THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Appeal Suit No.1875 of 1999

JUDGMENT:

This appeal, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful plaintiffs/appellants is directed against the decree and judgment, dated 25.06.1997, of the learned Senior Civil Judge, Gooty, Anantapur District, passed in O.S.No.40 of 1995.

2. I have heard the submissions of *Sri N. Ranga Reddy*, learned counsel appearing for the appellants/plaintiffs, and of *Sri C. Prakash Reddy*, learned counsel appearing for the respondent/ defendant. I have perused the material record.

3. In this Appeal Suit, the parties shall hereafter be referred to as plaintiffs and defendant, as arrayed in the Suit, for convenience and clarity.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5. The plaint averments, in brief, are as follows:

"The plaintiffs are the owners of house property bearing old D.No.13/270 and new D.No.14/91 with open space in Ward No.14, Hospital Palyam, Tadipatri Mandal, Tadipatri Municipal Area of Anantapur Sub-Registry and District, more fully described within the boundaries mentioned in the schedule appended to the plaint. The father of the plaintiffs, late K. Obulesu, purchased the same under a registered Sale Deed, dated 17.06.1938. Since the date of the said purchase, he continued in possession and enjoyment of the said plaint schedule house property as an absolute owner thereof. It is his self-acquired property. He had no ancestral properties. Except the said Obulesu, no others had any right or interest in the plaint schedule house property. The said Obulesu, who is the father of the plaintiffs, out of love and affection, gifted the plaint schedule house property to the plaintiffs by virtue of a registered Gift Deed, dated 17.12.1992. Having accepted the gift, the plaintiffs took possession of the plaint schedule house property. Since the date of execution of the said Gift Deed, the plaintiffs were and are in peaceful possession and enjoyment of the plaint schedule house property as absolute owners and are paying municipal taxes on the said property. The plaint schedule house property stands in the name of the plaintiffs is evident from the house tax receipts and the endorsement given by the Commissioner, Tadipatri Municipality, which are filed along with the plaint. The defendant is the elder brother of the plaintiffs. He sought permission of the plaintiffs to reside in the plaint schedule house property. However, due to misunderstandings that arose prior to the Suit, the defendant refused to vacate the plaint schedule house property, which is required for the personal occupation of the plaintiffs. The defendant has no right, title and interest whatsoever in the plaint schedule house property. The defendant is only in permissive possession of the same. The defendant is a powerful and influential person and is having support of rowdy elements in Tadipatri Town. Taking advantage that the plaintiffs are poor and are having no support in the Town, the defendant is refusing to vacate the plaint schedule house property. As there is a cloud on the title of the plaintiffs in respect of the plaint schedule house property, they are constrained to file the Suit for declaration of title and for recovery of possession of the same."

6. The defence in the written statement, in brief, is this:

"The relationship mentioned in the plaint is true. The material allegations in the plaint are false. The allegations in the plaint that father, late Obulesu, purchased the plaint schedule house property under a registered Sale Deed, dated 17.06.1938, and that it is his self-acquired property and that he was in exclusive possession and enjoyment of the same and that except he, no other person has any right, title and interest over the same, are all incorrect. The plaint schedule house property was purchased by late Obulesu from out of the income derived from the joint family property and agricultural lands. It is not the self-acquired property of late Obulesu. The allegation that late Obulesu, out of love and affection towards plaintiffs, gifted the plaint schedule house property by executing a registered Gift Deed, dated 17.12.1992, is not true. The said Deed was brought into existence with a view to grab the legitimate share of this defendant in the plaint schedule house property. This defendant, being the eldest son of late Obulesu, has got equal share along with plaintiffs nos.1 and 2 in all the properties of late Obulesu, including the plaint schedule house property. This defendant worked as a Constable in Railway Protection Force at Yadagiri Railway Station of Karnataka State. He had put up his family in Tadipatri. His family is residing in D.No.14/141 from the year 1990. He used to stay alone at the place of his work and make frequent visits to Tadipatri, whenever he could avail leave. Right from the year 1990, this defendant is residing in the said house. No one including the plaintiffs questioned him. This defendant also paid house tax on the said house. His father, late Obulesu, constructed four houses in Tadipatri during his life time. Two houses, namely one bearing D.No.3/26 and another bearing D.No.3/27 situated at Gannevaripalli Village Panchayat, are in possession of the 1st plaintiff; another two houses bearing D.Nos.3/1065 and 3/1066 situated in Tailors Colony, Tadipatri, are in possession of the 2nd plaintiff. Late Obulesu died intestate, on 09.01.1994. Father, Obulesu, was having love and affection towards all his three sons. To the knowledge of this defendant, his father never executed any Gift Deed conveying the properties to plaintiffs 1 and 2 only. The alleged Gift Deed, dated 17.12.1992, said to have been executed by his father in favour of the plaintiffs is a false and created one. There is no iota of truth in the plaint averments in that regard. Taking advantage of the absence of this defendant and due to bickerings among women folk, plaintiffs connived with each other in order to grab the legitimate share of this defendant and brought the colourful Gift Deed into existence. There was no partition at all till the date of filing of the written statement. There is no cause of action. Hence, the Suit may be dismissed."

7. Taking into consideration the above pleadings, the trial Court settled the following issues for trial:

> "1) Whether the plaintiffs are entitled a decree of declaration of title in respect of the suit schedule property. If so, they are entitled the delivery of possession of the suit schedule house?
> 2) Whether the gift deed dt. 17.12.92 acted upon the defendant?
> 3) Whether the defendant is having joint equal share in the suit schedule property?
> 4) To what relief?"
> (Reproduced verbatim)

8. At trial, the 1st plaintiff and one Fakir Mohinuddin, who was said to have attested the Gift Deed, dated 17.12.1992, were examined as PWs.1 and 2 and exhibits A1 to A5 were marked on the side of the plaintiffs. On the side of the defendant, the defendant was examined as DW1 and no documents were marked.

9. As already noted, by the judgment impugned, the trial Court dismissed the Suit of the plaintiffs. Therefore, the plaintiffs filed this Appeal Suit.

10. Learned counsel for the plaintiffs, while reiterating the pleaded case of the plaintiffs, which is already stated supra in detail, contended as follows:

"The trial Court ought to have seen that the delivery of possession of the plaint schedule house property, which was gifted under the Gift Deed, is not a mandatory requirement for the validity of the gift. The trial Court ought to have seen that acceptance of gift is only a necessary requirement. As such, the trial Court ought to have answered all the issues including issues 2 and 3 in favour of the plaintiffs and against the defendant. The trial Court ought to have seen that there is no pleading in the written statement that there was ancestral nucleus to the family of the plaintiffs and that there is also no evidence to show that the plaint schedule house property is the joint family property. The trial Court, therefore, ought to have answered the 1st issue also in favour of the plaintiffs and against the defendant. The trial Court was carried away by the fact that the plaintiffs and the defendant are brothers. The reasoning and the findings of the trial Court are perverse and against the pleaded facts and evidence brought on record. The trial Court ought to have seen that by examining PW2, one of the attestors of the Gift Deed, the plaintiffs proved the gift and that the onus of proof shifted to the defendant and that the defendant failed to discharge the onus, which was upon him and failed to establish his defence that the plaint schedule house property is not the exclusive property of late Obulesu, the father of the parties. The trial Court failed to properly appreciate the oral and documentary evidence and, in fact, has not discussed the documentary evidence. The trial Court ought to have seen that there is only presumption with regard to existence of joint family and that there is no such presumption with regard to existence of joint family property. The trial Court ought to have seen that the plaintiffs have no motive for creating false Gift Deed and bringing a false Suit against the defendant, who is their own elder brother. Since late Obulesu, out of love and affection, executed the Gift Deed in favour of the plaintiffs and as the gift was accepted and acted upon, and as the defendant, who is in permissive possession, failed to vacate the plaint schedule house property though the plaint schedule house property is required for the personal occupation of the plaintiffs, the plaintiffs are constrained to bring the Suit for declaration of title and recovery of possession. Therefore, the appeal may be allowed and the decree and judgment of the trial Court may be set aside and the Suit may by decreed as prayed for with costs throughout."

11. Per contra, learned counsel for the defendant, while supporting the decree and judgment of the trial Court and while reiterating the pleaded defence of the defendant, which is already stated supra, in detail, contended as follows:

"The plaintiffs and the defendant are brothers. In fact, defendant is the eldest of them. Their father, late Obulesu, is having equal love and affection for all his sons. The defendant worked in Railway Protection Force in a Railway Station of Karnataka State. Therefore, he alone used to reside at the place of his work by keeping the family in the plaint schedule house property at Tadipatri. Since 1990, his family was and is in occupation of the plaint schedule house property. The defendant used to visit the family at Tadipatri by availing leave, whenever leave was available. Late Obulesu had four houses; and, as mentioned in the written statement, two houses at Gannevaripalli Village are in possession of the 1st plaintiff and two other houses at Tailors Colony of Tadipatri are in possession of the 2nd plaintiff. Taking advantage that the defendant is working at a place away from Tadipatri and due to bickerings between the woman folk of the families, the plaintiffs created the false Gift Deed, dated 17.12.1992. To the knowledge of this defendant, the same was never executed by father, late Obulesu, as rightly held by the trial Court. Admittedly, as on the date of the alleged Gift Deed, the defendant and his family are in possession of the plaint schedule house property. Therefore, there was no possibility to deliver possession of the same under the Gift Deed to the plaintiffs. However, a false recital was made in the Gift Deed that possession of the gifted property was delivered. The false recitals in the Gift Deed indicate the false nature of the claim of the plaintiffs. The pleading is vague as to when the plaintiffs allowed the defendant to be in permissive possession of the suit schedule house property. The said vague allegation is invented as the defendant's possession of the house property belies the theory of gift. The trial Court, after appreciating the facts correctly and considering the evidence in proper perspective, rightly held that there is ancestral nucleus and that the plaint schedule house property is joint family property and that the defendant is having an equal share along with the plaintiffs in the plaint schedule house property. The trial Court rightly dismissed the Suit of the plaintiffs. The well considered judgment of the trial Court is sustainable under facts and in law. The contentions raised in the Appeal Suit are without merit and the Appeal Suit is liable for dismissal."

12. I have given earnest consideration to the facts and submissions. I have carefully perused the oral and documentary evidence.

13. The points that arise for consideration in this Appeal Suit are:–

1) Whether the plaintiffs are entitled to the reliefs of declaration of title in respect of the plaint schedule house property and recovery of possession of the same from the defendant?

2) Whether the Gift Deed, dated 17.12.1992, is not true and valid and was not acted upon?

3) Whether the defendant, in the facts and circumstances stated by him, is having a share along with plaintiffs 1 and 2 in the plaint schedule house property?

4) Whether the decree and judgment of the trial Court are unsustainable under facts and in law, as being contended by the plaintiffs?

5) To what relief?

14. <u>Point Nos. 1 to 3</u>:-

14.1 Before proceeding further, it is necessary to sum up the cases of the parties.

14.2 In the instant suit for declaration of title and recovery of possession of plaint schedule house property, the plaintiffs who are the younger brothers of the defendant claim that their father, late Obulesu, purchased the plaint schedule house property under exhibit A1, a registered Sale Deed, dated 17.06.1938; that their father has no ancestral properties or ancestral nucleus; and, hence, it is his absolute self-acquired property; that out of love and affection, he gifted the plaint schedule house property to plaintiffs, who are his younger sons, by virtue of exhibit A2, a registered Gift Deed, dated 17.12.1992; that the plaintiffs, having accepted the said gift, took delivery of possession of the plaint schedule house property; that they were in possession and enjoyment of the plaint schedule house property from the date of the said deed of gift; that the defendant, who is their elder brother, sought permission to reside in the plaint schedule house property; that the plaintiffs permitted him to do so; that the possession of the defendant over the plaint schedule house property is thus permissive possession;

that the plaintiffs requested the defendant to vacate the plaint schedule house property as the same is required for their personal occupation; that the defendant refused to vacate; that as a cloud is cast over the title of the plaintiffs in respect of the plaint schedule house property, the Suit is filed for declaration of title and recovery of possession as well. The 1st plaintiff/PW1 reiterated the pleaded case in his evidence; and, as already noted, he exhibited A1-Sale Deed, dated 17.06.1938, executed in the name of the father, late Obulesu, A2–Gift Deed, dated 17.12.1992, executed by his father in his favour and in favour of his other brother, the 2nd plaintiff, A3–Endorsement, dated 04.03.1993, issued by the Municipal Commissioner, Tadipatri, with regard to mutation of the plaint schedule house property in the names of the plaintiffs; and, A4-House Tax Receipt. Be that as it may.

14.3 In the defence, the defendant having denied the execution of the Gift Deed, exhibit A2, said to have been executed in favour of plaintiffs by the father, late Obulesu, contended that to his knowledge, his father never executed the same and that the father never informed him of the same. His further case is as follows: 'That due to his employment as a Constable in RPF, he used to work in a Railway Station of Karnataka State; but, his family was kept in Tadipatri i.e., in the house property bearing D.No.14/141 at Tadipatri; that his family is residing in the plaint schedule house property since 1990; that the possession of the plaint schedule house property was never delivered under the alleged Gift Deed to the plaintiffs; that the gift deed is false and invalid; that the plaint schedule house property is not the absolute self-acquired property of late Obulesu; that it was purchased by late Obulesu from out of the income derived from the joint family property and agricultural lands; and hence, he is having a equal 1/3rd share along with the plaintiffs in the plaint schedule house property; that in any view of the matter, the gift deed, even if true, it is valid to the extent of the share of late Obulesu as the plaint schedule house property is a joint family property and is not the exclusive property of late Obulesu; that the said gift deed is, therefore, not valid to the extent of 1/3rd share of this defendant in the plaint schedule house property; that since he is having a share in the same, the suit for declaration of title and recovery of possession is not maintainable.' What is to be noted is that the defendant as DW1, reiterated his pleaded defence in his evidence.

15. Be it also noted that the plaintiffs also examined PW2, one of the attestors of exhibit A2–Gift Deed, which is a compulsorily attestable document. The recitals of the Gift Deed reflect that the defendant neglected to take care of the health of the father Obulesu during his old age and that he did not evince interest and affection in the welfare of the father and neglected him and that the plaintiffs, who are the younger sons of late Obulesu, treated him with love and affection and, therefore, out of love and affection towards them, late Obulesu gifted the plaint schedule house property with absolute rights to the plaintiffs. It was elicited in the cross-examination of PW1 that late Obulesu was an illiterate and that he died two years after execution of exhibit A2–Gift Deed. It was suggested to PW1 that the Gift Deed was obtained in the absence of the defendant from the Town. PW1 denied the said suggestion. PW2, who is the attestor of the Gift Deed, spoke about the scribing of the Gift Deed by one Raja Singh, who is a document writer, on the instructions of late Obulesu and the scribe reading over the contents of the same to Obulesu, after it was drafted, and the admission of the contents of the same by late Obulesu to be true and correct and late Obulesu affixing his thumb mark on exhibit A2–Gift Deed and he and the other attestor Raja Gopal attesting the Gift Deed in the presence of late Obulesu, after Obulesu affixing his thumb mark on exhibit A2-Gift Deed. He identified his signature made as an attestor on exhibit A2-Gift Deed. It was elicited from him that late Obulesu was residing in Asupathri Palyam, Tadipatri, and that late Obulesu was an illiterate. In his cross-examination, he stated that he was present in Sub-Registrar's Office and that late Obulesu called him to attest exhibit A2–Gift Deed and that he knows the property that was gifted under exhibit A2. However, he stated that he does not know as to how the donar/Obulesu acquired the property covered by exhibit A2-Gift Deed. He further stated that he does not know whether the property covered by exhibit A2–Gift Deed is ancestral property or self-acquired property of late Obulesu. He denied the suggestion that the scribe and attestors colluded with the plaintiffs and brought up exhibit A2–Gift Deed to deprive the rights of the defendant over the plaint schedule house property. Though, DW1 asserted his defence in his examination in chief and stated that he was not aware of exhibit A2–Gift Deed, alleged to have been executed by his father in favour of the plaintiffs and that he was not informed about the existence of exhibit A2–Gift Deed prior to filing of the Suit, his evidence shows that he did not enquire either with the scribe or the attestors with regard to its genuineness and that since his father did not inform him about the existence of exhibit A2–Gift Deed, he was under the impression that exhibit A2–Gift Deed is a forged one and not a true and genuine document and that it was not acted upon.

16. In the considered view of this Court, the evidence brought on record is sufficient to safely come to the conclusion that late Obulesu executed exhibit A2, Gift Deed, in favour of the plaintiffs and its execution is true.

17. However, the next important question is as to whether the said Gift Deed is valid?

18. Broadly stated, for a Gift to be valid, the essential requirements are acceptance and delivery of possession of the gifted property. There is a specific recital in the said exhibit A2–Gift Deed that the possession of the plaint schedule house property was delivered by late Obulesu/donar to the plaintiffs/donees on the day of execution of the Gift Deed i.e., 17.12.1992. PW1 also asserted that after execution of exhibit A2–Gift Deed in favour of the plaintiffs, the plaintiffs accepted the gift. The said Obulesu died in the month of January, 1994. PW1 also asserted in his evidence that they are in possession and enjoyment of the plaint schedule house property from the date of execution of the Gift Deed; but, at the request of the defendant to stay in the plaint schedule house property, they permitted him to stay in the plaint schedule house property and therefore, the possession of the defendant over the plaint schedule house property was permissive possession, subsequent to the Gift Deed. Thus, even according to the admitted case of the plaintiffs, the defendant and his family are in possession of the plaint schedule house property. Their specific case is that the possession of the defendant over the plaint schedule house property is permissive in nature, as they permitted him to be in possession of the same at his request. However, in the plaint, there is no mention as to when such permission was granted and since which year the defendant is in permissive possession of the plaint schedule house property. The pleading in the plaint is very vague as regards the commencement of the alleged permissive possession. Even, in his evidence, PW1 did not state as to in which year the defendant made a request to stay in the plaint schedule house property and in which year, the said permissive possession of the plaint schedule house property was given to the defendant. In the case on hand, no doubt, the plaintiffs asserted through PW1 that the gift is accepted by them. However, as already noted, the year in which such permissive possession was given by the plaintiffs to the defendant is not pleaded and not proved. Per contra, the defendant specifically pleaded that he earlier worked as a Police Constable in RPF and used to work at a Railway Station in Karnataka State, but his family is kept in the house property bearing D.No.14/141 at Tadipatri and that his family is residing in the plaint schedule house since 1990 and therefore, there is no delivery of possession of the plaint schedule house property by late Obulesu to the plaintiffs under exhibit A2–Gift Deed. He asserted this aspect of defence in his evidence as DW1. In the absence of pleadings and proof as to in which year the defendant and his family came into possession of the plaint schedule house property exclusively and in the light of the specific defence and the evidence of the defendant, in the considered view of this Court, the defence that the defendant and his family are in possession of the plaint schedule house property since 1990 i.e., even prior to the execution of exhibit A2–Gift Deed, is more probable on the application of the test of preponderance of probability.

19. Thus, in the facts and circumstances of the case, there is sufficient evidence to conclude that the possession of the plaint schedule house property i.e., the property covered by exhibit A2–Gift Deed was not delivered by late Obulesu/donar to the plaintiffs/donees pursuant to the Gift Deed and that one of the most important elements of the gift, namely delivery of possession of the gifted property, is not established in this case. For all the reasons assigned, this Court is in agreement with the finding of the trial Court that the Gift Deed is not valid in the absence of delivery of possession of the gifted property, though the execution of the Gift Deed is true. Assuming for a moment that in the present prevailing legal position, acceptance of gift is enough and actual delivery of possession of the gifted property is not necessary and that delivery of deed of gift is sufficient indication of the delivery of gifted property, yet, there is one more question, which is vital and which requires advertence to.

20. The said crucial aspect covered by point no.3 supra is with regard to the nature of the plaint schedule house property. In other words, the incidental questions which require determination are -- 'Whether the plaint schedule house property, which was gifted by Obulesu to the plaintiffs, is his absolute separate self acquired property? (Or) Whether it is the property acquired by Obulesu with the income derived from joint family properties and lands? And, if so, is it a joint family property of late Obulesu and his sons?'

21. In this regard, placing reliance on exhibit A1–Sale Deed of the year 1938, the plaintiffs contend that late Obulesu purchased the plaint schedule house property in the year 1938 and therefore, it is absolutely self-acquired property of late Obulesu. The defendant contends that the plaint schedule house property is not the self-acquired property of late Obulesu and that the property was purchased by late Obulesu out of the income derived from the joint family properties and from agricultural lands. In the plaint, the plaintiffs specifically pleaded that late obulesu has no ancestral properties. But, in the first sentence of cross-examination, PW1 stated that earlier to execution of exhibit A1–Sale Deed, his ancestors had one house in Thimmanacheruvu Village in Jutur Mandal. However, he denied the suggestion that his father late Obulesu sold the said house and purchased the plaint schedule house property under exhibit A1–Sale Deed. And, he also denied the further suggestion that the plaint schedule house property is the ancestral property of the family. Thus, the averment in the plaint that late Obulesu had no ancestral property is not correct, is evident from the admission of PW1. The plaintiffs did not come to the Court fairly stating that the family was having ancestral property and yet the plaint schedule house property was acquired by late Obulesu with his own funds and that it is self-acquired property. Even PW2 stated that he does not know how the donar, late Obulesu, acquired the property covered under exhibit A2 and that he does not also know whether the property covered by exhibit A2–Gift Deed is an ancestral property or a self-acquired property of late Obulesu. Except stating that his father acquired the property in the year 1938, under a registered Sale Deed–exhibit A1 and gifted the property under exhibit A2–Gift Deed, dated 17.12.1992, PW1 did not state as to what was the occupation of late Obulesu and what were his earnings by the year 1938 and, therefore, there was absolutely no evidence to show that late Obulesu was in a position to acquire any property exclusively with the savings from his own earnings from his occupation, if any. Though, it is the specific case of the defendant that his father had four other houses and that out of them, two houses are in occupation of plaintiff No.1 and two are in occupation of plaintiff No.2, the plaintiffs did not deny the said aspect, either by filing a rejoinder or in the evidence of PW1. DW1 deposed that his brothers are residing in the said two houses each respectively, as their father gave those two houses to each of them. He testified that his father has no self-acquisition of his own. In his cross-examination, when it was suggested to him that the plaintiffs, who are masons, were given those two house properties each by the Government, as they are poor persons, he denied the said suggestion. No document is produced by the plaintiffs to show that the said houses were assigned to them by the Government. The year in which the houses were assigned by the Government to the plaintiffs is also not borne out by the record. There is also no explanation as to how two houses each were assigned by the Government to the plaintiffs, even assuming for a moment that they are poor persons entitled to such assignment of house properties. Thus, a careful scrutiny and harmonious consideration of the entire evidence brought on record shows that late Obulesu had ancestral property and that the contention of the plaintiffs that he had no ancestral property is incorrect. DW1 had also deposed that his father purchased the plaint schedule house property from the income derived from ancestral properties.

22. On the above analysis of the evidence, this Court is of the considered view that the contention of the defendant that late Obulesu acquired the plaint schedule house property with the income derived from the joint family properties and from ancestral nucleus is more probable and deserves acceptance of the Court, in the facts and circumstances of the case. On such careful scrutiny and evaluation of evidence, this Court does not find favour with the contention of the plaintiffs that late Obulesu acquired the plaint schedule house property exclusively and that it is his self-acquired property and therefore, he has got right to gift the entire property to the plaintiffs under exhibit A2–Gift Deed. The law is well settled that mere mutation of one's name in municipal records does not confer or take away any existing right in the property, more particularly when the defendant is in possession of the property.

23. As a sequel to the above findings, this Court holds that the plaint schedule house property is the joint family property of late Obulesu and his three sons and that it is not the self acquired property as being contended by the plaintiffs. The points 1 to 3 are accordingly answered.

24. Before taking up the next point, it is to be noted that the law is well settled that in a suit for declaration of title and recovery of possession, the legal burden as well as the initial onus of proof is very heavy and that in a suit of this nature, the plaintiffs succeed on their own strength but not on the weakness of the defence of the defendants. It is trite to refer to the following ratio in the decision rendered by the Supreme Court in **Union of India v. Vasavi Co-operative Housing Society Limited and others**[1].

> **It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.'**

In the light of the facts, evidence and the legal position supra, and the answers recorded under points 1 to 3, this Court holds that the plaintiffs' suit for declaration of title and recovery of possession is not maintainable in the facts and circumstances of the case and the same is liable to be dismissed.

25. <u>Point No.4</u>:-

In view of the afore-stated findings of this Court on point Nos.1 to 3 supra, it is to be held that the contentions of the appellants/plaintiffs that the decree and judgment of the trial Court are unsustainable under facts and in law are without merit and are liable for rejection. On carefully evaluating the oral and documentary evidence and after going through the judgment of the trial Court, this Court, for the reasons assigned in this judgment, finds itself in agreement with the findings

[1] (2014) 2 SCC 269

recorded by the trial Court on the issues settled and accordingly, holds that the trial Court is justified in dismissing the Suit of the plaintiffs and that the well considered judgment of the trial Court brooks no interference. Accordingly, this Court finds that the Appeal Suit is without merit and is liable for dismissal. Point No.4 is, accordingly, answered against the appellants/plaintiffs.

26. <u>Point No.5</u>:-

In the result, the Appeal Suit is dismissed without costs.

Miscellaneous Petitions, if any, pending in this Appeal Suit shall stand closed.

M.SEETHARAMA MURTI, J

14th March, 2018
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