

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Appeal Suit No.152 of 1997

JUDGMENT:

In this plaintiffs' appeal, under Section 96 of the Code of Civil Procedure, 1908, the challenge is to the decree and judgment, dated 25.09.1995, of the learned I Additional Senior Civil Judge, Visakhapatnam, passed in O.S.No.329 of 1981.

2. I have heard the submissions of Sri *T.Nagarjuna Reddy*, learned counsel appearing for the appellants/plaintiffs, of Sri *K.Sita Ram*, learned counsel appearing for the respondents 1 & 3, and of Smt *I.Maamu Vani*, learned counsel appearing for the 2nd respondent. I have perused the material record.

3. The parties in this Appeal Suit shall hereinafter be referred to as the plaintiffs and the defendants as arrayed in the suit, for convenience and clarity. Be it noted that the plaintiffs 2 & 3 being minors as on the date of the institution of the suit were being represented by the 1st plaintiff, who is their elder brother. After the institution of this appeal by the plaintiffs, the said plaintiffs 2 & 3 were declared as majors and all the plaintiffs are prosecuting the Appeal Suit. Be it also noted that this Appeal Suit was dismissed against the 4th respondent *vide* orders of this Court, dated 20.03.1998, in C.M.P.No.18259 of 1997 accepting the request of the 4th respondent in the said Miscellaneous Petition for dismissal of the appeal against him.

4. Since this is a First Appeal Suit, it is necessary to refer to the pleadings of the parties.

5. The averments in the plaint, in brief, are as follows:- The plaintiffs 1 to 3 are brothers and are sons of one Asuram Purnadas. Purnadas is an adopted son of Asuram, who succeeded to extensive properties by birth. The said Purnadas is the natural son of Narayanadas. The defendants 1 to 3 are the natural brothers of Purnadas. Neither Narayanadas nor the defendants 1 to 3 had any properties at Visakhapatnam. As the adoptive mother was not taking care of the properties or the person of Purnadas, Narayanadas, being the natural father of Purnadas, filed a suit in O.S.No.12 of 1949 by styling himself as next friend and guardian of Purnadas. The said suit, O.S.No.12 of 1949, on the file of the Subordinate Court, Visakhapatnam, which was filed for partition of the family properties, was compromised at the stage of final decree proceedings; and, the properties mentioned in the said suit schedule and some other properties fell to the share of Purnadas, who is the father of the plaintiffs. The said Purnadas, the father of the plaintiffs, from the beginning is a congenital idiot and was incapable of managing his own affairs. Taking advantage of his idiocy, the 1st defendant obtained a General Power of Attorney seemingly pretending to be interested in the welfare of Purnadas. In the meanwhile, the marriage of Purnadas was performed with one Sayar Devi. After the said marriage, she was apprised of the dishonest intention of the members of the natural family of Purnadas when they fraudulently obtained a Settlement Deed, dated 21.10.1957, purported to have been executed by Purnadas. From a reading of Settlement Deed, it would appear as if it is a family settlement settling various items in favour of different persons of the same

family. By virtue of his adoption, Purnadas ceased to be a member of his natural family and became a member of the adoptive family and no sane person with little intellect would settle most part of his properties in favour of his natural brothers without having any regard to his own interest. Thereupon, the said Sayar Devi with the help of one Hemabhai, filed a pauper suit, O.S.No.239 of 2016, representing Purnadas as guardian, as he was a man of unsound mind and sought declaration of the Settlement Deed as void and inoperative. In the said suit, notice was ordered for appointment of guardian. As a counter blast to the said suit, the 1st defendant, who is a dominating person and having full control over person of Purnadas, got filed O.P.No.19 of 1960 by Purnadas for restitution of conjugal rights against Sayar Devi; and, Sayar Devi was forcibly taken into custody by the 1st defendant with the aid of the said Hemabhai, who was also maneuvered. In the result, the pauper suit became ineffective. The said Hemabhai died subsequently. Sayar Devi, therefore, became helpless. The plaintiffs and their mother were not being treated well by the 1st defendant, who was having full control over the entire family of Purnadas and his family members. The 1st defendant wanted to grab the whole lot of property including the one that was stated to have been settled in the name of Sayar Devi and also the property that was said to have been retained by Purnadas. While so, the 1st defendant negotiated for sale of plaint 'A' schedule property belonging to Purnadas in favour of Theegala Satyanarayana/4th defendant in the year 1960 and insisted that Sayar Devi, the wife of Purnadas and the mother of the plaintiffs, to subscribe her signature to the sale transaction. But she refused to

do so, as the said sale is not in the interests of her lunatic husband and her minor sons, the plaintiffs herein. Thereupon, the 1st defendant sent away Sayar Devi to Rajasthan apprehending that she would take action in a Court of law to prevent the sale on behalf of the plaintiffs, who were all minors by then. Ever since then, the 1st plaintiff was brought up and educated mostly at Rajasthan under the care and guardianship of his mother. He became a major. Then he started making enquiries about extensive properties in which he has got a right by birth. His mother told him about what all had happened during his minority and also before his birth. The 1st defendant is an inter-meddler so far as the properties of Purnadas are concerned, as the same were acquired by virtue of his adoption by Asuram. Therefore, all transactions, which are effected in the name of Purnadas, are void and invalid, since he is a congenital idiot, incapable of managing his own properties and exercising his mind. The mother of the plaintiffs, Sayar Devi, also could not take effective action on account of her helplessness and being a woman, who was subjected to the dictations of the 1st defendant. The 1st plaintiff came to know that the defendants are going to make alienations of the properties covered by the Settlement Deed, which was obtained fraudulently. Hence, the plaintiffs came down to Visakhapatnam, along with their mother Sayar Devi. After ascertaining the developments, they got issued telegraphic notices to the respective alienees not to enter into proposed sale transactions. The proposed alienees namely M/s.Bharathi Photo Studio and Bulusa Rama Rao, having received notices, did not issue any replies. They and the defendants 1 & 2 threatened the 1st plaintiff that he

