

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

C.C.C.A. No.180 of 2011

Between

1. Gampa Srinivas and 3 others

... Appellants/Defendants 6 to 9

and

1. Smt. B.Sukeshini

... Respondent/Plaintiff

2. Smt. G.Savtri (died pending suit)
R.1 & R.3 to R.5 are her legal heirs
and 4 others

... Respondents/Defendants 1 to 5

DATE OF JUDGMENT PRONOUNCED: 16-3-2018

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

*HON'BLE SRI JUSTICE T.AMARNATH GOUD

+ C.C.C.A.No.180 of 2011

% 16-3-2018

1. Gampa Srinivas S/o late Venkatesham, Aged 41 years,
Occ: Business, R/o H.No.1-3-183/40/21/63/A,
P&T Colony, Gandhi Nagar, Hyderabad
2. Gampa Padma W/o G.Srinivas, Aged 35 years
3. Gampa Mallesham W/o late Venkatesham, Aged 49 years
4. Smt. Gampa Padma W/o Mallesham, Aged 46 years
... Appellants/Defendants 6 to 9

Vs.

\$ 1. Smt. B.Sukeshini W/o Sureshchandra, Aged 57 years,
Occ: Household, R/o H.No.4-7-915, Komati Basthi,
Esamia Bazar, Hyderabad
... Respondent/Plaintiff
2. Smt. G.Savtri (died pending suit)
R.1 & R.3 to R.5 are her legal heirs
3. Smt. G.sucheta W/o late Keshava Rao, Aged 45 years
4. Smt. Dasari Devi W/o Vijaya Kumar, Aged 27 years
5. Smt. Baktula Sridev W/o Manish, Aged 26 years
6. G.Amitab Yadav S/o late Keshav Rao, Aged 24 years
... Respondents/Defendants 1 to 5

! Counsel for the Appellants : Mr. Vedula Venkata Ramana,
Senior Counsel, representing
Mr. D.Vijaya Kumar

Counsel for Respondents: Mr. G. Purushotham Rao for R-1
Mr. Mohd. Zaheeruddin for R-3 to R-6

< Gist:

> Head Note:

? Cases referred:

1. (2003) 10 SCC 310
2. AIR 1984 SC 346
3. 1998(4) BomCR 506
4. AIR 1982 Bom 482
5. (2016) 6 SCC 440
6. Appeal Nos.311&313/2015, dt.01-12-2016
7. (2003) 2 SCC 355
8. 1946 (78) RR 47
9. (1866) LR 1 HL 129
10. AIR 1953 SC 98
11. (1994) 2 SCC 448
12. AIR 2012 SC 364
13. AIR 2002 SC 2057

14. [1981] 1 WLR 1265
15. (1880) 15 Ch D 96
16. Appeal (Civil) No.4179/2008, dt.27-5-2008



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.C.C.A.No.180 of 2011

Judgment: (per V.Ramasubramanian, J.)

Aggrieved by a preliminary decree for partition and a decree of cancellation of a Gift Settlement deed and two registered Sale deeds, the defendants 6 to 9 have come up with the above regular appeal.

2. Heard Mr. Vedula Venkata Ramana, learned senior counsel appearing on behalf of Sri D. Vijaya Kumar, learned counsel for the appellants, Mr. G. Purushotham Rao, learned counsel for the 1st respondent and Mr. Zaheeruddin, learned counsel for the respondents 3 to 6.

3. The 1st respondent herein filed a suit in O.S.No.527 of 2007 on the file of XIII Additional Chief Judge, City Civil Court, Hyderabad, seeking partition and separate possession of her 1/3rd share in the suit schedule property and also seeking a declaration that a Gift Settlement deed dated 30-04-2005 and the registered sale deeds dated 27-01-2007 registered as Document Nos.322 and 323/2007 are null and void and not binding on the plaintiff. The case of the 1st respondent-plaintiff was that she was the daughter of the 2nd respondent herein (1st defendant in the suit), who is now no more and one G. Seetharamaiah; that the respondents 3 to 6 herein (who were defendants 2 to 5) were the legal heirs of the deceased brother of the plaintiff by name G. Keshava Rao; that the appellants herein

(who were defendants 6 to 9) were third party purchasers; that the plaintiff's father G. Seetharamaiah was an employee of the State Bank of India, who died on 27-02-1972, leaving behind him surviving his wife, who was the 1st defendant and a daughter (plaintiff) and a son by name G. Keshava Rao; that the son G. Keshava Rao died on 27-03-2007 leaving behind him surviving his mother, who was the 1st defendant, his wife, who was the 2nd defendant and his daughters and son, who were defendants 3 to 5; that the father late G. Seetharamaiah was allotted the suit schedule property by the State Bank of India Staff Housing Cooperative Society in the year 1969-70; that the said property was of an extent of about 403.62 square yards; that the advance for the allotment of the house was paid by the father Sri G. Seetharamaiah and he also paid monthly instalments till his death; that after his demise in the year 1972, the house was leased out to tenants from 1973 onwards on a monthly rent of Rs.1,500/-; that subsequently the rents were enhanced from time to time and the instalments to the Cooperative Housing Society were paid out of the rental income; that late G. Seetharamaiah nominated his wife (1st defendant), as required by the bye-laws of the Cooperative Society; that therefore, the Society transferred the property in the name of the 1st defendant under a registered Transfer Deed bearing Document No.360/1986; that since the suit schedule house was acquired by three persons namely G. Seetharamaiah, his legal heirs namely his wife (1st defendant), his daughter namely the plaintiff and G. Keshava Rao (his son) succeeded to the property in

equal shares; that however the son G. Keshava Rao got a Gift deed executed by the mother in his favour on 30-04-2005 as Document No.1425/2005; that the 1st defendant has been suffering from chronic hyper tension, diabetics and other diseases and was actually in depression due to prolonged use of medicines; that taking undue advantage of the circumstances, the son G. Keshava Rao used to take her to the Bank for withdrawing the pension and he got executed the Gift Settlement deed by misrepresenting and misleading her; that the plaintiff was not aware of these developments and came to know about the Gift Settlement only after G. Keshava Rao sold the property under two registered Sale Deeds dated 22-01-2007, in favour of defendants 6 to 9; that the 1st defendant has no right to deal with the 1/3rd share of the plaintiff in the suit schedule property; that the Gift Settlement deed dated 30-04-2005 does not bind the 1/3rd share of the plaintiff in the suit property; that the defendants 2 to 5 fraudulently and by misrepresenting, alienated the property in favour of defendants 6 to 9; that G. Keshava Rao had only 1/3rd share in the suit schedule property and did not have any right to alienate more than his share; that therefore, the sale deeds executed by G. Keshava Rao and his legal heirs are not binding upon the plaintiff; that as a matter of fact, G. Keshava Rao got appointment in the State Bank of India on compassionate grounds and thus he availed of the benefits, but attempted to deprive the plaintiff, of her right; that upon coming to know of the alienation made by G. Keshava Rao, the plaintiff issued

a legal notice dated 28-02-2007 to G. Keshava Rao and defendants 6 to 9; that G. Keshava Rao issued a reply notice dated 13-03-2007; that defendants 6 to 9 also issued a reply notice dated 14-03-2007; that the plaintiff issued a rejoinder dated 27-03-2007; that G. Keshava Rao died on 27-03-2007, after which the plaintiff issued another notice dated 18-04-2007 to defendants 2 to 5; and that therefore, the plaintiff was entitled to a decree for 1/3rd share in the suit schedule property and also a decree for declaration that the Gift Settlement deed as well as registered sale deeds are null and void.

4. The 1st defendant (mother of the plaintiff) filed a written statement contending, *inter alia*, that her husband G. Seetharamaiah was allotted the suit schedule property by the State Bank of India Staff Cooperative Housing Society Ltd., that during his lifetime he paid the advance amount as well as instalments; that after the death of G. Seetharamaiah, the 1st defendant paid the remaining instalments from out of the rents received from the tenants through the son late G. Keshava Rao; that the 1st defendant was nominated by G. Seetharamaiah during his life time to deal with the society with regard to the payment of equated monthly instalments; that due to the nomination, the property was transferred in the name of the 1st defendant alone, after the death of G. Seetharamaiah; that it is false to state that the gift settlement deed was executed by the 1st defendant in favour of her son G. Keshava Rao fraudulently; that the 1st defendant was never interested to execute any gift settlement in favour of her son; that during the life time of her son G. Keshava

Rao, he advised the 1st defendant to get a loan in order to develop the property and took the 1st defendant for obtaining signatures on stamped papers, under the guise of obtaining pension; that being illiterate and household, the 1st defendant bonafide believed him and signed the papers without enquiry or consent of other children; that the 1st defendant came to know about the existence of the gift deed only from the material papers furnished in the suit; that the 1st defendant categorically admits that she had no right to execute such a gift settlement in favour of her son; that it is a mischief and misrepresentation played by her son along with defendants 2 to 5; that her son Keshava Rao also misrepresented on the earlier occasion by getting a registered document dated 05-01-2007 purported to be executed in favour of defendants 8 and 9; that the son misrepresented and misguided her to obtain signatures on the pretext of obtaining a loan and creating a mortgage; that bonafide believing his version, the 1st defendant signed on the documents, but never acted upon it, since the property was the subject matter of undivided joint family; that there was no cordial relationship between the 1st defendant and her son; that after the death of her son, the family members did not take care of the 1st defendant, forcing her to reside with her grand daughter; that the 1st defendant never parted with the possession of the suit property at any point of time; that it is admitted that the plaintiff, the 1st defendant and defendants 2 to 5 are entitled to 1/3rd share each in the suit property; that it is true that the 1st defendant's son got appointment on compassionate grounds

upon the death of G. Seetharamaiah; that the 1st defendant was not aware of any correspondence between the plaintiff and other defendants; that the sale deeds executed by defendants 2 to 5 show that they conspired to knock away the entire property without the knowledge of the 1st defendant; and that therefore, the 1st defendant should also be granted a decree for 1/3rd share in the suit property.

5. The defendants 2 to 5 independently filed a written statement contending *inter alia* that the house bearing No.1-3-183/40/85 was built on the plot belonging to State Bank of India Staff Housing Cooperative Society Ltd., allotted in the name of late G. Seetharamaiah, who was himself an employee of the State Bank of India; that after the demise of G. Seetharamaiah on 27-02-1972, his son G. Keshava Rao not only became an employee of the bank on compassionate grounds, but also became entitled to the membership of the society; that however, the 1st defendant was admitted to the membership of the society, since she was a nominee; that since the society was also a financing Bank, the 1st defendant was made to open a Savings Bank account with standing instructions to meet the present and future demands; that the 1st defendant wrote a letter to the society expressing her difficulty to comply with the demand, as she was not employed; that the 1st defendant wanted her son G. Keshava Rao, who was also an employee of the bank and qualified to be a member of the society, to be made a member; that therefore, the society enabled G. Keshava Rao to apply for membership and issued a pass book in the name of

G. Keshava Rao in which a sum of Rs.18,000/- was shown as debited with an opening balance of Rs.17,720/- after deducting the instalments received in the account from G. Keshava Rao; that the said loan amount was regularly recovered leaving an opening balance of Rs.540/- in the year 1991, which was cleared by the end of June, 1991, that to ratify the admission of late G. Keshava Rao as a member of the society and also in a grateful recognition of the discharge of the loan by Keshava Rao, the 1st defendant, who was only a nominee and not a staff member, executed a gift settlement deed in favour of G. Keshava Rao on 30-04-2005; that the 1st defendant executed the gift settlement deed voluntarily and out of her free will, which is covered by the Explanation to Section 25 of the Indian Contract Act, 1872; that there was neither any fraud nor misrepresentation by G. Keshava Rao or anybody on his behalf; that the 1st defendant, after having executed a registered gift settlement deed with full knowledge, has come up with a vague suggestion as there was a misrepresentation; that the suit schedule property was the absolute property of G. Keshava Rao and hence, defendants 2 to 5 alone were entitled to the same; that late G. Keshava Rao did not receive the terminal benefits of G. Seetharamaiah at any time and the same was received by the 1st defendant; that there is no cause of action for the plaintiff to file the suit; that the suit is neither properly valued nor sufficient court fee is paid; and that therefore, the suit is liable to be dismissed.

6. The defendants 6 to 9, who are appellants herein, filed a separate written statement contending, *inter alia*, that they are bonafide purchasers of the suit property for valuable consideration; that they purchased the property from late G. Keshava Rao and his legal heirs, who are defendants 2 to 5, after calling for objections as required by law; that the notice calling for objections was published in the Hyderabad Edition of Eenadu on 25-12-2006; that the defendants were surprised to receive notice from the plaintiff after 10 months of the issue of the paper publication; that the sale deeds were executed after one month of the publication in Eenadu; that there is no dispute about G. Seetharamaiah being the employee of the State Bank of India and being allotted the plot by the Cooperative Society, that there is also no dispute about G. Seetharamaiah passing away on 27-02-1972; that G. Keshava Rao died on 26-03-2007 due to lung cancer and not on 27-03-2007 as mentioned in the plaint; that late G. Seetharamaiah was a member of the Cooperative Society during the period 1969-70 and he nominated the 1st defendant; that the 1st defendant was accordingly admitted as a member of the Cooperative Society and a transfer deed on 17-10-1986 was executed in favour of the 1st defendant; that by virtue of the transfer deed, the 1st defendant became the absolute and lawful owner of the suit schedule property; that the plaintiff is not entitled to make a claim 33 years after the death of their father and 19 years after the execution of the transfer deed by the Cooperative Society in the name of the 1st defendant; that the

1st defendant was the natural guardian of G. Keshava Rao, as he was a minor at the time when G. Seetharamaiah died on 27-02-1972; that therefore, the 1st defendant let out the premises to tenants and paid instalments to the Cooperative Society; that after Keshava Rao got employment in the Bank, he paid the instalments to the society from his salary; that succession opened in the year 1972 on the death of G. Seetharamaiah and the transfer deed in favour of the 1st defendant was executed after 14 years of the death of G. Seetharamaiah; that the 1st defendant never questioned either the transfer deed or the gift deed in favour of her son; that though the 1st defendant was not a party to the notices exchanged between the plaintiff and defendants 2 to 9, she has now come up with a claim showing that she is in collusion with the plaintiff; that the suit schedule property was not alienated either by fraud or by misrepresentation; that the suit property was sold for a sale consideration of Rs.51,00,000/-; that the 1st defendant executed a gift settlement deed voluntarily and with free will and never questioned the same; and that therefore, the suit was liable to be dismissed.

7. After the completion of the pleadings, but before the framing of issues, the 1st defendant died. Therefore, the trial Court framed the following issues as arising for consideration.

- 1) Whether the suit schedule property was acquired by late G. Seetharamaiah?

- 2) Whether the remaining instalments of the suit schedule property were paid by late G. Keshava Rao out of the rents accrued?
- 3) Whether the defendant No.1 was entitled to execute the gift settlement deed document No.1425/2005 dt. 30-04-2005 in favour of late G. Keshava Rao?
- 4) Whether the plaintiff is entitled for 1/3rd share in the suit schedule property and entitled for partition?
- 5) Whether the gift settlement deed dt.30-04-2005 and registered sale deeds dt.22.01.2007 are null and void and not binding on the plaintiff?
- 6) Whether the Court fee paid by the plaintiff is sufficient and proper?
- 7) To what relief?

8. The plaintiff examined herself as PW.1. She also examined her maternal uncle as PW.2. PW.2 was also an employee of the State Bank of India. 15 documents were filed as Exs.A.1 to A.15 on behalf of the plaintiff. Ex.A.1 was the certified copy of the Gift Settlement deed dated 30-04-2005 executed by the 1st defendant in favour of her son. Exs.A.2 and A.3 were the certified copies of the registered sale deeds dated 27-01-2007 executed by late G. Keshava Rao and his legal heirs namely defendants 2 to 5 in favour of defendants 6 to 9. The certified copy of Encumbrance Certificate and the Market Value Assessment were filed as Exs.A.4 and A.5. A legal notice, reply legal notices, rejoinder notice etc., were filed as Exs.A.6 to A.11. The certified copy of the transfer deed dated 19-02-1986 executed by the Cooperative Society in favour of

the 1st defendant was marked as Ex.A.12. The voters' lists for 1975, 1993 and 1984 were filed as Exs.A.13 to A.15.

9. The 2nd defendant examined herself as DW.1. A person, who claimed to be a friend of the 5th defendant and who witnessed the execution of the gift settlement deed by the 1st defendant in favour of her son G. Keshava Rao, was examined as DW.2. The 8th defendant examined himself as DW.3.

10. Six documents were marked on the side of the defendants. The original appointment order dated 01-03-1974 issued to G. Keshava Rao on compassionate grounds was filed as Ex.B.1. The original bank pass book showing repayment of the loan was filed Ex.B.2. The public notice published in Eenadu was filed as Ex.B.3. The registered agreements of sale dated 05-01-2007 and 04-01-2007 were marked respectively as Exs.B.4 and B.5. The death certificate of the 1st defendant was marked as Ex.B.6.

11. On the basis of the oral and documentary evidence adduced by the parties, the trial Court came to the conclusion on Issue No.1 that the suit schedule property was a self-acquired property of G. Seetharamaiah. On issue No.2, the trial Court held that after the death of G. Seetharamaiah, the instalments were paid out of the rents received from the suit schedule property.

12. On issue No.3, the trial Court held that though the 1st defendant executed the gift deed out of free will and consent, she was entitled to execute the gift deed only in respect of her

1/3rd share. On issue No.4, the trial Court held that the plaintiff is entitled to 1/3rd share in the suit property.

13. On issue No.5, the trial Court held that defendants 6 to 9 are bonafide purchasers, only in respect of the 1/3rd share of the defendants 2 to 5 and the other 1/3rd share gifted by the 1st defendant in favour of G. Keshava Rao. On issue No.6, the Court held that the court fee paid was correct.

14. On account of the findings on Issue Nos.1 to 6, the Court held on Issue No.7 that the plaintiff was entitled to a preliminary decree for partition of her 1/3rd share and also to a decree that the gift deed and the sale deeds are liable to be cancelled in so far as the 1/3rd share of the plaintiff was concerned.

15. Aggrieved by the said judgment and decree, the defendants 6 to 9 alone have come up with the above regular appeal. The defendants 2 to 5 have not come up with any appeal.

16. Assailing the judgment and decree of the Court below, it is contended by Mr. Vedula Venkataramana, learned senior counsel appearing for the appellants that the entire case of the plaintiff rested on (i) the allotment of the land on which the suit property is comprised, by the State Bank of India Staff Cooperative Housing Society, (ii) the payment of some of the instalments by the original allottee Sri G. Seetharamaiah and (iii) the payment of subsequent instalments either out of the rental income or out of the terminal benefits of G. Seetharamaiah. According to the learned senior counsel, the plaintiff failed to prove payment of instalments by her

father G. Seetharamaiah and also failed to prove the existence of tenants in the suit property. The plaintiff also failed, according to the learned counsel, to prove the payment of instalments from out of terminal benefits. Therefore, it is contended by the learned senior counsel that the claim of the plaintiff that the suit property was termed as joint family property was without any basis and that as held by the Supreme Court in **D.S. Lakshmaiah v. L. Balasubramanyam**¹, there cannot be a presumption that a property is a joint family property, merely because of the existence of a joint family. Neither the nomination in favour of the 1st defendant nor the transfer of the suit schedule property by the Cooperative Housing Society in favour of the 1st defendant, according to the learned senior counsel, would make the property a joint family property entitling the plaintiff to partition.

17. Mr. Vedula Venkataramana, learned senior counsel also contended that the plaintiff has not come up with cross-objections or cross appeal as against the findings of the trial Court with regard to the Gift deed executed by the 1st defendant in favour of G. Keshava Rao and also with regard to the defendants 6 to 9 (appellants herein) being bonafide purchasers. Therefore, it is his contention that these findings have become final. It is further contended that once the Gift deed executed by the mother (D-1) is found to be valid, the trial Court ought to have gone by the express recitals contained in the gift settlement and dismissed the suit. The learned senior

¹ (2003) 10 SCC 310

counsel further contended that the issue of acquiescence pleaded by the appellants herein in paragraph 5 of their written statement was completely overlooked and not answered by the trial Court, and that therefore, the judgment and decree of the Court below are liable to be set aside.

18. Supporting the arguments advanced by Mr. Vedula Venkataramana, learned senior counsel appearing for the appellants, it is contended by Mr. Mohd. Zaheeruddin, learned counsel for the respondents 3 to 6 (legal heirs of late G. Keshava Rao) that the finding in Paragraph 15 of the impugned judgment as though G. Keshava Rao was unemployed till March, 1974 and that thereafter his salary was only Rs.392/-, was without any pleading or evidence; that the presumptions made by the Court below in this regard led to a perverse finding as though the instalments for the property were paid out of the rental income; that the other findings recorded in Paragraph 15 of the judgment with regard to Ex.A.3 and with regard to the period up to which G. Keshava Rao stayed in the suit property, were also perverse, as they were not based upon any pleading or evidence; that the voters lists filed as Exs.A.13 to A.15 clearly demonstrated that there existed a house in the suit property from 1969 onwards and that there was a valid lease between the tenants and late Keshava Rao, but there was no indication of the rent or tenure of the lease and that these Exs.A.13 to A.15 did not also prove the payment of instalments from out of the rental income and that the genuineness and validity of these exhibits were also not

proved in accordance with law; that in contrast, Ex.B.2 disclosed the payment of instalments from the salary of Keshava Rao; that Ex.A.12 transfer deed very clearly showed that what was transferred was only an open plot and not a house; that therefore, to say that there was a house, which was leased out and the rental income was used to pay the instalments, were farfetched; that the trial Court failed to examine as to who incurred the cost of construction of the house, when what was transferred to the 1st defendant under Ex.A.12 was only a plot of land; that the presumption drawn by the Court of the existence of a house was contrary to the recitals contained in Ex.A.12, and hence, these presumptions are contrary to Sections 91 and 92 of the Indian Evidence Act, 1872 and that therefore, the judgment and decree of the Court below are liable to be set aside.

18. In response, it is contended by Mr. G. Purushotham Rao, learned counsel for the 1st respondent/plaintiff that even admittedly, the land on which the suit property was comprised was allotted to the plaintiff's father by the State Bank of India Staff Cooperative Housing Society; that after his demise, the society honoured the nomination made by the plaintiff's father and executed the transfer deed in favour of the plaintiff's mother; that the plaintiff's mother (D-1) had no independent income either to pay the remaining instalments or to put up a construction; that therefore, it was obvious that the remaining instalments were paid either from out of the rental income or from out of terminal benefits of G. Seetharamaiah; that

even assuming that the remaining instalments were paid to the Society by late Keshava Rao (brother of the plaintiff and son of the 1st defendant), the same could not make him the absolute owner of the suit property; that recognizing the fact that nothing will make Keshava Rao the absolute owner of the property he got a gift deed from his mother, the 1st defendant; that by the very same logic, the 1st defendant could not also have become the absolute owner, as she got the transfer deed in her name only by virtue of the nomination and that too after the death of her husband; and that therefore, despite the findings with regard to the validity of the gift settlement deed and the validity of the sale deeds, the plaintiff's 1/3rd share cannot be denied to her and that therefore, the preliminary decree for partition was perfectly justified.

19. We have carefully considered the above submissions.

20. The rival contentions show that the following points arise for determination in the above appeal.

- 1) Whether the nomination made by the original allottee G. Setharamaiah in favour of his wife-1st defendant would make her the absolute owner of the suit property, entitling her to gift it to her son G. Keshava Rao?
- 2) Whether the plaintiff is guilty of acquiescence?
- 3) Whether the plaintiff became entitled to 1/3rd share of the suit property, in the facts and circumstances of the case?

Point No.1:

21. The first point arising for determination is as to whether the nomination made by the original allottee Sri G. Seetharamaiah

would make his wife-1st defendant, the absolute owner of the suit property entitling her to gift the same to her son G. Keshava Rao.

22. It is seen from the recitals contained in Ex.A.12, the certified copy of the transfer deed dated 19-02-1986, that the State Bank of India Staff Cooperative Housing Society Limited is a Cooperative Society registered under the Andhra Pradesh Cooperative Societies Act; that the Cooperative Society purchased a vast extent of land under a sale deed dated 29-06-1966; that the society applied for sanction of a layout and the Municipal Corporation of Hyderabad, by its proceedings dated 18-11-1967 accorded sanction for the layout; and that the transferee was allotted Plot No.85 measuring about 403.62 square yards on 21-01-1971 for a total sale consideration of Rs.9,202.54ps.

23. It is also seen from the recitals contained in Ex.A.1, Gift Settlement deed dated 30-04-2005, that the allotment of the plot by the Cooperative Society was originally in favour of the 1st defendant's husband namely G. Seetharamaiah; that the said G. Seetharamaiah, being an employee of the State Bank of India, was also a member of the Society and he availed the facility of loan for the construction of house; that the loan was repayable in instalments; that even prior to the sanction of the loan, the society had obtained permission to construct houses on the plots; that upon the sudden demise of G. Seetharamaiah, while he was in service, the property was transferred to the 1st defendant, she being his nominee; that the 1st defendant was in peaceful possession and

enjoyment of the property as an absolute owner; and that the 1st defendant constructed a house consisting of verandah, drawing room, hall, kitchen, dinning room and bath room by spending huge amounts and also cleared debts by paying all instalments pending upon the schedule property and that she was settling the property upon her son, out of natural love and affection and also on the apprehension that some property disputes among his wife and children may arise after her death. Since the defendants 2 to 5 herein stake their claim to the suit property on the strength of Ex.A-1 and also since the defendants 6 to 9 (appellants herein) purchased the property on the strength of Ex.A-1, they cannot now go back on the recitals contained in Ex. A-1. In fact none of the defendants 2 to 9 seek to question the recitals contained in Ex.A-1. Therefore, the narrative contained therein can be relied upon.

24. It is clear from the recitals contained in Exs.A.12 and A.1 that G. Seetharamaiah was the original allottee of the plot of land; that he was allotted the plot on 21-01-1971; that G. Seetharamaiah died on 27-02-1972 and that the son of G. Seetharamaiah was given appointment on compassionate grounds by the proceedings dated 01-03-1974 filed as Ex.B.1. Therefore, what follows is that from the date of allotment on 21-01-1971, up to the date of his death on 27-02-1972, G. Seetharamaiah was paying the instalments towards the purchase of the plot and that at least until the date of his appointment, G. Seetharamaiah's son could not have paid the instalments, as he had not secured employment in the State Bank of

India till then. There is also no dispute about the fact that the 1st defendant was not gainfully employed anywhere. If she was gainfully employed, her son G. Keshava Rao could not have got appointment on compassionate grounds.

25. As per the plaint, the monthly instalments to the Cooperative Society were paid from out of rental income. In paragraph 3 of the plaint, it was specifically pleaded that after the demise of G. Seetharamaiah in the year 1972, the house was let out to tenants from 1973 onwards on a monthly rent of Rs.1500/- and that subsequently, the rent was enhanced from time to time and that out of the rental income, the son G. Keshava Rao (husband of D-2 and father of D-3 to D-5) paid the remaining instalments to the society.

26. The 1st defendant herself filed a written statement admitting the fact that during the lifetime of G. Seetharamaiah, he paid the instalments, apart from the advance amount and that after his death, the 1st defendant paid the remaining instalments out of the rents collected from the tenants through her son G. Keshava Rao. In fact, the 1st defendant toed the line of the plaintiff and submitted in her written statement that the Gift Settlement deed was obtained from her by her son by fraudulent means. For the present, we shall keep this issue aside and examine as to how the instalments were paid to the Cooperative Society.

27. Interestingly, the defendants 2 to 5 took a very strange defence in so far as the payment of instalments to the society was

concerned. In paragraph 3 of the written statement, the defendants 2 to 5 pleaded as follows:

"3. After his demise on 27-02-1972 his son late G.Keshava Rao not only became an employee of SBI on compassionate ground but also became entitled for membership of SBI Staff Co-operative Housing Society Ltd., while Defendant No.1 is a widow and also a nominee of late G.Sitaramaiah and was admitted as member of SBI Staff Housing Co-operative Society Ltd., which is not only a federal society but also a financing Bank giving loans or advance money to staff members of SBI for whose benefits the society was floated subject to the conditions that defendant No.1 opens a Savings Bank A/c. with the standing instructions to meet the present demands and future demands which is likely to be made from time to time. But Defendant No.1 had written to the Society expressing her difficulty to comply with the demand as she was not a bread winner and wanted her son late G.Keshava Rao and employee from SBI and also qualified to be a member of SBI Staff Housing Co-operative Society Ltd., being made a member who would open in his name a Current A/c. from which he could draw his salary and demands of the society could be met and be paid through this Current Account. Thereupon the above said society made late G.Keshava Rao to apply for membership in prescribed form and issued a Pass Book in the name of G.Keshava Rao in which a sum of Rs.18,000/- was shown as debited with the opening balance of Rs.17,720/- after deducting the installments received in the said account from late G.Keshava Rao and said loan amount was regularly recovered leaving opening balance of Rs.540/- in the year 1991 which was cleared by end of June, 1991. To ratify the admission of late Sri G.keshava Rao as member of abovesaid society and also in a grateful recognition of the loan being discharged in full by late G.Keshava Rao, as defendant No.1 who was admittedly not a staff member of SBI but admitted as a nominee of deceased member who has ceased to be member of the said society on the date of commencement of A.P. Co-operative Society (Amendment) Act of 1985. Defendant No.1 executed a registered Gift Settlement Deed, dated 30-4-2005 in favour of late G.Keshava Rao."

28. In other words, the stand taken by defendants 2 to 5 was that despite the 1st defendant being a nominee, late G. Keshava Rao was made the member of the Cooperative society and that he paid all the instalments and that the 1st defendant executed a registered Gift Settlement in favour of G. Keshava Rao for the purpose of ratifying the admission of G. Keshava Rao as a member of the Cooperative Society and also in grateful recognition of the discharge of the loan by G. Keshava Rao.

29. The above stand taken by defendants 2 to 5 was patently false for two reasons. They are: (1) G. Seetharamaiah died on 27-02-1972 and G. Keshava Rao got appointment on 01-03-1974. What happened during this period of 2 years is unknown; (2) If G. Keshava Rao had been made a member of the Cooperative Society, immediately upon his becoming an employee in March, 1974, the Cooperative Society could not have executed the transfer deed Ex.A.12 on 19-02-1986 in favour of the 1st defendant but should have executed the transfer deed in favour of Kashav Rao.

30. First of all, two persons of the same family cannot become members independently and succeed to one plot of land allotted to the original allottee. Assuming that it was so, then Ex.A.12 ought to have been executed either in favour of G. Keshava Rao independently or at least jointly in favour of the 1st defendant and G. Keshava Rao.

31. The pass book filed as Ex.B.2 shows that the total loan amount was Rs.18,000/- and the period of repayment was 20 years.

It is stated in the first page of Ex.B.2 that the name of the member was G. Keshava Rao, son of Smt. G. Savithri (D-1). The monthly instalments payable was Rs.65/- comprising of (1) principal amount of Rs.40/- (2) maintenance charges of Rs.12.50 ps and other charges of Rs.12.50. The entries in Ex.B.2 show that payments were made in August, September, October, November and December, 1971 and also in January and February 1972. Thereafter, no payment was made for a period of 10 months from March to December 1972. But the amounts payable from March to December 1972 were remitted at one stroke on 24-01-1973. Thereafter, the payment was regularized. There were payments made in March, April, May, June, July, September, October, November and December 1973 and payments made in January and February 1974.

32. G. Keshava Rao got appointment only 01-03-1974 as evidenced by Ex. B-1. Therefore, the stand taken by the defendants 2 to 5 in paragraph 3 of the written statement is totally false.

33. As we have indicated earlier, the transfer deed dated 19-02-1986 executed by the Society in favour of the 1st defendant and filed as Ex.A.12 contains recitals to the effect that the 1st defendant was the member and that the transfer was executed pursuant to the allotment made on 21-01-1971. This transfer deed was executed 12 years after G. Keshava Rao gained appointment in the State Bank of India on compassionate grounds. Therefore, he alone would have become entitled to get the transfer deed executed by the Society, if what is stated in paragraph 3 of the

written statement of the defendants 2 to 5 is true. G. Keshava Rao need not have been at the mercy of the 1st defendant to get a Gift deed in his favour “out of love and affection” when the property should have lawfully gone to him had he been a member of the Cooperative Society, and had he paid the instalments.

34. Another interesting claim by defendants 2 to 5 in paragraph 4 of the written statement is that the 1st defendant executed the registered Gift Settlement deed in favour of her son G. Keshava Rao to regularize the admission of G. Keshava Rao as a member of the Cooperative Society after she ceased to be a member of the society on the date of commencement of the Andhra Pradesh Cooperative Societies (Amendment) Act 1985 in terms of the second proviso to Section 19 (1). But this argument is, to say the least, is an argument of convenience. After the 1985 amendment, no individual can be a member of a financing bank or a federal society, by virtue of the first proviso to Section 19 (1). If an individual was already a member of a financing bank or federal society, he will cease to be a member on the date of commencement of the Amendment Act 1985. This is by virtue of the second proviso.

35. If the 1st defendant, by virtue of being an individual will cease to be a member of the State Bank of India Staff Cooperative Housing Society by virtue of the second proviso to Section 19(1), we do not know how G. Keshava Rao, again an individual, could have become a member after the 1985 Amendment. Therefore, the

defence taken by defendants 2 to 5 as though it was G. Keshava Rao, who paid all the instalments, appears to be completely false.

36. Coming to the defence taken by defendants 6 to 9, who are the appellants herein, they have admitted in paragraph 4 of their written statement that G. Keshava Rao was a minor in 1973 and that the 1st defendant let out the premises to tenants and that G. Keshava Rao was paying instalments after getting employment in State Bank of India. Therefore, it is clear that at least up to the date of his appointment, G. Keshava Rao could not have paid the instalments.

37. There is one more interesting defence put up by defendants 6 to 9 in paragraph 5 of the written statement. They have admitted in paragraph 5 that upon the demise of G. Seetharamaiah on 27-02-1972, succession opened. But they have pleaded that the plaintiff kept quiet from 1972 to till 1986 and that therefore, there was acquiescence. We shall deal with this aspect later.

38. It is clear from the pleadings of parties (1) that G. Seetharamaiah was the allottee; (2) that he paid the instalments up to the date of his death and that his right to property devolved upon all his legal heirs namely his wife (D-1), one son by name G. Keshava Rao and one daughter, who was the plaintiff, in equal shares. It was only because of the nomination by G. Seetharamaiah that the Cooperative Society admitted the 1st defendant to the membership of the society and executed a transfer deed in her favour under Ex.A.12.

39. That takes us to the next question as to what is the effect of the nomination.

40. It is well-settled that nomination does not alter the course of succession under the personal law of the parties and that a nominee is no more than an agent authorized to receive the property for the eventual distribution among the legal heirs. In the context of nomination under Section 39 of the Insurance Act, 1938, the Supreme Court held in ***Smt. Sarbati Devi v. Smt. Usha Devi***² that Section 39 was not intended to act as a third mode of succession (the first and second being testamentary and intestate succession) and that the nomination does not alter the course of succession. Though the aforesaid decision of the Supreme Court was in the context of a Life Insurance Policy, the rationale behind the same applies even to allotment of properties by Co-operative Societies.

41. In ***Om Siddharaj Co-operative Housing Society Limited v. State of Maharashtra***³, a Division Bench of the Bombay High Court was concerned with a fight between two persons who were nominated by the Member of the Co-operative Society at different points of time. While dealing with the question revolving around the validity of the second nomination, the Division Bench of the Bombay High Court cited with approval the opinion rendered by a Single Judge in ***Gopal Vishnu Ghatnekar v. Madhukar Vishnu***

² AIR 1984 SC 346

³ 1998(4) BomCR 506

Ghatnekar⁴ to the effect that the provision for nomination was intended to make certain, the person with whom the society has to deal with and not to create interest in the nominee to the exclusion of those who in law will be entitled to the estate. In the passage of the decision of the learned Single Judge reproduced by the Division Bench with approval, it was indicated that the provision for transferring a share and interest to a nominee, as will be decided by the society is only meant to provide the interregnum between the death and the full administration of the estate and not for the purpose of conferring any permanent right on such a person to a property forming part of the estate of the deceased.

42. In **Indrani Wahi v. Registrar of Co-operative Societies**⁵, which arose under the West Bengal Co-operative Societies Act, 1983, the son of the original allottee challenged the transfer of membership in favour of the daughter, on the basis of the nomination by the father. When the matter reached the Supreme Court, the Supreme Court took note of three earlier decisions of the Court viz., (i) *Usha Ranjan Bhattacharjee v. Abinash Chandra Chakraborty* [(1997) 10 SCC 347], (ii) *Smt. Sarbati Devi v. Smt. Usha Devi* [(1984) 1 SCC 424] and (iii) *Gayatri De v. Mousumi Co-operative Housing Society Ltd.* [(2004) 5 SCC 90]. In *Usha Ranjan Bhattacharjee*, the Court directed possession of the flat to be handed over to the nominee, but left the dispute relating to title to the flat to be decided by the appropriate forum. The Court made it

⁴ AIR 1982 Bom 482

⁵ (2016) 6 SCC 440

clear that the holding of a valid nomination could not *ipso facto*, result in the transfer of title in favour of the nominee.

43. In *Indrani Wahi*, the Supreme Court analysed the decision in *Sarbati Devi* and *Gayatri De* and came to the conclusion that both of them are not relevant for deciding the controversy on hand in *Indrani Wahi*. Thereafter, the Supreme Court proceeded to consider Sections 79 and 80 of the West Bengal Co-operative Societies Act, 1983 and held that the Co-operative Society has no option except to transfer the membership in favour of the nominee. However, the Court clarified that such a transfer of membership would have no relevance to the issue of title between the inheritors or successors to the property of the deceased.

44. In ***Shakti Yezdani v. Jayanand Jayant Salgonkar***⁶, a Division Bench of the Bombay High Court had an occasion to consider the entire case law on the point, both with respect to the provisions of the Companies Act and the Depositories Act, 1996 as well as with respect to the Maharashtra Co-operative Societies Act. After dealing *in extenso* with the decision of the Supreme Court in *Indrani Wahi*, the Division Bench of the Bombay High Court pointed out in para-34 of its decision that the provisions relating to nominations under various enactments have been consistently interpreted by the Apex Court by holding that the nominee does not get absolute title to the property, which is the subject matter of nomination. The Division Bench of the Bombay High Court also

⁶ Appeal Nos.311&313/2015, dt.01-12-2016

pointed out that the Supreme Court did not dilute this principle even in *Indrani Wahi*.

45. Therefore, the law is well-settled that even in respect of a co-operative society, the nomination to the membership or even to the allotment does not tantamount to testamentary or intestate succession to the property under allotment. Hence, it is trite to point out that mere nomination by a member of the co-operative society does not enable the nominee to claim succession to the property to the exclusion of the legal heirs who are otherwise entitled to succeed.

46. Once it is clear that the nomination by Sitaramaiah in favour of the 1st defendant did not make her solely entitled to succeed to the plot of land allotted by the co-operative society or even to the house property constructed thereon, it follows as a natural corollary that the 1st defendant was not entitled to execute a gift settlement in favour of her son Keshava Rao. Upon the death of the original allottee Sitaramaiah, his right and interest in the plot of land and the house constructed thereon was inherited by three persons viz., (i) his wife - the 1st defendant, (ii) his daughter - the plaintiff and (iii) his son - late Keshava Rao whose legal heirs are the defendants 2 to 5. Therefore, at the most, the gift settlement executed by the 1st defendant could hold good only to the extent of her 1/3 share in the suit schedule property. Hence, we hold on point No.1 for determination that the nomination by Sitaramaiah in favour of his wife - the 1st defendant did not make her the absolute owner of

the suit property entitling her to gift the same to her son Keshava Rao.

47. Incidental to our conclusion on point No.1 for determination, is the question whether the gift deed executed by the 1st defendant in favour of late Keshava Rao was valid at least to the extent of the 1/3 undivided share that the 1st defendant was in any case entitled to.

48. The 1st defendant filed a written statement claiming that she was illiterate and that her son got her signatures on papers giving an impression as though a loan was to be obtained for the development of the property and that her son misrepresented and misguided her and obtained her signatures in the gift settlement deed. But unfortunately, the 1st defendant could not go to the witness box, as she died after filing the written statement but before framing of the issues. Though the plaintiff examined her maternal uncle as P.W.2, he did not talk about the execution of the gift settlement deed by his sister, the 1st defendant. On the contrary, he submitted in cross-examination that he was not aware of the gift settlement. Therefore, the claim made by the 1st defendant in her written statement that she was misrepresented and misguided to sign papers without having any intention to make a gift settlement, went unsubstantiated.

49. In contrast, the defendants 2 to 5 examined a person by name Purushotham as D.W.2. He was one of the witnesses who signed Ex.A-1 settlement deed. Though he claimed in cross-

examination that he did not know the contents of Ex.A-1 himself, he confirmed having attested the gift settlement deed.

50. In such circumstances, it is not possible to hold that Ex.A-1 gift settlement deed is not even valid insofar as the 1/3 share of the 1st defendant is concerned. Hence, the finding of the Court below on this aspect that Ex.A-1 gift settlement is valid to the extent of the 1/3 share of the 1st defendant, has to be confirmed, even while holding that the 1st defendant had no right by virtue of the mere nomination to gift the entire suit schedule property to late Keshava Rao.

Point No.2:

51. The second point arising for determination is as to whether the plaintiff is guilty of acquiescence.

52. In ***B.L. Sreedhar v. K.M. Muni Reddy***⁷, the Supreme Court extracted the statement of Lord Chancellor in ***Duke of Leeds v. Earn of Amherst***⁸, explaining the doctrine of acquiescence as follows:

“If a person having a right and seeing another person about to commit or in course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act.”

53. Quoting from ***Ramsden v. Dyson***⁹, the Supreme Court went on to point out that a common case of acquiescence is where

⁷ (2003) 2 SCC 355

⁸ 1946 (78) RR 47

⁹ (1866) LR 1 HL 129

a man who has a charge or encumbrance upon such property, stands by and allows another to advance money on it or to expend money upon it and that the equity considers it to be the duty of such a person to be active and to state his adverse title and that it would be dishonest in him to remain willfully passive in order to profit by the mistake which he might have prevented.

54. In order to constitute acquiescence, two things are to be established viz., (a) that the party against whom acquiescence is set up, should have full knowledge of his right and (b) that there was an act of omission or commission on the part of that party to the detriment of the opponent.

55. However, as pointed out by the Supreme Court in ***Sha Mulchand v. Jawahar Mills***¹⁰, ***a man who has a vested interest and in whom the legal title lies, does not and cannot lose that title by mere standing by or even by saying that he has abandoned his right unless there is something more viz., inducing another party by his words or conduct to believe the truth of that statement and to act upon it to his detriment.***

56. In ***Power Control Appliances v. Sumeet Machines Pvt. Ltd.***¹¹, the Supreme Court pointed out that ***acquiescence is a course of conduct inconsistent with the claim.*** It is the act of a person sitting by, when another is invading his rights. It implies positive acts and not merely silence or inaction. The acquiescence

¹⁰ AIR 1953 SC 98

¹¹ (1994) 2 SCC 448

must be such as to lead to the inference of a licence sufficient to create a new right in the opponent.

57. After quoting the exposition of law made in *Power Control Appliances*, the Supreme Court in ***State of Punjab v. Davinder Pal Singh Bhullar***¹² also quoted with approval the opinion rendered in ***P. John Chandy & Co. Pvt. Ltd. v. John P. Thomas***¹³ to the effect that inaction in every case does not lead to an inference of implied consent or acquiescence.

58. In ***Habeeb Bank Ltd. v. Habeeb Bank***¹⁴, the Court of Appeal pointed out that in order to succeed in a plea of acquiescence, a defendant must demonstrate all the five probanda contained in the judgment of Fry, J. in ***Willmott v. Barber***¹⁵. But with the development of law over a century, the English Courts held that irrespective of whether all the five probanda could be established or not, at least three things should be shown viz., (i) that the party must be acting under a mistake as to his legal rights, (ii) that the plaintiff encouraged that course of action either by statement or conduct and (iii) that the defendant acted upon the plaintiff's representation or encouragement to their detriment.

59. The decision of the Court of Appeal in *Habeeb Bank* was noted by the Supreme Court in ***Khoday Distilleries Ltd. v. The Scotch Whisky Association***¹⁶.

¹² AIR 2012 SC 364

¹³ AIR 2002 SC 2057

¹⁴ [1981] 1 WLR 1265

¹⁵ (1880) 15 Ch D 96

¹⁶ Appeal (Civil) No.4179/2008, dt.27-5-2008

60. Acquiescence is actually one of the several types of estoppel. The Indian Evidence Act, 1872 recognizes – (i) estoppel by record, (ii) estoppel by deed and (iii) estoppel by conduct. Acquiescence would fall under the third category.

61. Keeping these principles in mind let us come back to the facts of the present case. In this case, there was nothing on record to show that the plaintiff acquiesced to any of the transactions. As could be seen from the facts of the case, the plot of land was allotted by the Co-operative Society in favour of the plaintiff's father G.Sitaramaiah, way back in the year 1971. After his death in the year 1972, the membership was transferred to the 1st defendant on account of nomination and eventually the transfer deed was executed in the year 1986. The plaintiff cannot be held guilty of acquiescence, when the transfer deed was executed by the Co-operative Society in favour of the 1st defendant. As the law is well-settled that the transfer in favour of the nominee did not tantamount to altering the law of succession, the plaintiff was not at fault in keeping quiet when the transfer deed was executed in 1986 in favour of her mother. None of the three elements constituting acquiescence can be found in the silence on the part of the plaintiff when the transfer deed was executed by the Cooperative Society in favour of her mother in 1986.

62. The gift settlement deed was executed by the 1st defendant in favour of her son in April, 2005 and there is nothing

on record to show whether the plaintiff was aware of the gift settlement at all.

63. Interestingly, the plea of acquiescence is not taken by the defendants 2 to 5 but taken only by the defendants 6 to 9, who are the subsequent purchasers. But according to them, they came to know about the existence of the plaintiff only when pre-suit notices were exchanged. Therefore, they cannot actually set up the plea of acquiescence, since a party whose existence was not even known to the defendants 6 to 9, could not have made any representation or misrepresentation enticing the defendants 6 to 9 to enter into any transaction.

64. In fact, the defendants 6 to 9 also pleaded in their written statement that they were *bona fide* purchasers for valuable consideration and that before going ahead with the purchase, they made a paper publication in the Telugu Daily 'Eenadu' inviting objections. The paper publication was also filed as Ex.B-3.

65. But the most fundamental enquiry that the defendants 6 to 9 ought to have made, more than making a paper publication, was about the number of legal heirs left behind by Sitaramaiah. As a matter of fact, the gift settlement deed executed by the 1st defendant in favour of Keshava Rao, on the basis of which the defendants 6 to 9 purchased the property, contains recitals about the existence of the plaintiff. In page-3 of Ex.A-1 gift settlement deed, it is stated as follows:

“Whereas the Settlor is an age-old woman of 73 years of age, blessed with one daughter and one son by names

Smt. Bathula Sukeshini, and Sri Govu Keshav Rao i.e., Settlee, now the Settlor has decided to gift the schedule property to Settlee forever to remove all further complications that may arise in future.

Whereas the daughter of Settlor Mrs. Sukeshini was performed marriage on 06-3-1975 with Mr. Bathula Suresh Chandra S/o. Bathula Dharampuri belonging to a well-off family, and the Settlor and Settlee have spent huge amounts, and given sufficient amounts and articles for her future married life. Mrs. Sukeshini is having large chunks of property and her husband is looking after means of livelihood in a dignified manner.

Whereas the Settlee supported Settlor morally and monetary in performing marriage of her daughter and also by giving a huge worth of gold, articles, cash and kind at the time of Mrs. Sukeshini marriage and also on several other occasions. The Settlee and Settlor have already taken an utmost care of maintenance and livelihood of Mrs. Sukeshini.”

66. Therefore, instead of making a paper publication and inviting objections from unknown parties, the defendants 6 to 9 ought to have made enquiries with the plaintiff, a class-1 legal heir of Sitaramaiah. Any amount of enquiry made with the whole world except the person concerned, would not make a purchaser, a *bona fide* purchaser. Therefore, it hardly lies in the mouth of the defendants 6 to 9 to plead acquiescence against the plaintiff, whose existence they were made aware of, but with whom they never cared to make enquiry, when they were prepared to make enquiries with the whole world. Hence, the second point arising for determination is also to be answered against the appellants.

Point No.3:

67. The last point arising for determination is as to whether the plaintiff is entitled to a decree for partition of 1/3 share in the suit schedule property.

68. We have already held in answer to point No.1 that the property was originally acquired by G.Sitaramaiah, by virtue of being a member of the Co-operative Society and by virtue of getting allotment of the property. Since he died intestate and the property was transferred by the Co-operative Society in favour of his nominee, the succession that opened upon the death of Sitaramaiah entitled the plaintiff to 1/3rd share in the suit property.

69. Several contentions were raised, not in the course of oral arguments but in the form of written submissions that there was no proof to show payment of balance of instalments either by the 1st defendant or from out of the rental income from the property and that it was only Keshava Rao who paid the remaining instalments.

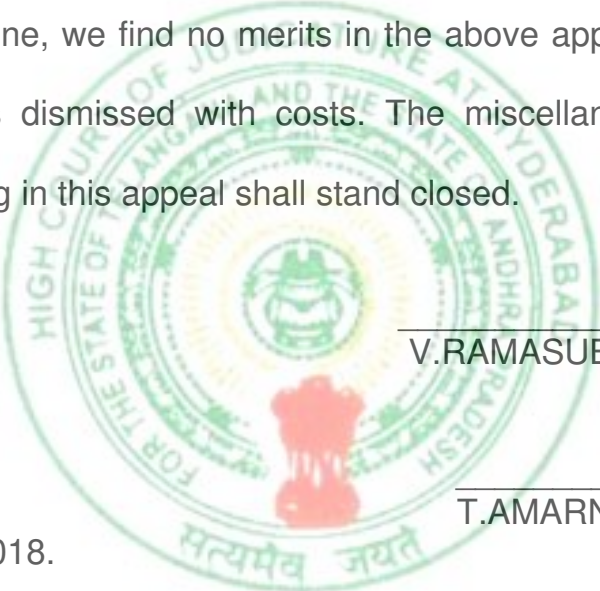
70. But we have to point out that the mere entries in the Pass Book do not constitute the proof to show that payments of the remaining instalments were made by Keshava Rao. Even assuming without admitting that the remaining instalments were paid by Keshava Rao, he was supposed to be in enjoyment of the property or in enjoyment of the rental income if he himself was not in occupation.

71. In any case, if Keshava Rao had made payment of the remaining instalments, in relation to a property allotted to his father

who died intestate, such payment of instalments would partake the character of gratuitous payments. On a property owned or inherited by several persons, if one contributes something, he would not become the owner of the property. At the most, he may be entitled to demand contribution from the co-owners.

72. Therefore, on point No.3, we hold that the plaintiff was entitled to a decree for 1/3 share in the suit property and the Trial Court was right in decreeing the suit.

73. In fine, we find no merits in the above appeal and hence, the appeal is dismissed with costs. The miscellaneous petitions, if any, pending in this appeal shall stand closed.



V.RAMASUBRAMANIAN, J.

T.AMARNATH GOUD, J.

16th March, 2018.
Ksn/Ak

Note:-
L.R. copy to be marked.
(B/o)
Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.C.C.A.No.180 of 2011
(per VRS, J.)



16th March, 2018.
(Ak)