

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.848 of 2007

JUDGMENT:

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This appeal under Section 100 of the Code of Civil Procedure, 1908 by the unsuccessful defendants 2 and 3 is directed against the judgment and decree dated 12.04.2007 of the learned VII Additional District Judge (Judge, Fast Track Court) at Vijayawada of Krishna District in A.S.No.85 of 2005. The learned Additional District Judge while dismissing the said appeal had confirmed the decree and judgment dated 09.05.2005 of the learned Senior Civil Judge, Nandigama of Krishna District passed in O.S.No.25 of 2003 filed for recovery of possession of the plaint schedule property after evicting the defendants, their men and followers; and, for a perpetual injunction restraining the defendants 2 to 5, their men and followers from making alienations of the property in any manner; and, for mesne profits at the rate of Rs.21,000/- per year from 03.07.2000 till date of delivery of possession of the plaint schedule property along with interest at 18% per annum from the date of the suit till the date of payment; and, for costs.

2. I have heard the submissions of the learned counsel for the appellants/defendants 2 and 3 ('the defendants', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. At the time of admission of this appeal, this Court had taken note of the following substantial questions of law mentioned in the memorandum of grounds:

- 1) **Whether mere delivery of possession on paper without delivery of physical possession is permissible under law?**
- 2) **Whether the oral HIBA under the Mohammedian Law is valid?**

(Reproduced verbatim)

4. To adjudicate the *lis* and to answer the substantial questions, it is

necessary to refer to the pleadings of the parties.

5. The case of the plaintiff, in brief, is this: "The plaintiff had brought a suit in O.S.No.134 of 1988 against the 1st defendant for recovery of money and the said suit was decreed by the District Munsif, Gudiwada. The plaintiff had got that decree transferred to the Court of the learned Junior Civil Judge, Nandigama and had filed E.P.No.87 of 1991 for attachment and sale of immovable property of Ac.5.20 cents in R.S.No.397/2i of Ganiatkuru village. The attachment was effected on 11.08.1991. Exhibit A1 is the certified copy of the attachment warrant in O.S.No.134 of 1988 and exhibit A2 is the certified copy of attachment list in E.P.No.87 of 1991. Counters were filed by the 1st defendant on 05.12.1991 and on 30.06.1994 in the said EP. Subsequently, the property was brought to sale and was sold in an auction held on 28.09.1999 by the said Junior Civil Court. In the said auction, the plaintiff/Decree Holder had purchased the property and the sale was confirmed in her favour on 30.11.1999 and a sale certificate was also issued to her in respect of the said property. The certified copy of the said certificate is exhibit A5. The plaintiff had filed E.A.No.181 of 2000 in the above said execution petition for delivery of the property purchased by her in the said Court Auction and the property was delivered to her on 03.07.2000. The Amin's report and the delivery receipt are exhibits A11 and A12. The property that was sold in the auction and that was purchased by the plaintiff herein, as stated above was also got attached by one Usman Baig in the suit O.S.No.133 of 1988 filed by him on the file of the Court of the learned District Munsif, Gudiwada. The 1st defendant had filed IP No.12 of 1995 on the file of the learned II Additional Senior Civil Judge, Vijayawada requesting to declare him as an insolvent. In that IP, the present plaintiff was impleaded as 2nd respondent. That IP was allowed adjudging the 1st defendant as an insolvent. Exhibit A4 is the certified copy of the order and the decretal order in IP No.12 of 1995. The property that was attached in the EP and was purchased in the court auction by the plaintiff herein i.e., the plaintiff's schedule property herein was not shown as a property in the schedule annexed to the IP, but, it was contended that the property was sold to defendants 2 to 5 by

virtue of a sale deed dated 09.07.1992. The 2nd defendant gave evidence as PW3 in the said IP stating that they had purchased the plaint schedule property. The discrepancy in the survey number, i.e., in mentioning as R.S.No.397/29 instead of as '397/2i' was brought to the notice of the court in the said IP. The V.A.O of Paritala was examined as PW2 in the insolvency proceedings. He deposed that as per the records the plaintiff has got land in R.S.No.397/2i but not in R.S.No.397/29. However, the learned Judge in his order passed in the IP had observed that the order in the insolvency petition is not binding on the plaintiff herein and the plaintiff may proceed with the execution proceedings against the attached property. Thus, the issue in regard to the discrepancy in the survey number is cleared in the said orders.

Thereafter only, the plaintiff had proceeded with the execution proceedings in E.P.No.87 of 1991. During the execution proceedings, though all the defendants are aware of the same, the defendants 2 to 5 did not file any claim petition claiming the schedule property. The purchase transaction of the defendants under the sale deed of the year 1992 is *void abinitio* as the said transaction was subsequent to the attachments affected on the property in the years 1988 and 1991 as per the orders of the Courts. Hence, no legal title passed to the defendants 2 to 5 under the said documents. The plaintiff is not a local resident of the village Ganiatkur. Based on their void sale deed of the year 1992, the defendants 2 to 5 having filed a suit and IA 526 of 2000 in O.S.190 of 2000 on the file of Junior Civil Judge, Nandigama had obtained an *ex parte* interim injunction against the plaintiff herein in regard to the subject property and had trespassed into the plaint schedule property in the absence of the plaintiff. The plaintiff's husband and the father-in-law had lodged a complaint on 08.07.2000 with the Station House Officer of Kanchikacherla Police Station against the defendants 2 to 5. Thus, the defendants 2 to 5 had dispossessed the plaintiff from the plaint schedule property in collusion with the 1st defendant taking advantage of the aforesaid *ex parte* injunction orders and are enjoying the property by raising sugar cane and other crops since July 2000 and are enriching themselves. They had deprived the enjoyment of the plaintiff over the plaint schedule land. The

estimated yield from the land would be Rs.21,000/- per annum and therefore, the defendants are also liable to pay the said profits with interest. Hence the present suit is filed.”

6. The 1st defendant had remained *ex parte*. The defendants 3 and 5 had filed a written statement and the defendants 2 and 4 had adopted the said written statement. The defence, in brief, is this:

There was no delivery of the property by the Court Amin, pursuant to the execution proceedings. One Chaduvula Ammer Basha was the owner of the schedule property. It is his self acquired property. He had settled Ac.1.00 out of the schedule property in favour of the wife of the 1st defendant i.e., his daughter-in-law under a registered settlement deed dated 07.07.1967 and had delivered possession of the same to her. She is thus the absolute owner and enjoyer of the said land, which is part of the schedule land. After the death of Chaduvula Ameer Basha, his son Tabre Alam, i.e., the 1st defendant came into possession and enjoyment of the remaining Ac.4.20 cents of the schedule land as his legal heir. He had settled the said Ac.4.20 cents of the schedule land in favour of his second daughter Chaduvula Rehana before her marriage and had executed an unregistered gift/settlement deed dated 22.05.1986 and had delivered possession of the said extent land to her on the same day. Since then, she is in possession and enjoyment of the said land. The 1st defendant along with his wife and said daughter had sold away the entire Ac.5.20 cents of the schedule land to the defendants 2 to 5 for a consideration of Rs.77,700/- and had executed a registered sale deed dated 09.07.1992 and had delivered possession of the land to them. Since then, the defendants 2 to 5 are having absolute title and possession over the schedule land. The defendants 2 to 5 had partitioned their joint family properties orally in the year 1995 including the schedule land. In that partition, out of the schedule land, Ac.1.55 cents each was allotted to the defendants 1 to 4 and Ac.0.53 cents were allotted to the 5th defendant. The revenue authorities had also issued pattadar passbooks in favour of the defendants 2 to 5 and they are paying the land revenue to the Government.

The plaintiff is only claiming title and possession over the plaint schedule land by virtue of sale certificate granted by the Court of the learned Junior Civil Judge, Nandigama and delivery receipt of the Court Amin. The survey number of the plaint schedule land and the land under the registered sale deed dated 09.07.1992 is R.S.No.397/2i, whereas the survey number in the E.P and the sale certificate and delivery receipt is 397/29. The boundaries are also different. Therefore, the plaintiff is not entitled to seek the reliefs claimed in the suit. The delivery of the property by the Court Amin is also false. In I.P.No.12 of 1995, the 2nd defendant gave evidence as PW3. The Village Administrative Officer was also examined as PW2. The difference in the survey number and the boundaries of the two properties were brought to the notice of the insolvency court. The insolvency court observed that the point relating to the validity of the sale deed dated 09.07.1992, the rights of Chaduvula Kareemunnisa Begum and Rehana and the rights of the defendants 2 to 5 are larger points to be decided either in the execution proceedings or in any other appropriate proceedings and the questions regarding the said rights of the said parties are not germane for the purpose of the determination of the issues involved in the IP. The plaintiff is aware of the orders in the said IP. She ought to have filed a suit for declaration and recovery of possession of the property. After lapse of five years, the plaintiff had filed suit for recovery of possession and mesne profits without seeking the relief of declaration of title. As there is a dispute regarding the title and possession of the property, the suit for recovery of possession is bad and not tenable. The plaintiff is not entitled to any reliefs claimed in the suit. It is false to state that the defendants 2 to 5 had trespassed into the schedule land after filing O.S.No.190 of 2000; and, a false averment is made for the purpose of the suit.

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

1. Whether the plaintiff is entitled to the possession of the schedule property as prayed?
2. Whether the plaintiff is entitled to the permanent injunction prayed?
3. Whether the plaintiff is entitled to the past and future

- profits as prayed?
4. To what relief?

On 18.03.2005, the plaintiff had not pressed the relief of permanent injunction claimed in the suit. At trial, PWs 1 to 3 were examined and exhibits A1 to A12 were marked. On the side of the defendants, DWs 1 to 8 were examined and exhibits B1 to B13 were marked. On merits, the trial Court had decreed the suit of the plaintiff as prayed and directed that the mesne profits for the period from July 2000 onwards till the delivery of the possession of the property shall be determined in a separate application that may be filed by the plaintiff. As already noted, the 1st appeal suit was dismissed.

8. The learned counsel for the defendants 2 and 3 would contend as follows:

The defendants have been in continuous possession and enjoyment of the schedule property having acquired valid title under exhibit, B2 the sale deed dated 09.07.1992. The Court below had erred in heavily relying upon the evidence of PWs 1 to 3 and the documentary evidence on the side of the plaintiff while not properly appreciating the oral and documentary evidence adduced on the side of the defendants. The court below ought to have seen that there is collusion between the plaintiff and the 1st defendant and that they together defrauded the appellants/the defendants 2 and 3. The Court below ought to have at least considered that the extent of Ac.1.00 cents out of Ac.5.20 cents is the absolute property of the wife of the 1st defendant in view of the registered settlement deed under exhibit B1, dated 07.07.1967, which was executed long prior to the attachment in the suit and also the institution of the execution proceedings. Therefore, the courts below ought to have excluded the said extent of land from the decrees granted to the plaintiff and ought to have confined the decrees to the remaining extent of Ac.4.20 cents, in any view of the matter. The courts below ought to have seen that even the extent of Ac.4.20 cents conveyed by the 1st defendant in favour of his daughter on 22.05.1986, under the oral Hiba, was much prior to the attachment and that as per the Mohammedan law, an oral Hiba is valid and

no document is required in that regard. The Courts below ought to have seen that the 1st defendant, his wife and daughter have together executed a registered sale deed dated 09.07.1992 under exhibit B2 in favour of the defendants and delivered possession of the property to the defendants and that therefore, the defendants 2 to 5 had acquired absolute and valid title in respect of the schedule property. The courts below ought to have seen that the execution proceedings are collusive proceedings. The courts below did not assign any reasons for placing reliance on the evidence on the side of the plaintiff and for not accepting the evidence on the side of the defendants. The courts below ought not to have held that the inaction on the part of the 1st defendant probabilizes the contention of the plaintiff. The courts below ought to have seen that the plaintiff succeeds on her own strength but not on the weakness of the defendants and therefore, ought to have dismissed the suit.

9. On the other hand, the learned counsel for the 1st respondent/plaintiff while supporting the judgments of the courts below in all respects had contended as follows:

The courts below have recorded concurrent findings of fact after accurately considering the facts and properly appreciating the evidence on record. Neither the wife of the 1st defendant who is claiming Ac.1.00 of land under a settlement deed of the year 1961 nor the 1st defendant, who is her husband and who was said to have gifted the remaining Ac.4.20 cents to his daughter or their daughter have filed claim petitions in the execution proceedings at the appropriate time. No objections much less valid objections were raised by them. The sale deed of the defendants of the year 1992 was subsequent to the attachment in the instant case and also the attachment in another suit filed by Usman Baig; therefore, the sale deed executed by the 1st defendant, his wife and daughter in favour of the defendants 2 to 5 in the year 1992 is void under law. And, hence, no valid title passed to the defendants 2 to 5. In the insolvency proceedings, the discrepancy in the survey number is cleared. Therefore, though the survey

number is wrongly mentioned as 397/29 in the execution proceedings, the correct number is '397/2i' as the letter 'i' in the said survey number due to its faulty appearance in the records was mistaken as '9'. Hence, the wrong mention of the survey number is immaterial as there is no dispute with the identity of the property and as the defendants 2 to 5 are also claiming the same property, which is attached and sold in the execution proceedings. If it is their case that their property is different from the EP schedule property, there is no need for them to come before the Court and claim the property which was sold in the court auction in the execution proceedings. There is no merit in the appeal. No substantial questions are involved, and, hence, the second appeal may be dismissed.

10. It is relevant to mention that only two substantial questions of law are formulated and therefore, the hearing and the decision in this second appeal shall be confined to the said questions formulated.

11. I have carefully gone through the pleadings and the evidence on record. The plaintiff had brought a suit in O.S.No.134 of 1988 against the 1st defendant for recovery of money and the said suit was decreed by the learned District Munsif, Gudiwada. The plaintiff had got that decree transferred to the Court of the learned Junior Civil Judge, Nandigama and had filed E.P.No.87 of 1991 for attachment and sale of immovable property of Ac.5.20 cents in R.S.No.397/2i (R.S.No.397/29) of Ganiatkuru village claiming that the said property belonged to the 1st defendant. The attachment was affected on 11.08.1991. Exhibit A1 is the certified copy of the attachment warrant in O.S.No.134 of 1988; exhibit A2 is the certified copy of attachment list in E.P.No.87 of 1991. Subsequently, the said property was brought to sale and was sold in an auction held by the said Junior Civil Court on 28.09.1999. In the said auction, the plaintiff herein, i.e., the Decree Holder had purchased the property and the sale was confirmed in her favour on 30.11.1999 and a sale certificate was also issued by the learned Junior Civil Judge, Nandigama to her in respect of the said property. The certified copy of the said certificate is exhibit A5. The plaintiff had filed E.A.No.181 of

2000 in the above said execution petition for delivery of the said property purchased by her in the court auction; and, the said property was delivered to her on 03.07.2000. The Amin's report and delivery receipts are exhibits A11 and A12. While so, the 1st defendant had filed I.P.No.12 of 1995 on the file of the learned II Additional Senior Civil Judge, Vijayawada requesting to declare him as an insolvent. In that IP, the present plaintiff is impleaded as 2nd respondent. That IP was allowed adjudging the 1st defendant as an insolvent. Exhibit A4 is the certified copy of the order and decretal order in IP.No.12 of 1995. The same on a perusal discloses that the property that was attached in the EP and was purchased in the court auction by the plaintiff herein was not shown as the property of the 1st defendant in the schedule annexed to the IP. The 2nd respondent in the said IP had contended that the 1st defendant, i.e., the petitioner in the IP suppressed from showing Ac.5.20 cents of land in R.S.No.397/2i in the IP. In that IP, the 1st defendant had contended that the out of said extent of Ac.5.20 cents, Ac.1.00 was settled by his father in the name of his wife under registered settlement deed dated 07.07.1967 and that the remaining Ac.4.20 cents was settled by him on his daughter under an unregistered settlement deed and that as per the settlement deeds, his wife and daughter were in possession and enjoyment of the property and that on 09.07.1992, he along with his wife and daughter had sold away the entire Ac.5.20 cents in R.S.No.397/2i to defendants 2 to 5 herein and had delivered possession of the same to them. The 2nd defendant herein was examined as PW3 in the said insolvency proceedings. The V.A.O of Paritala was examined as PW2 in the insolvency proceedings. He deposed that as per the records, the 1st defendant herein has got land in R.S.No.397/2i but not in R.S.No.397/29. However, the learned Judge in his order had observed that the R.S. number mentioned in exhibit X1 therein, i.e., the copy of the adangal appeared to the eye to be 397/29 though in fact, it is 397/2i and that there is a possibility for mistaking 2i as 29 on a perusal of exhibit X1. Thus, the discrepancy in the R.S number is cleared in the insolvency proceedings. Ultimately, in the insolvency proceedings, the Court of insolvency had observed that the issues in regard to the subsequent sale

deed in favour of defendants 2 to 5 herein and the claims of the wife and the daughter of the 1st defendant and the defendants 2 to 5 are larger points to be decided either in the execution proceedings or in any other appropriate proceedings and the said aspects are not germane for consideration and for determination of the issues involved in the IP. Therefore, the learned Senior Civil Judge in the orders passed in the IP had come to a conclusion that Ac.5.20 cents in R.S.No.397/29 attached in the above execution proceedings is the same property that was sold to the defendants 2 to 5 by mentioning the correct Sy.No.397/2i. The 1st defendant had subscribed his signature to the attachment list and is, therefore, having knowledge of the attachment of the property. The 1st defendant was also indebted to one Usman Baig. The said Usman Baig had filed O.S.No.133 of 1988 on the file of the learned District Munsif, Gudiwada and in the said suit, the schedule property was attached. The said suit was also decreed. Thus, the defendants 1 to 5 had got knowledge about the orders passed by the learned II Additional Senior Civil Judge, Vijayawada in the insolvency proceedings. The II Additional Senior Civil Judge, Vijayawada passed orders in IP.No.12 of 1995 on 18.06.1998 adjudging the 1st defendant as insolvent and stating *inter alia* that the said order is not binding on the plaintiff herein and that the plaintiff can proceed with the execution proceedings against the attached property. Thereafter, the execution proceedings in E.P.No.87 of 1991 were prosecuted and the property was sold and the possession of the property was delivered to the plaintiff, who is the auction purchaser. Neither the 1st defendant and his wife and daughter nor the defendants 2 to 5 had filed any claim petitions during the pendency of the execution proceedings. The sale transaction under exhibit B2 in the year 1992 having been made in favour of the defendants 2 to 5 is void *ab initio* in view of the fact that the said sale transaction was after the attachments were affected on the property pursuant to the orders of the Courts made in the years 1998 and 1991. Therefore, no legal or valid title can flow to the defendants 2 to 5 from the 1st defendant, his wife and daughter. The said sale deed under exhibit B2, which was executed after the attachments over the schedule property were affected, is void *ab initio* in view

of the provision of Section 64 of the Code. The said provision of law reads as under:

64. Private alienation of property after attachment to be void:- Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.]

Explanation: For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.”

A reading of the above said provision of law would make it manifest that the alienation of the property after the attachment is void. Therefore, there is no scintilla of doubt that the sale deed of the defendants 2 to 5 of the year 1992 under exhibit B2 executed by the 1st defendant, his wife and daughter is void as against the claim of the plaintiff/auction purchaser which was being made pursuant to a court auction sale and is being enforced under the attachment made in the execution proceedings. The defendants 2 to 5 had filed a suit basing on their void sale deed of the year 1992 and had obtained *ex parte* interim injunction against the plaintiff in I.A.No.526 of 2000 in O.S.No.190 of 2000 on the file of the learned Junior Civil Judge, Nandigama. This is an admitted fact. According to the plaintiff, the defendants 2 to 5 had trespassed into the schedule land in the absence of the plaintiff, who is not a resident of the village where the property is situate; and, that on such trespass, the husband and father-in-law of the plaintiff had given complaint on 08.07.200 to the Station House Officer, Kanchikacherla about the highhanded acts of the defendants 2 to 5. The plaintiff herein is *inter alia* stating that she was dispossessed by the defendants 2 to 5 in collusion with the 1st defendant taking advantage of the *ex parte* injunction granted by the Junior Civil Judge, Nandigama in the above said suit and that the defendants 2 to 5 are unlawfully enjoying the property by raising sugarcane and other varieties of crops since July 2000 and that the plaintiff herein who is the lawful owner of

the property is being deprived of the enjoyment of the land due to the illegal and unlawful acts of the defendants.

12. The evidence brought on record and the documents in exhibit 'A' series, which are referred to supra, would reveal that the entire plaint schedule property which was attached in the execution proceedings in E.P.No.87 of 1991 in O.S.No.134 of 1988 on the file of the learned Junior Civil Judge, Nandigama, was sold in a public court auction for realization of the decree debt of the plaintiff/Decree Holder and that the plaintiff/D.Hr., herself had purchased the plaint schedule property in the court auction and that a sale certificate was issued in her favour and that later the property was also delivered to her through Court proceedings. During the pendency of the execution proceedings or at the time of delivery of the property or even thereafter, neither the wife and the daughter of the 1st defendant nor the 1st defendant had filed any claim applications or objection applications and had not objected for the sale and delivery of the property in the execution proceedings. Similarly, the defendants 2 to 5 who are claiming to have purchased the property from the 1st defendant, his wife and daughter under regular sale deed under the original of exhibit B2 in the year 1992, i.e., after the attachment, also did not file any claim application or objection application and the execution proceedings have attained finality. Admittedly, the defendants purchased the property under the original of exhibit B2 after the property was attached and as already noted, their sale deed under exhibit B2 is void. Therefore, the defendants 2 to 5 cannot claim any valid right, title and interest in the schedule property under void sale deed. Now, neither the wife nor the daughter of the 1st defendant is before this Court. Though much reliance was placed on exhibit B1, the certified copy of the settlement deed dated 07.07.1967 whereunder Ac.1.00 was settled in the name of the wife of the 1st defendant by the father of the 1st defendant, it is pertinent to note that she did not claim any rights over the said property even though the said property was attached and was brought to sale. Therefore, the Courts below had accepted the contention of the plaintiff that the wife of the 1st defendant

had never enjoyed the property as absolute owner and that the said settlement deed under the original of exhibit B1 was a nominal document and was not acted upon. The courts below have also referred to exhibit A10, the certified copy of the mortgage executed by the 1st defendant in favour of Primary Agricultural Cooperative Society, Ganiatkuru, whereunder he had mortgaged the entire plaint schedule property in favour of the said society for obtaining a loan. The 1st defendant mortgaged the entire property as its owner also supports the content that the settlement deed in favour of the wife of the 1st defendant is only nominal and was never acted upon and that therefore, the wife of the 1st defendant never enjoyed the property covered by the said settlement deed by being in possession and as absolute owner thereof. Admittedly, the written document in favour of the daughter of the 1st defendant is not filed though the contention is that he had gifted the remaining extent of Ac.4.20 cents to his daughter. Even his daughter did not raise any objection when the property was attached in the execution proceedings and was brought to sale in a court auction and was purchased by the plaintiff herein. She did not even raise any objection at the time when the property was delivered to the plaintiff by the Amin of the court. The contention that the delivery of the property in execution proceedings by the Court Amin to the plaintiff is a paper delivery and physical delivery of the property was not made cannot be countenanced by this Court as under law it is to be presumed that every judicial and official act has been regularly performed. As per settled law, the court auction sale and the delivery of the property to the court auction purchaser ought to have been questioned by the judgment debtor and the persons claiming through him only in the execution proceedings and having not done so, neither the 1st defendant/judgment debtor nor the persons claiming through him can raise questions about the validity of the attachment, the court auction sale and the delivery proceedings in the defence in the present suit. Therefore, this Court has to necessarily accept that the plaintiff who is a court auction purchaser and who had obtained delivery through court proceedings in the execution petition is having right, title and interest in the property and that she had continued in

possession of the property from the date of the delivery of the property to her pursuant to the sale certificate and delivery proceedings in the execution petition. Any contentions contrary to the record in the execution proceedings cannot be countenanced. Therefore, this Court has to necessarily accept that the property was delivered to the plaintiff on 08.07.2000 and that the defendants have come into possession of the property subsequently, if not on the date alleged by the plaintiff. When this Court has to necessarily accept that the possession of the property was delivered by the court of execution to the plaintiff in the year 2000, the suit for recovery of possession brought in the year 2003 deserves to be decreed having regard to the discussion coupled with reasons supra. Both the courts below after accurately considering the facts and weighing and evaluating the evidence in proper perspective have recorded concurrent findings of fact upholding the right of the plaintiff to recover possession of the schedule property from the defendants and granted a decree for recovery of possession and for mesne profits having held that the sale deed of the defendants 2 to 5 is void. When once the right of the plaintiff to recover possession of the plaint schedule property is established and when the sale deed in favour of the defendants 2 to 5 executed by the 1st defendant/judgment debtor along with his wife and daughter is held to be void and when the said defendants could not show any semblance of right to continue to remain in possession over the plaints schedule property, it follows that they are bound to vacate and deliver vacant possession of the plaint schedule property to the plaintiff. Thus, on an analytical examination of the evidence brought on record, it appears that the questions raised are not even pure questions of law, let alone substantial questions of law and that on the issues involved in the *lis*, both the courts below had recorded concurrent findings of fact after properly appreciating the facts and the evidence brought on record and that the said concurrent findings arrived at by the courts below on the issues cannot be disturbed by taking a different view, more particularly when the view taken by the courts below is plausible and probable and is sustainable under facts and law. Viewed thus, this Court finds that there is no merit in the second appeal and the second appeal is liable to be dismissed.

13. In the result, the Second Appeal is dismissed being devoid of merit. No costs. The defendants 2 and 3/appellants are granted a time of two months from today to deliver vacant possession of the plaint schedule property to the 1st respondent. Failing compliance, the 1st respondent is at liberty to recover possession in accordance with the procedure established by law.

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

M. SEETHARAMA MURTI, J

26th August 2015
RAR