IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

APPEAL SUIT No. 1789 of 2002 + APPEAL SUIT No. 181 of 2003

A.S. No.1789/2002

Between:

Kandula Radha Kumari, W/o. Late Sanjeeva Rao,
Aged 60 years, Meraka Veedhi, Rajahmundry and
3 others

... APPELLANTS

AND

Kumari Narra Naga Yellamani Ratna Teja,
D/o. N.V. Lakshmana Kumar, 20 years,
Student, Mekara Veedhi, Ratna Mandiram Street,
Rajahmundry. ... RESPONDENT

A.S.No.181 of 2013

Between:

Kumari Narra Naga Yellamani Ratna Teja,
D/o. N.V. Lakshmana Kumar, 20 years,
Student, Mekara Veedhi, Ratna Mandiram Street,
Rajahmundry. ... Appellant

AND

Kandula Radha Kumari, W/o. Late Sanjeeva Rao,
Aged 60 years, Meraka Veedhi, Rajahmundry and
3 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12/02/2020

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local Newspapers May be allowed to see the order? Yes/No

2. Whether the copy of order may be Marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to See the fair copy of the order? Yes/No

M.VENKATA RAMANA,J

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3 others ... Respondents

! Counsel for appellant : Sri T.S. Anand (for appellants in A.S.No. 1789/2002 and for respondents in A.S.No.181/2013)

^Counsel for Respondents : Sri V. Balaram(for respondent in A.S.No. 1789/2002 and for appellant in A.S.No.181/2013

<GIST :
>HEAD NOTE:
? Cases referred:

1. AIR 1974 SC 1999
2. AIR 1959 SC 443
3. (2017) 1 SCC 257
4. (2007) 11 SCC 621
5. AIR 1990 SC 396
6. AIR 1971 SC 1910
7. AIR 1962 AP 178
8. AIR 1995 SC 1684
9. 2001(5) ALD 402
10. 2017(1) ALT 16 (SC)
11. AIR 2008 SC 2033

HON'BLE SRI JUSTICE M. VENKATA RAMANA

APPEAL SUIT Nos .1789 OF 2002 & 181 OF 2003

COMMON JUDGMENT:

It is said, "Blood is thicker than water". It is not always so! This case illustrates such an unfortunate exception of a grand daughter, who lost her mother within a few days of her birth, who is denied a justifiable share in the family properties by her maternal grandmother. Yet, the grand mother was not successful during her lifetime and the will of the grandfather prevailed to give away due share in his estate to his grand daughter. A *La* conflict of filial bondage and economic interests in a Hindu Family is mirrored.

2. A.S.No.1789 of 2002 is instituted by the defendants and whereas A.S.No.181 of 2003 is instituted by the plaintiff. The decree and judgment in O.S.No.86 of 1994 on the file of the Court of learned Additional Senior Civil Judge, Rajahmundry, dated 23.04.2002, are subject matter in these two appeals.

3. The first appellant (first defendant) in A.S.No.1789 of 2002 died on 05.04.2008. A memo was filed on behalf of the respondent (the plaintiff) on 12.06.2012 in this appeal bringing this fact to the notice of this Court while further informing that the respondent (plaintiff) and the second appellant (second defendant) alone have been her legal heirs and since they are already on record, it is requested to recognize them as legal heirs of the first appellant.

4. The parties as arrayed in the suit shall be referred to hereinafter as the plaintiff and the defendants, for convenience.

5. Plaint 'A' schedule consists of immovable properties. Plaint 'B' schedule relates to movables including cash balances in certain bank

accounts, gold jewellery and silver ware. The plaint 'A' schedule shall be referred to hereinafter as 'the suit properties' and whereas plaint 'B' schedule shall be referred to hereinafter as 'the suit movables', for convenience.

6. The parties to these appeals are closely related. Sri Kandula Sanjeeva Rao, was the husband of the first defendant. The second defendant and Smt.Venkata Ratna Matha Kumari, who is the mother of the plaintiff, are their daughters. Sri Kandula Sanjeeva Rao died on 08.04.1994. The first defendant died on 05.04.2008. Mother of the plaintiff Smt. Ratna Matha died on 24.05.1981 when the plaintiff was an infant (minor). Defendants 3 and 4 are the children of the second defendant.

7. The suit was originally instituted by the plaintiff as a minor, represented by her father Sri N.V.Lakshman Kumar. She was declared a major in the trial Court itself on attaining majority.

8. The plaint schedule properties undisputedly belonged to Sri Kandula Sanjeeva Rao.

9. It is desirable to consider the case set out by the plaintiff as well as the defendants in their respective pleadings before embarking upon consideration of the claim set forth by the parties at the trial.

10. The plaintiff stated in her plaint that her mother and the second defendant alone were the issues to Sri Kandula Sanjeeva Rao and the first defendant and that Sri Kandula Sanjeeva Rao, died intestate possessed of the plaint schedule properties. She further stated in the plaint that after death of Sri Kandula Sanjeeva Rao, she along with the defendants 1 and 2, was in joint possession and enjoyment of these properties all being legal heirs of equal degree and therefore, she is

entitled for 1/3rd share in these properties. She further alleged in the plaint that the defendants 1 and 2 though elder to her, taking advantage of her minority as well as innocence seriously contemplated to deprive her legitimate share in the plaint schedule properties. The plaintiff further alleged in the plaint that Sri Kandula Sanjeeva Rao, was physically and mentally ill atleast for about five years prior to his death, who during his lifetime was showering affection on the plaintiff she being his eldest grandchild. Though demanded on her behalf by her father, according to the plaintiff, the defendants 1 and 2 did not come forward to divide the plaint schedule properties. Hence, she states that she is constrained to lay the suit for partition and division of the plaint schedule properties into three equal shares and to allot one such share to her.

11. The defendants 1 and 2 resisted the claim of the plaintiff, filed a written statement, particularly denying that Sri Kandula Sanjeeva Rao died intestate, while admitting relationship among all these parties. They specifically contended that late Sri Kandula Sanjeeva Rao, executed a registered Will on 22.01.1994 during his lifetime making several bequests in favour of defendants 1 and 2 as well as the children of the second defendant, in a sound and disposing state of mind. However, they further stated that prior to it, he executed another Will dated 17.12.1991, which was registered on 18.02.1992 bequeathing all his properties in favour of the second defendant with absolute rights. It is also contended that it was a holograph Will of Sri Kandula Sanjeeva Rao, executed in a sound and disposing state of mind, which he later on cancelled and registered another Will dated 22.01.1994 stated above.

12. The defendants 1 and 2 further stated in their written statement that during his lifetime Sri Kandula Sanjeeva Rao, gave away

Ac.5.00 cents out of a total extent of Ac.10.96 cents in R.S.No.398 and 404 of Palacherla village creating life interest in favour of mother of the plaintiff, who is also known as Ratnamatha and vested reminder was directed to be given to the children to be borne to Smt.Ratnamatha. Therefore, in view of this registered settlement deed, it is stated that Sri Kandula Sanjeeva Rao, bequeathed all his other properties to the defendants 1 and 2 as well in favour of the children of second defendant by his last Will and testimony dated 22.01.1994.

13. Denying that Sri Kandula Sanjeeva Rao, was physically and mentally ill for about five years prior to his death, it was stated by the defendants 1 and 2 that he suffered paralysis on left side about two months prior to his death and though he was not in a position to sign and subscribe signatures, he was mentally in perfect condition and was in a sound and disposing state of mind by the date of the second Will. Setting out various extents given out of the suit lands as per the Will dated 22.01.1994, the defendants 1 and 2 further stated in the written statement that the 2nd defendant was given Ac.5.00 cents out of Ac.10.96 cents in R.S.No.398 and 404 of Palacherla village towards 'pasupu kumkuma' prior to the year 1991 by her father with absolute right and had delivered possession thereof, which she continued to be in possession and enjoyment in her own right. Remaining Ac.1.00 cents out of this total extent as per the averments in the written statement, was given away to the first defendant. They further stated that the plaintiff has no title in respect of item–5 of the plaint 'A' schedule, which is of 1200 square yards and no site was given away by her father out of it to the plaintiff, nor the site towards south of this land described in the plaint, of 800 square yards.

14. In respect of the suit movables, the defendants 1 and 2 stated in the written statement that the bank accounts shown in items 1 and 2 were closed during lifetime of late Sri Kandula Sanjeeva Rao and that there was a meager balance left in item 3 of suit movables. They denied that there were any gold or silver properties as shown in item – 4 and 5 of suit movables. Denying that there was any demand for partition on behalf of the plaintiff, it was stated in the written statement that defendants 3 and 4 being legatees under the Will, dated 22.01.1994, are necessary parties to the suit. Thus stating, the defendants sought dismissal of the suit.

15. In view of the contentions raised in the written statement, the plaintiff choose to bring defendants 3 and 4 on record stating that they did not acquire any interest, title and possession to any of the suit properties or the suit movables.

16. Basing on the pleadings, the following issues and additional issues were settled for trial by the learned trial Judge:

"*1. Whether the plaintiff is entitled for partition and separate possession of suit properties?*
2. *Whether the plaintiff is entitled for future profits on 1/3rd share of plaint A schedule property?*
3. *Whether the suit is bad for non-joinder of parties?*
4. *To what relief?*

Additional issues framed on 15/10/2001

1. *Whether the will dated 17/12/1991 and registration on 18/2/1992 said to have been executed by Kandula Sanjeeva Rao is true and valid?*

2. *Whether the will dated 22/1/1994 said to have been executed by Kandula Sanjeeva Rao is true and valid?"*

17. At the trial, on behalf of the plaintiff, P.W.1 to P.W.7 were examined and Ex.A1 was marked. On behalf of the defendants, D.W.1 to

D.W.4 were examined and they relied on Ex.B1 to Ex.B10, Ex.C1 and Ex.X1 to Ex.X4.

18. Basing on the pleadings as well as the evidence and considering the contentions of the parties, learned trial Judge for the detailed reasons assigned in the judgment, accepted the defence set up by the defendants 1 and 2 of execution of registered Will (holograph will) of late Sri Kandula Sanjeeva Rao, dated 12.12.1991 and disbelieved the registered Will of late Sri Kandula Sanjeeva Rao, dated 22.01.1994. Thus, observing that the plaintiff is entitled for 1/3rd share out of Ac.5.00 cents in item No.4 of plaint 'A' schedule, the plaintiff's claim was accepted to that extent, while dismissing the suit in respect of other items. She was also held entitled for mesne profits out of this item. In respect of remaining items in the suit properties, except to the above extent, the defendants were held entitled to. Thus, a preliminary decree was passed.

19. Aggrieved thereby, the plaintiff and the defendants preferred these two appeals.

20. Sri T.S.Anand, learned counsel for the defendants, and Sri V.Balaram, learned counsel for the plaintiff, submitted their elaborate arguments in both these appeals.

21. Now, the following points arise for determination:

1. What are the properties available for partition?
2. Whether the registered Will dated 22.01.1994(Ex.B6) alleged to have had been executed by late Sri Kandula Sanjeeva Rao, is true and valid?
3. Whether Will dated 17.12.1991 and registered on 18.02.1992 (Ex.B3) alleged to have had been executed by late Sri Kandula Sanjeeva Rao, is true, valid and if it can be considered to bind the plaintiff in the presence of the defence based on Ex.B6-Will?

4. Whether the plaintiff is entitled for partition of the plaint schedule properties and to allot 1/3rd share out of it?
5. To what relief?

POINT No.1:-

22. Admittedly, the plaint 'A' schedule properties, which included a residential house (ItemNo.1) house sites (Item Nos.2, 3 and 5) and the agricultural lands (Item No.4), belonged to Sri late Kandula Sanjeeva Rao. They are either his ancestral properties or his acquisitions. He had no male issues. Relationship of Sri late Kandula Sanjeeva Rao, the defendants as well as the plaintiff is referred to in para-4 of this judgment.

23. The evidence on record makes out that item No.1 house is not fully constructed and it requires completion. Not only Ex.B6-Will refers to such fact. The 1st defendant as D.W.1 confirms it. It is not in dispute that Sri late Kandula Sanjeeva Rao and his family were living in this house at Meraka Street, Rajahmundry.

24. Item No.2, though described as an extent of Ac.1-40 cents in plaint 'A' schedule, the evidence transpires that it is only to an extent of Ac.1-00, in as much as, for the purpose of laying a 60 ft. road, Rajahmundry Municipality had acquired certain extent out of it. Such status of this item is referred to in Ex.B3-Will.

25. Ex.B3-Will also refers to laying house plots in Item No.3 of the land by its date. Sri late Kandula Sanjeeva Rao had sold away certain plots and there was a balance of 70 house plots in this item.

26. Total extent of S.Nos. 398 and 404 of Diwancheruvu village is Ac.10-96 cents. Item No.4 of the plaint 'A' schedule describes it as Ac.6-00. It is admitted in this case that during life time of Smt. Ratna

Matha, mother of the plaintiff, Ac.5-00 out of this survey number was given away by Sri late Kandula Sanjeeva Rao under a registered settlement deed dated 02.08.1975 with limited rights to her and her progeny, to succeed after her lifetime. Ex.B1 is the registration extract of this registered settlement deed executed by him in favour of Sri Ratna Matha in this respect. The boundaries referred to in Ex.B1 are as follows:

East and North	: The land belonging to Sri late Kandula Sanjeeva Rao
South	: Land of Sri Kandula Manikya Rao
West	: land of sri Kandula Exswara Chandra Vidya Sagar

27. Thus, the western extent of Ac.5-00 was given away to Sri Ratna Matha by him under the original of Ex.B1. The parties to the suit are not in dispute in respect of it. Evidence of P.W.1 also goes to show that this land has been laid out into house plots and some of them were sold away by the plaintiff after attaining majority. This fact is not disputed by the defendants.

28. Item No.5 of plaint 'A' schedule in S.No.78 of Venkatapuram Village, Rajahmundary Mandal consists of a house site as per its description in an extent of 800 Sq.yards. But the evidence on record including Ex.B3 and Ex.B6-Wills described this site being 1200 Sq.yards. P.W.1 claimed that 400 Sq.yards out of it was gifted to him and thus southern boundary in the 'A' schedule of this item describes site of the plaintiff. However, both parties contend that they could not locate this site on the ground. According to P.W.1, during the lifetime of Sri late Kandula Sanjeeva Rao, he as well as P.W.1 searched to locate this plot, but could not trace it. It is also the version of the 1st defendant as D.W.1 at the trial. The learned trial Judge opted to exclude this item as a part of the properties available for partition, while reserving the right in respect of it

in case the parties trace out this property as well as the document pertaining to that property. It has to be borne in mind that the plaintiff laid the suit for partition. Question of consideration or deciding title or rights among the parties in a suit for partition cannot arise when all the parties have admitted that these properties belonged to Sri late Kandula Sanjeeva Rao . Therefore, merely because the parties could not trace out or locate this property at that point of time or before institution of the suit, there is no reason to exclude the same from consideration. In fact, in respect of Item no.5, no material is placed by P.W.1 that he was given away 400 sq. yards by his father-in-law and his version that it was given to him under an unregistered document is not in any manner substantiated. Therefore, item No.5 shall be considered to cover an extent of 1200 Sq.yards than 800 sq.yards.

29. Another reason to consider in this context is the effect of Ex.B5, which is a Registration extract of general power of attorney was executed by Sri late Kandula Sanjeeva Rao in favour of the 2nd defendant on 18.05.1993 appointing her as his attorney to manage certain properties stated therein including 1200 Sq.yards in S.No.78 at Venkatapuram (item No.5 of plaint 'A' schedule) and item No.2 of the plaint 'A' schedule. The power so conferred included to sell away these properties. The purpose of appointing her as an attorney, needs to be considered infra, while discussing point No.3. Nonetheless, the recitals in Ex.B5, are that Sri late Kandula Sanjeeva Rao had purchased on 16.05.1962 from Smt. Chellani Appalamma and others an extent of 400 Sq.yards in this S.No., 400 Sq.yards as well as 200 Sq.yards on 22.05.1962 and 29.01.1963 from Sri Chellani Kurma Rao and others and another extent of 200 S.yards in the same S.No. on 27.12.1963 from Sri Padala Satyanarayana. These recitals

thus make out that specific extents in all making up 1200 Sq.yards was purchased by Sri late Kandula Sanjeeva Rao for valuable consideration. Therefore, having regard to the nature of this suit, this item shall also be considered as a property available for partition. It could not have been excluded from consideration by the learned trial Judge and the observation that there is no record to that effect in the light of recitals in Ex.B5 is not correct.

30. Thus item nos. 1 to 5 of plaint 'A' schedule are available for partition among these parties.

31. In respect of plaint 'B' schedule properties, evidence on record makes out that there was no balance in these accounts either in Main Branch, Andhra Bank or its Devi chowk branch at Rajahmundary including in Indian Bank, Rajahmundry as well as District Co-operative Central Bank, Rajahmundry. Ex.B7 to Ex.B10 are the S.B.Account passbooks produced at the trial and D.W.1 has disposed in respect thereof. Her evidence also makes out that there were no fixed deposits in these banks, of Sri late Kandula Sanjeeva Rao . Reference of these accounts is also made in Ex.B3 as well as fixed deposits. There is also no evidence in respect of gold or silver items described in items 4 and 5 of the plaint 'B' schedule. There was no such property, according to D.W.1. In the light of the evidence on record, the learned trial Judge rightly observed that plaint 'B' schedule items were not available for partition. It is not necessary to reconsider this view of the learned trial Judge in this appeal basing on the material.

32. Thus, it has to be held that item nos. 1 to 5 of the plaint 'A' schedule properties are available for partition, subject to the claims of the parties.

33. Thus, this point is answered.

POINT No.2:-

34. Sri late Kandula Sanjeeva Rao was a graduate in arts. He was running a tutorial college for a considerable period at Rajahmundry. The evidence adduced on behalf of the parties proves this fact. He was also a social worker connected to several voluntary organizations like Brahma Samajam, Vidhyabhimana Samajam/sangam, Hithakarini Samajam, town hall library etc., at Rajahmundry. Evidence on record also makes out that he was founder of Vidyabhimana Samajam/ Sangam at Rajahmundry, a community based organization serving his community for certain philanthropic activities like education etc. He lived for about 84 years.

35. As the evidence in this case unfolds, Sri late Kandula Sanjeeva Rao intended to create a bequest in respect of his properties. The first will, undisputedly, executed by him, was on 17.08.1990. It is reflected from the contents in Ex.B3. A copy of this will by means of registration extract or its original is not on record. It is also not known if the Will dated 17.08.1990 was available with the defendants by the date of the suit since the parties did not pursue their claims in the suit in this respect nor any effort was made to know the nature of disposition of the property he intended to by the above will.

36. The case of the defendants in the written statement as well as at the trial has been that the above will was revoked leading to execution of Ex.B3- Will on 12.12.1991 by Sri late Kandula Sanjeeva Rao. Their

further case has been that Ex.B3 was also revoked by him leading to execution of Ex.B6-Will on 22.01.1994. Thus, the defence has been specific and categorical that the Will-Ex.B3 was revoked by Sri late Kandula Sanjeeva Rao and thereafter he created bequest by means to Ex.B6 in respect of his properties. This factor has any amount of bearing in this case.

37. Particular defence of defendants is that Ex.B6 is the last and final testament of Sri late Kandula Sanjeeva Rao whereby the properties belonging to him were subjected to bequest in favour of the defendants 1 to 4.

38. Under Ex.B6, he created a life interest in item No.1 of the suit properties, in his wife viz., the 1st defendant and after her lifetime, in favour of the defendant nos. 2 and 3. In respect of item No.2, the disposition was in giving away equal rights to the defendants 1 to 4 and similarly item no.3 was given away to them. This item no.3 also includes Ac.2-00 of wetland at Diwancheruvu and it has been given away to 4th defendant, being his grand son with absolute rights. However, this Ac.2-00 of wetland is not a part of plaint 'A' schedule property. Out of Ac.6-00 in item no.4 of plaint 'A' schedule, life estate was created in favour of the 2nd defendant and thereafter, her son viz., the 4th defendant to succeed. Balance Ac.1-00 was retained by the testator as per its recitals and after his lifetime, the 1st defendant to enjoy this extent of Ac.1-00 with absolute rights.

39. Item no.5 was also directed to be given away to defendants 1 to 4 in equal shares.

40. The recitals in Ex.B6 also referred to the age and physical status of the testator, being 83 years old and that he was very weak then, who was in contemplation of life being uncertain. It bears the thumb impressions attributed to the testator. Sri Yerra Muralidhar Rao (D.W.3) and Sri M.Srinivasa Ranga Kishore (P.W.7) attested it and it was scribed by Sri S.Venkata Krishnaiah of Rajahmundry (D.W.4). Though it was executed on 22.01.1994 as per its recitals, it was registered in the office of Registrar, Rajahmundry on 17.02.1994. D.W.3 and one Sri A.S.V.V. Satyanarayana Rao were the identifying witnesses at the time of registration of Ex.B6. The testator subscribed his thumb impression before the registering authority as per the endorsements on the reverse of the first page of Ex.B6.

41. Basing on Ex.B6, the defendants are contending that it is an absolute bequest in their favour by Sri late Kandula Sanjeeva Rao creating right and interest in them in respect of all the plaint 'A' schedule properties, which came into force upon the death of Sri late Kandula Sanjeeva Rao on 08.04.1994. Therefore, they contend that the plaintiff cannot maintain or pursue the suit for partition against them, in as much as there are no other properties available for partition.

42. The plaintiff has denied Ex.B6 as well as Ex.B3-Wills either in respect of their execution by Sri late Kandula Sanjeeva Rao or that they were executed by him in a sound and disposing state of mind, voluntarily. It is also her contention that the burden being on the defendants to prove these Wills, necessary evidence has to be let in by them dispelling all surrounding suspicious circumstances, which shall ultimately lead to conclusion that it was a last and final testament by Sri late Kandula Sanjeeva Rao. If the defendants failed to dispel the alleged suspicious

circumstances surrounding the Wills, it is her contention that the plaint schedule properties shall be considered for partition among all the legal heirs entitled for share in line of succession, since the properties belonged to Sri late Kandula Sanjeeva Rao. It is not in dispute that the plaintiff and the defendants 1 and 2 are class-I heirs, under Hindu Succession Act.

43. The legal position relating to burden of proof in this respect is settled. It is for the propounder of the Will to prove the same as required in terms of Sections 61 and 63 of the Indian Succession Act as well as Section 68 of the Indian Evidence Act.

44. In this respect, on behalf of the plaintiff, her learned counsel relied in ***Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another***[1]. Well known authority in ***H. Venkatachala iyengar v. B.N. Thimmajamma***[2] is relied on in the above ruling of Hon'ble Supreme Court in this respect. Relevant observations in this ruling are in para 7 are as under:-

> *7. The propounder has to show that the will was signed by the testator: that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the will are not the result of the testator's free will and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the will which confers on him substantial benefit that is itself one of the*

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1 . AIR 1974 SC 1999

2 . AIR 1959 SC 443

suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the Court that has to be satisfied, as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain. See H. Venkatachala Tyengar v. B.N. Thimmajamma and Ors. [1959] Supp 1 S.C.R. 426; (1) and Rani Purnima Devi and Anr. v. Kumar Kbagendra Narayan Dev and Anr. [1962]3SCR195 . In the latter case this Court, after referring to the principles stated in the former case emphasised that where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine; and where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same. It has been further pointed out that the suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will which may be unnatural or unfair or improbable when considered in the light of the relevant circumstances. If the caveator does not discharge the burden which rests upon him in establishing the circumstances which show that the will had been obtained by fraud or undue influence, a probate of the will must necessarily be granted if it is established that the testator had full testamentary capacity and had in fact executed it validly with a free will and mind. The observations of the Privy Council in Motibai Hormusjee Kanga v. Jamsetjee Hormusjee Kanga A.I.R. 1924 P.C. 28 support the above proposition. Mr. Ammer Ali observed at p. 33 "It is quite clear that the onus of establishing capacity lay on the petitioner. It is also clear that if the caveator impugned the will on the ground that it was obtained by the exercise of undue influences, excessive persuasion or moral coercion, it lay upon him to establish that case." In the light of what has been stated if the various requirements of a valid will are established, then as observed by the Privy Council in Motibai Hormusjee Kanga's case A.I.R. 1924 P.C. 28 at p. 33 'A man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition."

45. Another ruling relied on by the learned counsel for the plaintiff in this respect is, in ***Ramesh Verma (dead) through Legal Representatives vs. Lajesh Saxena (Dead) by Legal Representatives and another***[3] . In para 13 of this ruling, it is observed as under:

"13. A Will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature

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[3]. (2017) 1 Supreme Court Cases 257

to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement."

46. In ***Savithri and others vs. Karthyayani Amma and others***[4], it is similarly observed in respect of burden of proof and nature of evidence to be brought in proof of a will in para '17' as under:

"*17. The legal requirements in terms of the said provisions are now well- settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine."*

47. In proof of this Will, the defendants not only relied on the evidence of the 1st defendant but also of D.W.3 and P.W.7.

48. D.W.1 is none other than the wife of the deceased testator. Whereas D.W.3 is brother's son of the testator, while P.W.7 is nephew of the 1st defendant being her cousin sister's son. Learned trial Judge basing on the contentions advance before him on behalf of the plaintiff, in para 25 of the judgment, considered the following circumstances, which require evidence to dispel their effects, since they are suspicious circumstances surrounding execution of Ex.B6-Will.

" *1. Excluding the plaintiff from bequest*

2. Sanjeeva Rao having differences with the 1st defendant and not living wit her and still making bequest in her favour.

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[4]. (2007) 11 Supreme Court Cases 621

3. The health condition of Sanjeeva Rao having been effected fior about 5 years prior to the death of Sanjeeva Rao

4. Sanjeeva Rao putting thumb impression in Ex.B6 though his right limbs were not effected by paralysis.

5. There was long gap between execution and registration if will

6. Correction in the date of Ex.B3 and signatures of Sanjeeva Rao showing different dates as the date of execution and date of acknowledgement.

7. Want of circumstances warranting Sanjeeva Rao to change his mind as to change the bequest from Ex.B3 to Ex.B6."

49. Upon elaborate discussion of all these circumstances with reference to material on record, drawing certain presumptions on evidence, observed in para 59 as under:-

"From the discussion made above, I hold the exclusion of the plaintiff is not a suspicious circumstances. The health condition of Sanjeevarao is not proved to be of such nature as he could not make a disposition by the date of Ex.B3 though his health condition was not proved to be so good by the date of Ex.B6. The Sanjeevarao putting thumb impression in Ex.B6 is a suspicious circumstances affecting the proof of Ex.B6. Similarly bequest in favour of 1st defendant under Ex.B6 when she appears to be having differences with her husband and when no bequest was made earlier to her would go to doubt the genuineness of Ex.B6. The defendant failed to satisfy the Court showing some change in the circumstances or the opinions of Sanjeevarao towards the members of his family as to change the earlier bequest solely in favour of the 2nd defendant to a bequest in favour of all the defendants. For these reasons, the 2nd will Ex.B6 not proved to be beyond suspicion."

50. Thus, Ex.B6 was not believed by the learned trial Judge for the above reasons. Learned counsel for the plaintiff supported the reasons so assigned in drawing such inferences against Ex.B6. Whereas on behalf of the defendants, these findings are seriously assailed on the ground that the material on record was not properly considered by the learned trial Judge and the reasons assigned to reject Ex.B6, do not stand for consideration having regard to nature of discussion undertaken by the learned trial Judge with reference to material on record. Alternatively, it is contended by Sri T.S.Anand, learned counsel for the defendants, that the

defendants did not press their defence basing on Ex.B6 need to be considered in the light of the material on record.

51. Among the grounds considered by the learned trial Judge in this respect referred to above, physical and mental position of the testator on the date of Ex.B6 and manner of alleged execution of Ex.B6 as well as the proof adduced through D.W.3 and P.W.7 stand for consideration. The relationship of Sri late Kandula Sanjeeva Rao and the 1st defendant also has certain bearing in this respect particularly in the context of conferring entire right and interest on the 2nd defendant by Ex.B3-Will and thereafter revoking the same conferring right, title and interest in respect of his properties on the defendants 1 to 4.

52. One factor to be considered in this context is also the number of Wills executed by Sri late Kandula Sanjeeva Rao in between the years 1990 and 1994. In a quick succession of 4 years, he chose to create three bequests, out of which two are known and exposed as to their content and effect, first one being of the year 1990 having had not produced by the defendants. The circumstances that rather compelled and prevailed upon Sri late Kandula Sanjeeva Rao to execute these many wills in a span of four years should also be considered in the light of the contention of the plaintiff that he was unwell for about 5 years prior to his death and thus suggesting that by the year 1990, he was not keeping fine with slow deterioration of his faculties and who was unable to grasp or understand implications of his actions as well as responses, with fading memory.

53. From the terms of Ex.B6 and the evidence of P.W.1 as well as the defendants, it is clear that Sri late Kandula Sanjeeva Rao was hospitalized and was treated in Aruna Nursing Home at Rajahmundary

due to paralytic stroke suffered to his left limbs prior to demise. Thus, his left side became defunct, as per the evidence on record and yet according to the version of the defendants, he was able to attend his normal avocations with mental faculties intact. Thus, their firm contention is that he himself had instructed the scribe the terms of Ex.B6 will and got the same prepared. These circumstances are denied by the plaintiff.

54. In order to appreciate these contentions, it is not only the contents of Ex.B6 but also the evidence let in in proof of it along with attendant circumstances either antecedent or otherwise of this event shall be considered. The learned trial Judge considered the effect of ***Kalyan Singh vs. Chhoti and Ors***.[5]. In para 20 of this ruling in this context are as under:-

> *"20. It has been said almost too frequently to require repetition that a will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order* to *judge the credibility of witnesses and disengage the truth from falsehood the* court is *not confined only to their testimony and demeanour. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party.*

55. Physical condition of the testator Sri late Kandula Sanjeeva Rao described in Ex.B6 will and thumb marks appearing on it attributed to Sri late Kandula Sanjeeva Rao have significant bearing to know about his position if he was in a sound and disposing state of mind to make a

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bequest of this nature. When Sri late Kandula Sanjeeva Rao was a graduate in olden days, who was given to sign in Telugu and English as per the evidence on record, it is rather curious as to the reason prevailed for subscribing his thumb impressions to this document. He could have signed using his unaffected right hand, even if it was shaky or trembling to give touch of show of his ability.

56. On behalf of the plaintiff, P.W.2 to P.W.6 were examined at the trial not only to prove the physical status of the testator but also the alleged discordance between him and the 1st defendant in their matrimonial life. Among these witnesses, P.W.4 and P.W.5 are the brothers of the 1st defendant. They have disputes with her, since it is their evidence that the 1st defendant demanded a share in the properties of her father, which was otherwise bequeathed in their favour under a Will. These differences are also stated by the 1st defendant as D.W.1 for another reason on the premise that both of them did not call on her when her husband died, to convey condolences. She further stated that they were not in visiting terms for almost 12 years, since she claimed a share out of the property belonged to their father.

57. Added to it, as seen from the testimony of P.W.4, he did not know that Sri late Kandula Sanjeeva Rao suffered any paralytic stroke and if he was admitted in Aruna Nursing Home, Rajahmundry. Further according to him, he did not visit Sri late Kandula Sanjeeva Rao when he was ailing or when he was hospitalized. Sri late Kandula Sanjeeva Rao is none other than their mother's brother apart from being brother-in-law.

58. P.W.5 also stated that Sri late Kandula Sanjeeva Rao was not caring them and his evidence is silent if there was any occasion for him

or his brother P.W.4 to visit Sri late Kandula Sanjeeva Rao when he was unwell. Though he claimed that he used to visit Rajahmundry, being a resident of Doddipatla, West Godavari District for collection of rents and that he was staying with the 1st defendant and Sri late Kandula Sanjeeva Rao, he did not depose whether he was hospitalized or suffered a paralytic stroke.

59. Therefore, these circumstances are sufficient to disbelieve their version at the trial. Rightly, importance is not attached to their testimony in the course of hearing on these witnesses by the learned counsel appearing for the parties.

60. Similarly, P.W.3 claimed to be a neighbour of Sri late Kandula Sanjeeva Rao at Rajahmundry living in a different lane. His evidence is not inspiring confidence, in as much as he claimed to have visited the house of Sri late Kandula Sanjeeva Rao twice or thrice and on those occasions, he was in same physical condition. It was during the years 1993 or 1994. He did not know if Sri late Kandula Sanjeeva Rao was hospitalized and was discharged from the hospital. Being a resident of a neihbouring locality, if at all this witness had any affinity with this family, possibility of knowing about serious health condition of Sri late Kandula Sanjeeva Rao, could be inferred. But his testimony is appearing otherwise. Therefore, his version at the trial cannot be relied on for any purpose in this case.

61. P.W.2 was then secretary of Vidhyabhimana Sangam/ Samajam and since the year 1993. He deposed that Sri late Kandula Sanjeeva Rao was founder of Vidhyabhimana Samajam and as its president, he was taking active part in the affairs of this association. He further stated that Sri late Kandula Sanjeeva Rao was not moving about,

being bed ridden since the year 1990 till his death and was not in a position to identify the persons. He also stated that Sri late Kandula Sanjeeva Rao was not attending the affairs of Samajam.

62. This association was founded in the year 1970 and it was located in Sri Ramalayam street, Rajahmundry. On account of the inability of Sri late Kandula Sanjeeva Rao, the testimony of this witness makes out that another body was brought in place, to manage the affairs of this association. Ex.X1 is a minutes book maintained by this association, which bears signatures of its members including that of Sri late Kandula Sanjeeva Rao in many of its entries. As per its entries, on many occasions he presided over the meetings of this association. This book was secured by P.W.2 from the office of this association. In the cross-examination of this witness on behalf of the defendants, attempt was made to question the authenticity of Ex.X2 and to project it as a manipulation in view of certain sheets loosely appearing as part of it, which are Ex.X2. This bunch of loose sheets has no bearing in this case and that they are totally unconcerned for the purpose of this case. They relate to certain entries made on 17.12.1989 of the meetings or resolutions passed thereof, as rightly observed in the judgment under appeal.

63. Important bearing of the contents of Ex.X1 minutes book have through Ex.X3. It is a minutes relating to the proceedings dated 26.07.1992. Not only P.W.2 but also P.W.6 deposed in this respect.

64. P.W.6 was then retired Additional Superintendent of Police and who preferred to settle at Rajahmundry, post his retirement, being its native. His deposition makes out that he was an active participant in the affairs of this association. His brother Dr. Kandula Dhanunjaya Rao, a

resident of United Kingdom, had liberally donated for the purpose of this association and to construct a community hall. Testimony of P.W.2 and P.W.4 in this respect deserves consideration and proved to be of independent nature. It is desirable to rely on their testimony in this respect.

65. P.W.6 attended the meeting of this association on 26.07.1992. It was convened at the house of one Sri Kandula Badhra Rao adjoining Rachabanda Ramalayam. It is to be noted in this context that there is another entity known as 'Rachabanda Bhajana chavidi trust' of Rajahmundry. Ex. B2 is a booklet belonging this trust containing rules and regulations. This trust and Vidhyabhimana samajam are two different entities. The testimony of P.W.2 in cross-examination clarifies this situation.

66. On 26.07.1992, the members of Vidhyabhimana Samajam/ sangam discussed the health condition of Sri late Kandula Sanjeeva Rao and further steps to be taken in respect of managing the affairs of this association electing a new body. Such exercise was proposed on 15.08.1992. In this minutes it was recorded that Sri late Kandula Sanjeeva Rao was more than 75 years old and who was keeping indifferent health. It was also recorded that he was suffering from failure of memory, being mentally ill. It was also recorded in this minutes that family members of Sri late Kandula Sanjeeva Rao were requested to hand over the bank passbooks, accounts books etc., on behalf of this association and their response was that on account of the above situation of Sri late Kandula Sanjeeva Rao, they were unable to meet such request. It was further recorded that the 2nd defendant had agreed to bring her father to the proposed meeting on 15.08.1992 to show his position and to handover

records whatever available. A touch of authenticity to the contents of this minutes (Ex.X3) finds from the presence of Dr. Sri Kandula Dhanunjaya Rao in this meeting and his effort to donate liberally for construction of a marriage hall at Ratchabanda site. These facts are deposed to by P.W.6.

67. Consequent to the proceedings covered by this minutes, as seen from Ex.X4, Sri late Kandula Sanjeeva Rao attended this meeting on 15.08.1992 and so also the 2nd defendant. Their signatures are seen in Ex.X4-minutes, which was also considered by the learned trial Judge, as seen from the judgment under appeal. Therefore, the contents of Ex.X3 and Ex.X4 corroborated the version of P.W.6 not only in respect of the meeting of this association on 26.07.1992 and on 15.08.1992 but also the circumstances leading to convening this meeting, more on account of the position of Sri late Kandula Sanjeeva Rao vis-a-vis this association. They further make out about the health condition of Sri late Kandula Sanjeeva Rao at that time.

68. In this respect, the testimony of P.W.6 is that on 15.08.1992 Sri late Kandula Sanjeeva Rao came to the meeting along with the 2nd defendant and that he did not bring the account books of the association. P.W.6 further deposed that when he asked Sri late Kandula Sanjeeva Rao about these books along with others, his reply was that he was not remembering the things nor able to attend. Finding that his mental condition was not proper, according to P.W.6, he was removed as president of this association and an adhoc committee was formed with Sri Muthangi Sri Krishna as convener of this association. In cross-examination, this witness asserted that Sri late Kandula Sanjeeva Rao was replaced on account of his loss of memory and that Sri late Kandula Sanjeeva Rao was unable to understand and reply, when they asked him

about the account books of the association. P.W.6 further stated that Sri late Kandula Sanjeeva Rao pointed this 2nd defendant suggesting her to reply.

69. The version of this witness that health condition of Sri late Kandula Sanjeeva Rao was not recorded in Ex.X4 nor when the formation of new committed took place that there was a reason recorded for replacing Sri late Kandula Sanjeeva Rao on account of deteriorating mental condition cannot have any bearing to distrust him. Therefore, the material so placed on behalf of the plaintiff from the testimony of P.W.2, P.W.6, Ex.X1 including Ex.X3 and Ex.X4 did indicate that Sri late Kandula Sanjeeva Rao by then, was afflicted with loss of memory and had lost his ability to respond. Thus, it is a reflection of his deteriorating mental condition. Rightly, these circumstances were taken into consideration by the learned trial Judge as seen from the judgment under appeal.

70. In this backdrop, the ability of Sri late Kandula Sanjeeva Rao to make such disposition under Ex.B6 should be considered. Though Ex.B6 was prepared on 22.01.1994 as per its recitals it was presented for registration on 17.02.1994. The reason for delayed presentation for registration is not known. Neither there is evidence on record to explain away the same from the defendants. It is not open to make out a reason on assumptions as is done by the learned trial Judge in this respect. In as much as by the date of Ex.B6, Sri late Kandula Sanjeeva Rao had already executed two wills, one on 17.08.1990 and another under Ex.B3 on 12.121991, which were registered, it is manifest that he was conscious of the fact of registration of such document and would not have slowed down the process on the assumption that a will is not a compulsorily registerable document, nor there is an indication from the evidence

available on record in this respect. Therefore, the reasons assigned by the learned trial Judge in this respect are without any basis.

71. It is a proved circumstance in this case that about two months prior to death of Sri late Kandula Sanjeeva Rao , he was hospitalized in Aruna Nusing Home, Rajahmundry due to paralytic stroke. Since he died on 08.04.1994, it can be taken that in or about the first week of February, 1994 he would have been hospitalized likewise. According to D.W.1, Sri late Kandula Sanjeeva Rao was treated in that hospital for 10 days and thereafter he was able to walk with the assistance of another. She further deposed that her husband went to the registrar's office in an auto-rickshaw along with the 3rd defendant and D.W.3. The defendants could have produced the medical record of Sri late Kandula Sanjeeva Rao to prove his health condition by then and nature of ailment he was suffering from. The reason for the defendants in failing to produce such record is not known. D.W.1 was suggested at the trial on behalf of the plaintiff that she destroyed all medical records pertaining to her husband to suppress the fact that Sri late Kandula Sanjeeva Rao had lost memory even by the year 1991 and that he was incapable of executing the document. She denied that suggestion.

72. However, in the light of the burden of proof being on the defendants to dispel all the suspicious circumstances surrounding execution of Ex.B6-Will, production of such medical record could have been an added factor to support their version about the health status of Sri late Kandula Sanjeeva Rao by the date of Ex.B6. By producing such record, they could have proved and established that despite suffering paralytic stroke, Sri late Kandula Sanjeeva Rao maintained his ability to make such disposition mentally and physically. It is a serious omission

amounting to suppression of a material fact by the defendants. It is obvious that the 1st defendant had purposely suppressed production of medical record to prove the health status of Sri late Kandula Sanjeeva Rao at the trial.

73. By the date of presentation of Ex.B6 for registration, when the above circumstances are considered, it is obvious that Sri late Kandula Sanjeeva Rao has visited the registrar's office after suffering paralytic stroke with his left hand affected as is stated by D.W.1. Her version further that he began to take liquid diet about 1 ½ months prior to death is a definite indicator of failing health of Sri late Kandula Sanjeeva Rao by then. If this statement of D.W.1 is considered in conjunction with the date when Ex.B6 was presented for registration viz., 17.02.1994, it is clear that by then the health condition of Sri late Kandula Sanjeeva Rao was not conducive to undertake such exercise. The endorsement of the registrar on Ex.P6 at the time of registration did not record the health status of Sri late Kandula Sanjeeva Rao except that he had admitted the execution of the same. His mark was obtained apart from thumb impression on this endorsement by registering authorities, as seen from the contents of this endorsement appearing on the reverse of the first page of Ex.B6.

74. When the situation of Sri late Kandula Sanjeeva Rao by 26.07.1992 as is proved in this case was such that there was already a serious deterioration including of mental faculties, in the light of the circumstances observed above surrounding alleged execution of Ex.B6, a serious doubt is cast if really the testator was in a position to make a detailed bequest.

75. As rightly observed in the judgment under appeal, the contents of Ex.B6 make out a clear disposition of the property specifically conferring items referred to therein on individual beneficiaries with absolute rights or with a limited interest. The contents of Ex.B6 themselves, in the above circumstances, stand vulnerable for attack by the plaintiff on account of improbable event of making such a detailed disposition.

76. Thus these circumstances themselves cast a shadow not only on the ability of Sri late Kandula Sanjeeva Rao to make such disposition but also on the very disposition itself in Ex.B6. Surely he was not in a position to make such a bequest and as rightly contended for the plaintiff, it was a manipulated affair taking advantage of his failing health.

77. It is further to be seen that relationship between Sri late Kandula Sanjeeva Rao and the 1st defendant was not a happy affair and there was any amount of discordance in between them. The independent witness referred to above viz., P.W.2 clearly deposed that Sri late Kandula Sanjeeva Rao was living at Town hall in Rajahmundry, supporting the version of P.W.1. Even their close relations viz., P.W.4 and P.W.5 deposed in this respect. D.W.1 also stated that her husband was staying during day time in the office of Vidhyabhimana Sangam in Town hall and used to take food usually at home. Occasionally, according to her, he used to get food from the hotel and was visiting home during nights.

78. These statements of D.W.1, about her husband remaining in town hall are supporting the version of the plaintiff brought out through her evidence. It is a factor to be considered in this respect. But, she denied any differences or discordance between her and her late husband.

79. Nature of the 1st defendant herself requires to be considered at this juncture. The circumstances that lead to execution of Ex.B6 are discussed supra. By Ex.B6, a specific bequest was created in favour of the 1st defendant. However, the Will under Ex.B3 created a bequest only in favour of the 2nd defendant and not in respect of other defendants. The evidence of the 1st defendant is that Ex.B3 was prepared to her knowledge after expressing his intention to do so by her husband about 15 days prior thereto and that it was registered also after preparing it. However, the possible circumstances to infer in this context are that omission of the 1st defendant to be one of the beneficiaries under Ex.B3 will, could have lead for preparation of Ex.B6.

80. Though the 1st defendant claimed that she was not present either at the time of execution of Ex.B3 or Ex.B6-Wills, the manner in which she deposed about the presence of the attestors and the events relating to reading over the contents of these wills, subscription of signatures voluntarily by the attestors as well as Sri late Kandula Sanjeeva Rao, do indicate that she took an active part in the entire affairs and in all these events covering Ex.B3 and Ex.B6. If really, the 1st defendant was satisfied with the disposition so made under EX.B3, there was no impelling or compelling necessity for Sri late Kandula Sanjeeva Rao to make another bequest under Ex.B6 providing for benefits to her, apart from other defendants.

81. Her statements as D.W.1 is clearly indicative of her nature in to get at the property, as elicited in the cross-examination of the plaintiff. According to her, after death of her husband the property devolved on her and accordingly she is enjoying the property of her husband. This statement of D.W.1 in cross-examination is singularly sufficient to expose

the nature of the 1st defendant and to the effect that she was at all times after the properties of Sri late Kandula Sanjeeva Rao. Sri late Kandula Sanjeeva Rao would not have ventured to prepare Ex.B6-Will voluntarily and on his own. It was certainly an outcome of the manipulations of the 1st defendant as rightly contended by the plaintiff.

82. D.W.4, the scribe also deposed of the circumstances leading to preparation of Ex.B6. According to him as well as D.W.3, a draft of Ex.B6 was prepared in the first instance and thereafter, upon approval by Sri late Kandula Sanjeeva Rao, Ex.B6 was prepared, which D.W.4 had read over to him and others. D.W.4 also deposed that the 1st defendant was present during that time when Ex.B6 was prepared.

83. D.W.3 further claimed that he accompanied Sri late Kandula Sanjeeva Rao to the registrar's office along with Sri A.S.V.V. Satyanarayana, where both signed as identifying witnesses in the presence of the registrar.

84. D.W.3 is cousin brother of the 1st defendant. His testimony makes out that he did not attest any document for Sri late Kandula Sanjeeva Rao nor attended to any other affairs of Sri late Kandula Sanjeeva Rao. In these circumstances, reason for calling him as a witness by Sri late Kandula Sanjeeva Rao is no known. An attestor to a solemn document like Will, is a person in whom the testator reposes utmost confidence. When the statements of this witness in cross-examination are considered, he never had any association in respect of any of the affairs of Sri late Kandula Sanjeeva Rao. In these circumstances, it is hard to believe that the testator had reposed such confidence in this witness.

85. The backdrop of subsisting differences between Sri late Kandula Sanjeeva Rao and the 1st defendant, in this context, cannot be lost sight of and it is impossible to believe that a cousin brother of the 1st defendant would have been taken to confidence, to figure out as an attestor to Ex.B6 by Sri late Kandula Sanjeeva Rao. This witness could not give any reason why Ex.B6 was not taken for registration on the same day nor was presented. Only explanation offered by this witness in this respect is that Sri late Kandula Sanjeeva Rao told him that it was not an auspicious time to get the document registered. When Ex.B6 was prepared on that day viz., 22.01.1994 ignoring the fact that it was not auspicious, it is not known how this factor came in between to present the alleged Will for registration on that day itself. According to D.W.4, there was no discussion about registration of this will after its execution. This statement of D.W.4 completely stands against the version of D.W.3. A serious doubt is cast of the veracity of D.W.3 and it cannot implicitly be relied on.

86. D.W.4 is a professional document writer attached to one Sri Vaka Panduranga Rao, a document writer of Rajahmundry. This witness deposed that Sri late Kandula Sanjeeva Rao was mentally sound during these events and he affixed his thumb impression, since he was unable to subscribe his signatures on account of shaking hand. He further stated that while instructing him, Sri late Kandula Sanjeeva Rao referred to certain documents to furnish details of the properties such as survey numbers, door numbers, boundaries and from whom they were acquired. Such reference was made by Sri late Kandula Sanjeeva Rao, according to this witness, in one or two documents and who had prepared note on the slips.

87. D.W.3 and D.W.1 did no refer to such references or a note prepared by Sri late Kandula Sanjeeva Rao for this purpose. D.W.4 came out with such version in cross-examination for the plaintiff. Thus, such statements suffer for want of corroboration. Even otherwise, if really any slips were prepared making a note of those details, the defendants had never produced them to support their version at the trial and to give a touch of authenticity to the transaction covered by Ex.B6. Thus, this witness viz., D.W.4 proved pliable, who intended to defend the interest of the defendants, going an extra length by making such statements.

88. Thus, the evidence so adduced through D.W.3 and D.W.4 in proof of Ex.B6, suffered for want of reliability apart from being inconsistent. The presence of the 1st defendant through out this transaction as is reflected from their evidence itself is an indicator that it was brought out to suit her convenience and she being an added beneficiary, when Ex.B6 is considered along with Ex.B3. This circumstance seriously affects Ex.B6.

89. P.W.7 is an attestor to Ex.B6 will along with D.W.3. He is son of cousin sister of the 1st defendant. Though he supported the Wills under Ex.B3 and Ex.B6 referring to the transactions thereunder as if they were the bequests of Sri late Kandula Sanjeeva Rao , his testimony is condemned by the learned trial Judge and rightly so. The reason is based on Ex.C1-a notarized affidavit given by this witness on 22.02.1995 disowning his participation in these two transactions. The contents of Ex.C1 are that this witness was called by the 1st defendant, made to sign, though it did not contain the signature of Sri late Kandula Sanjeeva Rao with reference to Ex.B3 and that she had sent another document, which is used as Ex.B6 in similar situation, with a message to sign.

90. The contents of Ex.C1 as well as his testimony as P.W.7 are that he obliged the 1st defendant in that respect. Thus, these two different statements made by this witness clearly called for rejection of his testimony holding that he did not have value for truth. Learned trial Judge relied on the mode of making use of Ex.C1 in this context referring to ***Somanath vs. Union of India***[6] in terms of Section 145 of the Evidence Act. Observations of the trial Judge in this context are right and thus, evidence of P.W.7 has to be rejected from consideration being of no value for any purpose. These prevaricating statements do not lend support or assistance to the versions of D.W.3 and D.W.4 particularly with reference to Ex.B6-Will.

91. Another circumstance to be considered in this respect of the effect of power of attorney executed in favour of the 2nd defendant under the original of Ex.B5 by Sri late Kandula Sanjeeva Rao. It was on 18.05.1993 covering item nos. 2 and 5 of the plaint 'A' schedule. When Ex.B3 was so prepared on 12.12.1991 by Sri late Kandula Sanjeeva Rao, necessity of bringing out Ex.B5 is not known nor is there any evidence on record. Execution of this power of attorney in favour of the 2nd defendant also indicates that Sri late Kandula Sanjeeva Rao was not in a position to manage the affairs of his property by then. The 1st defendant deposed in this context that the original of Ex.B5 was executed by her husband, since he could not move about to look after the affairs and to enable the 2nd defendant to attend to them. She further stated that there was need for her husband to go to the gardens and sites in managing the property,

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and that since he could not go there, according to the 1st defendant, he executed the power of attorney in favour of the 2nd defendant.

92. Thus execution of original of Ex.B5, power of attorney, is an indicator of the health status of Sri late Kandula Sanjeeva Rao and it should be read in consonance with the contents of Ex.X3, the minutes of Vidhyabhimanula Samajam dated 26.07.1992. This circumstance certainly supports the inference drawn as to failing or deteriorating health status of Sri late Kandula Sanjeeva Rao then and continued thereafter, which could be perceived from the paralytic attack suffered by him about two months prior to his death.

93. In these circumstances, if the 2nd defendant had been examined as a witness at the trial, it would have been more appropriate. The reason for her silence without making out her version in respect of the claim to the suit properties did make out a dent in their defence. Not only the 1st defendant but also the 2nd defendant have been the best witnesses to speak of such affairs in their family. Particularly after the marriage, the 2nd defendant lived most often with her parents at Rajahmundry, where even her children viz., the defendants 3 and 4 studied. Though her husband was at Hyderabad, she was mainly staying with her mother.

94. On behalf of the defendants for the purpose of evaluating the sound and disposing state of mind of the testator, reliance is placed on the observations of then High court of Andhra Pradesh at Hyderabad in ***Ryali Kameswara Rao vs. Bendapudi Suryaprakasarao and Ors***.[7]. This ruling was also considered in the judgment under appeal by the trial

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7 . AIR 1962 AP 178

Court referring to para-33 therein. It is desirable to extract this passage hereunder:-

> *"33. Section 59 of the Indian Succession Act requires that the testator should have a sound mind and the illustrations 1 to 3 throw some, light as to the significance of the expression 'sound mind '. The "sound mind" mean that the testator should have his mental faculties in their fullest vigour, but he should have the capacity to understand the nature of his property the memory to remember the relations and persons normally having claims on his property the memory to remember the relation and persons normally having claims on his bounty and also a judgment of his own in making the dispositions. As observed by Mookerjee J., in Sarasindunath Ray Chowdhury v. Sudhir Chandre Das ILR 50 Cal 100 at P. 114 : (AIR 1923 Cal 116 at p. 121) "the essence of the matter is that testamentary capacity cannot but be looked upon as a relative thing ; it is to be considered with reference to the particular will the question being, not whether the testator had capacity for will making, but whether he had capacity to make the disputed will. He may have had capacity to make that will in the circumstances and yet not have had capacity to make a more complex one, or he may not have had capacity to make the will in suit, and yet have had capacity to make a less complex one or different one; whether he understood the particular thing he was doing is the vital question".*

95. In the light of the evidence on record, particularly in the light of affliction he was suffering from, as proved by material on record and for the reasons stated supra, the inference to draw is that Sri late Kandula Sanjeeva Rao was suffering on account of deteriorating mental health, serious loss of memory and physically became very weak long prior to Ex.B6 and well prior to 26.07.1992 (Ex.X3). In the context of nature of dispositions made by him, as already stated, it is rather unbelievable that he would have gone to such an extent in his physical or mental status then obtaining. Applying the observations in the above ruling, in given facts of the case, the inference to draw is that Sri late Kandula Sanjeeva Rao had neither physical capacity nor mental fitness to hold that he was in a sound disposing state of mind to make such disposition in terms of Ex.B6. Reasons assigned in the judgment under appeal mostly based on assumptions than the material on record of physical and mental status of Sri late Kandula Sanjeeva Rao, have to be

rejected, since they are without any foundation or basis nor material on record supports any of such inferences.

96. Having regard to these circumstances ensconcing Ex.B6 Will the nature of testimony brought out through its attestors and scribe need to be considered.

97. D.W.3 deposed in respect of execution of Ex.B6 by Sri late Kandula Sanjeeva Rao. According to him, the 3rd defendant came to him stating that Sri late Kandula Sanjeeva Rao had called him to the house, since he was executing a Will. Thereafter, according to him, D.W.4, the scribe, was brought within half an hour. His evidence further is that he and P.W.7-Sri Kishore signed in that will as attestors. According to this witness, since Sri late Kandula Sanjeeva Rao was not in a position to subscribe his signature and was affected on account of paralysis, his hand was shaking, he applied his thumb impressions to Ex.B6. He further deposited that Sri late Kandula Sanjeeva Rao was in a sound state of mental health by then and he himself had instructed D.W.4 to prepare the Will.

98. But for this alleged disposition of the properties under Ex.B6, the plaintiff, being daughter's daughter of Sri late Kandula Sanjeeva Rao is a legal heir to succeed to his estate. It is in the evidence of P.W.1 that Sri late Kandula Sanjeeva Rao during his lifetime was visiting them once a week and thus, the plaintiff had occasion or opportunity to meet her maternal grandfather. But P.W.1 himself deposed and also stated by the 1st defendant that the plaintiff had no affinity or any association with the defendants. Their version goes to show that she had never seen the defendants. The 1st defendant went to the extent of stating that she was

not willing to give away any property to the plaintiff, since she was not shown to her from the date of her birth even till the date she deposed in the Court. (This statement of D.W.1 was made in the trial Court on 21.11.2001).

99. The statement P.W.1 made at the trial that Sri late Kandula Sanjeeva Rao was visiting them during his lifetime and meeting the plaintiff once a week was not subject matter of cross-examination on behalf of the defendants. Not even a suggestion was made to P.W.1 on behalf of the defendants that Sri late Kandula Sanjeeva Rao had never met her nor visited their home. It should not be lost sight of the fact that P.W.1 as well as the plaintiff are also residents of Rajahmundry like Sri late Kandula Sanjeeva Rao and his family. When Sri late Kandula Sanjeeva Rao was spending most of his time in Town hall or in the affairs of Vidhyabhimanula Samajam, possibility that he would have taken time to meet his first/eldest grand daughter cannot be ruled out. When he was so loving and caring his grand children viz., the defendants 3 and 4, he would not have afforded to discriminate the plaintiff. More so, even the way he was making out his life as a social worker and activist involving himself in several social causes and affairs including Hitakarini Samajam (A well known welfare association founded by Sri Kandukuri Viresalingam garu, a social reformist) extension of such care and affection to his another granddaughter is a possible reality. Added to it, she is the only source for him to think of his eldest daughter, who unfortunately died on account of heart complication, within few days of giving birth to the plaintiff. It is possibly an influencing factor for him to meet the plaintiff.

100. The 1st defendant did not depose denying that Sri late Kandula Sanjeeva Rao was not meeting the plaintiff at any opportune

time. In fact, her testimony is silent in this respect. Therefore, possibility of Sri late Kandula Sanjeeva Rao making efforts to keep away the plaintiff from succeeding to his estate is too distant possibility to accept. Though there is a reference in Ex.B3-Will that his first daughter was already given by way of settlement Ac.5-00 of land, which the plaintiff ultimately would succeed. It is not reflected in later Will viz., Ex.B6. It is a serious omission and reason to depart to record such fact, particularly in the light of the defence set up by the defendants in this case, when it is to the effect that Ac.5-00 out of item No.4 of plaint 'A' schedule property was given to the 2nd defendant towards 'Pasupu Kumkuma', this departure in Ex.B6 has a profound effect. Neither the defendants have chosen to let in evidence explaining this circumstances why such departure was made by Sri late Kandula Sanjeeva Rao. When the 1st defendant was available all through these transactions, she should have explained this omission or departure.

101. These circumstances give raise to an indication that the testator would not have desired or liked to keep away the plaintiff from the line of succession to his estate by making such disposition. It is another artificial circumstance, which clearly affects the nature of Ex.B6 or the disposition. The learned trial Judge did not take into consideration this fact in right perspective and apparently glossed over.

102. A reference is made to the ruling of Hon'ble Supreme Court in ***Rabindra Nath Mukherjee and another v. Panchanan Banerjee (dead) by L.Rs. and others***[8] by learned counsel for the defendants in this respect contending that debarring natural heirs cannot be treated as a

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[8] . AIR 1995 SC 1684

suspicious circumstance. In para-4 of this ruling, in given facts and circumstances, it is observed thus:

> " *4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred arid in others only partially. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full blood sister, the disinheritance of latter could not have been taken as a suspicious circumstance, when some of her descendants are even beneficiaries under the will.*"

103. This ruling is also referred to in the judgment under appeal. But circumstances surrounding execution of Ex.B6 as have been detailed supra, leave no manner of doubt that the testator did desire to provide for out of his estate to the plaintiff and they do not point out otherwise barring the plaintiff from the line of succession to his estate.

104. Therefore, on a careful consideration of the entire material, when the circumstances and events surrounding Ex.B6 are bridled with many infirmities, inconsistencies, improbabilities and particularly pointing out the role of the 1st defendant in getting at this alleged Will, it is neither desirable nor safe to rely on. By virtue of Ex.B6-Will, Sri late Kandula Sanjeeva Rao, as vividly and clearly the circumstances point out that he would not have desired to dispose of the property in the manner stated therein including to disinherit or keep the plaintiff away from succession to his estate. Therefore, the inference drawn by the learned trial Judge rejecting Ex.B6-Will should be held proper. Hence, it is held that Ex.B6 is not proved as the last will and testament of Sri late Kandula Sanjeeva Rao made by him directing disposition of his properties voluntarily and in a sound and disposing state of mind with an intention to interfere with the process of succession. Thus, this point is answered.

POINT No.3:-

105. The defence set up by the defendants in the written statement and at the trial is clear and categorical. It is based on Ex.B6 will. Their defence is also that Ex.B3 alleged holograph Will attributed to Sri late Kandula Sanjeeva Rao was revoked by him during his lifetime and had created another disposition by way of Ex.B6. In the light of the definite stand of the defendants, it is not open for them to turn round and contend that in the event of rejection of Ex.B6, they can rely on Ex.B3-Will. It was the contention advanced before the learned trial Judge on behalf of the defendants. Unfortunately, the learned trial Judge followed it assigning such reasons, which are mostly without any foundation, either by means of pleadings or evidence. Importance was attached holding that it was a holograph Will and scribed by the testator himself, albeit holding that there is no proof that the testator himself prepared this will. But it is against the testimony on record. The 1st defendant stated in her deposition that Ex.B3-Will dated 12.12.1991 was executed by her husband and was scribed by him. She identified the handwriting and signature of her husband therein.

106. The statement of the 1st defendant referred to above is not corroborated or supported by the attestor examined to prove Ex.B3 viz., D.W.2. The version of D.W.2 at the trial was that Sri late Kandula Sanjeeva Rao called him to his house in the year 1992 and told him that he wrote a Will asking him to attest, after reading over its contents. D.W.2 stated that, accordingly, he obliged and attested it along with P.W.7. The testimony of P.W.7 is already rejected for the reasons stated supra. Though D.W.2 deposed that Sri late Kandula Sanjeeva Rao was in good health and was in a sound and disposing state of mind, when this

transaction went on, reasons are already stated holding that his situation was not so, even by that time for the reasons stated in point No.2 supra.

107. D.W.2 stated in cross-examination for the plaintiff that Sri late Kandula Sanjeeva Rao never took his assistance in any of his affairs. This witness is brother's son of Sri late Kandula Sanjeeva Rao . Reason for Sri late Kandula Sanjeeva Rao to call him as an attestor to Ex.B3 is not known. Even this witness did not ask him why he was called for such purpose. When the status of the attestor with reference to a solemn document like Will is so sacrosanct, in the absence of proof of any compelling reasons found from the material on record to call this witness as an attestor to Ex.B3, it is rather difficult to believe. It was not a long drawn and continuous association of this witness with him that made Sri late Kandula Sanjeeva Rao to call him to be an attestor, though he is his nephew and being brother's son. This witness had no acquaintance with P.W.7, as seen from his testimony or friendship. It is another circumstance to suspect nature of Ex.B3, in as much as the testator would not have preferred to call two individuals, who are not known to each other, to attest his document.

108. Serious contentions are advanced assailing nature of Ex.B3 on behalf of the plaintiff pointing out the manner in which it is appearing.

109. The contents of Ex.B3 reflect that a few lines from the top in this text were written using one ball point pen followed by other contents written using another ball point pen. It bears the date 12.12.1991 at the top. However, at the end, immediately after the last line under the endorsement of the scribe attributed to Sri late Kandula Sanjeeva Rao,the date written is 17.12.1991. Again, its contents reflect that there is

endorsement attributed to Sri late Kandula Sanjeeva Rao as its scribe with date '18.02.1992'. It is seen a line below the signatures of the attestors. Ex.B3 was presented for registration on 18.02.1992.

110. Presence of the 1st defendant is very much reflected, when Ex.B3 was allegedly entered into and it is discussed while considering point No.2 supra. Different dates as are appearing in Ex.B3 are subject matter of serious criticism on behalf of the plaintiff in these appeals. Reason for Sri late Kandula Sanjeeva Rao, if it is accepted that he himself scribed its contents, for assigning two different dates viz., 12.12.1991 and 17.12.1991 in its text, remained unexplained from the evidence of the defendants. Neither D.W.1 nor D.W.2 clearly deposed in this context.

111. The version of D.W.2 that he was called by Sri late Kandula Sanjeeva Rao in 1992 is an added factor and it is not known whether this witness was called on 18.02.1992 or earlier to it viz., in December, 1991. When his testimony is so clear and categorical in this respect having had met Sri late Kandula Sanjeeva Rao for the purpose in the year 1992, no other inference can be drawn, relatable to the dates in December, 1991. This circumstance goes to the root of the matter to suspect the very execution of this Will by Sri late Kandula Sanjeeva Rao and if it was during December, 1991 or February, 1992.

112. In respect of its registration on 18.02.1992, there is only testimony of the 1st defendant and no other witness, who identified before the concerned sub registrar, was examined at the trial. No explanation is offered for this omission by the defendants.

113. In the presence of these circumstances surrounding Ex.B3, the reasons assigned by the learned trial Judge that Sri late Kandula

Sanjeeva Rao had commenced preparing this will on 12.12.1991 and completed it on 17.12.1991 cannot be accepted, since it is not supported by any foundational facts, either laid in the written statement or in the evidence of the defendants at the trial. The learned trial Judge apparently went afar in holding Ex.B3 being true and valid disposition, made in a sound state of mind as his last well and testament by Sri late Kandula Sanjeeva Rao. It is again against the very defence set up by the defendants in this suit.

114. Finding the situation, it appears, in the course of hearing these appeals, Sri T.S.Anand, learned counsel for the defendants, sought to not press the defence basing on Ex.B6-Will. It is with an intention to support the reasons assigned by the learned trial Judge basing on Ex.B3-Will. No effort was made on behalf of the defendants to get Ex.B3 examined by a hand writing expert to prove the hand writing attributed to Sri late Kandula Sanjeeva Rao as well as signatures appearing therein as contended for the plaintiff in these appeals. Attention of this Court is also drawn by Sri V. Balaram, learned counsel for the plaintiff, to compare the hand writing appearing in the endorsements referable to 17.12.1991 and 18.02.1992. The learned trial Judge, as seen from the judgment under appeal, apparently made an effort as if to invoke Section 73 of the Evidence Act. When the matter relates to a serious dispute among the parties, it is quiet hazardous for the Courts to resort to Section 73 of the Evidence Act to compare the hand writing, without there being any information relating to proficiency or expertise of the Presiding Judge in the field of comparison of hand writings.

115. Finding no justification for the learned trial Judge to accept Ex.B3 in given facts and circumstances, the same has to be rejected. The

basis for rejection of Ex.B3 is mainly on account of the defence of the defendants, who themselves stated that it was revoked by the testator and cancelled leading to execution of Ex.B6 thereafter by him. Infirmities surrounding Ex.B3 discussed above, are also determinative factors to reject it. The testimony of the 1st defendant to call Ex.B3 a holograph Will, is not sufficient in the proved facts and circumstances of this case.

116. Thus, findings of the learned trial Judge in this respect with reference to Ex.B3 shall be set aside. Thus, this point is answered.

POINT No.4:-

117. In view of the findings on points 1 to 3, the claim of the plaintiff shall be accepted. She being a successor in the line of succession for a share in the estate of Sri late Kandula Sanjeeva Rao, is entitled to it along with the defendants 2 to 4. In the course of hearing, it is also informed by Sri Balaram, learned counsel for the respondents, that the 1st defendant during her lifetime executed her last will and testament bequeathing her properties. The plaintiff is entitled for 1/3rd in all these properties.

118. It is contended by Sri T.S.Anand, learned counsel for the defendants, that the 2nd defendant is entitled for Ac.5-00 independent of the claims in this case, in as much as it was given away to her by Sri late Kandula Sanjeeva Rao towards 'pasupu kumkuma'. The observations of the learned trial Judge rejecting the claim of the 2nd defendant so made are seriously assailed in this appeal.

119. Sri T.S.Anand, learned counsel for the plaintiff, contended that the concept of 'Pasupu kumkuma' transaction covered by an instrument in writing is hit by Section 17(1)(b) of the Registration Act held

in ***Gandevalla Jayaram Reddy vs. Mokkala Padmavathamma and others***[9]. and that the above decision is no longer good law in view of the later Judgment of Hon'ble Supreme Court in ***The Government of Andhra Pradesh and Ors. Vs. M. Krishnaveni and Ors.***[10].

120. In ***Government of A.P. vs. M. Krishna Veni and others*** referred to supra, the Hon'ble Supreme Court considered giving away immovable properties to the married daughters in the family towards 'pasupu kumkuma' by their father, as a part of family arrangement. In those circumstances, having regard to the nature of family arrangement vis-a-vis the provisions of the Stamp Act as well as the Registration Act, the observations were recorded. It is desirable to extract the observations of the Hon'ble Supreme Court in this respect hereunder:

> "*Mr. Rajendra Choudhary, learned senior counsel appearing on behalf of Smt. P. Rukmini and Smt. M. Krishnaveni, contended that the family arrangement dated 13.11.1970 was valid and legal settlement by which some land was given by the father to his daughters at the time of their marriages under age-old custom known as 'Pasupu Kumkuma' conferring an absolute title of the daughters to the property. In Sarupuri Narayanamma and Ors. v. Kadiyala Venkatasubbaiah and Ors. AIR1973SC2114 , this Court has given the meaning to the word 'Pasupu Kumkuma' to mean 'conferring an absolute title in the property'. It is well-settled that a document, which is in the nature of a memorandum of family arrangement and which is filed before the Court for its information for mutation of names, is not compulsorily registrable and, therefore, can be used in the evidence of the family arrangement and is final and binding on the parties [see Kale and Ors. v. Deputy Director of Consolidation and Ors. [1976]3SCR202 . Further, it was held in the cited decision that the object of the family arrangement is to protect the family from long-drawn litigation or perpetual strifes, which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. It promotes social justice through wider distribution of wealth. Family, therefore, has to be construed widely. It is not confined only to people having legal title to the property. Section 14(1) of the Hindu Succession Act, 1956 provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Smt. P. Rukmini and Smt. M. Krishnaveni, both daughters of late T. Chinna Seetharamaiah, had acquired an absolute right in the lands given to them by their*

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[9].2001(5) ALD 402 = 2001(5) ALT 130

[10].2017(1) ALT 16 (SC)

father in the family arrangement on 13.11.1970. They have made categorical statement in the declarations filed by them in the year 1976 immediately after the enforcement of the Act that they were the owners in possession of the lands to the extent of their respective shares."

121. Therefore, the ruling of Hon'ble Supreme Court considered a fact situation, where lands given to the daughters by father as a part of family arrangement under 'pasupu kumkuma' amounted to proper disposition. It was not the case where the parties relied on independent or separate instruments reflecting giving away immovable properties towards 'pasupu kumkuma' conferring right, title and interest thereby, to the beneficiaries. Thus, treating such transaction as a part of family arrangement, they were held proper and to confer right, title and interest on the daughter when given away by father.

122. It is further contended that the judgment of Full Bench of erstwhile High Court of A.P. at Hyderabad referred to above was considered in ***P.Buchi Reddy and others vs. Anathula Sudhakar, 1999(2) ALT 192*** and the above judgment was reversed by Hon'ble Supreme Court in ***Anathula Sudhakar vs. P. Buchi Reddy***[11].

123. With reference to the judgment of Hon'ble Supreme Court in Anathula Sudhakar case referred to supra, there is no observation specifically pointing out nature of a 'pasupu kumkuma' transaction and if amenable to an objection in terms of Section 17(1)(b) of the Registration Act. In para 26 of this ruling referring to the given facts and circumstances, the judgment of the Hon'ble High Court was held to be improper, particularly considering the nature of dispute relating to the relief of injunction. It is extracted hereunder for benefit.

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[11]. AIR 2008 SC 2033

"26. The High Court while reversing the decision of the first appellate court, examined various aspects relating to title and recorded findings relating to title. It held that gifting a property to a daughter or sister by way of 'Pasupu Kumkumam", could be done orally and did not require a registered instrument. Even though there was no independence evidence of oral gift except the assertion to Rukminibai (which was denied by Damodar Rao), the High Court, held that there was an oral gift in her favour. It also accepted the evidence of PW3 and PW5 and plaintiffs, that Damodar Rao negotiated for the sale of the plots representing that they belonged to his sister Rukminibai and that he attested the sale deeds as a witness and identified the Rukminibai as the executant before the Sub-Registrar and therefore, Section 41 of TP Act came to the aid of plaintiffs and Damodar Rao was estopped from denying the title of his sister. The High Court in a second appeal arising from a suit for an injunction, could not have recorded such findings, in the absence of pleadings and issue regarding title."

124. In the Full Bench judgment referred to above in Gandavalla Jaya Ramaiah case, 'Pasupu kumkuma' transaction was sought to be proved by way of a letter in favour of beneficiaries and in those circumstances, the letter was held to suffer from the vice under section 17(1)(b) of the Registration Act, considering it as a 'gift' within the meaning of Section 122 of Transfer of Property Act.

125. Reasons are assigned supra, in the given facts and circumstances that the transaction so asserted to by the 2nd defendant was not referred in Ex.B6 the alleged last will and testament attributed to Sri late Kandula Sanjeeva Rao. There is reference to it in Ex.B3, which stood revoked by Ex.B6, which the defendant for all purpose relied on in support of their claim nor is Ex.B3 held, proved.

126. There is no other documentary proof adduced by the defendants in support of this contention. On the other hand, the version of P.W.1 is that though his wife was given away under the original of Ex.B1, Ac.5-00 out of item no.5 of the plaint 'A' schedule property, since husband of the 2nd defendant own extensive properties, she was given away cash in lieu of it.

127. One of the contentions of the defendants is that the plaintiff after attaining majority has not been examined at the trial and hence her claim suffers on account of it. When P.W.1, being father who represented the plaintiff in all her affairs in this dispute, as her next friend and guardian, he is the best and proper person to speak on her behalf. Therefore, omission to examine the plaintiff as a witness at the trial can have no bearing in this matter.

128. In any view of the matter, having regard to the reasons assigned supra, the plaintiff is entitled for relief as prayed in respect of plaint 'A' schedule properties and that she is not entitled for any share in plaint 'B' schedule properties for want of proof. Thus, this point is answered.

POINT No.5:-

129. In view of the findings on point nos.1 to 4, the plaintiff's appeal in A.S.No.181 of 2003 has to be allowed in part and whereas the defendants appeal in A.S.No. 1789 of 2002 has to be dismissed. It is made clear that irrespective of extent or area of item no.5 of plaint 'A' schedule properties, they are entitled for their shares, be it 800 sq.yards or 1200 sq.yards.

130. Having regard to the close relationship among the parties they shall be directed to bear their own costs in these appeals.

131. In the result, A.S.No. 1789 of 2002 is dismissed. The parties are directed to bear their own costs.

132. In the result, A.S.No. 181 of 2003 is allowed. The decree and judgment in O.S.No. 86 of 1994 on the file of the Court of Additional

Senior Civil Judge, Rajahmundry dated 23.04.2002 are set aside in part. Consequently, there shall be a preliminary decree in O.S.No. 86 of 1994 on the file of the Court of Additional Senior Civil Judge, Rajahmundry in part directing division of plaint 'A' schedule properties into three equal shares and one such share shall be allotted to the plaintiff and another such share shall be allotted to the 2nd defendant. One such share allottable to the 1st defendant, on account of her death during pendency of these appeals, shall be subject matter of determination in the final decree applications among these parties. The suit is dismissed in respect of plaint 'B' schedule properties. The parties are directed to bear their own costs.

As sequel thereto, all miscellaneous petitions, if any, shall stand closed. Interim Order, if any, shall stand vacated.

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JUSTICE M.VENKATA RAMANA

Dt:12.02.2020
RRR

HON'BLE SRI JUSTICE M.VENKATA RAMANA

APPEAL SUIT Nos. 1789 of 2002 & 181 of 2003

Dt:12.02.2020

RRR

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

APPEAL SUIT No. 1789 of 2002 + APPEAL SUIT No. 181 of 2003

A.S. No.1789/2002

Between:

Kandula Radha Kumari, W/o. Late Sanjeeva Rao,
Aged 60 years, Meraka Veedhi, Rajahmundry and
3 others

... APPELLANTS

AND

Kumari Narra Naga Yellamani Ratna Teja,
D/o. N.V. Lakshmana Kumar, 20 years,
Student, Mekara Veedhi, Ratna Mandiram Street,
Rajahmundry. ... RESPONDENT

A.S.No.181 of 2013

Between:

Kumari Narra Naga Yellamani Ratna Teja,
D/o. N.V. Lakshmana Kumar, 20 years,
Student, Mekara Veedhi, Ratna Mandiram Street,
Rajahmundry. ... Appellant

AND

Kandula Radha Kumari, W/o. Late Sanjeeva Rao,
Aged 60 years, Meraka Veedhi, Rajahmundry and
3 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12/02/2020

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local Newspapers
May be allowed to see the order? Yes/No

2. Whether the copy of order may be
Marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to
See the fair copy of the order? Yes/No

M.VENKATA RAMANA,J

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ APPEAL SUIT No. 1789 of 2002 + APPEAL SUIT No. 181 of 2003

% Dated: 12/02/2020

 # A.S. No.1789/2002

^Between:

Kandula Radha Kumari, W/o. Late Sanjeeva Rao,
Aged 60 years, Meraka Veedhi, Rajahmundry and
3 others

... APPELLANTS

AND

$ Kumari Narra Naga Yellamani Ratna Teja,
D/o. N.V. Lakshmana Kumar, 20 years,
Student, Mekara Veedhi, Ratna Mandiram Street,
Rajahmundry. ... RESPONDENT

A.S.No.181 of 2013

Between:

Kumari Narra Naga Yellamani Ratna Teja,
D/o. N.V. Lakshmana Kumar, 20 years,
Student, Mekara Veedhi, Ratna Mandiram Street,
Rajahmundry. ... Appellant

AND

Kandula Radha Kumari, W/o. Late Sanjeeva Rao,
Aged 60 years, Meraka Veedhi, Rajahmundry and
3 others

... Respondents

! Counsel for appellant : Sri T.S. Anand (for appellants in A.S.No. 1789/2002 and for respondents in A.S.No.181/2013)

^Counsel for Respondents : Sri V. Balaram(for respondent in A.S.No. 1789/2002 and for appellant in A.S.No.181/2013

<GIST :
>HEAD NOTE:
? Cases referred:

12. AIR 1974 SC 1999
13. AIR 1959 SC 443
14. (2017) 1 SCC 257
15. (2007) 11 SCC 621
16. AIR 1990 SC 396
17. AIR 1971 SC 1910
18. AIR 1962 AP 178
19. AIR 1995 SC 1684
20. 2001(5) ALD 402
21. 2017(1) ALT 16 (SC)
22. AIR 2008 SC 2033