

06.12.1983) Javvaji Sambamurthy (plaintiff No.1) 5. The husband of Cherukumalli Sesharatnam, Hanumaiah was native of Magallu village, Nandigama Taluk, Krishna district. Chalamala Lachamma was owning properties and those properties were inherited by her second daughter Tatineni Subbamma, subsequently by Cherukumalli Hanumaiah, husband of Cherukumalli Sesharatnam. The said Hanumaiah after his marriage with Cherukumalli Sesharatnam had come down to Banigandlapadu village and settled as there were no male members to assist in the agricultural operations, in the family of Subbamma. Even in the family of Chalamala Lachamma, there was no male member, the husband of Tatineni Subbamma, i.e., father of Cherukumalli Sesharatnam came down to Banigandlapadu village, settled and assisted the family of Chalamala Lachamma in the agricultural operations. Thus, all the suit schedule properties originally belong to the family of Chalamala Lachamma and came into possession of Tatineni Basavaiah and subsequently into possession of Cherukumalli Hanumaiah. The said Cherukumalli Hanumaiah did not inherit any property from his father and all the properties were the properties of Cherukumalli Lachamma. 6. Cherukumalli Sesharatnam and Hanumaiah were not blessed with any issues and, from the beginning, they developed love and affection towards the 1st plaintiff, whereas, Hanumaiah developed strained relationship with all his relatives on his paternal side. The said Hanumaiah was not cordial with any of the defendants. The 1st plaintiff assisted Cherukumalli Hanumaiah in agricultural operations and served him during his life time. Till 1971, the 1st plaintiff worked as teacher at Yerrupalem village, which is nearby Banigandlapadu village. During those days, the 1st plaintiff stayed with Cherukumalli Sesharatnam and Hanumaiah and assisted in agricultural operations. Subsequently, the plaintiffs were transferred to Bodulabanda village of Khammam taluk. Even during their working in Bodulabanda village, they assisted Cherukumalli Sesharatnam and Hanumaiah. In the year 1980, the plaintiffs were transferred to Albaka village of Venkatapuram taluk, Khammam district, and from Albaka village, the plaintiffs occasionally used to visit Banigandlapadu village to look after the welfare of Cherukumalli Sesharatnam. The said Sesharatnam was sick during the months of December 1982 and January 1983, and the plaintiff came down to Banigandlapadu village to attend on the sick lady Sesharatnam, after obtaining leave and the plaintiffs have attended on her and served during her sickness. Cherukumalli Sesharatnam was shifted to Vijayawada and was admitted in the nursing home of Dr. Y. Purnachander Rao and got treated as inpatient. During her stay in the nursing home, both the plaintiffs attended on her. Subsequently, she was shifted to Banigandlapadu village to her house in the month of January, 1983. The plaintiffs stayed at Banigandlapadu village for some days attending on her. Thus, in view of the service rendered by the plaintiffs 1 and 2, Cherukumalli Sesharatnam developed love and affection towards the plaintiffs. 7. Cherukumalli Hanumaiah executed a Will dated 01.06.1974 in favour of his wife Sesharatnam, bequeathing his property. After the death of Hanumaiah in the year 1976, his wife Sesharatnam succeeded the property under testamentary disposition and enjoyed the property with absolute rights. As both the plaintiffs served Sesharatnam during her sickness and they got her treated in the nursing home, she developed love and affection and expressed her intention to execute a Will in their favour and, accordingly, she executed a Will on 10.12.1982 while undergoing treatment in the nursing home of Dr. Y. Purnachander Rao. One Veesam Narasiah and Seelam Venkat Reddy, Police Patel of Banigandlapadu village also visited the nursing home on that day at Vijayawada and in their presence, Sesharatnam executed the Will in sound disposing state of mind. One Muthavarapu Hanumantha Rao also visited the nursing home on the said date and at the instance of Sesharatnam, Veesam Narasaiah scribed the Will and she affixed her thumb impression on the Will in the presence of scribe and attestors Veesam Narasaiah and Muthavarapu Hanumantha Rao, thus Sesharatnam bequeathed her estate to both the plaintiffs by executing a Will in sound disposing state of mind. Sesharatnam died on 05.12.1983. Immediately, the plaintiffs, being the legatees on the Will, became the owners of the property. Thus the plaintiffs became the absolute owners of the property. 8. The defendants 1 to 3 are notorious in Magallu village and father of defendant No.5 is also equally notorious in the village, taking advantage of the absence of the plaintiffs, the defendants 1 and 3 and the father of defendant No.5 conspired together, forcibly shifted Sesharatnam to Magallu village and detained her till her death. Under the threat of serious consequences, Sesharatnam was detained there. The defendants have no right over the schedule property which was bequeathed to the plaintiffs by Sesharatnam, but started interfering with the possession and enjoyment of the plaintiff alleging that certain documents were executed in favour of D1 to D5. In fact, to the knowledge of the plaintiffs, the said Sesharatnam never executed any document in favour of defendants 1 to 5 and thereby they are not entitled to claim any right in the schedule property. Since the defendants 1 to 5 claimed title to the property on the basis of documents allegedly executed by Sesharatnam, the plaintiffs were constrained to file the suit for declaration of title to the schedule property and for grant of permanent injunction. 9. Defendants 1 and 3 who are the husband and wife filed written statement denying the material allegations of the plaint including the execution of Will in favour of the plaintiffs by Sesharatnam, while admitting execution of Will by Cherukumalli Hanumaiah in favour of Sesharatnam. The defendants denied the nature of acquisition of property by Cherukumalli Hanumaiah. 10. It is specifically contended that the plaintiffs were never cordial with Hanumaiah and Sesharatnam and they never looked after the welfare of both Hanumaiah and Sesharatnam. Sesharatnam even refused to get any service from the plaintiffs due to ill motive of the plaintiffs. The defendants denied the allegation that Hanumaiah was not cordial with paternal relations, while contending that they are affectionate towards Hanumaiah and Sesharatnam, developed love and affection towards the 1st defendant and third defendant and their wives, as, they helped a lot in the agricultural operations, so also, during sickness of Sesharatnam, got treated her in the nursing home of Dr.Y. Purnachander Rao. The defendants admitted settlement of property by Hanumaiah in favour of his wife Sesharatnam and denied execution of the Will dated 10.12.1982 by Sesharatnam, bequeathing her estate to the plaintiffs in sound disposing state of mind. Cherukumalli Sesharatnam died on 06.12.1983 at Magallu village at the house of the defendants and they performed the obsequies of Sesharatnam. Hanumaiah was the senior paternal uncle of the 1st and 3rd defendants, and whereas the plaintiffs are remote relations of Sesharatnam who approached Sesharatnam while she was ailing and being treated at Vijayawada in the nursing home of Dr. Y. Purnachander Rao. The defendants got admitted her in the nursing home but not the plaintiffs. While Sesharatnam was undergoing treatment in the nursing home of Dr. Y. Purnachander Rao, taking advantage of temporary absence of the defendants, the plaintiffs obtained thumb impressions of Sesharatnam on blank papers by misrepresenting and playing fraud on her. When she returned to Banigallapadu village, she informed about thumb impressions obtained by the plaintiffs from her. Thereafter, Sesharatnam got issued a notice to the plaintiffs through an advocate at Madhira and also to Veesam Narasaiah complaining that her thumb impressions were obtained on blank papers, fraudulently and that they should not make use of them in any manner. She also called upon the plaintiffs and Narasaiah to return those papers to her. Having

received notices, the plaintiffs and Narasaiah neither got issued any reply notice nor returned those papers containing the thumb impressions of Cherukumalli Sesharatnam. Therefore, it is clear that the Will referred in the plaint has been brought into existence making use of the papers containing the thumb impressions of Sesharatnam. Thus, the alleged Will is not voluntary and not out of the free volition and she never intended to execute any Will and the said Will propounded by the plaintiffs is a fabricated one to grab the schedule property. Therefore, under the said document, the plaintiffs are not entitled to claim any relief. 11. Sesharatnam executed a Settlement Deed dated 25.01.1983 in favour of defendants 1 and 3 and since the date of execution, the defendants 1 and 3 have been in possession and enjoyment of the property. Even during the lifetime of Sesharatnam, the defendants alone used to manage the property as she was unable to look after the cultivation due to her senility. The defendants raised paddy crop in the land situated at Pedagogavaram village and harvested the crop. While the crop was lying in a heap in Survey No.134 of Banigallapadu village, the plaintiffs interfered with the aid of unsocial elements such as Veeras Narasaiah and others without any manner of right. 12. The defendants denied the alleged forcible shifting of Sesharatnam to Magallu village and detaining her in the house at Magallu village under the threat of serious consequences. The alleged interference with the possession and enjoyment of the plaintiffs is false since they were never in possession and enjoyment of the property. The Will allegedly executed while undergoing treatment in the nursing home of Dr. Y. Purnachander Rao at Vijayawada is not appended by the certificate issued by the doctor certifying her sound and disposing state of mind, and therefore the Will is not voluntarily executed by Sesharatnam and it is fabricated, thereby the plaintiffs are not entitled to claim any right in the property. Sesharatnam executed another registered Settlement Deed dated 27.01.1983 in favour of defendants 2 and 4 settling certain items of the property. She also executed a Will in favour of defendants 2 and 4 bequeathing tiled house, peradu (vacant land/backyard), sheds and tobacco barenis. 13. The defendants sold Ac.2-87 cents in Survey No.79 of Banigallapadu village to one T. Laxma Reddy under a registered Sale Deed about five months back at Rs.5,000/- per acre and after receiving the entire consideration delivered possession of the same. The defendants also sold Ac.0-39 guntas in Survey No.571/E of Pedagogavaram village to Atluri Venkateswara Rao at the rate of Rs.9,000/- per acre about four months ago and delivered possession of the same. Despite knowledge about the same, the plaintiffs suppressed the real facts and filed the suit with false allegations and therefore the plaintiffs are not entitled to claim any right over the plaint schedule and prayed for dismissal of the suit. 14. Defendants 2 and 4 filed separate written statement almost reiterating the contentions raised by defendants 1 and 3, while contending that Sesharatnam executed a Settlement Deed dated 27.01.1983 in favour of defendants 2 and 4 settling an extent of Ac.3-09 guntas in Survey No.60 of Pedagogavaram village. In the said land, green gram crop was raised and harvested by the defendants 2 and 4, and the said Sesharatnam executed a Will in favour of defendants 2 and 4 on 10.11.1983 bequeathing tiled house, cattle shed, peradu and tobacco barenis; and the defendants 2 and 4 disposed of the tiled house about three months ago for a consideration of Rs.18,000/- to Vennam Ademma, vennam Ramakotareddy and also delivered possession of the same. The defendants 2 and 4 also sold Ac.0-05 guntas of peradu in Survey No.4 to the said Vennam Ademma and delivered possession to her; since then, the purchasers are in continuous possession and enjoyment of the same. 15. Defendants 1 and 3 sold Ac.2-25 guntas in Survey No.79 situated at Banigallapadu to one T. Laxma Reddy through a registered Sale Deed about five months ago and delivered possession. Thus, the defendants 2 and 4 denied execution of any Will by Sesharatnam in favour of the plaintiffs while contending that the Will dated 10.12.1982 is a fabricated document brought into existence with the aid of blank papers containing the thumb impressions of Sesharatnam, obtained while she was undergoing treatment in the nursing home of Dr.Y. Purnachander Rao at Vijayawada. Even otherwise, when she executed a Settlement Deed dated 25.01.1983 in favour of these defendants and Gift Deed dated 27.01.1983 in favour of defendant No.5, the alleged Will dated 10.12.1982 executed by Sesharatnam in favour of the plaintiffs will not prevail and therefore the plaintiffs are not entitled to claim any relief, and prayed for dismissal of the suit. 16. Defendant No.5 filed a separate written statement. While reiterating the contentions raised by the other defendants, specifically contended that Cherukumalli Hanumaiah and Sesharatnam were issueless and father of defendant No.5, by name Pulla Reddy, who is their neighbour was brought up from childhood and treated him as their son. Cherukumalli Hanumaiah and Sesharatnam developed love and affection towards the father of the 5th defendant and got educated him at their expenses and also performed his marriage at their expenses. Cherukumalli Hanumaiah settled his entire property in favour of Sesharatnam and it was his desire to settle some property in favour of the father of the defendant No.5. Therefore, he directed his wife Sesharatnam to settle some land in favour of father of defendant No.5. Subsequently, Hanumaiah died. As per the wish of Hanumaiah, Sesharatnam expressed her intention to execute a Gift Deed donating Ac.4-34 guntas in Survey No.59/EE of Pedagogavaram village, in favour of father of the 5th defendant. At the request of the father of the 5th defendant, Sesharatnam executed a Gift Deed in favour of the 5th defendant on 27.01.1983 and delivered possession on the same day, thereby the 5th defendant became the absolute owner of the property in an extent of Ac.4-34 guntas in Survey No.59/EE of Pedagogavaram village since 27.01.1983. Therefore, the plaintiffs are not entitled to claim any rights, much less absolute rights in the property in Survey No.59/EE of Pedagogavaram village, and prayed for dismissal of the suit. 17. The defendant No.6 filed a separate written statement denying the material allegations, inter alia contending that Sesharatnam settled property in favour of defendants 1 and 3 under a Settlement Deed dated 25.01.1983 settling certain land in Banegallapadu and Pedagogavaram villages of Madhira Taluk, Khammam district. After the death of Sesharatnam on 06.12.1983 at Magallu village, the defendants 1 and 3 sold away an extent of Ac.2-87 cents in Survey No.79/A of Banegallapadu village for consideration of Rs.14,500/- as Bilmukhtha bargain in favour of the minor sons of the 6th defendant, namely Ankala Reddi and Ramreddy. The defendant No.6 is the natural guardian of the said minors. The property was purchased under a registered Sale Deed dated 23.01.1984, obtained delivery of possession and cultivating the same; thereby the plaintiffs have no right or title to the property and not entitled to claim any right in the property. The 6th defendant also denied execution of any Will by Sesharatnam in favour of the plaintiffs in sound disposing state of mind, while contending that the 6th defendant is a bonafide purchaser without knowledge of the alleged Will dated 10.12.1982 and not entitled to claim any right under the said Will, and prayed for dismissal of the suit. 18. The defendant No.7 filed a separate written statement contending that defendants 1 and 3 sold an extent of Ac.1-00 guntas of land in Survey No.534 situated at Pedagogavaram village in favour of the 7th defendant for consideration of Rs.11,000/- under an agreement of sale dated 15.03.1984 and since then the 7th defendant is in possession and enjoyment of the said land and the plaintiffs have no manner of right in the property. The alleged Will dated 10.12.1982 executed in favour of the plaintiffs by Sesharatnam is neither true nor correct and that the 7th defendant is a bonafide purchaser for consideration without knowledge of the rights of the plaintiffs under the said Will, and prayed for dismissal of the suit. 19. Defendants 8 and 9 filed a common written statement contending that Cherukumalli Sesharatnam, in a sound disposing state of mind, executed a Will dated 10.11.1983 in favour of defendants 2 and 4 bequeathing some of her property and after the death of Sesharatnam on 06.12.1983, the defendants 2 and 4 became the absolute owners of the property covered by the Will dated 10.11.1983 and sold item Nos.5 and 8 of the schedule property i.e. tiled house and peradu to the defendants 8 and 9 under a registered Sale Deed dated 23.04.1984 for a consideration of Rs.18,000/- and delivered possession of the same, since then the defendants 8 and 9 are in possession and enjoyment of the property purchased from defendants 2 and 4, and that they are bonafide purchasers for valuable consideration without knowledge of the claim of the plaintiffs in the property, and prayed for dismissal of the suit. 20. Basing on the above pleadings, the trial Court framed the following Issues on 03.07.1984 and also framed Additional Issues on 01.07.1986. "Issues framed on 03.07.1984 Whether the Will dated 10.12.1984 set up by the plaintiffs is true and valid and binding on defendants? Whether the Will and Settlement Deeds relied on by the defendants are true and correct and also binding on plaintiffs? Whether the plaintiffs are in possession of the suit schedule? Whether the plaintiffs are entitled to the declaration of the perpetual injunction asked for in the suit? Whether the suit is properly valued and the Court fee paid is correct? To what relief? Additional Issues framed on 01.07.1986 Whether the defendant No.6 is the bonafide purchaser for valuable consideration without knowing the claim set up by the plaintiff? Whether the defendant No.7 is the bonafide purchaser for valuable consideration without knowing the claim set up in the plaintiff? Whether the defendant No.8 and 9 are the bonafide purchasers for valuable consideration without knowing the claim set up by the plaintiff?" 21. During the course of trial, on behalf of the plaintiffs PWs.1 to 6 were examined and exhibits A1 to A78 were marked. On behalf of the defendants, DWs.1 to 9 were examined and exhibits B1 to B44 were marked. 22. Upon hearing both the counsel and on considering oral and documentary evidence on record, the trial Court, by Judgment and Decree dated 25.09.1996 dismissed the suit declining to grant both the reliefs of declaration of title and permanent injunction in favour of the plaintiffs. Aggrieved by the said Judgment and Decree, the unsuccessful plaintiffs preferred the present appeal raising various grounds. 23. The main contentions raised in the grounds of appeal are that the trial Court did not appreciate the evidence in proper perspective and in the light of principles laid

down in various decisions, the decision of the trial Court is vitiated and the trial Court did not consider the evidence of PWs.2 and 3 who were present at the time of execution of the Will and the examination of PWs.1 to 3 is sufficient to meet the legal requirement under Section 68 of the Indian Evidence Act, but the trial Court did not consider the same in proper perspective. It is further contended that the plaintiffs were able to establish that they looked after the welfare of Sesharatnam during her sickness and produced various medical bills of Sesharatnam for the period of treatment in the nursing home of Dr. Y. Purnachander Rao at Vijayawada. The defendants did not produce any scrap of paper to establish that they attended on Sesharatnam during her sickness while undergoing treatment, but the trial Court, on erroneous appreciation, disbelieved the contentions of the plaintiffs that Sesharatnam developed love and affection towards the plaintiffs and executed the Will dated 10.12.1982 (marked as Ex.A26) in their favour bequeathing her entire estate in favour of the plaintiffs in sound disposing state of mind and the said fact was established by examining PWs.2 and 3 who totally supported the execution of Will dated 10.12.1982 in sound disposing state of mind, but the trial Court, on an erroneous appreciation of evidence, gave much credence to the testimony of defendants witnesses and no reasons were recorded to disbelieve the Will dated 10.12.1982. 24. The trial Court made a vague observation that non-registration of Will is a serious suspicion and it is against the settled law. 25. The trial Court failed to consider Exs.B1 to B3 and the effect of non-examination of the scribes of Exs.B1 to B3 and though Exs.B1 to B3 are compulsorily attestable documents and the scribe of B1 and B2 died but no piece of evidence is brought on record to substantiate the contention of the defendants. It is further contended that the defendants failed to establish execution of Exs.B1 and B2, in such case, the trial Court is bound to accept bequeath of properties by Sesharatnam by Will (Ex.A26) in favour of the plaintiffs and consequently the plaintiffs became the absolute owners of the property thereby entitled to claim relief of declaration of title but the trial Court, on erroneous appreciation of evidence, committed an error in dismissing the suit, finally prays to allow the appeal by setting aside the Judgment and Decree passed by the trial Court, and declare that the plaintiffs as absolute owners of the suit schedule property and also grant permanent injunction in favour of the plaintiffs restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the suit schedule property. 26. The appeal was dismissed for default against defendants 5 to 9 vide Court Order dated 28.04.1999 and no steps were taken to get the appeal restored. 27. During the course of argument, learned counsel for the appellants/plaintiffs would contend that the plaintiffs used to look after Sesharatnam during her old age, while undergoing treatment at different hospital for different ailments, but she was shifted to Magallu village by the defendants under the threat of serious consequences and detained her, obtained several documents and therefore the documents allegedly executed by Sesharatnam in favour of defendants 1 to 4 and 5 are not legal and valid and therefore the defendants 1 to 4 and 5 would not acquire any title to the property under the said documents. Though the defendants contended that Sesharatnam got issued a legal notice through their advocate complaining that the plaintiffs obtained her thumb impressions on blank papers while she was undergoing treatment in the nursing home of Dr. Y. Purnachander Rao at Vijayawada, but no copy of the notice was produced before the trial Court and therefore the said contention would not stand to any legal scrutiny. It is further contended that the trial Court also failed to consider the specific contentions of the plaintiffs in proper perspective and the condition under which Exs.B1 to B3 were executed by Sesharatnam in favour of defendants 1 to 5. PWs.4 and 5 are the identifying witnesses who testified about the condition of Sesharatnam, but his evidence was overlooked by the trial Court. It is further contended that the evidence of PWs.1 to 3 established that Sesharatnam executed Ex.A26-Will in sound disposing state of mind bequeathing her estate in favour of plaintiffs; and the evidence of PW4 established that Exs.B1 and B2 were not executed in sound disposing state of mind, but the trial Court gave much credence to the testimony of DWs.1 to 9 ignoring the evidence of PWs.4 and 5 who are identifying witnesses, and thus committed an error in dismissing the suit filed by the plaintiffs. If the evidence on record is appreciated in a proper perspective, the trial Court would not have dismissed the suit and prays this Court to allow the appeal by setting aside the Judgment and Decree of the trial Court and pass decree and judgment in their favour. 28. Though Mr. Metta Chandrasekhar, advocate on record for the respondents appeared, he neither advanced his arguments nor got the case represented at the time of hearing. Therefore, this Court, having no other alternative, closed the arguments of the respondents. 29. Considering rival contentions, perusing the material on record, including the Judgment and Decree under challenge, and the oral and documentary evidence, the points that arise for consideration are as follows: (i) Whether Cherukumalli Sesharatnam executed Will dated 10.12.1982 in sound disposing state of mind, bequeathing her property in favour of the plaintiffs 1 and 2? (ii) Whether Cherukumalli Sesharatnam executed Ex.B1 in favour of defendants 1 and 3; Ex.B2, B3 in favour of defendants 2 and 4; in sound disposing state of mind; if so, D1 to D4 became the owners of property covered by Exs.B1 to B3. (iii) If Cherukumalli Sesharatnam executed Exs.B1 to B3 in favour of defendants 1 to 5, subsequent to Ex.A26-Will dated 10.12.1982, whether the plaintiffs are entitled to the relief of declaration of title to the suit schedule property. (iv) Whether the Gift Deed dated 27.01.1983 executed by Cherukumalli Sesharatnam in favour of defendant No.5, settling Ac.4-34 guntas in Survey No.59/EE of Pedagogavaram village, in sound disposing state of mind; If so, defendant No.5 became the owner of the said property? (v) Whether the plaintiffs are in lawful possession and enjoyment of the property on the date of filing suit and; whether the defendants invaded or infringed the legal right of the plaintiffs. If so, whether the plaintiffs are entitled to permanent injunction restraining the defendants and their men from interfering with the possession and enjoyment of the schedule property by the plaintiffs. 30. Point No.2: As the findings on the Point No.1 depends upon the findings on Point No.2, I feel that it is expedient to decide Point No.2 initially. 31. According to the plaintiffs, Sesharatnam executed Will dated 10.12.1982 in their favour, marked as Ex.A26, bequeathing her entire estate; whereas the contention of the defendants is that Sesharatnam executed Ex.B1 in favour of defendants 1 and 3; Ex.B2 in favour of defendants 2 and 4; Ex.B3 in favour of defendant No.5, in a sound disposing state of mind. Even if Ex.A26 is proved and Exs.B1 to B3 are accepted, at the same time, the plaintiffs claim over the entire property is not acceptable. The trial Court also is of the view that in view of the proof of execution of Exs.B1 to B3, the plaintiffs are disentitled to claim right in pursuance of Ex.A26. When the defendants asserted that Ex.B1 to B3 were executed by Sesharatnam during her lifetime in sound disposing state of mind, it is for the defendants to prove due execution of Exs.B1 to B3 in their favour by Sesharatnam. 32. To substantiate their contention, the defendants examined DWs.1 to 8. DW1 is Cherukumalli Srinivasa Rao, who is the 1st defendant in the suit and husband of the 2nd defendant. He testified about acquisition of property by Hanumaiah and execution of Will in favour of his wife Sesharatnam two years prior to his death, and also death of Hanumaiah in the year 1976. The execution of Will by Hanumaiah in favour of Sesharatnam was not disputed before the trial Court or before this Court, so also the death of Hanumaiah. Therefore, by virtue of Will, Sesharatnam became the owner of the property. 33. The specific case of the defendants is that Sesharatnam executed a registered Settlement Deed dated 25.01.1983 in favour of DW1 and his wife, defendant No.3, settling the property situated at Banigandlapadu village and Pedagogavaram village and by another registered Settlement Deed dated 27.01.1983, Sesharatnam settled property in favour of D2 and D4, situated at Pedagogavaram village. Ex.B1 is the registered Settlement Deed dated 25.01.1983 executed in favour of DW1 and D3 by Sesharatnam. Ex.B1 was attested by Vemi Reddy and Javvaji Bhaskar Rao. Ex.B2 is the registered Settlement Deed dated 27.01.1983 executed by Sesharatnam in favour of D2 and D4. Vemi Reddy and Javvaji Bhaskar Rao are the attestors of the said Settlement Deed Ex.B2. He also testified about execution of Will in favour of D2 and D3 on 10.11.1983 bequeathing the said residential house, tobacco baren, in sound disposing state of mind and he was present at the time of execution of Ex.B3 Will dated 10.11.1983. Ex.B3 was attested by Muvva Gandhi and Javvaji Bhaskar Rao, resident of Somaram village, who was the incharge Karanam of the village by then. From the date of execution of Exs.B1 and B2, defendants 1 and 3, defendants 2 and 4 have been in possession and enjoyment of the property and from the date of death of Sesharatnam, defendants 2 and 3 are in possession and enjoyment of Shed, residential house and tobacco baren and were in exclusive right in pursuance of the Will; thus they became the owners of the property covered by Exs.B1 to B3. He also testified about the relationship between Hanumaiah and defendants 1 to 4 and remote relationship between plaintiffs and Sesharatnam and their personal relationship during the lifetime of Sesharatnam and Hanumaiah. 34. DW1 further testified about bringing up of father of defendant No.5, performing marriage of father of defendant No.5 and intention of Hanumaiah to settle some property in favour of defendant No.5's father and execution of Ex.B4 in favour of defendant No.5 as per the wish of Hanumaiah by Sesharatnam. DWs.1 and 3 also sold Ac.3-00 of land in Survey No.79 of Banigandlapadu village of T. Laxma Reddy under a registered Sale Deed and sale of Ac.1-00 of land in Survey No.571 and similarly sale of tiled house at Banigandlapadu village to Vennam Ademma and Ramakota Reddy under registered sale deed and sale of open land (peradu) and delivered possession of those items of property. In the examination-in-chief, PW1 testified about their possession and enjoyment of the property from the date of execution of B1 to B3, and later purchase by Ademma and Ramakota Reddy. In the cross-examination of DW1, he admitted that Sesharatnam was given 3 or 4 acres of land by her parents at Banigandlapadu village and she had no brothers but had

a sister and admitted that Hanumaiah and Ramaiah are two brothers and children born to Yellamandaiah, and pleaded ignorance about the partition of the property between Ramaiah and Hanumaiah. In the cross-examination, several questions were put to DW1 about partition and acquisition of property by Hanumaiah etc., but the source of acquisition of property by Hanumaiah is irrelevant in view of the admitted execution of Will by Hanumaiah in favour of Sesharatnam bequeathing his entire estate in her favour by both the parties. Therefore, I need not examine the source of acquisition of property by Hanumaiah. 35. In the cross-examination at Page No.9, DW1 admitted that Hanumaiah executed a Will in favour of Sesharatnam bequeathing property. The plaintiff No.2 is the wife of PW1. Both are working as teachers, but the father of plaintiff No.1 used to reside in Banigandlapadu village. Hanumaiah suffered from paralysis for a period of one year prior to his death while staying at Banigandlapadu and Magallu village and that DW1 himself performed the obsequies of Hanumaiah in Banigandlapadu village though the father of DW1 was alive while denying the performance of obsequies by plaintiffs. 36. In the entire cross-examination, nothing was elicited to disprove the execution of Ex.B1 to B4 and no suggestion was put to them about the mental condition of Sesharatnam by the date of execution of Exs.B1 to B4. In the cross-examination at Page No.5, DW1 admitted that one Seshaiyah was the scribe of Ex.B1 who is no more, but Sesharatnam affixed thumb impression before the Sub-Registrar, Madhira on 25.01.1983 on Ex.B1. DW1 further testified that by the time of execution of Ex.B1, the attestors Javvaji Bhaskar Rao, Vemi Reddy Narayana Reddy, Seelam Venkat Reddy, DW1 himself, his brother D3, D2, D4 and Venkat Reddy were present and in their presence only Sesharatnam affixed her thumb impression on Ex.B1 between 1 PM and 2 PM. Similarly on 27.01.1983, Sesharatnam executed Ex.B2 in favour of D2 and D4 and the same was scribed by the same scribe Ranga Seshaiyah who is no more and attested by Narayana Reddy and Bhaskar Rao. The reason for execution of Ex.B1 and B2 on two different dates was that the Sub-Registrar told them that Exs.B1 and B2 cannot be executed on the same day, therefore, they have obtained on two different dates. 37. The consistent evidence of DW1 is that Sesharatnam affixed her thumb impression on Exs.B1 and B2 in his presence and in the presence of attestors and his brother, several suggestions were put to him that defendant 1 to 4 are not entitled to sell the property to Laxma Reddy, Ademma and Ramakota Reddy, Venkateshwar Rao. But those suggestions were denied. As DW1 testified about due execution of Ex.B3 Will at Magallu village by Sesharatnam he was cross-examined by the counsel for the plaintiffs in the month of November, 1983, DW1 expressed his inability to say the exact date of execution of B3, but testified about his presence at the time of Ex.B3 and Bhaskar Rao, Muvva Gandhi, Narsimha Rao and presence of D3, D2 and D4. The said Bhaskar Rao and Muvva Gandhi are the residents of Magallu village and Narsimha Rao belongs to Somaram village and admitted they were alive and Ex.B3 was scribed as per the dictation of Sesharatnam. A suggestion was put to DW1 that Ex.B3 was not executed by Sesharatnam and it does not contain the thumb impression of Sesharatnam and it was denied by DW1. Thus, the entire endeavour of the plaintiff in the cross-examination of DW1 is that Exs.B1 to B3 were not executed by Sesharatnam but failed to elicit anything to disprove execution of Exs.B1 to B3 by Sesharatnam in their favour. 38. On close analysis of evidence of DW1, it is evident that Exs.B1 to B3 were executed by Sesharatnam in sound disposing state of mind. DW2 is one Vemi Reddy Narayana Reddy who is the resident of Banigandlapadu village and attester of Exs.B1 and B2. According to his testimony, Sesharatnam affixed thumb impression on Exs.B1 and B2 after the contents were read over and explained to her by the Sub-Registrar, Madhira and also about affixing thumb impression on Ex.B2. 39. In the cross-examination of DW2, strangely the counsel for the plaintiff could elicit that the plaintiffs never used to visit the house of Sesharatnam and mostly D1 used to visit the house of Sesharatnam very often. DW2 was unable to disclose the entire details of the property covered by Exs.B1 and B2. However, mere failure to disclose the details of property covered by Exs.B1 and B2 is not a ground to discredit the testimony of DW2, for the reason that DW2 is only an attester of Exs.B1 and B2 who is supposed to witness the affixing of thumb impression or signing on the document in his presence or acknowledging the signature or thumb impression of the executants in his presence. Therefore, failure to disclose the details of the property covered by Exs.B1 and B2 is of no consequence and on this ground Exs.B1 and B2 cannot be thrown overhead. 40. The defendants also examined one Javvaji Bhaskar Rao, the attester of Exs.B1 and B2 and his testimony is totally consistent with due execution of Exs.B1 and B2 by Sesharatnam affixing her thumb impression on both the documents. In the cross-examination, DW3 admitted that the gap between Exs.B1 and B2 is 1 to 3 days in their execution and also testified about the presence of DW1 and DW2, Seelam Pitchi Reddy and another person whom he does not remember. In the cross-examination, the counsel for the plaintiff could elicit that D1 to D4 took Sesharatnam to Magallu village prior to her death, but she was not in a position to walk and she used to walk with the assistance of others. He further admitted that Sesharatnam was taken from Banigandlapadu to Sub-Registrar's Office at Madhira in taxi and Exs.B1 and B2 were executed in the afternoon and scribed at Sub-Registrar's Office, Madhira. A suggestion was put to DW3 that Sesharatnam was at her house at the time of execution of Exs.B1 and B2 and the suggestion was denied by DW3. He further disclosed that Sesharatnam was in a sound state of mind at the time of execution of Exs.B1 and B2. 41. In the entire cross-examination, nothing has been elicited to disprove due execution of Exs.B1 and B2 and unsound state of mind of Sesharatnam at the time of Exs.B1 and B2. Exs.B1 and B2 are the gift/settlement deeds and they are compulsorily attestable documents and they are required to be proved under the Special Rules of Evidence, contained under Section 68 of the Indian Evidence Act. According to Section 68 of the Indian Evidence Act, a compulsory attestable document is required to be proved by examining at least one attester of the document. In the instant case, to prove Exs.B1 and B2, the defendants examined both the attesting witnesses DWs.2 and 3 and their consistent evidence establish that Sesharatnam affixed her thumb impression on Exs.B1 and B2 in their presence and registered the same with the Sub-Registrar, Madhira and nothing is elicited about the doubtful mental condition of Sesharatnam at the time of execution of Exs.B1 and B2. On the other hand, the fact elicited would show that, at the time of execution of Exs.B1 and B2, Sesharatnam was unable to walk due to fracture to her leg shows that she was not physically in good condition. Mere physical condition is not sufficient to doubt execution of Exs.B1 and B2 when the defendants are able to establish that Sesharatnam was in a sound state of mind at the time of execution of Exs.B1 and B2. 42. The defendants also examined Muvva Gandhi to prove the execution of Ex.B3 Will in favour of D1 and D4 and attesting of Ex.B3 by him, state of mind of Sesharatnam at the time of execution of Ex.B3. In the cross-examination, the counsel for the plaintiff could elicit about the presence of DW4 attester of Ex.B3, and that Sesharatnam affixed her thumb impression on Ex.B3 after it was scribed by the scribe. DW4 is Pavuluri Bhaskar Rao, the attester of Ex.B3 Will. Thus, the consistent evidence of DWs.4 and 5, the attester and scribe of Ex.B4 established that Ex.B3 was executed by Sesharatnam in sound disposing state of mind bequeathing tiled house, tobacco baren, open land and shed. Ex.B3 is the Will which is compulsorily attestable document, required to be proved as per the Special Rules of Evidence under Section 68 of the Indian Evidence Act and the unrebutted testimony of DWs.4 and 5 establish due execution of Ex.B3 by Sesharatnam in sound disposing state of mind as required under Section 68 of the Indian Evidence Act. That apart, mere execution of Exs.B1 to B3 in sound disposing state of mind is not sufficient and it is for the propounder of Ex.B3-Will, to dispel all the suspicious circumstances in execution of Ex.B3. Strangely, the plaintiffs examined the identifying witness as PWs.4 and 5 to disprove the mental condition of Sesharatnam at the time of execution of Exs.A1 and A2 and to establish that she was not in sound, disposing state of mind. 43. PWs.4 and 5 are the identifying witnesses of Exs.B1 and B2 and testified about state of mind of Sesharatnam at the time of executing Exs.B1 and B2 before the Sub-Registrar, Madhira. PW4 testified that he signed before the Sub-Registrar on the document written in the name of Janga Pulla Reddy by one Seshaiyah and at that time Sesharatnam was lying in the car and Vemi Reddy Naranaya Reddy, Seelam Venkata Reddy, Javvaji Bhaskar Rao, the 1st defendant found sitting in the car, and Sesharatnam was not in a position to talk and she was not in a conscious state and she was taken to the Sub-Registrar Office in the car and obtained thumb impression of Sesharatnam without reading the contents of the documents. He is also identifying witness in Ex.B2 and spoke about the physical and mental condition of Sesharatnam. Similarly, PW5 also testified that he himself and the 1st defendant brought Sesharatnam to Madhira in a car without taking her to Government hospital, Madhira and she was taken to hut of Janga Pulla Reddy which is at a distance of 200 yards from the Office of Sub-Registrar, there he prepared the document in favour of the 5th defendant and at that time Sesharatnam was lying in the car, keeping her head on the thigh of a woman in the office of Sub-Registrar and at that time Sesharatnam was not in a conscious state. Later, the Sub-Registrar came and saw the document written in favour of the 5th defendant and also the condition of Sesharatnam and seeing her condition, refused to register the document. He further testified that later the 1st defendant went to the office of Sub-Registrar and the Sub-Registrar came out and obtained thumb impression of Sesharatnam on the same document though she was in unconscious state. The consistent evidence of PWs.4 and 5 is that they identified Sesharatnam at the time of execution of Ex.B1 by PW4 and at the time of execution of document in favour of Ex.B5 and the condition of Sesharatnam at the time of execution of other document, what is the other document is not clear in the testimony of PW5. 44. In any view of the matter, PWs.4 and 5 are the identifying witnesses on Exs.B1 and B2. According to PW4, Sesharatnam was conscious

but not able to move, found sitting in the car at the time of execution of Ex.B1. Even according to the case of defendants, Sesharatnam was unable to move due to fracture to her leg when PW4 identified and established the identity of Sesharatnam before the Sub-Registrar and affixing thumb impression by Sesharatnam on Exs.B1, B2 and they cannot be doubted. The evidence of PW5 is not consistent with regard to the fit state of mind of Sesharatnam at the time of execution of Ex.B2. The role of identifying witness is only to identify the person as executant mentioned in the document and his role is limited. According to Rule 63 of the Rules framed under the Registration Act, a registering officer may require any executant, claimant or identifying or other witness regarding whose identity he has to satisfy himself but who is not personally known to him to affix in his presence, whether such person can write his name or not, the impression bulb of his left thumb both in the register of thumb impressions maintained in the registration office in the form shown in Appendix-IV as well as on the document presented for registration and such impression shall invariably be taken in the case of marksman and illiterate families. However, a messenger presenting the document under Rule 25(ii) shall not be required to prove his identity but shall, unless known personally to the registering officer, be required to sign and affix his thumb impression to the endorsement of presentation. So, the whole idea of identification is to establish the identity of the executants when the executant is not known to the registering authority as per Rule 63 of the Rules under the Registration Act, but whereas the role of attester is totally different from the role of identifying witnesses. The attester of a document has to sign on the document only to prove that the executant's sign or affix his or her thumb mark. Therefore, the attesters are not even expected or supposed to know the contents of the document and at best they have to sign on the document as attesters to prove that the executants signed or affixed thumb impression on the document in his presence. But the identifying witnesses are not required to state anything about due execution of Exs.B1 and B2 in their presence. Therefore, the evidence of identifying witnesses is only to prove the identity of the executants and not for any other purpose. Hence the evidence of PWs.4 and 5 cannot be given much credence to disprove the execution of Exs.B1 and B2. 45. On overall consideration of evidence of DWs.1 to 5, PWs.4 and 5 it is consistent that Sesharatnam executed Exs.B1 and B2 in favour of D1, D3 and D2, D4 in sound disposing state of mind. That apart, the defendants also proved execution of Ex.B3 Will by Sesharatnam in sound disposing state of mind bequeathing tiled house, shed, peradu, tobacco baren in favour of D2 and D4. Though the plaintiffs disputed execution of Exs.B1 and B2, they did not rebut the evidence of DWs.1 to 5. Therefore, the evidence of DWs.1 to 5 established execution of Exs.B1 to B3. The defendants examined DWs.6, 7 and 8 to prove the cultivation of land by Sesharatnam during her lifetime, execution of Exs.B1, B2 in favour of D1, D3 and D2, D4 and admittedly DW6 is the adjacent owner of the lands covered by Exs.B1 and B2 and in the cross-examination, DW6 testified that DW3 used to assist Sesharatnam and Hanumaiah during their lifetime in cultivation of land. In the cross-examination, the counsel for the plaintiff could elicit that about two years back, there was a dispute between plaintiff No.1 and DW1 about cultivation of adjacent land and DW1 alone cultivated the said land, but he does not know in what capacity he was cultivating. Similarly, according to the testimony of DW7, he knew both Sesharatnam and her husband Hanumaiah, who were residents of opposite house at Banigandlapadu village and DW7 own and possessed land to the East of the land of Hanumaiah and Sesharatnam. 46. During the lifetime of Hanumaiah, he cultivated the land and after his death, Sesharatnam cultivated the land with the assistance of DW1. In the cross-examination, DW7 admitted that he is the son of Vennam Ademma who is defendant No.8 in the suit and that DW1 enjoying the crop in the land. DW8 is another adjacent owner of lands in Pedagogavaram village and his testimony is also to the same effect. The consistent evidence on record established that D1 and D2 cultivated the land covered by Exs.B1 and B2 from the date of their execution. Even in the other circumstances, it would show that D1 alone used to assist Hanumaiah and Sesharatnam due to old age. In any view of the matter, the evidence on record established execution of Ex.B1 to B3 in favour of D1 to D4. 47. The trial Court, after appreciation of the entire evidence on record, concluded that the defendants 1 to 4 established execution of Exs.B1 to B3 in sound disposing state of mind by Sesharatnam who is competent to execute Exs.B1 to B3 being the absolute owner by virtue of Will executed by Hanumaiah. 48. In the entire argument before this Court, except highlighting the evidence of PWs.4 and 5 and non-consideration of evidence of PWs.4 and 5 by the trial Court, nothing was brought to the notice to disprove the execution of Exs.B1 to B3 in favour of D1 to D4. As per my discussion in the earlier paragraphs, since the role of PWs.4 and 5 is limited to identify execution, their evidence about the condition of Sesharatnam at the time of execution of B1 and B2 is improbable to the circumstances and the role of identifying witnesses. On the other hand, the evidence of PWs.2 and 3 established due execution of B1 and B2 in sound disposing state of mind and affixing thumb impression in the presence of D1 and D2. In the cross-examination, nothing was elicited to prove unsound state of mind. Therefore, I find nothing to disbelieve the execution of Exs.B1 to B3 in favour of D1 to D4 settling agricultural land under Exs.B1 and B2 bequeathing tiled house, shed, open land (peradu) and tobacco baren under Ex.B3. Therefore, I find no legal infirmity in the finding recorded by the trial Court warranting interference in this appeal. Hence, the finding of the trial Court is upheld and the point is answered in favour of the defendants and against the plaintiffs. 49. Point Nos.1 and 3: The 1st plaintiff was examined as PW1 besides examining PWs.2 and 3, the attesters of Ex.B1 as required under Section 68 of the Indian Evidence Act. Undoubtedly, their evidence is consistent to prove the execution of Ex.A26. Execution of Ex.A26 surrounded by certain suspicious circumstances such as execution of Ex.A26 while undergoing treatment in the nursing home of Dr. Y. Purna Chander Rao at Vijayawada and presence of the attesters at the time of examination is highly doubtful and failure to mention the details of the property which she bequeathed is another strong reason to doubt the execution of Ex.A26. Even assuming for a moment that Sesharatnam executed Will marked as Ex.A26 in sound disposing state of mind, that by itself is not sufficient to claim title unless it is proved that Ex.A26 is the last testament of Sesharatnam. Therefore, it is not only the duty of the propounders of the Will Ex.A26 to prove due execution of Ex.A26 and prove the same in terms of the Rules contained under Section 68 of the Indian Evidence Act, but also to prove that Ex.A26 is the last testament of Sesharatnam. 50. In the present case, the plaintiff proved due execution of Ex.A1, but the trial Court doubted the very execution of Ex.A26 as the fit state of mind of testatrix Sesharatnam was not certified by the doctor as Ex.A26 was allegedly executed while she was undergoing treatment in the hospital, but it is not a requirement under law since a Will is not required to be proved like a Dying Declaration. Therefore, the approach of the trial Court in disbelieving Ex.A26 as it was not accompanied by a certificate about the fit state of mind of Sesharatnam is erroneous, prima facie. On this ground the finding of the trial Court is liable to be set aside. In any view of the matter, as per Ex.A26, she reserved her right to cancel the Will as per the first three sentences of Page 3 of Ex.A26, execution of Ex.B3-unregistered Will is sufficient to believe that Sesharatnam revoked her testamentary disposition under Ex.A26 and bequeathed tiled house, open land, shed and tobacco baren, and Ex.B3 is proved. Therefore, the Will marked as Ex.A26 is deemed to have been revoked in view of the execution of Ex.B3 pertaining to bequeath of tiled house, shed, open land (peradu) and tobacco baren. Due to execution of Exs.B1 and B2, the Settlement / Gift Deeds, she was no more the owner of the items covered by Exs.B1 and B2 before her death; and therefore, the question of devolving the properties covered by Exs.B1 and B2 in pursuance of testamentary disposition of Ex.A26 in favour of the plaintiffs does not arise since the title is vested on the defendants 1 to 4 divesting the title from Sesharatnam. Therefore, the plaintiffs are not entitled to claim the property covered by Exs.B1 and B2 by virtue of Ex.A26 Will as Sesharatnam was not the owner of the items covered by Exs.B1 and B2 by the time of her death. Therefore, the plaintiffs are not entitled to claim any item covered by Exs.B1 and B2 and similarly in the property covered by Ex.B3-Will executed in favour of D2 and D4. 51. As Sesharatnam executed Exs.B1 to B3 subsequent to execution of Ex.A26 Will, the plaintiffs are not entitled to claim declaration of their title to the properties covered by Exs.B1 to B3 as the Will executed in Ex.A26 stood revoked by executing Exs.B1 to B3 and as Sesharatnam ceased to be the owner of the properties covered by Exs.B1 and B2 by the date of her death. Therefore, the plaintiffs are not entitled to claim title to the property covered by Exs.B1 to B3. 52. The plaintiffs approached the Court claiming declaratory relief under Section 34 of the Specific Relief Act and when the plaintiffs claim is an equitable relief under Section 34 of the Specific Relief Act, it is for the plaintiffs to prove their title to the property so as to enable the Court to exercise its discretion to grant the relief of declaration and the plaintiffs are not entitled to take advantage of the weakness in the defence set up by the defendants to claim the declaratory relief. 53. The plaintiff claimed declaration of his title to schedule property under Section 34 of the Specific Relief Act, 1963 (for brevity, 'the Act of 1963'), and the relief of declaration is purely discretionary in nature. In Union of India (UOI) and others Vs. Vasavi Co-operative Housing Society Limited and others, the Apex Court in para No. 15 held as follows: "The legal position, therefore, is clear that the Plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the Defendants have proved their case or not. We are of the view that even if the title set up by the Defendants is found against, in the absence of establishment of Plaintiff's own title, Plaintiff must be non-suited." 54. In Union of India Vs. Ibrahim Uddin and another, the Supreme Court held that: "In a suit for declaration of title or ownership of land, burden of proof should have been exclusively

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