

H O N ' B L E S R I J U S T I C E

S E C O N D A P P E A L N o

J U D G : M E N T

This appeal under Section 100 of the Code of Civil Procedure, 1908 ('the code', for brevity) by the defendants 2 and 8 is directed against the decree and judgment dated 04.02.2008 of the learned III Additional District Judge (Judge, Fast Track Court), Ongole passed in Appeal Suit No. 222 of 2004. The learned Additional District Judge while allowing the said first appeal had set aside the decree and judgment dated 14.10.2004 of the learned Senior Civil Judge, Kandukur of Ongole District passed in OS.No.55 of 1994 and had decreed the said suit as prayed for.

2. I have heard the submissions of the learned counsel for the appellants/defendants 2 and 8 ('the appellants' for brevity) and the learned Senior Counsel for respondents 1 and 2/plaintiffs ('the plaintiffs' for brevity). The other defendants are the respondents 3 to 12. In the appeal memorandum, it is stated that the respondents 8 to 12/defendants 3 to 7 are not necessary parties.

3. At the time of admission of this second appeal, this Court had formulated the following substantial questions of law:

01. Whether the recitals as to the boundaries in documents Ex.A.5, A.6, A.7 and A.8 not being inter parties are admissible in evidence?

02. Whether the plaintiffs are entitled to decree of specific performance and permanent injunction which are discretionary in view of their admission that they had no knowledge about the contents of the plaint?

[Reproduced verbatim]

3.1 It is apposite to mention that at the time of hearing the second appeal, this Court while disposing of the S.A.M.P. No.1547 of 2015 filed by the appellants had formulated the following additional

substantial questions of law:

- i) Whether the lower appellate court is justified in exercising of discretion to grant to the plaintiffs, the relief of specific performance in view of the facts and circumstances of the case especially in view of the admissions made by P.W.1 and P.W.2?**
- ii) Whether the judgment and decree of the lower appellate court is vitiated for its perverse reasoning including on the finding that Ex.A.2, Agreement of sale was proved by the oral evidence of P.W.2, especially when the evidence of P.W.2 is an admissible being hearsay evidence under Section 60 of Indian Evidence Act, 1872?**
- iii) Whether the lower appellate court is right in decreeing the suit for specific performance without recording a finding on the substantial issue as to the date on which Ex.A.2 agreement of sale came into existence i.e. either in the year 1980 or in the year 1994?**
- iv) Whether the lower appellate court is justified in granting the relief of specific performance of Ex.A.2 when the allegation of collusion among the plaintiffs and defendant No.9 as pleaded was successfully established by the defendants through the admission made by P.W.1?**

4. To begin with, it is necessary to refer to the facts that lead to the filing of this second appeal by the defendants 2 and 8.

4.1 The reliefs sought in the suit of the plaintiffs are as under: (i) Specific performance of the agreement for sale dated 26.06.1980 that was executed by the 9th defendant (since died) against the defendants 10 to 14 (the LRs of the 9th defendant) by directing them to execute a regular registered sale deed in respect of plaint 'A' schedule property corresponding to 'A B C D E F F1 F2 F3 J K P T S' of the plaint plan; (ii) Perpetual injunction to restrain all the defendants and their men etcetera from interfering with the plaintiffs' peaceful possession and enjoyment of the plaint 'B' schedule site [which is a part of the plaint

‘A’ schedule site] corresponding to the ‘A B C D E F F1 F2 F3 J K P T S’ of the plaint plan together with the house H1 thereon by entering into the suit site through ‘F F1 F2 F3’ line or otherwise; and (iii) costs.

The 2nd defendant had filed written statement resisting the suit; the said written statement was adopted by the defendants 1, 3 to 7 and 8.

Be it noted that during the pendency of the suit the 9th defendant who had executed the suit agreement for sale under exhibit A2 had died and hence the relief of specific performance was sought against his legal representatives who were brought on record as the defendants 10 to 14. The 1st defendant had also died and his legal representatives are the defendants 2 to 6, who are already on record.

4.2 Taking into consideration the pleadings of both the parties, the trial court had framed the following issues for trial:

- 1) **Whether the suit agreement of sale is true?**
- 2) **Whether the plaintiffs are entitled for specific performance of contract?**
- 3) **Whether the plaintiffs are entitled for the relief of permanent injunction?**
- 4) **To what relief?**

At trial, the first plaintiff and his supporting witnesses were examined as PWs 1 to 3 and exhibits A1 to A9 were marked on the side of the plaintiffs. The defendants 8 and 2 were examined as DWs 1 and 2 and their supporting witnesses were examined as DWs 3 and 4. Though DW5 was examined, his evidence was eschewed from consideration. Exhibits B1 to B5 were marked on the side of the defendants. Exhibits C1 to C3 were marked with consent.

4.3 After full-fledged trial, the trial court had dismissed the suit of the plaintiffs.

4.4 The Court below had framed the following points for determination:

- i) **Whether the plaintiffs are entitled for specific performance**

of contract with regard to 'A' schedule property at the cost of the plaintiff within the time fixed by the trial Court?

- ii) Whether the plaintiffs are entitled for the relief of permanent injunction with regard to 'B' schedule site?
- iii) Whether the first defendant and sons purchased the site underneath the H3 and H4 marked house for Rs.2,000/- in the year 1973 under oral sale transaction and also paid the sale consideration to Parvathamma and her son Rama Rao the 9th defendant herein, the defendants 1, 4 and 5 have been in exclusive possession and enjoyment of H4 and H4 house till now, thus they perfected their right of possession and enjoyment in the said property by means of adverse possession?
- iv) Whether the second defendant and 8th defendant purchased A A1 P T site an extent of 20 ankanams which is plaint B schedule property for a valuable consideration of Rs.4,000/- under a registered sale deed dt.6.6.94 from one V.V.Naga Prasad and duly delivered possession of the same on the even date?
- v) Whether the defendants 2 and 8 have been in exclusive possession and enjoyment of the same wherein defendants 2 and 8 have been tethering their cattle and also keeping the manure pits etc., it is also contended that A A1 P T plaint plan marked site which is plaint B-schedule site originally belonged to the family of Emani Venkata Subbaiah, a resident of Tanguturu village who executed a registered will on 10.12.1971 in favour of V.V. Naga Prasad the vendor of this defendant and 8th defendant bequeathing this suit B-Schedule property along with other properties?
- vi) Whether the said V.V.Naga Prasad also got divided his share of property under a registered partition deed dt.5.5.90 including this plaint B-schedule property shown as item No.7 in the said partition deed along with some other properties?
- vii) Whether the defendant contended that the alleged stamped agreement of sale dt.26.6.1980 is not a genuine document as the same has been fabricated by the plaintiff in collusion with the 9th defendant and with the help of their close friends or relatives with ante date with a mala fide intention to cause loss to this defendant, 8th defendant and defendants 1, 4 5 etc., as submitted supra?
- viii) To what relief?

4.5 As already noted, the first appeal suit of the plaintiffs was allowed and the plaintiffs' suit was decreed as prayed for. Therefore, the

appellants/defendants 2 and 8 are before this Court.

5. The learned counsel for the appellants had contended as follows:

a) The suit for specific performance of agreement for sale under exhibit A2 is filed by the plaintiffs in collusion with the 9th defendant. The trial court had considered the facts and the evidence brought on record in correct perspective and had rightly dismissed the suit for specific performance and for perpetual injunction by recording findings supported by valid and cogent reasons. There are no grounds much less valid grounds to interfere with the well considered judgment of the trial court. The court below having not taken into consideration the admissions of PWs 1 and 2 and not properly appreciating the pleadings and the evidence and without properly and judiciously exercising the discretion had held that the plaintiffs are entitled to the relief of specific performance against the legal representatives of the 9th defendant.

b) The Court below had erroneously relied on exhibits A5 to 7 and 8, though the said documents are not inter parties and the boundary recitals therein are not binding on the contesting defendants. The plaintiffs did not file a suit for specific performance of exhibit A2, the agreement for sale before instituting the instant suit for specific performance against the 9th defendant and for perpetual injunction in regard to 'B' schedule site against all the defendants. The suit is bad for multifariousness and mis joinder of causes of action. The plaintiffs ought to have first filed a suit for specific performance of agreement for sale against the 9th defendant with which the present contesting defendants are unconcerned and ought to have obtained a decree for specific performance and a sale deed pursuant thereto, and then ought to have brought the suit for perpetual injunction against the defendants, if the facts and the law so warranted. Clubbing of both the reliefs in this instant suit is unwarranted. No explanation is forthcoming for instituting the present suit seeking both the reliefs.

c) Had the court below considered the evidence in the right perspective keeping in view the relevant pleadings, it would have concurred with the reasoned findings of the trial court.

d) Exhibit A2-agreement for sale is fabricated on an old stamp paper just before the institution of the suit, in collusion with the 9th defendant and was pressed into service.

e) The admission of PW1 that the 9th defendant gave instruction to his counsel to draft the plaint and that he has no personal knowledge of the averments in the plaint clearly establishes that the suit is collusive and frivolous in nature and is intended to defeat the valuable rights of the contesting defendants. Even according to the admissions of the plaintiffs, the site marked as K P T in the plaint plain belongs to Emani people. There is no proof as to how the vendor under exhibit A9 i.e., N. Kondaiah got title to the said property. PW1 had stated that he did not verify any document at the time of his purchase to know about the said site A, A1, P, T. The court below erred in holding that N. Kondaiah is the owner of the said property. The stamp paper which was marked under exhibit A9 was purchased on 25.09.1954 and the date of execution is four years thereafter. There was no evidence to show that N. Kondaiah had ever purchased the said site.

f) Exhibit A9 goes to show that A, A1, P, T site in the plaint plan belongs to Emani people and that N. Kondaiah obtained property from them, but how N. Kondaiah had obtained the property from Emani people is not established by adducing necessary evidence.

g) The suit with two reliefs is a camouflage and is filed to obtain wrongful gain and grab the property purchased by the defendants 8 and 2 from Emani people under exhibit B1 registered sale deed dated 06.06.1994. The court below, having held that there is no direct document in the name of Kondaiah in respect of the site P R S T in the plaint plan, had erred in relying upon exhibit A5 to 7 and 8 to come to a

conclusion that N. Kondaiah is the owner of A, A1, P, T property.

h) The findings of the court below are vitiated for perversity. Hence, the second appeal may be allowed by setting aside the decree and judgment of the court below and confirming the decree and judgment of the trial court.

6. *Per contra*, the learned senior counsel for the plaintiffs had contended as follows:

The judgment of the court below reversing the judgment of the trial court is sustainable both under facts and in law. The trial court had failed to properly appreciate the facts and the evidence. The court of first appeal is the last court of fact. It had independently appreciated the evidence in the correct perspective and had analytically examined the evidence in juxtaposition with the facts and had recorded reasoned findings before over turning the decree and judgment of the trial Court and decreeing the suit of the plaintiffs. While reversing the findings of the trial court and in recording its conclusions in favour of the plaintiffs, the court below had given detailed findings supported by valid and cogent reasons. None of the questions raised are pure questions of law let alone substantial questions of law. Till the contesting defendants including the appellants had raised a dispute by obtaining a sale deed from Emani people there was no necessity for the plaintiffs to seek specific performance of the agreement for sale-exhibit A2 against the 9th defendant as there was no dispute whatsoever and as the plaintiffs were having confidence over the honesty and gentlemanliness of the 9th defendant. However, when a dispute had arisen with the contesting defendants 1 to 8, who are third parties to the suit agreement for sale, the plaintiffs thought it fit to obtain the relief of specific performance against the 9th defendant in the presence of the contesting defendants to be fair enough to the contesting defendants and to show their bona fides. Seeking of relief of specific

performance in regard to exhibit A2 agreement for sale against the 9th defendant, who is the vendor therein, in the suit provided an opportunity to the contesting defendants to raise all the defences that are available to them and therefore seeking the relief of specific performance in the suit is advantageous to the contesting defendants rather than the plaintiffs. When the plaintiffs are enjoying the property under exhibit A2 agreement, the defendants had obtained the disputed document in the year 1994 from Emani people and created a dispute. Therefore, the necessity to obtain a sale deed pursuant to exhibit A2 agreement had arisen as the plaintiffs intended to protect their interests by obtaining a perpetual injunction in respect of the property including the disputed property. The plaintiffs had filed a detailed plan showing all the properties and the plaint plan shows the topographical details of the locality and also the situation of the properties covered by the sale deeds particularly exhibits A5 to 9, which are more than 30 years old as on the date of the suit and as on the date they were tendered in evidence. There was no need for creating those documents and making false recitals in those documents in anticipation of disputes several decades thereafter. In a case of this nature where the rights to immovable property are involved, the documentary evidence assumes importance and not the oral evidence. The oral evidence was adduced only to mark the documents. Admissions do not confer title which is not there or take away the existing title. Even the oral evidence would show that since several decades Emani people and the Vyayavaram people were not in possession of the disputed property and this fact shows that Nandanavanam Kondaiah had purchased the property of Emani people and that no title in respect of the disputed property passed to the defendants under the document of the year 1994. In view of the presumption available under Section 90 of the Indian Evidence Act, no further proof of thirty years old documents was necessary. When once the execution is established and the title to the entire remaining property is not disputed and the

denial of right and title is only in respect of the small extent of disputed property, the recitals of boundaries in more than thirty year old documents, though not inter parties, are admissible in evidence. The court below having considered the contents of the documents had rightly come to the conclusion that the plaintiffs are entitled to the reliefs claimed in the suit and that therefore, the suit has to be decreed. The court below before accepting the oral and documentary evidence had considered the evidence of both the sides. The Court below had read the entire evidence on record in a harmonious manner and did not ignore any part of the material evidence. There is no perversity either in appreciation of the evidence or the findings recorded by the Court below. The reasoned findings and the conclusions drawn by the court below are neither erroneous nor contrary to mandatory provisions of law and no material evidence was left out from consideration and no findings are arrived at without any evidence. There is no substance in the questions that are raised in the second appeal as substantial questions. The questions raised are mixed questions of fact and law and are not pure substantial questions of law. The rejection of evidence for valid reasons cannot be a ground for interference in the second appeal. Mere appreciation of facts and documentary evidence cannot be held to be raising a substantial question. There are no grounds calling for interference with the well reasoned and well considered judgment of the court below. Hence the second appeal may be dismissed.

7. I have gone through the pleadings and the entire oral and documentary evidence brought on record including the commissioner's report, plan and the objections filed to the said report. I have also noted the submissions of both the sides.

8. To adjudicate the *lis* and to answer the substantial questions of law, it is necessary to refer to the relevant contentions, the pleadings of the parties and the evidence brought on record. Nevertheless, to avoid

repetition and be precise, the pleadings of the parties and the evidence, which may be relevant shall be adverted to while dealing with the various contentious issues involved in the substantial questions.

8.1 Dealing together the questions in regard to the plaintiffs' entitlement or otherwise to the relief of specific performance of the agreement for sale dated 26.06.1980 under exhibit A2 in respect of plaint 'A' schedule property against the defendants 10 to 14 (the LRs of the deceased 9th defendant); and the entitlement or otherwise of the plaintiffs to the relief of perpetual injunction in respect of the plaint 'B' schedule property; and, the contentions of the appellants that Nandanavanam Kondaiah had no title to the disputed property; and, that there is no passage; and, that the appellants had purchased the disputed property under exhibit B1, registered sale deed, what is to be first noted is that the said agreement for sale under exhibit A2 in favour of the plaintiffs was executed by the 9th defendant, who had worked and retired as a Sheristadar of the Court at Ongole. Now this relief of specific performance is being claimed against the defendants 10 to 14, who are the LRs of the said deceased 9th defendant in the presence of the other defendants including the appellants. To substantiate the plaintiffs' case on this issue, the first plaintiff was examined as **PW1**. He had testified that the 9th defendant had executed the suit agreement under exhibit A2 and that the 9th defendant had personally scribed the suit agreement for sale dated 26.06.1980. He had further affirmed the case pleaded in the plaint. As already noted, the 9th defendant, who is the executant of exhibit A2-agreement for sale, had died on 12.12.2001 i.e., during the pendency of the suit and before the trial had commenced. His wife Krishnavenamma, the 10th defendant, was examined as **PW2**. Her sons and daughter are the defendants 11 to 13 and 14. They are all not disputing the execution of exhibit A2 and their obligation to perform their part under exhibit A2. PW2 had

categorically stated in her examination-in-chief that her husband sold the agreement schedule property to the 2nd plaintiff under exhibit A2. She had further identified the signature of her husband on exhibit A2, which was admittedly scribed by her husband. She had asserted that D1 to D8 are no way concerned with the property by the date of the death of her husband, the 9th defendant-Rama Rao. Moreover, one of the attestors of exhibit A2 was examined as **DW3** on behalf of the defendants. He had admitted that he had attested exhibit A2 at the house of the executant, i.e., the 9th defendant at Singarayakonda and he had identified his signature on exhibit A2. However, having figured as a witness on the side of the contesting defendants including the appellants herein, he did not support the due execution of the said agreement on the other aspects. According to the plaintiffs, he is inimically disposed of towards them as he had earlier borrowed Rs.50,000/- from the 1st plaintiff and did not repay that amount, but, had handed over his professional camera to him in full satisfaction of the said debt. The denial of this motive that was suggested to him apart, he had admitted in his cross-examination that he is not in the habit of signing documents without knowing the contents and that he was running a photo studio. But, he had denied the suggestion that he had borrowed certain amount from PW1 by executing a pronote and that he had handed over his Camera worth Rs.20,000/- to PW1. He had also denied the further suggestions given in line with the case of the plaintiffs in regard to the due execution of exhibit A2. Reverting to the evidence of PW2, the wife of the executant of exhibit A2, it is to be noted that she had stated in her cross-examination that her husband had received Rs.80,000/- as consideration under exhibit A2 and had further admitted that in exhibit A2 it was mentioned that an amount of Rs.40,000/- was paid on different dates prior to execution and that Rs.40,000/- was paid under the agreement. She had denied the suggestion that exhibit A2 was not executed on the date mentioned on

it and in the year 1980 but, the same was prepared just before filing of the suit. According to the defence of the contesting defendants, the said exhibit A2 was brought into existence on old stamp papers in collusion between the plaintiffs and the 9th defendant with an intention to grab the site of Emani Venkata Subba Rao, which is part and parcel of 'B' schedule property. However, when it was suggested to PW2 that exhibit A2 was not executed in the year 1980 and that the same was prepared just prior to the filing of the suit by securing old stamp papers, she had denied the said suggestion. Though during course of trial the appellants had also raised a plea that the said agreement was forged, the same is not their pleaded defence and consistent stand. Most importantly, the said document was scribed by the executant himself; and his wife and children, who are the defendants 10 to 14; and, they are not disputing the said agreement and are willing to abide by the terms of the said agreement under exhibit A2 and are prepared to execute a sale deed in favour of the plaintiffs in respect of the agreement schedule property. However, the other contesting defendants including the appellants *inter alia* contend that exhibit A2 is not an agreement for sale and it is an out and out sale deed and that its contents lay bare that it is a sale deed coupled with delivery of possession and that, therefore, it is inadmissible in evidence and that it is liable to be impounded. In this regard, what is to be noted is that the plaintiffs are only seeking specific performance of exhibit A2, as it is not registered and as under the said agreement the transfer of title was not affected. In the said exhibit A2, there is a clear recital that as and when demanded a registered deed will be executed by the executant. From this recital, it is clear that it is an executory contract as there was contemplation to execute a further document, i.e., a regular registered sale deed as and when demanded by the purchaser. Therefore, the contention that exhibit A2 cannot be enforced as an agreement for sale and that it is itself a sale deed and that it is inadmissible in evidence is a contention which needs no countenance, being devoid of merit. One

more contention of the appellants is that exhibit A2 agreement was written on three stamp papers bearing Nos.6973, 6974, 6978 and not on stamp bearing continuous numbers. A perusal of the document shows that all the stamp papers were purchased on the same date in the name of the executant of the agreement from the same stamp vendor. Further, this contention was not put forward before the courts below. Therefore, there was no opportunity to the plaintiffs to explain this aspect. Be that as it may, the executant and his legal representatives are not disputing the agreement for sale as already noted. Therefore, this court finds no acceptable merit in this contention. Having gone through the entire evidence and on a harmonious consideration of the same this Court is satisfied that exhibit A2-agreement is true and genuine and can be enforced provided there are no other barriers or valid objections from the side of the appellants. When the executant during his life time and his LRs (the defendants 10 to 14) are admitting that they are under an obligation to execute a sale deed as per the terms of exhibit A2, the appellants who are third parties cannot have any grievance and are not entitled to stop the said defendants from executing the sale deed in favour of the plaintiffs. However, this Court may hasten to add that the appellants may object to the execution of the sale deed for the part of the property which is in dispute until the dispute is resolved in regard to that part of the property. Therefore, the plaintiffs' right to seek specific performance of exhibit A2 incidentally depends upon the right to property in dispute. Therefore, the resolution of the dispute in regard to the disputed property is necessary before coming to a safe conclusion on the issue of specific performance. Hence, before finally deciding the issue of the enforceability of the said agreement-exhibit A2 against the defendants 10 to 14 and adjudicating finally the plaintiffs' entitlement to the reliefs of specific performance in respect of plaint 'A' schedule property and perpetual injunction in respect of plaint 'B' schedule property claimed in the suit, it is necessary to

simultaneously deal with the further contentions of the appellants in regard to the title to the disputed property.

8.2 Since it is necessary now to examine the right and title in regard to the properties in dispute, it is necessary to refer to the relevant pleadings of the parties as the title of Parvathamma who had executed exhibit A3 Will in favour of the 9th defendant who is the vendor of the plaintiffs under exhibit A2 agreement is disputed in respect of a part of the property which is subject matter of the *lis*. Be it noted that the defendants are disputing the title of Parvathamma, the mother of the 9th defendant-Rama Rao, in regard to 'P R S T' stating that there is no document in the name of Nandanavanam Kondaiah in respect of that property and that Nandanavanam Kondaiah is not the owner of 'A A1 P T' property in the plaint plan, which comprises of 'A S R A1' passage in the plaint plan. However, according to the plaintiffs, that said portion, viz., 'A S R A1' was acquired by Navuluri Venkata Subbaiah and that the contention of the appellants that Nandanavanam Kondaiah is not the owner of the property shown as 'P R S T' is not correct and that the documents exhibited lay bare the falsity of the dispute raised by the appellants.

8.3 The relevant plaint averments, in brief, are as under:

The site marked as 'A B C D E F G H I J K L M N O P Q R S' originally belonged to one Navuluri Venkata Subbaiah. He had built a tiled house shown as H1 thereon about 100 years ago with a passage into the Eastern bazaar after acquiring the said passage of 6 cubits within the points 'A S R A1' in the plaint plan from Emani people long time back. The said Venkata Subbaiah had also built a thatched house shown as H2 and had also got dug up a Well shown as 'W' in the plaint plan and lived therein for a long time enjoying both the house and the aforesaid site with absolute rights. Subsequently the thatched house except the wall on its Western side shown as K L was demolished. The said Venkata Subbaiah had no issues. He gave

away all his properties including the above said site and house to his nephew (i.e., the son of wife's brother) by name Athmakuri Chenchu Subbaiah @ Chenchu Subbarao by way of registered sale deed dated 26.01.1937. The said Chenchu Subbaiah in his turn gave it to his mother Athmakuri Parvathamma with absolute rights. Both the Subbaiahs died. The said Parvathamma was in possession and enjoyment of the aforesaid site together with the houses H1 and H2 thereon for a long time. While enjoying the aforesaid property with full rights, the said Parvathamma had purchased the site marked 'M N O U V W' lying on the North-East of her house together with a tiled house shown as H5 in the plan from one Chilakapati Rajyalakshamma and her Sons, who were the Daughter and Grand Sons of the original owner by name Parnasala Narasimhacharyulu. The said Parvathamma had purchased the same with her self earnings and savings and had obtained a registered sale deed dated 12.01.1951 from the said Rajyalakshamma and her sons. The said site 'M N O U V W' originally belonged to some Eemani people, a charitable family of that time and that they had not only gifted the above said site to Parnasala Narasimhacharyulu, who was a famous scholar in Sanskrit and Telugu at that time, but had also built a tiled house therein shown as H5 at their own expense and gifted away the said house and the site to the said learned pandit Narasimhacharyulu. Parvathamma had also purchased the site shown as 'O P R S T U' which is on the front side i.e. to the East of her tiled house H1, from the original owner Nandanavanam Kondaiah and obtained a sale deed on 26.09.1954. Thus the annexed houses and site of Narasimhacharyulu on the Northern side and the vacant site of Nandanavanam Kondaiah on the East were acquired by Parvathamma during her life time with her own funds and she came into possession of all the above houses even up to W V line on the North-East as per plan and had combined all the houses and sites and enjoyed them as she pleased during her life time. She had removed the boundary stones at O R S U after

purchase and had annexed some of the site purchased by her from Nandanavanam Kondaiah from its Northern portion to the site purchased by her from Rajyalakshamma for her convenient use and had enjoyed the entire site as she liked, mixing all the plots. Parvathamma, while she was in a sound disposing state of mind, had executed a Will as her last testament and had bequeathed all her property including the suit schedule site and houses to her second son Atmakuri Rama Rao, the 9th defendant herein, as per her said registered Will dated 21.11.1973. Thus, Atmakuri Rama Rao came to be in possession and enjoyment of the suit schedule property with absolute rights and became the sole owner after the death of his mother. Even while his mother - Parvathamma was alive, her son Rama Rao-the 9th defendant was managing her property and gave the vacant site lying to the West on the backside of his tiled house H1 i.e., the site to the West of F F1 F2 F3 line to the first defendant Chimata Kondaiah for a ground rent and he had obtained a rent deed dated 01.08.1971 on stamp paper from the first defendant and allowed him to enter into possession. In the rent deed executed by the first defendant on 01.08.1971, the first defendant had categorically admitted the title of Rama Rao-the 9th defendant to the entire suit site and even up to the line V W M X line inclusive of the suit site. After the 9th defendant became entitled to the suit property he had annexed some more vacant site marked as 'O P T U' in the plan, from the site purchased from Nandavanam Kondaiah as well as the Well marked as 'W' in the plan to the house and the house site on the Northern side purchased from Rajyalakshamma and fixed a straight boundary line along 'K P T' between his two houses for their convenient use as the house marked as H5 was let out for Panchayat Samathi Elementary School. Thus, the 9th defendant was in possession and enjoyment of the suit schedule site marked as 'A B C D E F G H I J K P T S'. After the above demarcation, with full rights, the 9th defendant had proposed to

sell away the said suit site together with the old tiled house H1 and the thatched houses H3 and H4, as he was employed at Ongole and was incurring wasteful expenditure on the repairs of these houses. The plaintiffs had already purchased the site adjoining the suit schedule site i.e., to the North of I J line from the 9th defendant in the year 1966 and also constructed a small house therein. The plaintiffs had offered to purchase the suit 'A' schedule property, i.e., 'A B C D E F F1 F2 F3 J K P T S' also for themselves and the sale price was fixed at Rs.80,000/- by mutual consent. The plaintiffs had paid Rs.40,000/- in installments orally to the 9th defendant and had later paid the balance of the sale consideration of Rs.40,000/- on 26.06.1980 at Ongole and had obtained an agreement for sale on stamp paper on 26.06.1980 itself from the 9th defendant. The plaintiffs were duly put in possession of the suit property on 26.06.1980, the date of the sale agreement. The plaintiffs did not mind to take a registered sale deed for fear of heavy registration expenses and as they had no doubt about the *bona fides* of the 9th defendant well known as Honest Gentlemen. The plaintiffs had acquired title for the suit 'A' schedule property by adverse possession also. After purchasing the suit property, the plaintiffs had opened an entrance in the suit site marked as 'J1 J2' in the plaint plan for their ingress and egress from their own houses and site previously purchased lying to the West of J K L line. The plaintiffs are using the suit site for putting their grain pints, tethering their cattle and keeping bullock carts etcetera. The plaintiffs are rearing Japan and babul trees in the suit 'B' schedule site to provide shelter for their cattle. They are using the gate way between points 'A' and 'S' in the plaint plan for their ingress and egress into the Eastern side main bazaar. They had also raised a pendal in the suit site to the East of their entrance 'J1' and 'J2', to serve as a protection from Sun and Rain. The plaintiffs had proposed to build a pucca house in the front portion of the suit site entirely demolishing the old tiled house H1. The plaintiffs are advised

that the suit for bare injunction is not maintainable on the agreement for sale without the relief of specific performance. The plaintiffs are ready and willing to perform their part of the contract. To avoid technical pleas and legal flaws, the suit is filed against the vendor - the 9th defendant for the relief of specific performance as the plaintiffs are bound to get the document registered at any time.

8.4 The defence of the 2nd defendant, which is relevant, in brief is as follows:

It is false to state that the site marked as 'A B C D E F G H I J K L M N O P Q R S' originally belonged to one Navuluri Venkata Subbaiah of old Singarayakonda, but the truth is otherwise. A B C D E F G H I J K L M N O P Q R A1 alone belonged to Navuluru's family as there was no 'A S R A1' passage as shown in the plaint plan in existence at any point of time. The site shown as 'A A1 P T' in the plaint plan about 20 akanams belonged to Emani people from times immemorial till recently. It may be true that the said Venkata Subbaiah of old Singarayakonda might have built a tiled house shown as H1 in the plaint plan long ago, but, the defendant has no personal knowledge about the same. H1 house was built more than hundred years ago with a passage into the Eastern bazaar after acquiring the said passage of 6 cubits width between points A S R A1 from some Emani people long back is false. There had been no passage such as A S R A1 shown in the plaint plan in existence at any point of time since A S R A1 site was never acquired by Navuluri Venkata Subbaiah or anybody else at any time from Emani people. This defendant also is not aware whether Navuluri Venkata Subbaiah also built a thatched house H2 shown in the plaint plan and also dug a Well marked as 'W' in the plan because by the date of the age of discretion of this defendant, both H2 site and 'W' sites were found vacant as there were no structures. This defendant is also not aware about the subsequent burning of H2 house. Atmakuru Parvathamma never

purchased any site situated to the South of P T line shown in the plaint plan at any time since it belonged to Emani Venkata Subbaiah. She might have purchased some site situated to the North of P T line from N. Kondaiah and also from Rajyalakshamma and might have annexed with each other for convenience sake but not the 'A A1 P T' site as stated in the plaint as it never belonged to N. Kondaiah. It might be true that A. Parvathamma executed a registered Will dated 21.11.1973 in favour of the 9th defendant and also bequeathed all her properties to him under the same, but not 'A A1 P T' site shown in the plaint plan as it did not belong to Parvathamma. Therefore, it is false to state that Atmakuru Rama Rao, the 9th defendant, came to be in possession and enjoyment of the suit schedule property with absolute rights and became sole owner after the death of his mother. It is true that Atmakuru Rama Rao on behalf of his mother Parvathamma gave vacant site lying to the West of F F1 F2 and F3 line shown in the plaint plan to the 1st defendant on ground rent and also obtained rent deed dated 01.08.1971 from him. But, the first defendant and his sons had constructed thatched houses i.e., H3 and H4 houses shown in the plaint plan thereon and are continuing to reside therein till now. Since the first defendant is an illiterate, except putting his L.T.I on the Rent Deed dated 01.08.1971, he does not know the contents of the said deed as it was got scribed by the 9th defendant. The averments in the plaint are invented for the purpose of the suit. The 9th defendant, who is a veteran litigant, worked and retired as Sub-Court Sheristadar. After the death of Parvathamma, the 9th defendant had annexed some more vacant site marked as O P T U in the plan from the site purchased from N. Kondaiah as well as the Well (W) marked in the plaint plan to the house and house site purchased from Rajya Lakshamma and fixed a straight boundary line along K P T between his house for their convenient use as the house marked H5 was let out for Panchayat Samithi elementary school is false. It is false to state that the 9th

defendant who is in possession and enjoyment of the suit schedule property marked as A B C D E F G H I J K P T S after the above demarcations with full right had proposed to sell away the suit 'A' schedule site viz., 'A B C D E F F1 F2 F3 J K P T S' together with the old tiled house H1, the thatched houses H3 and H4 as he was employed at Ongole and as he was incurring unstable expenditure on the repairs of these houses. The 9th defendant has no manner of right to sell or alienate in any manner the site marked as A A1 P T in the plaint plan to anybody much less to plaintiff. A A1 P T plaint plan marked site, which is plaint 'B' schedule site originally belonged to the family of Emani Venkata Subbaiah, a resident of Tanguturu Village. He had executed a registered will on 10.12.1971 in favour of Vyayavaram Venkata Naga Prasad, son of Narasimha Sastry. The said Vyayavaram Venkata Naga Prasad also got divided his share of property under a registered partition deed dated 05.05.1990 including this plaint 'B' schedule property shown as item 7 in the said partition deed along with some other properties. This plaint 'B' schedule property which is marked as A A1 P T site shown in the plaint plan has been mentioned in page 5 of the registered Will dated 10.12.1971 i.e., in the schedule portion. The 2nd and 8th defendants had purchased 'A A1 P T' site an extent of 20 ankanams which is plaint 'B' schedule property for a valuable consideration of Rs.4,000/- under a registered sale deed dated 06.06.1994 from one Vyayavaram Venkata Nagaprasad and had duly obtained possession of the same on the even date. Ever since that date, the defendants 2 and 8 have been in exclusive possession and enjoyment of the same, wherein the defendants 2 and 8 have been tethering their cattle and also keeping the manure pits etcetera. Thus, the 2nd defendant and 8th defendant are the exclusive absolute owners of the site shown in the plaint 'B' schedule which is marked as 'A A1 P T' in the plaint plan. This defendant is not aware whether the plaintiffs have purchased the site adjoining the suit 'A' schedule site i.e. to the North of 'I J' line from the

9th defendant in the year 1966. The 9th defendant had no manner of right to alienate any portion or part of the plaint schedule property in any manner to the plaintiffs or anybody else by the year 1966. The plaintiffs offered to purchase the suit 'A' schedule property also for themselves and the sale price was fixed at Rs.80,000/- by mutual consent and that the plaintiffs paid Rs.40,000/- in installments to the 9th defendant and that later they had paid the balance of the sale consideration of Rs.40,000/- on 26.06.1980 at Ongole and that they had obtained an agreement for sale on stamped paper on 26.06.1980 from the 9th defendant and that the plaintiffs were duly put in possession of the suit property on 26.06.1980 and that the plaintiffs did not mind to take a registered sale deed for fear of heavy registration expenses and that they have no doubt about the bonafides of the 9th defendant well known as honest Gentleman and that the plaintiffs acquired title for the suit 'A' schedule property by adverse possession are false. The agreement for sale dated 26.06.1980 is not genuine. The same is fabricated by the plaintiffs in collusion, with the help of their close friends, with a *mala fide* intention to cause loss to the defendants 1 to 8. The defendants 2 and 8 are exclusively using the said plaint 'B' schedule property and the defendants 4 and 5 are in exclusive possession and enjoyment of the H3 and H4 thatched houses shown in the plaint schedule property. It is true that the plaintiffs raised a pendal in the site to the East of J K L line and that about 6' width of site to the East of J K L line belongs to the plaintiffs. G1 point shown in the commissioner's report situate to the East of the 'J K L' point is a Grannery pit of the defendants. It is in the exclusive possession and enjoyment of this defendant. The allegations made in the plaint are all false. It is false to state that the defendants had requested the plaintiffs to sell them atleast ten gadies of vacant site from N. Kondaiah's site shown as 'P R S T' to construct a house for the 2nd defendant. It is false to state that there is long standing enmity for

the last two decades between the 7th defendant and the plaintiffs. The material allegations in the plaint are invented to create a cause of action.

8.5 Before advertng to the aspect of title of Parvathamma in respect of the entire property, which she had bequeathed under exhibit A3 Will to her son-the 9th defendant, it is necessary to sum up the next contention of the appellants. The appellants' precise contention is that exhibit A2-agreement was brought into existence with an intention to grab the site of Emani Venkata Subba Rao, which is a part and parcel of 'B' schedule property. Therefore, it is to be examined as to whether the 9th defendant had a right to sell the entire property under exhibit A2 to the plaintiffs, in view of the defence of the appellants. Dealing with the aspect of title to the property, it is necessary to sum up the pleadings of the parties. A close reading of the pleadings of both the parties would show that the subject matter of exhibit A2 agreement is the plaint 'A' schedule property viz., 'A B C D E F F1 F2 F3 J K P T S' together with the old tiled house H1, the thatched houses H3 and H4. The most important aspect is that the appellants/defendants 2 and 8 are not disputing the title of Parvathamma and her son-the 9th defendant and in their defence, they have specifically stated that the plaint plan site 'A B C D E F G H I J K L M N O P Q R A1' alone belonged to Navuluru's family. Their main contention is 'P R S T' site in the plaint plan belonged to Emani people and there was no 'A S R A1' passage as shown in the plaint plan in existence at any point of time. Therefore, both 'P R S T' and 'A S R A1' put together the total site in dispute is 'A A1 P T' in the plaint plan. Now, this *lis* thus centers around the title to 'A A1 P T' in the plaint plan, which comprises of 'A S R A1' passage.

8.6 The case of the plaintiffs is that late Parvathamma, who is the absolute owner of the property, by executing exhibit A3-registered Will dated 21.11.1973 had bequeathed her properties to her son i.e., the 9th

defendant and that the 9th defendant had got right to execute exhibit A2 agreement for sale in respect of the entire property comprised therein i.e., 'A B C D E F G H I J K L M N O P Q R A1' site. From the defence which is adverted to supra, it is obvious that the appellants are not disputing that the 9th defendant is the son of Parvathamma and that Parvathamma had executed a registered Will under exhibit A3 dated 21.11.1973 in favour of her son-the 9th defendant bequeathing her properties. Further, the appellants herein are not disputing the title of Parvathamma in respect of the entire property, which is the subject matter of exhibit A2. They are, however, seriously disputing the title of Parvathamma and her son-the 9th defendant, in respect of property 'A A1 P T' site shown in the plaint plan by stating that the said property originally belonged to Emani people and that there was no passage 'A S R A1' at any point of time. In the defence in the written statement, it was pleaded that it might be true that A. Parvathamma had executed a registered Will dated 21.11.1973 in favour of the 9th defendant and also bequeathed all her properties to him under the same, but not A A1 P T site shown in the plaint plan as it did not belong to Parvathamma. It is relevant to note that according to the case of the plaintiffs, the property shown as 'A B C D E F G H I J K L M N O P Q R S' in the plaint plan originally belonged to one Navuluri Venkata Subbaiah and that he had built a tiled house shown as H1 thereon about 100 years ago with a passage into the Eastern bazaar after acquiring the said passage of 6 cubits within the points 'A S R A1' in the plaint plan from Emani people long time back. The plaint plan is exhibit A1. As already noted, the defendants are also not disputing the title of Navuluri Venkata Subbaiah in respect of that part of the site 'A B C D E F G H I J K L M N O P Q R A1' having admitted the ownership of the said Venkata Subbaiah in respect of that part of the property in their written statement. In this regard, it is necessary to restate that their specific stand in the defence is that 'A B C D E F G H I J K L M N O P

Q R A1' alone belonged to Navuluri family and that there was no 'A S R A1' passage in existence as shown in the plaint plan at any point of time and that the same was never acquired by Navuluri Venkata Subbaiah or anybody else at any time from Emani people and that the entire 'B' schedule property, i.e., 'A A1 P T' including the 'ASRA1' being termed as a passage is the exclusive property of Emani people and that the same devolved upon Vyayavaram Venkata Naga Prasad under a registered Will dated 10.12.1971 and that the said Vyayavaram Venkata Naga Prasad in turn had sold the plaint B schedule property to the 2nd and 8th defendants for a valuable consideration of Rs.4,000/- under a registered sale deed dated 06.06.1994 and delivered possession of the same to them. Therefore, based on the said contentions, it is obvious that the objection of the appellants is about the non-existence of passage, which is shown as 'A S R A1' in the plaint plan. Therefore, it is to be examined as to any of the documents brought on record support the case of the plaintiffs that 'A S R A1' passage was and is in existence.

8.7 Exhibit A5 is the registered settlement deed dated 26.01.1937 where under Navuluri Venkata Subbaiah had conveyed his properties along with his wife Kotamma in favour of his fostered son Atmakuri Chenchu Subbaiah. Let it be examined as to whether the said settlement deed of the year 1937 also comprised in the property therein, the disputed passage as this document assumes significance being one of the oldest documents executed when there were no disputes. A careful perusal of this document would show that while describing the boundaries of the tiled house and vacant site comprised in the schedule of this document, the Eastern boundary was described as follows: 'East: Six (6) cubits width passage for ingress and egress to reach the street from the house.....'. This recital corresponds to the passage in question, i.e., 'A S R A1' of the plaint plan is not in dispute. At this stage itself, it is necessary to make a passing reference to the observations in the Commissioner's Reports. H1 house as per the

Commissioner's reports is in dilapidated condition without any roof and that the said house faces towards East. The Commissioner had also noted the passage from the Eastern bazaar leading to H1 house shown as A S A1 S1 in his report, which corresponds to the subject passage 'A S R A1' of the plaint plan. The learned Commissioner had filed his plan showing passage while observing in his report that "to the A S A1 S1 passage at point 'A' , one old pillar and at point 'S' another pillar are there and that the said pillars are also in dilapidated condition." He had also identified that the name of the plaintiffs' vendor was engraved on one of the pillars and it appears as 'a sign board at the entrance', which was probably fixed on the pillars. Therefore, a plain perusal of exhibit A5 and the Commissioner's observations clinch the issue about the existence of passage 'A S R A1' shown in the plaint plan even by the year 1937. Before referring to the other documents of the plaintiffs, let it be noted that the only document which the appellants rely upon is exhibit B1, wherein, the Southern boundary belies the contention of the plaintiffs, according to their submissions. In fact, exhibit B1 came into existence about six months prior to filing of the suit. Therefore, this document which has come into existence after the disputes had arisen and just before the suit is not of much significance and no probative value can be attached to this document. Further, in the light of exhibit A5 settlement deed which mentions about the passage more than 65 years prior to the disputes, the contentions of the plaintiffs that the recital in exhibit B1 just prior to the suit was made with an ill intention of grabbing 'A S R A1' passage is more probable than the contention of the appellants. The next contention of the appellants is that though the plaintiffs are claiming that Nandanavanam Kondaiah is the owner of the 'P R S T' of the plaint plan, there is no document of title to prove the ownership of the said site 'P R S T' of the plaint plan. To prove that Nandanavanam Kondaiah is the owner of that property, the plaintiffs rely upon various other documents. The first and foremost of the said documents is the

sale deed dated 11.06.1929 under exhibit A8, which is again more than 75 year old and it is a document in respect of a site situated to the North of the site of Nandanavanam Kondaiah. The said property under exhibit A8 originally belonged to Parnasala Narasimhacharyulu. The said Narasimhacharyulu conveyed the said site in favour of his only daughter Chilakapati Rajyalakshmmamma under exhibit A8 and under that document, the property conveyed corresponds to 'M N O U V W' of the plaint plan. The boundaries of this property show that to the South of that site under exhibit A8, the site of Nandanavanam Kondaiah is situate as is evident from the Southern boundary of the property, which is described as the site of Nandanavanam Kondaiah. Thus, this document lays bare that Nandanavanam Kondaiah is having site to the South of the site of Parnasala Narasimhacharyulu. Yet again, the exhibit A5, which is a registered settlement deed of the year 1937 has relevancy on this aspect. Under this exhibit A5-settlement deed of the year 1937, Navuluri Venkata Subbaiah had conveyed his properties along with his wife in favour of his fostered son Atmakuri Chenchaiiah. The Eastern boundary of one of the items sold under the said sale deed shows that to the East of that item of property covered by exhibit A5, the wall of the property of Parnasala Narasimhacharyulu to some extent and vacant site of Nandanavanam Kondaiah to the remaining extent are situated. Further, Parvathamma had purchased the site shown as 'M N O U V W' from Chilakapati Rajaya Lakshmmamma under an agreement of sale dated 25.12.1950, which is marked as exhibit A7, wherein the Southern boundary is shown as the site of Nandanavanam Kondaiah. Subsequently, the said purchaser Parvathamma had obtained a registered sale deed exhibit A6 dated 12.01.1951; and, in her sale deed, it was mentioned that the Southern boundary is vacant site of Nandanavanam Kondaiah. Therefore, the documents from the year 1929 consistently reveal the existence of the property of Nandanavanam Kondaiah, i.e., the property described as

‘P R S T’ in the plaint plan. Though there is no document directly showing ownership of Nandanavanam Kondaiah in regard to that property, however, from the boundary recitals in the above said documents which are several decades old it can safely be concluded that Nandanavanam Kondaiah is the owner of the site on the Southern side of the property of Parnasala Narasimhacharyulu, viz., the property shown as ‘P R S T’ in the plaint plan. Unless Nandanavanam Kondaiah is the owner of that property the documents under exhibit A8 of the year 1929, exhibit A5 of the year 1937, exhibit A7-the sale agreement of the year 1950 and exhibit A6-the sale deed of the year 1951 ought not to have contained the boundary recitals showing the ownership Nandanavanam Kondaiah in respect of the site adjacent to the properties covered by those documents. In view of the fact that the boundary recitals in the above said documents are favourable to the plaintiffs, the learned counsel for the appellants would contend that the boundary recitals in the documents not inter parties are inadmissible in evidence. However, he had not placed reliance on any precedents on this proposition of law. Therefore, the question is whether the recitals in the documents not inter parties are admissible in evidence. In this regard, it is necessary to refer to Section 13 of the Indian Evidence Act, which reads as under:

“13. Facts relevant when right or custom is in question.—Where the question is as to the existence of any right or custom, the following facts are relevant:--

- (a) Any transaction by, which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;**
- (b) Particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.”**

A plain reading of the provision of law shows that under this provision of law documents like judgments not inter parties and/or registered sale deeds or deeds of conveyance which are not inter parties are

admissible in evidence. The admissibility of a document is not the same as the proof of contents of a document. The answers to the questions whether the contents of a document are proved or what is the probative value to be attached to the documents depends upon the facts and circumstances of a particular case. Reverting to the facts of the instant case, the documents viz., exhibits A8, A5, A7 and A6 which are referred to supra and which are several decades old needed no further proof. Further, the 1st defendant had taken on lease a part of the property from Rama Rao, the 9th defendant under the rent deed dated 01.08.1971 and in that rent deed, the 1st defendant had categorically admitted the title of the 9th defendant to the entire suit site and even up to 'V W M X' line which includes the suit site. The above said documents prior to the year 1971 coupled with the before mentioned rent deed executed by the 1st defendant admitting the ownership of properties are sufficient, in the well considered view of this Court, to come to a safe conclusion in favour of the plaintiffs basing on the recitals in exhibits A8, A5, A7 and A6 coupled with the said lease deed. It is to be recalled that the above said Nandanavanam Kondaiah is no other than the Younger brother of Parvathamma. In the plaint, it is averred that the piece of site shown as 'O P T U' is a part of the entire site of Nandanavanam Kondaiah. In fact, Nandanavanam Kondaiah had sold the said site to Parvathamma under exhibit A9 for a consideration of Rs.80/-. The defence of the contesting defendants is that exhibit A9 dated 26.06.1959 is a forged document. In fact, the appellants have no claim in respect of that property. Both the courts below had concurrently held that Nandanavanam Kondaiah is the owner of that property. Exhibit A9, on a careful perusal would show that it was drafted on a stamp paper purchased in the name of Atmakuru Parvathamma, the purchaser. The stamp paper bears the date 25.09.1954 and the sale deed was executed on 26.09.1959. Therefore, the appellants further contend

that exhibit A9 was forged using an old stamp paper. However, it is fairly conceded that there is no legal bar for entering into a transaction by making use of an old stamp paper and that a document can be written on an old stamp paper and that there is no time limit for use of stamp papers. It is also not in dispute that no registration is necessary for the sale of a property, the value of which is less than Rs.100/-. Therefore, the genuineness of exhibit A9 executed by Nandanavanam Kondaiah in favour of his own sister Parvathamma in regard to the vacant site 'O P T U' need not be doubted, more particularly when there is no dispute from the side of the legal representatives of the vendor Nandanavanam Kondaiah. That site is to the East of the house 'H1' of Parvathamma. Thus, the above referred documents clinchingly established that 'P R S T' site shown in the plaint plan belonged to Nandanavanam Kondaiah and also the existence of 'A S R A1' passage. Therefore, the contention of the appellants that Parvathamma might have purchased some site situate to the North of PT line shown in the plaint plan from Nandanavanam Kondaiah and also from Rajyalakshamma and might have annexed the same for convenience sake but not A A1 P T site and that it never belonged to Nandanavanam Kondaiah and that the site to the South of PT line continued to belong to Emani Venkata Subbaiah cannot be accepted. Even the Will of Parvathamma of the year 1973 which is a registered Will was long prior to the disputes between the defendants and the plaintiffs. There was no need for any of the parties to these documents to make false recitals anticipating litigation to follow several decades thereafter. Now, in contra distinction, this Court has to examine the case of the appellants that Emani Venkata Subbaiah was the original owner of the disputed property. The plaintiffs also had pleaded that 'A S R A1' passage was acquired by Navuluru Venkata Subbaiah from Emani people long time back. The case of the plaintiffs is that the entire site 'ABCDEFGHJKLMNOPQRS' was acquired by N. Venkata Subbaiah and that he had built H1 house thereon about

100 years ago with a passage into the Eastern Bazar after acquiring the said passage of six (6) cubic width between the points 'A S R A1' in the plaint plan from Emani people long time back. As already referred to supra, the oldest document evidences the fact that the said passage was in existence even by the year 1937, where under the said Venkata Subbaiah gave his property to his nephew by name Atmakuri Chenchu Subbaiah @ Chenchu Subba Rao, who is the son of Parvathamma. However, in the written statement, it was averred as follows: "A A1 P T plaint plan marked site, which is the plaint 'B' schedule site originally belonged to the family of Emani Venkata Subbaiah of Tangutur village, who had executed a registered Will on 10.12.1971 in favour of Vyayavaram Venkata Naga Prasad, the vendor of the defendants 2 and 8 bequeathing the suit 'B' schedule property along with other properties. The said Vyayavaram Venkata Naga Prasad also got divided his share of property under a registered partition deed dated 05.05.1990 including this plaint 'B' schedule property shown as item no.7 in the said partition deed along with some other properties. This 'B' schedule property marked as A A1 PT site in the plaint plan has been mentioned in page number 5 of the registered Will dated 10.12.1971 in the schedule portion of the same." Thus, the appellants contend that the disputed property originally belonged to Emani people and that the same was bequeathed to Vyayavaram Naga Prasad under a registered Will dated 10.12.1971 under exhibit B4(=B2), and that he, in turn, had sold the property to the appellants under a registered sale deed dated 06.06.1994-exhibit B1. A perusal of exhibit B2-Will discloses that there was a reference in it to a previous litigation and a compromise in the year 1940 and a registered partition deed. However, no such documents are exhibited. The partition deed was not filed inspite of a suggestion given to DW4, the vendor of the defendants, that there was no such partition between the testator of exhibit B2-Will and G.Venkata Narasimham at any point of time. A further perusal of exhibit B2 Will would show that the relevant

Northern boundary of the disputed property was mentioned as the property of Parnasala Rangacharyulu while in fact, the Northern boundary is the property of Nandanavanam Kondaiah. Further, Parnasala Narasimhacharyulu, who is the son of said Rangacharyulu gifted his property to his daughter Chilakapati Rajyalakshamma in the year 1929 as is evident from exhibit A8. The said Rajyalakshamma sold the property in the year 1951 to Parvathamma as is evident from exhibit A6. The Western boundary of the property described in exhibit B2-Will was described as the property of Navuluri Subbaiah, but Navuluri Subbaiah settled his property in favour of Chenchu Subbaiah in the year 1937 by virtue of exhibit A5. So, the boundaries in exhibit B2 Will executed in the year 1971 do not correspond to the correct boundaries as on the date of the execution of the Will. Exhibit B1-the copy of the registered sale deed on a perusal would show that the boundaries of the property as contained in the Will are mentioned therein by reproduction without mentioning the boundaries that are in existence as on the date of its execution. Added to these discrepancies in these documents in regard to boundaries, DW1 had admitted in his cross-examination that Emani Venkata Subbaiah never constructed a house in the disputed site and that he never had any house in the suit village and that he does not know how Venkata Subbaiah got the suit site though his claim is that he had purchased it along with the 2nd defendant from Vyayavaram Venkata Naga Prasad. Even DW4-the vendor under exhibit B1, i.e., Vyayavarapu Venkata Naga Prasad also does not belong to the suit village and he also never lived in the disputed site as per the admission of DW1. DW4 who is the vendor under exhibit B1 had also stated that he had never resided in Singarayakonda and that he is a resident of Navuluru village of Mangalagiri. He had also stated that Emani Venkata Subbaiah, the testator of exhibit B2-Will never resided in the disputed property and that in exhibit B2, there is no mention about the source of title of the testator and that he is not in possession

of the registered partition deed of the year 1940 mentioned in the Will and that he is not aware as to whether the disputed property was shown in the partition deed executed between the testator and others. He had also stated that he did not reside in the disputed site. It was specifically suggested to him that neither the testator nor his predecessor have any rights over the disputed site and that the partition referred to in exhibit B2 Will is false. Further, it is apt to recall that the 1st defendant had taken on lease a part of the property from Rama Rao, the 9th defendant under the rent deed dated 01.08.1971 and in that rent deed, the 1st defendant had categorically admitted the title of the 9th defendant to the entire suit site and even up to 'V W M X' line which includes the suit site. The contention that the 1st defendant being an illiterate had affixed his LTI without knowing the contents cannot be countenanced. When the evidence discussed supra is examined in juxtaposition with the evidence on the side of the plaintiffs, which is also discussed supra, the contention that the site marked 'ABCDEFGHIJKLMNOPS' originally belonged to Navuluri Venkata Subbaiah and that he having built a house shown as H1 thereon about 100 years ago had acquired from Emani people, the passage of 6 cubits width between ASRA1 to have ingress and egress to the Eastern Bazar and that the case pleaded by the plaintiffs in regard to title of Parvathamma for the entire property which she had bequeathed to her son is highly probable and is having acceptable merit on the application of the test of preponderance of probabilities.

8.8 The evidence discussed supra thus sufficiently establishes the case of the plaintiffs that the site marked as A B C D E F G H I J K L M N O P Q R S originally belonged to one Navuluri Venkata Subbaiah and that he had built a tiled house shown as H1 thereon about 100 years ago with a passage into the Eastern bazaar after acquiring the said passage of 6 cubits width between A S R A1 from Emani people long time back and that Nandanavanam Kondaiah was the original

owner of 'P R S T' site in the plaint plan. Having examined the facts and the evidence in juxtaposition and having regard to the reasons recorded, this Court finds that the court below is justified in exercising the discretion in favour of the plaintiffs and in holding that the plaintiffs are entitled to the relief of specific performance insofar as exhibit A2-agreement for sale is concerned and also the relief of perpetual injunction.

8.9 Before drawing curtains on the controversy, it is necessary to refer to infra some auxiliary contentions of the learned counsel for the appellants. Based on the admissions of the plaintiffs (PWs 1 and 2) that they had no personal knowledge about the contents of the plaint and that the 9th defendant had given instructions for drafting the plaint it was contended that the plaintiffs are to be non suited on their own admissions. It is next contended that there was collusion amongst the plaintiffs and the 9th defendant and that the plea of collusion was established through admissions made by PW1. It is also contended that the suit filed for specific performance of agreement for sale against the 9th defendant coupled with the relief of perpetual injunction against all the defendants is bad in law for mis-joinder of causes of action and for multifariousness. I have gone through the oral evidence. The exhibit A2 suit agreement executed by the 9th defendant of the year 1980 is already held to be true and genuine and is enforceable. The evidence brought on record shows that since 1980 till the defendants 2 and 8 had obtained the sale deed under exhibit B1 in the year 1994, the plaintiffs are enjoying their property purchased under exhibit A2 without any let or hindrance and it is specifically pleaded in the plaint that at the time of purchase under exhibit A2 agreement, the sale deed was not obtained for fear of heavy registration expenses and as the plaintiffs had not doubted the *bona fides* of the 9th defendant considering him as an honest gentleman. However, as a dispute had arisen after exhibit B1 sale deed of the year 1994 was obtained by

defendants 2 and 8 from Vyayavaram Venkata Naga Prasad and as the plaintiffs are not having a regular registered sale deed, they thought it fit to obtain specific performance of exhibit A2 agreement for sale before obtaining a perpetual injunction and therefore, they had brought the suit for the two reliefs as stated in the plaint. The 9th defendant and after his death, his family members were willing to abide by the terms of exhibit A2 agreement. Further, the documentary evidence under exhibits A1 to A9 discussed supra, which is of significance in a suit of this nature sufficiently established the case of the plaintiffs and therefore, in the light of the case established through overwhelming documentary evidence makes the admissions in the oral evidence insignificant and any such admissions on which reliance is placed are not sufficient to dislodge the case of the plaintiffs, which is otherwise established and supported by the documents, which are several decades old. As already noted admissions do not take away the existing title or confer title which is not there. Be it noted that but for the dispute that had given rise to the cause of action, the plaintiffs were enjoying the property under exhibit A2 agreement without obtaining a registered sale deed. After the dispute had arisen with the appellants on their obtaining a sale deed in respect of the disputed property, the necessity for obtaining a sale deed from the 9th defendant pursuant to exhibit A2 agreement had arisen as the plaintiffs felt the necessity to obtain a perpetual injunction in respect of their property. However, as there was only exhibit A2 agreement and not a registered sale deed, they had brought the suit for specific performance against the 9th defendant in the presence of the other defendants 1 to 8 and also sought the relief of perpetual injunction in the very suit. As rightly contended by the learned senior counsel for the plaintiffs, the institution of the suit *bona fide* for obtaining the relief of specific performance against the 9th defendant in the presence of the appellants and the other contesting defendants was necessary as by

that time the dispute with the defendants 1 to 8 had arisen. In the facts peculiar to this case and the findings recorded supra, this Court finds that the contentions of the appellants do not merit consideration.

8.10 Before parting with the case, it is necessary to refer to the decisions relied upon. The decision in **Medikonda Venkayamma v. Kolakaluri Peda Narsaiah (died) and others**^[1] was relied upon in support of the proposition that evidence of a person who had no personal knowledge of the suit transaction is not helpful. This decision was also relied upon in support of the proposition that when on the face of the record, it is apparent that the findings of the court below in regard to appreciation of oral evidence and application of evidence to the core facts are perverse such findings call for interference. The decision in **Khatri Hotels Private Limited v. Union of India and another**^[2] was relied upon in support of the proposition that the admissions which falsify the averments in the plaint would lead to the inference that such plaintiff came to court with unclean hands. The decision in **Mamma w/o late Balaram v. Permanand**^[3] is relied upon in support of the proposition that the plaintiff who approaches the Court with unclean hands is not entitled to the discretionary relief of specific performance. This decision was also relied upon in support of the proposition that when the findings of the courts below are recorded merely on surmises and the findings are perverse, the High Court can interfere with such findings while exercising jurisdiction under Section 100 of the Code. The decisions in **Rohini Prasad v. Kasturchand**^[4], **Dinesh Kumar v. Yusuf Ali**^[5], **Yadarao Dajiba Shrawane (dead) by LRs v. Nanilal Harakchand shah (dead) and others**^[6], **Kulwant Kaur and others v. Gurdial Singh Mann (dead) by LRs and others**^[7] were relied upon in support of the following propositions of law dealing with the powers of the High Court in entertaining a second appeal and the scope and ambit of such power. Placing reliance on

these set of decisions, it is contended that the High Court can interfere with the findings of the Court below – (a) when the Court below misread the evidence and ignored the admissions; (b) when the findings of fact are recorded on no evidence; (c) when the findings are based on inadmissible evidence; (d) when the findings of facts are based on wrong tests; (e) when the findings are based on assumptions and conjectures; and (f) when the findings are tainted with perversity.

8.11 There is no dispute with the propositions of law in all the cited decisions. However, in view of the fact that this Court finds that the findings recorded by the court below are plausible and possible and are justified in the facts and circumstances of the case, it cannot be said that there is either mis-appreciation or improper appreciation of evidence or that there is perversity either in the appreciation of evidence or in recording factual findings. On the other hand, this Court is satisfied that the Court below had appreciated the facts correctly and the evidence in proper perspective while overturning the decree and judgment of the trial court and decreeing the suit of the plaintiffs. In **Sugani v. Rameshwar Das** ^[8], the Supreme Court had culled out the following principles to be kept in mind while dealing with Second appeal.

- (i) If the trial Court and first appellate Court rejected any evidence, the same cannot be a ground for interference in the Second Appeal;
- (ii) In case two inferences are possible from a set of circumstances, the one drawn by the lower appellate Court is binding on the High Court in the Second Appeal and adopting any other approach is not permissible;
- (iii) The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusion is erroneous and contrary to mandatory provisions of law or settled precedent by the Apex Court or based on inadmissible evidence;

Therefore, on a careful examination of the facts and analytical assessment of the evidence, this Court finds that the decree and judgment of the Court below brook no interference.

9. In the result, the Second Appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

12th November, 2015
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[\[1\]](#) 2014 (5) ALD 365

[\[2\]](#) 2011 (9) SCC 126

[\[3\]](#) 2004(1) ALT 537

[\[4\]](#) 2000(3) SCC 668

[\[5\]](#) (2010) 12 SCC 740

[\[6\]](#) (2002) 6 SCC 404

[\[7\]](#) (2001) 4 SCC 262

[\[8\]](#) AIR 2006 SC 2172