

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Miscellaneous Appeal Nos.530 of 2015

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JUDGMENT:

The unsuccessful petitioner/plaintiff had filed this civil miscellaneous appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ('the Code' for short) assailing the order dated 13.04.2015 of the learned XXIV Additional Chief Judge, City Civil Court, Hyderabad passed in IA.No.2539 of 2010 in OS.No.249 of 2010 filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code requesting to grant a temporary injunction restraining the respondents/defendants, their agents, nominees and anybody claiming under them from alienating or transferring the plaint 'A' schedule land or from creating any third party charges over the same pending final disposal of the suit.

2. I have heard the submissions of the learned counsel for the appellant/petitioner/plaintiff ('the plaintiff', for brevity) and the learned counsel for the respondents/defendants ('the defendants', for brevity). I have perused the material record.

3. At the outset, it is necessary to refer to the pleadings of the parties and the facts that lead to the filing of this appeal by the unsuccessful plaintiff.

3.1 The case of the plaintiff, in brief, is this:

The plaintiff had brought the suit against the defendants for cancellation of registered development agreement-cum-general power of attorney bearing document no.1579/2006 dated 15.04.2005 in respect of plaint 'A' schedule property; to direct the defendants to deliver vacant and peaceful possession of the lands more fully described in the schedules A to G of the plaint schedule; to declare the registered sale deeds in respect of plaint 'B' to 'G' schedule properties as mentioned in the relief portion of the plaint as null and void *ab initio* and not binding on the

plaintiff; and, for costs. He is the absolute owner having title and possession over the land bearing old survey no.403/71 and new survey no.120/9(403/10P) admeasuring Ac.6.00 guntas situate at road no.5, Jubilee Hills, Shaikpet village and Mandal, Hyderabad having purchased the same from its original owner Sayanna under a registered sale deed bearing document no.969/1969 dated 18.04.1969. The said property was assigned to the said Sayanna in the year 1953 by means of a patta by the District Collector. The original documents are in the custody of the defendants 1 to 8. There was a clerical error in the survey number in the registered sale deed executed by Sayanna in favour of the plaintiff. Therefore, on detection of the said error and after noticing that the survey number is wrongly typed as 403/71 instead of 403/102/9 (403/10P) a rectification deed vide document no.2593/96 dated 20.09.1996 was obtained from the legal representative of late Sayanna in regard to the survey number. From the date of the said purchase in the year 1969, the plaintiff was and is in peaceful possession and enjoyment of the property purchased by him. As the plaintiff was pre occupied with his work, he had executed a general power of attorney in favour of one M. Venugopal in the year 1993; subsequently the same was cancelled by executing a deed of cancellation of general power of attorney dated 04.08.2006. That general power of attorney in favour of M. Venugopal was cancelled as he was indulging in illegal activities and was acting against the interests of the plaintiff with an intention to cause loss to the plaintiff. The plaintiff had paid 'naala' tax in respect of the property purchased by him. When there was an interference by third parties over the land purchased by him, the plaintiff was constrained to file OS.1747 of 1999 on the file of the Court of the learned X Junior Civil Judge, City Civil Court, Hyderabad for perpetual injunction; that suit was decreed on 29.09.2000 against the wife of Sayanna i.e., the 1st defendant herein and others. The land purchased by the plaintiff was an open land. He used to visit his home town now and then. The defendants 1 to 7 are the legal heirs of late Sayanna. After the death of late Sayanna, the defendants 1 to 7 had executed a development agreement-cum-GPA vide document no.1579/2006 dated 15.04.2005 in respect of survey no.403/120/9 admeasuring Ac.9.39 guntas situate at Shaikpet village in favour of the 8th defendant and that includes the plaint 'A' schedule property, which absolutely belongs to the plaintiff herein, and which is of an extent of Ac.6.00 guntas. Since Sayanna had already executed a sale deed in favour of the plaintiff in the year 1969 in respect of the said extent of land, the defendants 1 to 7,

who are his legal heirs, have no right, title and interest over the said extent of Ac.6.00 guntas of land out of Ac.9.39 guntas of land. The defendants 1 to 7 without any manner of right, title and interest over the plaint ‘A’ schedule property had entered into a development agreement-cum-GPA in the year 2006 with the 8th defendant. The plaintiff had come to know about the same recently when he had visited the Registrar’s office. He had immediately obtained the certified copy of the said agreement-cum-GPA on 21.04.2010 in respect of Ac.9.39 guntas, which includes Ac.6.00 guntas of plaint ‘A’ schedule land. The said document being fraudulent and spurious is liable to be cancelled. The said document was never acted upon by the defendants 1 to 7 on one hand and the 8th defendant on the other. The defendants 1 to 8 are estopped from claiming any rights over the plaint ‘A’ schedule property. The document of the plaintiff is 30 year old and is true, valid and genuine and its validity need not be doubted. The said development agreement-cum-GPA dated 15.04.2005 was executed by defendants 1 to 7 in favour of the 8th defendant to deprive the legitimate rights of the plaintiff over the plaint ‘A’ schedule property. The plaintiff had also learnt about execution of 6 registered sale deeds by the defendants 1 to 8 along with defendants 9, 13, 15, 17, 21 and 22 in favour of the defendants 10, 17, 12, 14, 16, 18, 20, 23 to 26. The plaintiff had obtained the copies of the said six registered sale deeds so executed on 31.01.2010 and sought the relief of declaration that the said six registered sale deeds are null and void and not binding on him and also other consequential reliefs in the suit. The details of the said sale deeds are as follows:

Document No.	Vendor	Vendee	Area
4186/2006	Respondent 1 to 7 & Respondent 9	Respondent 10 to 12	Schedule B property
6137/2006	Respondent 1 to 7 & Respondent 13	Respondent 14	Schedule C property
109/2007	Respondent 1 to 7 & Respondent 15	Respondent 16	Schedule D property
4187/2006	Respondent 1 to 7 & Respondent 17	Respondent 18	Schedule E property
4188/2006	Respondent 1 to 7 & Respondent 17	Respondent 20	Schedule F property
3597/2008	Respondent 1 to 7 & 8, 20, 29	Respondent 22 & 26	Schedule G property

The defendants 9 to 15 had obtained a collusive decree amongst them and that decree is not true, valid and binding on this plaintiff. The said six documents insofar as the plaintiff's scheduled property is concerned are not binding on the plaintiff as the defendants 1 to 7 have no right to transfer and execute the documents. Now the defendants 10 to 21 are trying to alienate the subject properties to third parties and are bringing some prospective purchasers to the property. Some such purchasers were brought to the property on 24.04.2010 and 26.04.2010. If the defendants succeed in their attempts and alienate the properties, the plaintiff would suffer serious and irreparable loss. The plaintiff has got a *prima facie* case and the balance of convenience is in his favour. Hence, the present application is filed.

3.2 The averments in the counter affidavit of the Managing director of the 8th defendant company filed on behalf of the defendants 1 to 8, in brief, are as follows: -
'The material allegations in the plaint are false. Sivella Sayanna, son of late Ramanna was the sole absolute owner and possessor of agricultural land measuring Ac.9.39 guntas. He was assigned the said land by the Tahasildar, Hyderabad in the year 1953 vide patta certificate dated 04.01.1953 in survey no.403, Shaikpet village of Golkonda Mandal of Hyderabad District. His title was upheld by the High Court in WA.Nos.860/89, 948/89, 1015/89, 560/90 vide order dated 25.09.1995. Further, after remand by the Supreme Court the title of the original owner was again upheld by this Court by orders dated 17.02.2006. The title was also upheld in LGC No.268 of 1995 on the file of the Special Court for Land Grabbing. He had also constructed a house in a part of the property and it was assessed by the Municipal Corporation of Hyderabad in the year 1985 and the D.No.8-2-293/82/C/121 was allotted. He used to cultivate the remaining land along with his son. The said Sivella Sayanna and his son Yadaiah had filed declarations before the Special Officer and the competent authority under the Urban Land Ceilings Act and in the said declarations filed by Sayanna, he had clearly shown that his family consists of his wife Shankaramma, his unmarried daughters and his major son Yadaiah. Further, his said major son Yadaiah had also filed a separate declaration in his name and in the names of his family members. An order dated 05.12.1977 was passed holding that Sivella Sayanna and S. Yadaiah are jointly entitled to 2000 Square Meters and the rest of the land was declared as surplus. Thus, Sivella Sayanna and his son Yadaiah were jointly entitled to 2000 Square Meters being the retainable area. The said Sivella Sayanna died in the year 1982

leaving behind him the defendants 1 to 7 as his only legal heirs and successors. The said defendants 1 to 7 along with another daughter of the original owner by name Shantamma together had executed the agreement of sale dated 31.10.1988 in favour of the 8th defendant and conveyed the property in an extent of Ac.9.39 guntas of property. The defendants 1 to 7 have further executed a registered GPA dated 21.04.1994 in favour of the 8th defendant. The possession of the property continuously changed hands from the original owner Sivella Sayanna to his legal heirs and from them to the 8th defendant; and the 8th defendant is in peaceful possession and enjoyment of the property (Ac.9.39 guntas). In terms of the development agreement-cum-GPA and in view of the understanding between the defendants 1 to 9, 13, 15, 17, 20, 21 the entire property was divided into portions and the portions were alienated in favour of the subsequent purchasers i.e., defendants 10 to 12, 14, 16, 18, 19, 22 and 26. At that juncture, the plaintiff, who has no manner of right, title and interest over the property came forward with this false and frivolous suit by making baseless allegations only to cause loss to the defendants and extract money from them. The plaintiff's contention and claim is that he is the owner of Ac.6.00 guntas of land in survey no.403/71 of Shaikpet village having purchased the same under a registered sale deed dated 17.04.1969 from Sayanna, S/o Chittari whereas the original owner Sayanna is S/o S. Ramanna and the property of the defendants is in survey no.403/120/9. The boundaries of the property of Ac.6.00 guntas being claimed by the plaintiff and the boundaries of the property, which is being claimed by the defendants, are different and the properties are two separate properties. The plaintiff had executed a registered general power of attorney dated 01.03.1993 in favour of one M. Venugopal in respect of the property in survey no.403/71. Acting upon the said power of attorney, the said GPA holder of the plaintiff had executed registered agreements of sale dated 11.03.1993 in respect of Ac.1.00 guntas out of Ac.6.00 guntas in survey no.403/71 in favour of D. Prema Sudhamani; dated 11.03.1993 in respect of another Ac.1.00 guntas in favour of M. Sukumari; dated 15.03.1993 for Ac.1.00 guntas in the same survey number in favour of Yogesh J. Shah; dated 15.03.1993 in respect of another Ac.1.00 guntas in favour of D. Bala Gopal Rao; dated 15.03.1993 in respect of another Ac.1.00 guntas in favour of M. Sai Ram; and dated 15.03.1993 in respect of another Ac.1.00 guntas in favour of M. Jeevan Lakshmi. The plaintiff having thus conveyed the property in survey number 403/71 is neither the owner nor the possessor of the plaint schedule property at any point of time and he has no *locus standi*. The plaintiff who had thus

sold away his property had developed an intention to grab the property of the defendants in survey number 403/120/9 (403/10P) and, therefore, had brought one Bhoomanna alleged to be the son of late Sayanna and got executed a rectification deed dated 20.09.1996 after lapse of 27 years and got rectified the survey number in his document of the year 1969 from 403/71 to 403/120/9. The said Bhoomanna is not the son or the legal heir of Sivella Sayanna. His name was not mentioned in any records filed before any authorities. The learned District Collector had issued orders dated 18.12.1984 cancelling the original allotment in favour of the original owner Sivella Sayanna. The GPA holder of the plaintiff had filed false and frivolous suit in OS.No.1747 of 1999 against non existent defendants and had obtained fraudulent *ex parte* decree. There is no sanctity for the said decree. The criminal case in Cr.No.546 of 2013 was registered by the SHO, Jubilee Hills Police Station against the plaintiff on the complaint of the 8th defendant. The plaintiff had cancelled the GPA dated 01.03.1993 executed in favour of the said Venugopal by executing a cancellation deed dated 04.08.2006 to create further litigation. The suit is barred by time. The plaintiff has no case much less a *prima facie* case. The petition may be dismissed.'

3.3 At the time of enquiry, no oral evidence was adduced on either side. However, exhibits P1 to P20 were marked on the side of the plaintiff. No documents were marked on the side of the defendants.

3.4 On merits, the trial Court had dismissed the application of the plaintiff. Feeling aggrieved, the plaintiff had preferred this appeal.

4. The learned counsel for the plaintiff would submit as follows:

The plaintiff had only sought a temporary injunction to restrain the defendants from alienating the subject property and/or from creating any charge over the same pending final disposal of the suit. Granting such an order helps in maintaining *status quo* during the pendency of the suit and prevents the parties from transferring or alienating the subject properties in any manner and creating third party interests. The injunction if granted would sub serve the ends of justice and helps in avoiding multiplicity of proceedings. If, during the pendency of the suit, any alienations or transfers are made and any third party interests are created that would lead to complexities and multiplicity of proceedings. The plaintiff has got a *prima facie* case and the balance of convenience is in his favour. The plaintiff had filed his documents

to establish his case. The defendants did not produce any documents. The established case of the plaintiff remained unrefuted as no documents are marked on the side of the defendants. An injunction was not sought in regard to possession of the property. However, the Court below had erroneously dismissed the application seeking temporary injunction not to alienate the property by observing that the possession of the defendants was admitted by the plaintiff. For the adjudication of the point involved in the application, the aspect of possession is not relevant. The suit is a comprehensive suit seeking substantial reliefs. Already properties were alienated as stated in the relief portion of the plaint. Cancellation of such void sale deeds was sought for abundant caution. If further alienations are made during the pendency of the suit, that would lead to multiplicity of proceedings and there would be no end to the litigation. The trial Court had earlier granted interim order on 03.05.2010 and that order was in force for more than four years and till the injunction petition was dismissed by the impugned order on 13.04.2015. No prejudice was caused to the defendants during the said last four years when the interim orders were in force. Exhibit P1 among the documents is a thirty-year old document. The wrong mention of survey number is immaterial as the law is well settled that boundaries prevail over the survey number and that ultimately boundaries would determine the identity of the property. The defendants did not dispute the boundaries in the document of the year 1969. The observation of the Court below that alienations were already made is erroneous as the temporary injunction was sought to prevent further alienations and creation of charges over the subject property during the pendency of the suit. No valid and sustainable reasons were assigned for refusing to grant temporary injunction, which was prayed for. The reasoning is erroneous and the findings are based on assumptions and presumptions and not on facts, which are relevant for consideration. The observation that rival contentions require full fledged trial and, therefore, the interim order cannot be granted is a reason which is unsustainable and unknown to law. The fact that issues which are triable are raised in the suit is itself a ground to hold that the plaintiff had established a *prima facie* case. The averments in the counter remained pleadings as no documents are filed to substantiate the pleadings in the counter.

5. On the other hand, the learned counsel for the defendants had contended as follows:

The suit itself is not maintainable. The property belongs to the defendants. The suit is a speculative suit filed in respect of a property situate at Banjara Hills, which is a posh and prime area in the twin cities. The property is located in survey no.120/9 (403/10P). The plaintiff had obtained a rectification deed 27 years after the document of the year 1969 was executed and got the rectification by mentioning the new survey number only for the purpose of litigating with the defendants. Sayanna from whom the plaintiff had purchased the land in survey no.403/71 and Sivella Sayanna i.e., husband of the 1st defendant and the father of the defendants 2 to 7 are different persons. Bhoomanna has no relationship with Sivella Sayanna, who is the husband of the 1st defendant. The plaintiff had not explained as to how the original documents pertaining to the property in survey no.403/71 are in the custody of the defendants, if the plaintiff had purchased the property in the year 1969. The plaintiff having sold the property in survey no.403/71 had created a rectification deed to usurp the property of the defendants. The rectification deed is a bogus and sham document and the former suit OS.No.1747 of 1999 is a collusive suit filed by the plaintiff and others and the decree obtained therein behind the back of the defendants including the 1st defendant herein is not binding on the defendants herein. That suit was filed against non existent and fictitious persons and a collusive decree for perpetual injunction was obtained. The defendants are not parties to the said suit. The 8th defendant had lodged a complaint with the SHO, Jubilee Hills Police Station and a case in crime no.546 of 2013 was registered against the plaintiff. No relief of declaration of any right and no declaration of title are sought in the present suit. The development agreement-cum-GPA was executed on 15.04.2005. The same was not challenged within three years of its execution. The suit is barred by law of limitation. Bhoomanna is a necessary party and his non impleadment as a party to the suit is fatal. His non impleadment creates any amount of doubt about the truthful nature of the case of the plaintiff. The plaintiff has neither a *prima facie* case nor is the balance of convenience in his favour. The trial Court having properly appreciated the facts and the pleadings had dismissed the application for temporary injunction by recording findings which are supported by cogent reasons. There are no grounds calling for interference with the impugned order. The appeal is devoid of merit and is liable to be dismissed.

5.1 While so contending the learned counsel for the defendants had placed reliance on certain documents, which are filed with a petition to receive additional evidence,

as no documents are exhibited on their side at the time of enquiry before the trial Court. The said application is coming along with this appeal for disposal.

6. Now the points for determination in this appeal are:

1. Whether the plaintiff had satisfied the cardinal principles and made out valid and sufficient grounds for grant of temporary injunction as prayed for? And, if so, whether the order impugned is liable to be set aside under facts and in law?

2. To what relief?

7. POINTS:

7.1 The facts that lead to the filing of this appeal by the plaintiff and the contentions of both the sides are already stated supra, in detail. I have carefully gone through the pleadings and the contents of exhibits P1 to P20. No documents are exhibited on behalf of the defendants. Exhibit P1-the certified copy of document no.969/1969 dated 18.04.1969 is a thirty year old document. It was executed by one Sayanna, son of Chittari in favour of the plaintiff herein in respect of land in survey no.403/71 of an extent of Ac.6.00 guntas at Shaikpet village of Banjara Hills of Hyderabad. The boundaries of the said land are also mentioned in the schedule of the document. The document also shows that a plan is annexed showing the details of the landed property. However, the order of the Court below shows that the said document does not reveal the schedule of property and its boundaries. Therefore, the said observation is not correct. Be that as it may, whether a plan referred to therein was enclosed to exhibit P1 filed before the trial Court is not known as the exhibits are not received from the Court below and the copies of the documents are only filed before this Court. Exhibit P2 is the rectification deed dated 20.09.1996 executed by Bhoomanna, son of late Sayanna in favour of the plaintiff wherein the survey number is rectified as survey no.403/120/9 (403/10P) in respect of the land which the plaintiff is claiming. The defendants are disputing the relationship of Bhoomanna with the original owner Sayanna and also claiming that the Sayanna who had executed the 1969 document is different from the original owner Sayanna. Exhibit P3 is the copy of the development agreement-cum-GPA dated 15.04.2005, the cancellation of which was sought in the plaint. Exhibits P4 to P9 are the copies of the six documents, the cancellation of which was sought in the suit stating that they relate to

schedule B, C, D, E, F and G properties respectively. Exhibit P10 is the deed of cancellation dated 04.08.2006 whereby the plaintiff had cancelled the power of attorney dated 01.03.2003 executed in favour of M. Venugopal. Exhibit P11 is the legal notice dated 16.11.2013 addressed to the Commissioner of GHMC, Hyderabad by the GPA holder of the plaintiff. Exhibits P13 and P14 are the relevant acknowledgments. Exhibit P15 is the legal notice dated 01.01.2014 addressed to the Commissioner, GHMC, Hyderabad. Exhibit P16 is the relevant acknowledgment. Exhibit P17 is the representation dated 13.03.2014 submitted by the plaintiff to the Commissioner, GHMC. Exhibit P18 is the certified copy of the FIR dated 16.01.2014 of Jubilee Hills Police Station. Exhibit P19 is the copy of the complaint dated 28.08.2013. Exhibit P20 is the copy of the complaint dated 29.08.2013. Though the defendants had referred to several documents, in their defence, no documents are exhibited by them before the trial Court. The trial Court without discussing the contents of any of the documents and by merely stating that there is no schedule of property and boundaries in exhibit P1 and that no explanation was offered for obtaining exhibit P2 rectification deed after a lapse of 27 years and that Bhoomanna is a necessary party had dismissed the application for temporary injunction filed by the plaintiff by further observing that upon hearing the rival contentions, unless and until a full fledged trial is conducted, the rights of the parties cannot be decided at this stage. Therefore, the very approach of the Court below is totally erroneous. When the defendants had not exhibited any documents and when the plaintiff had exhibited the documents in support of the case pleaded it is the bounden duty of the Court below to refer to the contents of the documents exhibited and record its findings as to whether a *prima facie* case is made out or not. Without doing that exercise, which is contemplated under law, by further holding that the defendants are in possession and, therefore, the plaintiff has no *prima facie* case and balance of convenience in his favour, the injunction application was dismissed though the injunction sought was to restrain the defendants and their men etcetera from alienating the property and/or creating charge over the subject matter of the property. The admitted fact is that the plaintiff by filing a suit had raised triable issues, which according to the trial Court are to be decided after full fledged trial. The defendants are also contending that the property being claimed by the plaintiff is different though it is the specific case of the plaintiff that under the guise of their claim in respect of Ac.9.39 guntas, the defendants are claiming the plaintiff 'A' schedule property in an extent of Ac.6.00 guntas, which the plaintiff is claiming as purchased from one

Sayanna under exhibit P1, which is the of the year 1969. There is also dispute about the identity of Sayanna, who had executed the original of exhibit P1 document dated 18.04.1969 in favour of the plaintiff and the other Sayanna, S/o. Ramanna, who according to the defendants is the original owner. The property is a huge extent of property in Banjara Hills. According to the defendants' contentions, the property of Ac.9.39 guntas was made into portions and was alienated in favour of subsequent purchasers who are the defendants 10 to 12, 14, 16, 18, 19, 22 and 26. The said transactions were entered into in terms of the development agreement-cum-GPA and a compromise and understanding. Therefore, further alienations, if any, are made by the said purchasers or the other defendants during the pendency of the suit, complex situations would arise leading to multiplicity of proceedings is the apprehension of the plaintiff. Even though there is reference to certain land ceiling declarations said to have been filed by Sayanna by showing his family members; and, also his major son showing his family members, the copies of the said documents are not filed and exhibited. It is trite to note that the defendants had filed CMA.MP.No.1473 of 2015 to permit them to file additional evidence in the form of certified copies of the documents and exhibit them in exhibit 'R' series. Having regard to the reasons and the facts and also the incorrect approach of the trial Court in passing the impugned order while dismissing the plaintiff's application for temporary injunction, this Court is of the considered view that the impugned order is unsustainable under facts and in law and is liable to be set aside. Nevertheless, in view of the further fact that the defendants have filed their documents along with a petition to receive additional evidence before this Court and as the trial Court had not examined the merits of the matter in proper perspective, this Court is satisfied that it is a fit case to allow the appeal and remit the matter to the trial Court for fresh disposal on merits and in accordance with the procedure established by law after giving opportunities to the plaintiff to mark further documents, if any, on his side and to the defendants to mark their documents. The points are answered accordingly.

8. For the reasons assigned, the Civil Miscellaneous Appeal is allowed and the order and the decretal order of the trial Court in I.A.No.2539 of 2010 in OS.No.249 of 2010 are set aside and the said application is remitted to the trial Court for fresh disposal on merits and in accordance with the procedure established by law, however, after giving opportunity to both the sides to exhibit their documents/further

documents. During the pendency of the suit, an interim order of injunction was granted in favour of the plaintiff by the trial Court on 03.05.2010 and that order was in force for more than four years i.e., till the impugned order was passed. Hence, it is necessary to continue the interim order till the disposal of interlocutory application afresh by the trial Court as such a course sub-serves the ends of justice. Therefore, considering the peculiar facts and circumstances of the case, there shall be in operation the interim order of injunction as prayed for in the aforesaid application in favour of the plaintiff until the said interlocutory application stands decided afresh on merits by the trial Court as per the directions in this judgment. Since the suit is of the year 2010, the trial Court, instead of disposing the interlocutory application as directed in these orders, may dispose of the suit itself on merits and in accordance with the procedure established by law, if the parties so desire and extend necessary co-operation. In such an event, the interim order shall be in force till the disposal of the suit. If the Court below takes up the interlocutory application for a decision afresh, the said application shall be decided within one month; or in the alternative if the suit is take up for disposal on merits as directed, the suit shall be so decided within three months from the date of receipt of a copy of this judgment.

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

M. SEETHARAMA MURTI, J

9th November, 2015

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