

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE S. RAVI KUMAR

A.S.Nos.862 of 2001, 1641 of 1999, 1974 of 1999,
2395 of 1999, 1944 of 1999, 1958 of 1999, 2131 of
1999,
& 1386 of 1999

COMMON JUDGMENT: (Per Hon'ble Sri Justice S. Ravi
Kumar)

These appeals are filed challenging common
judgment dated 3rd December, 1998 passed in
O.S.Nos.2 of 1996, 69 of 1993, 70 of 1993, 50 of 1993,
71 of 1993, 3 of 1996, 1 of 1995 and 2 of 1995.

O.S.No.70 of 1993 is originally filed on 4-4-
1980 which was registered as O.S.No.85 of 1980
renumbered as O.S.No.496 of 1982 again renumbered
as O.S.No.214 of 1988 and finally numbered as
O.S.No.70 of 1993 filed by N.Raghunandan and
N.Jagan Mohan against N.Yadagiri seeking relief of
declaration that lay out obtained or constructions
raised on the land admeasuring Ac.13-34 Guntas in
S.No.284 and Ac.11-33 Guntas in S.No.285 is illegal
and for a consequential injunction. Trial court
dismissed this suit and aggrieved by dismissal of suit,
plaintiffs therein preferred A.S.No.2395 of 1999.

O.S.No.50 of 1993 was originally filed on 2-7-
1981 which was registered as O.S.No.172 of 1981
renumbered as O.S.No.221 of 1983 and finally
renumbered as O.S.No.50 of 1993 filed by
N.Raghunandan and N.Jagan Mohan against
N.Yadagiri and another seeking cancellation of sale
deed in respect of 900 square yards of land (equal to
752.49 square meters) in the eastern half of survey
No.284 of Bagh Hayath Nagar village being document

No.7557/79 dated 23-7-79 and to declare the said document as illegal and void and for consequential injunction. Trial court dismissed the suit, aggrieved by which, plaintiffs therein filed A.S.No.1944 of 1999.

O.S.No.69 of 1993 is originally filed on 24-9-1981 which was registered as O.S.No.995 of 1981 renumbered as O.S.No.304 of 1992 and again as O.S.No.196 of 1983 and finally as O.S.No.69 of 1993 also filed by Raghunandan and Jagan Mohan against Yadagiri and others for recovery of possession of Ac.0-04 ½ cents out of survey Nos.29, 51 to 55 and 69 of Saheb Kalan village appurtenant to Balaji Bavi; Ac.2-19 cents out of S.No.9 of Saheb Kalan village out of lands known as Bothalachilaka; Ac.6-37 Guntas (equivalent to Ac.6.92 ½ cents) which is eastern half portion of Survey No.284 of Bagh Hayath Nagar village and Ac.1.9 ½ Guntas (equivalent to Ac.1.23 ¾ cents of S.No.285 on eastern side and for mesne profits. Trial court dismissed the suit, aggrieved by which, plaintiffs therein preferred A.S.No.1386 of 1999.

O.S.No.71 of 1993 was originally filed on 2-7-1979 which was registered as O.S.No.617 of 1979 filed by one Koya Satyanarayana against N.Yadagiri and N.Raghunandan for specific performance of agreement of sale dated 15-7-1967 in respect of Ac.3.23 Guntas of land in S.No.285 of Bagh Hayath Nagar and trial court dismissed the suit, aggrieved by which plaintiff therein filed A.S.No.1641 of 1999.

O.S.No.3 of 1996 was originally filed on 9-4-1986 and registered as O.S.No.147 of 1986 and renumbered as O.S.No.3 of 1996 filed by P.Varalaxmi and others against N.Raghunandan for the relief of permanent injunction in respect of plot Nos.3 and 4 admeasuring 2852.44 square yards in S.No.285 of Bagh Hayath Nagar. Trial court decreed this suit,

aggrieved by which, Raghunandan preferred A.S.No.1974 of 1999.

O.S.No.1 of 1995 was originally filed on 4-2-1987 and registered as O.S.No.50 of 1987 which was renumbered as O.S.No.1 of 1995 filed by one Dileep Champathirao Babde and another against Raghunandan and Jagan Mohan for perpetual injunction in respect of plot Nos.2C and 2D admeasuring 500 square yards in S.No.285 of Bagh Hayathnagar. Trial court decreed the suit in favour of plaintiffs therein, aggrieved by which, Raghunandan and Jagan Mohan preferred A.S.No.2131 of 1999.

O.S.No.2 of 1995 was originally filed on 11-4-1995 which was registered as O.S.No.124 of 1991 and renumbered as O.S.No.2 of 1995 filed by one A.Narender and another against N.Raghunandan and two others for perpetual injunction in respect of 363 square yards (0.03Guntas) in Survey No.285 of Bagh Hayathnagar for perpetual injunction and trial court granted decree in favour of plaintiffs, aggrieved by which Raghunandan preferred A.S.No.1958 of 1999.

O.S.No.2 of 1996 was originally filed on 11-8-1993 which was registered as O.S.No.514 of 1993 and renumbered as O.S.No.2 of 1996 filed by N.Srinivas and another against N.Yadagiri, N.Raghunandan and N.Jagan Mohan for the relief of declaration and recovery of possession in respect of 8 items based on a will dated 9th Amarded 1348 Fasli said to have been executed by late Smt.Bagamma. Trial court dismissed the suit in O.S.No.2 of 1996 challenging which, plaintiffs therein filed A.S.No.862 of 2001.

Basing on the pleadings of both parties, trial court framed the following issues in respective suits.

In O.S.No.2 of 1996, the following issues are framed:

1. *Whether the plaintiffs are entitled to declaration of title and delivery of possession of the suit schedule property on the will set up by them?*
2. *Whether the plaintiffs are entitled to past and future MESNE profits as asked for in the plaint?*
3. *Whether the suit is bad for non-joinder of necessary parties, as pleaded by 2 and D.3 in W/S.*
4. *Whether the alleged will set up by the plaintiffs are enforceable under law as against defendant?*
5. *Whether the suit is hit under the provisions of Benami Prohibition Act, as pleaded by D.2 and D.3?*
6. *Whether the suit filed by the plaintiffs barred by limitation?*
7. *To what relief?*

In O.S.No.69 of 1993, the following issues are framed:

1. *Whether the plaintiffs are entitled to claim their rights in respect of the suit properties under agreement dt.26-2-1965 in view of the subsequent events?*
2. *Whether late Venkataswamy revised and amended the transfers made through registered documents of June and July, 1965?*
3. *Whether the plaintiffs acted upon the revised and amended partition and division made by late Venkata Swamy?*
4. *Whether the defendants 1 to 3 prescribed their title by adverse possession in respect of extent of lands covered by suit Sy.Nos.284, 285, 283 of Bagh Hayathnagar village?*
5. *Whether the plaintiffs are entitled to the possession of Ac.6.37 Guntas in Sy.No.284 and Ac.1.9 ½ guntas in Sy.No.285?*
6. *Whether the 1st defendant was recognized for 1/7th share in the eastern part of Sy. No.285 when agreement dated 15-7-67 was executed in*

favour of the 9th defendant and another?

7. *Whether the suit is with in time?*

8. *Whether the suit for possession without securing declaration is tenable?*

9. *Whether the valuation and court fee paid are proper and correct?*

10. *Whether the plaintiffs are entitled to possession of the scheduled property?*

11. *Whether the plaintiffs are entitled to MESNE profits if so at what rate?*

12. *To what relief?*

Additional Issues:

1. *Whether the suit schedule property is self acquired property of late N.Bagamma @ Bamma?*

2. *Whether the will dt.9th Amarded 1348 Fasli executed by N.Bagamma @ Bamma bequeathing the land immovable property equally to her two sons Yadagiri and Satyanarayana, whether life interest is true, valid and binding?*

In O.S.No.70 of 1993, the following issues are framed:

1. *Whether the plaintiffs are the Co-owners and Co- parceners of the suit schedule property along with the defendants?*

2. *Whether the plaintiffs are entitled for declaration and consequential injunction as prayed?*

3. *Whether the suit property valued and C.F. paid is sufficient?*

4. *To what relief?*

In O.S.No.50 of 1993, the following issues are framed:

1. *Whether plaintiff is the owner of the suit schedule property and in possession of suit schedule property as contended by him?*

2. *Whether the plaintiff is not in possession of*

the present suit property and as suit as filed is not maintainable as contended by defendants?

3. *Whether the C.F. paid is sufficient?*
4. *Whether this court has no jurisdiction to try this suit?*
5. *Whether the plaintiff is entitled for the relief as prayed?*
6. *To what relief?*

In O.S.No.71 of 1993, the following issues are framed:

1. *Whether the plaintiff is entitled for declaration and injunction as prayed for?*
2. *To what relief?*

Additional issue framed on 19-1-1984.

1. *Whether the defendant No.2 is the bonafide purchaser of the portion of the suit land?*

Additional issue framed on 6-10-1987.

1. *Whether the suit is time barred as contended by defendant?*
2. *Whether the suit valuation is not correct as such whether the court fee is not sufficient as contended by D.2.*
3. *Whether the principle of estoppel and resjudicate operates in this suit as contended by D2?*

In O.S.No.3 of 1996, the following issues are framed:

1. *Whether the plaintiff is entitled for permanent injunction as prayed for?*
2. *To what relief?*

In O.S.No.1 of 1995, the following issues are framed:

1. *Whether the plaintiff is entitled for permanent injunction as prayed for?*

2. *To what relief?*

In O.S.No.2 of 1995, the following issues are framed:

1. *Whether the plaintiffs vendor B.Subba Rao had any valid title over the suit schedule property and if so he had conveyed any valid title to the plaintiff?*
2. *Whether the plaintiffs have got valid title over the suit schedule property?*
3. *Whether the defendants have perfected their title by adverse possession?*
4. *Whether the plaintiffs are entitled to perpetual injunction as prayed for?*
5. *To what relief?*

All the above suits are clubbed and common evidence was recorded in O.S.No.2 of 1996 as the said suit is a comprehensive suit. Two witnesses are examined on behalf of plaintiffs in O.S.No.2 of 1996, and documents Exs.A.1 to A.66 are marked. On behalf of defendants in O.S.No.2 of 1996, D.Ws.1 to 3 are examined and Exs.B.1 to B.134 are marked. Evidence is separately recorded in O.S.No.3 of 1996 wherein husband of the plaintiff in that suit is examined as P.W.1 in the said suit and ExsA.1 to A.47 are marked as documents on behalf of plaintiff therein.

From the submissions of advocates of respective parties and on a perusal of the pleadings and other material, the following points would arise for our reconsideration in all these appeals.

1. Whether the will dated 9th Amarded 1348 Fasli is true, valid and binding on the parties?
2. Whether acceptance deed executed by N.Venkataswamy dated 27th Amarded 1948 Fasli is true, valid and binding on the parties?
3. Whether Raghunandan and Jagan

Mohan (plaintiff in O.S.No.69 of 1993 are entitled for recovery of possession of plaint schedule properties in O.S.No.69 of 1993 as prayed for?

4. Whether Raghunandan and Jagan Mohan are entitled for possession of Ac.6.37 Guntas in S.No.284 and Ac.1.9 ½ Guntas in S.No.285 as per family agreement dated 26-2-1965?
5. Whether the family agreement dated 26-2-1965 was revised and amended in the year 1965 as contended by Venkata Swamy and whether the said revised family agreement is true and correct and binding on the parties?
6. Whether the plaintiffs in O.S.No.70 of 1993 are entitled for declaration and consequential injunction as prayed for?
7. Whether the plaintiff in O.S.No.50 of 1993 is entitled for possession of the plaint schedule property of O.S.No.50 of 1993?
8. Whether the plaintiff in O.S.No.71 of 1993 is entitled for declaration and injunction as prayed for?
9. Whether the plaintiff in O.S.No.1 of 1995 is entitled for permanent injunction as prayed for?
10. Whether the plaintiffs in O.S.No.2 of 1995 have got valid title over the schedule property of O.S.No.2 of 1995?
11. Whether the plaintiffs in O.S.No.3 of 1996 are entitled for permanent injunction as prayed for in respect of 2852.44 square yards in survey No. 285 of Bagh Hayathnagar village?
12. To what relief?

Arguments are advanced extensively particularly on behalf of Raghunandan and Jagan Mohan as one set, on behalf of N.Srinivas and another as another set and on behalf of Yadagiri as the 3rd set who are the main contestants and who claimed succession to

the estate of Bagamma and Venakta Swamy. N.Srinivas and other based their claim on the will said to have been executed by late Bagamma acknowledged by late Venkata Swamy and if the will is accepted, both Raghunandan and Jagan Mohan as one set and Yadagiri as another set cannot have any right in the disputed property. Therefore, we have to examine first findings of trial court in respect of the will and its acceptance deed, relied on by plaintiffs in O.S.No.2 of 1996.

One Nakka Venkataswamy was employed as Daroga in the Estate of Navab Salarjung Bahadur on a monthly salary of Rs.15/-. The said Venkataswamy married Bagamma @ Bamma and blessed with two sons namely Yadagiri and Satyanarayana and daughters. Bagamma died at a very young age and Venkataswamy married Jagadamba and through her, he got two sons namely Raghunandan and Jagan Mohan and five daughters. Substantial properties were acquired both in the name of Venkataswamy and Bagamma.

During the life time of Venkataswamy, there was a family arrangement on 26-2-1965 between Venkataswamy, Yadagiri, Raghunandan and Jagan Mohan. Both Raghunandan and Jagan Mohan were represented by their mother Jagadamba they being minors as on 26-2-1965. As per family arrangement deed dated 26-2-1965, Yadagiri executed document No.240 of 1965 dated 5-3-1965 in favour of Jagadamba in respect of flour mill and plot situated at Saheb Nagar. Venkata Swamy executed sale deed in favour of Yadagiri in respect of rice mill at Malakpet as per terms of family arrangement. Jodubavi land with well in an extent of Ac.14.36 ½ cents was allotted to Yadagiri and Balaji Bavi in an extent of Ac.14.36 ½ cents was allotted to Raghunandan and Jagan Mohan

as per the terms of family arrangement. The lands in Jodubavi and Balaji Bavi are situated in S.Nos.29, 51, 52, 53, 54, 55 and 69 of Saheb Nagar Kalan. As per family arrangement, Yadagiri executed sale deed in respect of lands in Jodu Bavi and Balaji Bavi.

According to Raghunandan and Jagan Mohan while executing sale deed, Yadagiri instead of conveying Ac.14-36 ½ cents only conveyed Ac.14-32 cents depriving them about 4 cents of land. As per family arrangement, Botla chilaka land in Survey Numbers 9 and 10 of Saheb Nagar Kalan is to be divided into two portions.

According to Raghunandan and Jagan Mohan, Yadagiri was bound to execute sale deed in their favour in respect of half portion of the land which comes to Ac.13.59 cents but Yadagiri conveyed only Ac.11.40 cents through document No.241/65 dated 9-3-1965 depriving them an extent of Ac.2.19 cents of land. Venkata Swamy executed sale deed in favour of Yadagiri in respect of Nadimi chilaka land situated in Survey No.283 of Bagh Hayath Nagar.

According to family arrangement, an extent of Ac.13.34 Guntas in S.No.284, Ac.11.33 Guntas in Survey No.285 known as Gadda chilaka situated at Bagh Hayath Nagar were divided into two half portions and western half of each Survey Number was allotted to Yadagiri and eastern half portion of each Survey Number was allotted to Raghunandan and Jagan Mohan.

As the land was standing in the name of Venkataswamy, he executed document in respect of half portion both in favour of Yadagiri under document No.236/65 dated 5-3-1965 and in favour of Raghunandan and Jagan Mohan under Document No.237/65 dated 5-3-1965.

According to family arrangement, river bed land situated in Survey No.68, 273, 275 to 279 at Kutubullapur village were exclusively allotted to Yadagiri, for which Venkataswamy executed document in favour of Yadagiri.

As per family arrangement, house bearing No.23-5-58 to 965 at Gowliguda was allotted to Raghunandan and Jagan Mohan and wife of Yadagiri in whose name,, this property stands, document No.603/65 dated 4-3-1965 was executed in favour of Raghunandan and Jagan Mohan.

As per family arrangement, house site measuring about 225 square yards, with foundation basement in Saheb Nagar Kalan village was allotted to Raghunandan and Jagan Mohan, and Yadagiri executed document No.242/65 dated 5-3-1965 in favour of Raghunandan and Jagan Mohan conveying the said site.

According to family arrangement, Nakka Bavi Chilaka land in Survey Nos. 286 to 289 of Bagh Hayathnagar village was allotted to Raghunandan and Jagan Mohan, and Venkataswamy executed document No.237/65 dated 5-3-1965 conveying this property along with property in S.Nos.284 and 285 known as Gadda chilaka land.

POINTS 1 AND 2:

According to Nakka Srinivas and Nakka Omesh Kumar, sons of Yadagiri, Venkataswamy was only a Daroga in the estate of Navab Salarjung Bahadoor with a meager salary of Rs.15/- and he has no capacity to earn and acquire huge properties.

According to them, Bagamma was daughter of Gajji Kumaraiah who was a rich landlord and Bagamma acquired all these properties with the

money she brought from her parents' house and from the income derived on the fruit business, milk business, dairy farm etc., carried on by her.

According to them, Bagamma was of ill-health and she knew that her life was very short and suspected that her husband Venkataswamy may marry again, so in order to safeguard the interest and welfare of children, she executed a will on 9th Amarded 1348 Fasli in a sound and disposing state of mind, bequeathing all her jewellery to her daughter and immovable property to her grandsons giving life interest to her son. According to them, she appointed Venkataswamy, Mamidi Rajamma (sister of Venkataswamy) as executors of the will.

N.Srinivas and another claimed the relief of declaration and recovery of possession in respect of 8 items and their claim is based on will dated 9th Amarded 1348 Fasli.

Learned advocate for appellants in A.S.No.862 of 2001 contended that according to will, Bagamma who is the paternal grandmother of Srinivas and Umesh Kumar, is the absolute owner of all the 8 items of plaint schedule property (O.S.No.2 of 1996) and in pursuance of the will executed by said Bagamma, Srinivas and Umesh Kumar have got absolute rights over these items and they are entitled for the relief of declaration and recovery of possession. He further submitted that in the plaint, it is specifically averred that Bagamma's father was a rich landlord of Hayathnagar and Bagamma brought some money along with her from her parent's house and joined her husband Venkata Swamy with such money, though the same has been denied by Raghunandan and Jagan Mohan, but material on record would disclose that Bagamma acquired these properties with the monies she earned

by doing milk business etc., He further submitted that the will is duly proved by examining the sole surviving attester Smt. M.Rajamma and there is no rebuttal evidence to impeach the testimony of Rajamma. He further submitted that Venkata Swamy, husband of Bagamma executed acceptance deed and both will and acceptance deed are executed on stamp papers and genuineness of these stamps is not at all questioned, the evidence of Rajamma is in consonance with the contents of both these documents but the trial court on presumptions and surmises disbelieved these two documents and the findings of trial court are incorrect.

He further submitted that trial court gave much importance for misdescription of Vimalamma and wrong description of survey numbers in the will, but those two aspects are not very much relevant, because attester of the will, Rajamma and first plaintiff N.Srinivas who were examined as P.Ws.1 and 2 were not at all cross-examined on these aspects.

He further submitted that trial court also focused on delay in production of the will but when there are no suspicious circumstances, the delay in production cannot be a ground to discard such an old document. He further submitted that when the signature of N.Venkata Swamy on the acceptance deed is not denied and when the acceptance deed refers to execution of will, findings of trial court for discarding these two documents is untenable.

On the other hand, learned advocate appearing for appellants in A.S.No.1386 of 1999 contended that the plaintiffs in O.S.No.2 of 1996 failed in proving execution of the will and attestation is not proved as required under Section 63 of Indian Succession Act.

He further submitted that burden is on the plaintiff in O.S.No.2 of 1996 to remove the surrounded suspicious circumstances being propounder of the will. He further submitted that there are several suspicious circumstances and the plaintiffs in O.S.No.2 of 1996 have miserably failed in removing those suspicious circumstances and trial court was right in discarding both the will and acceptance deed. He further submitted that the first suspicious circumstance is the unnatural bequest. He further submitted that even as per admitted facts, by the date of execution of alleged will executant and her husband were having two sons and three daughters. He further submitted that as per admitted case, children of executant were minors and the bequest was made in favour of unborn sons of her two minor sons and one of their son was only months old by the date of alleged execution.

He further submitted that no reasons are given for exclusion of daughters from bequest. He further submitted that both Yadagiri and first brother Satyanarayana were minors by the date of execution of alleged will and there cannot be any suspicion of bad habits to them, but still only life interest was created without power of alienation and no reasons were given for making such bequest. He further submitted that reason for executing the will is that executant suspected that her husband Venkata swamy may remarry and that he may be detrimental to her children but the same is contradicted by putting the same person under the obligation of implementing the terms of the will and management of the income derived from the property is also a strong suspicious circumstance.

He further submitted that the next suspicious circumstance is that the will did not see the light of the

day nearly for half a century. He contended that the will was not produced nearly for 50 years though there were property disputes and family arrangement was arrived to solve that dispute. He further submitted that the evidence of Rajamma does not inspire confidence for not producing this will for half a century though she was making occasional visits to Hyderabad. He further submitted that even though Venkata Swamy who had knowledge and custody of will copy failed to bring out the same to notice of parties when occasion arose like family settlement, is also a strong suspicious circumstance to doubt the will.

He further submitted that the other suspicious circumstance is a false recital in the will. He submitted that one of the daughter of the executant, was described as Vimalamma in the will but her actual name was Kamalamma as on that date and she was renamed only after her marriage and that the marriage was long after the alleged execution of the will. He further submitted that in the will survey numbers of Hayathnagar land were given but those survey numbers do not exist as on the date of execution of the will and the will refers only to the existing survey numbers as an execution of documents in pursuance of family arrangement and these instances would support the version of appellants in A.S.No.1386 of 1999 that the will must have been created after marriage of Kamalamma and after resurvey of the lands of Bagh Hayathnagar and this is a strong suspicious circumstance to doubt the will.

He further submitted that the other suspicious circumstances are appearance of the will. He submitted that the thumb impression of the executant which are separately marked are on the top of the will but not at the usual place where the executant should normally put her thumb impression.

He further submitted that the attestors put their thumb impressions on the bottom of the will whereas executant put her thumb impression on the top of the will which is quite unusual and a deviation from usual practice. He further submitted that on a perusal of the will, it is clear that one of the attestors put her thumb impression on three pages and whereas the other two attestors signed only on the last page which is also a suspicious circumstance. He further submitted that the propounder of the will failed to remove all these suspicious circumstances and therefore, trial court rightly discarded the will and that there are no grounds to interfere with the findings of the trial court in respect of the will and the acceptance deed.

Both advocates have cited some rulings in support of their submissions and we shall examine those rulings while scanning the evidence part.

Now we shall examine the pleadings, evidence and rulings with reference to the submissions advanced on behalf of respective parties.

Admittedly, burden is on the propounder of the will to prove its execution and remove all surrounding suspicious circumstances. There is no dispute with regard to relationship between the parties. According to Srinivas and Umesh Kumar, late Venkata Swamy was only a Daroga in the estate of Navab Salarjung Bahadur with a meager salary of Rs.15/- and he had no capacity to earn and acquire properties. According to them, properties covered by O.S.No.2 of 1996 were acquired by late Balamma.

According to them, Balamma anticipating her death suspected that her husband may marry again, therefore, to safeguard interest and welfare of her children executed will on 9th Amardad 1348 Fasli in a sound and disposing state of mind and that she

appointed her husband Venkata Swamy and his sister Smt.M.Rajamma (PW.1) as executors of the will. According to them, Bamma was having confidence in Rajamma. Therefore, she handed over original will to Rajamma and a copy of it to her husband Venkata Swamy. According to them, late Venkata Swamy also executed deed of acceptance agreeing to enforce the will. According to them, Bamma bequeathed her jewellery to her three daughters and also earmarked cash of Rs.8,000/- to purchase a house in the name of her sons and for marriage expenses of her daughters. According to them, only life interest was given to her sons to enjoy the immovable property and the vested remainder was given to her grandsons. According to them, an extent of Ac.13.38 guntas in S.Nos.55, 53 and 29 (corresponding to old survey numbers 2, 3 and 118) known as Jodu Bavi situated at Saheb Nagar Kalan village; land measuring Ac.11.16 guntas in S.No.9 (corresponding to old survey Number 176) known as Butla Burugadda Chilaka situated in Saheb Nagar, Bagh Hayath Nagar, Kalan village; land measuring Ac.6-36 guntas in S.No.283/2 (corresponding to old survey number 283) known as Nadimi Chilaka situated at Sarfekhas Mubarak Bagh Hayath Nagar; land measuring Ac.4.27 gunats in Survey No.285/2 (corresponding to old survey No.285) known as Pedda Gadda Chilaka situated at Sarfekhas Mubarak Bagh Hayath Nagar; land measuring Ac.10.39 guntas in Survey No.286 known as Naka Bowli Chilaka at Sarfekhas Mubarak Bagh Hayath Nagar; land measuring Ac.2.24 gunats in Survey No.287 known as Naka Bowli Chilaka at Sarfekhas Mubarak Bagh Hayath Nagar; land measuring Ac.1.24 guntas in Survey No.288 known as Naka Bowli Chilaka situated at Sarfekhas Mubarak Bagh Hayath Nagar; and land measuring Ac.7.37 guntas in S.No.No.289 known as

Naka Bowli Chilaka situated at Sarfekhas Mubarak Bagh Hayath Nagar, are the immovable properties bequeathed under the will.

Raghunandan and Jagan Mohan as one set and Yadagiri as another set disputed will propounded by Srinivas and Umesh Kumar. Raghunandan and Jagan Mohan specifically contended that both the will and acceptance deed are forged and fabricated documents brought into existence only for the purpose of the suit. Raghunandan and Jagan Mohan contended that late Venkata Swamy was the owner and possessor of all the properties situated at Bagh Hayathnagar and Saheb Nagar Kalan and he acquired those properties on his salary as Daroga and the income derived by him on business of taking garden on contract and selling its produce. They further contended that though litigation commenced in or about 1980 Srinivas and Umesh Kumar came forward with the plea that late Bagamma executed the will for the first time in the year 1992 and they never raised this plea though the other suits were pending for more than 12 years and suit based on such fabricated will is not maintainable.

The only surviving witness to prove execution of disputed will was Smt. Rajamma and she was examined as P.W.1.

According to advocate representing Srinivas and Umesh Kumar, evidence of this Rajamma is quite convincing, natural and supporting with the contents of will and acceptance deed therefore, the same has to be accepted.

On the other hand, according to advocate for Raghunandan and Jagan Mohan, the evidence of this Rajamma is quite unnatural and is not at all convincing and such evidence cannot be relied on to accept the

will relied on by plaintiffs in O.S.No.2 of 1996.

Admittedly, this Rajamma is own sister of late Venkata Swamy and that she lived in the house of Venkata Swamy for some time. She deposed in her evidence that late Venkata Swamy is her elder brother and worked as Daroga in the estate of Salarjung in Sahabnagar and was getting a salary of Rs.15/- per month. She deposed that Bagamma was wife of Venkata Swamy and Bagamma having suspected that Venkata Swamy may marry again after her death executed a document for the welfare of her children. She deposed that her brother Venkata Swamy brought a muslim person and that person wrote that document.

She deposed that at the time of execution of that document, herself, her brother, executant, scribe and two other persons by name Muddagani Narasaiah and Muddagani Eswaraiah were present. She deposed that after sometime, she was driven out from her brother's house and she went to the house of her own sister Ramanamma at Shanti Bazar and that her sister sent her to Pune with Marwadi people. She deposed that she stayed in the house of Marwadi at Pune and she only returned to Hyderabad two years prior to her examination. She deposed that she was brought to the house of Jagadeesh at Malakpet. She deposed, when she left for Pune, she carried the document executed by Bagamma and document executed by Venkata Swamy, with her and while returning to Hyderabad, she brought them back and she informed the same to Jagadeesh, who got the contents of those documents read over through some other person, after documents were read over, Srinivas was brought to that house and then she went to the house of Srinivas and from there to the house of Yadagiri. She deposed that she is staying in the house of Srinivas at Malakpet.

She deposed in her evidence that she left Hyderabad for Pune to work in a house of Marvadi as a servant maid and stayed at Pune for forty years. She deposed that she does not know the names of persons with whom she worked at Pune. She deposed that in the house in which she worked, her master, master's wife and two children were living but she does not know their names even the names of children. She deposed that she used to clean utensils, wash their cloths and sleep in the house of Marvadies. She deposed that no other servant was working in that house. She deposed that she does not know even the names of neighbours nor the names of servants working in the neighbour's house. She deposed that after the death of her master and his wife, she came back to Hyderabad. She deposed that she does not know Marathi language but she can speak Hyderabad Urdu mixed with Hindi. She deposed that during her entire stay of 40 years at Pune, she never came out of the house and did not visit any locality in Pune. She even deposed that she does not know in which school children of her master were studying. She deposed that she does not know even the area in which her master was residing where she stayed. When a specific question was put with regard to casting of vote at Malakpet, she deposed that she used to come to Hyderabad and go back to Pune which was contrary to her earlier version that she did not come back to Hyderabad till the death of her master and her master's wife. She deposed that she worked under the same Marvadi at Hyderabad before leaving to Pune. She deposed that Marvady where she worked at Hyderabad was staying in Ghansi Bazar, Hyderabad. She deposed that one Ramulamma, daughter of her senior paternal uncle was also working in Marvadies house and she accompanied her to Pune with Marvadies and after

some time, Ramulamma returned back.

Advocate for Srinivas and another submitted that P.W.1 who is one of the attesor has deposed in her evidence identified the thumb impression of executant, thereby, requirement of Section 63 of Succession Act has been complied with. It is further submitted that in written statement at para 5 which refers to the evidence of this witness with reference to will, no where it is questioned as to the custody of the will, and the circumstance stated by P.W.1 are very much convincing. He further submitted that through evidence of P.W.1, the will stands proved. He further submitted that the very fact that P.W.1 deposed about the presence of testatrix Venkataswamy and other attestors and the scribe and also about putting her thumb impression after the testatrix, through which will is duly proved, therefore by virtue of the will appellants in A.S.No.862 of 2001 i.e., Srinivas and another are entitled for the relief claimed in their suit O.S.No.2 of 1996. He further submitted that mentioning of wrong survey numbers and mis-description of Vimalamm's name cannot be taken into consideration as P.Ws.1 and 2 were not cross-examined on that aspect. He further submitted that even mis-description of survey number do not invalidate the devise under Section 78 of the Succession Act.

To support his argument, he placed reliance on judgments in *M.B.RAMESH (D) By LRs. V. K.M.VEERAJE Urs (D) by LRs. and Ors.* (^[1]), *A.E.G.CARAPIET v. A.Y. DERDERIAN* (^[2]), *HARIKRISHNA LAL v. BABU LAL MARANDI* (^[3]), *Y.SUBBA RAO (DIED) AND OTHERS vs. AZIZUNNISA BEGUM* (^[4]) AND *BROOMS LEGAL MAXIMS* 428.(^[5])

He further submitted that delay in production of will is not a suspicious circumstance and to support his argument, he relied on judgment of Honourable Supreme Court in *RADHA RANI BHARGAVA v. HANUMAN PRASAD BHARGAVA (DECEASED) AND OTHERS* (^[6]), *MANINDRA CHANDRA LALA v. MAHALUXMI BANK, LIMITED* (^[7]), *AMMU BALACHANDRAN v. MRS.U.T. JOSEPH (DIED) AND OTHERS* (^[8]). He further submitted that ultimately, it is the conscience of the court to satisfy about the will and to support this submission, he relied on a decision in *VISHNU RAMKRISHNA AND OTHERS v. NATHU VITHAL AND OTHERS* (^[9]).

He further submitted that though opposite party made an attempt to contend that the will is a forged one but they failed in establishing the said aspect and when they failed to establish the plea of forgery, the will cannot be discarded. To support this argument, he relied on decision in *DAULAT RAM AND OTHERS v. SODHA AND OTHERS* (^[10]).

On the other hand, advocate appearing on behalf of N.Raghunandan and Jagan Mohan submitted that when there are several surrounding suspicious circumstances, it is the duty of the propounder to remove such suspicious circumstances and it is not for the opposite party to establish them. He submitted that false recitals and delay in production of the will and unnatural bequest are the main suspicious circumstance which are not removed by the propounder of the will and when the suspicious circumstances are not removed, will cannot be accepted and the trial court has rightly discarded the will.

According to Srinivas and Umesh Kumar, the will

was in the custody of P.W.1 till they came to know about the existence of will. They contended that all parties were kept in dark in respect of will. As already referred above, according to Srinivas and Umesh Kumar. Bagamma executed the will and the same was confirmed by her husband Venkata swamy by executing a separate document.

As seen from the record, there was a confusion in marking of documents by trial court but both the advocates herein submitted that will relied on by Srinivas and Umesh Kumar is to be referred as Ex.A.1 and the document executed by Venkata Swamy confirming will is to be referred as Ex.A.2. According to Srinivas and Umesh Kumar, they got absolute right over the properties of Bagamma, as Yadagiri had no right of alienation, therefore, they are entitled for declaration of title in respect of properties of Bagamma and for recovery of possession.

On the other hand, Raghunandan and Jagan Mohan contended that these two documents are fabricated documents and they are subsequently created only to overcome the claim of Raghunandan and Jagan Mohan and for that reason, there are many suspicious circumstances in respect of these two documents. Trial Court on a consideration of contentions and rival contentions of both parties accepted the defence of Raghunandan and Jagan Mohan and disbelieved the will.

As already referred above, claim of Srinivas and Umesh Kumar is based on the will executed by Bagamma. According to them, the will was executed on 9th Amarded 1348 Fasli which is corresponding to 15-6-1939 and Venkata Swamy executed deed of acceptance on 27th Amarded 1348 Fasli corresponding to 3.7.1939.

Admittedly, Bagamma died on 21-9-1939.

Srinivas and Umesh Kumar being beneficiaries of the will and claiming declaration and possession in respect of plaint schedule properties, have to prove both execution and genuineness of the will. According to them, P.W.1 is the only surviving person connected with Ex.A.1 will and therefore, she was examined immediately with the leave of the court even before written statement is filed on behalf of opposite party. Srinivas and Umesh Kumar also contended that Ex.A.1 will being an old document of more than 30 years, a presumption under Section 90 of the Indian Evidence Act has to be drawn.

The first objection of Raghunandan and Jagan Mohan in respect of Ex.A.1 will is that there are false recitals in the will and those recitals would clinchingly prove that the will was not executed on the date as referred in the document but it was created subsequently. The two false recitals focused are that one of the daughter's name was referred as Vimalamma in the will but by 15-6-1939, her name was not 'Vimalamma' and she was 'Kamamma' by that date and her name was changed as 'Vimalamma' only after her marriage. From the evidence, it is clear that marriage of Kamamma was only after the death of Bamma and this fact is admitted by both parties. It is clear from the evidence of Rajamma (P.W.1) and Yadagiri (D.W.1) name of Kamamma was changed as Vimalamma only by in-laws of Kamamma after her marriage. So by the date of Ex.A.1, her name was only Kamamma but not Vimalamma.

The second false recital pointed out by advocate for Raghunandan and Jagan Mohan is in respect of Bagh Hayathnagar properties. In the will, new survey numbers were referred and from evidence, it is clear that new survey numbers were assigned long after

1939 i.e., year of Ex.A.1. If really, the document was genuine one, there was no possibility for the executant to refer to the new survey numbers. Executant cannot anticipate change of survey number and these two aspects are to be treated as strong suspicious circumstances is the submission of learned counsel appearing for Raghunandan and Jagan Mohan.

Advocate for Srinivas and Umesh Kumar contended that wrong description cannot be a ground to doubt the document.

Learned counsel placed reliance on judgment of Division Bench of this Court in *Y.SUBBA RAO (DIED) AND OTHERS vs. AZIZUNNISA BEGUM* 4th cited and judgment of the Honourable supreme court in *HARIKRISHNA LAL v. BABU LAL MARANDI* 3rd cited.

In *Y.SUBBA RAO (DIED) AND OTHERS vs. AZIZUNNISA BEGUM* 4th cited, this court held that law is well settled, if a property is described by distinct boundaries which can be identified, any mistake in the survey number of the land has to be ignored. The maximum 'falsa demonstratio non-nocet' has to be applied in such a situation.

In that case, discrepancy in survey number is in between a compromise decree and an agreement but not in respect of a will.

In *HARIKRISHNA LAL v. BABU LAL MARANDI* 3rd cited. the Honourable Supreme Court observed as follows:

"A reference may usefully be made to the maxim "falsa demonstratio non nocet, cum de corpore constat" which means mere false description does not vitiate, if there be sufficient certainty as to the object. "Falsa

demonstratio” means an erroneous description of a person or a thing in a written instrument; and the above rule respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the device, the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only. (See Broom’s Legal Maxims, 10th Edn., pp.426-27.) Broom quotes (at p.438) an example that an error in the proper name or in the surname of the legatee should not make the legacy void, provided it could be understood from the Will what person was intended to be benefited thereby.”

It was a election dispute. In that case, Returning Officer rejected nomination papers of respondent therein on the ground that respondent name is Babu Lal’. His surname is Marandi. He is known, recognized, addressed and identified everywhere by this name Babu Lal Marandi alone and not by any other name or surname whatsoever. The name of the respondent Babu Lal Marandi has not been enrolled as an voter in the electoral roll of any assembly constituency of the Legislative Assembly of Jharkhand State.

In the electrol role, his name was printed as Babu Marandi instead of Babu Lal Marandi and referring to that discrepancy and the maxim falsa demonstratio non nocet, cum de corpore constat was interpreted and held that dispute with regard to identify in wrong description do not come in the way.

But here in our case, this is not wrong description, it was wrong recital when the document Ex.A.1 was executed, one of the daughters name of executant was Kamalamma as on the date of

document, it cannot be anticipated that name of Kamamma would be changed as Vimalamma in future by her in-laws because only after marriage, in-laws of Kamamma changed her name and not from the parental side of Kamamma.

The other wrong recitals are the survey numbers for the lands at Bagh Hayath Nagar village. From the evidence, it is clear that the survey numbers referred in the will in respect of Bagh Hayath Nagar village are new survey numbers and as on the date of Ex.A.1 will, these survey numbers were not in existence and those lands have got old survey numbers.

As rightly pointed out by advocate for Raghunandan and Jagan Mohan, when the survey numbers referred to in the will were not in existence and those numbers were assigned to those lands long after execution of document, it has to be inferred that this document was prepared subsequently, only after the new survey numbers are assigned. This is definitely a strong suspicious circumstance to doubt the will. Added to this, the testatrix has excluded her children who are all minor by that date and made the bequest in favour of unborn sons of her sons excluding her unmarried daughters and husband.

The only reason assigned for exclusion of husband is that the executant suspected that her husband may contract a second marriage and he may neglect her children, but why children were excluded is not answered. By the date of Ex.A.1, Yadagiri was around 12 years and the other son of executant was only months old and if really her suspicion that her husband may ignore her children by contracting second marriage, bequest should have been in favour of her children, but making bequest to the sons of Yadagiri and Satyanarayana to be born is another circumstance to doubt that the will was not executed

on the date reflected in the document. Further, as seen from the recitals, the executant made her husband as principal executor of the bequest and if really, her suspicion that her husband would contact second marriage to the detriment of her children, keeping her husband as principal executor is not matching with the suspicion.

One of the objections of the advocate for Srinivas and Umesh Kumar is that P.W.1 was not cross-examined as to the wrong description of survey numbers and therefore, they cannot be allowed to raise that objection. He relied on a decision in *A.E.G. CARAPIET, v. A.Y.DERDERIAN* (^[11]).

In that case, Calcutta High Court held wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. This is not merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses.

In this case, only witness examined in respect of will is P.W.1. She was examined even before filing of written statement and therefore, at that time parties objecting for the will have no opportunity to put their plea in the form of written statement but however they cross-examined witnesses and suggested that the will was brought into existence subsequently and it was not executed by Bagamma.

Therefore, the contention that discrepancies are not put to the witness in the cross-examination cannot

be accepted particularly, when the evidence of P.W.1 itself is with lot of inconsistencies.

One of the objections from counsel for Raghunandan in respect of will is that will did not see light of the day nearly for half a century and no convincing explanation is forthcoming from the propounders of the will.

It is clear from the evidence on record that the will was not produced before any court for more than 40 years and according to P.W.1, she had taken away this will to 'Pune' and though she was making occasional visits to Hyderabad, she had no reason to divulge information regarding the will to the beneficiaries i.e., Srinivas and Umesh Kumar.

Even according to P.W.1, a copy of will was also with Venkata Swamy and Venkata Swamy was alive when sale tax department attached Saheb Nagar kalam land for the tax due from Yadagiri.

From the recitals of the will, Yadagiri has no power of alienation and if really the will was in existence, Venkata Swamy who was in the knowledge of will would have definitely pressed the will into service to protect the property which was attached for the tax due. So here, the delay is coupled with the fact that the will was not genuine, it was only brought into existence subsequent to the death of Bagamma, therefore, decision relied on by advocate for Srinivas and Umesh Kumar has no application.

With reference to suspicious circumstances, in
*K. JWALA NARASIMHA REDDY
AND ANOTHER v. NARAYAN REDDY AND OTHERS*
([\[12\]](#)), this court observed as follows:

*“Suspensions reign in the realm of proof.
In the nature of things, they cannot be either
exhaustively enumerated or accurately denied*

and it is not desirable even if it is possible to do so. But nevertheless, suspicions must be found bottomed or anchored in the facts of a particular case, a court believes to exist or the circumstances of a particular case the existence of which a court considers so probable that a prudent man may act upon the supposition that they exist. It will not do to talk airily about circumstances of suspicions. In other words, suspicions must be legitimate. They must be well-founded and well-grounded. They must be inherent in the transaction itself which is challenged. They must not be those arising out of a mere conflict of testimony. They must pertain to one or the other of the ingredien's that go to constitute a will as defined by the statute.

In *RYALI KAMESWARA RAO v. BENDAPUDI SURYAPRAKASARAO AND OTHERS* (^[13]), this court observed that the suspicion must be one inherent in the transaction itself and not the doubt that may arise from conflict of testimony which becomes apparent on an investigation of the transact on what those suspicious circumstances are cannot be defined precisely, or enumerated exhaustively. They must depend necessarily upon the facts of each case. Though a propounder has the obligation to prove the will in accordance with law and remove all well grounded suspicious, the quantum of proof that can be expected cannot conform to scientific exactitude or mathematical precision. The standard of proof can only be one that will satisfy a normal prudent person.

As already referred earlier, it is impossible for the testatrix to presume about new survey numbers that would be assigned to the lands that are bequeathed under the will and that daughter Kamalamma would be named as Vimalamma after her marriage by her in-laws.

So these two circumstances constitute an

impossibility and therefore, definitely are suspicious circumstances.

Regarding proof of will, advocate for Srinivas and Umesh Kumar contended that his clients have proved the will in accordance with Section 63 of Indian Evidence Act and as it is an old document of more than 30 years, it cannot be thrown out and the trial court discarded this will on presumptions and assumptions.

In *M.B.RAMESH (D) BY LRS. V. K.M.VEERAJE AND ORS.* ([\[14\]](#)), the Honourable Supreme Court held compliance of Section 63 of Evidence Act, is sufficient to prove the will. In that case, the signature of the executant was proved by one of the attestors and the will was registered on the next day of its execution and in those circumstances, by drawing inference, the Honourable Supreme Court held that will is duly proved.

But here in our case, the circumstances brought would throw strong suspicion as to the execution of the will on the date indicated in the document. On the other hand, the evidence and circumstances brought on record led to the inference that the document was subsequently brought into existence and therefore, that decision has no way helpful to the case of Srinivas and Umesh Kumar.

With regard to presumption for 30 years document also, it cannot be extended to the case on hand because circumstances brought on record are so strong to come to the conclusion that the will and the corresponding deed of acceptance were brought into existence and they were not executed on the date indicated in the documents.

Learned trial judge has discussed the entire

evidence connecting proof and execution of the will with reference to the contentions raised on behalf of both parties and held that both the documents are unbelievable and therefore, liable to be rejected.

On a scrutiny of the material we do not find any wrong in findings of trial court in respect of will and acceptance deed and both these documents are rightly rejected and we do not find any grounds to interfere with the said findings of the trial court.

For these reasons, we are of the view that the will propounded by Srinivas and Umesh Kumar cannot be accepted and their claim based on such will is not tenable and the trial court rightly dismissed their suit.

These two points are accordingly held against the plaintiffs in O.S.No.2 of 1996 and in favour of defendants in O.S.No.2 of 1996.

POINT Nos.3 to 5:

Raghunandan and Jagan Mohan claimed possession of Ac.0.04 ½ cents of land in S.Nos.29, 51 to 55 and 69 of Saheb Nagar Kalam village, Ac.2.19 cents in S.No.9 of Saheb Nagar Kalam village, Ac.6-37 guntas of land in S.No.284 of Bagh Hayathnagar village and Ac.1.23 guntas of land in S.No.285 of Bagh Hayathnagar village. It is specifically pleaded that in pursuance of family arrangement deed dated 26-2-1965 executed in between Venkata Swamy, Yadagiri, Raghunandan and Jagan Mohan represented by their mother as Guardian, these properties were allotted to Raghunandan and Jagan Mohan. It is also their specific case that in pursuance of the above referred family arrangement, certain properties were allotted to Yadagiri, certain properties were allotted to Raghunandan and Jagan Mohan and sale deeds were executed for those allotments. It is specific case

of these two for all the properties covered by family arrangement, deeds were executed as per allotments referred to in the family arrangement. According to Raghunandan and Jagan Mohan, Yadagiri executed document No.240/65 dated

5-3-1965 in favour of Smt.Jagadamba wife of late Venkata Swamy in respect of floor mill along with plot situated at Saheb Nagar. According to them, late Venkata Swamy executed sale deed in favour of Yadagiri in respect of rice mill at Malakpet. They further asserted an extent of Ac.14.36 ½ cents along with well known as 'Jodubavi' land was allotted to Yadagiri and an extent of Ac.14.36 ½ cents with well known as 'Balaji Bavi' was allotted to Raghunandan and Jagan Mohan and both these properties are situated at Saheb Nagar in S.Nos.29, 51 to 55 and 69. Their contention is that though they are entitled for Ac.14.36 ½ cents, sale deed was executed only for an extent of Ac.14.32 cents with a deficit of Ac.0.04 ½ cents and that they are entitled to recover that Ac.0.04 ½ cents. They further contended that the land situated in S.Nos.9 and 10 of Saheb Nagar was divided into two portions and its total extent was Ac.27.12 cents but in the family arrangement, the extent was referred as Ac.25.99 cents only and northern side portion was allotted to Yadagiri whereas southern portion was allotted to Raghunandan and Jagan Mohan and Yadagiri executed sale deed for Ac.11.40 cents only thereby depriving Raghunandan and Jagan Mohan for an extent of Ac.2.19 cents in respect of this item. It is further contended that land in S.No.283 was completely given to Yadagiri and sale deed was executed in his favour by N.Venkata Swamy. According to them, lands situated in Bagh Hayathnagar in S.No.284 (Ac.13.34 guntas) and S.No.285 (Ac.11.33 guntas) was divided into two half portions and western side of each Survey Number was

allotted to Yadagiri and eastern half of it was allotted to Raghunandan and Jagan Mohan and Venkata Swamy executed sale deeds, in respect of half portion given to Yadagiri and remaining half portion to these two persons i.e., Raghunandan and Jagan Mohan. According to them, document executed in respect of eastern half portion is under document No.237/65 dated 5-3-1965 which is marked as Ex.B.64 and translated copy of it is marked as Ex.B.65. Yadagiri and others contended that there was a rearrangement of property but both the family arrangements are not registered one and the trial court has not accepted both the family arrangements but the documents executed in pursuance of first family arrangement deed which are registered in nature were mainly considered by trial court.

Now on the basis of these documents, Raghunandan and Jagan Mohan contend that they are entitled to the eastern portion of S.No.284 of Bagh Hayathnagar village for an extent of Ac.6.37 guntas, but Yadagiri and others deprived them of entire eastern portion of survey No.284 therefore, they are entitled to recover it from them. In the same lines, they contended that they were deprived of Ac.0.04 ½ cents in respect of Saheb Nagar Kalam village of Balaji Bavi land and Ac.2.19 cents of land also of Saheb Nagar Kalam village in respect of 'Bothalachilaka' land and they are entitled to recover possession of this item.

To substantiate their claim, they mainly relied on the oral evidence of Raghunandan who is examined as D.W.2 in common trial and in his entire chief-examination, he has reiterated their case as pleaded in the plaint.

In the cross examination, he specifically stated that he cannot give appropriate measurements of the land. He further asserted that their claim is based on

sale deed dated 5-3-1965 which is marked as Ex.B.64 (in Urdu Language) and English translation copy is marked as Ex.B.65. In the cross examination, he asserted that D.1 was in possession of land in S.No.284.

He further stated that D.1 installed bore well in S.No.284.

Admittedly, Raghunandan and Jagan Mohan were minors as on the date of execution of Ex.B.64 i.e., sale deed for transfer of lands. When a specific question was put to him whether he was in possession of Ac.14.36 ½ cents of 'Balaji Bavi' land, he assertively stated that the land was not measured therefore, he cannot say whether he is in possession of Ac.14.36 ½ cents or not. He deposed that his claim is based as per the recitals in the document. With regard to lesser extent of Ac.0.04 ½ cents of land of Saheb Nagar Kalam, he deposed that he came to know about the lesser extent when Yadagiri fixed boundary stones in the year 1970. He deposed that revenue pass book was issued to him and his brother in respect of land in S.No.284 but patta was not issued. He deposed that S.No.284 is by the side of S.No.285 and he is in possession of land in S.No.285 as per document of 1965. He deposed that whenever agriculture work was there, he used to go to S.No.285 but he cannot say as to how many times he visited S.No.285. He deposed that he cultivated land in S.No.285 prior to filing of the suit and that he filed the suit in the year 1980 or 1981. He admitted that land in S.No.285 was not cultivated from 1981 onwards. He further stated that half portion in S.No.285 was in his possession from 1976 and prior to that it was in joint possession. He stated that S.No.284 is in possession of Yadagiri from 1976 onwards. He contended that land in S.No.284 was in joint possession from 1965 to 1976. He further stated that land in S.No.284 was not

demarcated after execution of sale deed and possession was also not delivered.

He deposed that he filed declaration before Urban Land Ceiling Authority. It was suggested to him that he has not shown the land in S.No.284 in his declaration which he denied. He further deposed that he filed document to show that Ac.0.04 ½ cents of land in S.Nos.29,51 to 55 and 69 of Saheb Nagar, was less in extent and he came to know about this lesser extent in the year 1980. He deposed that land was not measured till the date of his deposition.

Though Raghunandan assertively stated that he came to know about lesser extent in the year 1980, in the plaint, it is specifically pleaded that Yadagiri is not allowing them to survey the land and prepare actual land to show the location of lands which are in possession of Raghunandan and Jagan Mohan and therefore, they are contemplating to move application for appointment of commissioner to make survey and prepare plans in accordance with the plaint allegations and also with such matters as would be furnished by the opposite party so that a comprehensive plan relating to the claim made by Raghunandan and Jagan Mohan with reference to 284 and 285 of Bagh Hayathnagar village is prepared to have effective decree in favour of them. It is further pleaded that subject to the above reservation, they have given the description available at the site and reserved their right to amend the plaint after survey of land if necessary in respect of lands in S.No.284 and 285 of Bagh Hayathnagar village and S.Nos.29, 51 to 55 and 69 of Saheb Nagar Kalam village.

So the evidence of Raghunandan that he came to know about lesser extent in the year 1980 is contra to their pleadings namely that they were not allowed to survey the land and therefore, they do not know the

actual extent and they have given the description of lands as available at the site by reserving their right to amend the plaint if necessary after appropriate survey is conducted. It is clear from the evidence on record that when disputes arose between the parties, family arrangement was taken place on 26-2-1965 through which parties agreed to take specific properties and necessary registered sale deeds were executed in terms of such arrangement. When necessary documents were executed in pursuance of family agreement that arrangement came to an end. Yadagiri and others pleaded that there was rearrangement but that was not accepted by the court below, rightly so because it was not a registered document and that cannot over take the transfers made through registered documents that too by way of sale deeds. Trial court rejected readjustment pleaded by Yadagiri and others for want of registration and that the said rearrangement was introduced for the first time during evidence and there was no cogent and convincing evidence to accept rearrangement. All the allotments made under document dated 26-2-1965 were enforced by executing registered sale deeds in the very same year i.e., 1965, thereby that document would have no bearing.

Advocate for Raghunandan and Jagan Mohan vehemently contended that suit is filed for recovery of possession based on title. He further contended when the registered documents which are not disputed by opposite parties, do show that Raghunandan and Jagan Mohan are the owners of plaint schedule properties in O.S.No.69 of 1993, burden is on opposite party to show that they have perfected title to the property by adverse possession but here the trial court without any material evidence declared title of Yadagiri by adverse possession by applying old Limitation Act.

One of the arguments of the advocate for Raghunandan and Jagan Mohan is that the trial court applied provisions of the old Limitation Act for recovery of possession, but under the new Limitation Act, 1963, limitation for recovery of possession on the basis of title is 12 years when possession of the opposite party becomes adverse to the plaintiff, therefore, the burden is on Yadagiri to show, as to how he perfected title over the suit schedule property particularly, property in S.No.284 by adverse possession.

Learned advocate appearing on the other side has not disputed this legal proposition but contended that Yadagiri perfected title in respect of the plaint schedule properties including property under S.No.284 by adverse possession as he was continuously in possession even after execution of the sale deed in favour of Raghunandan and Jagan Mohan.

Yadagiri took a specific plea in respect of Bagh Hayathnagar land that he perfected title by adverse possession. Admittedly, Raghunandan and Jagan Mohan claimed title in respect of Bagh Hayathnagar land under the registered sale deed executed by Venkata Swamy (Exs.B.64 and B.65).

It is the contention of the advocate for Raghunandan and Jagan Mohan under Article 65 of the Limitation Act of 1963, the plaintiff need not show possession prior to the institution of suit. On the other hand, the defendant who seeks to defeat the plaintiff's title by virtue of adverse possession has to prove the date on which adverse possession commenced, his animus to dispossess the plaintiff and other ingredients of adverse possession. He submitted that Yadagiri took the plea of adverse possession based on the family rearrangement said to have taken place subsequent to the family arrangement in the year 1965 under Ex.B.63 and according to Yadagiri, subsequent family

arrangement was in August or September, 1965 but the court below has not accepted the rearrangement, therefore, the plea of adverse possession pleaded by Yadagiri should fall to the ground. He contended that trial court having discarded the subsequent family arrangement went wrong in accepting the plea of adverse possession of Yadagiri in respect of Bagh Hayathnagar land.

Though Yadagiri pleaded rearrangement, the same was not established since nobody connected with alleged arbitration is examined and the trial court also has not accepted this rearrangement. The registered documents i.e., sale deeds executed by Venkata Swamy or Yadagiri as the case may be, are only in pursuance of first family arrangement of February, 1965 under Ex.B.63 and there were no registered sale deeds or registered documents cancelling those transfers made in pursuance of first family arrangement of February, 1965.

No doubt, both these documents i.e. first family arrangement marked as Ex.B.63 and Second family arrangement marked as Ex.B.24 cannot be looked into for want of registration, they cannot even be taken for collateral purpose as registered documents were executed recording delivery of possession.

One of the argument of advocate for Raghunandan and Jagan Mohan is that as per the recitals in Ex.B.63, the entire property belonged to Venkata Swamy and those properties are capable of being treated as 'Hindu undivided property' and therefore, theory of blending would operate. He submitted that the recitals in these documents amount to throwing property into common hotch pot. Advocate for Srinivas and others disputed the blending theory and submitted that the recitals of Ex.B.63 indicate that the entire property was conveyed by N.Venkata

Swamy and Yadagiri and it does not establish existence of any coparcenary property. He submitted that doctrine of blending postulates existence of joint family property, existence of separate property of coparcenar and intention of coparcenar to throw his separate property into common hotch pot.

He submitted that this was the ratio, in *MALLESAPPA BANDEPPA DESAI AND ANR. v. DESAI MALLAPPA ALIAS MALLESAPPA AND ANR.* (^[15]). He submitted that para 11 of the judgment is relevant.

It may be useful to read the said para 11 which is as follows:

The question which falls for our decision is: Does this principle apply in regard to a property held by a Hindu female as a limited owner? In our opinion, it is difficult to answer this question in favour of the appellants. The rule of blending postulates that a coparcener who is interested in the coparcenary property and who owns separate property of his own may by deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate; in other words, the separate property of a coparcener loses its separate character by reason of a coparcener of the owner's conduct and get thrown into the common stock of which it becomes a part. This doctrine therefore inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcener property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention of benefit the members of the family

by allowing them the use of the income coming from the said property may not necessarily be enough to justify an inference of blending; but the basis of the doctrine is the existence of coparcenery and coparcenery property as well as the existence of the separate property of a coparcener. How this doctrine can be applied to the case of a Hindu female who has acquired immovable property from her father as a limited owner it is difficult to understand. Such a Hindu female is not a coparcener and as such has no interest in coparcenery property. She holds the property as a limited owner, and on her death the property has to devolve on the next reversioner. Under Hindu law it is open to a limited owner like a Hindu female succeeding to her mother's estate as in Madras, or a Hindu widow succeeding to her husband's estate, to effect herself and accelerate the revision by surrender; but, as is well known, surrender has to be effected according to the rules recognised in that behalf. A Hindu female owning a limited estate cannot circumvent the rules of surrender and allow the members of her husband's family to treat her limited estate as part of the joint property belonging to the said family. On first principles such a result would be inconsistent with the basic notion of blending and the basic character of a limited owners' title to the property held, by her. This aspect of the matter has apparently not been argued before the courts below and has not been considered by them. Thus, if the doctrine of blending cannot be invoked in regard to the property held by Channamma, the appellants' claim in respect of the said property can and must be rejected on this preliminary ground alone.

Learned advocate further submitted, for existence of joint family, there is a presumption but there is no such presumption for existence of joint family property and that has to be established by evidence and in this case, there is neither pleading nor evidence as to the existence of joint family property after execution of document in pursuance of Ex.B.63 family arrangement.

Here, Raghunandan and Jagan Mohan as plaintiffs claimed for recovery of possession of plaint schedule properties and initial burden is on them to show that they have title and possession over the plaint schedule properties and should plead when possession of Yadagiri became adverse to the plaintiff as required under Article 65 of the Limitation Act, 1963. In the entire plaint, there is no whisper as to when they lost possession of Bagh Hayathnagar property, particularly, S.No.284 after Ex.B.64 sale deed. In evidence, Raghunandan made a categorical admission that this property was joint till the date of execution of Ex.B.64 sale deed and thereafter, it has become their individual exclusive property. In the sale deed, Ex.B.64, there is a clear recital that possession was delivered to Raghunandan and Jagan Mohan who were represented by their mother as guardian.

As seen from the evidence, including admission of Raghunandan, even on the date of Ex.B.64 sale deed, Yadagiri was in possession of Bagh Hayathnagar land, particularly, S.No.284 and actual possession was not given though it is recorded in Ex.B.64 that possession was delivered. After execution of Ex.B.64, possession of Yadagiri from that date onwards becomes adverse to Raghunandan and Jagan Mohan being plaintiffs in O.S.No.69 of 1993 because possession was not delivered though it is recorded in the document that possession was delivered. Admittedly, suit was not filed within 12 years from the date of sale deed Ex.B.65 for recovery of possession.

No doubt, both Raghunandan and Jagan Mohan were minors by the date of Ex.B.64, if they are aggrieved, with the recitals of sale deed they have to institute suit within three years they attain majority, only in case they attribute anything malafide to the guardian through whom they were represented. Admittedly,

there is no allegation of any kind against guardian of Raghunandan and Jagan Mohan who is no other than their own mother and the suit was filed long after they attained majority.

Yadagiri who is examined as D.W.1 deposed that his father Venkata Swamy worked as 'Daroga' in Salarjung Estate and his salary was Rs.15/- per month. He deposed that in the month of February, 1965, there was an agreement between himself, his father, Raghunandan and Jagan Mohan and a document was executed on 26-2-1965. He deposed that after execution of sale deeds, some disputes arose between himself, his father and sisters. He deposed that the extent of land in S.No.284 is Ac.13.00 and odd whereas extent of land in S.No.285 is Ac.11.00 cents and odd. He deposed that since 1965, he is in exclusive possession of entire land in S.No.284 and further deposed that he do not remember as to how much of land in S.No.285 was allotted to him. He further deposed that he got dug a well in S.No.284 in the year 1969-70 and got leveled the land in S.Nos.284 and 285 with the help of bulldozer in the same year. He also deposed that an agreement of sale was executed in respect of part of land in S.No.285 i.e., for Ac.4.31 guntas and the same was executed by himself, his father, Raghunandan and Jagan Mohan represented by their mother. He further deposed that they all executed sale deed for Ac.1.08 guntas on the basis of agreement. He deposed that some alienations were taken place for the lands in S.Nos.284 and 285 and in all the documents for those transfers which were during the life time of Venkata Swamy, mother of Raghunandan and Jagan Mohan joined in execution on behalf of Raghunandan and Jagan Mohan along with Venkata Swamy and himself. In the cross-examination, he deposed that he mortgaged land in S.Nos.283 and

284 to co-operative bank in 1976 and borrowed money. He also deposed that Government acquired some land in S.Nos.284, 285 and 286 but he cannot say their extents. When Yadagiri assertively stated in his chief examination that he was in possession of entire land in S.No.284 from 1965, there was no cross-examination on behalf of Raghunandan and Jagan Mohan on this statement. There is not even a suggestion from Raghunandan and Jagan Mohan disputing the statement of Yadagiri that he is in possession of the entire land in S.No.284 from 1965.

Now coming to theory of blending from the evidence on record, it is clear that family arrangement had taken place in February, 1965 and necessary sale deeds were executed as per understanding between parties. So once sale deeds are executed, the theory of blending or existence of joint family property cannot be accepted unless strong material is produced to show that in spite of execution of document, parties agreed to treat properties as joint family properties. Further, if the properties are treated as joint family properties, plaintiffs in O.S.No.69 of 1993 have to seek for partition but they cannot claim for recovery of possession on the theory of blending.

Raghunandan and Jagan Mohan contend that though through sale deed Ac.6.37 cents of land in S.No.284 on eastern side was given to them and when the recitals in the sale deed disclose that possession was also delivered to Raghunandan and Jagan Mohan, it is for them to show whether possession was really handed over or not if handed over when they lost possession over it. Admittedly, survey Nos.284 and 285 of Bagh Hayathnagar are adjacent to each other and Raghunandan and Jagan Mohan have got Ac.5.36 ½ guntas of land in S.No.285 under the very same sale deed and from the evidence, it is clear that

they were often visiting land in S.No.285 when it was under cultivation.

As already referred to above, it is clear from the evidence of D.W.2 that they were not in possession of the land in S.No.284 from the date of sale deed under Ex.B.64. On the other hand, it is the evidence of D.W.1 Yadagiri that he is in possession of this land since 1965 and he dug a well in the year 1969-70 and levelled the land in S.Nos.284 and 285 in the same year through Bulldozer.

So from the evidence on record, it is clear that though it was recited in the sale deed Ex.B.64 about delivery of possession, in fact, possession of property was not delivered which indicate that Raghunandan and Jagan Mohan were never in possession of land in S.No.284 even though there was a division of status and property was conveyed in their favour through a registered document. When a sale deed was executed in favour of Raghunandan and Jagan Mohan and it refers to delivery of possession, a heavy duty is cast upon the plaintiffs in O.S.No.69 of 1993 to plead and prove in what capacity they allowed Yadagiri to continue in possession of land in S.Nos.284 and how his possession is not adverse to them. In fact, in pleading itself, they have to mention how the claim was within time by indicating from what date, possession of Yadagiri became adverse to them. When they have not pleaded as to when they lost possession after sale deed, it has to be presumed that they did not get possession under the document in which case their remedy is otherwise. Trial court has observed that suit is filed in the year 1981 which is 16 years after the sale deed and thereby their claim is barred. When Yadagiri asserted that he was in continuous possession of land in S.Nos.284 in 1965, and his evidence is supported and corroborated with

other circumstances and when Raghunandan and Jagan Mohan have not questioned that statement, the contention of advocate for Raghunandan and Jagan Mohan with regard to application of Article 65 of Limitation Act cannot be accepted.

According to Raghunandan and Jagan Mohan, they are entitled for Ac.14.36 $\frac{1}{2}$ guntas of land in S.Nos.29,51 to 55 and 69 of Saheb Nagar kalam village known as "jodubavi and Balaji Bavi" lands but Yadagiri executed sale deed for an extent of Ac.14.32 guntas and thereby depriving them for Ac.0.04 $\frac{1}{2}$ guntas of land. It is contended that they are entitled to recover for Ac.0.04 $\frac{1}{2}$ guntas of land from Yadagiri.

Admittedly, sale deed was executed on 5-3-1965 and according to pleadings, the land was not measured. Entire plaint is silent as to when Raghunandan and Jagan Mohan have noticed this deficiency of Ac.0.04 $\frac{1}{2}$ guntas of land. In the plaint, Raghunandan and Jagan Mohan contended that Yadagiri is not allowing for survey of Bagh Hayath Nagar lands and therefore, an advocate commissioner has to be appointed to make survey and prepare plans in respect of land in S.Nos.284 and 285 of Bagh Hayath Nagar. While pleading so, they also contended that similarly commissioner has to be entrusted with survey of land of Saheb Nagar Kalam also as they claimed possession in respect of those lands also and even they reserved their right to amend the plaint if necessary after the survey of land is done, both for survey Nos.284 and 285 of Bagh Hayath Nagar village and S.Nos.9, 29, 51 to 55 and 69 of sahib Nagar Kalam village.

So, Raghunandan and Jagan Mohan are not sure of the actual extent of land conveyed to them under sale deed dated 5-3-1965 relating to S.Nos.9, 29, 51 to 55 and 69 of Saheb Nagar Kalam village. The sale deed

Exs.B.64 and B.66 clearly shows the extent of land conveyed to Raghunandan and Jagan Mohan. One of the common point urged for all these lands on behalf of these two persons is that as property was not delivered to Raghunandan and Jagan Mohan, they are deemed to be in joint possession with Yadagiri, as such, they are entitled to recover possession.

But plea of joint possession cannot be accepted because Ex.B.66 is not a partition deed. Only when some extents are not physically delivered at the time of partition, then it will be construed that property remained in joint possession but here Ex.B.66 is a outright sale deed and the sale deed disclose that the property is transferred by receiving consideration. If the vendor delivers lesser extent, remedy of vendee is to enforce the recitals of the document. But here, the extent mentioned in the document is not disputed and on the other hand, they admitted that they got possession of that extent but their contention is that they are entitled for Ac.14.36 ½ guntas but document was executed only for Ac.14.32 guntas. If the agreement was for Ac.14.36 ½ guntas and conveyance deed is executed for Ac.14.32 guntas only, the remedy of the party is to seek for specific performance of that agreement for the remaining extent. Here the agreement pleaded and marked as Ex.B.63 is not enforceable for want of registration etc., therefore, the claim of Raghunandan and Jagan Mohan for Ac.0.04 ½ guntas of land is not sustainable.

Next claim of Raghunandan and Jagan Mohan is in respect of Ac.2.19 cents in S.Nos.9 and 10 of Saheb Nagar Kalam. According to them, the total extent of S.Nos.9 and 10 is Ac.27.12 cents and Yadagiri in stead of executing sale deed for Ac.13.59 cents executed sale deed for Ac.11.40 cents of land depriving plaintiffs for Ac.2.19 cents of land.

It is clear from the sale deed Ex.B.68 that only an extent of Ac.11.40 cents was conveyed to Raghunandan and Jagan Mohan and as they claim recovery of possession basing on title, they cannot get more than the extent that was conveyed to them under Ex.B.68 sale deed. According to them, Yadagiri instead of executing sale deed for Ac.13.59 cents executed sale deed for Ac.11.40 cents depriving them Ac.2.19 cents of land. If document is executed for lesser extent contrary to the agreement between the parties, remedy of Raghunandan and Jagan Mohan is to seek specific performance of agreement and pray for execution of document for the remaining land namely Ac.2.19 cents.

As seen from evidence, some land was sold in the very same survey number in the year 1963 which is even prior to execution of sale deed in favour of Raghunandan and Jagan Mohan. Further land sold to 3rd party in the year 1963 was deducted, therefore, contention of Raghunandan and Jagan Mohan that the total extent of land as on date of family arrangement was Ac.27.18 guntas cannot be accepted. When the sale deed Ex.B.68 conveys only Ac.11.40 cents of land, they cannot get more than that, therefore, seeking recovery of Ac.2.19 cents on the ground that they are entitled for it is not tenable and their claim shall fail.

In the evidence, Raghunandan asserted that total extent of land in S.Nos.9 and 10 is Ac.27.18 cents and that they are entitled for half of it. If that is so, when Yadagiri executed sale deed for Ac.11.40 cents only why they have not objected for it and why they have not taken any steps questioning execution of sale deed for lesser extent is completely silent both in the pleadings and evidence. Admittedly, Raghunandan and Jagan Mohan were represented by

their mother guardian during their minority during which these transactions took place. It is not their case that their mother acted adverse to their interest while accepting the conveyance under Exs.B.64, 66 and 68. Even they have not taken any action within three years after they attain majority questioning the conveyance under Exs.B.64, 66 and 68 which are executed contrary to the terms of agreement or for lesser extent. From the evidence, it is clear that Venkata Swamy got nine children through first wife Bagamma and out of them four children pre-deceased Bagamma and only two sons and three daughters remained. Out of two sons and three daughters only one daughter was made party to the proceedings and the other two daughters were not in the picture. Venkata Swamy had two sons and five daughters through his second wife Jagadamba and daughters through second wife are also not before the court in any of the proceedings. As seen from the documents Exs.B.64, 66 and 68, there was no whisper as to any allotment to the daughters. Of course, one daughter by name Vimalamma was made as a party and her legal representatives were brought on record as they are concerned with property in S.No.285. It is also clear from the material on record, many alienations were made after 1965 before filing the suits. From evidence, it appears Raghunandan and Jagan Mohan have allowed those alienations, particularly in S.No.284.

One of the arguments of advocate for Raghunandan and Jagan Mohan is that trial court recorded a finding that item 'A' schedule property is a small extent, therefore, it is trivial.

No doubt, the lower court observed that land under item No.'A' is trivial but the relief was denied mainly on the ground that Raghunandan and Jagan Mohan are entitled only as per sale deed and they cannot contend that they were given lesser extent as the

family arrangement Ex.B.63 is not accepted. In the entire plaint, there is no whisper as to when the period of limitation started for adverse possession in respect of land in S.No.284.

In the plaint, plaintiffs are expected to give details as to the dates on which cause of action arose for their claim. It may be necessary to examine the cause of action para to know whether necessary information is furnished by the plaintiffs i.e., Raghunandan and Jagan Mohan for their claim in respect of plaint schedule properties. The following is the cause of action para as mentioned in the plaint.

“That the cause of action for the suit arose when the defendants started denying the plaintiffs their right to the said lands in the proceedings instituted by the plaintiffs in the year 1980. The plaintiffs have filed this suit on the basis of their title for possession of the properties. The suit is, therefore, within limitation.”

From a reading of above para, it is clear that the details are very vague and necessary details like when the plaintiffs got possession and when they lost their possession and when the period of limitation commenced, particularly, under Article 64 of the Limitation Act. In the plaint, many transactions are pleaded and for all those the only plea in the cause of action para is that the cause of action arose when defendants started denying plaintiffs right. But the plaintiffs are expected to plead cause of action with specific date in order to examine whether the claim is within limitation or not. On examination of above cause of action para, we are of the considered view that the details required to appraise the cause of action are very vague and cryptic.

As seen from the pleadings and evidence, the entire claim of Raghunandan and Jagan Mohan is on the basis of family arrangement which is an inadmissible document which cannot be enforced,

particularly, when sale deeds are executed, the recitals of which are not challenged. As already referred supra, recitals in all the sale deeds are to the effect that property is conveyed for consideration. When the property is conveyed for consideration and if there are any wrong recitals contrary to the agreement between the parties, the effected party has to question the correctness of that recitals in the document and having allowed to remain those recitals as it is, it is not open to make any claim contrary to the recitals of the sale deeds Exs.B.64, 66 and 68.

Both sides referred to some rulings on the doctrine of blending, on the point of joint family properties and ancestral properties and about the right of reversioners in a joint family for blending.

For blending, they referred to decision of the Hon'ble Supreme Court in Binod Bihari Lal and others vs. Rameshwar Prasad Sinha and others^[16] wherein it was observed that blending was merely a historical aspect of the question as to how the properties had become joint family properties.

They also referred to decision of the Hon'ble Supreme Court in Mallesappa Bandeppa Desai and another vs. Desai Mallappa alias Mallesappa and another^[17] wherein it was held that where a member of a joint family blends the self-acquired property with property of the joint family, either by brining the self-acquired property into a joint family account, or by bringing joint family property into his separate account, the effect is that the property so blended becomes a joint family property.

They also referred to decision of Hon'ble Supreme Court in Sellamani Ammal vs. Thillai Ammal and another^[18] wherein testamentary disposition was

held as valid and doctrine of blending was not accepted.

In all those decisions, there was a specific plea about blending and the parties have also adduced evidence supporting the plea of blending. But here in our case, there is neither plea nor evidence and it is only raised at the time of argument.

Advocate for Raghunandan and Jagan Mohan referred to the theory of blending to support their version, and submitted though sale deed is executed in their favour in respect of plaint schedule properties particularly land in Survey No.284 of Bagh Hayathnagar, property was kept joint with Yadagiri and therefore, it amounts to blending. But here there is absolutely no such pleading nor Raghunandan as D.W.2 stated anything about this blending. On the other hand, from the evidence on record, it can be safely inferred that though document is executed with recital of delivery of possession, Yadagiri did not deliver possession and Yadagiri has been possession and enjoyment since 1965. This statement of D.W.2 is supporting the version of Yadagiri about his possession from 1965 in respect of land in Survey No.284 of Bagh Hayathnagar therefore, all the above referred decisions on the doctrine of blending have no application to the case on hand as there is neither pleading nor evidence as to the blending theory.

Lower Court observed that because of the disputes at the time of the family arrangement, all the properties are treated as a joint family properties and parties agreed to take specific properties in pursuance of which, registered documents are executed. So after execution of registered documents particularly sale deeds, there cannot be any jointness or joint family properties. If the registered documents i.e., sale deeds are not executed, the properties will remain as joint

family properties, but once transfer is effected from that date, jointness cannot be accepted.

With regard to registration of family arrangement deed, they referred to decision of Hon'ble Supreme Court in Tek Bahadur Bhujil vs. Debi Singh Bhujil and others ^[19] wherein it was observed "family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is generally prepared as a record of what had been agreed upon in order that there are no hazy notions about it in future. It is only when the family arrangement is reduced in writing, with the purpose of using that writing as proof of what they arrange and, where the arrangement is brought about by the document as such, that the document requires registration, because it is then that it would amount to a document of title declaring for future what rights in what properties the parties possess. But a document which is no more than a memorandum of what had been agreed to between the parties does not require compulsory registration under Section 17 of Registration Act."

As already referred above, Exs.B63 & B24 are not accepted by the Court below as both the documents are held to be inadmissible for want of registration. Admittedly, these two documents relied on by both parties are for the alleged family arrangement between them. After the family arrangement under Ex.B63, necessary registered sale deeds were executed in compliance of the terms agreed under Ex.B63, therefore, once registered documents are executed, this Ex.B63 lost its significance and it cannot be looked into, which the

trial Court rightly did. Even this decision only refers to that a memorandum can be recorded in respect of past events, but that document cannot be used for the purpose of future title of the parties. So both Exs.B63 & B24 cannot be used to claim future title, and also for want of registration.

In Muhammad Husain Khan and others vs. Babu Kishva Nandan Sahai^[20] the point before the Court was in respect of nature of property i.e., whether it is ancestral property or joint family property but here dispute is not with regard to nature of property and dispute is only with regard to recovery of possession based on title. Therefore, this decision has no bearing on the point involved in the appeal.

In Radha Rani Bhargava vs. Hanuman Prasad Bhargava^[21] Hon'ble Supreme Court held that right of reversioners was dealt with and as the reversioners are not entitled to possession of property at the time of institution of suit, the next reversioner can then sue for a bare declaration. This decision has also no bearing on the points involved in the appeal as claim is only to recover possession based on title.

It was also argued on the point of binami transactions and two decisions were referred to on this point, which are in *MARCEL MARTINS VS. M. PRINTER AND OTHERS*^[22], *VATHSALA MANICKAVASAGAM AND OTHERS VS. N. GANESAN AND ANOTHER*^[23] respectively. Though it is contended that Bhagamma was a rich women and with her earnings properties were purchased and they were nominally put in the name of Venkataswami. There is no dispute that Bhagamma died at a very young age and as per material on record, the said Bhagamma was doing some businesses but it cannot

be ignored that Venkataswami was employed as a Government Servant and having fixed income of his own. In the entire material, except some assertions about the income of Bhagamma and Venkataswami, there is no convincing evidence to show that properties were acquired with the income derived by Bhagamma alone. There is also no evidence to show that Bhagamma got any properties by way of succession from her parents and that she purchased properties with the income derived on such properties. The evidence on record is not sufficient to decide the source of income for purchasing properties either in the name of Bhagamma or in the name of Venkataswami. So in view of that, this binami principle has no application and further when registered documents are executed in favour of Raghunandan and Jagan Mohan on one side and Yadagiri on other side for all the properties, this binami plea becomes insignificant.

It is also argued on point of bearing of suit under Order 2 Rule 2, procedure under order 10, R.2 C.P.C. and also on the principles resjudicata and principle of waiver but these submissions are not supported by any material. There is neither evidence nor material to support those legal defences. Therefore, we are not going into those aspects.

It is submitted on behalf of Raghunandan and Jagan Mohan that court can grant relief which was not asked and to support that submission, he relied on *KUSAM SATYANARAYANA REDDY v. KUSAM SAMBRAJYAMMA (DIED) PER LRs. AND OITHERS* ([\[24\]](#)). In that case, the plaintiffs claimed for a certain extent of land but on evidence it is found that they are not entitled for the entire extent but only to part of it they are entitled, in those circumstances this court held where the relief claimed by plaintiffs is larger and the

court grant a relief smaller than one claimed it would be legal. But that decision has no application to this case.

As referred to supra, Raghunandan and Jagan Mohan claimed for recovery of possession of plaint schedule properties and that claim was resisted by Yadagiri and others contending specifically that they have perfected title by adverse possession. It is well settled principle that a party claiming adverse possession must prove that his possession is peaceful open and continuous and adverse to the interest of true owner. Here Raghunandan and Jagan Mohan claimed possession basing on title. In case of recovery of possession based on right or title where defendant pleads adverse possession, the initial burden is on the defendant i.e., Yadagiri in this case. He clearly deposed in his evidence that he is in possession and enjoyment of plaint schedule properties from the date of family arrangement. Raghunandan as D.W.2 admitted in his evidence that Yadagiri is in possession and enjoyment of land in Survey No.284 of Bagh Hayathnagar. Though recovery of possession is prayed for in respect of total plaint schedule properties, main controversy is only in respect of land in Survey No.284 of Bagh Hayathnagar. Trial Court, on appreciation of oral and documentary evidence, was of the view that claim of both Raghunandan and Jagan Mohan is barred by time.

Advocate for Raghunandan and Jagan Mohan contended that trial Court took that view relying on the old provisions of Limitation Act, but as per Article 65 of the new Limitation Act, suffice for Raghunandan and Jagan Mohan to prove their title and it is not necessary for them to show that they were in possession of the property twelve years prior to the institution of the suit. As already referred above, this proposition is not

disputed by other side. Where the recovery of possession is based on title and where opposite party pleads adverse possession the initial burden is on the opposite party to prove it and then the burden shifts on the person who claims recovery of possession to rebut it. Article 65 of the Limitation Act deals with for recovery of immovable property based on title and Section 27 of the Limitation Act deals with extinguishment of right to property. It may be useful to examine both the above provisions, which reads as follows:-

“27. Extinguishment of right to property.- At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

Article 65:

<i>“Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
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<i>For possession of immovable property or any interest therein based on title.</i>	<i>Twelve years</i>	<i>When the possession of defendant becomes adverse to the plaintiff.</i>
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Explanation.—For the purposes of this article—

- (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;*
- (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;*
- (c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.*

From a reading of the above provision, it is clear that a suit for recovery of possession based on title has to be filed within 12 years when the possession of opposite party becomes adverse to the plaintiff.

So period of limitation commences when the possession of opposite party becomes adverse to the interest of plaintiff and from that date, right will accrue

to the plaintiff. It is clear from the evidence on record that possession was not delivered to Raghunandan and Jagan Mohan for land in Survey No.284 of Bagh Hayathnagar though it was recorded in the sale deed-Ex.B64 that possession was delivered on the date of document. Yadagiri as D.W.1 asserted that he is in exclusive possession of entire extent of land in Survey No.284 at Bagh Hayathnagar since 1965. This statement of Yadagiri remained unchallenge.

There is not even a suggestion disputing the said statement. From the evidence, it is clear that possession of Yadagiri was peaceful open and continuous to the knowledge of guardian of Raghunandan and Jagan Mohan during their minority and to Raghunandan and Jagan Mohan after they attained majority.

So once this aspect is established, the burden is now shifted on Raghunandan and Jagan Mohan to show that possession of Yadagiri was not open and continuous and not to their knowledge. Here the material on record is oath against oath i.e., evidence of Raghunandan and Yadagiri.

I n *GANSHAMDOSS NARYANDOSS AND OTHERS VS. SARASWATHI BAI AND OTHERS* [\[25\]](#)

Madras High Court held that where a person has been in possession of property for over twelve years as legatee with an absolute estate under a will by a testator who had no disposing power over the property and no objection has been made by the person entitled to the property, the person in possession acquires an absolute title to the property.

In *MD. MOHAMMAD ALI VS. JAGADISH KALITA AND OTHERS* [\[26\]](#) Hon'ble Supreme Court held in a suit governed by Article 65 of the Limitation Act the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a

suit governed by Articles 142 & 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.

In *STATE OF HARYANA VS. MUKESH KUMAR AND OTHERS* ^[27] Hon'ble Supreme Court held the doctrine of adverse possession arose in an era where lands were vast particularly in the United States of America and documentation sparse in order to give quietus to the title of the possessor and prevent fanciful claims from erupting. The concept of adverse possession exists to cure potential or actual defects in real estate titles by putting a statue of limitation on possible litigation over ownership and possession. A landowner could be secure in title to his land; otherwise, long-lost heirs of any former owner, possessor or lien holder of centuries past could come forward with a legal claim on the property. Since independence of our country we have witnessed registered documents of title and more proper, if not perfect, entries of title in the government records. The situation having changed, the statue calls for a change.

In *P.T. MUNICHIKKANNA REDDY AND OTHERS VS. REVAMMA AND OTHERS* ^[28] Hon'ble Supreme Court held adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile.

In *VASANTIBEN PRAHLADJI NAYAK AND OTHERS VS. SOMNATH MULJIBHAI NAYAK AND OTHERS*^[29] it is held that to establish ouster in cases involving claim of adverse possession the defendant has to prove three elements namely, hostile intention, long and uninterrupted possession; and exercise of the right of exclusive ownership openly and to the knowledge of the owner. In cases of adverse possession, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but it commences from the date when the defendant's possession became adverse.

The principles laid down in all the above decisions cannot be disputed but from the material on record, it is clear that though sale deed was executed in the year 1965 recording that possession was delivered, but fact remains that possession was not delivered as recorded in the document, therefore, we have no hesitation in holding that guardian of Raghunandan and Jagan Mohan allowed Yadagiri to enjoy the property during the minority of these two persons and Raghunandan and Jagan Mohan themselves allowed Yadagiri to enjoy the property till filing of the suit. As already referred to above, there are no allegations attributing any malafidies to the guardian and admittedly suit is not filed within three years of attaining majority by either of them.

Though much is argued about the findings of the trial Court while examining the correctness of the findings of the trial Court, the basic principle of law is where trial Court rely on facts and probabilities basing on credibility with opportunity to observe the demeanour of the witnesses and based on reasons, such findings cannot be disturbed merely because some other view is also possible. In other words, the

appellate Court shall not ordinarily or casually interfere with the findings of the trial Court, unless those findings are contrary to law or weight of evidence or probabilities of the case or perverse or arbitrary or superficial or capricious or unsustainable either on fact or on law which is well settled proposition. Here the trial Court on a close examination of oral and documentary evidence found that the Raghunandan and Jagan Mohan are not entitled for recovery of possession and we do not find any material to declare those findings as contrary to law or weight of evidence or probabilities of case or perverse or arbitrary or superficial or capricious or unsustainable. Therefore, these points are held against plaintiffs in O.S.No.69 of 1993.

POINT No.6:

Raghunandan and Jagan Mohan filed O.S.No.2 of 1996 to declare that lay out sanction obtained for the construction of houses or construction commenced in the suit property as arbitrary, void and illegal, consequently to grant injunction

against Yadagiri and Umesh Kumar. Plaintiffs in this suit contended that they are in possession of the suit land in pursuance of family arrangement and sale deed executed in their favour as the same was allotted to them. He contended that exact boundaries were not demarcated and possession of the property is being enjoyed on proximate metes and bounds and the same is used for agricultural purpose only. They contended that Yadagiri and Umesh Kumar taking advantage of possession deliberately avoided fixation of metes and bounds and delayed the matter and plaintiffs came to know that Yadagiri and Umesh Kumar applied to Hyathnagar Panchayat for sanction of lay out by dividing land into plots and they are attempting to sell those lands to third parties and therefore, their action has to be declared as illegal, void and consequently restrain them by way of injunction from selling the plots. The defendants in the

suit resisted the claim of Plaintiffs and disputed Plaintiffs right over the suit schedule property. As already referred above, all the suits are tried jointly and no evidence is recorded in O.S.No.2 of 1996. Raghunandan is examined as D.W.2. In his entire evidence, he has not referred to any of the allegations mentioned in this plaint and his entire evidence was only in respect of their claim in O.S.No.69 of 1993. Trial court considering evidence of Raghunanda with reference to claim made in this suit, held issues against the Plaintiffs and dismissed the suit. Though much is argued about action of Yadagiri in converting the suit land into plots and selling them to third parties in the absence of any evidence, relief cannot be granted merely on the basis of pleading. Therefore, trial court rightly refused to grant relief claimed in O.S.No.2 of 1996 and dismissed the suit. We do not find any grounds to interfere with the findings on the issues of this suit and result thereon.

For these reasons, the point is held against the plaintiffs i.e., Raghunandan and Jagan Mohan.

POINT No.7:

This suit is also filed by Raghunandan and Jagan Mohan to declare the sale deed under document No.7557 of 1979 dated 23-7-1979 in book No.1 volume No.743 pages 17 and 18 dated 26-7-79 as void, illegal and consequently restrain Yadagiri and Mohd. Moinuddin, the purchaser of the property under the above document from constructing any structure or building in the suit land.

In this suit, plaintiffs contended that as the property conveyed under family arrangement is not demarcated. First defendant i.e., Yadagiri took advantage of his possession converted the land into

plots and sold them to third parties and D.2 herein is one of such purchaser of 900 square yards of plot in eastern half of survey number 284 of Bagh Hayathnagar village and therefore, the said sale transaction is void, illegal and does not convey any rights to second defendant. They contended that D.2 in pursuance of the sale deed is engaged in digging land and laying foundation for construction of some building and D.2 has no right in the suit land, and he has to be restrained by way of injunction. For this claim also, no other witness is examined except D.W.2. Raghunandan who is examined as D.W.2 has not deposed anything with reference to the claim made in this suit and his entire deposition is only in respect of their claim in O.S.No.69 of 1993. Raghunandan and Jagan Mohan have failed in establishing that Yadagiri highhandedly converted the suit land into house plots and obtained lay out permission. They equally failed in proving that Yadagiri sold property involved in the suit i.e., 900 square yards of site, without any valid right. Trial court held that as the plaintiffs have failed in proving the plaint averments held that they are not entitled for the relief claimed. We have examined the material papers including the evidence of Raghunandan and as rightly held by trial court, plaintiffs herein are not entitled for the relief particularly when they have not produced any evidence independently supporting the claim made under this suit. Therefore, we are of the view that there are no grounds to interfere with the findings of the trial court and the point is accordingly held against them.

POINT No.8:

This suit is filed by one K.Satyanarayana claiming as G.P.A. Holder for Sri V.Yadagiri Rao for the relief of specific performance against N.Yadagiri and N.Raghunandan. According to plaintiff in this suit,

N.Venkata Swamy father of first defendant herein and Jagadamba mother of second defendant herein agreed to sell Ac.4.31 guntas of land in S.No.285 of Bagh Hayathnagar for a sale consideration of Rs.1,21,000/- and during the life time of Venkataswamy, a registered sale deed dated 6-3-1968 was executed for an extent of Ac.1.08 guntas approximately 1/4th area of property covered by agreement and after the death of Venkataswamy, plaintiff requested defendants herein to register the remaining land but they are postponing the same on one pretext or the other and finally a notice was issued on 8.6.1979 as they failed to comply with the demand for specific performance of agreement of sale dated 15-7-1967.

This claim is resisted by Yadagiri and Raghunandan and this suit was also tried along with other suits. No witness is examined on behalf of plaintiff in this suit to prove the claim for specific performance. According to plaintiff, the sale agreement is dated 15-7-1967 and the suit is filed in the year 1979 i.e., almost after 12 years. It is also contended in the plaint that in pursuance of sale agreement, Ac.1.08 guntas of land was registered on 6-3-1968 during life time of Venkataswamy. Learned trial judge held that the plaintiff failed to adduce any evidence in spite of granting time and opportunity and at no stage plaintiff took interest about prosecution of the case and considering these aspects, trial court held that plaintiff has miserably failed in proving the claim for specific performance.

Advocate for appellant mainly contended that the plaintiff in this suit was not given opportunity to adduce evidence, therefore the matter has to be remitted back to the trial court to enable the plaintiff to adduce evidence to prove his claim.

Advocate for respondent in this appeal contended that when a registered sale deed was already obtained in respect of part of the property covered by the agreement, plaintiff cannot enforce the remaining part without there being any specific recital in the agreement. It is further contended that when the agreement was executed by Venkata Swamy, all L.Rs. are not brought on record and there was abnormal delay of more than 12 years in approaching the court for the relief of specific performance and these aspects were considered by trial court and that there are no grounds even for remand.

As seen from the material, within eight months of execution of sale agreement, a registered sale deed was executed for Ac.1.08 guntas of land and plaintiff has not pursued at any time till issuing registered notice. From this, it can be inferred that the remaining rights under the agreement have been abandoned. If really, the sale deed dated 6-3-1968 is only towards part performance of terms of agreement of sale, there should have been a recital in the registered document about reserving the claim of the plaintiff in respect of other portion of the land covered by agreement of sale. Even otherwise, when the plaintiff has not adduced any evidence and the claim is made nearly 12 years after the agreement, such relief cannot be entertained. Trial court rightly refused to grant relief of specific performance and we do not find any wrong in the judgment of the trial court in refusing the relief of specific performance. For these reasons, this point is held against the plaintiff.

POINT No.9:

This suit is filed for the relief of permanent injunction to restrain Raghunandan and Jagan Mohan from interfering with peaceful possession and enjoyment of plaint schedule property i.e., 100 square

yards in plot No.2C of S.No.285 and plot No.2D to an extent of 400 square yards in S.No.285 of Bagh Hayathnagar, Ranga Reddy District.

According to plaintiffs, they have purchased the suit schedule properties under registered sale deeds and they have been in possession and enjoyment of the property but the defendants i.e., Raghunandan and Jagan Mohan without any manner of right started causing interference with their enjoyment. These two suit plots are in the lay out in respect of which, O.S.No.70 of 1993 is filed. We have already observed earlier that Raghunandan and Jagan Mohan have failed in establishing that Yadagiri without any right converted the agricultural land belonging to Raghunandan and Jagan Mohan into house plots. Here, the plaintiffs purchased the suit plots under two registered sale deeds. One of the plaintiffs is examined as D.W.3 and he reiterated in his evidence as to how he purchased the property and through him, two sale deeds under which suit property is purchased are marked as Exs.B.129 and B.130. He also deposed that they have constructed shops in the suit property and no objection was raised at the time of construction and only in the year 1987, Raghunandan and Jagan Mohan started interfering. The evidence of D.W.3 is not at all rebutted and Raghuandan who is examined as D.W.2 has not deposed anything about the claim of plaintiffs in this suit. Considering oral evidence of D.W.3 and documents Exs.B.129 to 134, trial court held that plaintiffs have established their right over the suit schedule property and also established possession and enjoyment and therefore, granted decree of injunction restraining Raghunandan and Jagan Mohan from interfering. We do not find any wrong in appreciation of evidence. Learned trial Judge has examined all the link documents connected with the right of plaintiffs vendor from whom suit property

was purchased and there is nothing wrong in the approach of the trial court. In our view, trial court has rightly granted relief and that there are no grounds to interfere with the findings recorded by the trial court in respect of suit schedule property in O.S.No.1 of 1995. For these reasons, this point is answered in favour of the plaintiffs.

POINT No.10:

This suit is filed by one A.Narender and Smt.A.Veeramani who are husband and wife claiming relief of permanent injunction to restrain Raghunandan and Jaganmohan and Yadagiri from interfering with peaceful possession and enjoyment of Ac.0.03 Guntas equivalent to 363 square yards in S.No.285 of Bagh Hayath Nagar, Ranga Reddy District.

According to Narendra and others, they have purchased the suit schedule property of 363 square yards of site for Rs.1,45,200/- through a registered sale deed dated 4-4-1991 from one Subba Rao and thereafter, they constructed a building in the purchased property after obtaining necessary permission. They contended that Yadagiri, Raghunandan and Jagan Mohan have no right, title and interest in the suit property but started interfering with peaceful possession and enjoyment of the property highhandedly with the help of anti social elements and they are threatening plaintiffs that they will take forceful possession of the suit schedule property and in fact, they came to the suit property on 11-4-1991 and tried to interfere with the possession and enjoyment and therefore, they have to be restrained by way of permanent injunction.

This suit is also tried along with the other suits but the plaintiffs herein are not examined as witnesses during trial.

The main contention of the appellants is that the trial court even without any evidence from plaintiffs granted decree based on pleadings which is contrary to established principles.

As seen from the material papers, trial court dealt this suit in para 58 of its judgment. As rightly pointed out by advocate for appellants, the trial court only on the basis of pleadings in O.S.No.69 of 1993 held that Raghunandan, Jagan Mohan and Yadagiri have no right or interest in the suit property and therefore, they cannot cause interference. When the plaintiffs alleged that Raghunandan, Jaganmohan, Yadagiri made attempt to interfere with the possession and enjoyment on 11-4-1991 and came to the suit land with anti social elements, it is for the plaintiffs to prove that fact and without proof of interference, the court cannot presume basing on the pleadings. Here the trial court only on the basis of pleadings granted decree holding that the plaintiffs have right in the suit schedule properties and their right has to be protected. As rightly pointed out by advocate for appellants, even in case where defendants remained exparte, the court cannot grant a decree on the basis of pleadings and the same can be only on the basis of evidence. The trial court relying on the evidence of Raghunandan who stated that there was a document in favour of Batchu Subbarao from whom the plaintiffs claimed to have purchased the property, presumed interference and granted decree but that piece of evidence is not sufficient to grant permanent injunction in favour of a party who has not come to the witness box and not testified the allegations leveled against opposite party.

On a scrutiny of the material, we are of the considered view that the trial court has committed error in granting decree of permanent injunction only on the basis of pleadings and such decree cannot be upheld.

For these reasons, the point is answered in favour of appellants and the decree granted by the trial court in favour of plaintiffs in O.S.No.2 of 1995 is liable to be set aside.

POINT No.11:

Plaintiffs in this suit are P.Veeramani and others. They filed suit against Raghunandan contending that they along with one Shaik Babji purchased two plots i.e., plot Nos.3 and 4 admeasuring 2852.44 square yards of site in S.No.285 situated at Bagh Hayat Nagar, Ranga Reddy District through sale deeds dated 28-8-1981, 31.1.1981, 30.9.1981, 2.12.1981, 28.8.1981, 28.8.1981 and 30.9.1991. They further contended that plaintiffs have been in possession and enjoyment of 2852.44 square yards excluding 284 of square yards purchased by Babji and that plaintiffs have obtained necessary permission for construction of houses in their respective sites. According to plaintiffs, when they went to the site to commence construction work defendant i.e., Raghunandan who has got considerable influence in the village who is supported by anti social elements came to the suit site on 27.3.1986 and obstructed plaintiffs from proceeding with the construction and laid a false claim over the suit schedule property. As the defendant i.e., Raghunandan is a local person who has got support from anti social elements though has no right title and interest over the suit schedule property obstructed plaintiffs from proceeding with the construction and unless he is restrained by way of permanent injunction, the plaintiffs would suffer irreparable hardship and injury.

Raghunandan has disputed the claim of plaintiffs and contended that the suit property fell to him in the family arrangement and that the plaintiffs have no right and interest in the suit, alienations made

by the vendors of the plaintiffs are not legal and enforceable and disputed the plaint averments. None of the plaintiffs are examined as witnesses and the trial court considered the claim of plaintiffs only on the basis of pleadings of both parties.

Learned advocate for appellants submitted that when the plaintiffs have claimed to have purchased the suit property through registered sale deed and contended that defendant i.e., Raghunandan has interfered with their possession and enjoyment, it is for them to prove those allegations with cogent and acceptable evidence but the plaintiffs have not placed any evidence either oral or documentary in support of their relief they have claimed, but the trial court only on the basis of pleadings granted relief which is contrary to the established principles and procedure. We have examined material papers and also common judgment of the trial court. This suit was dealt under para 56. As rightly pointed out by advocate for appellant, the trial court only on the basis of pleadings granted relief in favour of plaintiffs of this suit. Trial court held that the evidence of Raghunandan does not show that plaintiffs Varalaxmi and others have occupied Raghunandan's land and made constructions therein and therefore, the claim of Varalakshmi and others have to be accepted and on that premise granted decree of permanent injunction. As rightly pointed out by Advocate for appellants, any party who claims relief has to establish his or her claim through cogent and convincing evidence and a decree cannot be granted on the basis of pleadings.

On a scrutiny of the material, we have no hesitation in holding that the trial court has committed grave error in granting decree of permanent injunction without there being any evidence in support of the relief claimed by the plaintiffs.

For these reasons, decree of trial court in O.S.No.3 of 1996 is liable to be set aside and this point is accordingly answered.

On an overall scrutiny of the material, we are of the considered view that trial court rightly negated relief of Raghunandan and Jagan Mohan and there are no grounds to interfere with the same. These points are held against Raghunandan and Jagan Mohan.

Before concluding, we shall mention that both sides brought to our notice certain irregularities like double marking of documents, giving witness was twice and allowing amendment of written statement of a party by another party, but those irregularities are not seriously challenged. On a scrutiny of material, we are of the view that all those lapses are curable mistakes and have no bearing on the main issues.

12. To what relief?

In view of our findings on point Nos.1 to 11, A.S.Nos.862 of 2001, 1641 of 1999, 2395 of 1999, 1944 of 1999, 2131 of 1999 & 1386 of 1999 are dismissed and A.S.Nos.1958 of 1999 and 1974 of 1999 are allowed.

As a sequel to the disposal of these appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE RAMESH RANGANATHAN

JUSTICE S.RAVI KUMAR

Date:28.4.2016.

Dvs/mrb

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND

HON'BLE SRI JUSTICE S. RAVI KUMAR

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A.S.Nos.862 of 2001,1641 of 1999, 1974 of 1999,
2395 of 1999, 1944 of 1999, 1958 of 1999, 2131 of
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Date: 28.4.2016

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- [1] A.I.R.2013 S.C.2088
[2] A.I.R. 1961 Calcutta 359
[3] 2003 (8) SCC 613
[4] 1985 (2) APLJ 149
[5]
[6] A.I.R.1966 SC 216,
[7] 1945 (2) MLJ page 46
[8] 1996 Madras page 442.
[9] A.I.R.1949 Bombay, 266.

- [\[10\]](#) A.I.R.2005 SC 233
- [\[11\]](#) AIR 1961 CALCUTTA 359 (Vol.48, C.74)
- [\[12\]](#) ALT 1978 408
- [\[13\]](#) AIR 1962 A.P. 178 (V 49, C 53) (1)
- [\[14\]](#) AIR 2013 SC 2088
- [\[15\]](#) AIR 1961 SC 1268
- [\[16\]](#) AIR 1978 SUPREME COURT 1201
- [\[17\]](#) AIR 1961 SUPREME COURT 1268
- [\[18\]](#) AIR (33) 1946 PRIVY COUNCIL 185
- [\[19\]](#) AIR 1966 SUPREME COURT 292
- [\[20\]](#) AIR 1937 PRIVY COUNCIL 233
- [\[21\]](#) AIR 1966 SUPREME COURT 216
- [\[22\]](#) AIR 2012 SUPREME COURT 1987
- [\[23\]](#) (2013) 9 Supreme Court Cases 152
- [\[24\]](#) 2004 (3) ALT 115 (D.B.)
- [\[25\]](#) AIR 1925 Madras 861
- [\[26\]](#) 2004 (1) Supreme Court Cases 271
- [\[27\]](#) (2011) 10 Supreme Court Cases 404
- [\[28\]](#) (2007) Supreme Court Cases 59
- [\[29\]](#) (2004) 3 Supreme Court Cases 376