

IN THE HIGH COURT FOR THE STATE OF TELANGANA

C.R.P.No.1892 of 2017 and C.R.P. No.2967 of 2017

CRP No.1892 of 2017:

Between:

Future Builders Co-Op Society
Rep., by its President Sri Mufaddal Javawala,
Address No.60/1, Ranigunj, Secunderabad-3.

....Petitioner/Plaintiff

and

S. Malla Reddy and four others.

....Respondent/Defendants

DATE OF JUDGMENT PRONOUNCED: 13.09.2019.

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. *Whether Reporters of Local newspapers may be allowed to see the Judgments?* -No-
2. *Whether the copies of judgment may be marked to Law Reports/Journals* -Yes-
3. *Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?* - No-

*** THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

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% Dated:13.09.2019

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Future Builders Co-Op Society
Rep., by its President Sri Mufaddal Javawala,
Address No.60/1, Ranigunj, Secunderabad-3.

....Petitioner/Plaintiff
and

\$ S. Malla Reddy and four others.

....Respondent/Defendants

! Counsel for Petitioner: Sri S.R. Mahajir

^ Counsel for respondent: Sri Vedula Srinivas
Sri Anand Kumar Kapoor
Sri Ghanshyam Das Mandhani
Sri A. Venkatesh

< GIST:

> HEAD NOTE:

? Citations:

1. 2013 (4) ALD 40
2. (2015) 9 S.C.C. 287
3. (1999) 8 S.C.C. 396
4. AIR 1958 S.C. 886
- 5 (1974) 1 SCC 242
- 6 (2008) 7 SCC 85
- 7 (2015) 10 SCC 203
- 8 (2003) 6 SCC 675
- 9 (1990) 4 SCC 309
- 10 (2003) 10 SCC 200
- 11 (2017) 3 SCC 702
- 12 (2014) 8 SCC 294
- 13 294 US 600 (1935)
- 14 AIR 1941 FC 5
- 15 (1975) 1 SCC 770
- 16 1992 Supp (2) SCC 623*
- 17 (2001) 2 SCC 762
- 18 (2010) 3 SCC 470
- 19 (2002) 2 SCC 256
- 20 (2003) 7 SCC 219
- 21 2006 (1) ALD 814
- 22 1995 (1) ALD 295
- 23 AIR 1986 Calcutta 220
- 24 AIR 1998 M.P. 310
- 25 AIR 1969 Madras 462
- 26 AIR 1984 AP 176
- 27 AIR 1979 Gujarat 134

²⁸ 2010 (4) ALD 500 (DB)

²⁹ (2004) 8 SCC 355

³⁰ (1983) 4 SCC 625

³¹ R.S.Maddanappa v. Chandramma ... AIR 1965 SC 1812 PARA 16



THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**C.R.P.No.1892 of 2017 and C.R.P. No.2967 of 2017****COMMON ORDER:**

These two Revisions arise out of the same suit O.S.No.1 of 2000 (previously O.S.No.408 of 1994) on the file of the XVI Additional District and Sessions Judge,-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri and so they are being disposed of by this common order.

2. C.R.P.No.1892 of 2017 is filed by the M/s.Future Builders Cooperative Housing Society (for short 'Society')/ Plaintiff in the above suit assailing the order dt.18-01-2017 in I.A.No.221 of 2004 in O.S.No.1 of 2000 and C.R.P.No.2967 of 2017 is filed by Defendant Nos.3 and 4 in the said suit assailing the order dt.18-01-2017 in I.A.No.582 of 2013 in O.S.No.1 of 2000.

3. The said suit was filed on 07-10-1994 as O.S.No.408 of 1994 before the III Additional Judge, City Civil Court at Secunderabad by the Plaintiff Society against (i) Samala Malla Reddy, (ii) Smt.Jaya Lakshmi, W/o.Samala Malla Reddy, (iii) Sri Raghava Reddy, S/o.Samala Malla Reddy and (iv) Ramachandra Reddy, S/o.Samala Malla Reddy for (a) declaration that the said Plaintiff is the owner of the suit schedule property and (b) for a perpetual injunction restraining the Defendants from interfering with the Plaintiff's possession of the suit schedule property.

4. The suit schedule property is an extent of Ac.4.10 gts of agricultural land in Tirumalghery village, Secunderabad Mandal, Hyderabad District consisting of (a) Ac.2.19 gts out of Ac.14.09 gts in Sy.No.110/1, (b) Ac.0.25 gts out of Ac.1.09 gts in Sy.No.107, (c) Ac.0.07 gts out of Ac.0.20 gts in Sy.No.108 and (d) Ac.0.39 gts out of Ac.1.24 gts in Sy.No.109 within specified boundaries.

The Brief history of the litigation is as under:

1978-1993

5. Mohd. Abdul Hai was the Chief Promoter of the Plaintiff Society. Before its registration as a Society under the provisions of the A.P. Cooperative Societies Act, 1964 on 28-08-1981, there was an agreement dt.08-03-1978 entered into by the said Mohd.Abdul Hai with Samala Malla Reddy (the 1st Defendant) to the effect that the Chief Promoter, along with others intended to promote the said Society for acquiring land and converting into building sites; that the Society's promoters had identified the suit schedule properties belonging to Mohd.Sarwar and others for purchase; and the promoters entrusted the work to 1st Defendant, who was experienced in such matters and delivered Rs.10,000/- towards sale price; and 1st Defendant would get the land measured, examine the documents, obtain legal opinion and possession of the land from its owner *on behalf of the Society* to be incorporated *thereafter*. The agreement further stated as under:

“2) That the 1st part (i.e the 1st Defendant) will get the sale deed executed in the name of the Society. In case of any delay in registration and incorporation of the Society, the 1st part will obtain the sale deed in his name or that of his nominee for the benefit of the said Society and hold the same as fiduciary for the Society and carry out such developments as all the Promoters may agree.

3) It is further agreed that after incorporation of the Society, the 1st part will deliver the land to it to the said Society. The Society shall be treated as Owner from the date of its incorporation and necessary changes and mutation shall be done accordingly.”

6. After the registration of the Society on 28-08-1981, a Memorandum of Agreement was executed on 16-09-1981 between the Defendants and the Society stating that the Promoters of the Society including the 1st Defendant agreed to purchase the suit schedule property from its owners *for the benefit of the Society*; that 1st Defendant was authorized to purchase the suit schedule property as one of the Promoters of the Society by agreement dt.08-03-1978; there was a delay in getting the Society registered and incorporated under the A.P. Co-operative Societies Act,1964; the 1st Defendant purchased under registered sale deed dt.02-01-1979 the suit schedule property *in his name with the funds provided by the Promoters for the benefit of the Society and also got the name of himself, his wife and sons mutated as pattedars and affected improvements as desired by the Promoters.* It stated further as under:

“(i) The land described in the schedule is hereby delivered to the said Society who may hold the same in their own rights as an owner;

(ii) The 1st part agrees to get the patta mutated in favour of the Society (2nd part) and also take all legal steps to protect the right and possession of the Society and perfect its title.

(iii) The parties agree that the expenses incurred by the 1st part for development and protection of the land by taking account and reimbursing to the 1st part.”

7. Admittedly the 2nd Defendant, who is the wife of the 1st Defendant in O.S. No.1 of 2000 (old O.S. No.408 of 1994) had filed a suit O.S. No.3797 of 1982 against Mohd. Sarwar for perpetual injunction in respect of Ac.0.24 gts in Sy. No.106 and Ac.1.24 gts in Sy. No.109 of Tirumulgherry village claiming to be the owner of the said properties and obtained a judgment and decree dt.05.03.1983 from the 1st Assistant Judge, City Civil Court, Secunderabad. Ac.0.39 gts in Sy. No.109 which is item 4 of the plaint schedule in O.S. No.1 of 2000 forms part of the property covered by the said decree.

8. Defendants 3 and 4 in O.S. No.1 of 2000 (old O.S. No.408 of 1994) who are the sons of the 1st Defendant therein had filed O.S. No.2386 of 1986 against Mohd. Sarwar and his family members to declare that they are the owners of Ac.2.33 gts in Sy. No.104 (Ac.1.18 gts), Sy. No.107 (Ac.0.35 gts) and Sy. No.108 (Ac.0.20 gts) of Tirumulgherry village and to enter their names in column No.11 and 16 of revenue records by deleting the name of the Defendants. The said suit ended in a compromise on 08.12.1987 and a decree as prayed for was granted by the 1st Assistant Judge, City Civil Court, Secunderabad. Items 2 and 3 of the plaint schedule in O.S. No.1 of

2000 form part of the lands which are subject matter of O.S. No.2386 of 1986.

1994-2000

9. The Defendants also filed a caveat No.178 of 1994 dt.11-07-1994 before the III Additional Judge, City Civil Court, Secunderabad confirming the agreement dt.08-03-1978 and also the Memorandum of Agreement dt.16-09-1981 reiterating that the 1st Defendant purchased the suit schedule land *for the Society*; that the 1st Defendant obtained sale deed on 02-01-1979 in his name *with the funds provided by the Promoters of the Society*; that 1st Defendant also got the patta transferred in his name as well as that of other Defendants; that the Memorandum of Agreement dt.16-09-1981 entered into with the Society after its registration on 28-08-1981 was ratified by the Managing Committee of the Society; *possession of the land was delivered to the Society* and it was agreed *that the patta be mutated in favour of the Society*; under the Memorandum of Agreement, he is entitled to expenses incurred by him for development of the land and its protection from the date of its purchase to the date of delivery from the Society, but the Society was postponing the said settlement. He contended that as an agent, he is entitled for lien on the land towards his expenses. He contended that he came to know that the Society was trying to make a layout of the land and dispose it of without paying the amount due to him and may try to get *exparte* orders of injunction in furtherance of its design, and no interim orders be granted in favour of the Society in any such suit

against the Defendants with reference to the suit schedule property which was also mentioned in the caveat.

10. Thereafter on 07-08-1994, O.S.No.408 of 1994 was filed by the Society as mentioned above.

11. On 14-01-1995, the Society claimed that Rs.1,00,000/- was paid to the Defendants by it.

12. On 19-01-1995, the Defendants 1 to 4 filed the following

Written Statement:

“ 1. The first Defendant was entrusted with the work of purchase of the land for the Plaintiff's Society before its incorporation. Since there was delay in the registration and incorporation of the Society, the suit land was purchased in the name of the first Defendant, who is also one of the Promoters from Sri Mohammad Sarvar and others and the patta was transferred in the name of these Defendants. These Defendants held it for the benefit of the Plaintiffs and after the Society was incorporated on 28-08-1981, delivered the land to the Plaintiff and also executed Memorandum dated 16-09-1981 which was ratified by the Plaintiff Society.

2. One of the terms of the Memorandum was that the Plaintiff agreed to pay the expenses incurred by the Defendants for the development and protection of the land. Since the Plaintiff postponed the settlement of accounts, these Defendants did not apply for transfer of patta in favour of the Plaintiff.

3. After the suit is filed there is mediation and settlement and a sum of Rs.1,00,000/- (Rupees One lakh only)is paid as full quit to these Defendants and these Defendants are willing to transfer of the patta in favour of the Plaintiff who has already acquired the title as stated in the plaint.

4. Hence the suit may be decreed as prayed for but without costs.”

13. But on 17-02-1995, Defendants filed I.A.No.2217 of 1995 (re-numbered later as I.A.No.162 of 2000) alleging that their counsel played fraud and got the above Written Statement filed.

14. Their counsel filed a counter-affidavit denying the said allegations on 02-08-1995.

15. In the meantime, third parties filed O.S.No.27 of 1998 before the I Additional Chief Judge, City Civil Court, Secunderabad against the Defendants in respect of the suit schedule property in O.S.No.408 of 1994 seeking relief of specific performance on the basis of an agreement of sale dt.04-12-1992 allegedly executed by the Defendants in O.S.No.408 of 1994 in their favour and for perpetual injunction restraining them from interfering with the Plaintiffs' possession of the suit schedule property.

16. On 18-05-1998, the youngest son of the 1st Defendant by name S.Gopal Reddy (who was not a party in O.S.No.408 of 1994 when it was filed initially) filed O.S.No.61 of 1998 on the file of III Additional District Judge, Ranga Reddy District at Saroornagar against Defendant Nos.1 to 4 and others alleging that the suit schedule properties and other properties were joint family properties of the family of the 1st Defendant in O.S.No.408 of 1994 and were acquired with the joint efforts/funds of the joint family members. He alleged that Defendant Nos.1 to 4 were acting detrimental to his interests and he is entitled to 1/5th share in the properties which were subject matter of the said suit (which included the properties which are subject

matter of O.S.No.408 of 1994). In that suit, the Society (Plaintiff in O.S.No.408 of 1994) was impleaded as 10th Defendant.

17. The Plaintiff Society in O.S.No.408 of 1994 filed Transfer C.M.P. No.268 of 1999 for transfer of O.S.No.408 of 1994 to the Court of II Additional District Judge, Ranga Reddy District at Saroor Nagar to be tried with O.S.No.61 of 1998. The Defendant Nos.1 to 4 in O.S.No.408 of 1994 filed Tr.C.M.P.No.282 of 1999 to transfer O.S.No.408 of 1994 to the Court of I Additional Chief Judge, City Civil Court, Secunderabad to be tried along with O.S.No.27 of 1998. The Plaintiffs in O.S.No.27 of 1998 filed Tr.C.M.P.No.295 of 1999 to transfer O.S.No.27 of 1998 to the Court of II Additional District Judge, Ranga Reddy District at Saroor Nagar to be tried along with O.S.No.61 of 1998.

18. The above three Tr.C.M.Ps. were disposed of by this Court on 23-11-1999 transferring O.S.No.408 of 1994 and O.S.No.27 of 1998 to the Court of the II Additional District Judge, Ranga Reddy District at Saroor Nagar to be tried along with O.S.No.61 of 1998 and the said Court was directed to dispose of all three suits as expeditiously as possible.

19. On transfer to the Court of II Additional District, Ranga Reddy District at Saroor Nagar, O.S.No.408 of 1994 was renumbered as O.S.No.1 of 2000.

20. O.S. No.27 of 1998 was renumbered as O.S. No.2 of 2000 after transfer and the Plaintiffs therein became members of the Plaintiff Society in O.S. No.1 of 2000.

2000-2010

21. Defendant Nos.1 to 4 filed I.A.No.415 of 2000 under Order VI Rule 16 C.P.C. to strike out the pleadings in the Written Statement filed on their behalf or otherwise to expunge the Written Statement filed in their names by their previous Advocate in O.S.No.408 of 1994; and I.A.No.416 of 2000 under Order VIII Rule IX C.P.C. to permit them to file a detailed Written Statement. Both these applications were dismissed by the trial court on 04-01-2002.

22. S.Gopal Reddy, the youngest son of 1st Defendant was impleaded vide order dt.08-02-2001 in I.A.No.1819 of 2000 as 5th Defendant in O.S.No.1 of 2000.

23. I.A.No.162 of 2000 was also allowed and Defendant Nos.1 to 4 were permitted to engage another Advocate.

24. Against the orders passed in I.A.Nos.415 and 416 of 2000, Defendant Nos.1 to 4 filed C.R.P.Nos.502 of 2002 and 505 of 2002 in this Court, which dismissed them on 18-09-2002.

25. Review Petitions filed by them were also dismissed on 25-06-2003.

26. The Society (Plaintiff in O.S.No.408 of 1994) then filed I.A.No.221 of 2003 in O.S.No.1 of 2000 under Order XII Rule 6

C.P.C. to decree the suit on the basis of admissions made by the Defendants which attained finality by virtue of the orders passed by the High Court in the above C.R.P Nos.502 of 2002 and 505 of 2002.

27. The Defendants filed Civil Appeal Nos.7940-7942 of 2004 in the Supreme Court of India challenging the orders passed in C.R.P.Nos.502 of 2002 and 505 of 2002. The Civil Appeals were dismissed on 15-03-2007.

28. The 1st Defendant, in May, 2007, filed I.A.(SR) No.593 of 2007 for amendment of the Written Statement. The trial Court dismissed it on 06-07-2007 without numbering it, but the said order was set aside in C.R.P.No.3374 of 2007 by this Court on 20-08-2007 and the trial Court was directed to number it and dispose it of on merits.

29. The said I.A. (SR) No.593 of 2007 was then numbered as I.A.No.629 of 2007 on 31-08-2007. On the same day, Defendant No.2 filed I.A.No.715 of 2007 and Defendant Nos.3 and 4 filed I.A.No.716 of 2007 also to amend the Written Statement.

30. On 27-09-2007, these I.As. were allowed by the trial Court.

31. The said orders were challenged in C.R.P.Nos.5139, 5175 and 5176 of 2007 by the Plaintiff-Society before this Court.

32. On 28-12-2007, the said C.R.Ps. were allowed and I.A.Nso.629, 715 and 716 of 2007 filed by the Defendant Nos.1 to 4 were dismissed.

2010-2019

33. Defendant Nos.1 to 4 challenged the said order in Civil Appeal Nos.3914, 3915 and 3916 of 2013 before the Supreme Court. The Supreme Court on 08-04-2013 dismissed the Civil Appeals and the said decision is reported in **S.Malla Reddy Vs. Future Builders Cooperative Housing Society and others¹**.

34. Two and half months thereafter, Defendant Nos.3 and 4 filed I.A.No.582 of 2013 under Order VII Rule 11 (a) C.P.C. for rejecting the plaint of the Society.

35. By separate orders dt.18-01-2017, I.A.No.221 of 2004 and I.A.No.582 of 2013 were dismissed by the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.

The order of the Court below in I.A. No.221 of 2004

36. As stated above, I.A. No.221 of 2004 had been filed on 15.12.2003 by the Plaintiff Society in O.S. No.1 of 2000 invoking Or.XII Rule 6 CPC. The Plaintiff Society contended that the Defendants had filed a Written Statement admitting the Plaintiff Society's claim; that attempts made by the Defendants to wriggle out of the admissions made therein had failed by dismissal on 04.01.2002 of I.A. Nos.415 of 2000 and 416 of 2000, and by dismissal on 18.09.2002 of CRP Nos.502 of 2002 and 505 of 2002; that Defendants 1 to 4 in O.S. No.1 of 2000 had set up 5th Defendant, who is the

¹ 2013 (4) ALD 40

youngest son of Defendants 1 and 2 and got filed O.S. No.61 of 1998 for partition of the suit schedule properties; the latter had filed a Written Statement as 5th Defendant which is vague and evasive; that Defendants 1 to 4 purchased the suit schedule properties with the monies provided by the Plaintiff Society and this was admitted by Defendants 1 to 4 in the Written Statement filed by them; and so judgment may be passed under Order XII Rule 6 CPC *on admissions against Defendants 1 to 4 reserving the right of the 5th Defendant to get his claim adjudicated in O.S. No.61 of 1998 as all interested persons are parties to the said suit.*

37. The 1st Defendant had filed a counter-affidavit running into 47 paragraphs seeking dismissal of I.A. No.221 of 2004. In brief, he contended that the Plaintiff Society is neither the owner of the suit schedule property nor was it ever in possession of it; that the suit itself is based on fabricated and ante-dated documents which are also inadmissible; Defendants are in possession since inception and the Plaintiff Society cannot maintain the suit for relief of declaration without seeking relief of possession and it also cannot seek relief of injunction because it does not have possession. According to him, Defendants 1 to 5 are true owners of the property and no injunction can be granted against them.

38. He contended that in the plaint, the Plaintiff Society at para 5 had also set up plea of adverse possession, but since it did not have possession, no relief can be granted on the said basis to it; that the claims of the Plaintiff Society in O.S. No.1 of 2000 need to be

determined at the trial, that the Written Statement filed therein by Defendants 1 to 4 is tainted by fraud, since both the plaint and Written Statement were typed on the same typewriter; that Counsel engaged by Defendants 1 to 4 colluded with the Plaintiff Society and disciplinary proceedings against him were initiated before the Bar Council of India which are pending.

39. He also contended that 5th Defendant is not a party to I.A. No.221 of 2004 and the said application has to be dismissed on the said ground; that pleadings in O.S. No.2 of 2000 are contrary to the pleadings in O.S. No.1 of 2000; title cannot be conferred by admission; and so I.A. No.221 of 2004 has to be dismissed. Reliance is also placed on the order passed in Transfer CMPs.268, 282 and 295 of 1999 on 23.11.1999 by this Court directing clubbing of the three suits and it is sought to be contended that filing of I.A. No.221 of 2004 is a devise to get over the said orders of this Court.

40. A new plea is raised for the first time that records available with Registrar of Housing Societies in relation to the Plaintiff Society do not disclose the name of 1st Defendant as the promoter of the Plaintiff Society; that the properties which were purchased by Defendants 1 to 4 under the sale deed dt.02.01.1979 are different from those mentioned in the plaint schedule; that there are no admissions in the Written Statement filed by Defendants 1 to 4 and the same has to be ignored as its contents are false and against the record.

41. In its order dt.18.01.2017 in I.A. No.221 of 2004, the Court below, having noted that the Supreme Court did not permit the Defendants 1 to 4 to strike off the contents of the Written Statement filed by them in the suit or to amend the Written Statement, observed that after 5th Defendant was added as a party in O.S. No.1 of 2000, the Plaintiff Society did not make any consequential amendments; that 5th Defendant denied the claim of the Plaintiff in his Written Statement; and so it is not proper for the Court to decide final rights of the parties in I.A. No.221 of 2004.

42. It also observed that power of the Civil Court under Order XII Rule 6 CPC is discretionary and judgment on admission is not a matter of right, but is in the discretion of the Court.

43. It observed that relief of declaration of title of the Plaintiff Society cannot be granted without going into the merits of the case of the 5th Defendant; there is a complicated issue whether Defendants are in possession of the suit property under fiduciary capacity for the Plaintiff and whether Plaintiff is deemed to be in possession of the suit property even though the physical possession is with the Defendants, which has to be decided after trial; and merely because the Court has not exercised its discretion under Order XII Rule 6 CPC it does not mean that the admissions of Defendants 1 to 4 are not considered by the Court.

44. He also observed that the Plaintiff Society did not plead in the plaint that Defendants 1 to 4 are in physical possession of the suit

schedule property as caretakers and promoters of the Society and that there is no mention of the Court decrees in O.S. No.3797 of 1982 or O.S. No.2386 of 1987 in the plaint.

The Order of the Court below dt.18.01.2017 in I.A. No.582 of 2013 in O.S. No.1 of 2000

45. As stated above, I.A. No.582 of 2013 was filed by Defendants 2 and 3 in the suit O.S. No.1 of 2000 to reject the plaint invoking Order VII Rule 11(a) of the CPC contending that the plaint does not disclose any actionable cause for the Plaintiff Society to sue Defendants 3 and 4.

46. They alleged that there are no pleadings in the plaint as far as they are concerned and it does not disclose any cause to sue them. According to them, there is no cause accruing or arising for the Plaintiff to sue them. They contended that though there is a mention in the plaint about a transfer of patta in favour of Defendants 2 to 4 on account of the sale deed dt.02.01.1979, the said sale deed is only in favour of 1st Defendant and the said patta is non-existent and was not produced by the Plaintiff Society. They contended that by clever drafting of the plaint and creation of an illusory cause of action, Plaintiff cannot proceed against them particularly when items 2, 3 and 4 of the plaint schedule are not part of the sale deed dt.02.01.1979.

47. Counter-affidavit was filed by the Plaintiff opposing his application. The Plaintiff contended that in the caveat filed against the Plaintiff Society (caveat No.178/94) before the III Senior Civil Judge, City Civil Court, Secunderabad, Defendants 3 and 4 had

mentioned about the said patta, which proves its existence; that there is a transfer of patta in their favour and in favour of other Defendants 1 and 2 and all of them hold it for the benefit of the Plaintiff Society in fiduciary capacity; and they are disabled from setting up any title adverse to their position as persons holding the said property in trust for the Society. It was pointed out that all attempts by the said Defendants to wriggle out of their admissions in the Written Statement having failed, they have resorted to filing of this application only to drag on the matter.

48. By order dt.18.01.2017, the Court below dismissed the said I.A. It observed that while dealing with an application under Order VII Rule 11 CPC, the trial Court must remember that only if on a meaningful and not formal reading of the plaint, the claim is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it can reject the plaint; in the instant case, whether the suit of the Plaintiff is bad for not asking relief of recovery of possession of the suit property or not is to be decided after trial of the suit; at this stage, it is not necessary in this I.A. to give any definite finding on the aspect of possession; the contention of the Plaintiff that Defendants are holding the land in fiduciary capacity or otherwise is to be decided after full fledged trial; and in the light of the Written Statement filed by Defendants 3 and 4 along with Defendants 1 and 2, it cannot be said that there is no cause of action for the Plaintiff to file the suit against them.

The CRP No.s 1892 and 2967 of 2017

49. *C.R.P.No.1892 of 2017 is filed by the Society assailing the order dt.18-01-2017 in I.A.No.221 of 2004 in O.S.No.1 of 2000 and C.R.P.No.2967 of 2017 is filed by Defendant Nos.3 and 4 assailing the order dt.18-01-2017 in I.A.No.582 of 2013 in O.S.No.1 of 2000.*

50. Heard Sri S.R. Mahajir, Counsel for the Plaintiff/petitioner in CRP No.1892 of 2017/respondent No.1 in CRP No.2967 of 2017; Sri Anand Kumar Kapoor, for 2nd Defendant/2nd respondent in CRP No.1892 of 2017/3rd respondent in CRP No.2967 of 2017; Sri Ghanshamdas Mandhani, Advocate for Defendants 3 and 4/respondents 3 and 4 in CRP No.1892 of 2017/petitioners in CRP No.2967 of 2017; and Sri V. Srinivas, Advocate for Sri M. Satish Kumar, Advocate for 1st Defendant/1st respondent in CRP No.1892 of 2017/2nd respondent in CRP No.2967 of 2017; and Sri A. Venkatesh, Advocate for 5th Defendant/5th respondent in CRP No.1892 of 2017/4th respondent in CRP No.2967 of 2017.

51. Several contentions were advanced by both sides. To avoid repetition, they will be considered by me at the appropriate place.

52. From the contentions raised by the parties, in my opinion the following points arise for consideration :

“(a) Whether the Plaintiff-Society had made out a case for obtaining a decree in its favour in O.S.No.1 of 2000 under Order XII Rule 6 C.P.C. ?

(b) Whether Defendant nos.3 and 4 have made out a case for rejection of plaint filed by the Plaintiff-Society in O.S.No.1 of 2000 under Order VII Rule 11(a) C.P.C. ?

(c) To what relief ?”

53. From the facts set out by me, events from 1978 till 2019 covering four decades are evident.

54. It is evident also that attempts made by Defendant nos.1 to 4 to wriggle out of the several admissions made by them in the Written Statement filed by them on 19.01.1995 to the plaint dt.07.10.1994 filed by the Plaintiff-Society in O.S.No.408 of 1994 (later re-numbered as O.S.No.1 of 2000) ended in failure. Initially, they tried to get an additional Written Statement filed (in I.A.NO.415 of 2000) and to strike off the Written Statement already filed (in I.A.No.416 of 2000). These I.A.s were dismissed on 04.01.2002 and the orders passed therein were confirmed by this Court on 18.09.2002 in CRP.No.502 and 505 of 2002. A Review Petition filed by them to get the said orders reviewed also failed on 25.06.2003. They challenged the orders in the Revisions in Civil Appeals Nos.7940 – 7942 of 2004 before the Supreme Court and they were also dismissed on 15.03.2007.

55. They then filed I.As.629 of 2007, 715 of 2007 and 716 of 2007 to amend the Written Statement. These I.As were allowed initially on 27.09.2007 by the trial Court, but the said orders were set aside on 13.11.2007 by this Court in CRP.No.5139, 5175 and 5176 of 2007

and later also confirmed by the Supreme Court on 18.04.2013 in Civil Appeal Nos.3914, 3915 and 3916 of 2013.

Point (a) :

56. Order XII Rule 6 of the C.P.C. deals with “Judgment on admissions”. It states :

“6. Judgment on admissions : -

(1) *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*

(2) *Whenever a judgment is pronounced under sub-rule(1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”*

57. The Supreme Court in **S.M. Asif vs. Virender Kumar Bajaj**² considered the said provision and held that the words ‘may’ and ‘make such order..’ in Order XII Rule 6 show that the power under that provision conferred on the Civil Court is discretionary and that a party cannot claim as a matter of right, judgment on admission. It held that it is a matter of discretion of the Court and that where Defendants raised objections which go to the root of the case, it would not be appropriate to exercise discretion under Order XII Rule 6 C.P.C. It held that the said provision is an enabling provision which confers discretion on the Court to deliver a quick judgment on admission and

² (2015) 9 S.C.C. 287

to the extent of the claim admitted by one of the parties of his opponent's claim.

58. Therefore, the question for consideration is whether in the facts and circumstances of the case whether the Court below has rightly exercised its discretion conferred by the said provision to reject I.A.No.221 of 2004?

59. In **Balraj Taneja and another vs. Sunil Madan and another**³, the Supreme Court stated that under Order XII Rule 6 C.P.C., the Court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the Defendant; but before the Court can act upon the admission, it has to be shown that the *admission is unequivocal, clear and positive*. It also held that the Court is empowered under this Rule to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit. Referring to the decision in **Razia Begum vs. Sahebzadi Anwar Begum**⁴, it held that Order XII Rule 6 must be read with proviso to Rule 5 of Order VIII; and notwithstanding the admission made by the Defendant in his pleading, the Court *may* require the Plaintiff to prove the facts pleaded by him in the plaint. Proviso to Section 58 of the Evidence Act which also states the same rule was quoted. It held as under :

“29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the Defendant in his Written Statement nor should the court proceed to pass judgment

³ (1999) 8 S.C.C. 396

⁴ AIR 1958 S.C. 886

blindly merely because a Written Statement has not been filed by the Defendant traversing the facts set out by the Plaintiff in the plaint filed in the Court. In a case, specially where a Written Statement has not been filed by the Defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 C.P.C. Before passing the judgment against the Defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the Plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the Defendant who has not filed the Written Statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the Plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8."

60. These parameters also need to be kept in mind while considering whether the discretion was properly exercised by the Court below in rejecting I.A.No.221 of 2004.

The pleading in the plaint:

61. In the plaint, the Plaintiff-Society stated that it is registered under the A.P. Co-operative Societies Act, 1964 by its promoters which included the 1st Defendant; for purpose of registration under the said Act, it was necessary to show the Registrar that the promoters entered into Agreement for purchase of land for the benefit of its members; before the Plaintiff-Society was registered, its promoters

identified the suit land as fit for the purpose and negotiated with Mohd. Sarvar and entrusted work to 1st Defendant for effecting the purchase after measurement and also delivered Rs.10,000/- to the 1st Defendant. It contended that 1st Defendant executed an agreement dt.08.03.1978 in favour of the Chief Promoter of the Society; under the said agreement, the 1st Defendant agreed to get the land measured, obtain legal opinion as to title, pay money to the land owner, obtain possession and also obtain sale deed in the name of the Plaintiff-Society which was expected to be registered soon under the Act; in the case of any delay in registration of the Society, it was agreed that the sale deed will be obtained in the name of the 1st Defendant and patta also will get transferred in his name or of his nominees and that they will hold it for the benefit of the society, which will be treated as owner as soon as it is registered. It is alleged that 1st Defendant accordingly obtained sale deed on 02.01.1979 and got transferred of patta in his name as well as that of Defendant nos. 2 to 4 who were his wife and sons respectively.

62. The Plaintiff-Society contended that the Society was registered on 28.08.1981; Defendant nos. 1 to 4 delivered possession of the suit land to it and agreed to secure the patta mutated in the name of the Plaintiff; a Memorandum of Agreement dt.16.09.1981 was also executed to the effect that the Plaintiff will hold the land as owner and that expenses incurred by the 1st Defendant from the date of purchase to the date of delivery of possession of the land to the Plaintiff

towards survey, demarcation and for development / protection of the land will be paid to the 1st Defendant after rendering account.

63. The Plaintiff contended that it thus became the owner of the suit schedule land on 02.01.1979 when 1st Defendant, who is one of the promoters purchased the land for the benefit of the society to be incorporated; upon incorporation on 28.08.1981, Plaintiff succeeded to the right of ownership and it adopted the benefit of purchase; and subsequently, on 16.09.1981, a Memorandum of Agreement was also executed conferring benefits of ownership on the Plaintiff.

64. Alternatively, it was pleaded that it acquired right of ownership by virtue of uninterrupted possession and enjoyment from 16.09.1981 for more than the statutory period in their own right and perfected title by adverse possession and prescription.

65. It claimed that it demanded the Defendants several times to apply to the Revenue authorities for transfer of patta in its name, but they were postponing it; and therefore, the suit was filed to declare the Plaintiff as the owner of the suit property and for perpetual injunction restraining the Defendants from interfering with its possession and enjoyment of the property and for such other relief as the Court may deem fit and proper apart from costs.

The Written Statement of the Defendant nos. 1 to 4 :

66. As stated above, Defendant Nos.1 to 4 filed Written Statement admitting the case of the Plaintiff Society. They contended that the 1st Defendant was entrusted with the work of purchase of the land for the

Plaintiff's Society before its incorporation. Since there was delay in the registration and incorporation of the Society, the suit land was purchased in the name of the 1st Defendant, who is also one of the Promoters from Sri Mohammad Sarvar and others and the patta was transferred in the name of these Defendants. They stated that they hold it for the benefit of Plaintiff and after the Society was incorporated on 28-08-1981, they delivered the land to the Plaintiff and also executed Memorandum dt.16-09-1981 which was ratified by the Plaintiff Society.

67. They contended that one of the terms of the Memorandum was that the Plaintiff agreed to pay the expenses incurred by the Defendants for the development and protection of the land; since the Plaintiff postponed the settlement of accounts, the Defendants did not apply for transfer of patta in favour of the Plaintiff; and that after the suit was filed there was mediation and settlement and a sum of Rs.1,00,000/- (Rupees One lakh only) is paid as full quit to these Defendants and these Defendants are willing to transfer of the patta in favour of the Plaintiff who has already acquired the title as stated in the plaint.

68. They specifically stated that *the suit be decreed as prayed for but without costs.*

THE CONSIDERATION BY THE COURT

69. A reading of the above Written Statement indicates that the admissions of the Defendant Nos.1 to 4 in the above Written

Statement are unequivocal, clear and positive. The plaint does not indicate that there are disputed questions of fact involved in the case. Merely because an alternative plea of adverse possession is also raised in the plaint, when the Defendants admit the initial and main plea of the Plaintiff, i.e they purchased for it's benefit with money of the Plaintiff, in my considered opinion, there is no necessity for the Court to require the Plaintiff to again prove the facts stated in the plaint as per Rule 5 of Order VIII or Section 58 of the Evidence Act.

70. More so, when the attempts by the Defendant No.s.1 to 4 to wriggle out of these admissions miserably failed.

71. Also, similar admissions were contained in the Caveat affidavit in Caveat No.178 of 1994 filed by the Defendant Nos.1 to 4 before the III Additional Judge, City Civil Court, Secunderabad in regard to the plaint schedule property in the suit, and the filing of the said Caveat is not denied by them.

72. In **Nagindas Ramdas v. Dalpatram Ichharam**⁵, the Supreme Court declared:

“27. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”(emphasis supplied).

⁵ (1974) 1 SCC 242

73. This principle has also been reiterated in **Gautam Sarup Vs. Leela Jetly**⁶ and by another three Judge Bench of the Supreme Court in **Ram Niranjana Vs. Sheo Prakash**⁷.

74. That apart, the Defendants 1 to 4 herein had failed in their attempts to wriggle out of the admissions made in the Written Statement by them. The Supreme Court in Civil Appeal Nos.3914 of 2013 and batch on 18-04-2013 as reported in **S. Malla Reddy** (1 supra) upheld the High Court order refusing to permit the Defendants 1 to 4 to amend the Written Statement filed by them in the suit O.S.No.1 of 2000.

75. The Supreme Court in **S. Malla Reddy** (1 supra) held that the High Court was right in not allowing the Defendant Nos.1 to 4 to resile from the admissions made in the Written Statement by them by taking recourse to Order VIII Rule 9 or Order VI Rule 16 C.P.C. by seeking to file a fresh Written Statement. It further went on to observe:

“24. In the aforesaid premises, filing of a fresh petition by the Defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent application for the same relief is an abuse of process of the Court. As noticed above, the relief sought for by the Defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the Defendants-appellants under Order VI Rule 116 CPC and Order VIII Rule 9

⁶ (2008) 7 SCC 85
⁷ (2015) 10 SCC 203

CPC and, therefore, the subsequent petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable.”

76. This order of the Supreme Court being an order *inter partes* is binding on Defendant Nos.1 to 4 and estops them from raising any plea contrary to what is contained in the Written Statement already on record in O.S.No.1 of 2000 on their behalf.

77. What the Supreme Court did not permit the Defendant Nos.1 to 4 to do directly by way of amendment of the Written Statement, cannot be permitted to be done by them indirectly by raising objections in the Order XII Rule 6 C.P.C. application filed by the Plaintiff contrary to the admissions contained in the Written Statement.

78. The Court below unfortunately did not consider this aspect of the matter while deciding I.A.No.221 of 2004 and committed a grave error of jurisdiction warranting interference by this Court under Article 227 of the Constitution of India.

79. As held in **Surya Dev Rai Vs. Ram Chander Rai**⁸, the supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate Courts within the bounds of their jurisdiction; and when a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have, or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and

⁸ (2003) 6 SCC 675

failure of justice or grave injustice has occasioned thereby, the High Court is entitled to step in to exercise its supervisory jurisdiction.

80. In the instant case, almost 40 years have elapsed since entering into the agreement on 08-03-1978 by the 1st Defendant as Promoter of the Plaintiff-Society with the Chief Promoter of the Plaintiff with regard to the subject land, and it would be a travesty of justice if the Defendants are allowed to further delay the process by allowing them to raise new technical objections in spite of the Supreme Court order refusing to permit them to raise them. It would amount to introducing through the back door, these objections, when the front door i.e., by way of amendment of Written Statement, was firmly shut by the Supreme Court.

81. However, for the sake of completeness, I shall also deal with the said objections to show that they are without any merit, though in my opinion, it is also wholly unnecessary to deal with them.

Objection No.1

82. Firstly I shall consider whether the objection raised by the Defendants about the non-mention of all the plaint schedule properties in the sale deed dt.02-01-1979 under which the 1st Defendant purchased from Mohd. Sarvar, has any bearing on the result in the suit.

83. No doubt under the said sale deed, Ac.1.06 gts 25 yards in Sy.No.105/1, Ac.0.11 gts in Sy.No.107, Ac.9.18 gts in Sy.No.110, totaling Ac.11.20 gts in Trimulgherry, Secunderabad was purchased

by 1st Defendant in his name. Of these, Ac.2.19 gts in Sy.No.110/1 (item No.1 of the plaint schedule in O.S.No.1 of 2000) appears to be covered by the above sale deed.

84. Admittedly the 2nd Defendant, who is the wife of the 1st Defendant in O.S. No.1 of 2000 (old O.S. No.408 of 1994) had filed a suit O.S. No.3797 of 1982 against Mohd. Sarwar for perpetual injunction in respect of Ac.0.24 gts in Sy. No.106 and Ac.1.24 gts in Sy. No.109 of Tirumulgherry village claiming to be the owner of the said properties and obtained a judgment and decree dt.05.03.1983 from the 1st Assistant Judge, City Civil Court, Secunderabad. Ac.0.39 gts in Sy. No.109 which is item 4 of the plaint schedule in O.S. No.1 of 2000 forms part of the property covered by the said decree.

85. Defendants 3 and 4 in O.S. No.1 of 2000 (old O.S. No.408 of 1994) had filed O.S. No.2386 of 1986 against Mohd. Sarwar and his family members to declare that they are the owners of Ac.2.33 gts in Sy. No.104 (Ac.1.18 gts), Sy. No.107 (Ac.0.35 gts) and Sy. No.108 (Ac.0.20 gts) of Tirumulgherry village and to enter their names in column No.11 and 16 of revenue records by deleting the name of the Defendants. The said suit ended in a compromise on 08.12.1987 and decree as prayed for was granted by the 1st Assistant Judge, City Civil Court, Secunderabad. Items 2 and 3 of the plaint schedule in O.S. No.1 of 2000 form part of the lands which are subject matter of O.S. No.2386 of 1986.

86. Copies of the judgments and decrees in these suits were placed on record by both parties.

87. So it is clear that item Nos.1 to 4 of the plaint schedule properties in O.S.No.4 of 2000 are owned by Defendant Nos.1 to 4 by virtue of not only the sale deed dt.02-01-1979 but also under the above decrees passed in their favour.

88. It is not in dispute that all the properties which are subject matter of O.S. No.1 of 2000 were mentioned in the agreement dt.08.03.1978 to which the 1st Defendant was a party and they were also mentioned in the Memorandum of Agreement dt.16.09.1981 executed by Defendants 1 to 4 in favour of the Plaintiff Society. Even the Defendants 1 to 4 have admitted in the agreement dt.16.09.1981 that the plaint schedule properties were purchased with the money provided by the promoters of the Plaintiff Society for the benefit of the Society. In the Written Statement also this was reiterated by them. In the Caveat No.178 of 1994 also, this was reiterated.

89. In my opinion, the principle of feeding the grant by estoppel contained in Section 43 of the Transfer of Property Act, 1882 would get attracted and permit relief to be granted to the Plaintiff even against Defendants 2 to 4. The said provision states:

“Section 43: Transfer by unauthorized person who subsequently acquires interest in property transferred. – Where a person erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the

transferor may acquire in such property at any time during which the contract of transfer subsists.....

Illustration

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying, A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him."

90. As explained by Mulla in his commentary on the Transfer of Property Act (10th edition), Section 43 follows the common law rule of estoppel by deed, in that the subsequent estate passes to the transferee without any further act of the transferor. The rule is that if a man, who has no title whatever to the property grants it by a conveyance which in form carries the legal estate, and he subsequently acquires an interest sufficient to satisfy the grant, the estate instantly passes. Thus, where a person having a partial interest in certain property passes a larger interest, and subsequently acquires that interest, the Section applies and the transferee is entitled to the interest acquired by the transferor. Where a person having no title represents that he has a present and transferable title and the transferee (acting on it) takes a transfer, and the transferor subsequently acquires the property, the Section applies.

91. In **Ram Bhawan Singh & others v. Jagdish & others**⁹, the Supreme Court explained this principle in the following manner:

⁹ (1990) 4 SCC 309

“ 10. Section 43 of the Transfer of Property Act embodies the rule of estoppel by deed. The section enables the transferee to whom a transfer is made on fraudulent or erroneous representation to lay hold at his option of any interest which the transferor may subsequently acquire in the property provided by doing so he does not adversely affect the right of any subsequent purchaser for value without notice. Thus when a lessor erroneously represents that he is authorised to lease a property and creates a lease of it and afterwards acquires that property, the lessee is entitled to have the property from the lessor.”

92. This was also reiterated in **Renu Devi v. Mahendra Singh**.¹⁰

93. So, though Defendants 2 to 4 acquired title to items 2 to 4 subsequent to 1978 in the civil suits O.S. No.2386 of 1986 and O.S. No.3797 of 1982 filed by them against Mohd. Sarvar and others, the Memorandum of Agreement dt.16.09.1981 to which they are parties, brings into operation Section 43 and title is conveyed to the Plaintiff Society for items 2 to 4 of the plaint schedule as well; and it is not open to the Defendants 1 to 4 to contend that they were not parties to the sale deed dt.02.01.1979 and only 1st Defendant was a party thereto and there cannot be a decree in favor of the Plaintiff Society for items 2 to 4 of the plaint schedule in O.S.No.1 of 2000.

94. So this objection has no merit and is rejected and it is held that the relief of declaration of title of the Plaintiff would have to be granted to the Plaintiff.

¹⁰ (2003) 10 SCC 200

Objection No.2

95. According to the learned counsel for Defendants, relief of declaration cannot be granted to the Plaintiff, when the Plaintiff does not have possession and it did not ask for the said relief. Reliance was placed on proviso to Section 34 of the Specific Relief Act, 1963 which directs that '*no Court shall grant a declaration sought by the Plaintiff, where the Plaintiff, being able to seek further relief than a mere declaration of title, omits to do so*'. Reliance was placed on the decision of the Supreme Court in **Executive Officer, Arul Migu Chokkanatha Swamy Koil Trust, Virudhunagar Vs. Chandran and others**¹¹, wherein the above proviso was applied by the Supreme Court.

96. But this principle, in my considered opinion, would not apply in a situation where both the Plaintiff in para 4 of the plaint and the Defendants 1 to 4 in para 1 of the Written Statement filed by them on 19-01-1995 state that the plaint schedule property was *delivered to the Plaintiff after the Plaintiff society was incorporated/registered under the provisions of the A.P. Cooperative Societies Act, 1964* and this is also reiterated in the Caveat No.178 of 1994 filed by them before the III Additional Judge, City Civil Court, Secunderabad.

97. *When the Plaintiff had possession, even according to the Defendants 1 to 4, on the date of filing of the suit, there was no necessity for it to seek relief of recovery of possession in the plaint.* Therefore, it cannot be said that on the date the suit was filed, since

¹¹ (2017) 3 SCC 702

relief of recovery of possession was not sought, the bar contained in Section 34 of the Specific Relief Act, 1963 would operate and render the suit as not maintainable.

98. Later after the suit was filed and Written Statement was filed, if the Defendants developed a malafide intention and grabbed possession from the Plaintiff and also sought to set up exclusive title, such conduct of the Defendants also does not make the suit not maintainable, when their plea in the Written Statement still holds good. It would be a case of dispossession *pendente lite* (though date of such dispossession is not specified), and would be subject to result of the suit.

99. That events occurring subsequent to filing of the suit can be taken note of by the Court and relief can be moulded appropriately to shorten the litigation or to do complete justice, is a well settled legal principle.

100. This principle was articulated in several decisions of the Supreme Court. One such decision is **Gaiv Dinshaw Irani v. Tehmtan Irani**¹², where the Supreme Court declared:

“ 48. In ordinary course of litigation, the rights of parties are crystallised on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 of the Code of Civil Procedure is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or on the entire purpose of the suit, the courts taking note of the same

¹² (2014) 8 SCC 294

should mould the relief accordingly. This rule is one of ancient vintage adopted by the Supreme Court of America in **Patterson v. Alabama**¹³ followed in **Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri**¹⁴. The aforementioned cases were recognised by this Court in **Pasupuleti Venkateswarlu v. Motor and General Traders**¹⁵ wherein he stated that: (SCC pp. 772-73, para 4)

“4. ... It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice—subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

49. The abovementioned principle has been recognised in a catena of decisions. This Court by placing reliance on **Pasupuleti Venkateswarlu case**, held in **Ramesh Kumar v. Kesho Ram**¹⁶ that: (SCC pp. 626-27, para 6)

“6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception.

¹³ 294 US 600 (1935)

¹⁴ AIR 1941 FC 5

¹⁵ (1975) 1 SCC 770

¹⁶ 1992 Supp (2) SCC 623

Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

50. This was further followed in **Lekh Raj v. Muni Lal**¹⁷. This Court in **Sheshambal v. Chelur Corpn. Chelur Building**¹⁸ while discussing the issue of taking cognizance of subsequent events held that: (SCC p. 476, para 19)

"19. To the same effect is the decision of this Court in **Om Prakash Gupta case**¹⁹ where the Court declared that although the ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit yet the court has power to mould the relief in case the following three conditions are satisfied: (SCC p. 263, para 11)

'11. ... (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.'"

51. This Court in **Rajesh D. Darbar v. Narasingrao Krishnaji Kulkarni**²⁰, a matter regarding the elections in a registered society, held that the courts can mould relief accordingly taking note of subsequent events. ..."

101. Therefore, it cannot be said that this Court ought to ignore the subsequent conduct of the Defendants 1 to 4 after the filing of their Written Statement admitting the plaint claim, and reject the suit as not maintainable, on the ground that the Plaintiff did not ask for relief of recovery of possession.

¹⁷ (2001) 2 SCC 762

¹⁸ (2010) 3 SCC 470

¹⁹ (2002) 2 SCC 256

²⁰ (2003) 7 SCC 219

102. To shorten the litigation and to do complete justice between the parties, this Court has ample power to mould the relief appropriately and grant relief of recovery of possession to the Plaintiff though not asked for by it on the basis that Plaintiff lost possession pending suit.

103. This power is vested in this Court under Art.227 of the Constitution of India as held in **Surya Dev Rai** (8 supra) in the following terms:

“ 38(9).In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”(emphasis supplied)

104. Moreover, this Court in **Mir Bazlay Ali v. Jagirdar Nirkhy Mir Mahammad Ali (died) and others**²¹ has taken the view that if the Plaintiff, in a suit for perpetual injunction, is in possession of the suit schedule property as on the date of filing of the suit, and thereafter he was forcibly dispossessed during the pendency of the suit, in violation of an interim injunction order granted in his favour by the trial Court, it can order restoration of possession under Section 151 CPC, though not under Section 144 CPC. This Court also held that *there is no necessity for the Plaintiff to seek any amendment of the plaint seeking restoration of possession.* It placed reliance on the

²¹ 2006 (1) ALD 814

decisions in **Jamaluddin v. Mirza Quader Baig**²², **Sujit Pal v. Prabir Kumar Sen**²³ and **Kailash Chand Gupta v. Rukam Singh Yadav**²⁴. It distinguished cases in which the Plaintiff did not have possession on the date of filing of the suit and held that in such a situation however, the Plaintiff should amend the plaint and seek relief of possession, but such a course of action the Plaintiff need not adopt, if he was in possession on the date of filing of the suit, but was dispossessed subsequently during the pendency of the suit.

105. The said principle in my opinion is also attracted to the instant case and the Plaintiff herein, who was admitted to be in possession by the Defendants 1 to 4 on the date of filing of the suit, and was dispossessed only subsequent to the filing of the suit; and therefore, in exercise of jurisdiction under Section 151 CPC read with Article 227 of the Constitution of India, this Court can direct the Defendants to restore possession of the plaint schedule property to the Plaintiff.

106. Thus this objection has no merit and is rejected.

Objection No.3:

107. The next objection raised that the Plaintiff ought to have sought relief of specific performance and obtained a conveyance from the Defendants and since such relief is not claimed, the suit ought to be dismissed.

²² 1995 (1) ALD 295

²³ AIR 1986 Calcutta 220

²⁴ AIR 1998 M.P. 310

108. It is to be noted that the pleading of Defendant Nos.1 to 4 in the Written Statement was that the 1st Defendant was entrusted with the work of purchase of the land for the Plaintiff Society before its incorporation; and since there was a delay in the registration and incorporation of the Plaintiff Society, the suit land was purchased in the name of the 1st Defendant, who is also one of the Promoters from Mohd. Sarvar and others and the patta was transferred in the name of the Defendants; that *the Defendants held it for the benefit of the Plaintiffs* and after the Society is incorporated on 28-8-1981, land was delivered to it.

109. There is no dispute that as per Section 9 of the Telangana Cooperative Societies Act, 1964 as also Section 9 of the A.P. Cooperative Societies Act, 1964, a Society registered under the said statutes is a body corporate by the name under which it is registered having perpetual succession and common seal. It is entitled to acquire, hold and dispose of property. This legal position is not disputed by the learned counsel for the Defendants. So the Plaintiff-Society, being a body corporate, is like a Company registered under the Companies Act, 1956 or later enactments.

110. It is settled law that if a promoter of a Company purchases property for the benefit of a Company prior to its incorporation, after it gets incorporated, the title would pass on to the Company and no conveyance is required for it.

111. The Madras High Court in **Weavers Mills Limited Vs. Balkis Ammal and others**²⁵ held that a Promoter of a Company is one who undertakes to form a Company with reference to a given project and to set it going and who takes the necessary steps to accomplish that purpose; that a Promoter of a Company is neither an agent nor a Trustee of the Company under incorporation but *certain fiduciary duties have been imposed on him under the Indian Companies Act*. It was held that *the legal position of a Promoter in relation to his acts, particularly purchase of immovable properties on behalf of the Company under incorporation, is a peculiar one not capable of being brought into any established or recognized norms of the law as to its character as an agent or a Trustee*. It held that *it is impossible to deny that he does stand in a certain fiduciary position in relation to the Company under incorporation and when he does certain things for the benefit of it, as for instance, purchase of immovable properties, he is not at liberty to deny that benefit to the Company when incorporated*. The Bench held that *in such a case, the benefit of the purchase will pass on to the Company when incorporated*.

112. This decision was followed by a Division Bench of this Court in **Vali Pattabhirama Rao Vs. Ramanuja Ginning and Rice Factory (P) Limited**²⁶. The Bench considered the questions (i) whether a conveyance is necessary to vest the property of the firm when the same was converted into a Company and (ii) whether such conveyance is necessary to claim title by the Company in respect of

²⁵ AIR 1969 Madras 462

²⁶ AIR 1984 AP 176

the property acquired by the Promoter before its incorporation. Both these questions were answered in the negative. It was held that Section 5 of the Transfer of Property Act, 1882 is not exhaustive of the law relating to the transfer of property by act of parties; and the declaration of the Promoter that the property is held by him for the Company to be formed does not constitute either a sale or mortgage or lease or exchange or gift, as the Company before its incorporation is not a living person and Section 5 is not attracted. It declared that if a Promoter purchases property from a third party he will be acquiring the title though apparently in his name for the benefit of the Company yet to be formed; and *the property vests in him for the benefit of the Company though his assurance is sufficient to clothe the Company after its birth to claim full title.* It held that *property acquired by a Promoter can become the property of the Company by its acceptance and adoption after its birth; and the said property can be claimed by the Company after its incorporation without any need for conveyance.*

113. Since the Plaintiff Society is akin to a Company after it was registered under the A.P.Cooperative Societies Act,1964, in view of this binding precedent, it follows that the 1st Defendant, who admitted to be a Promoter of the Plaintiff Society, has a fiduciary duty towards the Plaintiff Society; and his declaration is sufficient to clothe it after its birth (i.e., registration) to claim full title and no conveyance is required by it either. There is also a specific plea in the plaint that after the Plaintiff got incorporated, it adopted the benefit of the purchase by 1st Defendant.

114. The provisions of the Benami Transactions (Prohibition) Act, 1988 are also not attracted because the 1st Defendant had fiduciary relationship with the Plaintiff and his purchase is not hit by Section 4 of the Act which prohibits Benami transactions. Section 4(3) of the said Act provides that *'nothing in the said section would apply 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 it stands, in such capacity.*

115. Therefore, the objection of the Defendants 1 to 4 that the Plaintiff ought to have asked for relief of specific performance, is rejected.

Objection No. 4

116. It is contended by Defendants 1 to 4 that pre-incorporation agreements are not permitted by the A.P. Co-operative Societies Act/Telangana Co-operative Societies Act, 1964 and that only Section 6 (2) of the Mutually Aided Co-operative Societies Act, 1995 permits the same. It is contended that the agreement dt.08.03.1978 cannot be enforced.

117. There is no prohibition in the A.P. Co-operative Societies Act/Telangana Co-operative Societies Act, 1964 to enter into pre-incorporation or pre-registration agreements.

118. The decision of the Gujarat High Court in **Shri Ramji Mandir Narsinhji and others v. Narsinh Nagar Co-operative Housing**

Society Ltd.²⁷ is cited in support of the plea that a Co-operative Society becomes a legal person after it is registered, it is only thereafter that it acquires the capacity to enter into contract, and there is no provision in the Gujarat Co-operative Societies Act under which the promoters of the Society can act on behalf of the Society before it has been registered and has come into existence.

119. But, having regard to the decision of the Division Bench of this Court in **Vali Pattabhirama Rao** (26 supra) that in respect of Companies registered under the Companies Act, 1956 promoters can enter into contracts for the benefit of a Company to be incorporated, which is discussed above, and since a Co-operative Society registered under the A.P. Co-operative Societies Act, 1964 is a body corporate, I am inclined to follow this decision of the Division Bench of the A.P. High Court which is binding on me and not the decision of the Gujarat High Court, which has only persuasive value.

120. Therefore, this objection is also rejected as having no merit.

Objection No.5

121. Defendants 1 to 4 then contended that there is a remedy available to the Plaintiff under Section 61 of the Telangana Co-operative Societies Act, 1964 for reference of disputes touching the Constitution, Management or Business of a Society to a Registrar for decision and that when such effective alternative remedy is available, Plaintiff cannot invoke the remedy of a Civil Suit.

²⁷ AIR 1979 Gujarat 134

122. In the instant case, the dispute is between the 1st Defendant, a promoter of the Plaintiff Society and the Plaintiff Society represented by its Chief Promoter between whom there was an agreement on 08.03.1978.

123. Section 61 of the Telangana Co-operative Societies Act, 1964 does not deal with the Resolution of Disputes between a promoter of a Society and the Society. Only disputes among (i)members, past members and persons claiming through members, past members and deceased members or (ii) between the Society and them or (iii) between the Society or its Committee, and any past Committees or any Officer, agent or employee or nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the Society or between a Society and another Society are dealt with by Section 61.

124. A Division Bench of this Court in **M. Venkataramana v. A.P. Co-operative Tribunal, Hyderabad**²⁸ has held that disputes relating to alienations of land of the Society in favour of non-members of the Society which land was earmarked for common purpose are not matters covered by Section 61 of the Act.

125. In the instant case also, according to the 1st Defendant, he got mutated the land in favour of Defendants 2 to 4 and himself. Defendants 2 to 4 are admittedly not members of the Plaintiff Society. Therefore, this dispute will not come under Section 61 of the Act.

²⁸ 2010 (4) ALD 500 (DB)

126. Consequently, this objection is also rejected.

Objection No.6

127. It is also the contention of the Defendants that if I.A. No.221 of 2004 is allowed invoking Order XII Rule 6 CPC, it would amount to granting a decree of declaration of title to the plaint schedule property on the basis of the admission contained in the Written Statement of the Defendants; and that in law there cannot be transfer of title on the basis of an admission. Reliance is placed on the judgment of the Supreme Court in **Canbank Financial Services Ltd. v. Custodian and others**²⁹, wherein the Supreme Court held that an admission does not create a title in property; and that an admission of a party would not lead to relinquishment of his right therein, if he has otherwise acquired title in the property. It observed that extinction of right, title and interest in a property must be caused as a result of operation of law and not otherwise; and once a title vests in a person, he cannot be divested therefrom except by reason of or in accordance with a statute and not otherwise.

128. Though the above principle is unexceptionable, it has no application to the instant case because the basis for granting the relief to the Plaintiff is not merely the admission in the Written Statement of Defendants 1 to 4, but also the principle laid down in **Vali Pattabhirama Rao** (26 supra) which has been discussed in detail while dealing with objection No. 3 and it was held that purchase of property by a promoter of a Society (1st Defendant) before its

²⁹ (2004) 8 SCC 355

registration with the money of the Society, is for the benefit of the Society and no conveyance is required to vest title in the Society, after its registration and also. Also Section 43 of the Transfer of property Act,1882 was invoked and applied to confer benefit on the Plaintiff Society as regards items 2 to 4 while dealing with Objection No.1.

129. Therefore, this objection is also without merit.

Objection No.7

130. Next it is contended by the Defendants that if the Plaintiff is not entitled to relief even after a trial, he cannot be held entitled to it even prior to or without a trial. Reliance is placed on the decision of the Supreme Court in **Cotton Corporation of India v. United Industrial Bank**³⁰.

131. But the principle decided in the said case essentially is that a Court, by its injunction, cannot stay proceedings in a Court of superior jurisdiction or coordinate jurisdiction, but it could certainly, by an injunction, restrain a party before it from further prosecuting the proceeding in other Courts which are subordinate to it. In that context it was mentioned that a temporary injunction is granted during the pendency of the proceeding, so that while granting final relief, the Court is not faced with a situation that the relief become infructuous or that during the pendency of the proceeding, an unfair advantage is not taken by the party in default or against whom temporary injunction is sought; that grant of temporary injunction should be in

³⁰ (1983) 4 SCC 625

aid or as auxiliary to the final relief that may be granted; and if the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted.

132. These observations made in the context of power to grant temporary injunctions *pending* main suit, cannot be extended to applications under Order XII Rule 6 CPC because an order under Order XII Rule 6 CPC would result in disposal of the suit itself to the extent of the admitted claims of the Plaintiff.

133. Therefore, this objection is also untenable.

Objection No.8

134. It is contended that there has been a joint trial of O.S. No.1 of 2000 with O.S. No.2 of 2000 and O.S. No.61 of 1998 as per a docket order dt.04.12.2001 in O.S. No.61 of 1998 (O.S. No.2 of 2000) and such joint trial would not be possible if this application I.A. No.221 of 2004 is allowed.

135. At the time when joint trial was ordered, it is possible that the Court below had thought that applications filed by the Defendants to strike off their defence/file additional Written Statements/amend the Written Statement, were pending and it might be necessary to conduct joint trial of all the three suits. But now, such a situation does not arise since all those applications have been rejected.

136. Even otherwise, the said objection is also not tenable because admittedly the Plaintiffs in O.S. No.2 of 2000 are admittedly members

of the Plaintiff Society in O.S. No.1 of 2000. So if O.S. No.1 of 2000 is decided in favour of the Plaintiff Society, no prejudice would be caused to the Plaintiffs in O.S. No.2 of 2000.

137. Also, even in this Order XII Rule 6 CPC application I.A. No.221 of 2004, what the Plaintiff Society is seeking is to pass decree only against Defendants 1 to 4 *reserving the right of the 5th Defendant to get his claim adjudicated in O.S. No.61 of 1998, where he is the Plaintiff.*

138. Thus the 5th Defendant would suffer no prejudice as his claim is not decided in I.A. No.221 of 2004.

139. So this objection has also no substance.

140. For the aforesaid reasons, I am of the opinion that the order dt.18.01.2017 in I.A. No.221 of 2004 in O.S. No.1 of 2000 cannot be sustained.

141. Point (a) is answered in favour of the Plaintiff/petitioner in CRP No.1892 of 2017.

Point (b)

142. I.A. No.582 of 2013 had been filed in O.S. No.1 of 2000 by Defendants 3 and 4 stating that there is no cause of action against them in the suit. The trial Court had dismissed it on 18.01.2017 against which CRP No.2967 of 2017 has been filed by them.

143. The plea of the Defendants 3 and 4 in I.A. No.582 of 2013 has no merit because according to the plaint, patta for the subject land was

transferred in the name of these Defendants and 2nd Defendant by the 1st Defendant. It is contended by the Plaintiff in the plaint that inspite of several demands by him to Defendants 1 to 4 to transfer the patta in the name of the Plaintiff, they were postponing the same on some pretext or the other. It is also contended that they tried to interfere with the development work which the Plaintiff wanted to do in the land. Thus there is a clear cause of action pleaded against Defendants 3 and 4 as well in the Plaint.

144. Consequently, I.A. No.582 of 2013 was rightly dismissed by the trial Court. Point (b) is answered accordingly in favor of the Plaintiff Society.

Point (c)

145. Therefore, I hold that the Plaintiff is entitled to relief in I.A. No.221 of 2004 as prayed by it; that the plaint in O.S. No.1 of 2000 cannot be rejected and that I.A. No.582 of 2013 was rightly dismissed by the trial Court.

146. I have already held that the Plaintiff Society is also entitled to relief of recovery of possession of the plaint schedule properties from Defendants 1-4.

147. The Counsel for the Plaintiff raised contentions claiming compensation for the harassment faced by it from the Defendants 1 to 4 in this litigation for the past 40 years by denying enjoyment of the plaint schedule property to it.

148. Since relief of recovery of possession is also being granted to the Plaintiff society, I leave it open to the Plaintiff society to invoke Or.XX Rule 12 CPC to claim future mesne profits after institution of suit, because to make such claim, no specific prayer is necessary in the plaint³¹, by making a separate application in that behalf in the trial court against Defendants 1 to 4.

149. However, I am of the opinion that the conduct of Defendants 1 to 4 has not been bonafide and they should be mulcted with exemplary costs for their conduct in the matter.

CONCLUSION:

150. In the result,

(a) CRP No.1892 of 2017 is allowed with costs of Rs.50,000/- to be paid by respondents 1 to 4 therein to the petitioner; order dt.18.01.2017 in I.A. No.221 of 2004 in O.S. No.1 of 2000 of the XVI Additional District & Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy is set aside; the said I.A is allowed as prayed for;

(b) CRP No.2967 of 2017 is dismissed with costs of Rs.50,000/- to be paid by the petitioners therein to the 1st respondent therein; order dt.18.01.2017 in I.A. No.582 of 2013 in O.S. No.1 of 2000 of the XVI Additional District & Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy is confirmed; and

³¹ R.S.Maddanappa v. Chandramma ... AIR 1965 SC 1812 PARA 16

(c) Defendants 1 to 4 are directed to deliver vacant possession of the plaint schedule properties to the Plaintiff within four weeks from the date of receipt of a copy of this order.

(d) It is open to the Plaintiff to seek future mesne profits invoking Or.XX Rule 12 CPC in the trial court by way of a separate application.

(e) The costs imposed in this order shall be paid to the Plaintiff in O.S. No.1 of 2000 by Defendants 1 to 4 within four weeks from the date of receipt of copy of this order.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-09-2019

VSV/MRKR/NDR