*** THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI**

+A.S.NO. 1813 OF 2018

% 13.11.2026

#Between:

Tammineni Peddi Reddy and others

…… Appellants

$And:

Medam Venku Reddy Died and others

… Respondents

!Counsel for the Appellant/D.1 : Sri Mekala Rama Murthy, learned counsel representing Sri Kaushik Kumbhajadala,

^Counsel for the Respondent : Sri Anup Koushik Karavadi

<Gist:

>Head Note:

? Cases referred:

1. (2017) 3 SCC 702
2. (2023) 19 SCC 448
3. (2008) 4 SCC 594
4. 2006 SCC OnLine Bom 243
5. (2024) 10 SCC 613
6. 1963 SCC OnLine SC 37

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

A.S.NO. 1813 OF 2018

Tammineni Peddi Reddy and others

…… Appellants

And:

Medam Venku Reddy Died and others

….Respondents

DATE OF JUDGMENT RESERVED	**:**	**08.10.2026**
DATE OF JUDGMENT PRONOUNCED	**:**	**13.11.2026**
DATE OF JUDGMENT UPLOADED	**:**	**16.11.2026**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

_____

JUSTICE BALAJI MEDAMALLI

Date of reserved for orders : 08.10.2026
Date of pronouncement : 13.11.2026
Date of uploading : 16.11.2026

APHC010814122018

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3573]
(Special Original Jurisdiction)

FRIDAY, THE 13th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

APPEAL SUIT NO: 1813/2018

Between:

Tammineni Peddi Reddy and Others **...APPELLANT(S)**

AND

Medam Venku Reddy Died and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. KAUSHIK KUMBHAJADALA

Counsel for the Respondent(S):

1. ANUP KOUSHIK KARAVADI
2. KAUSHIK KUMBHAJADALA

The Court made the following JUDGMENT:

1. The Appeal, under Section 96 of the Code of the Civil Procedure, 1908 (for short, 'C.P.C.'), is filed by the appellant / defendant No.1 challenging the decree and Judgment, dated 17.08.2018 in O.S.No.7 of 2007 passed by the learned VII Additional District Judge, Prakasam District at Ongole, (for short, 'Trial Court').

2. Respondents No.1 to 50, Plaintiffs, filed the suit in O.S.No.7 of 2007, seeking declaration and injunction over the schedule property.

3. Referring to the parties as they are initially arrayed in the suit is expedient to mitigate confusion and better comprehend the case.

4. The factual matrix, necessary and germane for adjudicating the contentious issues between the parties inter se, may be delineated as follows:

(i) Plaintiffs No.1 to 40, represented by Plaintiffs No.41 to 45, their General Power of Attorney holders, along with Defendant Nos.2 and 4 to 28, jointly purchased Item Nos.1 and 2 of the suit schedule property, admeasuring Ac.4-00 cents and Ac.0-50 cents in S.No.342/A of Kanigiri, under registered Sale Deed Nos.708 and 714 of 1980, dated 06-05-1980, and have been in continuous possession and enjoyment thereof for more than 20 years.

(ii) Defendant No.1, son of Peddireddy, who is Plaintiffs' vendor, colluding with Defendant Nos.2 and 3, fraudulently instituted O.S.No.46 of 2000 before the Senior Civil Judge's Court, Kandukur, suppressed material facts and obtained an ex parte injunction by falsely claiming rights under an unregistered Will dated 15.04.1963. Taking advantage of the said proceedings, he threatened to dispossess the Plaintiffs and Defendant Nos.2 and 4 to 28.

(iii) Defendant Nos.29 to 45 have been impleaded as necessary and proper parties, being purchasers, co-purchasers or their legal representatives under the relevant registered sale deeds bearing Document Nos.669 and 670 of 1980, dated 06.05.1980, and as legal heirs of the concerned defendants and deceased co-purchasers.

(iv) 1st Plaintiff died on 10.06.2016, leaving behind his only daughter, Plaintiff No.47, to succeed to his estate and represent his interest in the suit. Defendant No.2 died on 21.08.2015, leaving behind his wife and son, who have been impleaded as Defendant Nos.51 and 52, respectively, as his legal representatives.

(v) In the circumstances, having no other option, Plaintiffs are constrained to file the suit seeking declaration of their rights and title over the suit schedule property, consequential permanent injunction and costs of the suit.

5. Upon service of summons, defendant No.1 appeared through counsel, filed his written statement, denied the material allegations of the plaint and contested the suit. Defendant No.2 reportedly died, while defendants No.3 to 54 remained ex parte.

6. In the written statement, defendant No.1 contended that his paternal grandfather, T. Bodi Reddy, acquired lands in Survey Nos.342/A and 342/C

under various registered sale deeds. T.Bodi Reddy executed a Will dated 15.04.1963, bequeathing Ac.5.00 cents in Survey No.342/A in his favour and that, since his grandfather's death in 1964, he had been in continuous possession and enjoyment of the said property. The remaining family properties were allegedly partitioned among the four brothers, who subsequently enjoyed and dealt with their respective shares. Upon interference by defendants No.2 and 3, he filed O.S.No.46 of 2006 and obtained a decree dated 31.07.2006. He denied that his father, Peddi Reddy, had executed the alleged registered sale deeds dated 06.05.1980, bearing Document Nos.708/1980 and 714/1980, and disputed their genuineness. He further contended that plaintiffs had neither title nor possession over the suit property and that he was in exclusive possession of Ac.5.00 cents covered by Patta No.374 in Survey No.342/A. He also disputed the plaint schedule extents and boundaries and contended that plaintiffs were not entitled to declaration or permanent injunction and that the suit was barred by limitation.

7. Based on the pleadings, the trial Court framed the following issues:

(1) *Whether the Plaintiff is entitled for declaration of title of the plaintiff to the suit schedule property and for permanent injunction?*

(2) *Whether the sale deed dated 06.05.1980 said to have been executed by the father of defendant No.1 T. Peddireddi is true and binding upon the defendant No.1?*

(3) *To what relief?*

8. During the trial, on behalf of the Plaintiffs, P.Ws.1 to 9 were examined and marked Exs.A.1 to A.19. On behalf of the Defendants, D.Ws.1 to 3 were examined, and Exs.B.1 to B.3 documents were marked.

9. Upon completion of the trial and after hearing the arguments of both sides, the Trial Court decreed the suit, declaring the plaintiffs, defendants No.4 to 28 and the other vendees mentioned in Exs.A5 and A6 as owners of the suit schedule property. The Trial Court also granted a decree of permanent injunction restraining the defendant No.1 and his men from interfering with their possession and enjoyment of the suit schedule property.

10. Heard Sri Mekala Rama Murthy, learned counsel representing Sri Kaushik Kumbhajadala, learned counsel for appellant / defendant No.1 and Sri Anup Koushik Karavadi, learned counsel for respondents.

11. It is pertinent to mention here that the present appeal was preferred by defendant No.1 against the plaintiffs as well as the other defendants, who are the co-purchasers along with plaintiffs or their respective legal representatives. However, during the pendency of appeal, despite granting several opportunities, defendant No.1 failed to take effective steps to effect service of notice on several respondents. Further, some of the defendants had died during the pendency of the appeal, but no steps were taken to bring their respective legal representatives on record. Defendant No.1 had also not sought permission of this Court to dispense with service of notice on the said respondents. In these circumstances, this Court, vide order dated 31.07.2023,

dismissed the application filed seeking dispensation of service of notice. Consequently, the appeal, insofar as respondent Nos.53 to 103, who are defendant Nos.2 to 54 in the suit, is concerned, came to be dismissed for non-prosecution. Thus, the judgment and decree of the Trial Court, insofar as the said respondents are concerned, attained finality.

12. Concerning the pleadings in the suit, the findings recorded by the Trial Court and in light of the rival contentions and submissions made on either side before this Court, the following points would arise for determination:

1) ***Whether the Trial Court was justified in decreeing the suit by declaring the plaintiffs, defendants No.4 to 28 and other vendees mentioned in Exs.A5 and A6 as owners of the suit schedule property and granting a decree of permanent injunction in their favour?***
2) ***Does the Judgment passed by the trial Court warrant any interference?***

POINT NOs.1 & 2:

13. The case of plaintiffs is that the suit schedule property originally belonged to the grandfather of appellant/defendant No.1, T. Bodi Reddy, who acquired the land under a registered sale deed dated 04.07.1930. Defendant No.1's father, T. Peddi Reddy (hereinafter referred to as 'Senior Peddi Reddy'), executed registered sale deeds dated 06.05.1980, bearing Document Nos.708/1980 and 714/1980, marked as Exs.A5 and A6. Pursuant to the said sale deeds, the purchasers formed a layout and allotted plots among their members. Subsequently, appellant/defendant No.1 filed O.S.No.46 of 2006 for

permanent injunction against defendants No.2 and 3, who were also purchasers under the said sale transaction. As they remained ex parte, a decree of injunction was granted in his favour on 31.07.2006. Appellant / defendant No.1 thereafter claimed title over the property on the basis of an alleged Will executed by his grandfather. Aggrieved by his interference, plaintiffs filed the present suit seeking declaration of title and permanent injunction before the Trial Court. Appellant/defendant No.1, in his written statement, contended that his grandfather had executed a Will dated 15.04.1963, marked as Ex.B1, bequeathing Ac.5.00 cents in his favour; the remaining properties were partitioned among the brothers of senior Peddi Reddy. He denied the execution and genuineness of Exs.A5 and A6, contending that his father had no exclusive right to execute the said sale deeds in view of the prior bequest under Ex.B1. As per the recitals in Exs.A5 and A6, the purpose of the sale was specifically mentioned, and the purchasers were stated to have been delivered possession by senior T. Peddi Reddy. However, since the property was ancestral and senior T. Peddi Reddy had no exclusive right over the entire property, the validity of his conveyance and delivery of possession under the said sale deeds becomes a matter for consideration.

14. Learned counsel for the appellant / defendant No.1 contended that, in a suit for declaration, plaintiffs must establish their title on the basis of their own evidence and not on the weakness of the defendant's case. He submitted that attestors of Exs.A5 and A6 had no knowledge of payment of consideration or

delivery of possession, and PW.2 also admitted his lack of knowledge on these aspects. Neither the attestors nor the scribe of sale deeds was examined. Exs.A3 and A4, relied upon to establish possession, are adangals allegedly issued by the Gram Panchayat without any official seal, though Tahsildar is the competent authority to maintain revenue records. In the circumstances, plaintiffs failed to establish payment of consideration, delivery of possession or their possession over the suit schedule property as on the date of filing of the suit.

15. Learned counsel for appellant / defendant No.1 further contended that Exs.A1 and A2, General Powers of Attorney executed in favour of plaintiffs, contain a clear recital that the suit schedule property was under encroachment. The said recital, coupled with the averments in the plaint, establishes that plaintiffs were not in possession of the suit property as on the date of filing of the suit. In the absence of possession, a mere suit for declaration without seeking recovery of possession is not maintainable.

16. Learned counsel appearing for respondents/plaintiffs No.1 to 50 submitted that under two registered sale deeds dated 06.05.1980, marked as Exs.A5 and A6, senior T. Peddi Reddy, father of defendant No.1, sold the suit schedule property to 83 vendees and delivered possession on the date of sale. PW.2, an attesting witness to both sale deeds, spoke about their execution, while PWs.1 to 5, 6 and 8 supported the plaintiffs' case regarding their purchases. Defendant No.1, examined as DW.1, admitted his father's signatures on Exs.A5 and A6. As the sale deeds are registered documents,

they carry a presumption of genuineness, and the burden lies on the party disputing their validity. Once plaintiffs established their claim through the registered sale deeds, it was for defendant No.1 to establish a superior or prior title.

17. Learned counsel for respondents / plaintiffs further submitted that the recitals in Exs.A5 and A6 show that the properties were ancestral properties purchased by the elders of the family. This fact is also supported by paragraph No.4 of the written statement, wherein it is admitted that properties were purchased by T. Bodi Reddy, grandfather of Junior Peddi Reddy (defendant No.1) refers only to Ac.5.00 cents, while the remaining extent is stated to have been partitioned among the family members. However, the documentary evidence discloses nine registered conveyances in respect of land in Survey No.342/A, covering an aggregate extent of Ac.8.11 cents. Each conveyance contains recitals regarding the date of acquisition and the acquisition of the property by the vendors' predecessors.

18. Defendant No.1 admitted that his father had alienated approximately Ac.8.31 cents; he had never questioned any of those alienations. There is no evidence of any objection raised by him in respect of those transactions. Ex.A9 was executed in the year 1965, one year after death of testator, by a person who is himself named in Ex.B1, jointly with the other co-sharers, treating the property as ancestral. This transaction assumes significance in the context of the defence based on Ex.B1. As per defendant No.1, the testator had bequeathed Ac.5.00 cents in the said survey number to his minor

grandson. However, the subsequent conduct of the person named in the Will, who joined the other co-sharers in executing Ex.A9, does not indicate that the alleged bequest was acted upon. No evidence has been placed to show that the Will was implemented or that the property allegedly bequeathed thereunder was treated as the exclusive property of the minor legatee. Further, defendant No.1 never questioned the title of the vendees under Exs.A9 to A15. His challenge is confined to the alienations made in the year 1980, although those transactions also emanated from the same vendor and were founded upon the same ancestral title. No satisfactory explanation is forthcoming for the same. The western and northern boundaries of the Ac.5.00 cents claimed by defendant No.1 in O.S.No.46 of 2006 correspond to the boundaries of Item No.1 of Exs.A5 and A6. The Cooperative Marketing Society land lies towards the west and was alienated by the vendor himself under Ex.A9. The land of Tammineni Pulla Reddy lies towards the north. These boundary recitals are relevant in determining the identity and extent of the property claimed by defendant No.1.

19. The challenge raised by defendant No.1 is, in substance, one by a Mitakshara coparcener against his father's alienation of ancestral property. Article 109 of the Limitation Act prescribes a period of twelve years for the category of claims contemplated therein. The alienee took possession pursuant to alienation dated 06.05.1980. Defendant No.1 had attained majority by that date, as admitted by him in his own evidence. Nevertheless, he did not challenge the alienation. His failure to question the transaction,

despite having attained majority and being aware of the alienation, is a relevant circumstance in considering his subsequent claim. The applicability of Article 109, however, has to be determined with reference to the precise relief sought and the statutory requirements.

20. As regards the burden of proof, the party asserting a fact must establish it. The burden of proof does not shift, though the onus may shift from one party to the other during the trial. Plaintiffs discharged their initial burden by producing the registered conveyances and establishing the relevant admitted signatures. Consequently, the onus shifted to defendant No.1 to establish his defence based on Ex.B1. Being the propounder of the alleged Will, he was required to prove its due execution and attestation and to remove all suspicious circumstances surrounding it.

21. Under Section 63(c) of the Indian Succession Act, 1925, a Will must be attested by two or more witnesses in the manner prescribed therein. Its execution must be proved in accordance with Section 68 of the Indian Evidence Act, 1872, by examining at least one attesting witness, subject to the exceptions provided by law. The presumption under Section 90 of the Evidence Act, relating to documents of thirty years old, cannot be invoked to dispense with proof of the due execution and attestation of a Will. Therefore, mere fact that Ex.B1 is an old document does not establish its genuineness. Section 69 of the Evidence Act permits proof of a document as required by law to examine at least one attestor, when no attesting witness can be found. However, its requirements must be strictly satisfied by establishing the

handwriting of at least one attesting witness and the signature of the executant must be proved in the manner prescribed by that provision.

22. In the present case, the scribe of alleged Will had deposed in an earlier ex parte suit and died on 12.03.2015. Plaintiffs herein were not parties to those proceedings and had no opportunity to cross-examine him. Therefore, his earlier deposition cannot automatically be treated as substantive piece of evidence in the present suit. Its admissibility must independently satisfy the requirements governing former testimony under the Evidence Act. In any event, the testimony of scribe cannot substitute the statutory proof of attestation required for a Will. Defendant No.1 merely contended that the attesting witnesses had died. He did not produce any evidence to establish their death or to show that they could not be found. Thus, the essential condition for invoking Section 69 of the Evidence Act was not established.

23. The evidence of DW.2, daughter of the scribe, does not cure this deficiency. She was born in 1997 and could not have had personal knowledge of the execution of the alleged Will. She did not produce any admitted handwriting of her father for comparison. It is also significant that Ex.B1 was shown to her immediately before the filing of her affidavit. Her evidence, therefore, does not independently establish the execution or attestation of Ex.B1. Further, admitted signatures of Bodi Reddy, dating back to 1940–1950, are available on record under Ex.A18. Despite the availability of those admitted signatures, defendant No.1 did not seek comparison of the disputed signature appearing on Ex.B1 by invoking Sections 45, 47 and 73 of the

Indian Evidence Act. Thus, no satisfactory evidence has been adduced to establish that the signature appearing on Ex.B1 is that of the alleged testator, T. Bodi Reddy.

24. The Will is surrounded by several suspicious and unexplained circumstances. The beneficiary was a minor grandson of the testator, and Defendant No.1, who was the executor, was the beneficiary's own father and guardian. The executor's own sale transactions are also irreconcilable with the claim now set up under the Will. Defendant No.1 contends that the Will remained with his father until 1970 and that it came into his custody only in 1987. However, the Will was never acted upon or reflected in the revenue records and surfaced for the first time in 2006 in an ex parte suit, after the property had already been sold in favour of the respondents-plaintiffs. These circumstances cast serious doubt on the genuineness and credibility of the Will.

25. In any event, even assuming that the Will is duly proved, it cannot confer title to any specific extent of the coparcenary property. A coparcener can bequeath only his undivided interest and not any specific portion of the joint family property. Therefore, the party claiming a specific extent under the Will must establish the testator's actual share in the property. In the present case, the sale deeds of 1939, 1941 and 1944, relied upon in paragraph 4 of the written statement to establish the alleged partition, were never produced. Further, Defendant No.1 admitted that no written document evidencing the alleged partition existed. Consequently, neither the alleged partition nor the

testator's entitlement to the specific extent claimed under the Will has been established.

26. In the written statement in O.S.No.46 of 2006, Defendant No.1 pleaded that Ac.5.00 cents covered by the Will and the remaining Ac.11.48½ cents had been partitioned among the four brothers under three deeds. However, none of the alleged partition deeds was produced, nor was the partition otherwise established by documentary evidence. Consequently, the respective shares of the brothers remained unproved. Further, the judgment in O.S.No.46 of 2006 does not establish the genuineness of the Will or bind plaintiffs on the question of title. The only issue framed was whether plaintiff therein was entitled to permanent injunction, which was granted on the basis of Defendant No.1's possession.

27. The judgment and decree in O.S.No.46 of 2006 (Ex.B3) does not record any finding that Ex.B1 Will was executed or duly proved. On the contrary, it records that the adangals for Fasli 1410 and 1411 did not reflect the name of defendant No.1 in Column No.13. Defendant No.1 himself admitted as DW.1 that Ex.B3 contains no finding regarding proof of execution of the Will. Further, the adangals relied upon therein do not advance his claim. Significantly, Ex.B3 is an ex parte judgment, and defendants No.2 and 3 in the present suit remained ex parte in the earlier proceedings. Therefore, the said judgment cannot be relied upon either to establish the Will or to bind plaintiffs on the question of title.

28. Learned counsel for respondents / plaintiffs submits that, in the case of a vacant site, possession follows title. The vendees had the land measured and boundary stones fixed at all four corners in 1980 itself. The Advocate Commissioner's report dated 19.06.2007 also confirmed the existence of boundary stones at all four corners. On the other hand, DW.1 admitted that his name was not reflected in the revenue records, that he had never sought mutation, and that the adangals reflected his name only in respect of Ac.0.25 cents. Defendant No.1 produced no evidence to establish his title or possession over the disputed land. It is further submitted that, though plaintiffs claim possession, Defendant No.1 has set up a rival title under Ex.B1 Will, obtained an ex parte decree and threatened their possession. Therefore, plaintiffs were justified in seeking declaration of title with consequential relief of permanent injunction. His conduct, including the filing of a caveat, further demonstrates that he disputes the plaintiffs' title.

29. Exs.A1 and A2 bind only the parties thereto, and Defendant No.1, being a stranger to those documents, cannot rely upon their recitals to defeat the title conveyed under the registered sale deeds. The recital dated 29.11.2006 regarding alleged encroachment by certain persons does not establish title in Defendant No.1. His claim rests solely on the ex parte decree dated 31.07.2006. A recital in a power of attorney cannot create, transfer or extinguish title conveyed under registered sale deeds. The suit was instituted on 24.01.2007, when all the principals represented under the power of attorney were alive. The subsequent death of a principal terminates the

agency prospectively and does not invalidate acts already lawfully performed. Since all the co-vendees are parties to the suit, the provisions of Order I Rule 8 CPC are not attracted. Defendant No.1 first set up a claim adverse to plaintiffs' title by obtaining the ex parte decree dated 31.07.2006. The present suit, instituted on 24.01.2007, was therefore filed within six months from the accrual of the cause of action. The suit was valued at half the market value under Section 24(b) of the Andhra Pradesh Court-fees and Suits Valuation Act. Significantly, no objection regarding valuation under Section 11(2) of the said Act was raised in the written statement.

30. Learned counsel for respondents-plaintiffs submits that a co-owner is entitled to maintain a suit for declaration and injunction without seeking partition, particularly when Defendants No.4 to 28 are also co-owners/co-vendees under the same sale deeds. The adangals relied upon by defendant No.1 do not constitute sufficient evidence to defeat the plaintiffs' title. Further, the Will allegedly executed by T. Bodi Reddy, grandfather of defendant No.1, has not been proved in accordance with law. On the other hand, the sale deeds marked as Exs.A5 and A6 stand proved and establish plaintiffs' title. Consequently, plaintiffs are entitled to a declaration of title, with possession following title in respect of the vacant land. Learned counsel, therefore, prays for dismissal of the appeal.

31. Learned counsel for appellant placed reliance on the judgment of Hon'ble Apex Court in ***Arulmigu Chokkanatha Swamy Koil Trust v. Chandran***[1]**,** wherein it held as follows:

> ***31.*** *One of the submissions made before the courts below, on behalf of the defendant, was that the suit for mere declaration when the plaintiff was not in possession of the property, was not maintainable and hit by Section 34 of the Specific Relief Act, 1963, the plaintiff having not sought for recovery of possession.*
>
> ***33.*** *Section 34 of the Specific Relief Act, 1963 provides as follows:*
>
> *"**34. Discretion of court as to declaration of status or right**.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*
>
> *Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."*
>
> ***34 [Ed. : Para 34 corrected vide Official Corrigendum No. F-3/Ed.B.J./52/2017 dated 4-9-2017.] .*** *In the present case, the plaintiff having been found not to be in possession and having only sought for declaratory reliefs, the suit was clearly not maintainable and has rightly been dismissed by the trial court. In this context the reference is made to the judgment of this Court in Ram Saran v. Ganga Devi [Ram Saran v. Ganga Devi, (1973) 2 SCC 60 : AIR 1972 SC 2685] , wherein in paras 1 and 4 following was stated : (SCC pp. 60-61)*

[1] (2017) 3 SCC 702

> *"1. This is a plaintiffs' appeal by special leave. Ram Saran and Raghubir Saran, the plaintiffs are brothers. They jointly owned suit property with Chhabili Kuer, widow of Lalita Prasad. After the death of Chhabili Kuer on 8-2-1971, Ganga Devi, the defendant in the suit came forward as the legal representative of Chhabili Kuer and got the mutation effected in her name in the place of the deceased ChhabiliKuer. In 1958, the plaintiffs brought this suit for a declaration that they are the sole owners of the suit properties. They did not claim possession of either the entire or even any portion of the suit properties.*
>
> ***
>
> *4. We are in agreement with the High Court that the suit is hit by Section 42 of the Specific Relief Act. As found by the fact-finding courts, Ganga Devi is in possession of some of the suit properties. The plaintiffs have not sought possession of those properties. They merely claimed a declaration that they are the owners of the suit properties. Hence the suit is not maintainable."*

Learned counsel for appellant / defendant No.1 submits that, plaintiffs, being out of possession, ought to have sought the consequential relief of recovery of possession. Having failed to seek such relief, they cannot maintain a suit for declaration of title coupled with mandatory injunction, particularly when they are not in possession of the suit property.

32. Learned counsel for respondents / plaintiffs placed reliance on the judgment of the Hon'ble Apex Court in ***Ashutosh Samanta v. Ranjan Bala Dasi***[2]**,** wherein it held as follows:

> ***13.*** *In view of the above decision, wills cannot be proved only on the basis of their age — the presumption under Section 90 as to*

[2] (2023) 19 SCC 448

> *the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Section 63(c) of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872.*

Learned counsel submits that the presumption under Section 90 of Evidence Act is not applicable to a Will, even if the attesting witnesses are no longer alive. In such circumstances, the Will must be proved in accordance with Section 69 of the Evidence Act. Since defendant No.1 failed to satisfy the requirements of the said provision, the Will cannot be relied upon and must be held to be not proved.

33. Learned counsel for respondents / plaintiffs placed reliance on the judgment of the Hon'ble Apex Court in ***Anathula Sudhakar v. P. Buchi Reddy***[3]**,** wherein it held as follows:

> ***16.*** *But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves*

[3] (2008) 4 SCC 594

complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

21. *To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:*

……

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

…….

Placing reliance on the aforesaid judgment, learned counsel for plaintiffs submits that possession follows title and, in respect of vacant land, possession is to be determined primarily with reference to title. In the present case, the suit schedule property is admittedly vacant land. Respondents / plaintiffs claim title under Exs.A5 and A6, registered sale deeds, which were duly proved before the Trial Court through cogent evidence. Having established their title, respondents / plaintiffs are entitled to a declaration of title and the consequential relief of permanent injunction.

34. Learned counsel for respondents placing reliance on paragraph Nos.12 and 13 of the judgment of Bombay High Court in ***Govind Anant Goltekar v. Dasharath DeobaGoltekar***[4] **,** submitted that registered document carries presumption of validity and possession in favour of the purchasers, unless the same is rebutted. In the case on hand, appellant / defendant No.1 failed to rebut the same by placing cogent evidence on record. In view of the same, the presumption operates in favour of respondents / plaintiffs.

35. Learned counsel for respondents / plaintiffs further placed reliance on the judgment of the Hon'ble Apex Court in ***A.B. Govardhan v. P. Ragothaman***[5]**,** wherein it held as follows:

> ***22.*** *Another factor is that the appellant was not heard in the appeal, as recorded in the first impugned order [P. Ragothaman v. A.B. Govardhan, 2017 SCC OnLine Mad 11918 : (2017) 3 CTC 777 : (2017) 4 LW 421] itself. Undoubtedly, in the face of non-appearance by the appellant before it, the Division Bench was free to proceed with final hearing of the appeal, as it did. However, what seems to have transpired is that in the absence of the appellant, what was averred by the respondent in the appeal was accepted as correct by the Division Bench. Fact remained that the respondent admitted to having executed Ext. P-1 (the agreement) and that the signature(s) thereon were his, in the proof affidavit dated 1-3-2010 as also cross-examination dated 8-3-2010. No doubt, he (respondent) has denied its voluntary execution and contended that it was under coercion and threat, but no evidence was brought or led by him to support this plea. The Division Bench opined, correctly, that "It is true that there was no supporting evidence adduced by him to show as to how he was threatened and forced to execute Ext. P-1."*

[4] 2006 SCC OnLine Bom 243
[5] (2024) 10 SCC 613

> *Pausing here, we may emphasise that for every fact which is pleaded, there has to be evidence, either oral or documentary, to substantiate the same. A bald averment or mere statement by a defendant bereft of evidentiary material to back up such averment/statement takes such defendant's case nowhere.*

Placing reliance on the aforesaid judgment, learned counsel submits that a mere pleading, unsupported by evidence, cannot advance defendant's case. In the present case, though Defendant No.1 pleaded that a Will had been executed in his favour by his grandfather, he failed to adduce legally admissible evidence to prove its execution. Consequently, the mere assertion of the Will in the written statement cannot establish any right or title in his favour. It is settled that evidence without pleadings is of no consequence, just as pleadings without supporting evidence cannot be accepted.

36. Learned counsel for respondents / plaintiffs further placed reliance on the judgment of the Hon'ble Apex Court in ***A. Raghavamma v. A. Chenchamma***[6]**, :** wherein it held as follows:

> ***12.*** *Learned Advocate-General contends that the learned Subordinate Judge as well as the High Court did not draw the appropriate presumptions arising from the fact that the transactions were old ones; nor did they give sufficient weight to the entries in the revenue records, the admissions made by the parties and to the conduct of the parties and such other important circumstances and, therefore, their findings are liable to be questioned in this appeal. This argument in effect and substance means that the courts below have not given due weight to particular pieces of evidence. There is an essential distinction between burden of proof and onus of proof : burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish*

[6] 1963 SCC OnLine SC 37

> *the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence. The criticism levelled against the judgment, of the lower Courts, therefore, only pertain to the domain of appreciation of evidence. We shall, therefore, broadly consider the evidence not for the purpose of revaluation, but to see whether the treatment of the case by the courts below is such that it falls in the category of exceptional cases where this Court, in the interest of justice, should depart from its usual practice.*

Placing reliance on the aforesaid judgment, learned counsel submits that the burden of proof never shifts, whereas the onus of proof keeps shifting during the course of trial. The burden lies on the party who asserts a particular fact and must establish it by adducing cogent evidence. In the present case, appellant / defendant No.1, having claimed title and possession on the basis of the Will, was required to discharge the initial burden of proving its due execution and his entitlement thereunder. Unless the said burden is discharged, the onus cannot shift to respondents / plaintiffs. Only after the foundational facts are established, the onus shift to the opposite party to rebut the claim.

37. The main contention of appellant / defendant No.1 is that his grandfather, the original owner, executed an registered Will dated 15.04.1963 (Ex.B1) in his favour. Upon the death of his grandfather, the property admeasuring Ac.5.00 cents, comprising Items 1 and 2 of the suit schedule, devolved upon him, thereby making him the absolute owner and possessor thereof. Appellant / defendant No.1 further relies upon the judgment and

decree dated 31.07.2006 passed in O.S.No.46 of 2000 by the learned Senior Civil Judge, Kandukur (Ex.B3), granting a decree of permanent injunction against respondents 2 and 3. He also places reliance on Exs.A1 and A2, General Power of Attorney deeds executed by certain purchasers under Exs.A5 and A6 in favour of some of plaintiffs. The recitals therein disclose that the suit schedule property was under encroachment by third parties and that the GPAs were executed for the purpose of instituting civil proceedings. He, therefore, contends that plaintiffs were not in possession of the suit property as on the date of institution of the suit.

38. Apart from the above, defendant No.1 relies upon Exs.A3 and A4, being the adangal records standing in the name of his father, who was the vendor under Exs.A5 and A6 sale deeds in favour of plaintiffs. Learned counsel contends that the said adangals were issued by the Gram Panchayat, which was not the competent authority to issue such revenue records, and therefore, they cannot be relied upon as evidence of possession or title.

39. Learned counsel for appellant / Defendant No.1 further places reliance on Ex.A16, survey report prepared by a private surveyor. However, the report does not bear the surveyor's signature. Therefore, learned counsel contends that Ex.A16 cannot be relied upon and that there is no cogent evidence on record to establish plaintiffs' possession over the suit schedule property.

40. Learned counsel for appellant / Defendant No.1, referring to the evidence of PWs.1 to 9, submits that plaintiffs had not obtained conversion

permission from the revenue authorities or layout approval and, therefore, their possession over the suit schedule property cannot be established. He particularly relies on the admission of PW.1 regarding the absence of such permissions. However, except eliciting the said admissions, defendant No.1 could not bring out any other material in the cross-examination to discredit plaintiffs' evidence. The attesting witnesses to Exs.A5 and A6 were examined, and PW.1 specifically denied that appellant / Defendant No.1 was in possession of the suit property. The evidence on record further establishes that the suit schedule property is an open site covered with bushes and trees.

41. PW.3, being the neighbouring owner of suit schedule property, specifically deposed that defendant No.1 was never in possession and enjoyment of the suit schedule property. Further, the evidence of DW.2, who is the daughter of the scribe of the Will allegedly executed by grandfather of defendant No.1, reveals that she was not even born as on the date of execution of the said Will. She further admitted that there is no documentary evidence to establish that the signature appearing on the Will belongs to its alleged scribe. Furthermore, from the evidence of DW.1, it is evident that Exs.A5 and A6 bear the signatures of the father of Defendant No.1. However, defendant No.1 has not taken any steps to challenge Exs.A5 and A6 or to establish that the said documents were not executed by his father. Thus, the oral and documentary evidence on record, particularly the admissions elicited from DW.1 and DW.2, materially weaken the defence set up by defendant

No.1 regarding his alleged possession and claim over the suit schedule property.

42. On a careful consideration of the evidence of PWs.1 to 9 and DWs.1 to 3, it is evident that the suit schedule property is a vacant piece of land covered with bushes and trees. The execution of sale deeds under Exs.A5 and A6 by the father of appellant / defendant No.1 has been disputed. However, no evidence has been placed on record to establish that the said sale deeds were not executed by father of Defendant No.1. So far as possession is concerned, the recitals in Exs.A5 and A6 specifically indicate that possession of the property was delivered to the purchasers on the date of execution of the respective sale deeds. Since the property is an open and vacant piece of land, as contended by learned counsel appearing for respondents, possession follows title, in support of which reliance has been placed on the judgment referred to supra. Though defendant No.1 claims right over an extent of Ac.5.00 cents out of the total extent of Ac.17.21 cents comprised in Sy.Nos.342/A (Ac.13.46 cents) and 342/C (Ac.3.75 cents), the alleged Will does not specify the boundaries of the said Ac.5.00 cents. Further, the recitals of the Will indicate that the said extent of Ac.5.00 cents is carved out of Ac.13.46 cents. It is also significant to note that, though the Will was marked in evidence by examining the daughter of the scribe, none of the attesting witnesses to the Will were examined to prove its due execution, as required by law. Further, the other legal heirs/successors of the executant of the Will were excluded from the alleged bequest, without assigning any reason for such

exclusion. In these circumstances, the absence of specific boundaries identifying the alleged bequeathed extent, coupled with the failure to examine the attesting witnesses and the absence of any explanation for excluding the other successors, raises serious doubts regarding the genuineness and due execution of the alleged Will.

43. Leaving that apart, when an unspecified extent of Ac.5.00 cents is claimed to have been set apart in favour of defendant No.1 under the alleged Will, without specifying the boundaries identifying the said extent, the burden lies upon defendant No.1 to establish not only the due execution and genuineness of the Will but also his physical possession and enjoyment of the property allegedly bequeathed to him thereunder. However, no cogent evidence has been placed on record by defendant No.1 to establish either of these aspects. At the same time, since plaintiffs are claiming right and title over the suit schedule property and seeking the consequential relief of permanent injunction, the initial burden is undoubtedly upon them to establish their title over the property and, thereafter, their possession and enjoyment thereof. As plaintiffs have purchased the properties from the father of defendant No.1 and the said sale deeds were proved and the said evidence was not rebutted.

44. So far as possession is concerned, the suit schedule property is a compact block of vacant land covered with bushes and trees. Having regard to the nature and physical features of the property, independent proof of actual physical possession may not be possible in the ordinary course, except by

establishing title over the property. In such circumstances, the settled principle that possession follows title assumes significance.

45. In the present case, as stated above, plaintiffs have established their title over the property covered under Exs.A5 and A6 by examining the witnesses and producing documentary evidence. The evidence of PWs.1, 5, 6 and 8, as well as PW.7, who was arrayed as defendant No.53 in the suit, supports the case of plaintiffs. Further, the alleged partition said to have taken place between the brothers of defendant No.1 has also not been established by adducing any cogent evidence. Equally, no evidence has been brought on record to establish that father of defendant No.1 was not in possession of the property in question. Therefore, in view of the fact that plaintiffs have successfully established their title over the suit schedule property through oral and documentary evidence, and having regard to the nature of the subject property as an open and vacant piece of land, the principle that possession follows title can be appropriately applied. Consequently, the Trial Court was justified in decreeing the suit in favour of plaintiffs. Accordingly, the points raised in the appeal are answered.

46. In view of the foregoing discussion and the findings recorded hereinabove, this Court does not find any illegality, irregularity or infirmity in the judgment and decree passed by the learned Judge of the Trial Court warranting interference by this Court in the present appeal.

47. As a result, the Appeal Suit is ***dismissed without costs***, confirming the Judgment and Decree dated 17.08.2018, passed by the learned VII Additional District Judge, Prakasam District at Ongole, in O.S.No.07 of 2007.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE BALAJI MEDAMALLI

Date: 13.11.2026
SAK

Whether the order is:

Speaking	☑	Reasoned	☑
Reportable	☑	Non-reportable	

116

THE HONOURABLE SRI JUSTICE BALAJI MEDAMALLI

APPEAL SUIT NO: 1813/2018

Date: 13.11.2026

SAK