

***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+A.S.No.912 of 1999

% 23-03-2018

Tagore Township Reg.No.2970/1998,
A welfare association, Hyderabad
Rep., by its Secretary and 18 others

... Appellants

Vs.

\$ Mr.Md.Khasim, S/o Jamaluddin,
Hayatnagar (M), Ranga Reddy District
And 32 others.

... Respondents

! Counsel for the appellants: Mr. C.N.Murthy

!Counsel for the Respondents 1 to 25 : Mr.Pottigari Sridhar Reddy

!Counsel for the Respondent No.26 : Mr. Y.V.Ravi Prasad

!Counsel for the Respondents 27 to 33 : Mr.Shaik Jilani

< Gist:

> Head Note:

? Cases referred:

¹ 1994 (1) ALT 673

² AIR 1999 SC 1441

³ AIR 2000 Ker 369

⁴ AIR 1996 SC 761

⁵ 2010 (5) SCC 104

⁶ 2014 (2) SCC 269

⁷ 2006 (5) SCC 558

⁸ AIR 1977 SC 615

⁹ 1992 (2) ALT 278 (D.B)

¹⁰ 1999 (2) ALT 624

¹¹ (2010) 5 SCC 104

¹² (2017) 2 SCC 797

¹³ AIR 1957 Madras 194

¹⁴ AIR 1958 MP 417

¹⁵ (1994) 1 SCC 1

¹⁶ (2007) 4 SCC 221

¹⁷ (2005) 7 SCC 605

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**A.S.No.912 of 1999****J U D G M E N T:**

This appeal is filed against the judgment and decree dated 08.06.1998 in OS.No.302 of 1990 passed by the Principal Senior Civil Judge, Ranga Reddy, Hyderabad.

As this is a first appeal, the parties are referred to as they are in the lower Court itself.

The appellants are the Tagore Township Welfare Association and 33 others, who have filed a suit initially against 10 defendants. In the appeal some more respondents were added. The suit was filed for a declaration that the decree and judgment in OS.No.184 of 1989 is collusive, fraudulent and not binding on the plaintiffs and for a declaration that the plaintiffs are the true owners of the land/plaint schedule property. They also sought an injunction restraining defendant Nos.1 and 10 from mutation of the name of the first defendant in the revenue records and other reliefs.

The case of the plaintiffs is that they have purchased the suit schedule property as individual plots of land from one Satyanarayana Reddy through his GPA holders-the defendant Nos.6 and 7. It is their case that they were convinced by the defendant Nos.5, 6 and 7 to purchase the plots. The details of the sale deeds by which the plots were

purchased were described in plaint. It is the case of all the plaintiffs that after they have purchased the plots, they were put in possession and that the defendants, more particularly, defendant Nos.1, 5 to 7 hatched a plan and filed a suit and got a collusive decree passed in OS.No.184 of 1989. It is their contention that the decree was obtained behind their back and due to a plan hatched by the defendants. Therefore, they sought a declaration that the decree is not binding on them and also sought a declaration of their title. Defendant No.1 is the main contesting defendant in this suit. He filed a written statement strongly denying the plaint averments and stating that Sri Satyanarayana Reddy did not have any title to the property at all. It is the specific case of the first defendant that the land in Sy.Nos.90 and 91 belong to one Afsar Jung Bahadur. The said owner gave the land to the grandfather of the first defendant-Sri Shaik Murthuza for the purpose of performing religious ceremonies and that subsequently his father Sri Jamaluddin got it and after that he inherited the same. He denies that the suit OS.No.184 of 1989 filed by him was a collusive suit and also denied that the decree passed therein was a collusive decree. Defendant Nos.2 and 4 are the wife and children of M.Satyanarayana Reddy. They have filed a written statement stating that Satyanarayana Reddy is the owner of the property and that the first defendant does not have title.

Based on these pleadings, the lower Court framed following five issues:

1. whether the plaintiffs are entitled to seek declaration that the judgment and decree passed in OS.No.184 of 1989 dated 28.09.1989 on the file of Principal Subordinate Judge Court, Ranga Reddy District as being collusive and fraudulent?
2. whether the plaintiffs are entitled for recovery of Rs.25,000/- compensation together with 18% interest?
3. whether the suit is bared by limitation?
4. whether the suit is bad for misjoinder of parties?
5. to what relief?

The parties went to trial. For the plaintiffs, PWs.1 and 2 were examined and Exs.A.1 to A.86 were marked. For the defendants, Exs.B1 to B.14 were marked and one witness-DW.1 was examined. After trial, the impugned judgment dated 08.06.1998 was passed by which the suit was dismissed. It is this order that is now assailed in the appeal.

Heard learned counsel for both the appearing parties.

The learned counsel arguing the appeal concentrated on the issue relating to the title of the plaintiffs *vis a vis* the first defendant and also on the nature of the suit OS.No.184 of 1989. The plaintiffs asserted that M.Satyanarayana Reddy is the actual and true owner of the property. Basing on the powers of attorney executed by the owner, the plaintiffs claim to have purchased the property. Therefore, it is their case that they have title to the land. They pointed out various

aspects of the suit OS.No.184 of 1989 to show that it is a collusive suit.

On the contrary, in reply thereto, the first defendant asserts title to himself in the suit schedule property and denied the title of Satyanarayana Reddy. He argued that the decree obtained in OS.No.184 of 1989 is not a collusive decree and is a valid decree by which his title was upheld. Therefore, it is his contention that the plaintiffs are not entitled to any relief.

Issue No.1 as framed by the Court below is to the effect; whether the plaintiffs are entitled to seek a declaration that the judgment in OS.No.184 of 1989 is collusive decree and fraudulent. However, it is noticed that the Court below has discussed about the title to the property. As the learned counsels also concentrated on the issue of title and the arguments were also addressed on the same, this Court has taken up the following two main points for consideration in line with the arguments.

- (a) Whether the suit schedule property belonged to M.Satyanarayana Reddy or to first defendant and as a consequence, whether there is a valid transfer in favour of the plaintiffs 2 to 33?
- (b) Whether the decree in OS.No.184 of 1989 is fraudulent and collusive?

As far as the plaint averments are concerned, it is worthwhile noticing that the plaintiffs have pleaded that the

property in question which is of an extent of about Ac.24.08 guntas in Sy.Nos.90 and 91 belong to Sri M. Satyanarayana Reddy. The said Satyanarayana Reddy, according to the plaintiffs, was in possession and enjoyment of the property and his name was also mutated in the records as the owner and the enjoyer of the property. In the plaint, it is asserted that Satyanarayana Reddy is the owner. When the evidence was introduced through PWs.1 and 2, the plaintiffs have filed Exs.A.1 to A.26, which are the copies of the pahanies from 1961-62 to 1986-87. The plaintiffs rely upon them to show that Satyanarayana Reddy has title and possession of the property. The plaintiffs point out that in the written statement filed by defendant No.10 in the suit namely the State of Andhra Pradesh, represented by the Mandal Revenue Officer (MRO), Hayatnagar, the MRO clearly admitted that the land in Sy.No.90 measuring Acs.15.27 guntas and in Sy.No.91 measuring Ac.8.21 guntas is in the name of M.Satyanarayana Reddy. Defendant No.10 admits that the patta for the said survey number is in the name of Satyanarayana Reddy only. Subsequently, due to the decree in OS.No.184 of 1989 (which is impugned in the present suit), the first defendant made an application and consequently, orders were passed for sanction of the mutation. It is also admitted in the written statement of defendant No.10 that a lay out was sanctioned by the Sarpanch of Thattiannaram

Village and as the said Sarpanch committed some violations, he was removed from his post.

In addition, the legal heirs of M. Satyanarayana Reddy are shown as defendant Nos.2 to 4. They have filed a written statement on 31.08.1995, wherein they clearly state that said Satyanarayana Reddy is the owner of the property in Sy.Nos.90 and 91. Ex.A.63 is a counter affidavit filed by the defendant Nos.3 to 5 in the OP.No.350 of 1983 (which is converted into the suit OS.No.184 of 1989). In this in IA.No.528 of 1997, the present defendant No.2 states that Satyanarayana Reddy is the owner of the property. Therefore, the learned counsel for the appellants/plaintiffs argued that the correctness of Exs.A.1 to A.26 pahanies cannot be doubted. It is his argument that 1961 onwards, up to 1986-87, the name of Sri Satyanarayana Reddy is reflected in the revenue records and that it is only pursuant to a collusive decree, which is impugned in the present case that the name of the first defendant or his predecessors is entered into the records.

Learned counsel also relied upon a judgment of the A.P. High Court in ***Chanumolu Nirmala and Others v. Chanumolu Indira Devi***¹, which is under the Pattadar Pass Books Act and argues that there is a presumption that the entries are correct and that the admission of defendant Nos.2

¹ 1994 (1) ALT 673

to 4 and 10 clearly shows that the plaintiffs have title through M.Satyanarayana Reddy.

In response thereto, learned counsel for the respondents argued that entries in revenue records are not documents of title and that the respondent has also filed Exs.B.2 and B.3 along with Exs.B.12 and B.13 to show that his predecessor in interest had title.

This Court, on an examination of the said documents and after hearing the submissions of the learned counsels, finds that the name of one Nawab Afsar Jung Bhadur is mentioned in Exs.B.2 and B.3. Similarly, in Ex.B.12 also the name of Bahadur Jung is mentioned. But, interestingly in Ex.B.13 pahani for 1966-67, the name of Maddi Satyanarayana Reddy is mentioned as being in possession. Similar pahani of 1966-67 is filed by the plaintiffs and the same is marked as Ex.A.5. It also shows the name of Maddi Satyanarayana Reddy. Even Exs.B.6 and B.7 filed by defendants show the name of M.Satyanarayana Reddy. Thus, learned counsel for the appellants points out that the very documents relied upon by the first defendant shows the name of Maddi Satyanarayana Reddy. The presumption as per the appellants counsel is that an entry in the revenue records is *prima facie* proof of possession and enjoyment and that it is for the defendants to challenge the same.

Learned counsel for the appellants also argued that assuming for the sake of argument that Sri Jung Bahadur

had title to the property; there is no link between the present first defendant and the said Jung Bahadur or of the title to the property. Learned counsel pointed out that in the written statement filed by the first defendant, it is clearly mentioned in paragraph 11 that the property belong to Afsar Jung Bahadur and the grandfather of the defendant Shaik Murthuza was given the said land and that thereafter it felt to the share of his father and after the death of his father, by name Shaik Jamaluddin, the present first defendant alone inherited the property absolutely. This tracing of title is however not borne out by any record according to the learned counsel. The learned counsel points out that another version is spelt out in ASMP.No.1061 of 2008, wherein new parties wanted to join the appeal claiming to be the children of Sri Jamaluddin and siblings of the first defendant. They were added as respondents 27 to 33 to this case as they state they have a right in this property. This claim of respondents 27 to 33 is contrary to the first defendant's case that he alone inherited the property both in this suit appeal and also in OS.No.184 of 1989. Respondent No.26 was added as per the orders in CMP.No.186 of 2008.

The learned counsel for the appellants also points out that Ex.B.1 is the power of attorney under which the present defendant was authorized DW.1 to give evidence. Learned counsel pointed out that this registered GPA at page 2 states that his father Jamaluddin has acquired the same by adverse

possession and was the cultivator since time immemorial. Therefore, it is his contention that the power of attorney runs contrary to the pleadings and to the averments in ASMP.No.1061 of 2008 also. In addition, learned counsel also argued that the first defendant did not enter the witness box and that a power of attorney holder gave evidence as DW.1. He argues that DW.1 is not a competent witness and that an adverse inference should be drawn against the defendant for his failure to appear ***Vidhyadhar v. Manikrao and Another***². The learned counsel also points out that in the cross-examination of DW.1 he admits that the power of attorney was only given in 1993 and that the witness admits that “Khasim” (defendant No.1) is now alright. Learned counsel argues that the power of attorney holder is only aged 30 years as on the date of deposition and that he was born in 1967. Therefore, it is his contention that power of attorney holder cannot depose anything that occurred prior to 1993 and that it is not his case that the GPA holder has personal knowledge.

This Court finds sufficient force in these contentions. If first defendant was alright, he should have been examined as a witness. This was not done in this case and therefore, this Court holds that an adverse inference must be drawn against the first defendant for failing to appear and deposing in this case. DW.1 is also not a competent witness as he is a GPA

² AIR 1999 SC 1441

holder only and not a person with any personal knowledge of the land or the cases. He cannot be said to have proved his case.

The learned counsel also points out that the cross-examination of DW.1 also contains a clear admission that there is no documentary proof filed to show that a gift was given to Jamaluddin by Afsar Jungh Bahadur. Learned counsel points out that in the deposition the witness states that a gift was given to the father of Khasim by name Shaik Jamaluddin by Afsar Jung Bahadur, whereas in written statement at para 11, it is said that the grand father of the first defendant Shaik Murthuza was given the land by Afsar Jung Bahadur. This clear discrepancy, in the argument of the learned counsel for the appellants also disproves the defendants' case. In addition, DW.1 also admitted that the name of M.Satyanarayana Reddy is shown in Ex.B.7. The learned counsel for respondents could not satisfactorily explain why the defendants filed documents with Satyanarayana Reddy's name.

The documents that are filed in this case would show that the name of M.Satyanarayana Reddy is shown in all the revenue records as pattadar/possessor of Sy.Nos.90 and 91. Even the document filed by the defendant Ex.B.7 shows the name of M.Satyanarayana Reddy. The mutation proceedings carried out on 02.07.1990 in Ex.B.7, shows that pursuant to a decree in OS.No.184 of 1989 the name of the first defendant

is included by deleting the name of M.Satyanarayana Reddy. The written statement filed by MRO also shows that Sri M.Satyanarayana Reddy is the owner as per the revenue records. The wife and children of M.Satyanarayana Reddy say that he is the owner in their written statement also. This Court also notices that apart from Exs.A.1 to A.25 pahanies, the plaintiffs have also filed Ex.A.86 which are the proceedings of the Land Reforms Tribunal-RDO, Hyderabad dated 26.12.1976 in CC.No.2117 of 1975. This order shows that Sri M.Satyanarayana Reddy filed a declaration under the relevant law for the lands in various survey numbers including Sy.Nos.90 and 91. It also shows that M.Satyanarayana Reddy initially suffered an order in Land Reforms Appeal in 34 of 1976 against which he filed a revision in this High Court, which vide orders in CRP.No.1066 of 1977 set aside the matter and directed the Tribunal to consider the case afresh. Similarly, the documents (Exs.B.11 and Ex.B9) which are filed to show the action taken against the Sarpanch for wrongful sanction of a layout also show that this land is in the name of Satyanarayana Reddy only.

On a review of the entire documentary evidence that is introduced in this case, it is clear that M.Satyanarayana Reddy is owner/pattadar of the lands in Sy.Nos.90 and 91. His possession of the land and enjoyment of the same is clear from 1961-62 onwards as can be seen from the pahanies that are filed. In contradistinction to this, the documents filed by

the defendants do not establish that the defendants' predecessor had any title. In addition, document Nos.Exs.A.80 to 84 also show that the name of M.Satyanarayana Reddy was being shown as the owner and possessor. Document No.Ex.A.85 shows the name of the Tagore society as the person in possession. Viewing the pleadings and the entire documentary evidence in totality, this Court is of the opinion that the plaintiffs have established that M.Satyanarayana Reddy is the owner of the property in Sy.Nos.90 and 91. The defendants did not establish that the first defendant or his ancestors are the owners of the property. There is no clear or cogent evidence to prove the claim of the defendants. No competent witness was examined for the defendants.

The next question that arises is that whether the property was conveyed to the plot owners. It is the case of the plaintiffs that they have acquired property from M.Satyanarayana Reddy through his GPA holders-defendant Nos.6 and 7. Pursuant to the said registered Power of Attorney executed in favour of defendant Nos.6 and 7, Ex.A.30 to Ex.A.61-sale deeds were signed in favour of the individual plot owners. The lower Court did not believe the execution of the sale deeds and held that the plaintiffs failed to examine defendant Nos.6 and 7 to prove the power of attorneys or the sale deeds.

Both the powers of attorney by which the sale deeds are executed are registered power of attorneys. The sub-registrar acting under Section 33 of the Registration Act, 1908 recognized that these power of attorneys are valid and registered the entire series of sale deeds which are marked as Exs.A.30 to 61. The sale deeds are filed in original before this Court. The agents who executed the sale deeds are shown as defendant Nos.6 and 7. In the submissions, the learned counsel for the respondents who supported the lower Court order took a stand that defendant Nos.6 and 7 were not examined by the plaintiffs. He drew the attention of this Court to the portions of the impugned judgment where the lower Court held that the failure to examine defendant Nos.6 and 7 is fatal to the plaintiffs' case. The learned counsel for the appellants pointed out that a plaintiff cannot summon a defendant as a witness particularly as they allege that defendant Nos.6 and 7 colluded with others and attempted to defraud them. This practice of summoning the defendant as a witness for the plaintiff is frowned upon by law and is not a healthy practice according to the learned counsel for the appellants. This Court also concurs with the submission made by the learned counsel for the appellants that the plaintiff cannot be called upon to examine a defendant to prove the plaintiff's case. This is a practice that is deprecated by the Courts in India. A Division Bench of the Kerala High Court in **Jortin Antony and Others V. Padmanabha Dasa**

Marthanda Varma and Others³ reviewed the case law and finally held as follows:

15. We are thus of the view that a party to the suit does not have a right as such to summon the opposite party to give evidence. It is really left to the Court, possibly after the evidence of all the witnesses made available is completed, to consider whether the examination of one of the parties who has not come before Court, is necessary and in that context if found necessary, to compel that party to give evidence in exercise of its jurisdiction under Rule 14 of Order 16 of the Code. A plaintiff like the one in the present case, cannot as a matter of course include the defendant in his schedule of witnesses and as of right seek the issuance of summons to the defendant for being examined as a witness on his own behalf.

In addition, the learned counsel for the respondents also argued in the course of his submissions that neither the attestors nor the scribe were examined for Exs.A.29 or 30 to 59. This Court is of the opinion that the law does not mandate the examination of the scribe or the attestors of a sale deed to prove the contents thereof. A sale deed is not a document for which attestation is compulsory under Section 68 of the Registration Act, 1908. It can be proved under Section 72 of the Indian Evidence At, as a document that is unattested. The judgment of the Hon'ble Supreme Court of India in **Smt. Hans Raji v. Yosodanand**⁴ is squarely on the point that a sale deed is not a document to prove the contents of which the attestor is to be examined.

The learned counsel for the appellants argued that the plaintiffs have pleaded that they have acquired the property

³ AIR 2000 Ker 369

⁴ AIR 1996 SC 761

through M.Satyanarayana Reddy and his agents. They filed all their sale deeds, which were accepted for registration by the sub-registrar. The learned counsel points out that under Sections 33 to 35 of the Registration Act, 1908 whenever an agent appears in place of the principal for registration of a document, the Registrar has to satisfy himself of the identity of the party and of the power that is granted.

In this case, the learned counsel submits that the registration of the sale deeds in the period November, 1979 to February, 1980 as was deposed in the evidence shows that 31 sale deeds were executed on various dates and all the documents were filed. He relies on Section 33(4) of the Registration Act, to show that he has discharged his burden by filing the original GPA. Therefore, the learned counsel submits that the onus was on the defendant to prove that these documents were not validly executed. Learned counsel for the appellants also rightly argued that it is not the contention of the defendants that this power of attorney is not signed by M.Satyanarayana Reddy. It is not their case that the powers of attorney are forged. The execution of the power of attorney is borne out by the record and in fact after the execution of all the sale deeds, M.Satyanarayana Reddy proceeded to cancel the power of attorney also for his own reasons and a copy of the cancellation deed is also filed as Ex.A.27.

The argument of the learned counsel for the plaintiffs is in the circumstances correct and the submissions of the learned counsel for the respondents do not find favour with this Court. The fact that the sale deeds were executed over a period of time and they were accepted for registration shows that the plaintiffs were conveyed title through the power of attorney that was executed in favour of defendant Nos.6 and 7. Nothing to the contrary was pointed out to enable this Court to discard the GPAs or the sale deeds. Even the title claimed by the defendants is not established.

The learned counsel for the appellants also argued that the power of attorney in question is a power coupled with interest and that a reading of the power of attorney-Ex.A.29 makes it clear that the principal has received the dues. Therefore, he argues that as it is a power of attorney coupled with interest, the same cannot be cancelled. He relies upon para 36 of the judgment in ***Shanti Budhiya Vesta Patel and Others. v. Nirmala Jayprakash Tiwari and Others***⁵ for this proposition. This point is not very relevant in the issue on hand. For all the above mentioned reasons, this Court has come to a conclusion that there was valid transfer of title from Maddi Satyanarayana Reddy through his GPAs to the plaintiffs.

The next question that arises and which is a part of the prayer is about the nature of the decree passed in OS.No.184

⁵ 2010 (5) SCC 104

of 1989. The learned counsel for the appellant argued that there is a design behind this suit and that the said suit has been filed with a deliberate intention to cause loss to the plaintiffs. On the other hand, the learned counsel for the respondents argues that decree passed is a valid decree and that the findings of the Court are true and correct. It is his submission that lower Court has considered the facts and circumstances and has correctly come to a conclusion that the decree cannot be set aside because the plaintiff failed to prove that there is a fraud in the passing of the said decree. He also argued that the standard of proof required has not been fulfilled.

The learned counsel arguing for the respondent No.26 cited the following case laws:

Union of India and others v. Vasavi Cooperative Housing Society Limited and others⁶ and argued that entries in revenue records are not proof of title and that patta is not title. The appellants replied that the respondents own documents are showing the name of M.Satyanarayana Reddy and that the earliest document filed by them is of the year 1961. The land ceiling declaration also shows that M.Satyanarayana Reddy was acting as per law. The admission of defendant No.10 in his written statement is again highlighted.

⁶ 2014 (2) SCC 269

Anil Rishi v. Gurbaksh Sing⁷, wherein it is stated that burden of proof is on the plaintiff and that the same is not discharged. The appellants reiterate that their evidence is of sufficiently long duration and repeats his earlier submission.

Varanasaya Sanskrit Vishwavidyalaya and another v. Rajkishore Tripathi and another⁸, while relying on this case law, the learned counsel argues that pleading about fraud is not clear or categorical. Respondent argues that both sufficient clarity and details are there of the fraud.

The Mandal Revenue Officer and another v. Sri Sri Sri Jagannadhaswamyvari Temple⁹. This was relied upon to argue that unless a person connected with a document is examined, the document is not proved. Plaintiff states that the defendants also did not examine anyone connected with any of their documents. He argues that this was a case under Land Acquisition Act, where sale deeds are produced to show the market value. To prevent fraud the Division Bench said parties to a document must be examined.

A. Ramloo and Others. vs. G. Sreeramachandra Murthy and Others¹⁰: Section 68 - sale deed is not proved as attester is not examined. This is not the correct view of the law in view of **Hans Raji's** case (4 supra) as per this Court.

⁷ 2006 (5) SCC 558

⁸ AIR 1977 SC 615

⁹ 1992 (2) ALT 278 (D.B)

¹⁰ 1999 (2) ALT 624

Shanti Budhiya Vesta Patel and others v. Nirmala Jayprakash Tiwari and others¹¹ and ***Harjas Rai Makhija (dead) through legal representatives v. Pushparani Jain and another***¹² cases were cited for the proposition that fraud must be pleaded with clarity and evidence must also support the same. The appellants contention is that they have pleaded the fraud in the paras 11 to 24 of their plaint and that the evidence of PWs.1 and 2 along with the inference from the circumstances pointed out like the OP being pending for years; the written statement being filed in September, 1989 and the suit being decreed immediately on the same day etc. The learned counsel for appellants in fact relied upon para 40 of ***Shanti Budhiya Vesta Patel's*** (7 supra) case, wherein the Hon'ble Supreme Court has said that a registered document has a lot of sanctity and also para 20 of ***Harjas Rai Makhija's*** case (8 supra) – that it is only after evidence is led coupled with intention to declare that a conclusion of fraud could be arrived at.

In view of the submissions made and the fact that the lower Court also held that the plaintiffs did not plead or prove the fraud, the pleadings and facts are examined.

An examination of the pleading shows that the plaintiffs have given sufficient particulars of the fraud that is perpetuated. They have stated various paragraphs of their plaint that the defendant Nos.1, 2, 5 to 7 hatched a plan and

¹¹ (2010) 5 SCC 104

¹² (2017) 2 SCC 797

have filed a collusive suit, obtained a decree and came forward to claim suit property. They alleged that the first defendant is not the owner of the land. They also alleged that M.Satyanarayana Reddy is the actual owner of the land and was enjoying the same since 1951. They assert that Satyanarayana Reddy was the pattadar as well as the cultivator. They also allege that Satyanarayana Reddy was alive initially and later when he died, his legal heirs were brought on record. Based on an admission of the legal heirs, the suit was decreed. They allege that defendant No.5 along with his henchmen played the fraud and get the first defendant to file the suit. They also state that from 1979-81, their sale deeds were being executed, there is no whisper about the pendency of this OP. They also gave details in the plaint of the role played by defendant No.5 and his henchmen. Therefore, they allege that the decree in OS.No.184 of 1988 is collusive. This Court, therefore, finds that as required under Order VI Rule 4 of CPC, sufficient particulars of fraud are given.

In addition, this Court also notices certain peculiar features of the decree passed in OS.No.184 of 1989. The said OS.No.184 of 1989 was filed on 30.12.1980. Ex.A.64 is the copy of the application filed "in forma pauperis". The petition is filed by Mohd.Khasim stating that his father Mohd.Jumaluddin died in 1964 and his grandfather Shaik Murthuza died around 1940. The plaintiff states, he then

inherited the property. The suit is filed against one S.Satyanarayana Reddy and one Ramachandra Rao. These are the description of the defendants. A reading of the entire plaint does not show any allegation about title of S.Satyanarayana Reddy in the land. Para 4 of the plaint states that the defendants and their associates came on 06.11.1980 and threatened the plaintiffs. This is the only averment made against defendant Nos.1 and 2. Therefore, a suit is filed for a declaration of title. As to the name or as to who is the second defendant, there is no clarity. It is the argument of the appellants that the “Ramachandra Rao” named in this OP is the very same defendant No.5 named in the present suit. The fact remains that neither of the parties pursued the remedy against the said Ramachandra Rao. It is evident from the decree that is passed on 28.09.1989 that process fee is not paid against defendant No.2. The same is the situation in the present suit also out of which the appeal arises. Ramachandra Rao was added in both the cases but the cases were not pursued to their logical end against him. The role of this ‘Ramachandra Rao’ is not at all explained in the suit OS.No.184 of 1989 particularly as the suit is for a declaration of title. It is the argument of the learned counsel for the appellant that the Ramachandra Rao in this OP is the very same Ramachandra Rao in the present case. He points out that because the plaintiffs were aware of the role played by Ramachandra Rao in this land along with Satyanarayana

Reddy, the collusive suit is filed against Satyanarayana Reddy and Ramachandra Rao, but the cases were not pursued against the said gentleman.

This Court also notices that the OP was kept pending for number of years. The legal heirs of Satyanarayana Reddy were added as parties. The surname of Satyanarayana Reddy is shown as "S". The legal heirs were brought on record and their names are shown as Bhagyamma, Srinivas Reddy and Bujji. They were added as the legal heirs as per orders in IA.No.435 of 1985.

Later from the record, it appears that IA.No.528 of 1987 was filed to set aside the dismissal order in the OP, which was dismissed on 05.09.1984. The wife of Satyanarayana Reddy-M.Bhagyamma filed a counter affidavit (Ex.A.63), wherein she states that her name is M.Bhagyamma (2) and the name of the children are M.Kantha Reddy and M.Venkatamma defendant Nos.4 and 5. Despite this categorical assertion, the names do not appear to have corrected in the plaint or in judgment and decree that is passed. In this counter, she asserts that M.Satyanarayana Reddy is the owner of the land. In addition to this, the learned counsel for the appellants points out the written statement that was filed in this OP, which is renumbered as a suit (Ex.A.62). This written statement was verified on 28.09.1989 and in that written statement, defendant Nos.3 to 5 do an about turn and admit the title of the plaintiff. On the

very same day, namely 28.09.1989, the Subordinate Judge, R.R.District passes a decree Ex.A.66 based on the admission.

Learned counsel for the appellants points out that no documents were marked on behalf of the plaintiffs. According to the petition copy-Ex.A.64, three documents were filed along with the petition. There is no consideration of these documents in the order that is passed. As noticed earlier, the case was initially filed in 1980. The legal heirs were added as per orders dated 10.10.1985. The legal representatives filed a written statement on 28.09.1989 (Ex.A.62) i.e. four years after, they were added and on the same day, a decree (Ex.A.66) was passed granting reliefs prayed for. The appellants, therefore, submits that the lower Court was wrong and in an undue haste granted a decree without even going into the documents that were filed. The fact that the suit which is filed in 1980 was ultimately decreed on the same day the written statement was filed, is a very suspicious circumstance according to the learned counsel for the appellants. The lower Court did not notice the earlier plea of Smt.Bhagyamma that M.Satyanarayana Reddy was the owner nor did the lower Court see if the plaintiff proved his title to the suit land.

The respondent on the other hand argued that there is nothing wrong in the judgment and decree that is passed and that once a defendant admits the plaintiffs' case, nothing prevented the Hon'ble Judge from passing a decree.

This Court, on an examination of all the facts, which are highlighted by the counsels, notices that OP filed in 1980 against Satyanarayana Reddy with a wrong surname and one Ramachandra Rao is allowed to be decreed in 1989 on the very same day that a written statement is filed admitting the suit claim. Even when the legal representatives were brought on record and later when IA.No.528 of 1987 was filed, the wife of the deceased Satyanarayana Reddy took a plea that the petitioner has no claim in this land. On 28.09.1989 however, she files a written statement agreeing to the suit claim. The lower Court, in the opinion of this Court, should have been little more circumspect in analysing the facts. The change in her stand should have been looked into by the Court. Even in cases a decree is passed on admissions, an examination of the facts and figures and the pleadings is necessary. *Ex parte* decrees are also to be passed only after the Court is “satisfied”. The documents filed should have been considered before the judgment was passed. No documents whatsoever were considered in this case and the pleadings filed by the plaintiff in the suit OS.No.184 of 1989 should have been backed by documentary evidence before a declaration for such a vast extent of land is given. There is no allegation against the defendants Satyanarayana Reddy or against Ramachandra Rao except in one paragraph of the plaint. The flow of title is not examined. It is also important to note that in the present suit out of which the present appeal arises, the

wife and the children of Satyanarayana Reddy were added as defendant Nos.2, 3 and 4. They have filed a written statement dated 28.08.1995 in the present suit. In the said written statement, which is in reply to plaintiffs' case of collusion and fraud by Satyanarayana Reddy and others, the defendant Nos.3 to 5 did not state anything about the decree passed in OS.No.184 of 1989 based on their admission. This Court notices that if Smt.Bhagyamma the wife of Satyanarayana Reddy had in fact consented to the earlier decree she should have mentioned the fact in the written statement filed in the present suit and pleaded that the first defendant is now the owner of the property. On the contrary, she states that her husband is the owner and possessor of Sy.Nos.90 and 91 in the present suit even in the year 1995. She also states that her husband never executed any document in favour of the plaintiffs. If things were as explained and argued, the course of human conduct and the natural course of things should lead this lady to state that initially her husband had title and that she gave up the same in the proceedings in OS.No.184 of 1989 and that Mohd.Khasim-first defendant is now the actual owner because of the decree passed. She did not take such a stand in the present suit. This is an important factor pointed out by the learned counsel for the appellants. In addition, learned counsel points out that the case of Mohd. Khasim is that he is the sole owner of the property as per the plaint in

OS.No.184 of 1989 and in the written statement filed in this suit, which was filed in June 1992, he did not disclose the alleged gift deed of 09.02.1999 relied on by his siblings, the petitioners in ASMP.No.1061 of 2008 or of the existence of other siblings also. He all along claimed to be the sole legal heir of his father. Therefore, the learned counsel submits that the attempt of Khasim is to somehow knock off the property by hook or crook.

After hearing the learned counsels and perusing the records, this Court is also of the opinion that the decree in the suit OS.No.184 of 1989 was obtained by fraudulent means. The sequence of events and the conduct of the parties lead this Court to believe that as a part of design, the suit was filed by the present first defendant against S.Satyanarayana Reddy and Ramachandra Rao. The name of Satyanarayana Reddy was wrongly mentioned and despite being put on notice, no steps were taken to correct the same. The case was pending for long and the passing of the decree based on a sudden admission is another doubtful circumstance. Despite the lack of pleadings; documentary evidence, a decree was passed on an admission. As per the judgments reported in ***Thangachi Nachial and Another v. Ahmed Hussain Malumiar and Others***¹³ and ***Passarilal Mannoolal vs. Mst. Chhuttanbai and Others***¹⁴, fraud can also be inferred from a reading of all the surrounding circumstances. All the

¹³ AIR 1957 Madras 194

¹⁴ AIR 1958 MP 417

circumstances when viewed together lead this Court to this conclusion. Once it is proved that fraud is played, even the most solemn judicial act can be reopened. The law is fairly well settled in **S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**¹⁵, **A.V. Papayya Sastry and Others. v. Government of A.P. and Others**¹⁶ and lastly **Bhaurao Dagdu Paralkar v. State of Maharashtra and Others**¹⁷.

This Court is, therefore, of the opinion that the conduct of the defendant Nos.1 to 4 in OS.No.184 of 1989 is clearly suspect and with an ulterior motive despite being aware of the fact that M.Satyanarayana Reddy is the owner and that the first defendant in this suit and the plaintiff in OS.No.184 of 1989 did not have any title, a collusive decree was obtained on 22.09.1989 in OS.No.184 of 1989.

In the result, the appellants succeed on both the accounts, (a) they have proved that M.Satyanarayana Reddy was the original owner and consequently through him they have acquired title. (b) they have also proved that decree in OS.No.184 of 1989 is not obtained lawfully and is liable to be cancelled.

One another point that was strongly argued through out the period was the lay out that is sanctioned by the Sarpanch

¹⁵ (1994) 1 SCC 1

¹⁶ (2007) 4 SCC 221

¹⁷ (2005) 7 SCC 605

out of which 40 sale deeds were executed is not a valid lay out and that therefore, the plaintiffs have no right.

It appears from the record and more so particularly the written statement of defendant No.10 also that the Sarpanch of the village was removed for violation of the rules in sanctioning the lay out. The defendants have also filed Exs.B.6 and Ex.B.7 proceedings of the Collector dated 09.03.1994 and the notification issued along with the proceedings to show that the Sarpanch did not act as per the rules and that he was removed from service.

Learned counsel for the respondents strongly relied upon these circumstances and have argued that the plaintiffs did not have any title to the land as the lay out that is sanctioned is an illegal lay out.

Learned counsel for the appellants on the other hand argued that the sanction of the lay out or the failure of the Sarpanch to act according to the rules for sanctioning the lay out will not take away the title of the plaintiffs. This Court notices that even in the order referred to namely Exs.B.6 and B.7, the name of M.Satyanarayana Reddy R/o Thattiannaram Village is mentioned and the Officer concerned noticed that the Sarpanch, who has to collect Rs.18,615/- has only collected Rs.1,000/- leaving behind a short fall of Rs.17,615/-. In addition, the District Collector held that the sanction of the lay out was illegal as the same was not informed to the Director of Town Planning, who was the

authority to sanction a lay out. On these two grounds of failure to inform and failure to collect the requisite fees, the Sarpanch was removed.

This Court agrees with the submissions of the learned counsel for the appellants. The failure to collect the amount as required under the rules for sanctioning the lay out and the failure to inform the Director of Town Planning before sanctioning lay out may be a breach of the relevant Act and regulations, but they do not in any way affect the “title” that is passed in this case. The sanctioning of lay out etc., is done to ensure systematic and planned development of lands. The failure to get a proper lay out does not affect a title to the land. Therefore, this Court holds that the said illegality committed by the Sarpanch and as evidenced by Ex.A.46 will not hurt the plaintiffs “title” to the property.

For all the above reasons, this Court holds that the judgment and the decree passed by the lower Court is not correct and deserves to be set aside. Therefore, this Court holds that issue No.1 is to be held in favour of the appellants/plaintiffs in the lower Court. The decree and judgment in OS.No.184 of 1989 is held to be collusive and is not binding on the plaintiffs. The plaintiffs are entitled to a declaration that they have sought. The plaintiffs 2 to 33 are declared to be the owners. Issue No.2 is for a claim of damages, but the same is not substantiated by any evidence,

therefore, it is held that the plaintiffs are not entitled to damages.

On the other two issues, no arguments were advanced and neither of the counsel placed much reliance on the same. Therefore, this Court also does not wish to say anything on these issues except stating that the State of Andhra Pradesh should have been represented by the Secretary or the District Collector and not by the MRO as pointed out by the lower Court. The State is however a party. Therefore, there is a mis-description as far as the “representative” of the State is concerned. The State was added. Therefore, under Order I Rule 9 of CPC, this Court holds that there was sufficient representation of the State, but on this ground the suit cannot be defeated. The original plaint also shows that the relief against defendant No.10 has also been given up. Therefore, although there is a mis-description, it is not fatal to the suit.

For all the above reasons, the impugned judgment and decree are set aside. The title of the plaintiffs 2 to 33 is upheld and the appeal is allowed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 23.03.2018

Note: L.R. copy be marked.
KLP