

***HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

+ Second Appeal No.106 of 2011

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% Date: 30.10.2015

Between:

Akula Sangappa S/o Chandrappa

R/o Munipally (v) and Mandal, Medak District

...Petitioner

And

\$ Bandam Siddappa S/o Nagappa and another

....Respondents

! Counsel for appellants: Sri A.Ravinder Reddy

^ Counsel for 1st respondent : Sri M.Rama Rao

< GIST:

>HEAD NOTE:

? Cases referred:

2014 SAR (Civil) 191

(2009) 6 SCC 194

1999 (6) ALD 308

AIR 2000 SUPREME COURT 426

(1999) 3 SCC 722

AIR 1996 SC 1604

(2008) 17 SCC 491

(2003) 10 SCC 653

AIR 1987 SC 1242 (1)

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Second Appeal No.106 of 2011

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JUDGMENT:

This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('the

Code', for brevity) by the unsuccessful 2nd defendant is directed against the decree and judgment dated 02.08.2010 of the learned Principal District Judge, Sanga Reddy of Medak District passed in A.S.no.1 of 2008. The learned Principal District Judge while allowing the said first appeal had set aside the decree and judgment dated 20.12.2007 of the learned Principal Junior Civil Judge, Sangareddy passed in O.S.No.407 of 2003 and had decreed the said suit for perpetual injunction filed by the sole plaintiff against the defendants 1 and 2 in respect of Ac.1.33 guntas in Sy.No.334/A/1 and another Ac.1.33 guntas in Sy.No.334/A/2 totally admeasuring Ac.3.26 guntas at Munipally village and Mandal of Medak District more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned counsel for the appellant/2nd defendant ('the 2nd defendant', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). The 2nd respondent herein is the 1st defendant in the suit. I have perused the material record.

3. At the time of admission of this appeal, this Court had taken note of the substantial questions of law mentioned in the ground no.11 as the substantial question of law involved in this appeal. The said substantial questions are as follows:

- “1. Whether Ex.A-15 unregistered Relinquishment Deed can be relied to recognize the relinquishment of right by Defendant No.1 in favour of his brother Kantha Rao (PW4)?**
- 2. Whether the Memo filed by the Defendant No.1 at Appellate Stage quite contrary to his own pleadings and evidence on oath in the suit can be considered by the First Appellate Court to reverse the judgment?**
- 3. Whether the findings recorded by the First Appellate Court with regard to effect of Memo and Ex.A-15 are perverse?**
- 4. Whether the requirement of prima facie title is not material for granting perpetual injunction?”**

(Reproduced verbatim)

4. To adjudicate the *lis* and answer the substantial questions of law, it is necessary

to refer to the pleadings and the chronology of events that lead to the filing of this appeal by the 2nd defendant.

4.1 The plaint averments, in brief, are as follows:

The plaintiff is the pattedar, owner and possessor of land bearing Sy.Nos.334/A/1 and 334/A/2 totally admeasuring Ac.3.26 guntas situated at Munipally village and Mandal of Medak District. The plaintiff's name is recorded as pattedar and possessor of the said land in all the revenue records and he is presently cultivating the said land from the year 1998 and is enjoying the said plaint schedule land. Originally, one Patlolla Kantha Rao was the pattedar of the said plaint schedule land. The said land fell to his share during the family settlement prior to 1998 and the property was mutated in his name in all the revenue records. In the year 1998, the said Kantha Rao had offered to sell the said suit land to the plaintiff on account of his family and personal necessities. On 6.02.1998, the plaintiff had purchased Ac.1.33 guntas for a consideration of Rs.37,500/- under a registered sale deed. Again, the plaintiff had purchased the remaining extent of Ac.1.33 guntas for a consideration of Rs.42,000/- under a registered sale deed dated 12.03.1999. From the dates of the said purchases, the plaintiff is in peaceful possession and enjoyment of the said respective extents of the plaint schedule property. The plaintiff is having pattadar passbook, title deed book and also the title deed of the original pattedar with him. The same are filed into Court. The copies of the pahanies for the years 1998-99, 2000-01, 2001-02 and 2002-03, the copy of the chowfasla for the years 2000-01 to 2002-03 and the encumbrance certificate also support the case of the plaintiff in regard to title and possession over the plaint schedule lands. The 1st defendant is the brother of the said Kantha Rao, the original pattedar. The 1st defendant came to the suit land with the support of the 2nd defendant on 12.10.2003 and had tried to damage the standing chilli and red gram crops in the plaint schedule land and had further tried to interfere with the peaceful possession and enjoyment of the plaintiff over the said lands. The plaintiff had managed to resist the acts of the defendants and managed to send them away with the help of his well wishers. The defendants while going away had openly declared that they will come again in future with full force. Therefore, the plaintiff apprehends danger to his possession over the suit land. The defendants are strangers and they have no right

or interest whatsoever in the plaint schedule lands. The 1st defendant, in fact, had executed a declaration that he is in no way concerned with the suit land as it fell to the share of his brother Kantha Rao. Hence, the suit is filed for perpetual injunction.

4.2 The 2nd defendant had adopted the written statement of the 1st defendant.

4.3 The averments in the written statement of the 1st defendant, in brief, are as follows:

The material allegations in the plaint are false. The plaintiff is the owner and possessor of Ac.3.26 guntas of the plaint schedule land is false. His name is recorded as pattedar and cultivator of the said land is false. The so-called recording of the name of the plaintiff as pattedar and cultivator of the plaint schedule lands in the revenue records is not lawful and the same was done without adopting the procedure prescribed under law for mutation. The original pattedar and possessor was one Kantha Rao is denied. The land fell to his share in the settlement prior to 1998 and that his name was recorded as pattedar and possessor in the revenue records is denied. The alleged documents of sale said to have been executed by Kantha Rao in favour of the plaintiff on 16.02.1998 and 12.03.1999 and the entries in the revenue records are false and fabricated and concocted with an intention to cause loss to the defendants. The plaintiff is not the owner and possessor of the land in Sy.No.334 situated at Munipally village. The claim based on revenue records is incorrect. The plaintiff cannot claim injunction against the true owner (1st defendant) and the 2nd defendant, who is the purchaser from him. The material allegations in the plaint are invented for the purpose of the suit. One Patlolla Basanth Rao is the father of Kantha Rao and the 1st defendant. All the three of them had constituted a Hindu Joint family, which owned and possessed properties. The said properties are shown in 'A' schedule annexed to the written statement. On 28.05.1985, in the presence of the elders, there was a partition of the said lands, which are mentioned in the written statement 'A' schedule. That partition was affected by the father with full consent of the two brothers; and, the document that was scribed was signed and counter signed. Late Basanth Rao had retained about Ac.23.04 guntas of land for his maintenance and had allotted the land shown in 'B' schedule of written

statement to Kantha Rao and the land shown in 'C' schedule appended to the written statement to the 1st defendant. The total land in Sy.No.334 of Munipally village was equally allotted to Kantha Rao and to the 1st defendant in the said settlement of the year 1980. The half extent in Sy.No.334 was allotted to the 1st defendant and it is towards North side and it is described as Sy.No.334/A2; whereas the half extent of Kantha Rao is described as Sy.No.334/A1. From the averments in the plaint, it appears that the said Kantha Rao had created and fabricated document of sale for the entire extent without having valid right and title. There is no registered document in respect of Ac.1.33 guntas in Sy.No.334/A2 as per encumbrance certificate issued by the Registration Department. The 1st defendant is the true owner of Ac.1.33 guntas of land in Sy.No.334/A2. He had neither sold nor consented for sale of his portion of land. The Photostat copy of the settlement deed dated 28.05.1988 and the certified copies of pahanies for the years 1995-96, 1996-97, 1997-98 and 1998-99 and the encumbrance certificate issued by the Registration Department are filed into Court. For a short period of five years, the 1st defendant was not in the village. Taking undue advantage of the temporary absence of the 1st defendant from the village, the plaintiff and Kantha Rao and some others had hatched up a plan to knock away Ac.1.33 guntas of land in Sy.No.334/A2 to cause loss to the 1st defendant and it appears that they had fabricated the documents, which are not valid and binding on the defendants. The 1st defendant who had returned to the village and who was in need of money had offered to sell his portion of land of Ac.1.33 guntas in Sy.No.334/A2 to the 2nd defendant and the 2nd defendant had purchased the same from the 1st defendant for a valid consideration of Rs.46,600/- under a registered sale deed bearing Document No.2047 of 2003 and the 1st defendant had delivered possession of the said land to the 2nd defendant. The Photostat copy of the sale deed is filed into Court. The plaintiff and Kantha Rao brought the 1st defendant forcibly under threat of injury to the Sub Registrar's office, Sadasivapet and made futile attempts to get the sale deed of the 2nd defendant cancelled. The Sub Registrar had refused to cancel the sale deed of the 2nd defendant. Thereafter, the plaintiff and Kantha Rao had forcibly brought the 1st defendant to the house of Ch.Baswaraj, Advocate. But, he was out of station. So, the 1st defendant was taken to a neem tree near the house of the said Advocate-Baswaraj and was made to sit there for more than two hours by use of force. He was

not allowed to move. One of the said persons had brought two blank stamp papers worth Rs.60/- each and also blank white and ledger papers and made the 1st defendant to sign and also put his thumb impressions and the 1st defendant was set free only thereafter. The 1st defendant gave a complaint to the Station House Officer, Sanga Reddy Town Police Station and had sent the copies of the said report to the Superintendent of Police, the Deputy Superintendent of Police and the CI of Police. The plaintiff and the said person belong to the Telugu Desham Party, which is a party in power; and, the police did not take any action being under the influence of the said persons. The 1st defendant waited up to 31.10.2003 and had lodged a complaint in the Court of the Additional Judicial First Class Magistrate, Sanga Reddy and the same was referred to the Station House Officer, Sanga Reddy Town Police Station for investigation and report. A case in Crime No.124 of 2003 for the offences punishable under Sections 341, 342, 193 and 384 of the IPC was registered. No further action was taken; and, not even recording of the statements of the witnesses was undertaken and the accused persons were not even arrested. The plaintiff is having a *mala fide* intention to use the blank stamp, blank white and blank ledger papers. Basing on the fabricated documents, the plaintiff cannot get any relief. The plaintiff had deliberately got filed by his mother, a criminal case against the 2nd defendant for the offences punishable under Sections 448 and 324 of the IPC and got the 2nd defendant arrested with the help of his associates. However, the 2nd defendant was enlarged on bail. The plaintiff and his associates are influencing Vijayalaxmi, the wife of the 1st defendant to file false cases against the 1st defendant. These illegal attempts and tricks are being resorted to make the defendants to kneel down. Hence, the suit may be dismissed.

4.4 Taking into consideration the above pleadings, the trial Court had framed the following issues for trial:

1. Whether the plaintiff is entitled to the perpetual injunction as prayed for?
2. To what relief?

4.5 At trial, the plaintiff and his supporting witnesses were examined as PWs 1 to 5. The defendants were examined as DWs 1 and 2 and exhibits A1 to A15 and B1 to B5 were marked.

4.6 On merits, the trial Court had dismissed the suit of the plaintiff. As already noted, the Court below, while reversing the decree and judgment of the trial Court and allowing the first appeal of the plaintiff had decreed the suit of the plaintiff. Therefore, the aggrieved 2nd defendant had preferred this appeal.

5. The learned counsel for the appellant/defendant no.2 would contend as follows:

The trial Court having considered the facts accurately and the evidence in proper perspective had rightly dismissed the suit of the plaintiff for perpetual injunction. Kantha Rao is none other than the brother of the 1st defendant. He is not having any right to execute the sale deed in respect of entire Ac.3.26 guntas of land of the plaintiff schedule property. He was only having a right to a half extent in the said property. The relationship is not in dispute. One Basanth Rao is the father of the said Kantha Rao and the 1st defendant. The 1st defendant, his brother Kantha Rao and their father Basanth Rao constituted a Hindu Joint family. The father had affected partition of the family properties. Half extent of Sy.No.334 was allotted to the 1st defendant and it is towards Northern side and it is described as Sy.No.334/A2. Another half extent was allotted to Kantha Rao and it was described as Sy.No.334/A1. Thus, Kantha Rao is having right to half of the extent only in the entire plaintiff schedule property whereas the 1st defendant is the owner of the remaining extent having got the said half extent to his share in the family partition. Kantha Rao has no right to execute sale deeds dated 16.02.1998 and 12.03.1999 in respect of the entire plaintiff schedule property. The said sale deeds are invalid and void to the extent of the share of the 1st defendant. The unregistered relinquishment deed or an oral assertion by the 1st defendant do not advance the case of the plaintiff. The fact that an unregistered relinquishment deed was obtained from the 1st defendant would only show that he was having a right in respect of Ac.1.33 guntas out of the total extent of Ac.3.26 guntas of the suit land. The 1st defendant for his family necessities had sold his half extent out of the plaintiff schedule property, i.e., Ac.1.33 guntas to the

2nd defendant/appellant herein under registered sale deed dated 13.10.2003. The original sale deed is exhibit B2. The plaintiff, who had allegedly purchased from Kantha Rao the entire Ac.3.26 guntas did not get any right, title and possession in respect of Ac.1.33 guntas, which belonged to the 1st defendant. Without assigning any valid reason and without following the procedure contemplated under law, the Court below had erroneously allowed the appeal and had reversed the well-considered judgment of the trial Court. The court below was carried away by the fact that during the stage of first appeal, the defendant no.1 had filed a memo stating that he had executed the relinquishment deed in favour of his brother. The court below had erroneously held that the said memo would make the version of the plaintiff true and the sale made by the defendant no.1 in favour of defendant no.2 false. The said finding is totally erroneous. At the stage of first appeal, by way of a memo one defendant cannot make an admission, which is detrimental to the rights of the other defendant who is the purchaser of the property under regular registered sale deed for a valuable consideration. By admission, no title passes in respect of immovable property. Admission of an unregistered relinquishment deed which does not affect any interest in immovable property is not going to affect the title of the 2nd defendant who is the purchaser from the 1st defendant under regular registered sale deed. When exhibit B2 sale deed of the year 2003 is filed into Court, the oral evidence of DW2 is not going to affect the rights of the parties. The Court below had erroneously relied upon exhibit A15-unregistered relinquishment deed dated 10.04.1995 under which the 1st defendant had allegedly relinquished his right in the property. The very fact that an invalid relinquishment deed was being relied upon would only show that the plaintiff is admitting the right of the 1st defendant insofar as the half extent in the plaint schedule property. Basing on the unregistered relinquishment deed and a memo filed by the 1st defendant, the Court below had erroneously reversed the decree of the trial Court. The Court below had acted upon inadmissible evidence. The decree and judgment of the court below which are based on inadmissible evidence cannot be sustained. There was no pleading in the plaint about the relinquishment deed and it was suddenly introduced during the course of evidence. Any amount of evidence without a pleading cannot be looked into as per the settled legal position. Variation in the pleadings and the evidence adduced is itself enough to non-suit the plaintiff. Hence, the second appeal may be allowed and the impugned judgment and decree may be set aside.

6. On the other hand, the learned senior counsel for the plaintiff/1st respondent had contended as follows:

The trial Court was in error in appreciating the facts and the evidence and also in applying the correct legal principles to the facts of the case. The learned Principal District Judge had first adverted to the facts and had then extensively discussed the oral evidence, and then, had taken into consideration the registration extracts of the two sale deeds of the plaintiff under exhibits A1 and A2 dated 12.03.1999 and 06.02.1998 respectively and also the entries in the revenue records before recording a finding that the plaintiff had established his case. The relinquishment deed and the memo filed by the 1st defendant before the court below were relied upon as additional material. The memo filed by the 1st defendant in the court below is not the only basis for decreeing the suit of the plaintiff by the court below. The 1st defendant did not establish that he has got right, title and interest in one half share of the plaint schedule property. The defendants were examined as DWs 1 and 2; and, on their side no independent witness was examined. Exhibit A14 is a very important document which proved possession of the plaintiff over the plaint schedule land and it was issued by the MRO, Municipally village on 28.11.2003 by personally visiting the suit land. The relinquishment deed executed by the 1st defendant in favour of the vendor of the plaintiff-Kantha Rao is admitted by the 1st defendant. Exhibit A15-relinquishment deed can be looked into for collateral purpose. Its execution is not denied by the 1st defendant. The plaintiff had examined independent witnesses who are the owners of the lands situated adjacent to the plaint schedule lands. Nothing is elicited in their cross-examinations. The well reasoned findings of the court below do not call for any interference. There are no substantial questions involved in this appeal and there is no substance in the questions raised and the second appeal may be dismissed.

7. I have carefully gone through the pleadings and the oral and the documentary evidence. I have noted the submissions.

7.1 The case of the plaintiff is this: 'The evidence brought on record by the plaintiff

would show that Kantha Rao and the 1st defendant are brothers and are sons of Basanth Rao. And, in a family settlement prior to the year 1998 with his brother and father, the said Kantha Rao had got the entire plaint schedule property in a total extent of Ac.3.26 guntas (Ac.1.33 gts + Ac.1.33 guntas) and that therefore, Kantha Rao is the absolute owner and possessor of the said plaint schedule land. He had sold the entire plaint schedule land in two extents of Ac.1.33 guntas each to the plaintiff under two registered sale deeds dated 12.03.1999 and 16.02.1998. The copies of the said sale deeds are exhibited as exhibit A1 and A2 respectively. Accordingly, the property was mutated in the name of the plaintiff. The plaintiff had also exhibited them copies of pahanies for the years 2002-2003, 2001-02, 2000-01, 1998-99, 2001-02, 2002-03 as exhibits A3 to A9, the title deed book and pattadar pass book of the plaintiff and also of his vendor and other documents. Therefore, the plaintiff has established sufficient case for granting a perpetual injunction.'

7.2 On the other hand, the case of the defendants as pleaded in the defence filed before the trial court is that in the family partition affected by the father Basanth Rao, Kantha Rao had got Ac.1.33 guntas in Sy.No.334/A1, but not the entire plaint schedule property and that the 1st defendant had got the remaining Ac.1.33 guntas in sy.No.334/A2 and that his said share is on the Northern side and that therefore, Kantha Rao has no right, title and interest to alienate the entire Ac.3.26 guntas to the plaintiff and that the sale deeds of the plaintiff to the extent of half share of the 1st defendant in an extent of Ac.1.33 guntas are invalid and void and that the 1st defendant out of necessity had sold his share of Ac.1.33 guntas to the 2nd defendant under a registered sale deed dated 13.10.2003 which is marked as exhibit B2 and that therefore, the 2nd defendant is lawful owner of Ac.1.33 guntas out of the plaint schedule land and that the plaintiff has no right, title and interest as well as possession and enjoyment in respect of the said extent of property.

7.3 it is not in dispute that there are serious disputes between the parties and criminal cases were also filed against each other. PW1 had reiterated his pleaded case and marked his documents, which are already referred to supra. PW2 who is a neighbouring land owner and PW3, had categorically stated that the property originally belonged to the father of the 1st defendant and Kantha Rao. The said Kantha Rao was examined as PW4. The admitted fact is that the plaintiff did not

purchase the entire plaint schedule property of Ac.3.26 guntas under one sale deed. He had purchased Ac.1.33 guntas each under the original sale deeds dated 12.03.1999 and 16.02.1998. The copies of the said sale deeds are marked as exhibits A1 and A2 respectively.

7.4 The law is very well settled that the entries in revenue records do not confer any title. In **Union of India and others v. Vasavi Co-op. Housing Society Ltd & others** the Hon'ble Supreme Court while referring to its earlier decisions held as follows: -

'This Court in several judgments has held that revenue records do not confer title. In Corporation of the City of Bangalore v. M. Papai and another [(1989) 3 SCC 612] it was held that 'it is firmly established that revenue records are not documents of title, and the question of interpretation of document not being a document of title is not a question of law'. In Guru Amarjit Singh v. Rattan Chand and others [(1993) 4 SCC 349] this Court has held that 'that the entries jamabandi are not proof of title'. In State of Himachal Pradesh v. Keshav Ram and others [(1996) 11 SCC 257] this court held that 'the entries in revenue papers, by no stretch of imagination can form the basis of declaration of title in favour of the plaintiff'.

7.5 It is equally well settled that no one can convey a better than what he has. PW4 is one of the crucial witnesses. He is the vendor of the plaintiff and the brother of the 1st defendant. He had stated that there was a partition during the life time of their father and that in that partition, he had got Ac.1.33 guntas in Sy.No.334 to his share i.e., land in Sy.No.334/A1 and the extent of Ac.1.33 guntas in Sy.No.334/A2 was allotted to the share of his brother. He had stated that he had also sold the share of his brother to the plaintiff as he had purchased the same from his brother before he sold it to the plaintiff. His evidence also shows that he had got his share in an extent of Ac.1.33 guntas in Sy.No.334/A1 on the Southern side portion of the plaint schedule property. The defendants' case also is that the 1st defendant had got to his share the remaining extent of Ac.1.33 guntas on the Northern side. Thus, the evidence of PW4-Kantharao, the vendor of the plaintiff, is quite contrary to the pleadings of the plaintiff. The plaintiff had pleaded in his plaint that his vendor Kantha Rao (PW4) had got the entire plaint schedule property in an extent of Ac.3.26 guntas towards his share in the family settlement prior to 1998. But, PW4 had admitted that he had got Ac.1.33 guntas out of the suit land and the remaining

Ac.1.33 guntas had fallen to the share of his brother/the 1st defendant. The plaintiff for the first time had introduced during trial, a theory through PW4 that Kantha Rao (PW4) had purchased the share of his brother before he sold it to the plaintiff. The said version in the evidence does not find support from the pleading. Further, during the course of trial, the plaintiff had sought to rely upon exhibit A15, an unregistered relinquishment deed whereunder, the 1st defendant was said to have relinquished his right, title and interest in Ac.1.33 guntas in favour of the vendor of the plaintiff, i.e., Kantha Rao, who is no other than brother of the 1st defendant. Under Section 17 of the Indian Registration Act, any document relinquishing a right in immovable property shall be registered. Therefore, exhibit A15, which purports to create a title or interest in immovable property in favour of Kantha Rao and extinguishes corresponding right of the 1st defendant requires registration. If such a document like exhibit A15-relinquishment deed is not registered, that document shall not affect any immovable property comprised therein. Therefore, exhibit A15 relinquishment deed which is unregistered and which was introduced for the first time during the course of trial does not advance the case of the plaintiff in regard to the right, title, interest and lawful possession over one half of the plaint schedule property i.e., the share of the 1st defendant in an extent of Ac.1.33 guntas. PW1 had stated in his evidence that existence of exhibit A15 was not revealed by PW4, his vendor at the time of registration of the original sale deeds under exhibits A1 and A2. Thus, exhibit A15 was introduced in the evidence after the evidence of PW4 was over and after PW1 was recalled. The evidence of PW4 is conspicuously silent on the aspect of exhibit A15 which is an unregistered relinquishment deed said to have been executed by his brother in his favour. On the other hand PW4 had stated that he had purchased the share of his brother before he had sold the property to the plaintiff. Exhibit A15 which was styled as 'vidudala kararnama' was executed in favour of PW4 by the 1st defendant stating that the 1st defendant had agreed to receive Rs.30,000/- from PW4 and relinquish his rights in respect of the property of Ac.1.33 guntas situate in Sy.No.334/A2 which he has got by virtue of partition. If really, PW4, who is the vendor of the plaintiff, had got the share of his brother/the 1st defendant by virtue of exhibit A15 unregistered relinquishment deed, he ought to have mentioned about the same in the sale deeds of the plaintiff. But there was no mention of exhibit A15 in any of the sale deeds of the plaintiff. Thus, the plaintiff could not establish that PW4 his vendor has got right, title, interest and possession in the entire Ac.3.26 guntas of

the plaint schedule land. Hence, no valid title passed to the plaintiff (PW1) in respect of Ac.1.33 guntas out of the plaint schedule land. When the copies of exhibits A2 and A3 relied upon by the plaintiff do not convey to the plaintiff right, title and interest in respect of the entire plaint schedule property and when the said sale deeds of the plaintiff in respect of the share of the 1st defendant are void and invalid, the contention that exhibit A15 can be looked into for collateral purpose cannot be countenanced. Further, exhibit A15 is being relied upon for the main purpose but not for collateral purpose. If a party who has got a share in the immovable property along with his brother intends to relinquish his right in that share of property in favour of his other brother, the same must be done by a registered instrument in terms of the provisions of the Indian Registration Act and it cannot be done by an unregistered instrument like exhibit A15. Exhibit A15-the unregistered relinquishment deed cannot be looked into as it is inadmissible for want of registration and did not affect the interest in the property covered by it. This view of this Court is reinforced by the decision in **Sneh Gupta v. Devi Sarup and others**. The Court below had erroneously placed reliance on exhibit A15-unregistered relinquishment deed, which is an inadmissible document and also on a memo filed by the 1st defendant admitting that he has relinquished his rights in the property. The law is also well settled that by mere admission in a memo no title passes in an immovable property. It is to be noted that transfer of immovable property cannot be affected by oral admissions and any transfer of immovable property can only be by means of an instrument which is registered. In the decision in **Ch.S.Hanumantha Rao and others v. R.Sainath and others** this Court held that the transfer of immovable property cannot be affected by oral admissions and it can only be by means of an instrument which requires to be registered and that unless a transfer *inter vivos* has been affected under a valid instrument no legal title will be conferred upon the transferee. Admittedly, in the instant case, no transfer *inter vivos* has been affected under a valid instrument in favour of the Kantharao so as to confer legal title upon him in respect of a half share of the 1st defendant. Further, any document specifying relinquishment of a right in immovable property and creating a corresponding right in another under it requires registration. When the memo as well as exhibit A15 unregistered relinquishment deed have no probative and evidentiary value and are not sufficient to convey valid title to Kantharao, the vendor of the plaintiff, it follows that the judgment of the Court below, which was passed after placing reliance on such inadmissible evidence, is perverse and is liable to be set aside. In the decision

in **Ishwar Dass Jain (dead) through LRs v. Sohan Lal (dead) by L.Rs.** and in the decision in **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and others**, the Supreme Court had held that when the findings of the court below are based upon inadmissible evidence a substantial question of law arises and that in such cases, the interference with findings of fact is permissible. In the instant case, if the inadmissible evidence is omitted from consideration the decision rendered by the court below is not possible. In **Jagdish Singh v. Natthu Singh**, it was held that when the findings of the court below are vitiated by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings in the second appeal. It is apt to reiterate that there is no pleading in the plaint that the 1st defendant has conveyed his half share in the plaint schedule property to his brother Kantha Rao by executing a deed of relinquishment. In that view of the matter, any amount of evidence, which has no foundation in the pleadings, need not be looked into in view of the settled principle of law that any amount of evidence without a basis in the pleadings cannot be looked into, and is of no avail. The ratio in the decision in **Bachhaj Nahar v. Nilima Mandal and another** supports the view that without a pleading, no amount of evidence can be looked into and on such evidence which is unsupported by the pleadings, no relief can be granted. The decision in **Rajgopal (dead) by LRs v. Kishan Gopal and another** also supports the contention that the courts are precluded from taking cognizance of evidence in the absence of specific pleading in the plaint or written statement. Further, in the decision in **Ram Sarup Gupta v. Bishun Narain Inter College** the well settled principle that in the absence of pleadings, evidence, if any, produced by the parties cannot be considered is reiterated and it was inter alia held that it is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it and that the object and purpose of pleading is to enable the adversary party to know the case it has to meet and that in order to have a fair trial, it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. Therefore, when there is no whisper in the pleadings that the 1st defendant had relinquished his rights in his half share in favour of his brother Kantharao and when the said Kantharao (PW4) does not speak about any such relinquishment in his favour, the plaintiff is liable to be non-suited as the evidence brought on record would lay bare that Kantharao had no right to execute any sale deed in respect of the half share of his brother in the plaint

schedule property. The law is well settled that when the findings of the court below are manifestly unreasonable or unjust in the context of the facts and the evidence on record, this court is obliged under law to set aside such erroneous findings to remedy the injustice. The law is also well settled that he who comes to equity must do equity and that he who comes to Court with unclean hands and suppresses material facts and takes inconsistent stands and prevaricates and fails to establish the pleaded case and lawful possession, which is a *sine qua non*, is not entitled to the equitable relief of perpetual injunction.

8. Having regard to the reasons, this Court finds that there is merit in the second appeal. Accordingly, the substantial questions of law are answered holding that the court below had committed a grave error in reversing the well considered decree and judgment of the trial court and in decreeing the suit of the plaintiff. Viewed thus, this Court finds the decree and judgment of the court below brook interference and that therefore, this second appeal deserves to be allowed.

9. In the result, the Second Appeal is allowed and the decree and judgment of the court below are set aside and the decree and judgment of the trial Court dismissing the suit of the plaintiff are restored. No costs.

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

M. SEETHARAMA MURTI, J

30th October 2015

RAR