THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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SECOND APPEAL No.450 OF 2005

JUDGMENT:

The unsuccessful plaintiffs 2 to 7, who are the legal representatives of the deceased sole plaintiff, brought this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the code') assailing the decree and judgment dated 18.01.2005 of the learned III Additional District Judge (Judge, Fast Track Court), Rangareddy District passed in A.S. No.94 of 1999. The learned Additional District Judge, while dismissing the aforementioned appeal, had confirmed the decree and judgment dated 14.09.1999 of the learned Principal Junior Civil Judge, Hyderabad, West and South, Rangareddy District passed in O.S. No.540 of 1995 filed against the defendants 1 to 3/respondents 1 to 3 herein for perpetual injunction restraining them and their men from interfering with the plaintiff's peaceful possession and enjoyment of Ac.0.21 guntas of agricultural land in S.No.43 at Chandanagar Village, Serilingampally Mandal of Rangareddy District, more fully described in the schedule annexed to the plaint.

2. I have heard the submissions of the learned senior counsel for the appellants/plaintiffs 2 to 7 ('the plaintiffs' for brevity). None appeared for the 3rd respondent/3rd defendant. I have heard the submissions of the learned senior counsel for the other contenting respondents. I have perused the material record.

3. At the time of admission of this second appeal, this Court had taken note of the following substantial questions of law mentioned in grounds 1, 3 and 4 of the memorandum of grounds of appeal. The said substantial questions to be determined in this appeal and which are involved are as follows:

1. **Whether the observation of the court below that on the plea of partition raised by the defendants and allotment of 7 guntas of land in favour of Mr.Venkataswamy, the burden is not on the defendants, simply because the suit is not a suit for partition is a clear case of perverse finding?**

2. **Whether the non consideration of the documentary evidence consisting of Exs.A.1 to A.20 are not referring to the entries in the column No.16 and not giving any finding on such entries with regard to the possession and incidental title and the further non consideration of the documents exhibited vitiated the findings recorded against the plaintiff?**

3. **Whether in the suit for perpetual injunction, the approach of the courts in not giving a finding on the possession of the plaintiff in respect of the suit schedule property, is erroneous? And, whether the finding with regard to the title of the defendants without any relief of declaration sought either by the plaintiffs or the defendants is perverse?**

(Reproduced verbatim)

4. To adjudicate the *lis* and answer the substantial questions of law, it is necessary to refer to the pleadings of the parties and the facts that led to the filing of this appeal by the plaintiffs 2 to 7.

4.1 The case of the sole plaintiff (since died) as stated in the plaint, in brief, is this:

The plaintiff is the absolute owner and possessor of the aforementioned plaint schedule agricultural land. He had acquired the same from his father. The father of the plaintiff had acquired the same from his father. After the death of the father of the plaintiff, the plaintiff had succeeded to the plaint schedule property. And, from then onwards the plaintiff is in peaceful possession and enjoyment of the plaint schedule property without any interruption from anybody. The defendants have no concern, right and interest whatsoever in the plaint schedule property. However, they came to the plaint schedule property on 25.12.1995 and tried to remove caddies (stone bars) and had tried to interfere with the possession of the plaintiff over the plaint schedule property. The plaintiff with the assistance of his friends and the members of his family, who were available there, had resisted the acts of the defendants and prevented them from removing the stone bars planted on the circulating boundary of suit schedule property. The defendants have proclaimed that they will come again with more force and occupy the suit schedule property and that the plaintiff cannot do anything. They had further challenged by saying that the plaintiff can take whatever steps he may wish to take. The defendants are highly influential persons. They are having association with the local politicians and police people. When the plaintiff had given a complaint, the police did not take any action for the said reason. Hence, he could not get any police help and protection. In the circumstances, having no alternative except approaching the court, the plaintiff had filed the suit for perpetual injunction against the defendants in order to protect and safeguard his interest over the plaint schedule property.

4.2 The averments in the written statement of the defendants 1 and 2, in brief, are as follows:

The material allegations in the plaint are false. The plaintiff is the absolute owner of the plaint schedule property having acquired the same from his forefathers is false. One Madduri Sayanna is the ancestor of the plaintiff's family. He had one son by name Madduri Papanna. He was blessed with a son by name Veeraiah, through his first wife Yellamma. The said Papanna was also blessed with two sons, namely Seethaiah and Sayanna, through his second wife Latchamma. Veeraiah was blessed with one son, namely Venkata Swamy. Seethaiah was blessed with two sons by names Anjaiah and Papaiah. Sayanna was blessed with three daughters. The original ancestor Sayanna was holding certain ancestral joint properties including the plaint schedule land. During the lifetime of Seethaiah, the father of the plaintiff, the suit schedule lands along with other lands were partitioned orally; and the suit land was divided amongst Venkata Swamy, Anjaiah and Papaiah (the plaintiff herein), who are the great grand sons of Sayanna, into three equal shares. The three daughters of the other great grand son of Saynna by the same name i.e., Sayanna were not allotted any share in the said partition as their marriages were performed. As such Ac.0.21 guntas covered by the plaint schedule property is partitioned into three shares amongst Venkata Swamy, Anjaiah and Papaiah. Thus, the plaintiff herein was allotted to his share Ac.0.07 guntas after demarcating it separately. The plaintiff and his two other brothers were thus enjoying their respective shares as absolute owners. In view of the said reasons, Madduri Venkata Swamy had sold away his share of Ac.0.07 guntas, which is in his lawful possession to one D. Sampurna under a registered sale deed bearing document No.729/64. In the said sale deed it is categorically recited that the remaining extent of Ac.0.14 guntas of land is in the possession of Madduri Anjaiah and Papaiah, the plaintiff herein. The said Sampurna had also purchased Ac.0.28 guntas in Sy.No.44 of Chandanagar under a registered sale deed bearing document No.730/64 from its owners and possessors. As such, she became the owner of Ac.0.35 guntas in all covered by S.Nos.43 and 44. She had converted the said lands into residential plots under Gram Panchayat layout. Subsequently, the said Sampurna had sold out the plot no.A3 to an extent of 523 square meters equivalent to 622 square yards out of the said lands to one Peddireddy Venkateswar Rao under a registered sale deed dated 22.02.1967 bearing document No.1756/67. After the death of said Venkateswar Rao, his wife Venkata Narsamma @ Chittemma and his two sons by name Shivaji Rao and Vara Prasad inherited the said plot being his successors. The said plot no.A3, which was renumbered as 3/A, admeasuring 622 square yards

was divided into two parts by the said legal heirs of Peddireddy Venkateswar Rao. One of the said two parts i.e., the part admeasuring 311 square yards was sold by them to B. Sri Krishna, who is the 2nd defendant herein under registered sale deed dated 06.12.1988 bearing document No.8911/88. The other part of the said plot admeasuring 311 square yards was also sold by them to C. Rama Krishna who is the 1st defendant herein vide document No.8912 dated 06.12.1988. Since the dates of the said respective purchases, the defendants 1 and 2 are enjoying their respective plots as absolute owners and possessors. The plaintiff had suppressed all the real facts. The plaintiff is enjoying his share of Ac.0.07 guntas and he is not concerned with the Ac.0.07 guntas, which was already allotted to his brother Madduri Venkata Swamy, who had sold away his said share. The defendants land in plot No.3/A admeasuring 622 square yards is a part and parcel of Sy.Nos.43 and 44 as the lay out plan is covered by these two survey numbers. Under the guise of wrong entries made by the Village Officers in the revenue records that are being maintained by them and taking advantage of the innocence of the defendants, the plaintiff is trying to dispossess them from the possession of their respective plots. The plaintiff had filed the suit with a *mala fide* intention. The plaintiff is having support of antisocial elements and is trying to knock away the plots of the defendants, as the values of the properties in the vicinity are increasing day by day. The transactions of the defendants are covered by registered sale deeds and the defendants are in lawful possession over their respective plots. All the contrary allegations in the plaint are false. The suit is filed to harass the defendants.

4.3 Taking into consideration, the above pleadings, the trial court had framed the following issues at trial:

1. Whether the plaintiff is in possession of the suit property?
2. Whether the plaintiff is entitled for perpetual injunction as prayed for?
3. To what relief?

4.4 At trial, the plaintiff and his supporting witnesses were examined as PWs 1 and 2 and exhibits A1 to A20 were marked on the side of the plaintiff. The defendants 1 and 2 and their supporting witnesses were examined as DWs 1 to 4 and exhibits B1 to B4 were marked on their side. On merits, the trial court had dismissed the suit of the sole plaintiff. During the pendency of the first appeal, the sole plaintiff/appellant

had died and his legal heirs, i.e., the plaintiffs 2 to 7/the appellants herein had prosecuted the said first appeal. As already noted, the first appeal was dismissed confirming the decree and the judgment of the trial court. Therefore, the plaintiffs 2 to 7 had preferred this second appeal.

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

The courts below without recording any findings as regards the legal position and without assigning any reasons had dismissed the suit. The courts below had illegally decided the title of the defendants in the suit for injunction. The courts below have not referred to various documents which are filed by the plaintiff and marked as exhibits A1 to A20. There was no discussion on the said exhibits. No reasons were assigned for not considering the documents which are marked in 'A' series. The courts below without answering the specific issues framed had dismissed the suit of the plaintiff on extraneous observations and by recording arbitrary conclusions, which are contrary to the documentary evidence and settled principles of law. The courts below ignored the admissions of the defendants. The defendants in their pleadings had admitted that the plaintiff is in possession of Ac.0.14 guntas of land in Sy.No.43 of Chandanagar Village. The courts below did not see and appreciate that no documents are filed to substantiate the defence and that exhibits B1 to B4 are only certified copies and the same do not disclose as to how Mr. Venkata Swamy became the owner of Ac.0.07 guntas of land. The sale deeds also do not disclose as to which part of Sy.Nos.43 and 44 was purchased by the defendants under their sale deeds. The defendants had failed to produce any document to show that Ac.0.35 guntas of land covered by Sy.Nos.43 and 44 was divided into plots. The courts below ought to have seen that exhibits A1 to A20 clearly established that the deceased plaintiff is the pattadar and possessor of the suit schedule property and that the said plaintiff had filed land revenue receipts and the copies of pahanies, which show that the name of Anjaiah, who is the brother of plaintiff, was recorded along with the name of the plaintiff and the said brother had died in the year 1998 issueless and that the property with all rights had devolved upon the deceased plaintiff and that the said sole plaintiff had also died in the year 2002 and, therefore, the property had devolved upon the plaintiffs 2 to 7, who are his legal heirs. The findings of the courts below are perverse, for not adverting to the material evidence and for not considering the documentary evidence. The courts below had wrongly

cast the onus of proof on the plaintiff; when the case of the defendants is that there was a partition between the three brothers and that in that partition of Ac.0.07 guntas of land fell to the share of Venkata Swamy, the court below ought to have seen that the burden is on the defendants and that the defendants had failed to establish the said partition between the said brothers. However, the courts below had erroneously held that the land under exhibits B1 to B4 belongs to DW3. The courts below ought to have seen that the evidence of DW3 did not advance the case of the defendants any further and his evidence does not correlate to the alleged partition. The courts below ought to have seen that the entire documentary evidence clearly proved the case of the plaintiff as required in a suit for perpetual injunction and that in the documents of the defendants viz., exhibits B1 to B4 it was not mentioned as to how Venkata Swamy got the property, though it was pleaded by the defendants that there was a partition amongst Venkata Swamy, Papaiah and Anjaiah. The courts below ought to have taken into consideration the aspect that if at all Venkata Swamy is the legal heir of Papanna, his name would have appeared in the revenue records along with the name of Seethaiah, whose name is admittedly recorded as Pattadar of the land bearing Sy.No.43 admeasuring Ac.0.21 guntas and that the plaintiff along with his brother Anjaiah had succeeded to the property from his father-Seethaiah. The defendants had failed to produce any document to show that there was any person by name Veeraiah as legal heir of Papanna and similarly there is no proof that Venkata Swamy is the son of Veeraiah. Exhibits B1 to B4 refer only to a plot of land in Sy.Nos.43 and 44; but, the said documents do not disclose on which side of Sy.no.43, the two plots admeasuring 311 square yards each of the defendants 1 and 2 are forming part. There is absolutely no evidence brought on record to show that the land in Sy.Nos.43 and 44 was divided into plots as contended by the defendants. The findings of the courts below that the plaintiff is not in possession of Ac.0.07 guntas out of Ac.0.21 guntas in Sy.No.43 is perverse and deserves to be set aside. The courts below have committed grave error in dismissing the petition for receiving additional evidence which establishes that the names of the plaintiffs 2 to 7 were recorded as pattadars and possessors after the death of the deceased sole plaintiff and that neither the names of the defendants nor their vendors were ever recorded at any point of time. In the absence of filing of any copy of the lay out, it is impermissible for the court below to arrive at a finding that the property covered by exhibits B1 to B4 corresponds to the suit schedule property. For all the reasons, the decrees and the judgments of the courts below passed in O.S. No.540 of 1995 and

in A.S. No.94 of 1999 are liable to be set aside and the second appeal is to be allowed.

6. On the other hand the learned senior counsel for the defendants 1 and 2, while supporting the decrees and the judgments of the courts below had contended as follows:

The courts below have recorded the concurrent findings of facts on all the issues which are framed and which are relevant for consideration in the *lis*. It is incorrect to contend that the courts below did not consider the facts accurately and the evidence in proper perspective. Both the courts have adverted to the oral and documentary evidence to the extent necessary and in detail and had recorded findings supported by reasons. The well reasoned findings of the courts below do not call for any interference. The very contentions and the substantial questions of law raised by the plaintiffs 2 to 7 would show that the said contentions and the questions are based on facts and are not even pure questions of law. The deceased plaintiff had suppressed that his grand father Papanna had two wives and that his grand father through his first wife Yellama had given birth to a son by name Veeraiah and that Venkata Swamy is the son of the said Veeraiah. Admittedly the plaintiff-Papaiah is the grand son of Papanna through his son Seethaiah and the said Seethaiah was having a brother by name Sayanna. After the death of Papanna, how Seethaiah alone got the property of Papanna in the presence of his brother Sayanna is not explained. Seethaiah is having two sons, namely, Anjaiah and Papaiah i.e., the plaintiff. After the death of the deceased sole plaintiff, how the plaintiffs 2 to 7 had succeeded to the property of their father and also of his brother by inheritance is not explained by them. It is for them to explain as to how their father had alone inherited the property in the presence of the other legal heirs of his father, Seethaiah. There is absolutely no pleading and evidence to show that the plaintiff is the only legal heir of his forefather and that on the death of his forefather, the said forefather had left behind the father of the plaintiff and no other heir. The court below had framed the point as to whether the deceased plaintiff was in exclusive possession and enjoyment of the entire extent of the plaint schedule land and had proceeded to discuss the evidence brought on record, both oral and documentary evidence before recording its conclusion. The earliest document that was relied upon by the defendants is the registered sale deed dated 18.12.1964; and a copy of the said document of the year 1964 was exhibited as B2. Under the said document, Venkata Swamy had sold his

share of Ac.0.07 guntas out of Ac.0.21 guntas covered by Sy.No.43 to one Sampurna. In the said earliest document it was downright recited that the remaining area of Ac.0.14 guntas in Sy.No.43 is in possession of Madduri Anjaiah and Papaiah. There was no need to make false recital in the document of the year 1964. The said document itself, which is a 30 years old document, would disclose that the case pleaded by the defendants is true and cannot be doubted. The trial court had held that the plaintiff had suppressed that there are some more legal heirs of late Papanna, who are also entitled to a share in the suit schedule property and, therefore, the plaintiff who has come to the court with unclean hands is not entitled to the equitable relief of perpetual injunction. No substantial questions of law are involved in the second appeal. The second appeal is devoid of merit and is liable to be dismissed.

7. I have carefully gone through the pleadings, the oral and the documentary evidence. I have noted the submissions of the learned senior counsel for both the sides.

8. In a suit for perpetual injunction the initial onus of proof as well as the legal burden, which never shifts, are on the plaintiff.

9. The crux of the case of the plaintiff is that his father had got the plaint schedule property in a total extent of Ac.0.21 guntas from his father and that the plaintiff had succeeded to the plaint schedule property after the death of his father. Therefore, the plaintiff's specific case is that the property originally belonged to his forefathers and he had succeeded to the property by inheritance and that since the death of his father, he was and is continuing in possession and enjoyment of the plaint schedule property as absolute owner and that the defendants have no concern whatsoever and also right, title and interest in the plaint schedule property and that when they had made unlawful attempts to interfere with his lawful possession over the plaint schedule property, he is constrained to file the suit. The sole plaintiff (since died) was examined as PW1. He had reiterated his pleaded case in his affidavit filed in lieu of his examination in chief. He had further examined his supporting witness as PW2. In his evidence, the following documents are marked. Exhibit A1-the CC of ROR; exhibits A2 to A6-the land revenue receipts; exhibit A7-the copy of the encumbrance certificate; exhibit A8-the land revenue pass book; exhibit A9-the land revenue receipt; exhibits A10 to A16-the certified copies of the pahanies for the years 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1996-97; exhibit

A17-the survey report dated 12.01.1998; exhibit A18- the CC of khasra pahani of the suit land; and exhibits A19 and A20-the copies of the pahanies. Placing reliance on the entries in the revenue records, wherein the name of the plaintiff and his brother Anjaiah was said to have been recorded, it is sought to be contended that the plaintiff had established lawful possession and that the Courts below did not properly appreciate the oral and documentary evidence, particularly the documentary evidence in exhibit 'A' series. It was also submitted that in a suit for perpetual injunction, the courts below ought to have granted a perpetual injunction when the plaintiff's lawful possession is established without erroneously placing reliance on exhibits B1 to B4. It was canvassed that the Courts below had grossly erred in deciding the title of the defendants in a suit for perpetual injunction.

10. Conversely, the case of the defendants is this: "Madduru Sayanna is the original ancestor of the family of the plaintiff. He had a son by name Madduru Papanna. The said Papanna had two wives, namely, Yellamma and Lachamma. Veeraiah is his son through his wife Yellamma. Venkat Swamy is also the son of said Veeraiah. Seethaiah and Sayanna are the sons of said Papanna through his 2nd wife Lachamma. The deceased sole plaintiff and his brother Anjaiah are the sons of Seethaiah. Sayanna had no male issues. Therefore, the property which devolved by succession, was partitioned amongst the great grandsons of the ancestor-Sayanna, namely, Venkat Swamy, Anjaiah and Papaiah, the plaintiff herein. In that partition, the total extent of Ac.0.21 guntas, which is the entire plaint schedule property, was also partitioned. And, in that partition, each of the three brothers, namely, Venkat Swamy, Anjaiah and Papaiah had got Ac.0.07 guntas each. Since the marriages of the daughters of Sayanna [son of Papanna] were already performed, they were not given any share. Thus, the sole plaintiff-Papaiah (since died) and his brother Anjaiah together had got Ac.0.14 guntas. The said Papaiah, the plaintiff, is therefore, not entitled to claim the entire extent of Ac.0.21 guntas which is the suit land. Venkat Swamy during his life time had sold away his share of Ac.0.07 guntas under a registered sale deed dated 18.12.1964 to one Sampurna. The certified copy of the said sale deed is exhibit B2. The said Sampurna had also purchased Ac.0.29 guntas in another survey no.44 under another sale deed dated 18.12.1964. The copy of the said sale deed is exhibit B3. Therefore, Sampurna had purchased Ac.0.07 guntas in survey no.43 from Venkat Swamy and also another above said

extent under the original of exhibit B3 and had laid out the total extent of Ac.0.35 guntas into plots. Out of the said plots, the plot no.A3 was purchased under a sale deed dated 12.02.1967 by one Peddireddy Venkateshwar Rao from the said Sampurna. The extent of that plot is 622 square yards. After the death of the said Venkateshwar Rao, the said plot was divided into two parts of equal extent of 311 square yards each. That plot was renumbered as 3/A. The legal heirs of the said Venkateshwar Rao had sold the said two parts of 311 square yards each under two sale deeds dated 06.12.1988 to the defendants 1 and 2. The registered sale deed of the 2nd defendant is exhibit B1. The copy of the sale deed of the 1st defendant is exhibit B4. Thus, the defendants having purchased their respective properties under regular registered sale deeds have become absolute owners. Their plots are comprised in Sy. Nos.43 and 44 as Sampurna had laid out the lands in both the said survey numbers 43 and 44. The plaintiff is not in possession of the entire extent of Ac.0.21 guntas and he has no right, title and interest in Ac.0.07 guntas which had originally fallen to the share of Venkat Swamy in the family partition."

11. Before dealing with the issues raised in the substantial questions of law it is necessary to refer to the decisions that are relied upon by the learned senior counsel for the appellants/plaintiffs and the defendants/respondents.

11.1 In **Jagdish Singh v. Natthu Singh,** the Supreme Court had held that where the findings of fact recorded by the Courts below are 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 in the second appeal. The decision in **Krishnan v. Backiam** was relied upon in support of the proposition that the findings of fact of the First Appellate Court can be challenged in second appeal on the ground that the said findings are based on no evidence or are perverse. The decision in **Maria Colaco v. Alba Flora Herminda D'souza** was relied on in support of the proposition that 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. The decision In **Raghunath Beheri v. Balaram Behera** was relied upon in support of the contentions that when a finding of fact falls in the category of perversity, the same can be interfered with by the High Court in the second appeal; and, that the High Court while hearing the appeal under Section 100 of the Code has got

jurisdiction to reappraise the evidence and reverse the perverse conclusions, which are arrived at by the courts below; and, that the lower appellate court is under a duty to examine the entire relevant evidence having direct bearing on the disputed issue; and, that if the error which arises is of a magnitude, it gives birth to a substantial question of law, and that in such a case, the High Court will be fully justified in setting aside the finding. In the decision in **Dnyaneshwar Ranganath Bhandare & Another v. Sadhu Dadu Shettigar (Shetty) & Another,** the Hon'ble Supreme Court had held as follows:

> **"Normally this Court will not, in exercise of jurisdiction under Article 136 of the Constitution of India, interfere with finding of facts recorded by the first appellate court, which were not disturbed by the High Court in second appeal. But what should happen if the first appellate court reverses the findings of fact recorded by the trial Court by placing the burden of proof wrongly on the plaintiffs and then holding that the plaintiffs did not discharge such burden; or if its decision is based on evidence which is irrelevant or inadmissible; or if its decision discards material and relevant evidence, or is based on surmises and conjectures; or if it bases its decision on wrong inferences drawn about the legal effect of the documents exhibited; and if grave injustice occurs in such a case on account of High Court missing the real substantial question of law arising in the appeal and erroneously proceeds on the basis that the matter does not involve any question of law and summarily dismisses the second appeal filed by the appellant? In this context we may remember that the legal effect of proved facts and documents is a question of law. (See Dhanna Mal v. Rai Bahadur Lala Moti Sagar [AIR 1927 P.C. 102] and Gujarat Ginning & Manufacturing Co. Ltd. V. Motilal Hirabhai Spinning & Manufacturing Co. Ltd. [AIR 1936 PC 77]. In such cases, if the circumstances so warranted, this Court may interfere in an appeal by special leave under Article 136. Let us therefore consider whether circumstances in this case warrant such interference."**

There is no dispute with the above propositions of law in regard to the scope and ambit of jurisdiction of this Court in a second appeal. Since one of the documents relied upon by the plaintiff is a khasra pahani, reliance was placed on the decision in **Mylaram Lachaiah v. Nafeezunnisa Begum** and it was urged that the details contained in the Khasra Pahani give all the particulars stipulated in Section 4 of the Andhra Pradesh (Telangana Area) Record of Rights in Land Regulation of 1358 Fasli and that the same will be in conformity with sub-section (1) of Section 4 and hence, it can be held that Khasra Pahani is the record of rights notified under Section 4(2) of the regulation. In **Mohd. Kareemuddin Khan v. Syed Azgar Ali,** a Division Bench of this Court had held that any sales shall be null and void and unenforceable in law when such sales are made without the permission under Section 47 of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 as long as the said section of law was in force. Section 47 of the Act, which has since been repealed on 18.03.1969, barred any permanent alienation or any other transfer

of land unless it was made with the previous sanction of the Tahsildar. In K.Ashok **Reddy v. K.Ramchandra Reddy,** this Court had held that unless the partition, as a fact, is proved, any amount of mutations or entries cannot be taken into account, to infer partition. I n **Smt. Sarladevi widow of Kundanlal Bandawar, Dharmpeth, Nagpur v. Shailesh S/o Gourishankar Namdeo, Tilaknagar, Nagpur**, it was held that a person in possession can claim injunction against everyone including the original owner and that the original owner also cannot evict the person in possession by force and that the only remedy open to the original owner is to follow the procedure established by law.

11.2 In the decision in **Anathula Sudhakar v. P. Buchi Reddy** the Supreme Court had summarized the position in regard to suits for prohibitory injunction relating to immovable property as under:

> **(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.**
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> **(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.**
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> **(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.**
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> **(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.**

11.3 On the aspect of appreciation of pleadings and the adequacy of the pleadings

of the plaintiff in the suit for perpetual injunction, the following decisions were relied upon. In **Bharat Singh v. State of Haryana,** this Court in the factual context of the matter had held as follows:

> "…… In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

In fact the above finding was recorded while disposing of a batch of civil appeals and writ petitions. In the decision in **K.Laxmanan v. Thekkayil Padmini,** it was held as follows:

> **"Pleadings as we understand under the Code of Civil Procedure (for short, "the Code") and as is defined under the provisions of Rule 1, Order 6 of the Code consist only of a plaint and a written statement. The respondent-plaintiff could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court would have become the part of the pleadings, but mere non-filing of a replication does not and could not mean that there has been admission of the facts pleaded in the written statement."**

In the decision in **Rohan Lal Choudhary v. Prem Prakash Gupta**, it was held as follows;

> **"It is not possible to accept this contention in the bald form as has been advanced by the learned counsel for the petitioner. A subsequent pleading by way of defence to a set-off or counter-claim can be filed by the plaintiff as a matter of right, but the provisions do contemplate the fling on other pleading as well but by the leave of the Court and invest the Court with the widest possible discretion. Under this rule either party may, with the leave of the Court file a supplementary written statement, but at the same time it cannot be disputed that the law does not compel the plaintiff to the any rejoinder to the allegations made in the written statement and the failure of the plaintiff to all such a rejoinder cannot be treated as an admission of the plea in the written statement. The plaintiff is entitled to join issues with the defendant with respect to all those allegations which are made in the written statement and may lead evidence in rebuttal of the allegations notwithstanding the fact that he does not file any rejoinder. Although the procedure is well established, but nonetheless reference may be made in support of the same to two Bench decisions of the Madras High Court in the cases of Gurusanthayya v. Setra Veerayya (AIR 1952 Mad 825) and Veerasekhara Varmarayar v. Amirthavalliammal (AIR 1975 Mad 51). In my opinion, it will, therefore, not be advisable to lay down as an abstract principle that under R.9 of O.VIII leave should be obtained; by the plaintiff to file subsequent pleading as a rejoinder to the written statement, additional written statement or the**

> **like, as this would result in lengthening the proceeding and is more likely to be abused. But at the same time in appropriate cases, if the Court feels satisfied that such a pleading is necessary, then leave can be granted. However, the court exercising the discretion under this rule cannot permit to go on record a rejoinder which is inconsistent with the original pleading and which contains any allegation of fact inconsistent with the earlier pleading provision, in my view, has been made more with the purpose of filing of written statement after the stage of O.VIII, R.1 is over, as was the situation in the case of Kali Pado v. Surendra Nath (AIR 1975 Pat 24), or filing of a additional written statement where a plaint is amended, or a minor defendant attains majority and wants to file his own written statement, or a new defendant is added after the filing of the written statement. I can imagine yet another situation of filing of a subsequent pleading under the provisions of this rule by either party if it wants to bring to the notice of the Court any subsequent even having taken place, which must be allowed to do as having a bearing on the controversy in the case."**

In **Veerasekhara Varmarayar v. Amirthvalliammal,** it was held that the law does not compel the plaintiff to file a rejoinder challenging the allegations made in the written statement. The failure to file a rejoinder cannot be treated as an admission of the plea in the written statement.

11.4 In **Sheel Chand v. Prakash Chand,** which was relied upon by the learned senior counsel for the respondents, it was held that the existence of a "substantial question of law" is the *sine qua non* for the exercise of jurisdiction by the High Court under the amended provisions of Section 100 CPC.

11.5 In **Madduru Papaiah (died) by L.Rs v. Ch.Ramakrishna and others,** it was held as follows:

> **"In a suit for injunction, the burden squarely rests upon the plaintiff to prove his possession over the suit schedule property. Apart from provision possession, he must also convince the Code, as to the existence of semblance of right in him, vis-à-vis the property. The reason is that even if a person is in possession of the property, without there being any right in him, and as a trespasser, he cannot be granted the relief of injunction against the true owner. The possession over the vacant land is mostly established through the extracts in revenue records."**

12. I have carefully gone through all the decisions cited. Suffice if it is observed that the substantial questions of law raised in this second appeal shall be determined keeping in view the settled propositions of law, which are relied upon and also the other propositions which may be applicable to the facts of the present *lis*.

13. Dealing first with the relationship between Venkat Swamy and the sole plaintiff-Papaiah (since died) and his brother Anjaiah, which according to the defendants

was suppressed by the plaintiff, it is to be noted that the plaintiff is claiming the entire extent of the plaint schedule property as his ancestral property and that he had succeeded to the property by inheritance and law of succession. Therefore, it is necessary for the plaintiff (since died) to establish that his father is the only legal heir of his grandfather. Now it is apt to refer to the evidence brought on record. It is important to note that the plaintiff as PW1 had deposed as follows:

> **"I am the Plaintiff herein. I am resident of Chandanagar. I have got 21 guntas of land in Survey No.43 in Chandanagar which is the suit schedule property. It is, my ancestral property. I am cultivating the land as owner. I am raising vegetables, Paddy etc., in the suit land. I am paying land revenue. My father also paid land revenue.**
>
> **About three years back on Christmas day the defendants came to the suit land and tried to remove the Kaddis. When I questioned they stated that they purchased the land. I resisted them, stating that it is my land. They went away stating that they would come again and occupy land. I gave police report. Police did not take any action stating that it is civil dispute. Then I came to this Court and filed this suit for Injunction. Ex A1 is the certified copy of ROR of 1992. Ex A-2 to A-6 are land revenue receipts, Ex A7 is the copy of Encumbrance Certificate, Ex A8 is land Revenue pass book, Ex A9 is L.R Receipt for 1996-97. I filed certified copy of pahanies relating to the suit property from 89-90 to 94-95. They are Ex A10 to A15. Ex A16 is the Pahani for 1996-97. Still I am in possession of property. Request to decree the suit as prayed for." (Reproduced verbatim)**

A reading of the above evidence, which is reproduced in entirety, would show that the plaintiff did not deny in his examination in chief, his relationship with Venkat Swamy and also the genealogy, which was pleaded by the defendants in their written statement. He had admitted in his cross-examination that his father's name is Seethaiah and that his grandfather's name is Papaiah, but had expressed ignorance as to whether his grandfather had two wives, by names-Yellamma and Lachamma. He had further admitted that his grandmother is Lachamma and that Lachamma had two sons by names Seethaiah and Sayanna. He had further pleaded ignorance as to whether Yellamma gave birth to Veeraiah through Papaiah, his grandfather. He had also expressed ignorance of the fact that Veeraiah has a son by name Venkat Swamy. However, he had admitted that he has a brother by name Anjaiah and that his father's brother Sayanna has two daughters and that they are married. He had denied the suggestion that the suit schedule property was orally partitioned amongst him, Sayanna and Venkat Swamy and that each of them has got Ac.0.07 guntas of

land out of the plaint schedule property. But, he had admitted that the surrounding lands of the suit land are covered by house plots. He had denied the suggestion that Venkat Swamy had sold his Ac.0.07 guntas of land to Sampurna and that Sampurna had laid out the said extent of Ac.0.07 guntas of land into plots and sold the plot no.A3 in survey no.43 under registered sale deed to Venkateswar Rao and that the said plot was re-numbered as 3/A and that the heirs of Venkateswar Rao having divided the said plot into two parts had sold one part each to the defendants 1 and 2. He had filed exhibit A17, the survey report and also exhibit A18, the copy of the Khasra Pahani and had asserted that he is in possession of the entire land. The village Assistant of Chandanagar was examined as **PW2**. He had stated that the plaint schedule property is the ancestral property of the plaintiff and that the sole plaintiff is in possession of the same and that the plaintiff's brother is sick and bed ridden and is not able to move out since ten years and that at present, the suit land is vacant and that the plaintiff is paying the land revenue and that except the plaintiff nobody else is in possession of the property. He had proved exhibits A2, A4, A5, A6, A19 and A20 said to have been issued by him. In his cross-examination, it was elicited that the plaintiff's grand father's name is also Papaiah and that he does not know late Papaiah had two wives by names Yellamma and Lachamma. He had further stated that he does not know how many sons late Papaiah had and whether Venkat Swamy is the son of Veeraiah. He had denied the suggestions given in line with the defence. However, he had admitted that survey number 43 is fallow. *Per contra*, the defendants had reiterated their defence in their respective depositions and had maintained their stand in the cross-examinations. Apart from this oral evidence, the evidence of DW3, Venkat Swamy, appears to be of significance in the facts and circumstances of the case and in view of the relationship between Venkat Swamy and the plaintiff Papaiah pleaded in the defence. He had stated that the (sole) plaintiff's father and his father are brothers and that they have divided the ancestral properties and that he had got Ac.0.07 guntas in Sy. no.43 of Chandanagar and that he had sold away the said property, about 35 years back, to one Sampoornamma (Sampurna) under a registered document and delivered possession of the same to her and that the plaintiff has nothing to do with it and that houses are constructed in that area. In his cross-examination, he had admitted that he has not filed any document to show that his father and plaintiff's father were brothers. He had stated that the partition is an oral partition and that partition took place between his father and the father of the plaintiff and had admitted that there

are no records to show that his father was the owner and pattadar of Ac.0.07 guntas of the land in sy.no.43 and that he does not remember the date and the year of the partition. When it was suggested to him that he and his father have nothing to do with the suit schedule property, he had denied the said suggestion. He had also stated that his grandfather and the grandfather of the plaintiff were not one and the same person.

14. I have thus carefully gone through the oral evidence. The evidence brought on record on a harmonious consideration sufficiently establishes the relationship between the sole plaintiff (since died) and Venkat Swamy-DW3 as pleaded in the defence and therefore, it follows that that the plaintiff had suppressed the said relationship between him and DW3.

15. As rightly contended by the learned senior counsel for the defendants, since the name of the grandfather of the plaintiff is Papanna and as he is also known as Papaiah, the contention that the name of Papaiah does not refer to the plaintiff, but it refers to the grandfather of the plaintiff and Venkat Swamy (DW3) appears to be probable in the facts and circumstances of the case.

16. The most important aspect in this case, which also weighed with the courts below, is in regard to the covenants in the earliest document of the year 1964. This document which is a registered sale deed dated 18.12.1964 was executed by Venkat Swamy in favour of Sampurna. This document is marked as exhibit B2. The same on a perusal would show that the vendor Venkat Swamy had stated in the said sale deed that he is the absolute owner in possession of Ac.0.07 guntas out of the total extent of 21 guntas of dry land bearing Survey no.43 situated at Chandanagar Taluq of West Hyderabad District and that the reaming 14 guntas of land is in the possession of Madduri Anjaiah and Madduri Papaiah of Chanda Nagar village. This vital recital made in a registered sale deed executed way back in the year 1964 clearly lays bare that Venkat Swamy (DW3) had got Ac.0.07 guntas out of Ac.0.21 guntas in Sy. no.43 of Chanda Nagar and that the remaining extent belonged to Madduri Papaiah, the sole plaintiff herein and his brother Anjaiah. As rightly contended by the defendants, there was no need for Venkat Swamy to make a false recital in the document of the year 1964 in anticipation of some litigation in the long future. Therefore, this recital in this document of the year 1964 clinches the issue in

favour of the defendants that Papaiah and his brother Anjaiah are entitled only to the land in an extent of Ac.0.14 guntas out of the suit land whereas Venkat Swamy was the original owner of Ac.0.07 guntas. This recital in the earliest document also probabilises the defence that Venkat Swamy was the absolute owner of the said Ac.0.07 guntas and that therefore he was entitled to sell the said extent of land to Sampurna under the said regular registered sale deed. Though it was contended on behalf of the plaintiffs/appellants that the sale deed dated 18.12.1964 which was executed by Venkat Swamy in favour of Sampurna was void as it was executed without obtaining the necessary permission under Section 47 of the A.P (Telangana Area) Tenancy & Agricultural Lands Act, 1950 which was in force by that time, the said contention which was raised for the first time before this Court being not a substantial question of law deserves no countenance. Had this contention been raised specifically in the trial Court the defendants might have produced the permission, if any, obtained or might have advanced some defence that may be available to them. Section 47 of the Act which barred any permanent alienation or any other transfer of land unless it was made with the previous sanction of the Tahasildar, was admittedly repealed on 18.03.1969. Sampurna had purchased not only the present disputed extent from Venkat Swamy but also another extent in another survey number and she had laid out into plots the entire Ac.0.35 guntas purchased by her in the two survey numbers and she had further alienated a plot of a total extent of 622 square yards to one P. Venkateswar Rao under a registered sale deed dated 22.02.1967. Thus, the validity of the sale deeds apart, the possession of the property changed hands and the said fact is evident from the said registered documents, which are more than thirty years old as on the date the trial had commenced in the suit. As per the evidence brought on record, after the death of the said Venkateswar Rao, the said plot was divided into two parts admeasuring 311 square yards each. Thereafter, after re-numbering of the plots, the legal representatives of the said Venkateswar Rao had sold one part each of 311 square yards each of the entire plot to the defendants 1 and 2 under regular registered sale deeds both dated 06.12.1988 and delivered possession of the said extents to the defendants 1 and 2 and the said facts are evident from the registered sale deeds of the defendants (exhibits B1 and B4). The suit was instituted by the sole plaintiff in the year 1995 claiming only a relief of perpetual injunction. In the light of the chronology of events, the courts below were disinclined to accept the contention of the plaintiff that the plaintiff is in possession of the entire plaint schedule property,

particularly the plots in possession of the defendants 1 and 2.

17. The law is well settled that the entries in revenue records do not confer or take away the existing title. Therefore, in the light of the evidence and more particularly, the fact that the name of the grandfather of the sole plaintiff is also Papaiah and that he is the ancestor of Venkat Swamy (DW3), the mere mention of the name of Papaiah in the earliest records does not advance the case of the plaintiffs any further. Therefore, the entries in exhibits A1 to A20, the copies of the revenue records, showing the name of either Papaiah or the names of Papaiah and his brother Anjaiah are not by themselves sufficient to come to a safe conclusion that the plaintiff is in exclusive lawful possession of the entire extent of Ac.0.21 guntas, i.e., the suit schedule property, more particularly when the said land, as per the evidence brought out on record, is a fallow land and is not under cultivation even as per the version of PW3, the Village Assistant. Having analyzed the evidence and examined it in juxtaposition with the facts, this Court is satisfied that the courts below are justified in holding that the plaintiff had failed to establish his lawful possession over the entire plaint schedule property and that therefore, the plaintiff is not entitled to a perpetual injunction as prayed for in respect of the entire plaint schedule property and that the findings of the courts below well supported by valid and cogent reasons do not call for any interference in this second appeal.

18. Viewed thus, this Court finds that there is no substance in the substantial questions of law raised and that the decree and judgment of the courts below, which are impugned, do not call for any interference and that the Second Appeal is devoid of merit and is liable to be dismissed.

19. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

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

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M. SEETHARAMA MURTI, J

07th October, 2015

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