

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE FOURTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

APPEAL SUIT NO: 1772 OF 2001

Appeal against the Judgment and Decree order dated.15-3-2001 made in O.S.No.71 of 1986 on the file of the Court of the Senior Civil Judge, Khammam.

Between:

Syed Moinuddin, S/o Sardaruddin aged 50 years, Occ:Business R/o Aziz lane,
Khammam

...APPELLANT/PLAINTIFF

AND

1. Devavath Laxmi, W/o late Ramsingh aged 60 years, Occ:Household R/o Postal Colony, Behind Nehrunagar Colony, Khammam.
2. Devavath Sikindar Singh, S/o late Ramsingh R/o Postal Colony, Behind Nehrunagar Colony, Khammam
3. Devavath Durga, D/o late Ramsingh, aged 35 years, Occ:Household R/o Postal Colony, Behind Nehrunagar Colony, Khammam

R1 and R3 dismissed for default vide C.O. dated. 08.02.2011 and the same was restored against RR1 and R3 as per C.O. dated.30.10.2013 made in ASMP.2397/2013

...RESPONDENTS/DEFENDANTS

Counsel for the Appellant: SRI. P SRI RAM

Counsel for the Respondent No.2: SRI MEHERCHAND NORI

The Court made the following: ORDER

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

A.S.NO.1772 of 2001

JUDGMENT :

The plaintiff in O.S.No.71 of 1986 on the file of Senior Civil Judge, Khammam, herein after will be referred as trial Court, being not happy with the Judgment of the trial Court dated 15-03-2001, where under his suit was dismissed by the trial Court, preferred this appeal on the following grounds.

2. The trial Court having rightly appreciated the issues except Issues No.4 and 5 and additional Issues No.1 and 2 ought to have seen that O.P.No.15 of 85 filed by the respondent No.1/defendant No.1, clearly established the transaction was squarely for the benefit of minor and the said transaction is being made by a competent person but on behalf of the minor. The trial Court having noted that the Hindu Minority and Guardianship Act will not apply, but proceeded to hold the permission obtained in the referred O.P. was void but the Court below ought to have seen that irrespective of validity of the permission, the respondents are estopped from contending contrary to their averments in O.P.No.15 of 85. The appellant has claimed that the benefit of the

minor was not only pleaded but proved in O.P.No.15 of 85. Therefore, it was not open for the respondents or for the trial Court to contend that the transaction was not for the benefit of minor. The Court having confirmed that the document i.e., agreement of sale was voluntarily executed, ought to have considered that the respondents are estopped in law from opposing the specific relief, thereby, the Court below committed an error in sitting over the Judgment of the District Court in O.P.No.15 of 85.

3. The appellant further claimed that the trial Court having given affirmative finding on all other aspects in favour of the plaintiff, committed an error while dealing with the issues relating to the effect of minority of defendant No.2. In the absence of any allegation over the father, who executed the original agreement of sale, it cannot be said the transaction was not for the benefit of minor or against the interest of the minor. The defendant No.2 has failed to produce any evidence in support of his plea to believe that the transaction of sale was not for his benefit. The sale transaction of the suit schedule property was for the purpose of discharging the debts and for the benefit of defendant No.2. Therefore, the evidence clearly established that

the transaction was made for the benefit of defendant No.2. The appellant find fault with the observations made by the Court below that the amount received from the plaintiff may not be sufficient to clear the debts since they are all assumptions and ought not to have been made basis for the conclusions arrived at in the Judgment.

4. The appellant further claimed that the Court below committed an error in not noticing the defendant No.2 became major in 1987 itself. Even though he has engaged another Advocate in October, 1995 and filed a separate written statement, the Court below failed to appreciate that the defendant No.2 did not choose to repudiate the contract within three years after attaining majority. Therefore, according to the appellant, making of such an application would be wholly irrelevant under Section 8 of Limitation Act, and imperative thereby, the finding of the Court below the defendant No.2 is entitled to avoid the suit agreement, which completely vitiates and supports the Limitation Act. Therefore, the appellant sought for setting aside the Judgment of the trial court and sought for a decree in his favour.

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5. As could be seen from the record received and as per the copies of plaint, written statement filed along with the appeal, it seems the appellant herein has filed the above referred O.S.No.71 of 1986 for specific performance of contract, to direct the defendants to execute a registered sale deed in respect of suit schedule property in his favour and for avoiding future damages of Rs.500/- per month from the date of suit till the date of execution of sale deed and delivery of possession of the suit schedule property.

6. As per the averments made in the plaint, it was the case of the appellant that one Devavath Ramsingh is the husband of defendant No.1 and father of defendants No.2 and 3. An extent of Ac.0-20 gts of land was acquired in the name of defendant No.2 during 1968. The above referred Ramsingh representing himself to be the owner of Sy.No.106, agreed to sell an extent of 1000 Sq.yrds to the appellant for a consideration of Rs.60,000/- and executed an agreement of sale in favour of the plaintiff on 03-03-1985. While executing the said agreement, he has received Rs.2,000/- out of the total consideration of Rs.60,000/-. However, soon after the said agreement, the said Ramsingh died in April, 1985. Therefore, the appellant approached the wife and



children of Ramsingh and enquired them whether they are abide by the agreement. They agreed to receive back the agreement executed by Ramsingh and to execute a fresh agreement by receiving another sum of Rs.3,000/- and accordingly they said to have executed a fresh agreement in favour of appellant on 11-05-1985. As per the said agreement, the respondents agreed to receive the balance consideration of Rs.55,000/- by the end of August, 1985, and to execute registered sale deed after obtaining required permission from the competent Court.

7. The appellant further pleaded in his plaint that defendant No.1 filed an application before the District Court seeking permission to sell the property vide O.P.No.15 of 1985. The District Court allowed the petition and accorded permission to the defendant No.1 to sell the property on 26-08-1985. Thereafter, the appellant approached the defendants and having offered to pay the balance consideration, requested them to execute a registered sale deed but the respondents avoided the execution of sale deed. The appellant got issued legal notice on 16-09-1985 and 18-11-1985 demanding the respondents to perform their part of contract as he was ready to pay the balance consideration and to obtain the registered sale deed. The

respondents got issued a reply on 28-11-1985 and denied the entire transaction. The appellant has claimed that even though the agreement was obtained in respect of 1,000 sq.yrds, the land available on the spot was 1045 sq.yrds. Thereafter, he expressed his willingness to pay sale consideration for the above extent to obtain the sale deed. However, the respondents failed to cooperate, thereby, he filed the suit and sought for a decree in his favour.

8. All the respondents/defendants appeared before the Court, in the first instance a common written statement was filed by defendants No.1 and 2 but subsequently, the defendant No.2 having become major filed a separate written statement with the same averments which they made in the earlier written statement. It seems from the record, the defendant No.1 did not choose to contest the suit and defendant No.2 alone contested the suit.

9. According to the statement filed on his behalf, it was the case of defendant No.2 that his grand father purchased an extent of Ac.0-20 gts of land under a registered sale deed in the name of defendant No.2 while he was a young boy. Therefore, he is the absolute owner of the property purchased under registered sale deed dated 29-11-1968. His father never agreed to sell the

property to the plaintiff since it exclusively belongs to defendant No.2. The father of the defendant No.2 has no legal necessity to sell the property. Defendant No.2 has denied the execution of agreement of sale dated 11-05-1985 by defendants No.1 and 3 and also pleaded that he was not aware of the proceedings in O.P.No.15 of 1985.

10. The defendant No.2 has pleaded that the defendants are not aware of the proceedings before the District Court till they received notice dated 16-09-1985 from the plaintiff. He has also pleaded that the appellant herein is a notorious person in Khammam. He has acquired many properties by adopting foul methods and that on 11-05-1985, the appellant came to their house and while the defendant No.1 was in distress on account of the death of her husband, forced her to execute another agreement of sale and threatened her with dire consequences and also threatened that in case she failed to execute such an agreement, he will see the end of defendant No.2 and by putting the defendant No.1 under threat obtained her signatures on blank stamp papers and also on some white papers and by the time she was forced to sign those documents nobody was present. Therefore, according to defendant No.2 there was no such

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agreement of sale by his father, there was no agreement by defendants No.1 and 3 as alleged by the plaintiff. There was no necessity to sell the property to the plaintiff. The defendant No.1 was forced to file O.P.No.27 of 1985, therefore, defendants No.1 and 2 filed a petition before the District Court vide O.P.No.15 of 1985 but it was dismissed. They have also pleaded that the market value of the property was Rs.300 per square yard, thereby, no sane person would sell the property @ 60 per square yard. Therefore, on the above grounds, the respondents/defendants sought for dismissal of the suit.

11. At the initial stage, the trial Court framed the following six issues:

1. Whether the husband of D1 and father of D2, and D3 executed the agreement of sale in favour of the plaintiff on 03-03-1985?
2. Whether the defendants have executed fresh agreement of sale in favour of the plaintiff on 11-05-1985?
3. Whether the suit schedule property belongs to D2 and it was purchased on 29-11-1968 to the benefit of D2 as pleaded in the written statement?
4. Whether the plaintiff is entitled to the specific performance as prayed for?
5. Whether the plaintiff is entitled to damages as prayed for ?
6. To what relief?

12. During the trial, PWs.1 to 4 were examined and Exs.A1 to A9 are marked on behalf of the appellant, whereas the

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defendant No.2 himself was examined as DW.1, he has marked Exs.B1 to B10. The trial Court framed the following two additional issues before pronouncement of Judgment.

1. Whether the alleged agreement of sale was for the benefit of D2 for his estate?
2. Whether D2 can avoid the contract of sale executed by his mother on his attaining majority?

13. The trial Court having heard both parties and having considered the oral and documentary evidence, dismissed the suit with a direction to the defendants No.1 and 2 to repay Rs.5,000/- which they received under the sale agreement with interest @ 18% per annum from 11-05-1985 till the repayment.

14. The defendant No.2 also filed cross objections against the findings of the trial Court in Issues No.1 and 2. The defendant No.2 has claimed that the findings of trial Court in Issues No.1 and 2 are erroneous. The Court below having come to the conclusion with a specific finding on Issue No.3 that the suit schedule property belongs to the defendant No.2 and it was purchased for his benefit by his grand father and sale of the property is not for the benefit or necessity of the minor ought not to have answered issues No.1 and 2 in favour of the plaintiff. He has also pleaded that the Court below having considered that the suit schedule property is exclusive property of defendant No.2 and that



defendants No.1 and 3 have no right to sell the property ought to have given a finding in Issue No.1 infavour of the defendant No.2 but wrongly answered the issue in favour of plaintiff. The Court below did not consider the discrepancy with regard to the amount paid by Ramsingh, the husband of defendant No.1. The Court below failed to appreciate the fact that the subsequent agreement in favour of the plaintiff on 11-05-1985 was obtained by coercion and undue influence.

15. According to the defendant No.2, since the Court below already concluded that defendant No.2 alone is the exclusive owner of the property, the question of entering into a fresh agreement of sale by defendants No.1 and 3 does not arise and defendants No.1 and 3 does not have authority to enter into a fresh agreement with the plaintiff. He has also pleaded that the trial Court having given a specific finding that the family of defendant No.2 was not in financial constraints and they have no legal necessity to sell the property for the benefit of defendant No.2, ought to have held the Issue No.1 in favour of the defendant No.2 but not in favour of the plaintiff. He has also pleaded that the Court below ought to have held that the plaintiff played fraud

and by coercion and undue influence got defendants No.1 and 3 for filing O.P.No.15 of 1985.

16. Heard both parties.

17. The main grievance of the appellant is against the finding of the trial Court on issue No.4 and additional issue No.1. The appellant has claimed that the finding of the trial Court that the permission granted by the District Court in O.P.No.15 of 85 is not binding the defendant No.2 is incorrect and the trial Court committed an error in sitting over the Judgment of the District Court. He has also claimed that defendant No.2 having become major in 1987 did not choose to repudiate the contract till October, 1995, but in fact he was supposed to have repudiate the contract within 3 years after becoming major.

18. Therefore, the following points arose for consideration in this appeal:

1. Whether the respondent No.1/defendant No. can execute any sale agreement in respect of exclusive property of her minor son? And whether such agreement is binding on defendant No.2?
2. Whether the permission obtained by respondent No.1/defendant No.1 for sale of the property when the defendant No.2 was minor was actually for the benefit of the minor?
3. Whether such sale of agreement and permission are binding on the defendants?
4. To what relief?

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19. The oral and documentary evidence brought on record clearly show that the property in dispute was originally purchased by his grand father for the benefit of respondent No.2/defendant No.2 when he was in his childhood. The parents of respondent No.2 were not having any right to deal with the property. As could be seen from the evidence and contents of Ex.A6 (Agreement executed by the father of respondent No.2), it is alleged that Ram Singh agreed to sell the property to the appellant under the original of Ex.A6. However, the said agreement was not executed by the father of respondent No. after obtaining any permission for sale of minor's property. In fact as per the agreement vide Ex.A6, the said Ram Singh claimed title over the property and agreed to sell the property to meet his personal necessities. The agreement under Ex.A6 was not executed on behalf of his minor son nor it was executed for the benefit of the minor. The said Ram Singh who has no right on the property cannot transfer any such title to the appellant under this agreement and even if any sale deed was executed, it is not binding on the minor son.

20. The appellant has claimed that subsequent to the death of Ram Singh, his wife i.e., respondent No.1/defendant No.1 agreed to abide by the agreement executed by her husband and

said to have executed a fresh agreement i.e., Ex.A.1. There is no dispute even by appellant that originally the property was purchased in the name of respondent No.2/defendant No.2 for his benefit. Therefore, respondents No.1 and 3 have no right to alienate the said property. At best respondent No.1 being the natural guardian of defendant No.2, in view of the death of her husband, can enter into a contract on behalf of her minor son, provided the contract is for the benefit of the minor son, after obtaining required permission. Ex.A1 was executed as if the property was owned by her entire family.

21. The appellant has claimed that he agreed to purchase the property through Ex.A6 on 03-03-1985. However, in view of the death of Ram Singh, he has obtained another agreement vide Ex.A1 on 11-05-1985. If there was a contract to purchase the property in March 1985 itself, there was no necessity for the appellant to again obtain another agreement of sale. The appellant has claimed that after the death of Ram Singh, he approached the respondent No.1/defendant No.1 and the respondents/defendants agreed to abide by the agreement of sale executed by Ram Singh. Respondents No.1 to 3 have executed Ex.A1 in which respondent No.1 acted as minor guardian. During

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his evidence, PW.1 has deposed that respondent No.1/defendant agreed to execute sale deed after obtaining permission from the Court and as if such a condition was incorporated in Ex.A1. But in fact there was no such averment in Ex.A1. The appellant has produced Exs.A7 to A9 to show that the respondent No.1/defendant No.1 has obtained permission from the competent Court to alienate the property of her minor son. In fact Ex.A8 permission was granted on 26-08-1985, whereas, Ex.A1 was executed on 11-05-1985. Therefore, as on the date of Ex.A1, there was no permission in favour of respondent No.1 for alienation of schedule property to the appellant on behalf of respondent No.2/defendant No.2. No sale deed/sale agreement was executed in pursuance of Ex.A8 permission.

22. As per the evidence of PW.1, he has paid only a sum of Rs.3,000/- under Ex.A1 but the agreement was prepared as if he paid Rs.5,000/-. PW.1 has claimed that he has paid Rs.3,000/- and having added the amount of Rs.2,000/- paid to Ram Singh under Ex.A6, he has obtained Ex.A1. Admittedly, there was no mention about Ex.A1 in the petition filed by respondent No.1 before District Court in O.P.No.15 of 85 and Ex.A8 permission was not in pursuance of Ex.A1. PW.1 has admitted that Ram Singh



offered the property to meet his personal necessities and he was not aware whether Ram Singh has no right on the property.

23. The trial Court has held that the suit schedule property was exclusively belongs to defendant No.2 purchased under Ex.B1 for his benefit and the Ram Singh had executed an agreement under Ex.A6 for the sale of said property to the appellant. The trial Court has also held that Ex.A1 was executed by respondent/defendant on 11-05-1985.

24. The trial Court having held that the said agreement was executed prior to obtaining permission required under Minority and Guardianship Act, such permission can be obtained even after sale agreement and accepted the contention of appellant on the basis of Judgment relied on by the appellant. However, in view of the provision under Section 29 of Guardian and Wards Act, the natural guardian cannot sell the property of a minor except for the benefit of minor or for the benefit of his estate.

25. The evidence on record clearly shows that father of defendant No.2 was working in RTC. As per Ex.A6, the appellant agreed to purchase the property when Ram Singh offered the same to meet his personal necessities and there is nothing in Ex.A6 to believe that the alienation was for the benefit of the

minor i.e., the defendant No.2 or for the benefit of the estate. The subsequent agreement was in continuance of Ex.A6. Even in Ex.A1 also it is not stated the proposed sale was for the benefit of the minor. According to the evidence of PW.1, he has paid only Rs.3000/- under Ex.A1. As rightly observed by the trial Court, such a meager amount cannot be considered to be sufficient to clear the family debts and to educate the minor. In fact if the sale consideration was for the purpose of clearing the family debts, it cannot be said that it was for the benefit of minor.

26. The evidence placed by the appellant clearly shows that in the first instance, appellant obtained agreement from the father who has no right on the property and who did not obtain any permission for the sale of the property. After his death, another agreement was obtained from the mother even without any permission. Even though permission was obtained under Ex.A8, the evidence does not disclose that the sale is for the benefit of minor.

27. The next contention of appellant is about repudiating the contract. The learned counsel for the appellant has submitted that in view of the evidence placed before the Court, it is very clear that the defendant No.2 attained majority in the year 1997



itself. But he did not choose to repudiate the contract within 3 years as required under the Act but filed a petition to escape the sale agreement. The record shows that by the date of Ex.A1, respondent No.2 was a minor. He was represented by his mother till the appellant filed a memo before the trial Court on 16-07-1993 with a request to discharge the guardian. It may be true, as per the memo filed on 22-04-1993 by the respondent, defendant No. was born on 28-06-1969. The petition filed by the appellant to discharge the defendant No.2 was allowed on 02-09-1995 and he was declared as major.

28. So even though defendant No.2 attained majority in 1997, he was being represented by defendant No.1 before the Court and only after he was declared as major by the Court, he has engaged counsel on 04-10-1995. Therefore, he had no occasion to question the sale agreement executed by his father or by his mother till he was declared as major and his guardian was discharged. The above referred sale was not beneficial to the minor, thereby he is entitled to deny the responsibility to execute any sale deed. Therefore, the trial Court rightly held that defendant No.2 need not execute any sale deed and dismissed the suit. Therefore, the appeal deserves to be dismissed.

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29. In the result, petition is dismissed with costs.

Consequently, Miscellaneous applications if any, are closed.

MEMORANDUM OF COSTS

A.S.NO.1772 2001

Respondent(s) 's Costs

	Rs.	Ps.
Stamps for Vakalatnama	17	00
Advocate's fee on Rupees FC not filed		
Translation and Printing charges	00	00
Total	17	00

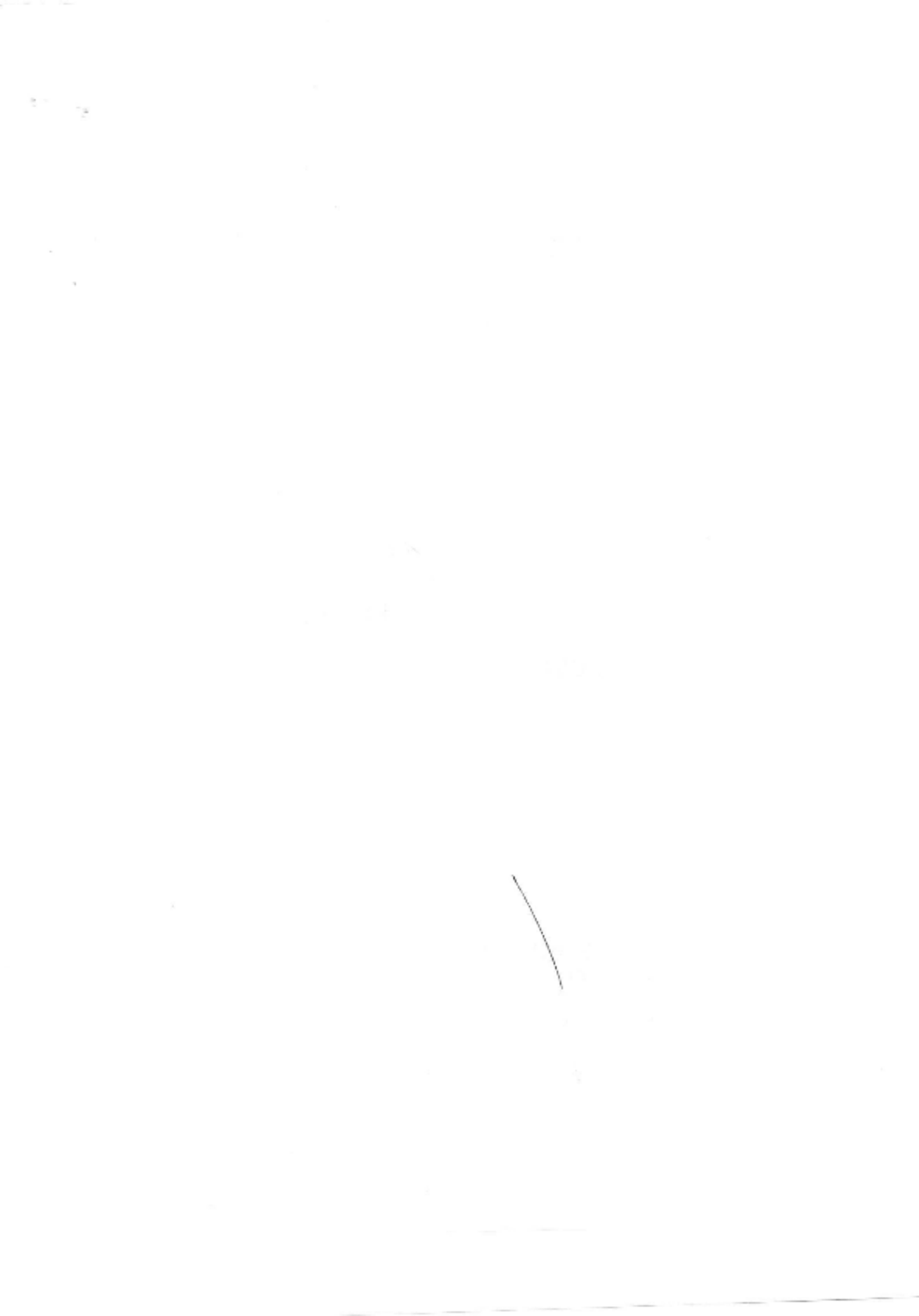
(Rupees17/- to be paid by the Appellant to the respondent No.2)

Sd/- B SATYAVATHI
DEPUTY REGISTRAR


SECTION OFFICER

- To,
1. The Senior Civil Judge, Khammam
 2. One CC to SRI. P SRI RAM, Advocate [OPUC]
 3. One CC to SRI. MEHERCHAND NORI, Advocate [OPUC]
 4. Two CD Copies

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HIGH COURT

DATED:04/01/2023

JUDGMENT

AS.No.1772 of 2001



**DISMISSING THE APPEAL
SUIT WITH COSTS**

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23/4/23

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE FOURTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

APPEAL SUIT NO: 1772 OF 2001

Between:

Syed Moinuddin, S/o Sardaruddin aged 50 years, Occ:Business R/o Aziz lane,
Khammam

...APPELLANT/PLAINTIFF

AND

1. Devavath Laxmi, W/o late Ramsingh aged 60 years, Occ:Household R/o Postal Colony, Behind Nehrunagar Colony, Khammam.
2. Devavath Sikindar Singh, S/o late Ramsingh R/o Postal Colony, Behind Nehrunagar Colony, Khammam
3. Devavath Durga, D/o late Ramsingh, aged 35 years, Occ:Household R/o Postal Colony, Behind Nehrunagar Colony, Khammam

R1 and 3 dismissed for default vide C.O. dated. 08.02.2011 against
RR1 and 3 as per C.O. dated.30.10.2013 made in ASMP.2397/2013

...RESPONDENTS/DEFENDANTS

Appeal Under Section 96 of C.P.C against the Judgment and Decree Dated 15-3-2001 made in O.S. No. 71 of 1986 on the file of the Court of Senior Civil Judge, Khammam.

ORDER : This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the Suit and upon hearing the arguments of SRI. P Sri Ram, Advocate for the Appellant and SRI. MEHERCHAND NORI, Advocate for the Respondent No.2,

This Court doth Order and Decree as follows :

1. That the appeal be and hereby dismissed with Costs
2. That The Respondent No.2 be and hereby is entitled for Rs.17/- (Rupees seventeen only) from the Appellant

**Sd/- B SATYAVATHI
DEPUTY REGISTRAR**



SECTION OFFICER

- To,**
1. The Senior Civil Judge, Khammam
 2. Two CD Copies

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HIGH COURT

DATED:04/01/2023

DECREE

AS.No.1772 of 2001

DISMISSING THE APPEAL
SUIT WITH COSTS

④ PM
23/4/23