

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

SECOND APPEAL Nos.190 and 208 OF 2013

COMMON JUDGMENT:

Second Appeal No.190 of 2013 is filed by the defendants challenging the decree and judgment dated 29.12.2012 in A.S.No.72 of 2006 on the file of the Court of VI Additional District Judge (Fast Track Court), Krishna at Machilipatnam, wherein and whereby the decree and judgment dated 03.3.2006 in O.S.No.5 of 2000 on the file of the Court of Senior Civil Judge, Machilipatnam, decreeing the suit for recovery of possession of item No.1 of the suit schedule property, in favour of the plaintiffs, was confirmed.

2. The unsuccessful plaintiffs preferred S.A.No.208 of 2013 assailing the decree and judgment dated 29.12.2012 in A.S. No.105 of 2006 on the file of the Court of VI Additional District Judge (Fast Track Court), Krishna at Machilipatnam, wherein and whereby the decree and judgment dated 03.3.2006 in O.S.No.107 of 2001 on the file of the Court of Senior Civil Judge, Machilipatnam, dismissing the suit for partition of the suit schedule property, was confirmed.

3. The first plaintiff in O.S.No.5 of 2000 is the sole defendant in O.S.No.107 of 2001. The plaintiffs in O.S.No.107 of 2001 are the defendants in O.S.No.5 of 2000. The suit schedule property, in both the suits, is one and the same. O.S.No.5 of 2000 was filed seeking recovery of possession of

item No.1 of the suit schedule property together with the appurtenant vacant site and for past profits at Rs.300/- per month. O.S.No.107 of 2001 was filed for partition of the suit schedule property. In view of the same, the trial Court clubbed both the suits, recorded the evidence in O.S.No.5 of 2000 and disposed of both the suits by common judgment. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in O.S.No.5 of 2000. During the pendency of the Second Appeals, second plaintiff-Merugu Jaya Sugunamani, died. Learned counsel for both the parties submitted that second plaintiff in O.S.No.5 of 2000 is only a proforma party. Hence, question of bringing the L.Rs of the second plaintiff, does not arise.

4. The case of the plaintiffs, as per the averments made in the plaint in O.S.No.5 of 2000 and written statement in O.S.No.107 of 2001, is that the second plaintiff is the daughter of the first plaintiff and they are residents of Malakapatnam of Machilipatnam Town. Merugu John Meeraiah is the husband of first plaintiff and father of second plaintiff. The suit schedule property, which is consisting of houses bearing Door Nos.30/347 (corresponding old No.21/72) and 30/348 (corresponding old No.21/73) in an extent of 650 Sq.yards each, is situated at Malakapatnam of Machilipatnam, originally belongs to the mother of the first plaintiff Dr.Navamani Man Singh, who died intestate in the year 1977. The father of the first plaintiff i.e., Peter Chandra

Manna Man Singh died in the year 1970. The first plaintiff is the only daughter, who succeeded to all the properties of her mother. During her lifetime, Dr.Navamani Man Singh executed a gift deed in favour of first plaintiff bequeathing the suit schedule property with absolute rights. After death of Dr.Navamani Man Singh, first plaintiff became the absolute owner of the suit schedule property and has been in possession and enjoyment of the same by paying necessary taxes to the Municipality. Dr.Navamani Man Singh used to look after the welfare of orphans. Peter Ratna Mohan Singh, who is the father of defendant Nos.1 to 3 and husband of defendant No.4, was a Hindu orphan. Out of benevolence, Dr.Navamani Man Singh brought up Peter Ratna Mohan Singh, and after his marriage, permitted him to stay in house bearing No.30/348. Peter Ratna Mohan Singh lived in the said house till his death i.e., up to the year 1976 and thereafter the defendants have been continuing in the said house. Peter Ratna Mohan Singh, during his lifetime, never asserted as he is the owner of house bearing Door No.30/348. In the year 1996, the defendants filed O.S.No.46 of 1996 on the file of the Court of Senior Civil Judge, Machilipatnam, seeking partition of the suit schedule property, contending that Peter Ratna Mohan Singh is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. He is not born to Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. The defendants have no right whatsoever in the

suit schedule property. Since the defendants did not vacate house bearing Door No.30/348, the plaintiffs filed O.S.No.5 of 2000 for recovery of possession of item No.1 of the suit schedule property.

5. The case of the defendants, as per the averments made in the plaint in O.S.No.107 of 2001 and the written statement in O.S.No.5 of 2000, is that late Peter Ratna Mohan Singh is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh, and brother of first plaintiff. After marriage of Peter Ratna Mohan Singh with defendant No.4, late Peter Chandra Manna Man Singh and Dr.Navamani Man Singh advised Peter Ratna Mohan Singh to occupy the house bearing Door No.30/348. They also directed the first plaintiff to occupy the house bearing Door No.30/347. Both parties have been residing in their respective houses. In the year 1996, the first plaintiff began to interfere with the peaceful possession and enjoyment of house bearing door No.30/348 by the defendants; therefore, defendant No.4 being a lady, who does not have requisite knowledge, approached an Advocate by name Goriparthi Siva Sankara Prasad, who is family friend of both the parties. Siva Sankara Prasad prepared plaint in O.S.No.46 of 1996, and without narrating the contents therein, obtained the signatures of defendants on the plaint and filed the same before the Court. Few days prior to filing of O.S.No.5 of 2000 by the plaintiffs, the defendants came to know about the facts mentioned in

O.S.No.46 of 1996 are contrary to the actual facts and the fraud played by Siva Sankara Prasad. The intention of defendants was to effect partition of the suit schedule property. The plaintiffs discarded the oral arrangement of partition. On coming to know about the fraud played by Siva Sankara Prasad, the defendants withdrew O.S.No.46 of 1996 with the permission of the Court to file a comprehensive suit claiming half share in the suit schedule property. These defendants have filed O.S.No.107 of 2001 instead of making counter-claim in O.S.No.5 of 2000. Hence, the defendants prayed for dismissal of O.S.No.5 of 2000 and allowing of O.S.No.107 of 2001.

6. Basing on the pleadings, the trial Court framed the following issues:

O.S. No.5 of 2000

1. Whether the possession of the defendants in the suit schedule property is permissive?
2. Whether the plaintiffs are entitled for possession as prayed for?
3. Whether the plaintiffs are entitled for past profits at Rs.300/- per month?
4. Whether PETER RATNA MOHAN SINGH is the son of Dr.Navamani Man Singh and Peter Chandra Manna Man Singh?
5. Whether the defendants are Hindus?
6. To what relief?

O.S. No.107 of 2001

1. Whether the plaintiffs are entitled to seek for partition over the schedule mentioned properties as sought for?
2. To what relief?

7. The trial Court clubbed both the suits and recorded the evidence in O.S.No.5 of 2000. To substantiate the case, the first plaintiff besides examining herself as P.W.1, examined P.W.2 on their behalf, and got marked Exs.A.1 to A8. To demolish the case of the plaintiffs, first defendant examined himself as D.W.1 and got marked Exs.B.1 to B.16. D.Ws.2 and 3, who are Pastors, were examined to prove the recitals of Exs.X.1 to X.6.

8. Considering the oral, documentary evidence and other material available on record, the trial Court arrived at the conclusion that the plaintiffs in O.S.No.5 of 2000 are entitled for recovery of item No.1 of the suit schedule property and allowed the suit. The trial Court also held that Peter Ratna Mohan Singh is not the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh and dismissed O.S.No.107 of 2001. Feeling aggrieved by the decree and judgment in O.S.No.5 of 2000, the defendants preferred A.S.No.72 of 2006. The unsuccessful plaintiffs in O.S.No.107 of 2001 preferred A.S.No.105 of 2006. The first appellate Court, after reappraising the oral, documentary evidence and other material available on record and without being influenced by the findings of the trial Court, came to a conclusion that Peter Ratna Mohan Singh is not the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh, and the plaintiffs in O.S.No.5 of 2000 are entitled for recovery of item No.1 of the suit schedule property;

consequently dismissed both the appeals. Hence the defendants, who lost the battle in both the suits, have preferred these two second appeals.

9. Sri Sai Gangadhar Chamarty, learned counsel for the appellants-defendants, strenuously submitted that the Courts below misconstrued the provisions of the Indian Evidence Act and discarded the documents filed by the appellants. He further submitted that the Courts below ought not to have decreed O.S.No.5 of 2000 without seeking the relief of declaration. He further submitted that the findings recorded by the Courts below are perverse; hence, they are liable to be set aside.

10. *Per contra*, Sri Hari Sreedhar, learned counsel for the respondents-plaintiffs in O.S.No.5 of 2000, strenuously submitted that the Courts below concurrently held that Peter Ratna Mohan Singh is not the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. He further submitted that the findings recorded by the Courts below are based on sound reasoning apart from supported by oral and documentary evidence. He further submitted that this Court shall not lightly interfere with the concurrent findings of fact in view of Section 100 of CPC.

11. Basing on the submissions made by both the counsel, the questions of law that arise for consideration are:

(1) Whether the decrees and judgments of the Courts below are sustainable for non-consideration of Exs.X.4 to X.6 in view of Section 35 of the Indian Evidence Act? and

(2) Whether the plaintiffs in O.S.No.5 of 2000 are entitled to seek the relief of recovery of possession, without seeking the relief of declaration?

12. Both the points are interlinked with each other; hence, this Court is inclined to address both the points simultaneously, in order to avoid recapitulation of facts and evidence.

13. The following admitted facts can be culled out from the pleadings of both the parties. Originally the suit schedule property belongs to Peter Chandra Manna Man Singh, who is the husband of Dr.Navamani Man Singh, and father of the first plaintiff. They are Christians and are residents of Malakapatnam, Machilipatnam. The second plaintiff is the daughter of the first plaintiff. Peter Chandra Manna Man Singh executed Ex.A.2 gift deed dated 04.10.1945 bequeathing the suit schedule property in favour of the first plaintiff. On 04.5.1948, Peter Chandra Manna Man Singh and the first plaintiff executed Ex.A.3 settlement deed transferring the suit schedule property in favour of Dr.Navamani Man Singh. Peter Chandra Manna Man Singh died in the year 1970 whereas Dr.Navamani Man Singh died in the year 1977. The suit schedule property is consisting of houses bearing Door Nos.30/347 and 30/348, in an extent of 650 sq. yards each.

14. The defendant Nos.1 to 3 are sons of defendant No.4 and late Peter Ratna Mohan Singh. The marriage of Peter Ratna Mohan Singh was performed with defendant No.4 in the year 1962 at Chennai. Since then, he stayed in item No.1 of the suit schedule property. Peter Ratna Mohan Singh died in the year 1976. The defendant Nos.1 to 4 filed O.S.No.46 of 1996 on the file of the Court of Senior Civil Judge, Machilipatnam, seeking partition of the suit schedule property, and withdrew the same after filing of O.S.No.5 of 2000 by the plaintiffs.

15. The core issue involved, in these cases, is as to whether Peter Ratna Mohan Singh is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. If the issue is decided in the affirmative, the defendants are entitled to seek partition of the suit schedule property. If the issue is decided in the negative, the defendants have to vacate item No.1 of the suit schedule property along with abutting vacant site.

16. P.W.2 is the Health Assistant in Machilipatnam Municipality. As seen from the testimony of P.W.1, Peter Ratna Mohan Singh was born on 14.12.1936 in Inagudurupet. The testimony of P.W.2 further reveals that one Yekula Seetharatnam gave birth to a male child on 14.12.1936 in Inagudurupet Hospital. Ex.X.1 and Ex.A.8 are copies of birth register of Machilipatnam Municipality relating to male child of Yekula Seetharatnam. As per the recitals of

Ex.B.1 Marriage Certificate, Ex.B.2 Secondary School Leaving Certificate and Ex.B.3 Declaration of correct date of birth appended to Ex.B.2, Peter Ratna Mohan Singh was born on 14.12.1936. There is no much dispute with regard to the date of birth of Peter Ratna Mohan Singh.

17. As rightly pointed out by learned counsel for the appellants, the entries made in the birth, marriage and death registers are relevant in view of Section 35 of the Indian Evidence Act. A document, which is relevant to the suit, can be considered by the Court, if such document satisfies relevant provisions of the Stamp Act and the Registration Act, as the case may be. In order to prove the entries made in the above referred registers, the competent persons shall be examined. The relevancy of a document cannot be equated with the admissibility of the same. If the party to the proceedings, who produced the document, examined the person connected with such document, it can be admitted in evidence. To place reliance on a document, the Court has to satisfy itself that the document is relevant, admissible and the same is proved in accordance with law. Let me consider the facts of the case on hand, in the above legal backdrop.

18. The defendants mainly relied on the testimony of D.Ws.2 and 3, who are the Pastors, to establish that Peter Ratna Mohan Singh is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. As per the testimony of

D.W.3, late Peter Ratna Mohan Singh worked as Lower Division Clerk in Andhra Scientific Company, Machilipatnam. As per the testimony of D.W.2, the marriage of Peter Ratna Mohan Singh and defendant No.4 was performed in St.Paul's Church, Vepery at Chennai. As per Ex.B.7 Marriage Certificate, Peter Ratna Mohan Singh was working as Clerk in Statistical Department, Government of Madras. In Ex.B.7 marriage certificate, the column pertaining to father's name was kept blank; therefore, the Courts below discarded Ex.B.7.

19. The defendants placed much reliance on Exs.X.4 to X.6, to substantiate their stand, which were marked through D.W.3. As per the testimony of D.W.3, Indian-Christians will be buried in St.Mary's Church, Machilipatnam. His testimony reveals that Peter Chandra Manna Man Singh was buried in St.Mary's Church. A perusal of Exs.X.4 to X6 clinchingly establishes that Peter Ratna Mohan Singh was buried in St. Mary's Church. That itself is not sufficient to establish that he is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. In order to appreciate these documents, it is not out of place to extract hereunder the relevant portion of the cross-examination of D.W.3.

29) D.W.3 in his cross-examination deposed that:-

In Ex.X.4 the surname column of Peter C.M. Man Singh is left blank and in the same sheet the surnames of others are mentioned. In Ex.X4 I did not sign under the column "Signature by whom buried". It is true in Ex.A5 (*sic* X5) the particulars of the location or village or Town to which Navamani Man Singh belong to and lived was not mentioned. It is true that the particulars mentioned in the column "surname" in Ex.A6 (*sic* X6) are incorrect... It is

true in Ex.X4 the particulars of information relating to the location, village or Town of the deceased are not mentioned... The Baptism certificate of Peter C.M. Man Singh, Dr.Navamani Man Singh and Peter Ratna Mohan Singh are not available in my Office... It is true that we have to maintain the record of the Baptism certificate of the dead bodies that were buried in the compound of St.Mary's Church.

20. A perusal of the above reveals that surname of Peter Ratna Mohan Singh was not mentioned in Ex.X4. However in Ex.X6 correct particulars of Peter Ratna Mohan Singh were mentioned. Further, Ex.A4 does not bear the signature of the person by whom the body of Peter Ratna Mohan Singh was buried. In Ex.X5, it is not mentioned to which place Dr.Navamani Man Singh belongs. The testimony of D.W.3 further reveals that Baptism certificate of Peter Ratna Mohan Singh is not available in his office. In the absence of Baptism Certificate, it is not possible to come to a conclusion that the father of defendant Nos.1 to 3 is a Christian. The sole testimony of D.W.3 and Exs.X4 to X6 are no way helpful to the defendants. The trial Court considered Exs.X4 to X6, in right perspective, and disbelieved the same. The appellate Court also disbelieved these documents in view of discrepancies therein. The findings recorded by the Courts below are supported by reasoning much less sound reasoning.

21. The other documents on which the defendants placed reliance are Ex.B2 Secondary School Leaving Certificate of Peter Ratna Mohan Singh, wherein date of birth is mentioned as 14.12.1936 and father's name as N.Monsingh. Ex.B3 is

the declaration of correct date of birth purported to have been signed by Dr.Navamani Man Singh. There are some corrections and over-writings in these two documents. Mere marking of a document would not automatically amount to proof its contents. In order to prove the authenticity of these documents, the defendants ought to have examined competent person of that school. For the reasons best known, the defendants did not choose to examine the person from whose custody Ex.B2 was obtained. In such circumstances, no credibility can be attached to these documents. The Courts below have considered various aspects and rightly discarded these documents. The Courts below did not commit any error while doing so. On the other hand, Ex.B.2 Secondary School Leaving Certificate supports the case of the plaintiffs that Peter Ratna Mohan Singh born on 14.12.1936 at Inagudurupet. As observed earlier, on 14.12.1936 one Yekula Seetharatnam gave birth to a male child. If that be so, Peter Ratna Mohan Singh is Hindu by birth.

22. A perusal of the record makes it clear that during his the lifetime, Peter Ratna Mohan Singh never claimed that he is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. Only after death of Peter Ratna Mohan Singh, the defendants are claiming that Peter Ratna Mohan Singh is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. There is no evidence on record

much less legally admissible evidence to establish that Peter Ratna Mohan Singh is the son of Peter Chandra Manna Man Singh and Dr.Navamani Man Singh. It is the case of the defendants that taking advantage of ignorance of fourth defendant, Siva Sankara Prasad, Advocate, played fraud and filed O.S.No.46 of 1996 as if the defendants are Hindus. The copy of the plaint in O.S.No.46 of 1996 served on the plaintiffs herein was marked as Ex.A.1. A party to the proceedings, who has taken the plea of fraud, has to establish the same by adducing cogent and convincing evidence. If really fraud is played on them, as alleged, the fourth defendant is competent person to establish the same. For the reasons best known, she did not choose to come into witness box to substantiate the fraud alleged to have been played by Siva Sankara Prasad.

(1) In **Nagubai Ammal v B.Shama Rao**¹, the Hon'ble apex Court held at paragraph No.16 as follows:

16. An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.

(2) In **Union of India v Ibrahim Uddin**², the Hon'ble apex Court held at paragraph Nos.20 and 21 as follows:

20. Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in certain circumstances,

¹ AIR 1956 SC 593

² (2012) 8 SCC 148

operate as an estoppel. The question which is needed to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission.

21.**admission made by a party is admissible and best evidence, unless it is proved that it had been made under a mistaken belief.** While deciding the said case reliance has been placed upon the judgment in *Slatterie v. Pooley*, (1840) 6 M & W 664, wherein it had been observed "What a party himself admits to be true, may reasonably be presumed to be so.

As per the principle enunciated in the cases cited supra, an admission made by a party to a proceeding is binding on him, unless the contrary is proved.

23. As observed earlier, the defendants have filed O.S.No.46 of 1996 seeking partition of the suit schedule property. In the plaint, the defendants have taken a specific plea that they are Hindus. After filing of O.S.No.5 of 2000, the defendants withdrew O.S.No.46 of 1996 and filed O.S.No.107 of 2001 stating that they are Christians. The reliefs sought in O.S.No.46 of 1996 and O.S.No.107 of 2001 are one and the same. The plaintiffs in O.S.No.46 of 1996, who are the defendants in O.S.No.5 of 2000, in unequivocal terms, admitted that they are Hindus. It is not the case of the defendants that before withdrawing O.S.No.46 of 1996, they have filed a petition seeking deletion of the pleading with regard to their religion as Hindus. The admission made by the plaintiffs in O.S.No.107 of 2001 negatives their contention that they are Indian-Christians. Having regard to the

admission made by the plaintiffs in O.S.No.46 of 1996 and also the principle enunciated in the cases cited supra, the stand taken by the plaintiffs in O.S.No.46 of 1996, who are defendants in O.S.No.5 of 2000, that they are Hindus is binding on them.

24. The learned counsel for the appellants-defendants submitted that the suit filed by the plaintiff in O.S.No.5 of 2000 for recovery of the possession of the terraced building and verandah bearing door No.30/348 shown as item No.1 of the suit schedule property together with appurtenant vacant land, without seeking the relief of declaration is not maintainable. To substantiate the argument, he has drawn the attention of this Court to the judgment in **Ananthula Sudhakar v P.Buchi Reddy**³ wherein the Hon'ble apex Court held at paragraph No.21(a) as follows:

21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

25. Let me consider the facts of the case on hand in the light of the above legal principle. At the cost of repetition, this Court is referring few relevant facts in order to appreciate the contention of learned counsel for the appellant. It is the case

³ (2008) 4 SCC 594

of the plaintiffs that Peter Chandra Manna Man Singh executed gift deed dated 04.10.1945 bequeathing the suit schedule property in favour of the first plaintiff under Ex.A.2. It is the further case of the plaintiffs that the first plaintiff and Peter Chandra Manna Man Singh executed settlement deed dated 04.5.1948 bequeathing the suit schedule property in favour of Dr.Navamani Man Singh under Ex.A3. P.W.1, who is the first plaintiff, is the competent person either to admit or deny these documents. The plaintiffs filed Exs.A4 to A6, house tax and water tax receipts issued by Machilipatnam Municipality in the name of the plaintiffs towards the suit schedule property. In the cross-examination, P.W.1, in unequivocal terms, admitted the execution of Ex.A3 settlement deed and she identified the signature of Peter Chandra Manna Man Singh on Ex.A2. D.W.1 is not disputing the correctness of Exs.A2 and A3. It is a settled principle of law that admitted facts need not be proved. This Court is very much conscious that gift deed is an attestable document. In view of the proviso to Section 68 of the Indian Evidence Act, if the document said to have been executed is other than a Will or execution of such document is not denied by the executant, no attester need be examined, in order to prove the same. In this case, P.W.1 as executant of Ex.A3 admitted the same and also identified the signature of her father-late Peter Chandra Manna Man Singh on Ex.A2 as well as Ex.A.3. In such circumstances, the Court can safely place reliance on

Exs.A2 and A3 and it can be held that the suit schedule property belongs to the plaintiffs. Since the plaintiffs are the absolute owners of the suit schedule property, they can file the suit for recovery of possession, without seeking the relief of declaration.

26. In **Municipal Committee, Hoshiarpur v. Punjab SEB⁴**, while dealing with the scope of Section 100 of C.P.C., the Hon'ble apex Court held at paragraph No.16 as follows:

16. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC.

27. The courts below concurrently held that the plaintiffs are entitled for the relief of recovery of possession of item No.1 of the suit schedule property. The courts below have minutely scrutinized the oral and documentary evidence and arrived at such conclusion that the plaintiffs are the owners of the suit schedule property. The courts below have assigned cogent and valid reasons to their findings. Viewed from factual or legal aspects, the findings recorded by the courts below cannot be branded as perverse. I am fully agreeing with the findings recorded by the courts below that the plaintiffs are entitled to recover the possession of item No.1 of

⁴ (2010) 13 SCC 216

the suit schedule property. There is no question of law much less substantial question of law in these second appeals. Hence, these two second appeals are liable to be dismissed.

28. At this stage, the learned counsel for the appellants submitted that some time may be granted to the appellants to vacate the suit schedule property.

29. Accordingly, the second appeal Nos.190 and 208 of 2013 are dismissed. The appellants are directed to vacate item No.1 of the suit schedule property on or before 17.2.2018. The parties are directed to bear their own costs in these two appeals. As a sequel, miscellaneous petitions if any pending shall stand closed.

Date: 17.11.2017
YS

T.SUNIL CHOWDARY, J

