appellants did not admit the so-called right of the LRs of the original vendors and the LRs did not take any legal action so far against the appellants for recovery of possession. So the conspicuous and long silence of the LRs against the appellants is an indicative of no imminent and genuine threat of eviction of the respondents. So, the alleged attornment is not a *bona fide* claim to constitute a valid exception to the rule of estoppel. Hence for this reason respondents can't be permitted to deny the title of respondents.

c) For another reason also the new plea sought to be

introduced cannot be permitted. The respondents seek to introduce the new plea as a changed circumstance. Earlier, while discussing the judgments of Apex Court in ***Krishna Ceramics and Refractories's*** case (2 supra) and ***Rameshwar's*** case(9 supra), I observed that the Court cannot take changed circumstances into consideration firstly, when such changed circumstances were brought about by the party himself by his own conduct and secondly, when such changed circumstances if taken into consideration would divest the rights already vested by a statute in favour of other party. When these principles are applied in the present instance, it must be said that the so-called changed circumstances were not occurred in their natural course but they were brought about by the respondents themselves. More vividly, admittedly the so-called LRs of the vendors did not initiate any legal proceedings either against the appellants or respondents within the period of limitation or for that matter even till today. In such case, even if they exerted any threat of eviction on respondents, they need not be worried. However, they allegedly inducted those LRs into their partnership and later allegedly acquired their share of land. These change of circumstances, it must be said, were brought into existence by the respondents to gain advantage but they did not occur in their natural course. Further, if such changed circumstances are permitted to be pleaded, the statutory right acquired by the appellants under the law of

adverse possession will be defeated.

d) The proposed new plea and the proposed additional evidence cannot be permitted also for the reason that they are quite contrary to the earlier original plea of the respondents in the suit and they are sought to be introduced belatedly. In this regard the contention of the appellants that if really the alleged partnership deed and retirement deed were executed on 27.01.2014 and 28.03.2014 respectively, nothing prevented them to plead about them in their counter filed against the petition filed by the appellants to condone the delay in representing A.S (SR) No.2814 of 2006 before the I Addl. Chief Judge, City Civil Court, Secunderabad, should be accepted.

e) So for all the above, the respondents are estopped from denying the title of the appellants and they cannot be permitted to introduce new pleas under the garb of changed circumstances.

f) It must be mentioned that the decisions relied by the respondents in **S.Chokkalingam Pillai's** case (6 supra) and **Ramaswami Thevan's** case (7 supra) cannot be taken into consideration in view of the law laid down by Apex Court on the subject in issue.

28 a) In view of the findings as arrived above, the specific performance suit—O.S.No.152 of 1995 is concerned, since the lease period of 30 years was over by efflux of time

pending suit and appeal, specific performance need not be ordered and so also the suit need not be decreed. Consequently, CCCA No.84 of 2006 filed by the appellants deserves to be allowed.

b) Then O.S.No.339 of 1993 is concerned, since lease was determined by efflux of time pending litigation, the plaintiffs in that suit deserve the reliefs of possession of plaint schedule property after evicting defendants and consequential reliefs of permanent injunction and damages.

29) It may be noted that the respondents feebly argued that the suit O.S.No.339 of 1993 is not maintainable for non-joinder of necessary party i.e, Sardar Baldev Singh (DW.2) who is one of the co-owners of the suit schedule property. The trial Court held him to be a necessary party. It must be noted that the suit was instituted by the 1st plaintiff—Sardar Inder Singh Sokki who was Karta of the joint family along with his wife and other sons except Sardar Baldev Singh. It is a suit for eviction of a tenant from demised premises. The lease was executed by Sardar Inder Singh Sokki (1st plaintiff in O.S.No.339 of 1993) who is the Karta of the joint family and his wife and four sons joined as lessors as abundant caution. It is true that subsequently some family disputes arose between the Sardar Baldev Singh Sokki, one of the sons of Sardar Inder Singh Sokki and other family members and he was not shown as plaintiff in O.S.No.339 of 1993.

Since the Karta of the joint family himself filed the suit along with the available members of the joint family, non-inclusion of one of his sons is not fatal to their suit. My view gets fortified by the ruling of Hon'ble Apex Court in the case of ***Pundlik Krishna Ji and others vs. Trimbak Bhikaji Patil and others***^[12]. In that case also the Karta of the Joint family alone filed suit for eviction without joining his brother Keshao Bhikaji. The Tribunal held that the eviction suit was bad for non-joinder of necessary party. However, the Nagpur Bench of Bombay High Court held that Trimbak Bhikaji being the Karta of the family could file the applications for ejectment in that capacity. Upholding the said finding, the Hon'ble Apex Court observed thus:

“The High Court found that Trimbak Bhikaji being the Karta of the family could file the applications for termination of the tenancy without associating his brother. We see no infirmity in the said finding of the High Court.”

Hence the arguments raised by the respondents does not hold water. Accordingly, this point is answered in favour of appellants.

30) **POINT No.3**: In view of the findings in points 1 and 2, the two appeals are disposed of as follows:

i) In the result, C.C.C.A. No.84 of 2006 is allowed and decree and judgment dt:23.01.2006 in O.S.No.152 of 1995 on the file of III Senior Civil Judge's Court, City Civil Court,

Secunderabad, are set aside by dismissing the suit.

ii) The Tr.C.C.C.A.No.25 of 2015 is allowed and decree and judgment dt: 23.01.2006 in O.S.No.339 of 1993 on the file of III Senior Civil Judge's Court, City Civil Court, Secunderabad, are set aside and the suit—O.S.No.339 of 1993 is decreed in favour of the plaintiffs.

- a) directing the defendants to put the plaintiffs into possession of the plaint schedule property within one(1) month from the date of this judgment;
- b) granting permanent injunction restraining the defendants, their men, henchmen, servants, legal heirs etc, claiming through them from altering the physical features of the plaint schedule property in any manner and also creating liability over the plaint schedule property in any manner by putting the third parties into possession of the plaint schedule property; and
- c) the plaintiffs are entitled to the damages against the defendants from the 12th March, 2012 till the recovery of possession of the plaint schedule property and they shall apply for damages by filing a separate application before the trial Court for fixation of the quantum of damages.

iii) No costs in both the appeals.

As a sequel, miscellaneous applications pending, if
any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 30.10.2015

scs/murthy/eha

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- [\[1\]](#) AIR 2014 SC 2326
 - [\[2\]](#) 2000 (5) ALD Pg. 1 (DB)
 - [\[3\]](#) AIR 2002 SC 960
 - [\[4\]](#) AIR 1950 Supreme Court Pg.1
 - [\[5\]](#) (1987) 4 SCC 424
 - [\[6\]](#) AIR 1951 (Mad) 284
 - [\[7\]](#) AIR 1925 Mad 143
 - [\[8\]](#) AIR 1977 Supreme Court 680 (1)
 - [\[9\]](#) AIR 1976 SC 49
 - [\[10\]](#) 1997 (1) BLJR 851 = MANU/BH/0154/1997
 - [\[11\]](#) AIR 2002 SC 569
 - [\[12\]](#) AIR 1992 SC 1338