

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

ASMP No.19437 OF 1997

In / and

Appeal Suit No. 156 of 1997

Judgment:

This appeal is preferred against the judgment and decree dated 23.12.1996 passed in O.S.No.57 of 1988 by the learned Subordinate Judge, Kovvur.

The appellant herein is the plaintiff and the respondents herein are the defendants in the said suit. The parties hereinafter will be referred to as they are arrayed before the lower Court for the sake of convenience.

The plaintiff filed the suit for recovery of possession of the plaint schedule properties and for future profits. The plaintiff's case as narrated in the plaint is briefly as follows. The defendants 1 and 2 are brothers and the sons of one Chandraiah. One Chodaiah is the father of the third defendant and he is the brother of Chandraiah. The plaint schedule properties originally belonged to one Puliboyina Gangaraju who died after executing a Will on 22.01.1961 bequeathing his properties to the plaintiff subject to a life interest in favour of his wife Ramamma. He had no children and he brought up the plaintiff as his foster son, being the second son of his brother Puliboyina

Venkataramaiah. His marriage was also performed by Gangaraju and his wife. During his last days Gangaraju executed a Will. He died on 23.01.1961, as he was ailing from Asthama for sometime past. As the testator developed whitlow i.e., a boil on the left thumb, he had to put his right thumb mark in the Will. Life estate was given to his wife in the suit properties with vested remainder to the plaintiff. After the death of Gangaraju, his wife enjoyed the suit properties as per the directions of the Will, and she died in October, 1972. The plaintiff got into possession of the suit schedule properties immediately thereafter. But, defendants 1 to 3 filed two suits OS Nos.14 and 15 of 1973 on the file of District Munsif, Kovvur, in January 1973 claiming to be in possession of the plaint schedule properties and seeking permanent injunction on the basis of two fictitious sale deeds alleged to have been executed by late Ramamma. The lower Court, while holding that the Will dated 22.01.1961 is not true, decreed the suits of the defendants. The plaintiff filed AS Nos.7 and 8 of 1979 on the file of the Sub-Court, Kovvur against the said judgment. The Sub-Court, while holding the Will dated 22.01.1961 is true, dismissed the appeals. The Second Appeals bearing Nos.645 and 646 of 1983 preferred by

the defendants 1 to 3 against the Sub-Court judgment were disposed of on 09.06.1987 by this Court. This Court observed that the question of title can only be gone into incidentally in the injunction suits and they do not affect the merits of the Will in case a regular suit is filed on the basis of the title by the plaintiff. As a result of the observation of this Court, the plaintiff filed the suit for recovery of possession of the suit properties on the basis of his title. Late Gangaraju never had debts, except one small debt which was discharged by him during his life time. The sale deeds set up by the defendants dated 31.03.1961 are bogus documents and unsupported by consideration, brought into existence to prevent the plaintiff from entering into possession of the suit schedule properties.

The defendants filed a written statement admitting the relationship between the parties as set out in the plaint, the ownership of late Gangaraju over the plaint schedule properties while denying the other allegations in the plaint. They denied the allegations that the plaintiff was brought up by Gangaraju and his wife Ramamma as their foster son and they performed his marriage and he used to look after the cultivation of the suit lands on their behalf. Defendants alone paid taxes for the suit

lands right from the date of purchase. They filed OS Nos.14 and 15 of 1973 against the plaintiff and others on the file of the District Munsif Court, Kovvur, for the suit properties. The Second Appeal Nos.645 and 646 of 1983 filed by them against the judgment of the Sub-Court were allowed and they were found to be in possession. They denied the allegation that in collusion with Ramamma they brought into existence the two sale deeds without consideration. They have been in uninterrupted possession of the suit properties from the year 1961 onwards to the knowledge of the plaintiff in their own right. Hence, the plaintiff cannot question their title now. Since Ramamma was given the suit lands in lieu of her maintenance under the alleged Will, her rights became enlarged by virtue of Section 14(1) of the Hindu Succession Act and she became absolute owner of the properties. The sale deeds executed by her are perfectly legal and valid. Hence, the suit may be dismissed with costs.

On the basis of the above pleadings, the trial Court framed the following issues for trial.

- 1) Whether the Will dated 22.01.1961 said to have been executed by Gangaraju is true, valid and executed in a sound and disposing state of mind and binding on the defendants?

- 2) Whether the sale deeds dated 31.03.1961 in favour of the defendants are true and binding on the plaintiff?
- 3) Whether the defendants perfected their title to the plaint schedule property by adverse possession?
- 4) Whether the possession of the plaint schedule property by the defendants from the date of death of Ramamma i.e., from October 1972 or from the date of service of injunction notices on the plaintiff in OS Nos.14 and 15 of 1973 filed by the defendants in the Munsif Court is not adverse to the plaintiff, if so, whether the suit is in time?
- 5) Whether the pendency of previous injunction suits in District Munsif Court and appeals thereon to the Sub-Court and High Court of Andhra Pradesh stop the running of adverse possession against the plaintiff?
- 6) Whether the plaintiff is entitled for possession and profits on the plaint schedule property?
- 7) To what relief?

Before the trial Court, on behalf of the plaintiff, PWs.1 to 5 were examined and Exs.A1 to A4 were marked. On behalf of the defendants, DWs.1 and 2 were examined and Exs.B1 to B7 were marked.

After considering the oral and documentary evidence and the legal submissions made, the lower Court dismissed the suit with costs. It is this judgment

and decree dated 23.12.1996 that is challenged in the present appeal.

This Court has heard Sri Subrahmanyam Kurella, learned counsel for the appellant/plaintiff and Sri T.S. Anand, learned counsel for the respondents/defendants.

Both the learned counsel essentially concentrated on the correctness of the Will propounded by the plaintiff and also argued about the sale deeds that were executed by the wife of the deceased Gangaraju in favour of the defendants. This Court, on examination of the facts and the law on the subject, is also of the opinion that these two points namely the correctness of the Will dated 22.01.1961 (Ex.A1) and the correctness of the sale deeds dated 31.03.1961 (Exs.B4 and B5) would form the essential points for determination in this case. Keeping in view the submissions made by the learned counsel on these two points and the evidence highlighted by them, this Court is proceeding to decide the following two points at first.

1. Whether the Will dated 22.01.1961 (Ex.A1) is a genuine and valid document?
2. Whether the sale deeds dated 31.03.1961 (Exs.B4 and B5) are valid?

POINT No.1:

As can be seen from the plaint itself, the plaintiff is claiming title from one Puliboyina Gangaraju. The plaintiff states that he is the “foster” son of Gangaraju. It is also admitted that Gangaraju had no children and he died leaving behind his wife Ramamma. The contention of the plaintiff is that as the couple had no children he was brought up as a foster son and that on 22.01.1961 Gangaraju executed a Will bequeathing his properties to the plaintiff with a life estate to Ramamma.

In addition to this, the plaintiff also pleads about the suits OS Nos.14 and 15 of 1973 filed by the defendants which ended in a decree in favour of defendants 1 to 3. The Will was disbelieved by the Court. Against the judgment in the said suits, two appeals were filed which are numbered as A.S.Nos.7 and 8 of 1979. The first appellate Court upheld the finding on the issue of possession by the present defendants, but held that Ex.A1 Will was genuine. Against the judgment and decree passed in the appeals, second appeals were filed before this Court bearing SA Nos.645 and 646 of 1983. In the second appeals, a learned single Judge of this Court held that the possession of the defendants is correct; however, the learned single Judge felt that as the

suit was a simple suit for injunction, the Court should not have pronounced on the genuineness of Ex.A1 Will. The single Judge Court also held that in an appropriate suit the correctness of the Will has to be decided. Therefore, according to the plaintiff, the present suit is filed.

On behalf of the plaintiff, PW.1 was examined. His evidence is followed by the evidence of the attesor of the Will who was examined as PW.2. As the scribe of the Will had died, PW.3 was called in to identify his handwriting. PWs.4 and 5 were essentially examined to prove the plaintiff's possession etc.

It is a fact that in this case Ex.A1 Will itself clearly states that the testator had developed a boil (whitlow) on his left thumb and that is the reason why he affixed his right thumb mark on the Will. Learned counsel for the appellant/plaintiff submits that as per Section 3 of Clause (56) of the General Clauses Act, 1897, "sign" includes "mark". Therefore, the learned counsel argued that in this case the thumb impression on Ex.A1 meets the requirement of law and that as the attesor of the Will was also examined, the Will is duly proved. He points out that in Ex.A1 itself it is clearly written that as the testator was unable to affix his left thumb mark due to

the presence of a boil, he has put his right thumb impression. Learned counsel also stated that the contents of the Will are also inherently believable because a life interest is given to the wife Ramamma, then only thereafter the plaintiff is entitled to succeed to the properties. Learned counsel argued that if his client's intention was to create a Will or to create a document he would have got the entire title to vest in him immediately rather than giving a life estate to Ramamma. Learned counsel, therefore, argued that the Will is a natural disposition and that there are no suspicious circumstances surrounding the same. He also argued that the sale deeds purportedly executed by Ramamma in favour of the defendants which are marked as Exs.B4 and B5 are not valid documents and that Ramamma did not have a right to execute the same. He argued that with the aid of these two documents the defendants dispossessed the plaintiff when they filed suits OS Nos.14 and 15 of 1973 on the file of the District Munsif Court, Kovvur. It is for this reason the plaintiff is seeking recovery of possession of the plaint schedule properties in the present case. His case is that he proved his case by examining PWs.1 to 5 and by marking Exs.A1 to A4. Therefore, he states that he is entitled to a decree as

prayed for and argued that the lower Court committed a grave error in passing the impugned judgment. He also points out that the stands taken by the defendants are not consistent and they both plead both adverse possession and title also.

In reply to this argument, learned counsel for the respondents/defendants argued that there are lot of suspicious circumstances surrounding the Will Ex.A1 and that Ex.A1 Will is not a genuine document. He points out that Ex.A1 is purportedly executed on 22.01.1961 and that on the very next day the testator died. He also points out that the Will did not see the light of the day for a very long time and was filed only during the trial in the suits OS Nos.14 and 15 of 1973. He also points out that the testator was actively participating in the making of the Will. Therefore, he points out that the Will is surrounded by suspicious circumstances. He also states that the oral evidence introduced by the plaintiff is not enough to state that the Will is proved and points out that PW.2 clearly stated in his evidence that by the time he reached the house of the testator, Ex.A1 was already written. He also points out that in the sale deeds executed in March 1961 there is no reference by Ramamma to the Will and that therefore

Ex.A1, according to the learned counsel for the respondents/defendants, is not a valid document nor is it proved as required under law. He also points out that the registered sale deeds were executed in favour of the defendants in March 1961 and since then they have been in possession of the properties. Their possession has also been upheld by the District Munsif, Kovvur in OS Nos.14 and 15 of 1973, by the first appellate Court in the judgment in AS Nos.7 and 8 of 1979 and also by this Court in the Second Appeals, the copy of which is marked as Ex.A3. Learned counsel also argued that the suit is hopelessly barred by time as it is filed more than 12 years after the possession of the property was taken over by the defendants even as per the plaintiff. He also argues that in view of the earlier findings of the Courts, the genuineness of Ex.A1 Will cannot be looked into. He argued that the plea of adverse possession was not pursued. He supports the judgment passed by the lower Court, hence states that the appeal is misconceived.

This Court, on examination of the facts and circumstances, notices that in Ex.A3 judgment passed by this Court, the learned single Judge held that the correctness and the validity of the Will Ex.A1 should be decided in an appropriate civil suit. A single Judge of

this Court held that in a suit for injunction which was filed the lower Court committed an error in pronouncing on the validity of Ex.A1. Based on this observation the present suit is filed and this Court is called upon to examine the correctness of Ex.A1 Will on the basis of the documentary and oral evidence.

As per the learned counsel for the appellant/plaintiff, Ex.A1 Will is validly proved because the plaintiff has examined the sole surviving attester. The evidence on record shows that the scribe and the second attester have died. To identify the handwriting of the scribe, PW.3 was examined and the learned counsel points out that there is no cross-examination at all of PW.3. Therefore, his argument is that the essential requisites for proving a Will have been complied with.

This Court, however, notices that the oral evidence introduced does not in any way help the case of the plaintiff and on the other hand the suspicious circumstances surrounding the Will are not actually removed. A Will is a document which has peculiar characteristics and this is the reason why the law mandates a specific mode of proof. Invariably as the author of the document is no longer alive and in cases where the Will has the effect of upsetting the regular line

of succession greater care must be taken to examine the validity of a Will.

In the case on hand, the facts which emerge from the record are as follows:

- 1) The testator died one day after the Will was executed.
- 2) The testator affixed his right thumb mark instead of his left thumb on the Will. The suggestion put to PW.1 in the cross-examination is to the effect that the left thumb impression of the testator is available in the Village Panchayat Office. Therefore, to get over this available evidence it is suggested that the right thumb impression was affixed.
- 3) The propounder of the Will was actively participating in the making of the Will and admittedly he was present when the Will was executed.
- 4) The scribe of the Will is from another village. The witness admits that his village Mangapadevipet is a very small village. One Joga Rao is the Village Karnam (VK) and also document writer. Despite the local villagers being available one Prabhakar Rao of Koyyalagudem has scribed Ex.A1 and his

village is at a distance of 3 KMs. The witness also says that he does not know why the local Village Karnam was not preferred for scribing Ex.A1.

5) The Will Ex.A1 saw the light of the day only during the course of the trial in OS No.14 of 1973. Therefore, from the date it bears namely January 1961 it did not see the light of the day till 1977. The witness PW.1 admits that he has only filed it four (4) years after the written statement was filed in OS No.14 of 1973. The witness also admits in his cross-examination that he did not issue any notice either to Ramamma or to the defendants informing them about Ex.A1 Will and his rights in the property. The witness also deposes that Ramamma died in October 1972. After Ramamma died in 1972 also the plaintiff did not produce Ex.A1 Will before any local authority and seek mutation of his name. He did not also pay any taxes from 1972 onwards for the property. No tax receipts or other documents are filed to prove the possession and enjoyment of the property from 1961 when Ganga Raju died. Neither Ramamma's possession nor

the possession of the plaintiff is borne out by record.

- 6) Exs.B4 and B5 sale deeds which are executed in March 1961 by the wife of late Gangaraju do not make any reference whatsoever to the said Will.

Learned counsel for the respondents/defendants submitted that in view of the large number of suspicious circumstances the Will cannot be looked into or treated as a valid document. This Court also, on examination of the facts and circumstances, notices that all the suspicious circumstances that are highlighted in this case are actually emanating from the evidence of the witnesses themselves. A heavy duty is cast on the propounder of the Will to remove even an iota of suspicion surrounding the same. The witness in the opinion of the Court need not be called upon to explain what is obvious namely that a testator died on the next day of the Will. This itself is a suspicious circumstance. In addition, the propounder of the Will himself admitted that he was present when Ex.A1 was executed, that the scribe is from a neighbouring village three (3) miles away, that the local Village Karnam was also a document writer, but he was not asked for scribing the document, that the left thumb impression of the testator would be

available in the local Panchayat Office, that he has not filed any document to show that he took possession of the property immediately after the death of Ramamma in 1972 or that he brought the Will out into the public for claiming his title. His other assertion that he was in possession of the properties basing on the Will and till the injunction orders were granted against him is also not believable. As can be seen from the evidence the witness admits that he has not issued any notice either to Ramamma or to the defendants about the Will.

This Court also notices a peculiar stand taken by the plaintiff. OS Nos.14 and 15 of 1973 are the suits filed for injunction by the defendants against the plaintiff. The plaintiff states that he was in possession of the properties till the defendants obtained injunction orders against him in OS Nos.14 and 15 of 1973 and that later he came out of the lands. It is a fact that the present plaintiff who is the defendant in OS Nos.14 and 15 of 1973 contested the suits and had the benefit of legal advice. If he was in actual possession of the properties, he should have highlighted the same by relying on the Will and if he was forcibly dispossessed by virtue of injunction order, as alleged he should have filed

a suit within six months under Section 6 of the Specific Relief Act to claim possession. This was not done.

On appreciation of all the facts and circumstances, this Court is of the opinion that the plaintiff in the suit (present appellant) did not succeed in removing the suspicious circumstances surrounding the Will.

In view of what is stated above, this Court is of the opinion that Ex.A1 is not genuine document and it was brought into existence for the purpose of the claim only.

POINT No.2:

The other point that arises for consideration which needs to be considered is the relief sought by the plaintiff for recovery of possession. In the plaint itself the plaintiff states that the sale deeds dated 31.03.1961 were set up by the defendants and that these sale deeds are not genuine. Para 7 of the plaint contains the pleadings of the plaintiff with regard to the sale deeds. He states that they are bogus documents, unsupported by consideration and introduced for the purpose of preventing the plaintiff from "reentering" the properties. He also pleads that the defendants hatched a conspiracy, colluded with Ramamma and brought into existence these two sale deeds. In addition, he pleads that the sale deeds were executed for a ridiculously low sum of Rs.1500/-. In

reply to this, the defendants contended that the sale deeds are correct and valid. They also state that the contents of paragraph 7 of the plaint are not correct. They state that the sale deeds are perfectly valid and it is the Will that is brought into existence with an ante date to get over the suits OS Nos.14 and 15 of 1973.

This Court, on examination of the facts and circumstances, notices that on the basis of these pleadings PW.1 did not introduce proper evidence. In his entire chief examination he does not state anything about the sham and nominal nature of the documents, about the fraudulent nature of the documents, or about the alleged conspiracy. On the other hand, he merely deposes as follows. "My foster mother Ramamma had no debts at all. There was no necessity for her to sell the lands for discharging the alleged debt. I do not know whether the sale deed dated 31.03.1961 is a genuine document. It was brought about collusively". Therefore, his evidence itself is to the effect that he does not know whether the sale deed dated 31.03.1961 is a genuine document or not. Other than merely saying that it was brought about collusively and there are no debts at all, no other evidence has been introduced. The contents of the documents Exs.B4 and B5 clearly show that

Ramamma executed the documents in certain circumstances. The bar contained under Section 92 of the Indian Evidence Act clearly prohibits the plaintiff from introducing any evidence contrary to the terms of a registered document. The plaintiff had an option of attacking the entire document as a sham and nominal document, but he did not choose to introduce any such evidence. These documents are in his knowledge since the suits OS Nos.14 and 15 of 1973 were filed. From 1973 the present plaintiff had definite knowledge of these sale deeds if not from earlier. Despite knowledge of the contents of the documents and the stand of the defendants on these two documents the plaintiff did not introduce any evidence whatsoever to prove that the sale deeds are sham and collusive or that they were brought about as a result of conspiracy. A sham and collusive document is a document which is never meant to be acted upon. There is no proof for the same. Similarly, he could lead evidence to prove the lack of consideration. The law allows the plaintiff to introduce evidence to prove that they are bogus documents. This is an exception contained in Proviso 1 to Section 92 of the Evidence Act. Therefore, this Court is of the opinion that the evidence of PW.1 does not in any way support the case pleaded in

paragraph 7 of the plaint. The contents of the documents are clear and there is no evidence to the contrary to disbelieve the same. A registered document also carries a certain sanctity. There is a presumption in favour of the same (**Prem Singh v. Birbal**¹). Nothing to the contrary was pointed out to disbelieve the sale deeds.

On a review of the entire evidence, this Court is of the opinion that the plaintiff is not able to prove that Exs.B4 and B5 documents are not valid and genuine documents or that they are bogus, unsupported by consideration and are the result of a 'conspiracy'.

In view of what is stated above, this Court is of the opinion that the evidence available on record will not in any way support the case of the plaintiff. Therefore, the registered sale deeds Exs.B4 and B5 are held to be valid documents.

Thus, the main two points that arise for consideration in this case are held as follows.

Point No.1: The suspicious circumstances surrounding the execution of the Will have not been removed. The Will Ex.A1 is, therefore, held to be invalid document created for the purpose of this suit.

¹ 2006 (5) SCC 353

Point No.2: The sale deeds Exs.B4 and B5 are held to be valid documents and, thus, the defendants have valid title over the suit schedule properties and their possession which has been upheld by the Courts of competent jurisdiction earlier is also upheld. As the plaintiff failed to prove his right to the properties, this Court is of the opinion that delivery of possession as sought for in the plaint cannot be awarded.

Limitation:

The other major point that survives for consideration is limitation. The suit out of which the impugned judgment arises was filed on 23.03.1988. The respondents in the appeal and defendants in the suit, while pleading adverse possession, have raised a specific plea that the suit that was filed in 1988 is hopelessly barred by time. In para 8 they specifically raised the plea that the finding of this Court in 1987 in the Second Appeals under Ex.A3 does not give the starting point for limitation.

The Court below also framed Issue No.4 on limitation. Issue No.5 is also to the effect that whether the pendency of the injunction suits will stop the running of time. Issues 3, 4 and 5 were decided in favour of the

defendants and the lower Court held that the filing of the suits will not stop limitation from running.

This Court also notices that the defendants have taken two mutually inconsistent pleas. They have pleaded that they have perfected their rights by adverse possession against the plaintiff. While they took this plea of adverse possession, they did not pursue the same in their oral evidence. In this case, the first defendant was examined as DW.1. In his entire evidence he did not depose about his adverse possession vis-à-vis the plaintiff. It is settled law that adverse possession must be pleaded and proved with certainty. The evidence on record does not show any proof about “adverse” possession of the defendants. Therefore, this Court is of the opinion that the defendants have failed to prove their case of adverse possession and perfection of title. The plea of title and adverse possession are mutually destructive pleas. As noticed the evidence is on the title of the defendants and their possession following the sale deeds executed by Ramanamma.

It is an admitted fact that Exs.B4 and B5 sale deeds were executed in March 1961. On the basis of these two title deeds the defendants herein have filed suits OS Nos.14 and 15 of 1973. The case of the plaintiff himself

is that after the injunction orders were granted in 1973, he left the possession of the properties. In his evidence as PW.1, the plaintiff clearly deposes in the chief examination that as there was injunction order in those two suits he came “out” of the lands. In his cross-examination on 11.06.1996 he clearly deposes as follows. “It is true that the defendants in the suit obtained an injunction against him by filing a suit in District Munsif Court, Kovvur in January 1973. It is true that from that date I have not been in possession of the suit lands. I have not filed suit before January 1985 for recovery of possession of the suit properties.” Apart from this deposition, it is clear that the present suit is filed in March 1988 seeking recovery of possession. As noticed earlier by this Court, if by virtue of the injunction orders granted in OS Nos.14 and 15 of 1973 the plaintiff either surrendered the possession or was dispossessed forcibly, nothing prevented him from filing a suit for appropriate reliefs. If he was dispossessed in January 1973 the cause of action began for filing a suit for possession. He admittedly had the benefit of legal advice and did not file a suit for recovery of possession within 12 years from the date. Therefore, this Court finds substantial force in the submission of the learned counsel for the respondents

that the suit is barred by time under Article 65 b of the Limitation Act. The earlier suits OS Nos.14 and 15 of 1973 which are filed for a bare injunction will not in any way come in the way of the plaintiff enforcing his right for recovery of possession. This Court is of the opinion that the plaintiff could have made a counter claim for recovery of possession in those two suits itself. He also could have filed a suit for recovery of possession under Section 6 of the Specific Relief Act within six months. Having failed to exercise his legal remedies within the statutory period, the plaintiff cannot now file a suit for recovery of possession after 12 years period has elapsed. Therefore, this Court holds that the plaintiff's suit for recovery of possession is hopelessly barred by time. Ramanamma died in 1972 and if time is reckoned from this date also the suit is filed after 12 years. The pleading in the cause of action para that only after the finding in the Second Appeal dated 19.06.1987 the cause of action arose is not correct. The finding of this Court in the Second Appeal will not in any way stop the running of time which had already began. Section 9 of the Limitation Act is clear and once time begins to run: it does not stop. This suit filed in March 1988, therefore, hopelessly barred by time. This Court, therefore, concurs with the findings of the

Courts below on the issue of limitation and holds that the plaintiff's case is barred by time.

For all these reasons, this Court is of the opinion that the plaintiff has failed to prove that the Will Ex.A1 is genuine one. He also failed to file the suit within the statutory period of limitation. He failed to prove that the sale deeds in the defendants favor were bogus not supported by consideration etc.

This Court is, therefore, concurs with all the findings of the Courts below on issues 1 to 7 and holds that there are no merits in the appeal.

The Appeal Suit is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Appeal Suit shall stand closed.

ASMP No.19437 of 1997:

Learned counsel for the appellant/plaintiff also states that he has filed this application for additional evidence and that the documents filed should be received in additional evidence. This Court, on a perusal of the affidavit filed in support of the documents, finds that the appellant/plaintiff wants to mark Exs.A5 to A9. Exs.A5 and A6 are the death extracts of Gangaraju and

Ramamma. These documents are not really relevant, because there is no dispute about their deaths or the dates . The plaintiff in his pleading and in his deposition has stated about the deaths. Therefore, these two documents are not necessary to decide this case. The other three documents filed are the certified copies of revenue extracts for the suit lands. The averments in the affidavit are that these revenue extracts are necessary as they would clinchingly establish that the respondents were never in possession and enjoyment of the properties. No other ground is made out to receive these documents. None of the three grounds which are specified in Order 41 Rule 27 CPC are even pleaded. These documents were not produced in the lower Court, they were not discovered recently nor were they rejected by the lower Court. These documents should have been filed in the lower Court. A perusal of these documents also shows that no attempt was made to produce them in the lower Court and that they are documents prepared in the year 1997. Therefore, they are filed much after the suit was also decreed. They also bear the date which is subsequent to filing of the appeal itself. Therefore, for all these reasons, this Court is of the opinion that ASMP

No.19437 of 1997 does not have any merit and the same is accordingly rejected.

D.V.S.S. SOMAYAJULU, J

Date: 06th July, 2018
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THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

ASMP No.19437 OF 1997
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Date: 06th July 2018

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