

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

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**Appeal Suit No.1075 of 2004**

**Between:**

**Brughumalla Seethamahalakshmi**

**... Appellant**

**AND**

**Brughumalla Raghunayaka Gupta and another**

**... Respondents**

**DATE OF JUDGMENT PRONOUNCED: 03.07.2018**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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1. Whether Reporters of Local Newspapers  
may be allowed to see the judgments? Yes / No
  2. Whether the copies of judgment may be  
marked to Law Reporters / Journals? Yes / No
  3. Whether His Lordship wish to  
see the fair copy of the Judgment? Yes / No

**U. DURGA PRASAD RAO, J**

**\* THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**+ Appeal Suit No.1075 of 2004**

**% 03.07.2018**

**Between:**

Brughumalla Seethamahalakshmi.

... Appellant

AND

Brughumalla Raghunayaka Gupta and another

... Respondents

**! Counsel for Appellant** : Sri D.V. Sitharam Murthy

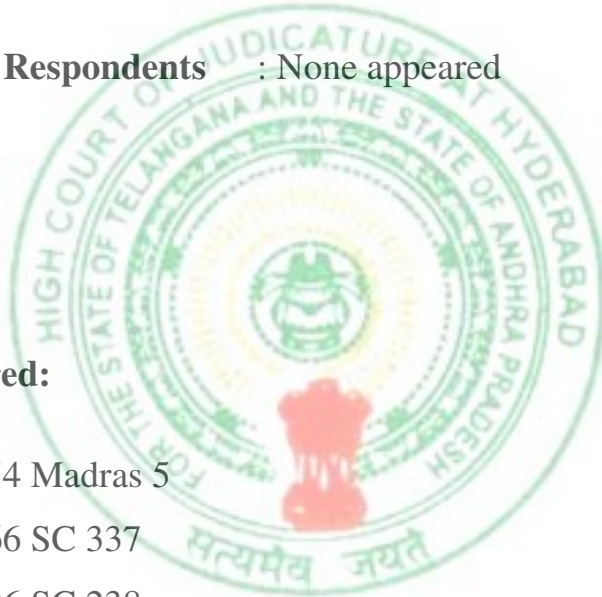
**^ Counsel for Respondents** : None appeared

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) AIR 1954 Madras 5
- 2) AIR 1966 SC 337
- 3) AIR 1996 SC 238
- 4) (2011) 3 SCC 556
- 5) AIR 1995 SC 2145
- 6) (1974) 1 SCC 3



**HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**APPEAL SUIT No.1075 of 2004**

**JUDGMENT:**

This appeal is preferred by plaintiff aggrieved by the decree and judgment dated 24.09.2001 in O.S.No.55 of 1995 on the file of Senior Civil Judge, Chirala, whereby and whereunder the learned Judge dismissed the suit for setting aside the relinquishment deed dated 15.03.1971 and to direct the defendants to deliver possession of suit schedule property.

2) The parties in the appeal are referred as they stood before the Trial Court.

3) The factual matrix of the case is thus:

a) Plaintiff and 1<sup>st</sup> defendant are wife and husband. Plaintiff's case is that she purchased the suit schedule property from Achukolu Raghavaiah under a registered sale deed dated 24.06.1967 with the money given by her parents towards 'Pasupu Kumkuma'; the 1<sup>st</sup> defendant had aversion towards her and necked out from the marital house. The 1<sup>st</sup> defendant filed divorce petition O.P.No.17 of 1990 on the file of Subordinate Judge, Chirala for dissolution of marriage. While the matter stood thus the 1<sup>st</sup> defendant, just a week prior to marriage of their eldest daughter—Chandra Prabhavathi (2<sup>nd</sup> defendant), informed plaintiff that they have to mortgage the suit schedule property to meet

the marriage expenses and made her to believe his words and played fraud and obtained registered relinquishment deed on 15.03.1971.

Hence, the suit.

b) The 1<sup>st</sup> defendant filed written statement. While denying the plaint averments, he pleaded that suit is barred by limitation, as the same ought to be filed within three years from the date of registration whereas the suit was filed 27 years after its execution inspite of plaintiff having full knowledge about execution of the document. The plaintiff filed M.C.No.10 of 1990 on the file of Additional Munsif Magistrate, Chirala for maintenance wherein she averred that at the time of marriage of eldest daughter in 1971, 1<sup>st</sup> defendant beat her and coerced her to execute the document. Quite contrary to the above stand, she deposed that at the time of marriage of their eldest daughter the 1<sup>st</sup> defendant threatened her that he would not sit at the marriage unless the house was kept in his name. The house property was purchased by him with his own earnings and he himself paid the sale consideration to the vendor and therefore, the plaintiff has no right over the suit property. The plaintiff began to live with Kondaiah openly so, he filed divorce petition which is pending. The 1<sup>st</sup> defendant orally gifted the suit property to his eldest daughter—Chandra Prabhavathi towards 'Pasupukumkuma' on 16.07.1986 and delivered possession and also executed a registered settlement deed dated 17.05.1993.

c) D.2 filed written statement in similar lines.

d) Basing on the above pleadings, the trial Court framed the following issues for trial:

- 1) Whether the plaintiff is entitled for declaration of her right and title?
- 2) Whether the suit claim is barred by limitation?
- 3) To what relief?

**Additional issue framed on 29.07.2000.**

Whether the 2<sup>nd</sup> defendant is entitled for the suit property by way of oral gift deed dated 16.07.1986 and also under registered settlement deed dated 17.05.1993 as prayed for?

The following issues have been recasted on the material available on the file of this Court are as follows:

- 1) Whether the relinquishment deed dated 15.03.1971 in favour of Bhrugumalla Raghunayaka Gupta is true, valid and binding on the plaintiff?
- 2) Whether the suit claim is barred by limitation?
- 3) Whether the 2<sup>nd</sup> defendant is entitled for the suit property by way of oral gift deed dated 16.07.1986 and also under settlement deed dated 17.05.1993 as prayed for?
- 4) To what relief?

e) PWs.1 to 3 were examined and Exs.A1 to A31 were marked on behalf of plaintiff. On behalf of defendants, DWs.1 and 2 were examined and Exs.B1 to B33 were marked.

f) The trial Court in its judgment observed that PW1 (plaintiff) failed to establish that sale consideration under Ex.A1 was paid by her and DW1 (1<sup>st</sup> defendant) played fraud and obtained Ex.A2—relinquishment deed under the guise of mortgage deed. The trial Court further observed that suit was barred by limitation as it was not filed within three years from the date of knowledge and ultimately dismissed the suit.

Hence the appeal by plaintiff.

4) Heard arguments of Sri D.V.Sitarama Murthy, learned Senior Counsel for appellant. None appeared for respondents.

5) Severely fulminating the judgment, learned Senior Counsel Sri D.V. Sitarama Murthy, would argue that the trial Court grossly erred in dismissing the suit holding that the plaintiff failed to prove the fraud committed by D1 on the plaintiff in obtaining Ex.B4—relinquishment deed.

a) He would firstly argue that the suit property in fact was purchased by the plaintiff with the amount given by her parents towards 'Pasupu Kumkuma' and not by the defendant as he had no financial capacity and on the other hand he was pulling on the days by securing loans from the villagers which is evident from the various pro-notes executed by him which were marked as exhibits. He thus vehemently argued that the suit property is not a Benami property in the hands of the plaintiff. Even if it is assumed to be so, D1 cannot claim it as such in the light of provisions

of Benami Transactions (Prohibition) Act, 1988 (for short “Benami Act”).

b) Nextly, he would argue, if it is approved that the property is the self-acquisition of the plaintiff, the same cannot be conveyed through a relinquishment deed. In expatiation, he would submit, generally a relinquishment deed would be executed by one of the co-sharers of the property relinquishing his share in the aforesaid property in favour of other co-sharers. That being not the case here and on the other hand plaintiff being the exclusive owner of the suit property, the conveyance of the property through Ex.A2—relinquishment deed is not valid in the eye of law. He relied upon the following decisions.

1. **Senthathikalai Pandiya Channathambiar and others vs. Varaguna Rama Pandia Chinnathambiar and another**<sup>1</sup>
2. **Thayyil Mammo and another vs. Kottiath Ramunni and others**<sup>2</sup>

c) Thirdly, he would submit, Ex.A2—relinquishment deed is nonest in the eye of law mainly for the reason that the same was hit by the fraud committed by D1. Representing that he would mortgage the suit house to secure money for performing the marriage of D2, D1 took the plaintiff to Sub-Registrar’s Office, Chirala and obtained Ex.B4—relinquishment deed. Learned Senior Counsel sought to project the act of D1 as intrinsic fraud committed on the plaintiff. He would submit, the plaintiff being an illiterate housewife, naively believed the version of

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<sup>1</sup> AIR 1954 Madras 5

<sup>2</sup> AIR 1966 SC 337

her husband and executed Ex.B4 under misconception that the document which she executed was only a mortgage deed. The evidence of PWs.1 to 3 would manifest the wicked deed of the defendant. Though these witnesses emphatically deposed about the nefarious act of defendant, without there being any plausible reason the trial Court disbelieved their version and held as if the plaintiff failed to prove the fraud and dismissed the suit.

d) Finally, he argued the trial Court dismissed the suit also on an another erroneous finding that the suit was barred by limitation as the plaintiff failed to file the suit within three years from the date of execution of Ex.B4, despite plaintiff's emphatic plea that she came to know the fraud committed by D1 only in 1990 when she was driven out of the suit house.

6) In the light of above argument, the points that arise for consideration in this appeal are:

- 1) Whether 1<sup>st</sup> defendant is estopped from contending that the suit property was purchased by him as benami in favour of plaintiff in view of provisions of Benami Act?
- 2) If point No.1 is held negatively, whether 1<sup>st</sup> defendant could establish that he purchased the suit property in favour of plaintiff only as a benami but not for her benefit?
- 3) Whether plaintiff could by cogent evidence establish the fraud allegedly committed by D1 in obtaining Ex.A2 (Ex.B4)—relinquishment deed dated 15.03.1971?
- 4) Whether the suit is filed within the period of limitation?
- 5) To what relief?

7) **POINT No.1**: It is the case of the plaintiff that she purchased the suit schedule property under Ex.A1—sale deed dated 24.06.1967 with the money given to her by her parents towards Pasupu Kumkuma. In contrast, D1 would contend that he purchased the suit property by paying sale consideration to the Vendor—Achukolu Raghavaiah and it is preposterous to plead that the plaintiff purchased with the amounts given by her parents. She was never in possession of the suit property in her own right. Therefore, he obtained Ex.A2—relinquishment deed from her. Later he gifted the suit property to D2 who is his eldest daughter on 16.07.1986. Be that it may, the contention of learned counsel for appellant/plaintiff is that the suit property is the absolute property of plaintiff and D1 cannot contend it to be a benami in view of provisions of Benami Act.

8) In this context, certain relevant provisions of Benami Act and case law need to be discussed to know whether 1<sup>st</sup> defendant can take benami plea or not.

a) Benami Transactions (Prohibition) Act, 1988 (Act 45/1988) came into force w.e.f. 05.09.1988. However, as per Section 1 (3) of the Act, certain Sections i.e. 3, 5 and 8 came into force at once and the remaining provisions of the Act came into force w.e.f. 19.05.1988.

b) Section 2(a) defines “benami transaction” means any transaction in which property is transferred to one person for a consideration paid or provided by another person. The above section would tell us that if consideration was paid by one person to obtain the property in the name

of another person, the said transaction would be regarded as benami transaction.

c) Then, Sections 3 and 4 are germane for our discussion. Section 3 reads thus:

**“Section 3: Prohibition of benami transactions—**

(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to—

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a—

(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996.

(ii) participant as an agent of a depository.

**Explanation.**—The expressions “Depository” and “Participants” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.”

To sum up, Section 3 exhorts that entering into benami transaction after the advent of the Act is an offence. One of the exceptions is the purchase of property by a person in the name of his wife or unmarried daughter with a presumption that the said purchase

was made for the benefit of his wife or unmarried daughter. Since the presumption is rebuttable, a pertinent question that arises is, whether a person who purchased the property in the name of his wife or unmarried daughter either prior or subsequent to the advent of Benami Act can take a plea in the plaint or written statement that such purchase was not for the benefit of his wife/daughter and it was purchased only as a benami and he himself is the real owner. The answer lies in Section 4 and also in its judicial interpretation. Section 4 reads thus:

**Section 4. Prohibition of the right to recover property held benami.—**

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,—

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

d) A close study of sub-sections (1) and (2) of Section 4 gives us an understanding that benami plea is not available in the form of plaint or written statement after the Act came into force. Sub-section (3) of Section 4 prescribed certain exceptions to sub-sections (1) and (2). Since the transaction in the instant appeal does not fall within those exceptions, they are not discussed.

9) There used to be a controversy as to whether Section 4 of Benami Act has retrospective effect in the sense whether the Act applies to benami transactions entered into prior to the Act. This controversy was resolved by Apex Court in **R.Rajagopal Reddy v. P.Chandrasekharan**<sup>3</sup>. The scope and ambit of Section 4 and its retrospectivity are dealt with in the said decision. The said decision was followed in a subsequent judgment in **Samitri Devi vs. Sampuran Singh**<sup>4</sup>.

10) As per the above precedential jurisprudence, it is clear that Section 4 is prospective in operation i.e. no suit or written statement contending that the transaction relating to property is benami is maintainable after the advent of Benami Act. However, this section has limited sphere retrospectivity. Though the original transaction took place prior to the advent of the Act, still, a suit or written statement contending that the said transaction was benami cannot be taken after the Act came into force. To this extent only, Section 4 (1) & (2) of the Act were held retrospective. It would mean, if a benami transaction and

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<sup>3</sup> AIR 1996 SC 238

<sup>4</sup> (2011) 3 SCC 556

institution of the suit or filing of written statement, both were taken place prior to the advent of the Act, Section 4 of the Act would have no application.

The above are the statutory provisions and judicial interpretations with regard to the effect of Sections 3 and 4.

11) Now, again reverting to the question whether a person who purchased property in the name of his wife or unmarried daughter as benami can take such plea of benami subsequent to the Act came into force, it must be said that his plea does not fall within the ambit of exceptions engrafted in sub-section (3) of Section 4. So, one may think he cannot take benami plea subsequent to the Act as such a plea is hit by Section 4(1) and (2). However, in **Nand Kishore Mehra vs. Sushil Mehra**<sup>5</sup> the Apex Court held benami plea is available to the appellant. In that case, plaintiff/husband filed suit in the High Court of Delhi against defendant/wife for relief in respect of properties alleged to have been purchased as benami in the name of his wife. The wife filed petition under Order VII Rule 11 CPC to reject the plaint on the plea suit is not maintainable in terms of Section 4 of Benami Act. A learned single Judge rejected the application. However, on appeal Division Bench of the High Court reversed the order and allowed the petition of the defendant/wife. On appeal by the husband, the Apex Court will be interpreting Sections 3 and 4 of Benami Act, observed that Section 3(2) of Benami Act permitted a person to purchase in the name of his wife or

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<sup>5</sup> AIR 1995 SC 2145

unmarried daughter notwithstanding the prohibition to enter into a benami transaction contained in sub-section (1) of Section 3. When statute created such a right, it was observed, prohibiting such right under Section 4(1)(2) would amount to a contradiction which cannot be attributed to a Statute. Ultimately the Apex Court held thus:

**“Para-7:** Therefore, our answer to the question under consideration is that neither the filing of a suit nor taking of a defence in respect of either the present or past benami transaction involving the purchase of property by a person in the name of his wife or unmarried daughter is prohibited under Sub-sections (1) and (2) of Section 4 of the Act.”

12) Needless to emphasise, the above decision applies in all its fours to the instant case. Therefore, it is held that 1<sup>st</sup> defendant is entitled to take the plea of benami. However, as held in **Nand Kishore Mehra** he cannot succeed in his defence unless he proves that property although purchased in the name of his wife, same has not been purchased for her benefit and it was purely a benami under compelling circumstances.

This point is answered accordingly in favour of defendants.

13) **POINT No.2:** In view of finding in point No.1, the burden is on the 1<sup>st</sup> defendant firstly, to establish that consideration for Ex.A1 sale transaction was paid by him and secondly, though he obtained sale deed in favour of the plaintiff it was only for name sake but not for her benefit.

14) The trial Court, it must be said, erroneously fixed burden on the plaintiff and held as if plaintiff failed to prove that she purchased the

suit house with her funds. It must not be forgotten that Ex.A1—sale deed stands in the name of plaintiff. Hence, the presumption is that she paid the consideration and obtained sale deed. Since 1<sup>st</sup> defendant claims the transaction to be a benami, the burden rests on him.

15) **Jaydayal Poddar (Deceased) through L.Rs. and others vs. Bibi Hazra and others**<sup>6</sup> the Apex Court held that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances unerringly and reasonably raising an inference of that fact. The Apex Court has given certain circumstances to be taken into consideration for the benami transaction. They are: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

Hence, it has now to be seen whether D1 could successfully establish the benami character of the property.

16) Ex.A1 reads that sale deed dated 24.06.1967 was executed by one Achukolu Ragavaiah for a sale consideration of Rs.7,000/-. The recitals

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<sup>6</sup> (1974) 1 SCC 3

therein show that plaintiff paid Rs.5,000/- on 20.07.1966 and balance amount on the date of registration. Nowhere it is mentioned that the consideration was paid by D1. He was not even an attester in the sale deed to infer his presence.

17) In the light of aforesaid recitals, when the evidence of 1<sup>st</sup> defendant (DW1) is perused, he stated that out of the total consideration of Rs.7,000/- he paid Rs.5,000/- in the first year and remaining Rs.2,000/- in the next year and obtained the registered sale deed in the name of his wife. He asserted as if he paid entire sale consideration out of his self-acquisition and his father-in-law has not paid any amount by way of Pasupu Kumkuma at the time of marriage. Though he claimed he has paid the sale consideration, his financial status during the relevant period proved otherwise. In his chief examination itself he stated that he got five children—two daughters and three sons; his eldest daughter (D2) passed SSLC and for the education of his sons he stopped her studies. He stated that as his salary was hardly sufficient to meet both ends, he started rickshaw business and out of the income derived from the said business he educated his children. He filed M.C.No.11 of 1994 on the file of Principal District Munsif, Chirala seeking maintenance against third son wherein he deposed (Vide Ex.A.30) that he worked as head of the department of Sanskrit in the local college; at the beginning his salary was Rs.66/- and later it became Rs.104/-; as the salary was not sufficient to maintain his family, he started rickshaw business with the help of Rama Murthy; he owned 24 rickshaws; he spent all his income

for the education of his children and he incurred debts; he has no other assets; he never had liquid cash; he used to borrow from others including Kolla Venkateswarlu; Kurma Musalaiah; Yelisetti Ranganayakulu; Puvvada Varadaiah and used to discharge the debts by instalments. So, in his own terms, whatever salary he was getting was hardly sufficient even to maintain the family and to educate his five children and therefore, he started rickshaw business and entire income was spent on the education of his children. Even the said amount was not sufficient and so he extensively borrowed amounts. It is pertinent to mention here the plaintiff filed Exs.A9 to A26 which are pro-notes and hand letters executed by 1<sup>st</sup> defendant between 1957 and 1966 while borrowing amounts from others. Above all, he has no other assets.

18) In this backdrop, it is difficult to believe 1<sup>st</sup> defendant could purchase property worth Rs.7,000/- under Ex.A1 in 1967 by which time the said amount was a heavy amount for a person who was hard pressed for money to maintain his family and manage the education of his five children. Therefore, the claim of 1<sup>st</sup> defendant that he purchased the suit property as benami in the name of plaintiff cannot be accepted. Further, he has not shown any reason muchless convincing reason as to why he obtained the property as benami instead of in his name. Though a husband obtaining the property in the name of his wife is not uncommon, however, it must be noted that in view of Section 3(2) of the Benami Act, the burden squarely lies on him to establish that he obtained the property as benami not for her benefit but due to some

other reasons. No such reason is forthcoming in this case. It is true 1<sup>st</sup> defendant in his evidence deposed as if the parents of plaintiff had no worthy properties to confer on her to enable her to purchase the suit property. However, as already stated supra, the burden is on the 1<sup>st</sup> defendant to prove the benami nature of transaction. Since he failed in that regard, the financial capacity of parents of the plaintiff to give amounts to her to pay sale consideration pales into insignificance.

This point is accordingly answered against the defendants.

19) **POINT Nos.3 and 4:** Regarding these points, plaintiff's plea in the plaint is that she and 1<sup>st</sup> defendant fixed the marriage of their eldest daughter (D2) and just before a week prior to it, the 1<sup>st</sup> defendant informed her that he would get money by mortgaging the suit schedule property to celebrate the marriage and made her believe his words and taking advantage of her innocence, he played fraud and obtained Ex.A2—relinquishment deed by concealing the truth and he thus grabbed the property. Thus, she pleaded fraud allegedly committed by D1. To prove this fact, besides herself, plaintiff examined PWs.2 and 3. Plaintiff (PW1) in her evidence, of course, deposed in tune with her plea stating that believing the words of D1 she signed on Ex.B4 treating it as a mortgage deed. In the cross-examination she stated that she can read and write Telugu. In further chief examination she gave a go-by to her earlier statement and deposed as if she was only a signatory and does not know how to read and write. So, it is evident that she can read and write Telugu. In that context, it is hard to believe that she did not make

any enquiry about the nature of the transaction and signed on Ex.A2 (B4) without perusing the contents.

a) Coming to PW2, he is the attester of Ex.A2 (B4). He admitted his signature on the deed. He stated that PW1 already signed on the original of Ex.A1 by the time he went to Sub-Registrar's office. In the cross-examination he stated that scribe will read over the contents of the document to the executant after execution. He also stated Registrar has to enquire about the contents of Ex.A2 and PW1 admitted that she executed the document. A close scrutiny of evidence of PW2 does not indicate that D1 obtained document from plaintiff by representing that it was a mortgage deed.

b) PW3 is the third son of D1 and plaintiff. He deposed that he was 12 or 13 years old by the date of execution of A2. He stated that on 15.03.1971 his father sent his grant-father to Kavali to bring the bridegroom and then he demanded his mother to mortgage the house for the marriage purpose and he assaulted her when she refused to execute mortgage deed and also abused her in filthy language and warned that unless the mortgage deed was executed marriage would not be performed. One hour after the said incident, D1 returned home and requested her mother to go to Sub-Registrar office and accordingly his father, mother and himself went to Sub-Registrar office where he (D1) came with written stamped papers on which his mother put her signature without going through the contents and nobody read over the contents to her. At the time of registration also document was not read over to her.

He stated that she signed on the document under the impression that it was a mortgage deed. In the cross-examination he stated that by the time of Ex.A2 he was 11 years old and he was born in 1960. He stated that his father filed criminal case against him, his mother, other brothers and younger sister alleging that they attempted to throttle his neck.

c) The veracity of PW3 is highly doubtful. He is an interested witness. Since his father filed criminal case against him and others, naturally a hostile tendency would prevail against his father. Even otherwise, he was only 11 years old boy and there was no specific reason for him to associate with his parents to Sub-Registrar office. Even assuming he followed, considering his tender age, it is difficult to believe he would understand the nature of transaction that transpired at the sub-Registrar office. Even assuming what PWs.1 and 3 stated to be true, certainly PW1 would narrate to her parents that due to the physical assault and abuse made by her husband she was compelled to execute a mortgage deed (as she was under such impression). In that event, certainly her parents would enquire D1 about the so-called mortgagees and amount borrowed as loan etc, facts. Hence, there was every possibility for the truth to come out within short time after execution of Ex.B4 (Ex.A2). Therefore, the theory of plaintiff's signing on Ex.B4 under a misconception that it was a mortgage deed is unacceptable. While fraud vitiates everything, its proof must be cogent. Therefore, the plea of misconception is unacceptable. The further plea of plaintiff is that she came to know about the nature of document only in the year

1990 also cannot be believed. For another reason also her version cannot be believed. Admittedly, she filed M.C.No.10 of 1990 against D1 (Vide Ex.B1—certified copy of petition in MC.No.10/1990 on the file of II Additional Munsif, Chirala). In Ex.B1 it appears she got it mentioned that while the marriage of her eldest daughter was settled to be held on a particular day in 1971, the respondent/1<sup>st</sup> defendant attacked the petitioner/plaintiff, beat her and coerced her to execute a registered conveyance deed in his name in respect of suit house. When the contents of Ex.B1 were confronted to PW1, she denied to have got mentioned so and therefore, contradictory portions of Ex.B1 were marked as Exs.B2 and B3. (It should be mentioned that this Court had no opportunity to peruse Ex.B1 to B33 as they were taken return by D1 after disposal of the suit as per letter dated 06.10.2017 submitted by Senior Civil Judge, Chirala). So, Exs.B1 to B3 would clinchingly establish that the plaintiff had knowledge about the nature of Exs.B4 even as on the date of execution of the said document. Ex.B4 was executed on 15.03.1971. However, the plaintiff did not file the suit till 1992 (O.P.No.47/1992). Therefore, her suit is barred by limitation as held by the trial Court.

20) Thus, on a conspectus of the above findings, plaintiff could not establish the plea of fraud and further, she failed to file the suit within the period of limitation. The other contention of learned senior counsel that relinquishment deed is not maintainable in the eye of law does not hold water and consequently the decisions cited will be of no avail.

21) In the result, this appeal is dismissed by confirming the judgment and decree of the trial Court in O.S.No.55 of 1995. No costs.

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

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**U. DURGA PRASAD RAO, J**

Date: 03.07.2018

Murthy/Scs

