

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

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APPEAL SUIT No. 503 of 2005

JUDGMENT:

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

This Appeal is directed against the judgment and decree dated 21.03.2005 in Original Suit No.655 of 1997 on the file of the II Additional Senior Civil Judge, Ranga Reddy.

2. The appellant herein is the plaintiff and the respondents herein are the defendants, 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.655 of 1997 was filed by the plaintiff originally against the first defendant for declaration that it is the absolute owner of the plaint schedule property admeasuring Ac.9.20 guntas in survey no.100/1 and 101/1 part of Serilingampally village and also direct the defendants to hand over vacant possession of the same to it.

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

Plaintiff is the absolute owner and possessor of land admeasuring Ac.9.20 guntas in survey nos. 100/1 and

101/1 part situated in Serilingampally village and mandal, Ranga Reddy bounded by North: Road; South: plaintiff's land; East: ALIND industry; and West: Neighbourer's property (hereinafter called as the 'suit schedule property'). It purchased an extent of Ac.60.00 of land in survey nos. 94, 95, 96, 97 and 102 under registered sale deed bearing document No.776 of 1960, dated 19.11.1960 from one Osman Ali Khan. It also purchased an extent of roughly Ac.45.00 of land in survey nos. 137, 138 and 139 under registered sale deed bearing document No.1717 of 1959, dated 31.07.1959 from Hyderabad National Industries Limited Company represented by its Directors Pingali Venkata Rami Reddy, Osman Ali Khan and Premji Lalji Meghji. Thus, plaintiff is the owner of total extent of Ac.105.00 guntas of land. Out of the said land, plaintiff sold away Ac.45.00 guntas on 06.03.1961 to M/s. Aluminium Industries Limited under registered document No.106/1961. The government acquired Ac.10.00 and paid compensation.

While so, the defendant with the help of some unsocial elements and with the support of muscle men and with rowdy elements and criminal intention, tried to trespass into the suit land, and dispossessed the plaintiff and interfered with the rights and peaceful possession of the plaintiff with evil design. The defendant did so by falsely claiming that he had entered into an agreement of sale with the plaintiff and paid amount to it. The

defendant forged documents and tried to enter into the suit schedule land of Ac.9.20 guntas which is a part of balance Ac.50.00 guntas of land of the plaintiff herein. The defendant and his henchman tried to enter into the schedule land on various dates and the same was resisted by the plaintiff. The plaintiff also complained to Chandanagar police on various dates. Defendant created false and fabricated documents and lodged money in the account of the plaintiff without its knowledge. With the help of forged and fabricated documents, the defendant resorted to trespassing on various dates. Defendant is alien to the schedule property and he has nothing to do with it. He has neither title nor possession at any point of time. Colluded with the patwari of Serilingampally village, he is trying to enter his name in pahani patrika. Finally, on 25.07.1997, the defendant and his henchmen dispossessed the plaintiff from the schedule land.

The defendant created fake document bearing No.237/96, dated 26.12.1996 by forging signature of Naresh Chand. The plaintiff company or the said Naresh Chand has not executed any document nor passed any resolutions to sell the lands to defendant. He resorted to lodge Rs.1,60,000/- into the account of the plaintiff without knowledge of the plaintiff. The said amount was kept in suspense account and the bank was instructed to remit the amount back and send it to the drawee bank. The

plaintiff has been in uninterrupted possession and enjoyment of the schedule land ever since its purchase i.e. from 1960, which is reflected in pahani patrikas as pattadar and owner. Hence, the suit.

5. The defendant filed written statement denying the material averments in the plaint and stating *inter alia* as follows:

It is true that plaintiff purchased Ac.105.00 guntas of land situated in Serilingampally village during the year 1960, and that the plaintiff sold an extent of Ac.45.00 guntas of land and the Government acquired Ac.10.00 guntas of land. The plaintiff represented by its Director Mahesh Chand, entered into an agreement of sale on 27.02.1975 with the defendant agreeing to sell Ac.11.00 guntas of land at Rs.10,000/- per acre, and that father of the defendant paid entire sale consideration of Rs.1,10,000/- to the plaintiff and the defendant was put in possession of the said land. It is mentioned in the agreement of sale that after attaining majority by the defendant, sale deed would be executed. After attaining majority, when the defendant requested the plaintiff in the month of November, 1996 to complete the transaction in terms of the agreement of sale, plaintiff demanded more money and the defendant agreed to pay Rs.40,000/- per acre. On survey and actual demarcation, the area available was found to be Ac.9.20 guntas in survey nos.

100/1 and 101/1 as against Ac.11.00 guntas agreed to be sold. Thereafter, the plaintiff agreed to execute separate sale deeds for Ac.4.00 guntas and Ac.5.20 guntas. The defendant paid total sale consideration of Rs.4,75,000/- on 24.12.1996 under a receipt passed and signed by Mahesh Chand, Director of the plaintiff company. An amount of Rs.40,000/- was paid by father of the 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. The plaintiff executed registered sale deed for an extent of Ac.4.00 guntas of land in survey no.101/1, on 26.12.1996 registered on 08.01.1997 as document no.237/97 in the office of the District Registrar, Ranga Reddy District. On 10.01.1997, the plaintiff, through its Director Mahesh Chand, brought and handed over the original sale deed to the defendant. When the defendant enquired as to when the other sale deed would be executed, the plaintiff promised to do so very shortly and agreed to hand over original title deed to the defendant at the time of registration of the second sale deed. At that time, the said Mahesh Chand took away the original agreement of sale dated 27.02.1975 under written acknowledgement stating that it was required to be returned in view of difference in the extent and sale consideration. Thereafter, the plaintiff evaded to execute

and register the second sale deed for the remaining Ac.5.20 guntas of land. Hence, the defendant was constrained to file Original Suit No.643 of 1997 for specific performance of the agreement of sale dated 27.02.1975.

The defendant never forged or fabricated any documents. The defendant never tried to interfere with the possession of the plaintiff. The defendant constructed a compound wall on three sides and erected a gate and also constructed watchman room in 600 square feet with the permission of the authorities concerned and completed it in May, 1997. Therefore, the question of pulling down the structures of plaintiff and causing damage, etc. does not arise. Plaintiff is not at all owner of Ac.9.20 guntas of land in survey nos.100/1 and 101/1. It transferred the said land to the defendant under valid agreement of sale dated 27.02.1975 and since then the defendant is in possession of the said land. Therefore, the plaintiff is not entitled to the relief of declaration and recovery of possession in respect of suit schedule land. Hence, he prayed to dismiss the suit.

6. Defendant no.2 got impleaded as per order dated 22.07.2003 in I.A. No.1070 of 2002. Defendant no.3 got impleaded as per order dated 20.08.2003 in I.A. No.1269 of 2003.

7. Defendant no.2 filed written statement denying the material averments in the plaint and set up counter claim

contending *inter alia* as follows:

Neither the plaintiff nor the defendant has any right over the suit schedule property. The averment in the plaint that the plaintiff purchased totally an extent of Ac.105.00 guntas of land and disposed of Ac.55.00 guntas of land and is now owner Ac.50.00 guntas of land, is denied. As per the averments of the plaint, plaintiff purchased an extent of Ac.60.00 guntas of land from Osman Ali Khan in survey nos. 94, 95, 96, 97, 102, 103/1 and 103/2, and as such it is clear that land is not purchased in survey nos. 100 and 101. The said Osman Ali Khan acquired the land from Mohmoobunnissa Begum, who is original owner of the property. Her only legal heir by name Syed Ali Mohd. Hussaini, inherited the said land from her as absolute owner. She is the paternal aunt of vendor of the second defendant. The plaintiff has not filed sethwar, faisal patti or any other revenue record to show that the land bearing survey nos. 137, 138 and 139 are old and correlated to given survey nos. 94, 95, 96, 99, 100/1 and 101/1 of Serilingampally village. Plaintiff is neither owner nor in possession of any of the property and as such the question of interfering with his possession and dispossessing it by defendant no.1 is concocted story created to show a cause of action without any right, title or interest. The plaintiff and defendant no.1 without any right, are trying to create some title by forged and fake documents to usurp the property belonging to

the vendor of this document and are trying to create hurdle and interfere with the possession of this defendant by creating a false claim. This defendant is in possession of the suit property since 1996 having entered into agreement of sale with regard to survey no.101/1 to an extent of Ac.4.30 guntas out of Ac.10.31 guntas. On the date shown i.e. on 25.07.1997, this defendant is in possession and enjoyment of the suit property to an extent of Ac.4.30 guntas in survey no.101/1 and the remaining part is in possession of his vendor i.e. original owner. No document is filed to show that the suit schedule property in survey nos. 100/1 and 101/1 is the property of the plaintiff. The said property in both the survey numbers to an extent of Ac.10.31 guntas belongs to the vendor of this defendant i.e. Syed Ali Mohd. Hussaini, who is the absolute owner of survey nos. 97 part, 98, 100/1, 100/2, 101/1, 101/2, 101/3, 102, 103/1 and 103/2, admeasuring total extent of Ac.58.18 guntas having inherited the same from Mahaboobunnisa Begum, and this defendant purchased an extent of Ac.4.30 guntas in survey no.101/1 out of the extent of Ac.10.31 guntas.

Out of which, this defendant got registered documents to an extent of Ac.4.00 guntas under two registered sale deeds bearing document nos. 268/99, dated 07.01.1999 to an extent of Ac.2.00 guntas and 658/99, dated 27.01.1999 to an extent of Ac.2.00 guntas. Thus, this defendant became owner of Ac.4.00 guntas and has

agreement for Ac.4.30 guntas in total and so, he is entitled to Ac.0.30 guntas to be registered in his favour. In the earlier litigation with regard to the same, it was clearly held that this defendant's vendor is the absolute owner of the property and the plaintiff is nothing to do with the said properties. The revenue records and the documents show that the suit property is of Ali Mohd. Hussaini. HUDA also gave permission in 1992 for change of use of the land with regard to the property held by the vendor of this defendant and published in the Gazette No.288, dated 24.08.1992 and he also took permission for construction in plot no.101/1, 2 and 3 in 1993 itself vide proc. No.G/681/93, dated 28.08.1993. This defendant is the rightful owner and possessor of the said property. Hence, this defendant is making counter claim with regard to the said property.

8. Defendant no.3 filed written statement denying the material averments in the plaint. This defendant is sailing with the first defendant. It is her case that she purchased an Ac.2.32 guntas of land in survey no.101/1 part forming part of old survey nos. 137, 138 and 139 situated in Serilingampalli village from the first defendant under an Agreement of Sale-cum-Registered General Power of Attorney vide document no.305/97, dated 10.01.1997 for a total consideration of Rs.4,20,000/-, and paid entire sale consideration; that defendant no.1 received the

consideration and delivered vacant possession of the said land to this defendant, and ever since that date, this defendant is in actual and physical possession of the same; that this defendant developed the said land by spending huge amounts, laid road and made it convenient for preparation of lay-out; that at that time, this defendant came to know about the pendency of the suit and got herself impleaded as defendant to safeguard the property; that before purchase, this defendant along with one Dr. P.Nagabhusham approached the plaintiff and verified the title of Mr. Mahesh Chand, who had also given consent to this defendant to purchase the said property from the first defendant; that before purchase, this defendant conducted a survey for demarcation of Ac.2.32 guntas and fixed in the presence of sons of Mahesh Chand and the first defendant; that the second defendant is nothing to do with the suit schedule property and the alleged documents relied on by the second defendant are false, fabricated and created ones; that the second defendant filed a Land Grabbing Case No.29 of 1999 before the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, wherein this defendant got impleaded as respondent to safeguard her rights, and hence, it is prayed to dismiss the suit.

9. Defendant no.3 filed additional written statement to the counter claim made by the defendant no.2 denying

the averments in the counter claim, and reiterating the contentions in her written statement.

10. The plaintiff filed rejoinder denying the averments in the written statements of defendants and the counter claim of the second defendant and reiterating the averments in the plaint, and further stating *inter alia* as follows:

Plaintiff company never received any amount or executed any document, much less agreement of sale dated 27.02.1975, in favour of the first defendant. No Director of the plaintiff company has executed any agreement of sale in favour of the first defendant or his father. The signatures of the Directors were forged and the documents filed by the defendants are not real. The first defendant with the help of unsocial elements, dispossessed the plaintiff on 25.07.1997 and prior to that also, tried to dispossess the plaintiff. Plaintiff is the absolute owner and possessor of the suit schedule property. Defendants 2 and 3 are nothing to do with the said property. The revenue record i.e. sethwar of 1959 and nakal vasoolbhaki of 1338 fasli does not confer any title to Smt. Mahmoodunnisa Begum and does not confer any title subsequently to Syed Ali Mohd. Hussaini and it does not confer any title to son of Syed Ali Mohd. Hussaini or his General Power of Attorney. The vasoolbhaki in the year 1928 which was in the name of Syed Ahmedullah

prior to selling the property to Osman Ali Khan, vendor of the plaintiff herein, cannot be taken into consideration as already hands changed. No succession certificate was filed by Syed Ali Mohd, Hussaini and no inheritance proceedings are filed before the Court. The third defendant colluded with the first defendant and filed the fabricated, false and bogus written statement. Second defendant is set up by the first defendant. Second defendant or his vendor has no title to the corresponding numbers i.e. survey nos. 100/1, 101/1 which are corresponding to old survey nos. 137, 138, 139 which was purchased by the plaintiff herein and the plaintiff is having documentary proof. The vasoolbhaki and sethwar is in the name of Syed Ahmedullah, husband of Smt. Mahmoodunnissa Begum, and the vasoolbhaki is of the year 1928 i.e. 1338 fasli, which is in no way concerned with the case in hand, because this land was sold away by late Smt. Mahmudunnissa Begum to Osman Ali Khan, who in turn sold away to the plaintiff in the years 1959-1960 vide registered sale deeds. Second defendant has not derived any title to the corresponding new survey numbers 137, 138 and 139. Nowhere it is emphasized by his vendor that survey nos. 100/1 and 101/1 are the survey numbers belonging to Syed Ali Mohd. Hussaini. Pahanis also do not show the same. Second defendant purchased the land without calling for any enquiries.

Hence, contents of the counter claim are liable to be set

aside and extricated and the second defendant be directed to file a separate suit against the plaintiff.

Survey numbers 100, 100/1 and 101/1 are corresponding numbers to old survey numbers 137, 138 and 139 and hence non-mentioning 101/1 and 100/1 is not a grave mistake and it is to be understood by verifying the revenue records. Second defendant has not title to the extent of Ac.4.30 guntas out of Ac.10.31 guntas in survey no.101/1, since his vendor is not owner of survey nos. 100/1 and 101/1. The averment in the counter claim that the plaintiff and first defendant colluded together and filed the suit, is meaningless. Bogus sale deeds were executed in favour of the second defendant and the sale agreements are illegal and do not confer any title or ownership. Vendor of the second defendant has no title to the property claimed by the second defendant. The documents filed by the second defendant along with the counter claim are false, bogus and were produced in collusion with the officials of Serilingampalli municipality.

The transaction of the first defendant with the third defendant in respect of Ac.2.32 guntas of land is illegal and hence denied. Hence, it is prayed to decree the suit as prayed for.

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

- 1) Whether the plaintiff is entitled to declaratory relief as prayed for ?

2) Whether the plaintiff is entitled to recovery of possession of the suit land after ejecting from the suit land ?

3) Whether the suit claim is barred by limitation?

4) To what relief ?

Following additional issues were framed on 29.03.2004.

1) Whether D.2 is entitled to declaration to

declare that he is owner of the property of 4 acres in

sy.no.101/1?

2) Whether D.1 executed agreement of sale-cum-G.P.A. in favour of D.3 and D.3 is in possession of Ac.2.32 gts. in sy. No.101/1 ?

Following additional issue was framed on 09.04.2004.

Whether the plaintiff company entered into agreement of sale with D.1 on 27.02.75 ?

12. During trial, on behalf of the plaintiff, P.W.1 was examined and Exs.A1 and A.2 were got marked, and on behalf of defendants, D.Ws.1 to 3 were examined and Exs.B1 to B50 were got marked.

13. The trial Court, vide the impugned judgment and decree dated 21.03.2005, dismissed the suit filed by the plaintiff but decreed the counter claim made by the second defendant declaring that he is the absolute owner of Ac.4.00 guntas of land in survey no.101/1 out of

Ac.4.30 guntas. Challenging the same, the present appeal was filed by the plaintiff.

14. Order XLI Rule 33 of the Code of Civil Procedure, 1908 is based on a salutary principle that an appellate court must have the power to do full and complete justice between the parties. An appeal is continuation of a suit. Inasmuch as an appeal is a rehearing of the matter, the appellate court can re-appreciate the entire evidence, oral as well as documentary, and can arrive at its own conclusion. At the same time, the appellate court must bear in mind a finding recorded by the trial Court on oral evidence.

15. Now, the points that arise for consideration in this appeal are –

- 1) Whether the plaintiff is entitled for declaratory relief as prayed for ?
- 2) Whether the plaintiff is entitled for consequential relief of recovery of possession of the suit land ?
- 3) Whether the suit is barred by limitation ?
- 4) Whether the second defendant is entitled to declaration that he is the owner of property admeasuring Ac.4.00 guntas in survey no.101/1 ?
- 5) Whether the first defendant executed agreement of sale-cum-General Power of Attorney in favour of the third defendant and whether the latter is in possession of Ac.2.32 guntas of land in survey no.101/1 ?
- 6) Whether the plaintiff company entered into

agreement of sale with the first defendant on
27.02.1975?

7) To what relief ?

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POINT No.1:

Whether the plaintiff is entitled for declaratory
relief as prayed for ?

16. The suit is filed to declare that the plaintiff is the owner of the suit schedule property admeasuring Ac.9.20 guntas in survey nos. 100/1 and 101/1 part situated at Serilingampally village, with boundaries- North: Road; South: land of the plaintiff; East: ALIND industry, and West: Neighbourer's property.

17. Plaintiff is a company incorporated under the Companies Act, 1956. Case of the plaintiff is that it purchased Ac.45.00 guntas of land comprising survey nos. 137, 138 and 139 corresponding to new survey nos. 100/1 and 101/1 situated at Serilingampalli village, under registered sale deed from the vendor Hyderabad National Industries Limited on 31.07.1959, and that it also purchased Ac.60.00 of land bearing survey nos. 94, 95, 96, 97 and 102 vide registered sale deed dated 19.11.1960 from Osman Ali Khan, and since then it is in possession and enjoyment of the property, and that the first defendant fabricated fake document bearing registration No.237/1996, dated 26.12.1996 by forging signatures of Naresh Chand, who is one of the Directors

of the plaintiff company and that the document was not executed by the plaintiff company. The plaintiff also contends that the plaintiff company never executed any agreement of sale in favour of the first defendant, and that without knowledge of the plaintiff, an amount of Rs.1,60,000/- was credited, by way of cheques, to the account of the plaintiff company. It is stated that on 25.07.1997, the first defendant with his henchmen dispossessed the plaintiff from the suit schedule property. Hence, the suit.

18. On the other hand, case of the first defendant is that the plaintiff company entered into an agreement of sale with him on 27.02.1975 agreeing to sell Ac.11.00 guntas of land in survey nos. 137, 138 and 139 of Serilingampally village agreeing to sell the same at the rate of Rs.10,000/- per acre; that at that time, the first defendant was minor and after attaining majority, when the first defendant requested the plaintiff to execute a regular sale deed, the plaintiff demanded more money and that the first defendant agreed to pay Rs.40,000/- per acre; that on survey and actual demarcation, the land available on ground was found to be Ac.9.20 guntas only, and the plaintiff agreed to execute two separate sale deeds, and accordingly executed a sale deed on 26.12.1996 registered as document no.237/1997 on 08.01.1997, in respect of an extent of Ac.4.00 guntas, and the said

document was handed over by Mahesh Chand, one of the Directors of the plaintiff company and he promised to execute the second sale deed in respect of Ac.5.20 guntas shortly in terms of the agreement of sale; that at that time, Mahesh Chand took away the original agreement of sale dated 27.02.1975 on the ground that there was a difference in extent of land and sale consideration and gave an acknowledgement in token of receipt of the agreement of sale; that thereafter the first defendant constructed a compound wall and erected gate after obtaining permission from the concerned authority; that the plaintiff is not at all the owner of the plaint schedule property and hence, he prayed to dismiss the suit.

19. The second defendant made a counter claim stating that land in survey nos. 137 to 139 of Serilingampalli village is nothing to do with the plaint schedule property; that he purchased the property from his vendor Syed Ali Mohd. Hussaini an extent of Ac.4.30 guntas out of Ac.10.31 guntas, in survey no.101/1 for a consideration of Rs.4,75,000/-, and that the said vendor Syed Ali Mohd. Hussaini executed two separate sale deeds on 07.01.1999 and 27.01.1999 each for Ac.2.00 guntas, and that the second defendant is entitled for Ac.0.30 guntas more for which the vendor agreed to execute a sale deed, and that the revenue records show that the said Syed Ali

Mohd. Hussaini was shown as pattadar of the land and he sought permission from Hyderabad Urban Development Authority for change of use of the land and the same was published in the Gazette in the year 1992, and that he also took permission for construction of a building in the plot, and that the second defendant paid the entire sale consideration. Hence, he claims that the counter claim has to be allowed.

20. Third defendant's case is that she entered into an Agreement of Sale-cum-General Power of Attorney with the first defendant on 10.01.1997 in respect of Ac.2.32 guntas of land, for development and she got constructed a compound wall and servant quarter after obtaining necessary permission. Case of the third defendant depends upon success or otherwise of the case of the first defendant.

21. It is contended by the learned senior counsel appearing for the appellant/plaintiff that under two registered documents the plaintiff company purchased Ac.105.00 guntas of land in survey nos. 94, 95, 96, 97, 102, 137, 138 and 139, situated in Serilingampally village, out of which it sold an extent of Ac.45.00 guntas to Aluminium Industries Limited under a registered sale deed in the year 1961 and an extent of Ac.10.00 was acquired by the Government, and hence, the plaintiff company is owner of the land admeasuring Ac.50.00 guntas situated

in survey nos. 137 to 139 corresponding to old survey nos. 94, 95, 96, 99, 100/1 and 101/1. He further contended that the first defendant, who has no manner of right, trespassed into the plaint schedule land on 25.07.1997; that the first defendant forged signatures of Naresh Chand and brought into existence a sale deed bearing No.237/96, dated 26.12.1996; that the said Naresh Chand was not authorized to execute any sale deed on behalf of the plaintiff company; that the agreement of sale dated 27.02.1975 has not been filed into the Court; that an amount of Rs.1,60,000/- was illegally deposited by the first defendant into the bank account of the plaintiff company; that the source of title insofar as the plaintiff company and the second defendant is one and the same; that the evidence of an expert cannot be relied upon as the expert has not given any reasons for giving his opinion; that the defendants 1 and 2 colluded together and brought into existence two sale deeds from a person, who does not have any right, title or interest; that the second defendant miserably failed to show as to how his vendor inherited the property from the original owner Mahaboobunnisa Begum; that the second defendant miserably failed to produce any evidence with regard to deriving the property and there is no evidence to prove the same; that when it is seriously disputed about the execution of the alleged agreement of sale, a perverse finding has been given by the trial Court that the

agreement of sale was admitted by the plaintiff; that it is the specific case of the first defendant in the criminal case that signature of Naraesh Chand in the sale deed was forged by Mahesh Chand under which the first defendant is claiming; that the first defendant lodged a complaint with police that Mahesh Chand forged the signature of Naresh Chand in the sale deed, and in those circumstances, non-examination of Naresh Chand is not at all fatal to the case of the plaintiff since it is the specific case of the first defendant that the sale deed was not executed by Naresh Chand, and hence, he prays to set aside the impugned judgment and decree and decree the suit by dismissing the counter claim of the second defendant.

22. On the other hand, learned counsel for the first respondent/first defendant contended that in pursuance of the agreement of sale dated 27.02.1975, the plaintiff company represented by its Director Naresh Chand executed a registered sale deed dated 26.12.1996 for an extent of Ac.4.00 guntas and another Director Mahesh Chand promised to execute another sale deed for the remaining extent of Ac.5.20 guntas after demarcation as there was a variance of land as mentioned in the agreement of sale and ground measurements; that while handing over the said sale deed, Mahesh Chand had taken away the original agreement of sale dated

27.02.1975 and in token of receipt of the agreement of sale, he issued a receipt, and that the criminal court had given a categorical finding that Mahesh Chand has not forged signatures of Naresh Chand in the sale deed under which the first defendant claims the property; that the complaint given by the first defendant with police has not been confronted and as such there is no admission made by the first defendant with regard to his defence; that the specific plea of the first defendant is that it is Naresh Chand who executed the sale deed in favour of the first defendant; that the plea and the evidence of the first defendant are one and the same with regard to execution of sale deed dated 26.12.1996 by Naresh Chand representing the plaintiff company in favour of the first defendant; that the second defendant's vendor's title has not been established and therefore the counter claim of the second defendant has to be rejected.

23. On the other hand, learned counsel for the second respondent/ second defendant contended that vendor of the second defendant is none other than nephew of the original owner, and he, being the sole surviving legal heir of the original owner, the properties devolved upon the vendor of the second defendant; that neither the first defendant nor the plaintiff company has any right, title or interest over the suit schedule property, and considering these aspects, the trial Court rightly allowed the claim and

the said finding needs no interference by this Court.

24. Counsel for the third respondent/third defendant did not address any arguments since the third respondent is sailing with the first defendant.

25. In view of the fact that it is a suit for declaration in respect of right over the suit schedule property, the initial burden is on the plaintiff to establish that he has got title to the said property. On behalf of the plaintiff, Mahesh Chand was examined as P.W.1 and two documents were got marked. Under Ex.A1, the plaintiff company purchased Ac.60.00 guntas of non-agricultural land in survey nos. 94 to 97, 102 and 103/1 & 2 from Osman Ali Khan. Under Ex.A2, the plaintiff purchased an extent of Ac.45.00 guntas of land in survey nos. 137, 138 and 139. Certified copies of these two documents marked as Exs.A1 and A2 have not been denied or disputed even by the defendants. The specific contention of the second defendant is that the land covered by Exs.A1 and A2 is not corresponding to the plaint schedule land as the plaintiff failed to produce any revenue documents for correlation. P.W.1 has stated that the plaintiff company is the absolute owner, pattadar and possessor of land over Ac.50.00 guntas in survey nos. 137, 138 and 139 (old) correlate to new survey nos. 94 to 96, 99, 100/1 and 101/1 situated in Serilingampalli.

26. P.W.1 in his chief-examination specifically stated that survey nos. 100, 100/1 and 101/1 are corresponding to old survey nos. 137, 138 and 139. It is admitted by him that Mahaboobunnisa Begum is the original owner of the property and she sold an extent of Ac.45.00 guntas to Osman Ali Khan, who in turn sold it to the plaintiff company. First defendant admitted in the written statement that the plaintiff purchased Ac.105.00 guntas of land situated in Serilingampally village and sold an extent of Ac.45.00 guntas out of Ac.105.00 guntas. Nowhere in the written statement it is denied or disputed that the plaint schedule land does not correlate to new survey nos. 137, 138 and 139. But, the second defendant has taken a specific plea that the land in survey nos. 137, 138 and 139 (old) does not correlate to survey nos. 94 to 96, 99, 100/1 and 101/1 of Serilingampally village. He is claiming an extent of Ac.4.30 guntas of land in survey no.101/1. It is the specific case of the second defendant that old survey nos. 137, 138 and 139 do not correlate to new survey nos. 100/1 and 101/1. But, in cross-examination, he admitted that he does not know the corresponding old survey numbers of survey nos. 100/1 and 101/1. Second defendant, having taken a specific plea that the land in old survey nos. 137, 138 and 139 does not correspond to new survey nos. 100/1 and 101/1, the initial burden is on him to prove the same. He did not file any document to prove the same. It is for him to show with regard to old

survey numbers correspond to new survey nos. 101/1. He has not filed the important document vasoolbaki and setwar which would show about the old survey numbers and new survey numbers. Ex.B39 is the kasra pahani for the year 1954-55. It shows Ac.2.31 guntas in survey nos. 137/1, 138/1 and 139/1 stand in the name of Kammari Ramaiah. Ex.B40, 43 to 50-pahanis, Ex.B41-vasoolbaki and Ex.B42-setwar do not reveal about old survey numbers corresponding to the land in survey no.101/1. These documents are not relevant with regard to the contention of the second defendant. On the other hand, these documents show that the plaintiff company was shown as pattadar in respect of the land in survey nos. 94 to 97, 99, 100 and 101. These documents support the case of the plaintiff. Second defendant miserably failed to establish the plea taken by him that old survey nos. 137, 138 and 139 do not relate to the plaint schedule property. Therefore, the plea taken by the second defendant that old survey nos. 137, 138 and 139 do not correlate to the suit schedule property, is wholly devoid of merit and untenable. On the own showing by the second defendant, survey no.137 correlates to new survey no.101/1. The second defendant is not concerned with the land in survey nos. 138 and 139. The case of the plaintiff that the land in survey nos. 137, 138 and 139 correlates to survey nos. 100/1 and 101/1 remained unchallenged by the first defendant.

27. Though the burden of proof is on the plaintiff to establish that old survey nos.137, 138 and 139 correlate to suit schedule land, at the same time, it loses its significance when both the parties tendered evidence. On this aspect, it is pertinent to refer to a decision in *Lakhan Rao v. Dharamu Chaudhary*^[1], wherein 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."

28. On this aspect, learned senior counsel appearing for the appellant relied upon the following decisions.

i) In *Govind Gavate v. State of Maharashtra*^[2]
(paras 18, 19, 20, 21, & 22).

"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.

9. "PROOF", which is the effect of evidence led, is defined by the provisions of Sections 3 of the Evidence Act. The effect of evidence has to be distinguished from the duty or burden of showing to the Court what conclusions it should reach. This duty is called the "onus Probandi", which is placed upon one of the parties, in accordance with appropriate provisions of law applicable to various situations; but, the effect of the evidence led is a matter of inference or a conclusion to be arrived at by the Court.

10. THE total effect of evidence is determined at the end of a proceeding not merely by considering the general duties imposed by Sections 101 and 102 of the Evidence Act but also the special or particular ones imposed by other provisions such as Secs. 103 and 106 of the Evidence Act. Section 103 enacts :

"103. THE burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

And, Section 106 lays down ;

"106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

In judging whether a general or a particular or special onus has been discharged, the Court will not only

consider the direct effect of the oral and documentary evidence led but also what may be indirectly inferred because certain facts have been proved or not proved though easily capable of proof if they existed at all which raise either a presumption of law or of fact. Section 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by Courts in the course of administration of justice to remove lacunas in the chain of direct evidence before it. It is, therefore, said that the function of a presumption often is to "fill a gap" in evidence.

True presumptions, whether of law or of fact, are always rebuttable. In other words, the party against which a presumption may operate can and must lead evidence to show why the presumption should not be given effect to. If, for example, the party which initiates a proceeding or comes with a case to Court offers no evidence to support it, the presumption is that such evidence does not exist. And, if some evidence is shown to exist on a question in issue, but the party which has it within its power to produce it, does not, despite notice to it to do so, produce it, the natural presumption is that it would, if produced, have gone against it. Similarly, a presumption arises from failure to discharge a special or particular onus.

11. 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."

ii) In *Narayan Bhagwantrao Gosavi Galajiwale v.*

Gopal Vinayak Gosavi^[3], it is held thus:

“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.”

iii) In *Arumugham v. Sundarambal*^[4], it is held thus:

“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.”

iv) In *National Insurance Company Limited v.*

Rattani,^[5] it is held thus:

“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.”

From the above decisions, it is clear that when the parties adduced evidence with regard to an issue in a trial, the Court need not rely upon the abstract doctrine of burden of proof and the Court has to appreciate the evidence considering the totality of the facts and circumstances of the case. Here, it is a case where both the parties have tendered evidence with regard to their respective claims and therefore basing on that evidence, the Court has to weigh the evidence.

29. As per Exs.A1 and A2, it is very clear that plaintiffs became absolute owners of land admeasuring Ac.105.00 guntas forming part of survey nos. 94 to 97, 100, 101, 102 of Serilingampalli. Though it is stated by P.W.1 that the company sold Ac.45.00 guntas in old survey nos. 137, 138 and 139, no sale deed is filed to show about the sale. Though Ex.B6 is filed to show about the sale, it cannot be relied upon for the reason that it is Xerox copy. No steps have been taken to obtain certified copy of the registered sale deed nor a notice was given to the plaintiffs to produce the authenticated copy of the sale deed. D.W.2 filed certified copy of setwar for 1352 fasli corresponding to 1942 year.(Ex.B42) which shows that Ac.5.39 guntas is in survey no.100 and Ac.10.31 guntas is in survey no.101. Therefore, from the evidence on record, it is clear that old survey nos. 137, 138 and 139 correlate to the suit schedule property.

30. Plaintiff was having title to an extent of Ac.105.00 guntas of land under Exs.A1 and A2, out of which it sold an extent of Ac.45.00 guntas of land under Ex.B6 to M/s. Aluminium Industries Limited and admittedly, Ac.10.00 guntas of land was acquired by the government. Therefore, the plaintiff has got title in respect of Ac.50.00 guntas of land in survey nos. 137, 138 and 139. The fact that the plaintiffs were having Ac.50.00 guntas of land in Serilingampally is not even denied or disputed by the defendant. Case of the first defendant is that out of the

said extent of Ac.50.00 guntas, plaintiff entered into an agreement of sale in the year 1975 for an extent of Ac.11.00 guntas with the father of the first defendant, and that when the first defendant requested to execute sale deed after attaining majority, plaintiff asked for more money; then, the first defendant agreed for the same; that on survey and demarcation, it was found that only Ac.9.20 guntas of land was available on ground; in the first instance, plaintiff executed sale deed under Ex.B2 in favour of the first defendant in respect of Ac.4.00 guntas of land and promised to execute another sale deed for the remaining extent of Ac.5.20 guntas.

31. Ex.B2-sale deed is seriously disputed by the plaintiff stating in the first instance that Naresh Chand is not authorized to execute the sale deed in favour of the first defendant on behalf of the plaintiff company and secondly that signatures of Naresh Chand on the sale deed are forged. It is contended vehemently by the learned senior counsel appearing for the appellant that the agreement of sale dated 27.02.1975 relied upon by the first defendant is not true agreement of sale and it is fabricated. The first defendant has not produced the agreement of sale dated 27.02.1975. At the same time, proper explanation was given by the first defendant for not filing the said agreement of sale. D.W.1, in his evidence, categorically stated that after handing over the sale deed Ex.B2, P.W.1

had taken away the said agreement of sale by giving acknowledgement dated 10.01.1997, on the ground that it was required for measurements of the land. There was every possibility for the first defendant to hand over the said agreement of sale to P.W.1 on 10.01.1997 because on that day, P.W.1 handed over Ex.B2-registered sale deed for an extent of Ac.4.00 guntas executed by Naresh Chand on behalf of the plaintiff company in favour of the first defendant. Because P.W.1 handed over original of Ex.B2 to the first defendant, there was every possibility for the first defendant to believe the words of P.W.1 in handing over the original agreement of sale. The acknowledgement given by P.W.1 is marked as Ex.B3, which clearly shows that he received original agreement of sale dated 27.02.1975. Except suggesting that signature of Mahesh Chand was forged in Ex.B3, nothing has been elicited to discredit the testimony of D.W.1.

32. The plaintiff had taken the plea of forgery in all the important documents viz. Exs.B1 to B3. Ex.B1 is the receipt issued by P.W.1 to show that he received a sum of Rs.3,15,000/- by way of cash and Rs.1,60,000/- by way of two cheques i.e. 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. Admittedly, proceeds under the two cheques

were credited to the account of the plaintiff company. The first defendant would not have credited these two cheques into the account of the plaintiff company unless P.W.1 gives account number of the company. It is the specific case of P.W.1 that after coming to know about the deposit of the said two cheques, he sent letter to the concerned bank to keep the amount in suspense account. However, there is no material to show that the amounts were received by way of the two cheques totalling Rs.1,60,000/- in pursuance of Ex.B1 were deposited by the first defendant into the account of the plaintiff company without the knowledge of the plaintiff. There is no material to show that the amount covered under the two cheques was kept in suspense account and it has not been credited to the account of the plaintiff company. Since the plaintiff company is incorporated under the Companies Act, 1956, it has to submit statement of account to the Registrar of Firms. If really the first defendant has not paid the amount, the same would not have been reflected in the accounts of the plaintiff company. The ledger, day book, income tax returns, statement of the company about receipts and payments and other statutory documents were admittedly available with the plaintiff and had they been produced before the Court, the truth would have come out. P.W.1 purposefully withheld those documents. If they were produced, the transaction under sale deed Ex.B2 and the receipt of the

two cheques would have been reflected in those documents. No explanation was given by P.W.1 as to why he did not produce those books. An adverse inference has to be drawn under Section 114 (g) of the Indian Evidence Act, 1872 for non-production of important documents which were admittedly in possession of the plaintiffs.

33. Original of Ex.B2 has been proved by preponderance of probability by the first defendant. Agreement of sale dated 27.02.1975 has not been filed for the reason that P.W.1 himself had taken away it at the time of handing over original of Ex.B2. Therefore, in the facts and circumstances of the case, non-filing of the original of the agreement of sale dated 25.02.1975 cannot be said to be adverse to the case of the first defendant.

Because an agreement of sale was in existence, the plaintiffs executed Ex.B2-registered sale deed.

34. It is also the specific case of P.W.1 that signatures of Naresh Chand were forged on original of Ex.B2. Ex.B2 contains not only signatures of Naresh Chand, but also his thumb mark. Originals of Exs.B1, B2 and B3 were sent to expert in crime no.206/1997 of Chandanagar police station and after examination, the expert gave opinion marked as Exs.B7 and B8. The same cannot be relied upon by either of the parties. Ex.B7 is the opinion with regard to examination of the documents and Ex.B8 is

the opinion expressed with regard to stamp expressions of the plaintiff company. The persons who gave these documents are not examined. Further, Exs.B7 and B8 do not contain any reasons for arriving at the opinion. On this aspect, learned senior counsel appearing for the appellant placed reliance on the following decisions.

a) In *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee & others*,^[6] it is held thus: (paras 33 & 34)

“A Court is not bound by the evidence of the experts which is to a large extent advisory in nature. The Court must derive its own conclusion upon considering the opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes.

Medical science is a difficult one. The court for the purpose of arriving at a decision on the basis of the opinions of experts must take into consideration the difference between an 'expert witness' and an 'ordinary witness'. The opinion must be based on a person having special skill or knowledge in medical science. It could be admitted or denied. Whether such an evidence could be admitted or how much weight should be given thereto, lies within the domain of the court. The evidence of an expert should, however, be interpreted like any other evidence.

20. THIS Court in *State of H.P. v. Jai Lal and others*, [(1999) 7 SCC 280] held as under :-

" 17. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts.

Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject. 18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. 19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in court and has to face cross-examination. THIS Court in the case of Hazi Mohammad Ekramul Haq v. State of W.B. concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons."

b) In *State of H.P. v. Jai Lal & others*^[7], it is held thus: (paras 17 to 19)

"Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identify of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an

expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the applicaiton of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.

THE report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination. This Court in the case of Hazi Mohammed Ikramul Haque v. State of West Bengal, AIR 1959 SC 488 concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.”

c) In *State of Maharashtra v. Sukhdev Singh &*

another^[8], it is held thus: (para 29)

“IT is well settled that evidence regarding the identity of the author of any document can be tendered (i) by examining the person who is conversant and familiar with the handwriting of such person, or (ii) through the testimony of an expert who is qualified and competent to make a comparison of the disputed writing and the admitted writing on a scientific basis, and (111) by the Court comparing the disputed document with the admitted one. In the present case the prosecution has

resorted to the second mode by relying on the opinion evidence of the handwriting expert P.W. 120. But since the science of identification of handwriting by comparison is not an infallible one, prudence demands that before acting on such opinion the Court should be fully satisfied about the authorship of the admitted writings which is made the sole basis for comparison and the Court should also be fully satisfied about the competence and credibility of the handwriting expert. IT is indeed true that by nature and habit, over a period of time, each individual develops certain traits which give a distinct character to his writings making it possible to identify the author but it must at the same time be realised that since hand writing experts are generally engaged by one of the contesting parties they, consciously or unconsciously, tend to lean in favour of an opinion which is helpful to the party engaging him. That is why we come across cases of conflicting opinions given by two handwriting experts engaged by opposite parties. IT is, therefore, necessary to exercise extra care and caution in evaluating their opinion before accepting the same. So Courts have as a rule of prudence refused to place implicit faith on the opinion evidence of a handwriting expert. Normally Courts have considered it dangerous to base a conviction solely on the testimony of a handwriting expert because such evidence is not regarded as conclusive. Since such opinion evidence cannot take the place of substantive evidence, Courts have, as a rule of prudence, looked for corroboration before acting on such evidence. True it is, there is no rule of law that the evidence of a handwriting expert cannot be acted upon unless substantially corroborated but Courts have been slow in placing implicit reliance on such opinion evidence, without more, because of the imperfect nature of the science of identification of handwriting and its accepted fallibility. There is no absolute rule of law or even of prudence which has ripened into a rule of law that in no case can the Court base its findings solely on the opinion of a handwriting expert but the imperfect and

frail nature of the science of identification of the author by comparison of his admitted handwriting with the disputed ones has placed a heavy responsibility on the Courts to exercise "extra care and caution before acting on such opinion. Before a Court can place reliance on the opinion of an expert, it must be shown that he has not betrayed any bias and the reasons on which he has based his opinion are convincing and satisfactory. It is for this reason that the Courts are wary to act solely on the evidence of a handwriting expert; that, however, does not mean that even if there exist numerous striking peculiarities and mannerisms which stand out to identify the writer, the Court will not act on the expert's evidence. In the end it all depends on the character of the evidence of the expert and the facts and circumstances of each case."

d) In *Ramesh Chandra Agrawal v. Regency Hospital*

Limited & others^[9], it is held thus: (paras 18 & 22)

"The importance of the provision has been explained in the case of *State of H. P. v. Jai Lal and Ors.*, [1999] 7 SCC 280. It is held, that, section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

...

In the Article "relevancy of Expert's Opinion" it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for

forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on basis of which opinion is formed. The same is clear from following inference: "mere assertion without mentioning the data or basis is not evidence, even if it comes from expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value. "

e) In *Smt. Bhagwan Kaur v. Shri Maharaj Krishan*

Sharma & others,^[10] it is held thus: (para26)

"It is no doubt true that the prosecution led evidence of hand writing expert to show the similarity of handwriting between PW 1/A and other admitted writings of the deceased, but in this respect, we are of the opinion that in view of the main essential features of the case, not much value can be attached to the expert evidence. The evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed. The courts should, therefore, be wary to give too much weight to the evidence of handwriting expert. In *Kishore Chandra v. Ganesh Prasad*, AIR 1954 SC 316 this Court observed that conclusions based upon mere comparison of handwriting must at best be indecisive and yield to the positive evidence in the case."

f) In *Magan Bihari Lal v. The State of Punjab*,^[11] it is

held thus: (para 7)

“It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra v. State of U. P.*, AIR 1957 SC 381 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad v. Md. Isa*, AIR 1963 SC 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar v. Subodh Kumar*, AIR 1964 SC 529 where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin v. State of M. P.* AIR 1967 SC 1326 and if uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide *Gurney v. Longlands*, (1822) 5 B and Ald 330 and *Matter of Alfred Foster's Will*, 34 Mich 21. The Supreme Court of Michigan pointed out in the last mentioned case : "Every one knows how very unsafe it is to rely upon any one's opinion concerning the niceties of penmanship - Opinions are

necessarily received, and may be valuable, but at best this kind of evidence is a necessary evil." We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence, being opinion evidence, is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with the offence."

g) In *Fakhruddin v. The State of M.P.*, [\[12\]](#) it is held thus: (paras 10 & 11)

"EVIDENCE of the identity of handwriting receives treatment in three sections of the Indian EVIDENCE Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. This is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The EVIDENCE Act also makes relevant the opinion of a handwriting expert (S. 45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S. 73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of the person.

6. BOTH under S. 45 and S. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case

the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that Court may accept that fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.”

From the above decisions, it is clear that evidence of an expert like any other witnesses, has to be appreciated in accordance with law and accepted only if found to be trustworthy. In doing so, every effort should be made to explain the same and correlate with the evidence of eye-witnesses.

35. Ordinarily, the evidence of an expert is opinion evidence. It cannot be substantive evidence. Opinion of the persons specially skilled in such foreign law, science or art or question as to the identity of hand-writing or finger

impressions, called experts therein are relevant facts.

Certain documents have been sent to the expert by Chandanagar police station in crime no.206/97 seeking for opinion. None of the parties filed the documents relating to the said crime. Further, these two documents do not contain opinion with reasons. Though as seen from Ex.B8, the enclosures containing 7 sheets would reveal about the opinion with reasons, those enclosures have not been filed. Simply because they are marked, it does not mean that the contents have to be accepted as gospel truth. Even the contents have to be accepted as gospel truth, they do not correlate to the disputed signatures on Exs.B1 to B3. Therefore, Exs.B7 and B8 cannot be looked into.

36. Naresh Chand, who executed the sale deed on behalf of the plaintiff company under the original of Ex.B2 is the best person to speak as to under what circumstances he executed the original of Ex.B2. But, he was not examined. No explanation is given by P.W.1 for his non-examination. P.W.1 purposefully withheld the evidence of his own brother Naresh Chand. Though it is one of the contentions of the learned senior counsel appearing for the appellant that when it is the case of the first defendant that signature of Naresh Chand was forged by Mahesh Chand, there is no need to examine Naresh Chand. The plea taken by the first defendant in the

criminal case has not been confronted with D.W.1. The relevant documents in which the plea of the first defendant is raised are not filed into the Court. Even other wise, judgment of the criminal court is not binding on the civil Court. The pleadings and evidence let in by the parties are alone can be weighed and appreciated in answering the issues or points. This argument is fallacious for the simple reason that it is not at all the case of the first defendant in the suit that signatures on original of Ex.B2 were signed by Mahesh Chand forging signatures of Naresh Chand. There is no plea on this aspect by the first defendant and it is not stated by D.W.1 in his evidence that Mahesh Chand forged signatures of Naresh Chand on the original of Ex.B2. This argument is wholly untenable and devoid of merit.

37. It is one of the contentions raised by the learned senior counsel appearing for the appellant that Naresh Chand was not authorized on behalf of the plaintiff company to execute the sale deed. It is not in dispute that Naresh Chand is one of the Directors of the plaintiff company. Section 54 of the Companies Act, 1956 reads that save as otherwise expressly provided in this Act, a document or proceeding requiring authentication by a company may be signed by a director, the managing agent, the secretaries and treasurers, the manager, the secretary or other authorized officer of a company and

need not be under its common seal. Resolutions passed by the plaintiff company, particularly with reference to the authorization, are exclusively within the knowledge and possession of the plaintiff company. Except filing two documents i.e. Exs.A1 and A2, no other document is filed by the plaintiff. No explanation is forthcoming for not producing the important documents of the company like board resolutions or authorization in favour of Naresh Chand, etc. As seen from the original of Ex.B2, it is very clear that it is executed by Naresh Chand as Director of the plaintiff company. The evidence of D.W.1 would go to show that he paid total consideration of Rs.4,75,000/- on 24.12.1996 which is inclusive of Rs.1,10,000/- paid at the time of execution of the agreement of sale dated 27.02.1975, and a receipt signed by the plaintiff company through its Director Mahesh Chand was issued for the same, and that the plaintiff company executed a sale for an extent of Ac.4.00 guntas of land on 26.12.1996 registered on 08.01.1997 as document No.237 of 1997 in the office of the Sub Registrar, Ranga Reddy; that on 10.01.1997, P.W.1 handed over original sale deed to him and when he enquired about execution of another sale deed, P.W.1 promised to execute the same shortly; that at that time, P.W.1 took away original agreement of sale dated 27.02.1975 under acknowledgement dated 10.01.1997. Except giving some suggestions, nothing has been elicited to discredit the testimony of D.W.1.

There is no other reason for a person like D.W.1 to foist originals of Exs.B1, B2 and B3 by stealing letter head of the company and forging the signatures of Mahesh Chand and Naresh Chand. In all these documents, rubber stamp of the plaintiff company is affixed. It is not the case of the plaintiff that stamp of the company has been stolen or that the first defendant got prepared a stamp similar to the stamp of the plaintiff company and used it in the preparation of Exs.B1 to B3. P.W.1 did not state in his evidence that stamp of the company has been stolen and that the same was used for execution of originals of Exs.B1 to B3 nor the stamp of the company was fabricated by the first defendant. Therefore, the probability factor in execution of Ex.B2 is in favour of the first defendant. P.W.1 appears to be giving false evidence for the reasons best known to him. He is totally unreliable witness. Plaintiff has not come to the court with clean hands. Therefore, the plaintiff is not entitled to the declaratory relief sought for. Accordingly, this point is answered against the plaintiff and in favour of the first defendant.

POINT No.2:

Whether the plaintiff is entitled for consequential relief of recovery of possession of the suit land ?

38. On point no.1, it is established preponderance of

probability that the plaintiff company sold an extent of Ac.4.00 guntas of land to the first defendant and promised to execute a sale deed in respect of Ac.5.20 guntas of land in pursuance of the agreement of sale dated 27.02.1975, and the original of Ex.B2 is found to be correct and similarly it is found that the first defendant established the payment of entire sale consideration under Ex.B1, and by virtue of Ex.B3, P.W.1 had taken away original agreement of sale dated 27.02.1975. Since the plaintiff inducted the first defendant in possession of the suit schedule property in pursuance of the agreement of sale dated 27.02.1975 lawfully, plaintiff is not entitled for recovery of possession. This point is, accordingly, answered against the plaintiff and in favour of the first defendant.

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POINT No.3:

Whether the suit is barred by limitation ?

39. According to the plaintiff, cause of action arose on 25.02.1997 on which date the first defendant forcibly entered into possession of the suit schedule property and therefore the suit is filed within 3 years after the dispossession, and hence, it is within the period of limitation. But, it is the specific case of the first defendant that in pursuance of the agreement of sale dated 27.02.1975, he was put in possession of the plaintiff schedule property by the plaintiff, and for recovery of

possession of the property, suit has to be filed within 12 years under Article 65 of the Limitation Act, 1963 which provides for possession of immovable property or any interest therein based on title, time from which period begins to run is when the possession of the defendant becomes adverse to the plaintiff. If the possession of the first defendant is illegal or contrary to the agreement of sale, then the suit has to be filed within 12 years. After lapse of 22 years, the suit is filed, and so, the suit is not filed within the prescribed period of limitation. In view of the foregoing discussion on point no.1, the first defendant established that in pursuance of the agreement of sale dated 27.02.1975, he was put in possession of the suit schedule property. Therefore, the cause for filing the suit for recovery of possession commences from 27.02.1975 and the period of limitation is 12 years thereafter. Admittedly, the suit is not filed within the period of 12 years. Therefore, filing of the suit is barred by limitation. This point is, accordingly, answered against the plaintiff and in favour of the first defendant.

POINT No.5:

Whether the first defendant executed agreement of sale-cum-General Power of Attorney in favour of the third defendant and whether the latter is in possession of Ac.2.32 guntas of land in survey no.101/1 ?

40. It is the case of the third defendant that the first

defendant executed an Agreement of Sale-cum-General Power of Attorney in her favour in respect of Ac.2.32 guntas of land in survey no.101/1 and she is in possession of the said land. The third defendant is examined as D.W.3, who categorically stated that she purchased the property admeasuring Ac.2.32 guntas in survey no.101/1 forming part of old survey nos. 137, 138 and 139, from the first defendant under Agreement of Sale-cum-General Power of Attorney bearing document No.305/97, dated 10.01.1997 for a total consideration of Rs.4,20,000/- i.e. at the rate of Rs.1,50,000/- per acre, and that she is in possession of the said extent of property. Nothing has been elicited to discredit the testimony of D.W.3. Except giving suggestions when she was cross-examined on behalf of the plaintiff, nothing has been elicited. But, she has not filed the Agreement of Sale-cum-General Power of Attorney. No explanation is given for its non-production. In the absence of production of the Agreement of Sale-cum-General Power of Attorney in her favour, no finding can be given on this point. Accordingly, this point is answered.

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POINT No.6:

Whether the plaintiff company entered into agreement of sale with the first defendant on 27.02.1975?

41. Though the first defendant has not produced the agreement of sale dated 27.02.1975 into the Court, a

proper explanation was given by the first defendant to the effect that it was taken away by P.W.1 after handing over original of Ex.B2 under acknowledgement dated 10.01.1997 (Ex.B3). The recitals in Ex.B2 coupled with the evidence of D.W.1 would clearly go to show that the plaintiff company entered into agreement of sale with the first defendant on 27.02.1975 and in pursuance of the said agreement of sale, the plaintiff executed regular sale deed in respect of an extent of Ac.4.00 guntas in favour of the first defendant. Learned senior counsel appearing for the appellants placed reliance on the following decisions.

a) In *Ganesh Shet v. C.S.G.K. Setty (Dr)*,^[13]

wherein it is held thus:

“THESE are the points upon which the appellant's counsel made elaborate submissions citing several rulings of this Court and the High Courts under Order 6 and Order 7, C.P.C. It has been argued that, without amendment of pleadings, plaintiff can ask the Court to construe the pleadings liberally. Inasmuch as both sides have adduced evidence on the question whether there has been an agreement at Bangalore on 28-4-1984 or not, the plaintiff can still be given relief of specific performance on the basis of the original pleadings as it stands, even assuming there is no specific reference to a contract being concluded at Bangalore on 28-4-84. Several rulings have been cited before us to the effect that if parties have led evidence on a point which has not been pleaded, no prejudice will be caused if relief is granted on the basis of what emerges from the evidence. We do not propose to refer to these rulings as the said propositions are not in dispute.

(A) Point 3 :

(a) We shall first refer to certain special principles of law applicable to suits for specific performance in regard to

the discretion which is to be exercised under Section 20 of the Specific Relief Act, 1963, when there is a conflict between the pleading and the evidence.

Section 20 of the Act reads as follows :

"S. 20 : Discretion as to decreeing specific performance:

(1) The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) to (4)"
."

It is well settled that the circumstances referred to in sub-clauses (2) to (4) in regard to exercise of discretion for granting a decree for specific performance are not exhaustive. The relief for specific performance is discretionary and is not given merely because it is legal but it is governed by sound judicial principles. See *Madamsetty Satyanarayana v. G. Yelloji Rao*, (1965) 2 SCR 221 : (AIR 1965 SC 1405) and *Sardar Singh v. Smt. Krishna Devi*, (1994) 4 SCC 18 : (1994 AIR SCW 4729).

It is again well settled that, in a suit for specific performance, the evidence and proof of the agreement must be absolutely clear and certain.

7. IN *Pomeroy on 'Specific Performance of Contracts'* (3rd Edn) (para 159) it is stated clearly that a "greater amount or degree of certainty is required in the terms of an agreement, which is to be specifically executed in equity, than is necessary in a contract which is to be the basis of an action at law for damages. An action at law is founded upon the mere non-performance by the defendant, and this negative conclusion can often be established without determining all the terms of the agreement with exactness. The suit in equity is wholly an affirmative proceeding. The mere fact of non-performance is not enough; its object is to procure a performance by the defendant, and this demands a clear, definite, and precise understanding of all the terms; they must be exactly ascertained before their performance

can be enforced. This quality of certainty can best be illustrated by examples selected from the decided cases.

....."

b) In *Nahar Singh v. Harnak Singh*,^[14] it is

held thus:

"It is well settled that unless the property in question for which the relief has been sought for is identifiable, no decree can be granted in respect of the same. The learned counsel in the course of his arguments, however, having not been able to dislodge the findings arrived at by the Lower Appellate Court merely urged that the agreement having been found to have been entered into between the parties the Court should issue the direction for enforcement of the same. We are unable to agree with this argument of the learned counsel for the appellant."

c) In *Vimlesh Kumari Kulshrestha v.*

Sambhajirao,^[15] it is held thus:

"REFERENCE to the said legal maxim is, in our opinion, is not apposite in the facts and circumstances of this case. By reference to the boundaries of the premises alone, the description of the properties agreed to be sold did not become certain. For the purpose of finding out the correct description of the property, the entire agreement was required to be read as a whole. So read, the agreement becomes uncertain.

An agreement of sale must be construed having regard to the circumstances attending thereto. The relationship between the parties was that of the landlord and tenant. Appellant was only a tenant in respect of a part of the premises. It may be that the boundaries of the house have been described but a plan was to be a part thereof. We have indicated hereinbefore that the parties intended to annex a plan with the agreement only because the description of the properties was

inadequate. It is with a view to make the description of the subject-matter of sale definite, the plan was to be attached. The plan was not even prepared. It has not been found that the sketch of map annexed to the plaint conformed to the plan which was to be made a part of the agreement for sale. The agreement for sale, therefore, being uncertain could not be given effect to."

d) In *Manjunath Anandappa v. Tammanasa*, ^[16] it is held thus:

"In *Veerayee Ammal v. Seenii Ammal* reported in (2002) 1 SCC 134 the law is stated in the following terms :

"11. When, concededly, the time was not of the essence of the contract, the appellant-plaintiff was required to approach the Court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in *Chand Rani v. Kamal Rani* (1993) 1 SCC 519 held that in case of sale of immovable property there is no presumption as to time being of the essence of the contract. Even if it is not of the essence of contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case. 12. In *K. S. Vidyanadam v. Vairavan* (1997) 3 SCC 1 this Court held : "Even where time is not of the essence of the contract, the plaintiff must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property." 13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably

knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do Conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon, it is defined to mean :

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or require'd, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea".

IN *Lourdu Mari David and others v. Louis Chinnaya Arogiaswamy and others* reported in (1996) 5 SCC 589 this Court observed :

"2. It is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. IN other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief."

The above decisions have no application to the peculiar facts of this case. Entire sale consideration as per the agreement of sale is paid. As per demand made by the plaintiff, the first defendant paid additional amount. After receiving the additional amount, Naresh Chand executed a sale deed (original of Ex.B2) for an extent of

Ac.4.00 guntas of land and promised to do so in respect of Ac.5.20 guntas shortly. The recitals in Ex.B2 cannot be shown to be false or incorrect. The said document would also reveal that the Board of Directors of the plaintiff company passed a resolution to sell about Ac.8.00 guntas of land to the first defendant. Though the plaintiff company received the total consideration as per agreement of sale dated 27.02.1975, it demanded further amount, and on negotiations, the first defendant agreed to enhance the amount to Rs.40,000/- per acre. The explanation given by D.W.1 appears to be probable in view of the acknowledgement given by P.W.1 vide Ex.B3. Except a bald plea of forgery taken by the plaintiff, it has not substantiated with proper and relevant evidence. If really the agreement of sale is not in existence, Naresh Chand representing the plaintiff company, would not have executed Ex.B2-sale deed (original). Recitals in Ex.B3 show about execution of the agreement of sale by Mahesh Chand representing the plaintiff company in favour of the first defendant.

42. There is yet another strong circumstance which would go to show that Mahesh Chand executed Exs.B1 and B3, receipt and acknowledgement respectively, in favour of the first defendant and Naresh Chand executed Ex.B2-sale deed in favour of the first defendant, i.e. Ex.B16-Award. It is an award passed by Justice

P.N.Bhagawati (Rtd.) and Justice V.D. Tulzapurkar on 02.04.1994 directing Mahesh Chand, plaintiff and some others to hand over the title deeds relating to land in survey nos. 94 to 97, 102, 103/1 and 3 to the advocate for the claimants. The properties of the plaintiff company were referred to arbitration. Plaintiff company is respondent no.30 in the arbitration proceedings. Plaintiff schedule property is not referred to arbitration. The reasons are obvious. Because the plaintiffs were aware of the agreement of sale dated 27.02.1975, the lands covered by the agreement of sale dated 27.02.1975 have not been referred to arbitration before the learned Judges of the Supreme Court (Retired). Hence, execution of the agreement of sale dated 27.02.1975 is true and correct. Therefore, we have no hesitation to hold that the plaintiff company entered into agreement of sale with the first defendant on 27.02.1975. Accordingly, this point is answered.

POINT No.4 (COUNTER CLAIM) :

Whether the second defendant is entitled to declaration that he is the owner of property admeasuring Ac.4.00 guntas in survey no.101/1 ?

43. The second defendant made a counter claim in respect of Ac.4.00 guntas of land in survey no.101/1 of Serilingampalli village. Order VIII Rule 6A of the Code of Civil Procedure, 1908 enables a defendant to set up

counter claim against the claim of the plaintiff, in writing, or any right or claim in respect of cause of action accruing to the defendant against the plaintiff either before or after filing of the suit , but before the defendant has delivered his defence or before the time fixed for delivery of his defence has expired. Such counter claim, however, should not exceed the pecuniary limits of the jurisdiction of the Court. Counter claim of the defendant will be treated as a plaint and the plaintiff has a right to file written statement in answer to the counter claim of the defendant. Therefore, the initial burden is on the second defendant to prove his title in respect of Ac.4.00 guntas of land in survey no.101/1.

44. According to the second defendant, he purchased the land under Exs.B18 and B19 each an extent of Ac.2.00 guntas from Syed Ali Mohd. Hussaini. It is the case of D.W.2 that Mahaboobunnisa Begum is the original owner of the land in survey no.101/1 and Syed Ali Mohd. Hussaini inherited the said land from Mahaboobunnisa Begum, who claims that she is his paternal aunt. Except this pleading and oral evidence of D.W.2, he has not produced any document to show as to how his vendor inherited the property from Mahaboobunnisa Begum. He has not filed succession certificate to show that Syed Ali Mohd. Hussaini became the sole legal heir of Mahaboobunnisa Begum. Though he has seen the

legal heir certificate of Syed Ali Mohd. Hussaini, it has not been filed into the Court. Exs.B18 and B19 were executed by Syed Kutbuddin Ahmed Hussaini as a General Power of Holder of Syed Ali Mohd. Hussaini. Syed Ali Mohd. Hussaini claims to have derived the title from Mahaboobunnisa Begum, being her nephew. There is no evidence let in on behalf of the second defendant to show that Mahaboobunnisa Begum does not have any legal heirs. The evidence of D.W.2 is silent with regard to the surviving legal heirs of Mahaboobunnisa Begum and there is no pleading on this aspect. Though D.W.2 claims to have seen the legal heir certificate of Syed Ali Mohd. Hussaini, he has not filed the same into the Court. Therefore, there is absolutely no evidence to show that Mahaboobunnisa Begum is paternal aunt of Syed Ali Mohd. Hussaini. None of the relatives of Mahaboobunnisa Begum was examined to show that Syed Ali Mohd. Hussaini was the sole surviving legal heir of Mahaboobunnisa Begum who is the original owner of the plaint schedule property along with other properties. Therefore, from the evidence on record, this Court has no hesitation in holding that Syed Ali Mohd. Hussaini does not have any right to sell the property to D.W.2. Ex.B17 which is the General Power of Attorney executed by Syed Ali Hussaini in favour of Syed Khutubuddin Ahmed Hussaini, does not reveal as to how he acquired the title to the suit schedule lands. Even in Exs.B18 and B19, the

sale deeds do not show as to how Syed Ali Mohammed Hussaini derived or acquired right, title and interest over the suit schedule property.

45. On behalf of D.W.2, several documents were filed. Ex.B16 is the Award passed by the Arbitrators, which relates to survey nos. 94, 95, 96, 97, 102, 103/1 & 2. Therefore, it has no relevance to the suit schedule land. Ex.B17 is copy of the agreement of sale executed by Syed Ali Mohd. Hussaini in favour of the second defendant. The agreement of sale does not confer any right to D.W.2. Ex.B20 is the General Power of Attorney. This document does not show as to how Syed Ali Mohammed Hussaini derived title. Except stating that he is owner of land in survey nos. 97, 98, 100/1, 100/2, 101/1, 101/2, 101/3, 103/1 and 103/2, totally Ac.58.18 guntas, no other document is filed to show as to how he derived title to the property. Therefore, Ex.B20 does not confer any right, title or interest in favour of Syed Ali Mohammed Hussaini.

46. Ex.B21 is the Gazette converting the land as residential zone. This document does not show that on the application made by Syed Ali Mohd. Hussaini, this Gazette Publication was made. Ex.B22 is the document in Urdu. As seen from its translated copy, Osman Ali Khan, Managing Agent of Hyderabad National Industries, Hyderabad purchased Ac.60.00 guntas of land in survey

nos. 94, 95, 96 and 97. This document does not relate to the suit schedule property. Exs.B23 and 24 are proceedings issued by Hyderabad Urban Development Authority permitting Syed Ali Mohd. Hussaini and others for conversion in respect of several survey numbers.

Unless a document is filed to show that Syed Ali MOhd. Hussaini had a title, the proceedings has no value.

Ex.B25 is the copy of application filed under Section 8 (1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 by the second defendant against Mahesh Chand and others. It is only a pleading and it has no relevance.

He claims to have purchased the property under two registered sale deeds and those sale deeds cannot be relied upon as vendor of D.W.2 has no title to alienate the property. Ex.B26 is the judgment in Original Suit No.258 of 1970 on the file of the V Additional Judge, City Civil Court, Hyderabad filed by the plaintiff herein against Syed Ali Mohammed Hussaini and one Gilbert. The suit relates to land in survey nos. 94 to 97, 102, 103/1 & 2. Therefore, this judgment is not relevant for the purpose of deciding the point as it does not relate to suit schedule property.

Ex.B27 is the order dated 04.04.1994 in C.M.A. No.85 of 1993 on the file of the District Judge, Ranga Reddy. It relates to survey nos. 102, 103/1 & 2. Therefore, this document is not relevant to decide the present point.

Ex.B28 is the judgment and decree in Original Suit No.169 of 1992 on the file of the Principal District Munsif,

Hyderabad West & South. It relates to survey nos. 102, 103/1 & 2 and part of survey no.97. Therefore, it does not relate to the suit schedule property.

47. Ex.B29 is the certified copy of judgment in C.C. No.908 of 2002 whereby the Court convicted Mahesh Chand of the offence punishable under Section 420 IPC while acquitting him of the offences under Section 506 and 468 IPC. The conviction was confirmed by the appellate court as per judgment in Ex.B30. The criminal court gave a categorical finding that the prosecution failed to prove its allegation that A.1 (Mahesh Chand) forged signature of Naresh Chand in original of Ex.B2. Even otherwise, judgment of criminal court is not binding on civil Court. Ex.B31 is paper publication. It is not a legally admissible document. Ex.B32 is the building permission. Ex.B33 is the plan. These documents cannot be relied upon as Syed Ali Mohd. Hussaini has no title to the property. Ex.B34 is property tax demand notice and Exs.B35 and B36 are property tax payment receipts said to have been paid by the second defendant. Within one month after the sale, these documents came into existence. It is not the case of D.W.2 that he constructed the house. As seen from Exs.B18 and B19, he purchased vacant site. Ex.B37 is the application made for demarcation of the land. This document does not confer any title to the property. Ex.B39 is the khasra pahani. In

this document, pattadar's name was shown as Kammari Ramaiah in respect of lands in survey nos. 37/1, 38/1 and 39/1. Therefore, this document does not relate to the suit schedule property. Ex.B40 is the adangal. It does not relate to the suit schedule property. Ex.B41 is the copy of vasoolbaaki for 1343 fasli and Ex.B42 is sethwar for fasli 1352. Survey numbers mentioned therein do not correlate to the suit schedule property. Exs.B43 to 50 are certified copies of pahanis. In all these documents, pattadar name was shown as M/s. National Commercial Company in respect of survey nos. 100/1 and 101/1.

Exs.43 to 50 also show about the same. There is no dispute about that fact because the plaintiff company purchased the property from the original owner under Exs.A1 and A2. Therefore, the documents filed on behalf of D.W.2 do not help in any manner to improve his case.

D.W.2 miserably failed to establish his vendor's title. Therefore, the counter claim made by D.W.2 has to be rejected.

POINT No.7:

To what relief ?

48. Judgment of the trial Court with regard to allowing counter claim of the second defendant is set aside, and the counter claim of the second defendant is dismissed. The Appeal Suit is dismissed confirming the judgment and decree of the trial Court insofar as the relief sought for, by the plaintiff, with

costs.

(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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APPEAL SUIT No. 503 of 2005
(per the Hon’ble Sri Justice K.C.Bhanu)

01.06.2015

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- [\[1\]](#) (1991) 3 Supreme Court Cases 331
 - [\[2\]](#) (1977) 1 Supreme Court Cases 133
 - [\[3\]](#) AIR 1960 SC 100
 - [\[4\]](#) (1999) 4 Supreme Court Cases 350
 - [\[5\]](#) (2009) 2 Supreme Court Cases 75
 - [\[6\]](#) (2009) 9 Supreme Court Cases 221
 - [\[7\]](#) (1999) 7 Supreme Court Cases 280
 - [\[8\]](#) (1992) 3 Supreme Court Cases 700
 - [\[9\]](#) (2009) 9 Supreme Court Cases 709
 - [\[10\]](#) (1973) 4 Supreme Court Cases 46
 - [\[11\]](#) AIR 1977 Supreme Court 1091(1)
 - [\[12\]](#) AIR 1967 Supreme Court 1326
 - [\[13\]](#) (1998) 5 Supreme Court Cases 381
 - [\[14\]](#) (1996) 6 Supreme Court Cases 699
 - [\[15\]](#) (2008) 5 Supreme Court Cases 58
 - [\[16\]](#) (2003) 10 Supreme Court Cases 390