

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

SECOND APPEAL Nos.818 AND 819 OF 2016

Between:

K. Chitti Babu .. Appellant

v.

K. Payanivel Chetty & others .. Respondents

DATE OF JUDGMENT PRONOUNCED: 22-01-2018

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. : Yes
 3. Whether Their ladyship/Lordship wish
to see the fair copy of the Judgment? : Yes

A. SHANKAR NARAYANA, J

*** HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

+ SECOND APPEAL Nos.818 AND 819 OF 2016

% Date: 22-01-2018

K. Chitti Babu

..

Appellant

v.

\$ K. Payanivel Chetty & others

..

Respondents

! Counsel for the Petitioner

: Sri S.V. Muni Reddy

^ Counsel for the respondent Nos.1, 2, 7 & 8 : Sri K. Ravinder Rao,
for Sri M. Siva kumar

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

1. 2007(3) ALD 442
2. 2017 (3) ALT 420
3. 2012 (2) ALT 57
4. 2012 (6) ALT 49
5. 2016 LawSuit (Hyd) 184
6. 2014 (5) ALT 152 (DB)
7. 2014 (6) ALT 370
8. AIR 2006 Gauhati 115
9. 2013 (3) ALT 467
10. (1992) 2 SCC 51
11. (1993) 4 SCC 6
12. (1997) 5 SCC 438
13. (2004) 9 SCC 468
14. AIR 1963 SC 1203
15. (2015) 9 SCC 356
16. (2016) 10 SCC 767
17. AIR 2011 Madras 66

C/15

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**SECOND APPEAL Nos.818 AND 819 OF 2016****COMMON JUDGMENT:**

Both these Second Appeals are taken up for disposal by this common judgment, though, they arise from two different first appeals in A.S. No.117 of 2015 and A.S. No.125 of 2015, that were directed against one and the same judgment and decree dated 15.02.2013 in O.S. No.951 of 2005 passed by the learned II Additional Junior Civil Judge, Chittoor, dismissing the suit of the plaintiff, who is the appellant in both these second appeals, by allowing the counter claim of defendant Nos.1 to 4, who are respondent Nos.1 to 4 herein. Admittedly, defendant Nos.5 to 7, who are respondent Nos.5 to 7 herein, remained *ex parte*, and thus, did not participate in the suit proceedings.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the original suit before the trial Court.

3. These Second Appeals are disposed of, at the admission stage itself, having heard Sri S.V. Muni Reddy, learned counsel for the appellant - plaintiff, and Sri K. Ravinder Rao, learned counsel appearing for Sri M. Siva Kumar, learned counsel for respondent Nso.1, 2, 7 and 8 - defendant Nos.1, 2, 7 and 8, and perused the material on record. None appears for respondent Nos.3, 4, 5 and 6.

4. These two second appeals are preferred by the plaintiff having been unsuccessful before the trial Court and also before the lower appellate Court. One of these appeals is directed against dismissal of the suit and the decree passed therein, the other against decreeing the counter claim. Thus, these two second appeals have arisen against one and the same judgment and decree rendered by the trial Court.

5. It is now well settled that though, concurrent findings have been rendered by the Courts below, still, if the plaintiff makes out a strong case in the direction of showing that the concurrent findings recorded by the Courts below are patently perverse or suffer from patent illegality, at the admission stage, it is difficult to formulate substantial questions of law, merely, basing on the questions of law, shown under the caption 'Substantial Questions of Law' in the Memorandum of Grounds of Second Appeal.

6. The plaintiff has projected identical questions of law as 'substantial questions of law', in paragraph No.22, thus:

"22. Substantial Questions of Law:

- a. When the findings of the courts below are not supported by evidence or based on misconception or erroneous and perverse or based only on surmises, the judgment of courts below are liable to be vitiated.
- b. Whether the courts below are justified, in allowing counter claim of the defendants 1 to 4, without

considering its maintainability, as the defendants failed to present the counter claim along with written statement.

- c. Whether the trial court is right in dismissing the suit and the lower appellate court is right in dismissing the appeal, contrary to law, evidence on record and against the Rule 26 (k), prohibits registration of document which seeks to cancel previous transactions between parties unilaterally.
- d. Whether the Judgments of the courts below are liable to be vitiated and (*Sic.* and) they are rendered contrary to the principle that once the gift was accepted by donee, right of the donor to unilaterally cancel the gift deed ceases to exist, in case, the donor felt that there are circumstances warranting cancellation of gift deed, she/he could have cancel only with the consent or participation of the donee, or by filing suits for the cancellation in the court of law.
- e. Whether the judgments of the courts below are liable to be vitiated, in view of specific clause in Ex.A17, that the donor has no right to cancel the same during her life time.
- f. Whether unilateral cancellation of Ex.A17, Registered Gift Settlement deed, dated 31.05.1996, by a registered cancellation deed dt.26.04.1997, under Ex.B1, is permissible under law.
- g. Whether the judgments of the courts below are liable to be vitiated, as same are contrary to the principles settled by this Hon'ble Court in the decisions, 1), Gaddam Lakshmaiah & Others Vs. Commissioner & Inspector General Registration & Stamps, (DB), 2), Hazi Mohammad Ahammad Vs. State of A.P.,.

- h. Whether the judgment of the lower appellate court is contrary to law Order 41 Rule 31 of C.P.C.
- i. Whether the Judgments of the courts below are liable to vitiated as same are erroneous, perverse, patently illegal and suffers from procedural illegality.
- j. Whether the gift settlement deed, dated 31.05.1996, Ex.A17, executed by Manickyamma in favour of the plaintiff is valid and binding on the defendants and whether the said Manickyamma is a class-I heir.
- k. Whether the lower appellate court is justified in deciding the application, I.A.No.101/2016, to receive additional evidence, contrary to procedure.”

7. Admittedly, in the present second appeals, both the Courts below tendered concurrent findings on the issues formulated by the trial Court based on the pleadings, where the plaintiff raised certain allegations and defendant Nos.1 to 4 denied them specifically.

8. Common submissions have been made by the learned counsel for the appellant in both these second appeals which mainly relate to the statement of facts, but, not centrally attacking the questions of law.

(a) He would submit that the entire extent of Acs.3-40 cents in Survey No.188/1 of Greampet Village Accounts stand in the name of Smt. Manikyamma, late mother of the plaintiff and defendant Nos.1 to 7, and, as absolute owner thereof, she executed Ex.A-17, a registered gift deed dated 31.05.1996, in favour of the plaintiff concerning

Ac.0-50 cents of land and even executed a registered exchange deed on 07.06.2000 concerning an extent of Ac.0-36 cents to one T. Nagarajan, under Ex.A-1, for the purpose of development of the property and the plaintiff took possession of the developed property. The learned counsel would submit that the plaint schedule property, therefore, consists of Acs.2-54 cents available for partition amongst the brothers and the Courts below, somehow, did not properly appreciate the findings in arriving at that their mother, late Smt. Manikyamma was competent to execute Ex.A-17.

(b) The next submission is that the subsequent recession of gift deed under Ex.A-17 by execution of a cancellation deed thereof, is invalid, as once the gift was accepted, the donor cannot unilaterally cancel the gift deed, which, the Courts below completely ignored.

(c) The learned counsel further submits that Rule 26(k) of Andhra Pradesh Rules under the Registration Act, 1908 (for short 'Registration Act') prohibits registration of document which seeks to cancel previous transactions between the parties unilaterally and cancellation without participation of all parties to the documents is unsustainable in law, and, therefore, the Courts below ought to have decreed the suit.

(d) The learned counsel further submits that late Smt. Manikyamma also executed an Exchange Deed dated 16.08.2000, under Ex.A-8, for the land in Survey Nos.193 and 194, in

favour of Srinivasulu, which, defendant No.1 as DW.1 admitted the same and the Courts below, therefore, ought to have allowed the appeal and decreed the suit.

(e) His further submission is that observation of the trial Court in paragraph No.13 that the plaintiff has not chosen to examine any witness i.e., either the attestor or the scribe of Ex.A-17, is highly perverse in view of existence of unilateral cancellation of gift deed under Ex.B-1.

(f) The learned counsel placed reliance in **Pedda Jagannadha Rao v. Renanki Janikamma¹**, **Ediga Chandrasekar Gowd v. State of Andhra Pradesh²**, **Haji Mohammed Ahmed v. State of Andhra Pradesh**, represented by its District Registrar, Hyderabad³, **Garagaboyina Radhakrishna v. District Registrar Visakhapatnam⁴**, **Gaddam Laxmaiah v. Commissioner and Inspector General, Registration and Stamps, Hyderabad⁵**, **Kurella Venkata Satyavathi v. Kanyamayini Devender Yadav⁶**, **Sanku Veeraiah v. Sanku Veeranna⁷**, **Govinda Das v. Robanbala Das⁸** and **Pagadala Bharathi v. J. Radha Krishna⁹**.

¹ 2007(3) ALD 442

² 2017 (3) ALT 420

³ 2012 (2) ALT 57

⁴ 2012 (6) ALT 49

⁵ 2016 LawSuit (Hyd) 184

⁶ 2014 (5) ALT 152 (DB)

⁷ 2014 (6) ALT 370

⁸ AIR 2006 Gauhati 115

⁹ 2013 (3) ALT 467

9. These decisions would be dealt with a little later after referring to the questions of law shown by the plaintiff (appellant) in the Memorandum of Grounds of Second Appeal as 'substantial questions of law'.

10. Per contra, the learned counsel for defendant Nos.1 to 4 would submit that concurrent findings recorded by the Courts below do not suffer from any legal infirmity. According to the learned counsel, plaintiff did not specify in his plaint, the source of title of late Smt. Manikyamma. In fact, the written statement schedule properties, originally belonged to one Smt. Bhagyamma, paternal aunt of plaintiff and defendant Nos.1 to 7. She bequeathed the said properties in favour the father of the parties i.e., K. Kodandarama Chetty under a bequest dated 17.11.1959 and since then till demise of their father in 1973, their joint family continued, and, thereafter, their mother, Smt. Manikyamma acted as elder of the joint family, and, therefore, late Manikyamma was not competent to execute the gift deed in favour of the plaintiff, one of the five sons, ignoring the rights of other four sons, in the joint family properties, as admittedly, no partition was effected by them and equally, she was not competent to enter into a registered Exchange Deed concerning Ac.0-36 cents of suit survey number, and even the so-called Exchange Deeds set out by the plaintiff does not reflect what was the property got in relation to which, Ac.0-36 cents of suit survey number was conveyed to one T. Nagarajan in exchange.

(a) His submission is that, though, counter claim is made and in the written statement filed by defendant Nos.1 to 4, though, it is specifically mentioned that Ex.A-17 was cancelled, within six (6) months from the date of its execution by a registered Revocation deed dated 26.04.1997, the plaintiff did not file rejoinder to the counter claim and thus, the cancellation deed stood uncontroverted, and for the first time, introducing a new plea in these second appeals is impermissible in view of the settled principles of law.

(b) The learned counsel would also submit that when the very gift is invalid irrespective of existence of execution of cancellation deed, no rights are conveyed in favour of the plaintiff concerning Ac.0-50 cents of the property, and, therefore, no substantial questions of law would arise, as such, sought to dismiss the appeal.

(c) To substantiate his submission that no new plea need be raised, though, the Courts below have not settled the issue touching the deed of cancellation cancelling Ex.A-17, and, thus, it accounts for perverse finding being recorded disavoursing the plaintiff, relied on the rulings in **Kewal Krishan v. Dina Nath**¹⁰, **Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam v. Atmaram Kumar**¹¹ and **Kshitish Chandra Purkait v. Santosh Kumar Purkit**¹².

¹⁰ (1992) 2 SCC 51

¹¹ (1993) 4 SCC 6

¹² (1997) 5 SCC 438

(d) The learned counsel also placed reliance in **Krishna Mohan Kul alias Nani Charan Kul v. Pratima Maity¹³**, **Mst. Kharbuja Kuer v. Jangbahadur Rai¹⁴** and **Kirpal Kaur v. Jitender Pal Singh¹⁵**, **Satya Pal Anand v. State of Madhya Pradesh¹⁶**, **M/s. Latif Estate Line India Ltd. V. Mrs. Hadeeja Ammal¹⁷** and the commentary in the Text of Transfer of Property Act, 1882 (for short ‘TP Act’).

11. Incidentally, it is necessary to refer to the issues settled for trial by the trial Court which are thus:

“Issues in O.S. No.951 of 2005:

{1} Whether the plaintiff is entitled for the relief of partition of plaint schedule property as prayed for ?

{2} Whether the plaint schedule property originally belonged to the plaintiff’s mother Smt Manickyamma ?

{3} Whether the Gift Settlement deed dt.31.05.1996 is true, valid and binding on the defendants?

{4} Whether there is an exchange of an extent of Ac.0.36 cents in S.No.188/1 between Manickyamma and T. Nagarajan on 07.06.2000 and the same is binding on the defendants?”

¹³ (2004) 9 SCC 468

¹⁴ AIR 1963 SC 1203

¹⁵ (2015) 9 SCC 356

¹⁶ (2016) 10 SCC 767

¹⁷ AIR 2011 Madras 66

12. When the first appeals are preferred, the lower appellate Court formulated the following common points:

- “i. Whether the plaintiff is entitled for the relief of partition of plaint schedule property as prayed for?*
- ii. Whether the plaint schedule property originally belonged to the plaintiff's mother Smt. Manickyamma ?*
- iii. Whether the Gift Settlement deed dated.31.05.1996 is true, valid and binding on the defendants?*
- iv. Whether there is an exchange of an extent of Ac.0.36 cents in S.No.188/1 between Manickyamma and T. Nagarajan on 07.06.2000 and the same is binding on the defendants?*
- v. Whether all the joint family properties including the properties described in the written statement schedule are liable to be divided to be allotted to the plaintiff and the defendants 1 to 4 1/5 share each?*
- vi. To what relief?”*

13. Additional point framed in A.S. No.117 of 2015:

- “i. Whether all the joint family properties including the property in O.s. 609/2005 as shown as the house property are liable to be divided and allotted to the plaintiff and the defendants.*
- ii. Whether the properties in Gift deed dated.31.05.1996 filed in another suit in O.S. 609/2005 declared as void?”*

14. Turning to the fact-situation occurring in the present case, basing on which, the evidence was let in by the respective parties to substantiate their claims and the findings tendered on issues by the trial Court, points formulated for determination by the lower appellate Court and the findings rendered thereon, a few admitted facts are absolutely relevant to advert.

(a) The plaintiff did not come out with true facts in his plaint, but, the answers given by him in his cross-examination that constitute categorical admissions, have got direct bearing on the case set out by him, not only on the competency of their late mother, Smt. Manikyamma, in executing Ex.A-17, in favour of the plaintiff and Ex.A-8 Exchange Deed, in favour of one T. Nagarajan, but also the effect of Ex.A-17 on defendant Nos.1 to 4.

(b) The plaintiff did not deny that late Smt. Bhagyamma was original owner of the written statement schedule properties. The written statement schedule properties are agricultural lands in an extent of Acs.3-40 cents in Survey No.188/1, second item is the house property measuring East - West 100 feet, North - South 30 feet.

(c) The plaintiff has not shown the house property, though, he gives specific admission in his cross-examination that the said property originally belonged to Smt. Bhagyamma which was covered by the Will Deed, under which, the agricultural land was also conveyed along with other properties, which are not subject matter

herein. Therefore, these admissions made by the plaintiff would reflect his conduct in deliberately suppressing the source of title and only setting up title in their mother Smt. Manikyamma, as if, it constituted her self-acquired property.

(d) The admissions made by the plaintiff in his cross-examination would further condemn his case since these admissions are to the effect that his mother had no source of income nor any properties of her own except managing the properties got by their father after his demise. Therefore, the entries in the revenue records showing the name of the mother of the parties, Smt. Manikayamma, is of no avail to the plaintiff to derive any rights nor to substantiate that his mother was competent to execute a gift deed, concerning a part of the scheduled mentioned survey number when the property was undivided and belonged to the joint family of the parties.

(e) The conduct of the plaintiff also manifest from the fact that he instituted a suit earlier to the present suit concerning Ac.0-50 cents of land covered by Ex.A-17, seeking declaration of title and perpetual injunction against the defendants herein. Admittedly, the proceedings are still pending and not yet terminated. The said suit was instituted on the file of the very same Court, but, somehow, for the reasons best known to either party, it was not taken up for its logical end.

(f) Certain admissions made by the plaintiff in his cross-examination since absolutely relevant, it would be appropriate to

extract them, though, the Court below did not do so in assessing whether the findings recorded by the Courts below are utterly perverse, so as to give rise to formulate substantial questions of law. No doubt, the plaintiff was examined-in-chief which completely condemns his stand, alone is necessary to be extracted.

It is true, till date, no partition has taken place. It is true, the suit schedule properties are the self-acquired properties of my father. My father died in the year 1968 in my childhood when I was studying third standard. After the death of my father, till 1973, we were all living in joint family. No partition took place in the year 1973. It is true, my mother was looking after the entire joint family properties until her death as a manager. It is true, subsequent to the death of my mother, I and defendant Nos.1 to 4 are entitled to 1/5th share each in the joint family properties. It is true my mother never acquired any properties. It is true, I, my mother and defendant Nos.1 to 4 jointly sold the properties to Vasantha, Vijaya Kumari, and Uma Devi under Exs.A-5 to A-7. It is true, the total extent of land in Survey No.188/1 is Ac.s.3-40 cents. It is true, the properties sold under Exs.A-5 to A-7 are not the properties in Sy.No.188/1. the suit schedule land is surrounded by roads on all its directions. I do not know how many cents of land my mother received under Ex.A-1 Exchange Deed. Witness volunteers that his mother exchanged Ac.0-36 cents for roads. It is not true to suggest that it is not mentioned in Ex.A-1 that my mother received roads under Ex.A-1. It is true the exchanged roads are not shown in the suit schedule property. The roads came into existence subsequent to Ex.A-1. It is not true to suggest that I constructed house over the suit schedule property. Witness volunteers that he construed house in Survey

No.192. Out of his income, I purchased Acs.2-00 of land that was received under Ex.A-1 Exchange Deed. It is true there are roads on Eastern and Southern sides of my house. There is also a road on Western side of my house. It is true the entrance of my house is facing towards East. It is true Ex.A-1 was entered only by my mother. It is not true to suggest that no exchange ever took place and that I created Ex.A-1 to knock away the joint family properties. It is not true to suggest that my mother has no right to exchange the properties. It is true the property under Ex.A-9 to an extent of Acs.3-40 stands in the name of my mother. It is true, I filed this suit for Acs.2-54 cents out of Acs.3-40 cents. It is true, we have a joint family house. It is true the same is not shown in the plaint schedule. It is true, the defendants have sought for division of entire joint family properties in their written statement by way of counter claim. It is true I filed O.S No.609 of 2005 before this court seeking declaration of the property received under gift settlement deed.

(g) Thus, these admissions would project two vital circumstances. First, the properties were acquired by the father of the parties and their mother acted as manager after the death of their father and, thus, evidencing subject matter of this suit was admittedly, joint family property and in possession and enjoyment of members of the joint family. Second, their mother did only act as manager after the demise of their father and she had no independent source of income, and, therefore, his mother was not competent to execute Ex.A-17 in favour of the plaintiff, when the said extent constituted joint family property.

15. It is appropriate at this stage to refer to the ruling relied on by the learned counsel for defendant Nos.1 to 4, in **Kirpal Kaur**¹⁵. The expression of the Hon'ble Supreme Court contained in paragraph Nos.28 to 31, in an alike situation is thus:

“28. Notwithstanding the above legal principle, we have examined the legality and validity of the alleged gift deed. The recital of the gift deed, particularly, the recital clause 2 is extracted hereunder:

"2. That since the physical possession of the said property is already with the Donee hence the proprietary possession of the same is being handed over by the Donor unto the Donee who shall enjoy the same peacefully without any interference or disturbance of the Owner/Donor or anybody claiming through him. On this the Donee shall become the absolute Owner of the said Property and shall be at liberty to deal with same in the manner he likes."

A careful reading of the above recital would clearly go to show that the physical possession of the entire suit schedule 'B' property could not have been given to the second defendant in the light of the undisputed fact that the physical possession of the second floor of the schedule 'B' property is with the plaintiff. Further, the plaintiff is in the possession of the second floor in her independent right of her husband's share after they separated from the family. Therefore, the alleged gift deed executed by the deceased-first defendant in favour of the second defendant during the pendency of the proceedings with respect to the suit schedule 'B' property is not legally correct as it is the joint family property and even otherwise the same cannot be acted upon by the parties.

29. On the basis of the legal submissions made by the senior counsel on behalf of the plaintiff, we have examined the case on merit in these proceedings based on proper appreciation of evidence on record and we have to reverse the concurrent finding on the contentious issue no.4 for the reasons recorded by us in the preceding paragraphs of this judgment. Accordingly, we set aside the concurrent finding recorded by both the trial court and the First Appellate Court on issue no.4. We conclude that the courts below have failed to exercise their jurisdiction and power properly, thereby causing a grave miscarriage of justice to the rights of the plaintiff upon the 'B' schedule property.

30. The plaintiff must succeed for one more alternate reason viz. that the deceased-first defendant died during the pendency of the proceedings and therefore, Section 8 of the Hindu Succession Act, 1956, will come into operation in respect of the suit schedule 'B' property even if it is considered that the said property is a self acquired property of the deceased-first defendant.

31. Therefore, we have to record the finding of fact with respect to the gift deed and hold that the same is invalid as it is evident from the factual and legal aspect of the case that the gift deed of the schedule 'B' property was executed by the deceased first defendant in favour of the second defendant during the pendency of the proceedings and the same could not have been acted upon by the defendants as the plaintiff has been in possession of the second floor of the said property in her husband's independent right. The same is also not acted upon by the parties for the reason that the plaintiff has been in physical possession of the second floor of

the 'B' suit schedule property and therefore, in fact, she could not have delivered the possession to the second defendant and acted upon the same, hence, Section 8 of the Hindu Succession Act, 1956, would come into operation in respect of the above said property. The said property of the deceased-first defendant would devolve upon the deceased husband of the plaintiff along with the second defendant and the other daughters of the deceased-first defendant as they are the joint owners of the said property by virtue of being Class I legal heirs of the deceased-first defendant as per the schedule to the Hindu Succession Act, 1956, upon the death of the first defendant. For this reason also, the plaintiff is entitled for 1/4th share in the suit schedule "B" property”

16. Thus, the law declared by the Hon’ble Supreme Court that when the property found to be joint family property, a gift of joint family property in favour of one of the sons, on the basis that the same is self-acquired property is not legally valid and cannot be acted upon.

17. Nothing more is required to probe further except in arriving at the conclusion that the findings tendered by the trial Court on issue Nos.2 and 3 and additional issue Nos.1 and 2 and even the findings tendered by the lower appellate Court on point No.1, are based on proper appreciation of evidence in accordance with the evidentiary rule.

18. This apart, the very failure on the part of the plaintiff to file a rejoinder questioning the counter claim laid by defendant Nos.1 to 4 is suicidal and affects the claim of the plaintiff so far as the property

covered by Ex.A-17 is concerned, but also giving rise to an inescapable inference that the entire extent of Acs.3-40 cents has been in constructive possession of the plaintiff and defendant Nos.1 to 4.

19. Yet another probability under Exs.A-5 to A-7, when alienations were effected in favour of others, concerning the extents comprising of Survey Numbers, within the suit survey numbers, jointly by the plaintiff and defendant Nos.1 to 4 along with their mother during her life time, is suffice to hold that their mother, Smt. Manikyamma acted as manager only, but not as an absolute owner of subject properties of the suit.

20. Concerning validity of the Exchange Deed under Ex.A-1 dated 07.06.2000, as already mentioned in the above, the answers given by the plaintiff as PW.1, would cut at the root of the case he has set out. His admission referred to in the above to the effect that Ex.A-1 does not reflect that Ac.0-36 cents was exchanged for carving out roads is sufficient to hold that Ex.A-1 was executed by Smt. Manikyamma alone which extent belongs to joint family of the parties, is invalid.

21. The plaintiff as the appellant herein has attempted to make out some case by agitating the grounds in the second appeal. In paragraph No.14 in S.A. No.818 of 2016, he raises that the Exchange Deed dated 16.08.2000 under Ex.A-8 concerning the extents comprised in Survey Nos.193 and 194 in favour of Srinivasulu was

admitted by defendant No.1 as DW.1, and thereby contended that the Courts below ought to have allowed the appeals and decreed the suit. But, again this plea is agitated only at the Second Appeal stage without laying foundation in the original pleading. Therefore, that ground is of no avail to improve the case of the plaintiff.

22. Turning to the rulings relied on by the learned counsel for the plaintiff, in **Pedda Jagannadha Rao¹, Ediga Chandrasekar Gowd², Haji Mohammed Ahmed³, Garagaboyina Radhakrishna⁴, Gaddam Laxmaiah⁵, Sanku Veeraiah⁷ and Pagadala Bharathi⁹**, the question was whether unilateral cancellation of gift deed which has been acted upon cannot result in any legal consequences was answered holding that deed of cancellation and consequential deed will have no legal consequences and do not have impact upon operation of the earlier deed of conveyance and the term conveyance occurring in Rule 26(1)(k)(1) of the A.P. Registration Rules, 1908, has a wide connotation and it would certainly include, deeds of sale/gift/exchange in which the property is transferred from one person to another.

23. A learned single Judge of this Court in **Pagadala Bharathi⁹**, while dealing with the issue, held that unless the donor reserves a right in himself for cancellation of gift executed by him or unless there is an understanding between donor and donee at the time of execution of gift deed for its cancellation on the happening of a certain event, the gift deed executed cannot be cancelled under

Section 126 of TP Act. Here, for the aforesaid reasons in the case at hand, that the gift of undivided property held by a joint family, by a member of joint family in favour of one son ignoring other sons is not valid, in view of the law declared by the Hon'ble Supreme Court in **Kirpal Kaur**¹⁵, which expression of the Hon'ble Supreme court is extracted in the above.

24. Therefore, these rulings relied on by the learned counsel for the plaintiff requesting to hold that unilateral cancellation of gift deed under Ex.A-17 by Ex.B-1 is not legal and valid and, therefore, to hold that the findings recorded by the Courts below thereon are perverse, and, therefore, to admit the present second appeals and to formulate questions of law is, wholly unworthy of acceptance.

25. The ruling in **Kurella Venkta Satyavathi**⁶ relied on by the learned counsel for the plaintiff was to substantiate his submission that the person, who alleges fraud, must give full particulars of allegation and prove the same beyond reasonable doubt either by oral, documentary or circumstantial evidence, in the context of the stand taken by defendant Nos.1 to 4 that since Ex.A-17 was obtained by practicing fraud on their mother Smt. Manikyamma, the donor, herself, cancelled the same by execution of a registered cancellation deed under Ex.B-1. According to the learned counsel, relevant details are wanting in the written statement and also in Ex.B-1, and, therefore, Ex.B-1 is of no avail and does not erase the binding effect of Ex.A-17. But, again this submission has no merit for the very same

reason that it is not as though, on account of execution of Ex.B-1, Ex.A-17 was invalid, but, on account of the fact that execution of Ex.A-17 itself is not legal for the aforesaid reasons. Therefore, this ruling rendered by a Hon'ble Division Bench of this Court would not render any assistance to advance the case of the plaintiff.

26. Even the decision in **Govinda Das**⁸, rendered by a learned Single Judge of Gauhati High Court, would not aid the case of the plaintiff for the reason, on facts, it differs. It was a case, where the plaintiff therein claimed title over the property on the basis of gift deed executed by his mother in respect of the property left by his deceased father. Rival claim was laid by the defendant herein who was daughter of the plaintiff's father from his another wife and name of the plaintiff's mother was recorded as co-sharer in respect of the subject property in *Zamabandi*, and, therefore, it was held that it can be said that the plaintiff's mother had acquired absolute right over the subject property so left by her deceased husband and the plaintiff therein was entitled for declaration in view of the valid gift deed executed by his mother.

27. In the present case, the admissions of PW.1 would clinchingly establish that the suit schedule properties are joint family properties acquired by their father by virtue of a Will executed by their paternal aunt, Smt. Bhagyamma in favour of their father and the parties continued their joint family even after the demise of their father while their mother acted as manager of the joint family till 1973

and also in view of the admission that partition had ever taken place. Thus, even this decision would not assist the plaintiff in substantiating his stand.

28. Thus, it is difficult to construe the questions of law formulated by the plaintiff constituting substantial questions of law besides the plaintiff completely becoming unsuccessful in showing perversity in the findings recorded by the Courts below. When the plaintiff fails to project patent illegality in the findings recorded by the Courts below, it cannot be said that there exists substantial questions of law.

29. Therefore, both the Second Appeals fail and are dismissed accordingly, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand dismissed.

A. SHANKAR NARAYANA, J

January 22, 2018.

PV