

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No. 368 of 2009

JUDGMENT:

(per the Hon'ble Sri Justice K.C.Bhanu)

This Second Appeal is directed against the judgment and decree dated 15.12.2008 in Appeal Suit No.210 of 2006 on the file of the IV Additional District Judge, Ranga Reddy District.

2. The appellants herein are plaintiffs 1 and 2; the respondents 1 to 3 herein are defendants 1 to 3, and the fourth respondent herein is plaintiff no.3, in the trial Court. For better appreciation of facts, the parties are hereinafter referred to, as they are arrayed in the trial Court.

3. Original Suit No.527 of 1998 was filed by the plaintiff originally against the sole defendant no.1 to pass a decree declaring registered sale deed bearing document No.237/1996 dated 26.12.1996 as null and void and to direct the defendants and any person or persons on behalf of the defendant to hand over possession of the suit schedule property to the plaintiffs and to award damages @ Rs.40,000/- per month from the date of the suit and to the date of recovery of possession, for wrongful possession of the defendant.

4. The averments, in brief, of the plaint may be stated as follows:

Plaintiffs are the absolute owners of the plaint schedule property and are in possession and enjoyment of the same. The sale deed dated 26.12.1996 set up by the defendants was never executed by the third plaintiff Dr. Naresh Chand. Defendant forged signatures of the third plaintiff and therefore it is a sham, bogus, false, fake, fabricated and nominal document and it does not confer any valid title to the defendant. The plaintiffs claim that the document is fit to be adjudged as null and void. It is falsely mentioned in the sale deed that on 29.12.1968 and 26.02.1975, Board of Directors of the first plaintiff company passed a resolution to sell the land out of Ac.8.00 in survey no.101/1 forming part of old survey no.137 to 139 and authorized its Director to sell and complete all formalities. The real fact is that no meeting of the Board of Directors was held and no such resolution was passed to sell part of the land. The defendant and his father are strangers to the schedule property. There was no contract between the plaintiff and the defendant.

The allegation in the sale deed that both the parties settled sale consideration at Rs.4,000/- per acre, is false. The plaintiffs never demanded any amount and no negotiations took place between the defendant and the plaintiffs. It is false to say on the part of the defendant that the vendee shall pay a further sum of Rs.6,000/- per acre

to the vendor company for the said land of Ac.8.00 covered by survey no.101/1. At no point of time, the plaintiffs entered into contract with the defendant to sell agricultural land of Ac.4.00 out of Ac.8.00 in survey no.101/1. There was no agreement of sale dated 27.02.1975 as alleged in the sale deed, between the plaintiffs and the defendant. It is concocted that the rate of Rs.10,000/- per acre was further changed to Rs.40,000/- per acre. The alleged receipts are fabricated, bogus and nominal. Plaintiffs also filed Original Suit No.655 of 1997 on the file of the II Additional Senior Civil Judge, Ranga Reddy, to pass a decree declaring that they are absolute owners of Ac.9.20 guntas of land bearing survey no.100/1 and 101/1 part. The defendant filed a false suit viz. Original Suit No.643 of 1997 before the said Court for specific performance of the agreement of sale dated 27.02.1975 and 10.01.1997, and the suit is a bogus and false one. The payments allegedly shown by the defendant are false and showing Rs.40,000/- paid by the defendant's father at the time of the agreement of sale; Rs.1,00,000/- by way of cheque no.000796, dated 24.11.1996; Rs.60,000/- by way of cheque No.000797, dated 24.12.1996 –both cheques drawn on Central Bank of India, Gudimalkapur branch, Hyderabad, are false and bogus allegations. The defendant and his henchmen had entered into the schedule land and drove the plaintiffs, their staff and servants out. Therefore, the plaintiffs filed a

complaint to police concerned seeking protection. The plaintiffs prayed the Court to send the document for expert opinion regarding the forged signatures at the cost of the plaintiffs. The defendant is liable to pay heavy damages of Rs.40,000/- per month. Hence, the suit.

5. In the first instance, the original sole defendant filed written statement denying the material averments in the plaint and contended as follows:

It is denied that the sale deed in favour of the defendant as set up by this defendant, was never executed by the third plaintiff Dr. Naresh Chand. It is denied that the signature of said Naresh Chand was forged by this defendant on the sale deed. It is misconceived to say that the document is fit to be adjudged as null and void. It is absolutely false to say that the defendant resorted to forge signatures of plaintiffs 2 and 3. Plaintiff company, represented by its Director Mahesh Chand, the second plaintiff, originally entered into agreements of sale on 30.12.1968 and 27.02.1975. It was agreed that the land had to be sold @ Rs.4,000/- and Rs.6,000/- per acre i.e. Rs.10,000/- per acre, and the father of the defendant paid the entire sale consideration of Rs.1,10,000/- to the plaintiff on behalf of the defendant, and the defendant was put in possession of the said land. After the defendant attained majority, he requested the plaintiff in the month of November, 1996 to complete the

said transactions in terms of the said agreement of sale. Then the plaintiff demanded more money to settle the transaction once for all. Thereupon the defendant agreed to buy at Rs.40,000/- per acre over and above Rs.10,000/- per acre. On survey and actual demarcation, the area of land available was found to be Ac.9.20 guntas in survey no.100/1 and 101/1 as against Ac.11.00 which was agreed to be sold. Thereafter, the plaintiff agreed to execute separate sale deeds for Ac.4.00 and Ac.5.20 guntas. Under the first sale deed, entire sale consideration was paid. With regard to the other sale, a registered sale deed had to be executed in the month of March, 1997 with a view to avoid obtaining permission from the Income Tax Department. The defendant paid part consideration of Rs.4,75,000/- on 24.12.1996 under receipt passed and signed by the second plaintiff Mahesh Chand as Director of the company. Plaintiff executed sale deed in respect of Ac.4.00 of land in December, 1996 registered as document No.237/97. On 10.01.1997, the first plaintiff through second plaintiff Mahesh Chand, its Director, brought and handed over the original sale deed to the defendant. When the defendant enquired as to when the other sale deed would be registered, the second plaintiff promised to do so shortly and agreed to hand over the title deed to the defendant at the time of registration of the second sale deed. At that time, he took away original agreements of sale dated 30.12.1968 and 27.02.1975

under written acknowledgement dated 10.01.1997 stating the same are required to be returned in view of the difference in the extent and sale consideration. Thereafter, the plaintiff evaded to execute and register sale deed in respect of the remaining Ac.5.20 guntas of land. Therefore, the defendant was constrained to file Original Suit No.643 of 1997 for specific performance. The sale deed executed by the plaintiffs in favour of the defendant is valid document and conveys title to the defendant. The averments in the other paragraphs of the plaint were specifically denied except filing Original Suit No.655 of 1997. The averment that the defendant entered into the suit schedule premises in the month of March or February, 1997, is denied. In fact, possession of the suit schedule property and the land covered by Original Suit No.643 of 1997 was delivered on 27.02.1975 and since then the defendant has been in peaceful possession and enjoyment of the property. Hence, he prayed to dismiss the suit.

6. The second defendant was impleaded as per orders in I.A. No.680 of 2000, dated 22.07.2003 and the third defendant was impleaded as per order in I.A. No.1686 of 2003, dated 11.09.2003.

7. Second defendant filed written statement supporting the case of the original defendant and stated as follows.

The first defendant purchased the suit schedule

property from the plaintiffs and is in possession of the same. She entered into an agreement of sale with the first defendant for Ac.2.32 guntas in survey No.101/1 (old), corresponding to new survey nos. 137 to 139 on 10.01.1997 at Rs.1,50,000/- per acre. Before purchase, she and one P.Nagabushanam approached the second plaintiff and also verified the title and that the second plaintiff gave his consent to purchase the property, and that at the time of demarcation of Ac.2.32 guntas, sons of the second plaintiff and the first defendant were present and that she is in possession of the property purchased. Hence, she prayed to dismiss the suit.

8. Defendant no.3 has not filed any written statement.

9. Basing on the above pleadings, the trial court framed the following issues for trial.

1) Whether the sale deed dated 26.12.1996 is true, valid and executed by plaintiff and signed by plaintiffs 2 and 3 ?

2) Whether the agreement of sale alleged in the sale deed dated 26.12.1996 is true ?

3) Whether the sale deed dated 26.12.1996 is forged one and null and void ?

4) Whether the plaintiffs are entitled to recovery of possession ?

5) Whether the plaintiffs are entitled to damages ?

6) To what relief ?

The following additional issue was framed on 19.01.2004.

Whether D.2 purchased Ac.2.32 guntas in Sy. No.101/1 part in Old Sy. No.137 to 139 from D.1 under agreement of sale dated 10.01.1997 and D.2 is in actual possession ?

10. During trial, on behalf of the plaintiffs, P.W.1 was examined and Exs.A1 and A2 were got marked, and on behalf of defendants, D.W.1 was examined and Exs.B1 to B26 were got marked.

11. The trial Court, after considering the evidence on record, dismissed the suit vide its judgment and decree dated 21.03.2005. Challenging the same, Appeal Suit No.210 of 2006 on the file of the IV Additional District Judge, Ranga Reddy was filed by the appellants/plaintiffs 1 and 2. The first appellate court framed the following points for consideration.

(i) Whether the plaintiffs proved that the first defendant created sale deed dated 26.12.1996 by forging the signature of 3rd plaintiff ?

(ii) Whether the plaintiffs are entitled to the relief of declaration that the sale deed dated 26.12.1996 is null and void ?

(iii) Whether the plaintiffs are entitled for recovery of possession of suit schedule property ?

(iv) Whether there are any grounds to interfere with the findings of the trial court ?

12. After considering the evidence on record, the first appellate court came to the conclusion that the plaintiffs

failed to prove that the first defendant obtained the sale deed dated 26.12.1996 by forging the signature of third plaintiff and therefore the plaintiffs are not entitled for cancellation of the said sale deed and consequently the plaintiffs are not entitled for damages, and accordingly dismissed the appeal with costs. Challenging the same, the present Second Appeal is filed.

13. This Court admitted the Second Appeal on the following substantial questions of law.

(i) Whether the sale deed dated 26.12.1996 is true, genuine and valid ?

(ii) Whether plaintiff no.3 is authorized to execute the sale deed dated 26.12.1996 on behalf of the first plaintiff ?

(iii) Whether the execution of sale deed dated 26.12.1996 without there being an Board Resolution of the appellant company to sell the schedule property is valid, if so, whether such is not violative of provisions of the Companies Act, 1956 ?

(iv) When the counter claim of 3rd defendant is allowed by the trial Court in O.S. No.655 of 1997 in Ac.4.00 guntas, whether the appellate court was justified in disposing of the appeal without wairint for the result in A.S. No.503 of 2005 pending on the file of this Court wherein the title of the appellant herein and title of 3rd defendant are under scrutiny ?

(v) Whether the trial Court was justified in recognizing the rights of the defendant no.2 when she has not chosen to file the alleged agreement of sale under which she claims to

have purchased an extent of Ac.2.32 guntas ?

(vi) Whether the appellate court was justified in not deciding all the issues as were framed by the trial Court ?

14. Learned senior counsel Sri D.Prakash Reddy appearing for the appellant contended the first plaintiff company represented by Dr. Naresh Chand never executed the sale deed which was set up by the first defendant, and that the first defendant forged the signature of Dr. Naresh Chand and created the false and sham document; that the plaintiffs did not receive any sale consideration; that there was no agreement of sale as stated in the sale deed and all the contents in the sale deed dated 26.12.1996 are not admitted by the plaintiffs; that the first appellate court except on the point as to whether the sale deed is forged or not, has not considered the evidence placed by both the parties; that Ex.B12-complaint filed by the first defendant discloses that the second plaintiff forged the signature of the third plaintiff on the sale deed, and in view of the same, nothing more is required to be proved by the plaintiffs to the effect that original of Ex.B4 does not contain signatures of third plaintiff; that the case of the first defendant is that Mahesh Chand forged the signatures of Dr. Naresh Chand on the original of Ex.B4 and in such a case also, in that view of the case, non-examination of Dr. Naresh Chand is not fatal to the case of the plaintiffs since the first defendant

himself admitted in criminal case that original of Ex.B4 does not contain signatures of the third plaintiff; that the first appellate court erred in placing burden on the plaintiffs by ignoring the material evidence; that in the absence of expert being examined as witness, no credence or value can be given to the opinion of the expert and the first appellate court erred in placing reliance on the expert opinion,; that the first appellate court failed to take into consideration the fact that the expert opinion is not supported by reasons; that the judgment in the criminal proceedings ought not to have been relied upon by both the trial court as well as the appellate court, and therefore, he prays to allow the Second Appeal and set aside the impugned judgments of both the Courts below.

15. On the other hand, learned counsel for the first respondent/first defendant Sri B.Narasimha Sarma vehemently contended that it is the case of the defendant that Dr. Naresh Chand, Director of the first plaintiff company, representing the first plaintiff company, executed the sale deed (Ex.B4) and Dr. Naresh Chand is the best and proper person to speak about the forgery, if any, allegedly committed by the first defendant, but he was not examined on behalf of the plaintiffs; that the plaintiffs were denying bluntly every document relied upon by the first defendant as forged without there being any iota of evidence; that having come to the Court seeking

declaration that sale deed dated 26.12.1996 is not true, genuine and valid document and it is forged one, initial burden is on the plaintiffs to establish the same; that the plaintiffs miserably failed to establish that the said sale deed is forged and fabricated one; that the first plaintiff company is incorporated under the provisions of the Companies Act, 1956 and the said company will be having all the relevant documents and that statement of assets and liabilities of the company have to be forwarded to the Registrar of Companies every year; that had any relevant documents of the company been produced by the company, the truth would have come out, and that they have purposefully withheld in filing those documents and therefore an adverse inference has to be drawn in terms of Section 114 (g) of the Indian Evidence Act, 1872 for non-production of the documents; that the plaintiff cannot succeed in the suit on the weaknesses of the defendant's case, and that both the courts below rightly appreciated the evidence on record and came to right conclusions and there are no grounds to interfere with the same, and hence, he prays to dismiss the Second Appeal.

16. Second defendant is sailing with the first defendant and she claims to have purchased an extent of Ac.2.32 guntas of land from the first defendant under an agreement of sale-cum-General Power of Attorney dated

10.01.1997 and before purchase, she, along with one P.Nagabhusanam, verified the title deeds and at the time of demarcation, sons of the second plaintiff and the first defendant were present and that she is in possession and enjoyment of A.2.32 guntas of land. Neither the second defendant nor the third defendant has come to the witness box to speak about their respective cases. Similarly, no documents were marked on their behalf. There is no need to consider the stand taken by the second or third defendant in the suit as pleading is not an evidence.

17. Section 100 (1) of the Code of Civil Procedure, 1908 (for short, 'CPC') reads save as otherwise expressly provided in the body of this Code or any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. The expression 'substantial question of law' has not been defined in the Code. But, it must mean that it should directly and substantially affect the rights of the parties. In other words, it can be said that the question must be debatable, arguable and not free from doubt. If the High Court is satisfied that a substantial question of law is involved in a case, it should formulate such substantial question of law. The following questions can be said to be substantial questions of law covered by Section 100

(1) CPC, which are illustrative not exhaustive, viz. recording finding without evidence; inference from or legal effect of proved or admitted facts; disregard to, or non-consideration of, relevant or admissible evidence; taking into consideration irrelevant or inadmissible evidence; misconstruction of evidence or documents; gross miscarriage of justice; rejection of evidence on flimsy grounds; perverse finding and inconsistent and contradictory findings. At the same time, a finding of fact recorded by the first appellate court on the evidence and material on record, can be said to be no substantial question of law involved.

18. Learned senior counsel for the appellants placed reliance on a decision in *State Bank of India & others v.*

S.N.Goyal^[1], wherein it is held thus: (paras 13 & 14)

“What is a substantial question of law ?

13. Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of

law. Where there is a clear and settled enunciation on a question of law, by this Court or by the high Court concerned, it cannot be said that the case involves a substantial question of law. It is said that a substantial question of law arises when a question of law, which is not finally settled by this court (or by the concerned High Court so far as the State is concerned), arises for consideration in the case. But this statement has to be understood in the correct perspective. Where there is a clear enunciation of law and the lower court has followed or rightly applied such clear enunciation of law, obviously the case will not be considered as giving rise to a substantial question of law, even if the question of law may be one of general importance. On the other hand, if there is a clear enunciation of law by this court (or by the concerned High Court), but the lower court had ignored or misinterpreted or misapplied the same, and correct application of the law as declared or enunciated by this Court (or the concerned High Court) would have led to a different decision, the appeal would involve a substantial question of law as between the parties. Even where there is an enunciation of law by this court (or the concerned High Court) and the same has been followed by the lower court, if the appellant is able to persuade the High court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two view points, it can be said that a substantial question of law arises for consideration. There cannot, therefore, be a strait-jacket definition as to when a substantial question of law arises in a case. Be that as it may.

Procedure relating to second appeals

14. We may next refer to the procedure relating to second appeals as evident from section 100 read with order 42 Rules 1 and 2, of Code of Civil procedure :

(a) The appellant should set out in the memorandum of appeal, the substantial questions of law involved in the appeal. (b) The High Court should entertain the

second appeal only if it is satisfied that the case involves a substantial question of law. (c) While admitting or entertaining the second appeal, the High Court should formulate the substantial questions of law involved in the case. (d) The second appeal shall be heard on the question/s of law so formulated and the respondent can submit at the hearing that the second appeal does not in fact involve any such questions of law. The Appellant cannot urge any other ground other than the substantial question of law without the leave of the court. (e) The High Court is at liberty to reformulate the substantial questions of law or frame other substantial question of law, for reasons to be recorded and hear the parties or such reformulated or additional substantial questions of law.”

He also relied on a decision in *Hero Vinoth (minor)*

v. Seshammal^[2], wherein it is held thus: (para 24)

“The principles relating to Section 100 CPC, relevant for this case, may be summarised thus:- (i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law. (ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a

contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law. (iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

Some of the principles relating to Section 100 CPC have been summarized by the Hon’ble Supreme Court of India in the above decisions. Those principles have to be kept in mind in dealing with the Second Appeal.

19. Learned senior counsel for the appellants also relied on a decision in *Maria Colaco & another v. Alba Flora Herminda D’Souza & others*,^[3] wherein it is held thus: (para 7).

“Learned Single Judge after considering the matter found that these averments did not constitute the basis on the part of the plaintiff that he was not in possession of the suit property. On the contrary, learned Single Judge found in reply to paragraph 13 of

the plaint, the defendants in their written statement admitted that the work was stopped by the defendant No. 1 for some time but they restarted the work again. This, according to learned Single Judge was a proof of the fact that the Defendant Nos. 1 and 2 and Defendant No. 3 were not sure about the possession and right of the defendant Nos. 1 and 2 over the property. In fact, what it transpires from all these facts that the trial court reached the same conclusion as the learned single Judge in second appeal in High Court. It is true normally in the second appeal the High Court should not interfere on the questions of fact. But if on the scrutiny of the evidence it is found that the finding recorded by first appellate court is totally perverse then certainly the High Court can interfere in the matter as it constitutes the question of law.”

It is clear from the above decision that the High Court should not normally interfere with the questions of fact, but when there is a perverse finding given by the first appellate court, High Court can hear the appeal on merits.

20. In another decision in *Narendra Gopal Vidyarthi v. Rajat Vidyarthi*^[4], relied upon by the learned counsel for the appellants, it is held thus (para 13)

“A finding of fact may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidences have not been taken into consideration or inadmissible evidences have been taken into consideration.”

Bearing the above principles in mind, it has to be seen whether the findings of fact recorded by the trial

Court as well as the first appellate Court are correct and whether the plaintiffs established its case beyond preponderance of probability?

21. To test the finding of the both the courts below and to know whether any perverse findings are given, it is necessary to refer to the evidence adduced by both the parties viz. the plaintiffs and the first defendant.

22. With regard to the substantial questions of law 1 to 3 raised, two documents viz. Exs.A1 and A2, are filed on behalf of the plaintiffs. Ex.A1 is certified copy of sale deed dated 31.07.1959 executed by the Hyderabad National Industries Limited represented by its Directors Pingle Venkat Rama Reddy; Osman Ali Khan and Premji Lalji, in favour of the first plaintiff, whereunder Ac.45.00 of land in survey No.137 (Ac.7.06 guntas) and survey nos.138 and 139 (Ac.38.06 guntas) situated in Sherilingampally village, Hyderabad West Taluk and Hyderabad District was sold for a consideration of Rs.70,000/-. So, by virtue of this document, total extent of Ac.45.00 guntas in old survey nos. 137, 138 and 139 has been purchased by the first plaintiff. Ex.A2-certified copy of sale deed dated 19.12.1960 executed by Osman Ali Khan in favour of the first plaintiff in respect of Ac.60.00 guntas of non-agricultural land in survey nos. 94, 95, 96, 97, 102 and 103/1&2 at Lingampally village, Hyderabad. The case of the plaintiff that part of the land in survey nos. 137, 138

and 139 (old) is corresponding to the plaint schedule land, is not specifically denied or disputed even by the contesting first defendant. There is no dispute on this aspect. Once the first defendant admitted that the plaint schedule land is corresponding or correlating to old survey nos. 137, 138 and 139, proof is not required. It is well settled that admitted facts need not be proved. From the admission of the first defendant and as per the evidence, it is clear that the first plaintiff is having a right, title and interest over the plaint schedule land.

23. Only one witness is examined on behalf of the plaintiffs. He is none other than the second plaintiff. Entire chief-affidavit of P.W.1 is nothing but reproduction of the averments in the plaint. The sum and substance of his evidence in chief affidavit is that the sale deed bearing document no.237/1996, dated 26.12.1996 (original of Ex.B4) is not executed by Dr. Naresh Chand and the signatures of Dr. Naresh Chand were forged by the first defendant and that the agreement of sale, acknowledgement and receipts were also forged by the defendants and that contents of the document dated 26.12.1996 are false. In cross-examination, he admitted that the lands covered by Exs.A1 and A2 are in survey nos.137 to 139 and survey no.100 and 101/1 were not in existence by then. He did not say in which year the survey nos. 100 and 101/1 were assigned. He admitted

that the land in survey nos. 137 to 139 (old) covered by Ex.A1 corresponds to new survey nos. 94, 95, 96, 99/1, 99/2, 100/1&2 and 101/2. He did not say the extent of land in survey nos. 137 to 139 comprising Ac.45.00 guntas was not sold to Aluminium Company. He admitted that he has not filed any document to show that survey nos. 137 to 139 which were assigned correlate to survey nos. 94, 95, 97, 99, 100/1 & 2 and 101/1 to 3. He only stated that pahanis show about his ownership over the land in the survey number. It is not the case of the first defendant that part of the land in old survey nos. 137 to 139 does not correlate to plaint schedule property.

24. Case of the first defendant is that the first plaintiff executed sale deed for an extent of Ac.4.00 guntas of land on 26.12.1996 registered as document No.237/1996 on 08.01.1997 in the office of the District Registrar, Ranga Reddy District; that on 10.01.1997, the first plaintiff company through the second plaintiff-Mahesh Chand, Director of the company, brought and handed over Ex.B4 original sale deed to the first defendant and when the defendant enquired as to when the second sale deed to the remaining extent of land viz. Ac.5.20 guntas, would be executed and registered, the second plaintiff-Mahesh Chand promised to do so very shortly and agreed to hand over title deed to the first defendant at the time of registration of the second sale deed.

25. There cannot be any dispute that for cancellation of a sale deed on the ground of forgery and fabrication, a decree from a competent civil court is necessary. Unless there is fraud in the matter of execution of a sale deed, the question of cancellation of the sale deed would not arise. Suit for cancellation of sale deed on the ground that it is forged and fabricated, and recovery of possession, can succeed on the strength of evidence adduced by the plaintiff. Therefore, the initial burden is on the plaintiff to establish that the sale deed is forged and fabricated.

26. Case of the plaintiffs is that the original of Ex.B4 sale deed was brought into existence by forging signatures of Naresh Chand by the first defendant. It is not in dispute that Naresh Chand is none other than the brother of P.W.1. To constitute forgery, a false document must be made with an intention to cause damage or loss to the plaintiff. Where a document alleged to have been forged purports to be the signatures of Naresh Chand on the original of Ex.B4, then Naresh Chand is the best person to speak about the alleged committing of forgery by the first defendant. The opinion of the hand-writing expert is also necessary to support the evidence of Naresh Chand. Except the oral testimony of P.W.1, there is no other evidence to show that signatures of Naresh Chand on the original of Ex.B4 were forged by the first defendant. The original of Ex.B4 is a registered document before the concerned Sub Registrar. Except a bald

statement made by P.W.1 that original of Ex.B4 was forged and fabricated, nothing has been stated as to under what circumstances the document came into existence. The material witness, who is none other than his brother Naresh Chand, was not examined. Section 114 (g) of the Indian Evidence Act, 1872 provides that the court may presume that the evidence, which could be and is not, produced, would, if produced, be unfavourable to the party who withholds it. This illustration refers to the presumption raised from a willful withholding of evidence and suppression of useful evidence naturally leads to the inference that the evidence, if produced, would go against the party who withholds it.

27. In a suit for declaration of cancellation of sale deed on the ground of forgery, the plaintiff must establish his case affirmatively and must prove that the signatures on the document were forged. Under Section 101 of the Indian Evidence Act, 1872, whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove existence of any fact, it is said that the burden of proof lies on that person. The above provision makes it clear that the burden of proof of a fact rests on the party, who substantially asserts the affirmative of the issue and not upon the party who denies it, for, a negative is usually incapable of proof. Where the issue was whether the

document in question was genuine, sham or bogus, the party who alleges it to be bogus, has to prove nothing till the party relying upon the document establishes its genuineness. On this aspect, it is pertinent to refer to a decision in *Subhra Mukherjee v.*

Bharat Cooking Coal Limited^[5], wherein it is held thus: (para 13).

“There can be no dispute that a person who attacks a transaction as sham, bogus and fictitious must prove the same. But a plain reading of question No.1 discloses that it is in two parts: the first part says, ‘whether the transaction, in question, is bona fide and genuine one, which has to be proved by the appellants. It is only when this has been done that the respondent has to dislodge it by proving that it is a sham and fictitious transaction. When circumstances of the case and the intrinsic evidence on record clearly point out that the transaction is not bona fide and genuine, it is unnecessary for the Court to find out whether the respondent has led any evidence to show that the transaction is sham, bogus or fictitious.”

In a decision in *Anil Rishi v. Gurbaksh Singh*^[6], the Hon’ble Supreme Court held thus: (para 19)

“There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both

of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102, the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.”

Therefore, from the above decisions and also under Section 101 of the Indian Evidence Act, 1872, onus is always on a person who asserts a proposition of fact, which is not self-evident.

28. Section 102 of the Indian Evidence Act, 1872 provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. In other words, when the burden of proof lies on the party, that party must fail if he does not discharge the burden by producing evidence. Though burden to prove that the signatures of Naresh Chand on original of Ex.B4 were forged, lies on the plaintiffs, they have not examined Naresh Chand or has not taken any pains to send the disputed sale deed to a hand-writing expert for comparison of the disputed signatures with the admitted signatures. P.W.1 has not given any explanation as to why he did not examine his own brother Naresh Chand nor made any efforts to send the disputed document to an expert. The original of Ex.B4 also contains the thumb impression of Naresh Chand (third plaintiff) and stamp impressions of the first

plaintiff company. There is no denial of the thumb impression of Naresh Chand on the original of Ex.B4. It is not the case of the plaintiffs that the stamp impressions of the first plaintiff company were not fabricated or created by the first defendant. There is no pleading and evidence on behalf of the plaintiffs. Unlike the opinion of hand-writing expert, the science of thumb impression is an exact science. Plaintiffs ought to have taken steps to send the disputed thumb impressions on Ex.B4 along with the admitted thumb impressions of the third plaintiff to an expert. Then, the real truth must have come out.

29. Specific contention of the learned senior counsel appearing for the appellants is that the first defendant lodged a complaint stating that second plaintiff-Mahesh Chand forged signatures of Naresh Chand on the sale deed and it amounts to admission made by the first defendant in the criminal prosecution and the said admission is a best piece of evidence, and therefore there is no need to examine Naresh Chand. Exs.B13 to B17 do not show that the first defendant admitted that Mahesh Chand forged the signatures of Naresh Chand on the original of Ex.B4. Admission, if any, made by the first defendant in criminal case, should have been confronted to D.W.1 when he was in witness box. No such pains have been taken by the plaintiffs. Exs.B7 and B8-certified copies of Forensic Science Laboratory reports cannot be

taken into consideration as the experts who issued those reports have not been examined. Further, they do not contain any reasons. The learned senior counsel placed reliance on the following decisions.

(a) In *Rattan Dev v. Pasam Devi*,^[7] it is held thus:

(para 4)

“In our opinion, the first appellate court was bound to apply its mind to all the evidence available on record and then test the legality of the findings arrived at by the trial Court. While doing so, the first appellate court could have taken the factum of the non-examination of the plaintiff also into consideration. The manner in which the appeal has been disposed of by the first appellate court cannot be said to be satisfactory. Non-application of mind by the appellate court to other material, though available, and consequent failure of the appellate court to discharge its judicial obligation, did raise a question of law having a substantial impact on the rights of the parties, and therefore, the second appeal deserved to be heard on merits.”

(b) In *Jagdish Singh v. Natthu Singh*,^[8] it is held

thus: (para 10)

“In our opinion, the High Court was right in its view. The notices must be presumed to have been served as contemplated by Section 27 of the General Clauses Act. As to the jurisdiction of the High Court to re-appreciate evidence in a second appeal, it is to be observed that where the findings by the court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings. We find no substance in the first contention.”

There is no dispute about the law laid down in the above mentioned decisions. From the above decisions, it is clear that the if first appellate Court has not applied its mind to the evidence, the second appeal deserves to be heard on merits.

30. With regard to burden of proof, learned senior counsel contended that when both the parties let in evidence, burden of proof loses its significance. He relied on the following decisions.

(a) In *Narayan Govind Gavate & others v. State of Maharashtra & others*,^[9] it is held thus: (paras 18 & 23)

"Turning now to the provisions of our own Evidence Act, we find the general or stable burden of proving a case stated in S. 101 as follows :

"101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The principle is stated in Sec. 102 from the point of view of what has been sometimes called the burden of leading or introducing evidence which is placed on the party initiating a proceeding. It says :

"102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

In practice, this lesser burden is discharged by merely showing that there is evidence in the case which supports the case set up by the party which comes to Court first, irrespective of the side which has led that evidence. An outright dismissal in limine

of a suit or proceeding for want of evidence is thus often avoided. But, the burden of establishing or general burden of proof is heavier. Sometimes, evidence coming from the side of the respondents, in the form of either their admissions or conduct or failure to controvert, may strengthen or tend to support a petitioner's or plaintiff's case so much that the heavier burden of proving or establishing a case, as distinguished from the mere duty of introducing or showing the existence of some evidence or record stated in Section 102, is itself discharged. Sufficiency of evidence to discharge the onus probandi is not, apart from instances of blatant perversity in assessing evidence, examined by this Court as a rule in appeals by special leave granted under Articles 136 of the Constitution. It has been held that the question whether an onus probandi has been discharged is one of the fact . It is generally so.

...

THE result of a trial or proceeding is determined by a weighing of the totality of facts and circumstances and presumptions operating in favour of one party as against those which may tilt the balance in favour of another. Such weighment always takes place at the end of a trial or proceeding which cannot, for purposes of this final weighment, be split up into disjointed and disconnected parts simply because the requirements of procedural regularity and logic, embodied in procedural law, prescribe a sequence, a stage, and a mode of proof for each party tendering its evidence. What is weighed at the end is one totality against another and not selected bits or scraps of evidence against each other. ”

(b) In *Narayan Bhagwantrao Gosavi Balajiwale v.*

Gopal Vinayak Gosavi^[10], it is held thus: (para 11)

“THE appellant contended that this was a special suit under S. 5(3) of the Charitable and Religious Trusts Act, 1920, and that the burden lay upon the

respondents to prove that there was a religious and charitable trust of a public character in favour of the deity. He contended that the two courts below had placed the burden of proof upon him to show by positive evidence that the deity was a family deity, and that the properties were his private properties. According to him, the defendants ought to have proved their case, and if they failed to prove affirmatively that case, then the suit ought to have been decreed in his favour. THE expression "burden of proof" really means two different things. It means sometimes that a party is required to prove an allegation before judgment can be given in its favour; it also means that on a contested issue one of the two contending parties has to introduce evidence. Whichever way one looks, the question is really academic in the present case, because both parties have introduced their evidence on the question of the nature of the deity and the properties and have sought to establish their own part of the case. THE two Courts below have not decided the case on the abstract question of burden of proof; nor could the suit be decided in such a way. THE burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic."

(c) In *Arumugham (dead) by LRs & others v.*

Sundarambal & another,^[11] it is held thus: (para 16)

"ON the question of burden of proof we are of the view that even assuming burden of proof is relevant in the context of the amended provision of Sec. 100, C. P. C., the same would not be relevant when both sides had adduced evidence. It would be relevant only if a person on whom the burden of proof lay

failed to adduce any evidence altogether. In the present case both sides had adduced oral as well as documentary evidence and therefore even assuming that it was erroneous for the lower appellate Court to say that the burden of proof lay on the first defendant to prove that the plaintiff was not the son of the Haritheertham, that would not, in our opinion, have any material bearing on the conclusion reached by the lower appellate Court. The appellate Court had considered the oral and documentary evidence adduced on both sides and preferred to accept the evidence adduced on the side of the plaintiff and it also rejected the evidence adduced on the side of the defendants. In fact, reading the judgment of the High Court, we are left with the impression that the High Court thought that it was dealing with the case if it was a first appeal. Therefore, for the reasons given above, the judgment of the High Court cannot be sustained and the same is accordingly set aside. The judgment of the lower appellate Court is restored.”

(d) In *Lakhan Sao (deceased) through Legal Heirs*

v. Dharamu Chaudhary,^[12] it is held thus: (paras 5 & 6)

“THE findings are essentially findings of fact. If, however, the appellants succeed in showing that in recording the findings of fact, the court had proceeded on a wrong conception of law as to onus, the correctness of the findings has necessarily to be examined. The only point that has been stressed before us is that lower appellate court has wrongly proceeded on the basis that onus shifted to the defendant to prove the passing of consideration and that the evidence did not establish that fact. It was maintained that the onus did not shift as the burden was entirely on the plaintiff to prove the fact that document was inoperative and no consideration did pass thereunder. We have pointed out earlier that the High Court has set aside the earlier decree pointing out the error committed by the lower appellate court.

This observation made by the High Court has been kept in mind by the Additional District Judge in disposing of the appeal thereafter. The learned Judge has considered the question of burden on the plaintiff to establish that there had been no consideration. In examining the question whether the plaintiff had succeeded in proving the negative fact it was open to the court to consider the entire evidence on record when both the parties have tendered evidence and no part of the evidence could be left out. On a consideration of the whole evidence, the court has concluded that there had passed consideration. This finding cannot, therefore, be said to be vitiated.

It is always open to the defendant not to lead any evidence where the onus is upon the plaintiff but after having gone into evidence, he cannot ask the court not to look at and act on it. The question of burden of proof at the end of case when both parties have tendered evidence is not of any great importance and the court has to come to a decision on a consideration of all materials.”

(e) In *National Insurance Company Limited v.*

Rattani & others^[13], it is held thus: (para 14)

“The question as to whether burden of proof has been discharged by a party to the lis or not would depend upon the facts and circumstances of the case. If the facts are admitted or, if otherwise, sufficient materials have been brought on record so as to enable a court to arrive at a definite conclusion, it is idle to contend that the party on whom the burden of proof lay would still be liable to produce direct evidence to establish that the deceased and the injured passengers were gratuitous passengers. As indicated hereinbefore, the First Information Report as such may or may not be taken into consideration for the purpose of arriving at a finding in regard to the question raised by the appellant herein, but, when the First Information Report itself has been made a part of the claim

petition, there cannot be any doubt whatsoever that the same can be looked into for the aforementioned purpose.”

From the above decisions, it is clear that on whom burden of proof lies, depends upon the facts and circumstances of each case. In the facts and circumstances of the present case, the burden of proof is on the plaintiffs to establish that the document is forged or created by the first defendant. There is no other reason for a person like the first defendant, to fabricate or create a document like the original of Ex.B4.

31. There cannot be any dispute that the judgment of the criminal court, which is marked as Ex.B5, is not binding on the civil court. It is apt to refer to a decision rendered by the Hon'ble Supreme Court of India consisting of 3 Judges in *Syed Askari Hadi Ali Augustine Imam & another v. State (Delhi Administration) & another*^[14], wherein it is held thus: (para 24)

“If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own merit, keeping in view the evidences brought before it and not in terms of the evidence brought in the criminal proceeding. The question came up for consideration in K. G. Premshanker vs. Inspector of Police and anr. [(2002) 8 SCC 87], wherein this Court inter alia held:

"30. What emerges from the aforesaid discussion is -
- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a

criminal case, Section 300 Crpc makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.”

From the above decision, it is clear that judgment of the civil court is not binding on the criminal court and vice versa. The evidence in the suit adduced by both the parties has to be weighed, evaluated and appreciated in accordance with law.

32. When the private complaint filed by the first respondent before a criminal Court, it was referred to police for investigation, police registered a case and filed charge sheet which was taken on file as C.C. No.908 of 2002 on the file of the Special Judicial First Class Magistrate (Mobile), Ranga Reddy at L.B. Nagar, Hyderabad. In its judgment dated 04.07.2003, the criminal court, basing on the evidence on record, held that the prosecution failed to prove its allegation that A.1 (second plaintiff-Mahesh Chand) forged signature of Naresh Chand (third plaintiff) on Ex.P4 (disputed sale deed in the present suit). Even otherwise, the judgment of the criminal court is not binding on the civil court, and

the complaint filed by the defendant and his evidence in C.C. No.908 of 2002 have not been confronted with the defendant when he was examined.

33. It is not in dispute that the first plaintiff company is registered under the Companies Act, 1956. It is also not in dispute that Mahesh Chand (second plaintiff) and Naresh Chand (third plaintiff) are the Directors of the first plaintiff company. It is deemed that the company must be maintaining statutory books and statements like day book, ledger, Bank accounts, income tax returns, annual statements, board resolutions, etc. These documents would certainly show about the transactions, if any, made for and on behalf of the first plaintiff company. The chief-examination of P.W.1 does not reveal about any explanation for not filing those documents. If those documents were filed, the transaction between the plaintiff company and the first defendant would be revealed. If no transaction is reflecting in the documents of the first plaintiff between the plaintiff company and the first defendant, then it can be presumed that the sale deed Ex.B4 must have been fabricated. For the best reasons known to the second plaintiff, he has taken the defence denying the execution of the original of Ex.B4 by the third plaintiff to deny the substantial rights accrued to the first defendant.

34. It is the case of the first defendant that under Ex.B4,

total consideration was paid in the following manner viz. Rs.40,000/- paid by father of the first defendant at the time of agreement of sale; Rs.1,00,000/- by way of cheque No.000796, dated 24.11.1996; and Rs.60,000/- by way of cheque No.000797, dated 24.12.1996-both the cheques drawn on Central Bank of India, Gudimalkapur branch, Hyderabad. It is the specific case of P.W.1-Mahesh Chand is that he did not receive any amount from the first defendant at any point of time. Except denying the same, he has not produced bank account statement relating to the first plaintiff company to show that the aforesaid amounts were not credited to the account of the first plaintiff company. No plea has been taken by the plaintiffs with regard to the two cheques credited to the account of the first plaintiff company. Section 165 of the Companies Act, 1956 *inter alia* provides that statutory report shall set out abstract of the receipts by the company and the payments made thereout. This statement of account has not been filed. On the other hand, P.W.1 admitted in his cross-examination that he came to know about deposit of Rs.1,60,000/- in the current account of the company and adds that he addressed a letter to the Bank to send back the amount to the person who deposited the amount. But, copy of that letter has not been produced. He admitted that he had a receipt to show that he received the statement of account from the bank. He admitted that he had not filed any

bank account. Had this statement been filed, then it can be known whether the amount covered by the two cheques was credited to the account of the plaintiff company or not.

35. Further more, the board resolutions are in the custody of the first plaintiff company. P.W.1 admitted that Income Tax officials seized certain records on 09.08.2000 and the company was maintaining resolution book. He also admitted that the case pertaining to seizure of books on 09.08.2000 was completed and that the income tax assessment for the year 1996-97 of the first plaintiff was completed. Had the said records been produced by the plaintiff company, the fact about the payments made by the defendant to the first plaintiff company by way of the aforesaid two cheques to a tune of Rs.1.60 lakhs, would have come out. The plaintiffs purposefully withheld those important documents from consideration by competent civil court.

36. The evidence of D.W.1 would go to show that the plaintiff entered into oral agreement of sale on 30.12.1968 for a consideration of Rs.4,000/- per acre, and the extent agreed to be sold was Ac.11.00 guntas and total sale consideration of Rs.44,000/- was paid; that on 27.02.1975, the sale consideration was enhanced to Rs.10,000/- per acre; the company represented by Mahesh Chand entered into an agreement of sale dated

27.02.1975 and the difference amount of Rs.66,000/- was paid by his father and that he was put in possession of the land on 27.02.1975. The evidence of D.W.1 with regard to payment of entire sale consideration is very clear, which reads thus:

“Accordingly, I paid the entire additional sale consideration and after receiving Rs.1.60 Lakhs by way of two cheques and Rs.2.05 Lakhs by way of cash, thus the plaintiff company has received the entire sale consideration of Rs.4.75 lakhs for the total extent land of 9 acres 20 guntas and the plaintiff No.2 as a director passed the receipt acknowledging the receipt of entire amount of Rs.4.75 lakhs on 24.12.1996 and subsequently the 2nd plaintiff on 10.01.1997 brought the original sale deed Document No.237/97 for 4 acres and handed over the same to me and when I enquired about the execution of sale deed in respect of balance land, the 2nd plaintiff promised to do so shortly and also agreed to hand over company’s title deed to me at the time of registration of second sale deed. At the time of handing over the original sale deed for 4 acres, the 2nd plaintiff taken away the original Agreement of Sale and the same was acknowledged by him in the acknowledgement dated 10.01.1997.”.

Except giving some suggestions, the above evidence remained unchallenged and uncontroverted. Once a fact has been stated by a witness and the same has not been specifically denied or disputed in cross-

examination, it can be presumed that such a fact is admitted. From the evidence of D.W.1 coupled with recitals in Ex.B4, it is clear that entire sale consideration covered under Ex.B4 has been paid and the same was acknowledged by the third plaintiff. Therefore, Ex.B4 is supported by consideration and it is executed by the third plaintiff for and on behalf of the first plaintiff company.

37. As seen from recitals in Ex.B4, it is clear that the first plaintiff is absolute owner having got the title by virtue of a registered document No.1717/59, dated 31.07.1959 (Ex.A1) over agricultural land covered by old survey nos. 137, 138 and 139 admeasuring Ac.45.00 situated within the limits of Serilingampally village, Hyderabad. It is further clarified that in the Board of Directors meeting held on 29.12.1968 and 26.02.1975, the first plaintiff company resolved to sell a part of the land i.e. Ac.8.00 in new survey no.101/1 (forming part of old survey nos. 137 to 139) situated in Serilingampally village. Ex.B4- sale deed was executed by its Director Naresh Chand and it contains his thumb impressions. There cannot be any dispute that unlike hand-writing, the evidence of expert on thumb impression is an exact science. Therefore, plaintiffs ought to have taken steps to send the thumb impressions of Naresh Chand on the original of Ex.B4 to expert for comparison with his admitted thumb impressions. The circumstances from the evidence on

record, it is established beyond preponderance of probability that original of Ex.B4 was executed by Naresh Chand as one of the Directors of the first plaintiff company. If Naresh Chand was not authorized to execute the sale deed, nothing prevented the plaintiffs to produce the resolutions of the company which would clearly reveal that Naresh Chand was not authorized to execute the sale deed. In view of the above discussion, P.W.1 is totally unreliable witness and he can be put in the category of wholly unreliable. For the sake of avoiding sale deed Ex.B4, the plea of forgery has been taken. There are absolutely no surrounding circumstances to infer that Ex.B4 was brought into existence by forging the signatures of Naresh Chand. In such a case, there is no difficulty for the Court to reject his evidence in toto.

38. Another important document is Ex.B25, which is Form No.34-A dated 26.12.1996, which is an application for a certificate under Section 230A(1) of the Income Tax Act, 1961. A perusal of Ex.B25 would go to show that Ac.5.00 of land in survey no.101/1 of Serilingampalli village was sold to the first defendant and the same was registered with the Sub Registrar, Ranga reddy District, Hyderabad. The relevant paragraph thereof reads thus: "The above-mentioned applicant has been assessed/is assessable by me upto 96-97". The said application was received and assessed by the Income Tax Officer, Ward

No.4, Hyderabad. Thereafter, the first defendant applied for construction of compound wall and watchman room. Under Ex.B20 proceedings, the first defendant was given sanction proceedings. Under Ex.B21, the first defendant paid building permission fee on 03.05.1997. He paid property tax on 12.06.1998 under Ex.B22. Ex.B23 is the property tax demand notice and Ex.B24 is house tax receipt. Exs.B18, B26 to B36 are news paper cutting of different dates. They cannot be read as evidence unless the person who reported that statement is examined as a witness. No such witness is examined and therefore those documents cannot be relied upon.

39. The contentions raised by the learned senior counsel appearing for the appellant are relating to questions of fact. The questions of fact have been properly appreciated by both the courts below. None of the concurrent findings given by both the courts below is shown to be perverse or contrary to law. The findings are based upon proper appreciation of the evidence on record. It is not shown that both the courts below had taken inadmissible evidence into consideration or overlooked admissible evidence.

40. With regard to substantial question of law no.4, there is no pleading with regard to counter claim of the third defendant. Therefore, this is not a substantial issue in the absence of any pleadings or counter claim.

41. With regard to substantial question of law no.5, rights of the second defendant is not an issue because she claims that she entered into an agreement of sale with the first defendant to an extent of Ac.2.32 guntas. There is no pleading and evidence on this aspect.

42. With regard to substantial question of law no.6, the main and only important point to be decided by the appellate court is whether the sale deed dated 26.12.1996 is true, genuine and valid. That issue has been substantially dealt with by the appellate court.

43. The defendants produced over-whelming evidence to show that Ex.B4 was executed by Naresh Chand on behalf of the first plaintiff company by receiving total consideration. The signatures on original of Ex.B4 were not forged and it cannot be said to be a sham, nominal or fabricated document. The plaintiffs miserably failed to establish that the original of Ex.B4 was forged by the first defendant. Therefore, the findings of the trial court as well as the first appellate court cannot be said to be perverse.

44. In the result, the Second Appeal is dismissed. No costs. Miscellaneous Petitions pending, if any, in the Second Appeal shall stand closed.

(K.C.BHANU, J.)

(M.SEETHARAMA MURTI, J.)

01.06.2015

DRK

THE HON'BLE SRI JUSTICE K.C.BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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SECOND APPEAL No. 368 of 2009
(per the Hon'ble Sri Justice K.C.Bhanu)

01.06.2015

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- [1] (2008) 8 Supreme Court Cases 92
- [2] (2006) 5 Supreme Court Cases 545
- [3] (2008) 5 Supreme Court Cases 268
- [4] (2009) 3 Supreme Court Cases 287
- [5] AIR 2000 SC 1203
- [6] AIR 2006 Supreme Court 1971 = 2006 AIR SCW 2394
- [7] (2002) 7 Supreme court Cases 441
- [8] (1992) 1 Supreme Court Cases 647
- [9] (1977) 1 Supreme Court Cases 133
- [10] AIR 1960 SC 100
- [11] (1999) 4 Supreme Court Cases 350
- [12] (1991) 3 Supreme Court Cases 331
- [13] (2009) 2 Supreme Court Cases 75
- [14] (2009) 5 Supreme Court Cases 528