

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

APPEAL SUIT No.1294 of 1998

JUDGMENT:

This Appeal Suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful plaintiff, is directed against the decree and judgment, dated 23.04.1996, of the learned Senior Civil Judge, Nuzvid, passed in O.S.No.78 of 1991.

2. I have heard the submissions of Sri *M. Bala Subrahmanyam*,

learned counsel appearing for the appellant, and of

Sri *A.V. Sivaiah*, learned counsel appearing for the respondents 1 to

3. Be it noted that during the pendency of this Appeal Suit, the

respondents 2 & 3, who were formerly minors, were declared as

majors *vide* order, dated 26.02.2018, in I.A.No.1 of 2018. I have

perused the material record.

3. In this Appeal Suit, the parties shall hereinafter be referred to

as the plaintiff and the defendants as arrayed in the original suit, for

convenience and clarity.

4. Since this is a first Appeal Suit and as this Court is the last

Court of fact, it is necessary to refer to the pleadings of the parties.

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

plaintiff is one of the sisters of the 1st defendant. The 2nd and 3rd

defendants are the undivided sons of the 1st defendant. The

defendants 1 to 3 constitute a joint Hindu family. Late Parise

Venkata Kotaiah and late Lakshmi Kantamma are the parents of the

plaintiff and the 1st defendant. They are having sons other than the

1st defendant and daughters other than the sole plaintiff. Lakshmi

Kantamma had stridhana properties. The plaint schedule property viz., item no.1 admeasuring Ac.4.01 cents in R.S.Nos.533/3; and, item no.2 admeasuring Ac.3.00 cents in R.S.No.602 of Cheemalapadu Village, Hamlet of Ramachandrapuram in A.Konduru Mandal of Krishna District, are part of her stridhana properties. Out of the afore-said two items, the first item is a dry land and the second item is a Mango garden. Parise Venkata Kotaiah pre-deceased his wife Lakshmi Kantamma. There was a partition of the joint family properties between Venkata Kotaiah and his sons many years back. Each sharer has been enjoying his share of properties exclusively in his own right. Lakshmi Kantamma, after the death of her husband Venkata Kotaiah, has been mostly residing with her daughters and for some times with her sons at different places as per her wishes. She had considerable properties both movable and immovable and she was fully replenishing her wants from the income she was getting from her properties. Her daughters were treating her with great love and affection and serving her and looking after her needs while she was living with each of her daughters. The mother was also having abundant love and affection towards her daughters and she was more intimate and free with her daughters than her daughters-in-law. During her life time and old age, she was never in need of any money or female help. In the year 1980, Lakshmi Kantamma was living with the plaintiff. At that time, when she fell sick, the plaintiff served her with all daughterly affection. Lakshmi Kantamma was a diabetic. Plaintiff temporarily set up her residence at Machilipatnam for getting her mother treated by a doctor she desired. While so, Lakshmi Kantamma expressed her desire of

vesting limited rights of enjoyment over the plaint schedule properties in favour of the plaintiff, however, reserving life estate with her. Accordingly, she executed a registered deed of gift, dated 10.04.1980, in favour of the plaintiff reserving to herself right of enjoyment during her life time. The plaintiff accepted the said gift and the donor/mother of the plaintiff delivered the deed of gift to the plaintiff. The corresponding earlier documents of title relating to the plaint schedule items were also given to the plaintiff. Lakshmi Kanthamma died, on 07.04.1991. Thereafter, the plaintiff became the absolute owner and person entitled to possession of the plaint schedule property. The 1st defendant, who is residing at Ramachandrapuram village, taking advantage of the fact that the plaintiff is residing at Vijayawada, took illegal possession of the plaint schedule property by trespassing into and occupying the same. The plaint schedule property is capable of fetching an annual minimum net income of Rs.8,000/-. The plaintiff got issued a legal notice, dated 04.07.1991, to the 1st defendant requiring him to deliver the property to the plaintiff and stating that failing which she would have no other option than to take recourse to such legal reliefs to which she is entitled to, through appropriate proceedings. The 1st defendant got issued a reply notice, dated 12.07.1991, with all false allegations. In the said reply notice, it is alleged that the gift deed, dated 10.04.1980, was duly cancelled by the mother, on 14.06.1990; that within six days thereafter she executed her last Will and testament bequeathing the plaint schedule property to the defendants 2 & 3; and, that as such defendants 2 & 3, after the death of Lakshmi Kantamma, became absolute owners of the plaint

schedule property. It was also stated that all the above facts were known to the plaintiff also and that, on 22.04.1991, that is, the day of 'asseervachanam', the said Will was shown to all the relatives including the plaintiff; that the contents were also read over in the presence of all children of Lakshmi Kantamma and relatives; that the alleged gift deed was obtained by misrepresentation and playing fraud on Lakshmikantamma. The said allegations are baseless, false and invented. The alleged document cancelling the gift deed is a void document. The donor has no right to cancel the gift. The said cancellation deed was procured by deceitful means while Lakshmi Kantamma was in a hopeless condition of health and without an opportunity to exercise her wishes or to have proper advice, consultation or to act out of her own will and volition. Lakshmi Kantamma was a signatory. The alleged revocation deed and the alleged Will *ex facie* show that they bear the alleged thumb marks of Lakshmi Kantamma. Therefore, the plaintiff has reasons to believe that the said documents are not executed by Lakshmi Kantamma; and, in any event if the thumb impressions are found to be of hers, then, by all circumstances, they would have been procured from her by over powering her free will, consent and judgment. The revocation deed, cancelling the earlier valid and binding gift deed, dated 10.04.1980, is a void, inoperative and non-affective deed under facts and in law. The dispositions made in the gift deed are irrevocable and unalterable and cannot be set at naught by any subsequent manoeuvres. Under these circumstances, the plaintiff is constrained to file the suit seeking declaration of plaintiff's title and right to possession of the plaint schedule properties, for

consequential relief of eviction of the defendants, their successors-in-interest, their men and agents from the plaint schedule properties, and for mesne profits.

6. The 1st defendant filed written statement. Defendants 2 & 3 adopted the said written statement by filing a memo. The defence of the 1st defendant, in brief, is this:

Except the relationship between the parties, the material allegations in the plaint are all false. This defendant's family is a respected family in A. Konduru Mandalam, Ramachandrapuram village. The plaintiff's father performed the marriage of his children including the plaintiff (except last daughter Sulochana) in a grand manner by giving enormous wealth towards pasupukumkuma. Out of love and affection, plaintiff's father purchased Ac.2.00 cents of land in the name of the plaintiff. Unfortunately, with a dishonest intention to grab the properties of the mother, all the daughters conspired together and fraudulently obtained four alleged gift deeds in their favour in 1980 without explaining the recitals of gift deeds to the mother, by secretly taking her to the District Registrar Office, Machilipatnam, even though Mylavaram Sub-Registrar office, which is situated within 13 KMs, is available. The plaintiff and three sisters kept the execution of alleged gift deeds in dark without intimating to anybody. The alleged four gift deeds including the alleged gift deed, dated 10.04.1980, in favour of the plaintiff were never acted upon and it never saw the light of the day. The contents of the said documents are false and not binding either on the deceased or on this defendant or on the children of this defendant. Having come of know about the fraud played by the plaintiff and her

sisters in 1990, the mother cancelled the said alleged gift deeds including the alleged gift deed in favour of the plaintiff by executing a regular registered cancellation deed, dated 14.06.1990, and clearly stated the fraud played by the daughters. Further, the alleged gift deed, dated 10.04.1980, is a conditional document and the conditions therein were not fulfilled. Hence, the executant is at liberty to cancel the document. Under law, though the said document is styled as 'gift deed', the said document is only a Will and not a gift. The cancellation of the said deed is justified both under facts and in law. The plaintiff has more affection towards the property of the mother rather than the mother. This defendant, being an affectionate son, looked after the welfare of the mother by giving all comforts and necessary treatment as a dutiful son. Lakshmi Kantamma was taken by this defendant to number of doctors for her treatment as she was subjected to deadly infections to leg and paralysis; and, this defendant provided good treatment at Prasanthi Nusing Home, Vijayawada, Praja Vaidyasala, Mylavaram, by spending his money. After the cancellation of the alleged gift deeds, Lakshmi Kanthamma executed her last registered Will and testament, dated 20.06.1990, in a sound and disposing state of mind bequeathing plaint schedule property along with other properties in favour of the defendants 2 & 3 and the wife of this defendant with absolute rights and creating life interest on this defendant and his brother, Nageswara Rao. The Will was registered in Sub-Registrar Office, Mylavaram, on 29.06.1990. The plaintiff has no right to claim any declaratory or possessory relief over the plaint schedule properties. The plaintiff cannot claim the subject property on the

basis of fraudulent and concocted document said to have been executed by the mother of the plaintiff, on 10.04.1980. As the writing capacity of the hand of Lakshmi Kantamma is arrested due to illhealth, she affixed her thumb impressions. The plaintiff wants to magnify the said aspect as a fraud. Ever since 1972, the plaint schedule property is in possession and enjoyment of this defendant. He has been cultivating the same as a tenant of his mother by regularly paying the maktha @ Rs.3,000/- per year. The taxes were also being paid by this defendant. Under Tenancy law, the tenancy rights of this defendant cannot be disturbed by the plaintiff by filing frivolous suit. The suit is liable to be dismissed *in limine*. After the obsequies of the mother, on the day of asseervachanam, the cancellation deed and the Will were shown to all the relatives including the plaintiff and the contents thereof were also read over. Knowing fully well all the facts stated above, the plaintiff filed the suit without any *bona fides* only to grab the properties of this defendant. Under the alleged gift deed, dated 10.04.1980, no right or interest or title whatsoever are vested upon the plaintiff. The plaintiff has no interest at all in the plaint schedule property. Lakshmi Kantamma died in the house of this defendant. This defendant and his wife nursed her very carefully. This defendant has also been looking after his brother, who is insane, in lucid intervals. The allegations that the daughters were treating the mother with great love and affection and looking after her needs etcetera are absolutely false. Lakshi Kanthamma did not reside in the house of daughters at any time except at times of paying formal visits during functions and festivals. This defendant reasonably believes that the plaintiff

might have fraudulently obtained the alleged gift deed in her favour taking undue advantage of Lakshmi Kantamma's formal visit to her house in 1980. Lakshmi Kantamma voluntarily and with free will and in a sound and disposing state of mind executed the cancellation deed, dated 14.06.1990, and the Will, dated 20.06.1990. In view of the cancellation deed, the alleged gift deed, dated 10.04.1980, has become invalid and unenforceable. Hence, the suit may be dismissed with costs.

7. Based on the above pleadings, the trial Court framed the following issues for trial.

1. Whether the plaintiff is entitled for declaration of title of the suit property?
2. Whether the plaintiff is entitled to possession of the suit land from the defendant?
3. Whether the registered gift deed, dated 10.04.1980, executed in favour of the plaintiff is valid and binding on the defendants?
4. Whether the gift deed, dated 10.04.1980, in favour of the plaintiff is not valid in view of the registered cancellation deed, dated 14.06.1990?
5. Whether the plaintiff is entitled to mesne profits as claimed in the suit?
6. To what relief?

[Reproduced verbatim]

8. At trial, plaintiff and her supporting witness were examined as PWs1 & 2 and exhibits A1 to A3 were marked on the side of the plaintiff; 1st defendant and his supporting witness were examined as DWs1 & 2 and exhibits B1 to B17 were marked on the side of the defendants.

9. On merits and by the judgment impugned in this appeal suit, the trial Court dismissed the suit of the plaintiff. Therefore, the plaintiff is before this Court.

10. Learned counsel for the plaintiff contended as follows:

The trial Court ought to have held that exhibit A1, as could be seen from its contents, is a gift settlement deed. The trial Court should have endeavoured to interpret the document with a view to infer the intention of the executant at the time of execution and should have taken into account all the attending and surrounding circumstances before rejecting the plaintiff's case that the document in-fact is a gift. The trial Court ought to have seen that in the defence of the defendants also, this document was referred to as gift deed and it is also stated that it is one of the four gift deeds executed by the mother, Lakshmi Kantamma. According to the further defence, Lakshmi Kantamma even executed a deed of cancellation of gift cancelling the gift deed in question. The said defences indicate that the defendants are also admitting that the deed in question is a gift deed and not a Will and that even Lakshmi Kantamma, the executant, treated it as a gift deed. From the intention and the circumstances, it is clear that the deed in question is a gift settlement deed. The trial Court ought to have seen that the fact that the gift deed in question is engrossed on stamps of the required value and was duly registered also suggests that the said document is a gift deed and not a Will. The trial Court ought to have seen that as no power of revocation is reserved by the executant while executing the gift deed in the instant case, the document could only

be held as a gift and not a Will. The trial Court failed to take note of the fact that immediately on the execution of the gift deed the ownership of the lands vested in the donee and that the possession was obtainable under the said deed after the donor's death and, therefore, the said further fact with regard to possession is insignificant and would not in any way dilute the intention of the donor to part with the property by way of gift settlement. The trial Court was in error in ignoring the decisions cited before it although they directly cover the subject issue. The trial Court erred in concluding that the document is a Will. The trial Court totally ignored the contents of the document and also the fact that title had immediately passed and it is only the possession which was deferred to a later date. The trial Court, from the surrounding circumstances, ought to have gathered the intention of the donor and also the fact that only gift deed would be executed by paying the necessary stamp duty and not a Will. The trial Court was in error in basing its conclusion on presumptions and surmises and was clearly in error in not assessing the nature of the document directly and by taking into account the tests laid down by various High Courts and the Supreme Court. The trial Court while attempting to resolve the dispute ought to have also considered the plea put-forth by the defendants that a cancellation deed was executed, which, in-fact, is in hue as no such cancellation deed was filed or such a plea was got substantiated. In the absence of a counter claim or a separate suit, the trial Court ought not to have given any findings on the Will put forth by the defendants.

10.1 In support of the contentions, learned counsel relied upon the following decisions.

1. Renikuntla Rajamma (D) by LRs v. K. Sarwanamma¹
2. Namburi Basava Subrahmanyam v. Alapati Hymavathi and others²
3. Kapuganti Jagannadha Gupta v. District Registrar³
4. Haji Mohammed Ahmed v. State of Andhra Pradesh and others⁴

11. On the other hand, learned counsel for the defendants supported the judgment of the trial Court and, *inter alia*, contended as follows: - 'The recitals in the gift deed make it apparent that it is not a deed of gift but it is only a Will. The trial Court, therefore, rightly held that the alleged gift deed is only a Will. In any view of the matter, the donor-Lakshmi Kantamma executed a cancellation deed and, therefore, the gift deed is no longer valid and enforceable. Later, she executed a Will in a sound and disposing state of mind bequeathing the property gifted by the gift deed, that is, the plaint schedule property and her other properties in favour of the defendants 2 & 3 and the wife of the 1st defendant. The said Will is her last Will. Therefore, the contentions of the plaintiff are devoid of merit. The well considered judgment of the trial Court does not warrant interference.'

11.1 He relied upon the decision in G.Narasimhulu Chetti and others v. S. Pandurangaiah Chetti and others⁵.

¹ AIR 2014 Supreme Court 2906

² AIR 1996 SC 2220

³ 2012 (3) ALD 404

⁴ 2012(2) ALD 230

⁵ 1995(3) ALT 193 (DB)

12. Having regard to the facts and contentions, it is to be first noted that the plaintiff contended as follows: 'Lakshmi Kantamma executed exhibit A1, registered deed of gift settlement, dated 10.04.1980, in favour of the plaintiff, who is one of her daughters. The said gift settlement deed was executed in respect of the plaint schedule property, which is admittedly one of her stridhana properties, and that under the said document she reserved life estate for herself with limited rights of enjoyment without any rights of alienation and further created vested rights *in praesenti* in favour of the plaintiff. She died, on 07.04.1991. Therefore, on the execution of the said deed and the acceptance of the gift settlement by the plaintiff, the right, title and interest in the property vested immediately and irrevocably in the plaintiff though as per the recitals in the deed, the possession of the property was obtainable by the recipient after the death of the executant, Lakshmi Kantamma, as she retained life estate with limited rights. The documents relating to the property covered by the deed were also given to the plaintiff. After the death of Lakshmi Kantamma, the plaintiff became absolute owner and possessor by virtue of the said exhibit A1. Taking advantage of the absence of the plaintiff in the village, the 1st defendant trespassed into the plaint schedule properties. Exhibit A1, gift settlement deed, is not affected by the cancellation deed said to have been executed by Lakshmi Kantamma, the executant of exhibit A1 as any such deed of cancellation unilaterally cancelling the said exhibit A1, deed of gift settlement, even if true, is void. The contention of the defendants that exhibit A1 is a Will and not a deed

of gift settlement is false and untenable in view of the recitals in exhibit A1 and the intention of the parties, facts & circumstances.'

13. The defendants contend that exhibit A1, even if true and valid, is not a deed of gift or settlement and that it is a Will and that in any view of the matter, exhibit A1 was cancelled by Lakshmi Kantamma by executing a deed of cancellation, dated 14.06.1990, and that later Lakshmi Kantamma executed exhibit B1, registered Will, dated 20.06.1990, in a sound and disposing state of mind bequeathing all her properties including the plaint schedule property covered by exhibit A1 in favour of the defendants 2 & 3 and the wife of the 1st defendant and that in view of the cancellation deed and the Will deed, the plaintiff's claims are untenable.

14. At the hearing, it is fairly submitted by the learned counsel for both the sides that the success of either of the parties hinges on the only issue as to whether exhibit A1 is a deed of Will or a deed of gift settlement.

15. Before proceeding further, it is apt to note the following aspect: Though Lakshmi Kantamma was stated to have executed a cancellation deed (which is not filed and exhibited) cancelling exhibit A1, the said deed of cancellation unilaterally executed by Lakshmi Kantamma does not in any way affect exhibit A1 in the event this Court eventually holds that exhibit A1 is a gift settlement deed and not a Will as the law is well settled that such unilaterally executed deed of cancellation cancelling a deed of gift is void. This settled legal position is reinforced by the decision in **Kapuganti Jagannadha Gupta** (3 supra). In the said decision, this Court followed the

decision of the Supreme Court in **Thota Ganga Laxmi v. Government of Andhra Pradesh** [2012 (1) ALD 90 (SC)] wherein the Supreme Court held that when a valid transfer is brought into existence in accordance with law, it cannot be set at naught at the instance of one of the parties to it. Further, in the decision in **Haji Mohammed Ahmed** [4 supra], this Court following the ratio in the afore-stated decision of the Supreme Court also held that the observations of the Supreme Court that if any sale deed is required to be cancelled, the only remedy is by way of a civil suit for cancellation but no cancellation deed can be unilaterally executed or registered made in the context of sale deeds would equally apply to unilateral cancellation of gift deeds also and that the person intending to cancel the gift deed has to invoke the jurisdiction of the competent civil Court for cancellation of the said deed. Thus, based on the legal position obtaining, it is to be restated that in the event this Court holds that exhibit A1 is a gift settlement deed and not a Will, the cancellation deed said to have been executed by Lakshmi Kantamma cancelling exhibit A1 being void does not affect the validity and binding nature of exhibit A1. Thus, if exhibit A1, deed of gift settlement, is to be held to be valid and binding, then, exhibit B1-Will said to have been executed by Lakshmi Kantamma, even if true, will not be valid insofar as the property covered by exhibit A1, the deed of gift settlement, as after execution of the said document, Lakshmi Kantamma having divested herself of her title over the property covered by the said deed is not entitled to execute a Will like exhibit B1 and will away the very same property under any Will.

16. In view of the above prefatory discussion, it is perceptible that the questions involved in this *lis* narrow down to the following first vital point and consequential points.

1. Whether exhibit A1 is a deed of gift settlement as being contended by the plaintiff or a deed of Will as being contended by the defendants? Whether the deed of cancellation cancelling exhibit A1 and the Will deed, exhibit B1, said to have been executed by Lakshmi Kantamma would in any way affect exhibit A1 in the event this Court holds on merits of the matter that it is a deed of gift settlement and not a Will?

2. Whether the plaintiff is entitled to a decree declaring her right and title over the plaint schedule property and for consequential relief of recovery of possession after evicting the defendants, their men, agents and successors in interest therefrom?

3. Whether the plaintiff is entitled to a decree for recovery of mesne profits from the date of the suit till date of recovery of possession?

4. Whether the decree and judgment of the trial Court holding that exhibit A1 is a Will is unsustainable under facts and in law?

5. To what relief?

17. Now the above points which fall for determination are taken up.

18. POINT Nos.1 to 3:

Both the learned counsel, in view of the ratios in the decisions in **G. Narasimhulu Chetti** [5 supra], **Namburi Basava Subrahmanayam** [2 supra] and **Renikuntla Rajamma** [1 supra], fairly submitted that the decision as to whether exhibit A1 is a deed of gift settlement or a Will depends upon not merely on its nomenclature, but, on the recitals in the document; and that the ultimate test is whether the interest conveyed under the said document is irrevocable or not; and that the Court has to find out as to whether the document confers any interest in the property *in praesenti* so as to take effect *intra vivos* and whether an irrevocable

interest thereby, is created in favour of the recipient or whether the executant intended to transfer the interest in the property only on the demise of the settler/executant; and that the recitals in the document as a whole, the intention of the executant and the acknowledgment thereof by the parties are conclusive.

18.1 In view of the undisputed legal position, now this Court shall turn to exhibit A1 and has to critically examine its recitals in whole and adjudge its nature by having regard to the settled legal position.

The recitals in exhibit A1, which are in Telugu language, read as under:





At the end of the document, that is, after the schedule, it is further recited as follows:

18.2 Both the learned counsel, having read the above recitals in the document, urged that the recitals support their respective stands. Be that as it may.

18.3 A plain, wholesome and critical consideration of the recitals in exhibit A1 makes manifest the following aspects:

(i) The executant is the mother. The recipient is her third daughter.

(ii) With the desire to give the property (described in the schedule annexed to the document) to the recipient after the life time of the executant, the executant had relinquished/given up her rights over the said property and conferred the same on the same day on the recipient while retaining possession of the property to enjoy the usufruct for her life by paying taxes, however, without any rights of alienation.

(iii) The recipient shall take possession of the property after the death of the executant and enjoy the said property with trees, water resources and treasure troves along with all the rights and with absolute powers of disposition by way of gift, mortgage and sale etcetera.

(iv) Nobody shall raise an objection or dispute for such enjoyment of the property by the recipient.

(v) The executant executed exhibit A1 having assured and having made the recipient to believe that the schedule mentioned property is not in any manner alienated and that all her properties are either stridhana properties given to her

by her parental family or properties acquired from the income from her said properties and that the property covered by the deed is her absolute separate property and that over the said property she alone has got absolute rights to gift or sell etcetera.

(vi) Consideration is love and affection, the executant had for her daughter/recipient, who served her during her old age by rendering necessary services.

(vii) Necessary relinquishment forms are submitted along with the deed for mutation of the property in the name of the recipient.

(viii) The property is not assigned by the Government and it is not in the Government's list of assigned properties.

(ix) The deed is a settlement deed (dakhalu dasthaveju) executed with the consent of the executant.

18.4 Thus, from the recitals in exhibit A1 it is apparent that the executant's desire to give the property to the recipient is coupled with the relinquishment of rights of the executant over the property and simultaneous conferment of the same on the same day on the recipient with absolute rights; and, the retention of possession of the property by the executant is only to enjoy the usufruct for life without any rights of alienation. From the last recital, which appears after the narration of the schedule of the document, it is evident that exhibit A1 is a deed of settlement (dakhalu dasthaveju) and that the same was executed with the consent of the executant. Further, all the recitals, when read harmoniously and wholly, would indicate that the document conferred interest in the property *in*

praesenti so as to take effect *intra vivos* and that by virtue of the document irrevocable interest in the property is created in favour of the recipient and that no right of revocation is reserved. Thus, the combined reading of the recitals in exhibit A1 clearly indicate that the deed is a deed of settlement and it is to take effect on the day of its execution and that the rights created there under are to take effect from that day. It is apt to note that the recitals in exhibit A1, which are referred to supra, generally do not find place in a testament or a Will. Further, under a testament, no interest *in praesenti* would be conferred irrevocably; and in a Will there would generally be a recital that the bequests in the Will shall come into operation after the death of the testator; and in a Will the testator would retain a right to cancel the Will or alter the recitals in future. Such recitals are conspicuously absent in exhibit A1. Further, a Will is not a compulsorily registerable document. Even if a testator chooses to register a Will, no stamp duty would be paid on the value of the properties bequeathed under the Will as no such stamp duty is collectable on a deed of Will. Admittedly, exhibit A1, which is a 'dakhalu dasthaveju' (deed of settlement), was engrossed on non judicial stamp papers of the value of Rs.570/-. Thus, necessary stamp duty payable on the value of the property, which is the subject matter of the gift settlement deed, was paid and the document was duly registered. Under a Will, no consideration for the bequests is necessary. But, in exhibit A1, as the executant desired it to be a gift settlement deed, she made a specific mention that the consideration is love and affection towards her 3rd daughter, the recipient. All the recitals when read together and considered in

harmony would indicate that on the date of execution itself, the executant created right, title and interest in the property in favour of her 3rd daughter, the recipient; but it was stated that the possession of the property shall be taken by the recipient only after the demise of the executant. Thus, the recitals in exhibit A1 that are beyond pale of controversy would signify that the executant created life interest in herself in the property and vested remainder in favour of the recipient and that the executant while divesting herself of the title to the property and vesting the title on the recipient retained estate for enjoyment during her life time without any right of alienation. As a result, it is not in doubt that the executant created right and interest *in praesenti* in favour of her 3rd daughter, who is the recipient, and, however, delivery of possession of the property was postponed till after the demise of the executant. There is no dispute with regard to the legal position that any executant while divesting herself to the title to the property could create life interest in her and vested remainder in favour of the recipient. For all the above reasons, the document could be construed as a gift settlement deed but not as a Will.

18.5 Having dealt with the recitals and the purport & import of the same, it is now necessary to turn to the intention and surrounding circumstances. Admittedly and even according to the defence, the executant executed four documents in favour of her four daughters in respect of different extents of her stridhana property. Exhibit A1 is one of such four documents. Four such documents were more or less simultaneously executed by Lakshmi Kanthamma in favour of her four daughters is proof positive that the

documents are gift settlement deeds. Had the executant intended to execute a Will, she would have executed only one document viz., Will and not four deeds all in the nature of exhibit A1. According to the defence, she even executed a deed of cancellation though such deed of cancellation is not filed and exhibited.

18.6 Further, it is relevant to note that it is admitted that the property covered by exhibit A1 is not the only property of the executant, Lakshmi Kantamma, and that she is also having other properties. In-fact, the defendants contend that she executed exhibit B1-Will in respect of all her properties including the plaint schedule properties covered by exhibit A1. Thus, it is clear that Lakshmi Kantamma had many properties including the plaint schedule properties, which are the subject matter of exhibit A1. It is trite to observe that generally a Will will be executed in respect of all the properties of the testator, but, not in respect of one or two properties. Even in a case where the Will is executed in respect of some properties of the testator by leaving the other properties, a mention accordingly would generally be made in the Will. The very fact that Lakshmi Kantamma, who was having many properties executed exhibit A1 in respect of two items of her property is also a factor which portrays that it is a gift settlement deed and her desire is to execute a gift settlement deed and not a Will.

18.7 Before concluding the discussion on the point, it is to be noted that the facts of the case in the decision of the Supreme Court in **Namburi Basava Subrahmanyam** (2 supra) are nearly akin to the facts of the instant case in view of the commonality between the

recitals in exhibit B1 therein and the recitals in exhibit A1 herein. Therefore, the ratio in the said decision, which squarely applies to the facts of the case, fortifies the view of this Court that exhibit A1, in question is a gift settlement deed and not a Will.

18.8 In the preface, this Court already noted that in the event that this Court on merits of the matter finds that exhibit A1 is not a Will and that it is a gift settlement deed, then the unilaterally executed cancellation deed, if any, does not affect exhibit A1 in any manner. In that view of the matter, the contention based on unilateral cancellation of exhibit A1 is of no avail to the defendants. Further, in view of the finding that exhibit A1 is a deed of gift settlement and not a Will and that it is binding on the parties, exhibit B1-Will said to have been executed by Lakshmi Kantamma, even if true, will not be valid insofar as the property covered by exhibit A1, that is, the plaint schedule properties, as after the execution of the said exhibit A1 document, Lakshmi Kantamma having divested herself of her title to the property covered by the said deed became disentitled to execute the Will-exhibit B1 and will away the very same property under the said Will. Therefore, the bequests in the Will deed, exhibit B1, even if true would be void insofar as the property covered by exhibit A1-gift settlement deed. In that view of the matter, either the deed of cancellation, which is not filed, or the Will deed, exhibit B1, do not affect the rights conferred on the plaintiff by virtue of exhibit A1.

18.9 On the above detailed analysis, this Court holds that exhibit A1 is a deed of gift settlement and that, therefore, the deed of

cancellation cancelling exhibit A1 and the Will deed-exhibit B1 said to have been executed by Lakshmi Kantamma, would in no way affect the validity and binding nature of exhibit A1. As a result this Court holds that the plaintiff is entitled to a decree declaring her right and title over the plaint schedule property and for consequential relief of recovery of possession after evicting the defendants, their men, agents and successors in interest therefrom and also mesne profits. Points 1 to 3 are accordingly answered.

19. POINT No.4:

I have gone through the judgment of the trial Court. By not reading the whole document, exhibit A1, and by not harmoniously considering the recitals therein and by not following the cited judicial precedents, which squarely applied to the facts of the case, and by getting carried away by certain isolated recitals in exhibit A1 and the circumstance that delivery of possession was postponed till after the demise of the executant, the trial Court erroneously held that exhibit A1 is a Will. The trial Court neither properly appreciated the facts nor the nature of exhibit A1 and further failed to follow the ratio in the decision of the Supreme Court in **Namburi Basava Subrahmanyam** [supra] and arrived at erroneous conclusions, which in the considered view of this Court, are unsustainable. For the afore-stated reasons and findings recorded under point nos.1 to 3, this Court accordingly holds that the judgment and decree of the trial Court, which are unsustainable, brook interference. Point is accordingly answered in favour of the plaintiff and against the defendants.

20. Before parting, there is one more incidental aspect to be considered. Though this aspect of the matter was not raised and urged before this Court, it is pertinent to note that one of the defences of the defendants is that the 1st defendant is inducted by the mother into the plaint schedule property as a tenant. In that view of the matter, a question would arise as to whether the civil Court would be having jurisdiction in view of the provisions of the Andhra Pradesh (Andhra Area) Tenancy Act. It is apposite to note that the suit is filed seeking mainly the relief of declaration and a decree was sought for declaring the right, title and possession of the plaintiff over the plaint schedule properties. The tenancy Tribunal admittedly is not having jurisdiction to grant the above relief. No doubt, the jurisdiction of the tenancy Tribunal in respect of matters provided under the Act is exclusive. But, where the tenancy Tribunal cannot grant the afore-stated relief that was claimed in the instant suit and when the suit is filed for the said relief as well as eviction, a comprehensive suit of the said nature is maintainable before a civil Court, in the considered view of this Court. This view of this Court finds support from the ratio in the decision in **Satya Pramoda Tirtha Swamula Varu v. M. Gunnayya** [AIR 1982 AP 24]. It has been held in the said judgment thus: - It is now well established by a catena of decisions of this Court reported in *Chigurupati Venkatasubbaiah v. Ravi Punnayya* 1957 (2) An W R 204; *Mahendrada Ramayya v. Mahendrada Govindu* 1966 (1) An W R 352; and *Donti Reddy venkata Reddy v. Bhimavarapu Bhushireddy* 1970 (2) An W R 226 (FB) that when only a part of the relief claimed can be granted by a tenancy Tribunal, the Civil Court had

jurisdiction to entertain the suit and the Court below was in error in holding that the civil Court had no jurisdiction to entertain the suit.' In the light of this settled legal position this Court holds that the Civil Court is having jurisdiction to also grant the consequential relief of eviction claimed in the suit.

21. POINT No.5:

In the result and for the reasons afore-stated and the findings recorded under points 1 to 4 supra, the appeal suit is allowed without costs and the decree and judgment, dated 23.04.1996, of the learned Senior Civil Judge, Nuzvid, passed in OS.No.78 of 1991 are hereby set aside. As a sequel, the said suit of the plaintiff is decreed with costs, as prayed for, declaring the plaintiff's right and title over the plaint schedule property and consequentially directing the defendants to deliver vacant possession of the same to the plaintiff and account for the profits realised from the plaint schedule property from the date of the suit till date of delivery of possession of the same. It is made clear that the mesne profits shall be determined, as per procedure, on an application which the plaintiff may file pursuant to the instant decree and judgment. The defendants are granted three months time from the date of receipt of a copy of the judgment of this Court for vacating and delivering vacant peaceful possession of the plaint schedule property to the plaintiff. It is needless to state that on failure of the defendants so to do, the plaintiff shall be at liberty to obtain delivery of vacant possession of the plaint schedule property in accordance with the procedure established by law.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

04.04.2018

Note: L.R. copy to be marked.

[B/o]

Vjl

