IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

A.S.No.450 of 2007

Between:

Rayachoty Anjaneyulu S/o.R.Nagaiah
and two others

... PETITIONERS

AND

Anamala Basamma W/o.Anamala Venkata Ramaiah

... RESPONDENT

DATE OF JUDGMENT PRONOUNCED :20.04.2020

SUBMITTED FOR APPROVAL

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

- Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No
- Whether the copy of order may be marked to Law Reporters/Journals? Yes/No
- Whether His Lordship wish to see the fair copy of the order? Yes/No

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M. VENKATA RAMANA

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... APPELLANTS

AND

Anamala Basamma W/o.Anamala Venkata Ramaiah

... RESPONDENT

! Counsel for appellants : Mr. N.Subba Rao

^Counsel for Respondent : Mr.S.S.Bhatt

<GIST:

>HEAD NOTE:

? Cases referred:

- (2013) 9 SCC 319
- (2008)16 SCC 785
- (1987) 3 SCC 294
- (2004) 1 SCC 295
- (1964) 4 SCR 497
- (AIR 1967 SC 569)
- (2004) 6 SCC 341
- AIR 2003 SC 4319
- 2009(6) ALT 35
- 2011(5) ALT 564

M. VENKATA RAMANA

HON'BLE SRI JUSTICE M. VENKATA RAMANA

A.S.No.450 of 2007

JUDGMENT:

This appeal is preferred under Section 96 of CPC by the defendants. The respondent is the plaintiff.

2. The respondent laid the suit for relief of declaration of her right, title and interest to the plaint schedule property and for perpetual injunction against the appellants, restraining them from interfering with her peaceful possession and enjoyment of the same.

3. The plaint schedule property is a dry land in Survey Number 63/1 of Ac.0.60 cents, Kummari Palli village in Rayachoti Mandal, Kadapa District, with a RCC building. It shall be referred to hereinafter as "the suit property".

4. The appellant and the respondents are closely related. The respondent is the elder sister of the appellants 1 and 2. The third appellant is the son of the second appellant. The respondent and the appellants 1 and 2 are the children of Sri late Rayachoti Naganna. Smt. Laxmi Devi and Smt. Parvathamma are their sisters. Smt. Gangulamma is the wife of Sri late Rayachoti Naganna. Sri Bala Subbanna, Sri Nalla Subbanna, Sri Ramana and Sri Lakshmanna are brothers. Smt. Lakshmamma is the wife of Sri

Lakshmanna, referred to above.

5. Sri Lakshmanna and Smt. Lakshmamma had two daughters viz., Smt.Basamma and Smt.Subbamma. Smt.Basamma died during the lifetime of Smt. Lakshmamma, leaving behind her only daughter Smt. Gangulamma. Sri late Rayachoti Naganna is related to Smt. Lakshmamma, being the son of one of her brothers-in-law. Smt. Subbamma died issueless.

6. Admittedly, the respondent's family constructed a house in the suit property in the year 1988. It is not in dispute that they have been living in this house. It is in an extent of about six cents. Remaining extent in the suit property is a vacant site. It is not in dispute that there are two tombs of the first wife of the first appellant and that of the second appellant respectively in this site.

7. The respondent along with one of her sons, Raja has been working in Kuwait, a Gulf country for about 15 to 20 years. They used to visit their village once in two years or three years. On account of her employment in the above country, the respondent appointed her son Sankar as her attorney, under a registered General Power of Attorney (Ex.A1), to look after the affairs relating to the suit property on her behalf.

8. Disputes arose between the appellants and the respondent in respect of the suit property in or about the year 2005, when the appellants complained to the revenue authorities requesting to delete the suit property from the Pattadar Passbook and Book of Title deed issued to the

respondent. In the enquiry before the Mandal Revenue Officer, the version of the appellants was accepted and entries in these Pattadar Passbook and Book of Title deed were directed to be deleted by an order dated 14-04-2005 (Ex.B12). An appeal preferred to the Revenue Divisional Officer, Kadapa by Sankar son of the respondent, was also dismissed on 18-10-2005 (Ex.B7). A revision petition filed by Sankar, is stated to be pending before the Joint Collector, Kadapa in this respect, against the order of the Revenue Divisional Officer.

9. In the above circumstances, it is the contention of the respondent that she was constrained to lay the suit for the above reliefs against the appellants.

10. The case of the respondent in the plaint was that her father Sri late Rayachoti Naganna gifted away the suit property along with Ac.0.17 cents of wet land in Survey Number 77/5 of Kummari Palli at the time of her marriage towards 'Pasupu Kumkuma', which she has been enjoying from then onwards and that ultimately her father executed
a registered gift deed in respect of these properties on 27-12-1973 in her favour. She further averred in the plaint that in recognition of her possession and enjoyment, she was given a Pattadar Pass book and
a Book of Title deed. She further averred that she along with her husband and children has been enjoying the suit property including constructing a house therein. She further averred that the appellants without any manner

of right, since asserted their alleged interest to the suit property by virtue of a registered will dated 07-07-1959 of Smt. Lakshmakka and initiated a false action against her before the revenue authorities, she was constrained to lay the suit.

11. The appellants through the third appellant filed a written statement resisting the claim of the respondent in the plaint mainly contending that Sri late Rayachoti Naganna had no right or title to the suit property to execute a gift deed in favour of the respondent and that this property did not belong to him, which in fact belonged to Sri Bala Subbanna and his three brothers. They further contended that Smt. Lakshmakka bequeathed her properties including the suit property in favour of the appellants under a registered will dated 07-07-1959 and also in favour of her other daughter Smt Subbamma, on whose demise they became entitled to these properties. They further contended that the gift deed set up by the respondent was obtained by impersonation and as a forgery. Asserting that they have been in possession and enjoyment of the suit property paying land revenue, referring to the proceedings before Revenue authorities relating cancellations of entries in Pattadar Pass Book and Book of Title deed issued to the respondent and contending that the respondent did not have right and interest to the suit property, they sought dismissal of the suit.

12. Basing on these pleadings, the trial court settled the following issues for trial:

"1. Whether the plaintiff is entitled for declaration of title over the suit property?

2. Whether the plaintiff is in possession and enjoyment of the suit property and if so, the plaintiff is entitled to permanent injunction as prayed for?

3. To what relief?"

13. At the trial, on behalf of the respondent, her son Sankar was examined as P.W.1, attestor to the Registered Gift Deed (Ex.A2) as P.W.3, P.W.2 and P.W.4 concerned to the neighbouring land on the south of the suit property, while relying on Ex.A1 to Ex.A11. The third appellant examined himself as D.W.1, then Mandal Revenue Officer, Rayachoti as D.W.4 and D.W.2, D.W.3 as well as D.W.5 while relying on Ex.B1 to Ex.B12. The appellants also relied on Ex.X1 to Ex.X3 to support their claim against the respondent.

14. On the material and the evidence adduced by the parties, considering the contentions on their behalf, learned trial Judge accepted the claim of the respondent, rejecting the contentions of the appellants and thus, decreed the suit as prayed, by the judgment under appeal.

15. Sri N. Subba Rao, learned counsel for the appellants and Sri K.S. Gopalakrishnan, learned counsel on behalf of Sri S S.Bhatt, learned counsel for the respondent, submitted elaborate arguments basing on the evidence and the material with reference to their respective claims in this appeal.

16. Now, the following points arise for determination:

- Whether Sri late Rayachoti Naganna had any right and interest to gift away the suit property to the respondent under the original of Ex.A2 and if, it conferred any right, title and interest to the respondent, to the suit property?

- Whether the respondent continued to be in possession and enjoyment of the suit property by virtue of Ex.A2 Gift Deed and against the right and interest of the appellants?

- To what relief?

17. **Point No.1:** In a Suit for declaration, the burden is on the plaintiff to prove his or her case. The plaintiff cannot rely on any weakness or deficiency in the case of the defendant. If the plaintiff succeeds in discharging the burden, it shifts on to the defendant to rebut.

18. The respondent is claiming right, title and interest to the suit property by virtue of a oral gift to her at the time of her marriage in the year 1963 made by her father Sri late Rayachoti Naganna and that Ex.A2 gift deed was executed by her late father Sri late Rayachoti Naganna, out of love and affection in her favour, where under the suit property was delivered to her, which she has been in possession and enjoyment. The appellants are denying the same. They contended that Ex.A2 is a fabrication and was brought out by impersonation after death of Sri late Rayachoti Naganna and that it was never acted upon.

19. Sri A. Subbarao, learned counsel for the appellants predominantly raised the following contentions, questioning this gift:

1. That the recitals in the gift deed did not support the case of the respondent in the plaint that a oral gift was given at the time of her marriage and hence, it is of doubtful authenticity.

2. That by the date of Ex.A2, the alleged donor was no more in view of Ex.B6 Death Certificate which recorded that he died on 11.11.1972, whereby it's falsity is exposed.

3. That it is not proved that the donor had any independent right and interest to gift away the suit property. Even otherwise, the property being of Hindu undivided family, constituted by Sri Rayachoti Naganna and appellants 1 and 2, the donor had no right to make the gift without consent of other members of the joint family.

20. These contentions are now addressed.

21. The recitals in Ex.A2 Gift deed are that the suit property was given away thereunder to the respondent, out of love and affection by her father, where under the suit property was delivered to her. They did not acknowledge the fact that the suit property was gifted to her towards 'pasupu kumkuma' at the time of her marriage in the year 1963 as pleaded in the plaint. There are no recitals in Ex.A2 to that effect.

22. Want of recitals in Ex.A2 to that effect cannot altogether make that

this document be rejected. It's validity shall be considered in the light of the proof offered by the respondent in respect thereof. P.W.1 Sankar deposed in respect of it. However, he did not know personally the circumstances under which Ex.A2 was executed.

23. On behalf of the respondent, P.W.3 Sri A.Veeranagaiah, was examined at the trial in proof of Ex.A2. Contents of Ex.A2 make out that he attested the same along with one Sri Chavvakula Lakshmaiah, who is his Junior paternal uncle. He deposed supporting execution of Ex.A2 by Sri late Rayachoti Naganna. His testimony reveals that he was at the place of his uncle Sri Laxmaiah on the date of execution of Ex.A2. He had visited his uncle Sri Laxmaiah, since he had come to Rayachoti on that day. He clearly deposed that Sri late Rayachoti Naganna had affixed his thumb mark on the original of Ex.A2 in his presence. He further deposed that it was scribed by Sri Naga Mallaiah, a professional document-writer at Royachoti. He further deposed that Sri late Rayachoti Naganna had given away two lands under it to the respondent, which he had gifted at the time of her marriage. He also deposed that he and Sri Laxmaiah appeared as identifying witnesses to this gift deed at the time of it's registration.

24. Cross-examination of this witness for the appellants did not elicit any material to question his veracity or truthfulness of his testimony. It was suggested on their behalf to this witness that he did not attest Ex.A2, which he denied. Physical presence or otherwise of Sri late Rayachoti Naganna, at

the time of execution of Ex.A2 and its registration, was not a subject matter of cross-examination of this witness. That the defence that the executant of Ex.A2 died on 11.11.1972 and that it was an outcome of impersonation and fabrication was not suggested to this witness. When the status of this witness in respect of Ex.A2 is as an attestor, cross-examination about the right and interest of Sri late Rayachoti Naganna to make such a gift, did not bear relevance.

25. Original of Ex.A2 was not produced at the trial. P.W.1 Sankar deposed that it was lost and that it was not traced. It was suggested to him for the appellants that it was with Smt. Lakhmi Devi, the sister of the respondent. When the appellants have raised a serious question of truth and valid nature of Ex.A2, they could have summoned Index register or any other register maintained by the Sub-Registrar's office concerned, regarding this document and subjected it to examination by a finger print expert. It is well known that the science relating to finger prints is an exact science. The defence would have got strengthened if the report so obtained stood in its favour and to establish that Sri Late Rayachoti Ramaiah did not execute the same. Added to it, the alleged doubtful veracity of P.W.3 could have been exposed. Rightly this circumstance was considered by the learned trial judge in the judgment under appeal against the appellants.

26. Thus, the evidence of P.W.3 stands and it has to be accepted to

prove Ex.A2. Learned trial Judge rightly recorded reasons in it's acceptance. There are no reasons to differ with the same, in spite of strenuous contentions advanced on behalf of the appellants.

27. Strenuous contentions are advanced on behalf of the appellants that Sri late Rayachoti Naganna was no more by the date of Ex.A2, basing on Ex.B6 Death Certificate issued by Panchayat Secretary of D.Abbavaram village. It recorded that Sri late Rayachoti Naganna died on 11-11-1972. However, it is interesting to find out how and at what stage Ex.B6 Death Certificate was secured by the appellants. The material on record proves that it was applied for through the Panchayat secretary, after examination of many of the witnesses on behalf of the respondent at the trial. It is a post suit document obtained by the appellants, when trial was in progress. It is dated 07.09.2006. Nearly 36 years after the alleged date of death of Sri late Rayachoti Naganna, it was obtained. These circumstances are sufficient to reject this document. It was never pleaded in the written statement. It was introduced at the trial through D.W.1, the third appellant.

28. Apart from it, there are several suspicious circumstances surrounding this document and the manner by which it was obtained by the appellants, obviously manipulating with the help of the revenue authorities. Evidence of D.W.1 - the third appellant and that of D.W.4 -then Mandal Revenue Officer, Rayachoti, make the same explicit and which stood exposed.

29. Sri A. Subbarao, learned counsel for the appellants contended that in

view of Section 13 of the Births and Deaths Registration Act, 1969, the certificate of death issued thereunder has statutory presumption in its favour and is conclusive proof of the facts stated therein. Learned counsel further contended that such certificate, viz., Ex.B6 cannot be lightly interfered with. Elaborating with reference to the rules under this act in issuing the certificate, learned counsel seriously assailed the findings recorded by the learned trial Judge in this respect.

30. However, Sri K.S. Gopalakrishnan, learned counsel for the respondent supported the findings recorded by the learned trial Judge pointing out the circumstances under which Ex.B6 was obtained, nearly 36 years after the alleged death of the donor during pendency of the suit and that such defence was never raised in the written statement, calling upon the respondent to present the pleadings suitably controverting the same.

31. It is desirable to consider what Section 13 of The Births and Deaths Registration Act speaks of and its effect. It reads as under:

> "13. Delayed registration of births and deaths.—(1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.
>
> (2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer

authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.(4) The provisions of this section shall be without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefor and any such birth or death may be registered during the pendency of any such action."

32. It is also necessary to refer Rule 9 of A P. Births and and Deaths Registration Rules, 1999. It reads as under:

"9. Authority for delayed registration and fee payable therefor under Section 13:- (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in Rule 5(3), but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

(2) Any birth or death of which information is given to the Registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the officer prescribed in this behalf and on payment of a late fee of rupees five. In rural areas the Mandal Revenue Officer, in other areas the concerned Registrar will permit Registration of Births and Deaths after 30 days and below one year.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of a Magistrate of the First Class (R.D.O. & above rank) or a Presidency Magistrate and on payment of late fee of rupees ten."

33. A careful consideration of Section 13 of this Act, did not indicate that a certificate issued thereunder offers conclusive proof of the facts stated therein. Being a certificate issued under a statute, it bears a presumption under Section 114 of Indian Evidence Act that its contents should have been an outcome of regularity in performance of the acts concerned there to. However, it is a rebuttable presumption and if the material on record proves that the certificate so issued, is an outcome of a fraudulent activity, it can as well be rejected from consideration.

34. In terms of Rule 9 of the rules referred to above, if a certificate is applied thereunder after an year of the concerned event, namely the death of an individual, it should be to the concerned Revenue Divisional Officer. In this case, it was Revenue Divisional Officer, Rayachoti.

35. D.W.1 and D.W.4 deposed as to the manner by which a certificate relating to death of the father of the respondent was sought. D.W.1 applied to the Village Panchayat Secretary for this purpose in or about August or September 2006, according to D.W.4. His evidence further reflects that he directed the Mandal Revenue Inspector to enquire into it, who in turn conducted an enquiry along with the Village Panchayat Secretary. The evidence of D.W.4 further makes out that the Revenue Divisional Officer did not conduct an enquiry by himself nor ask D.W.4 to conduct an enquiry and that Ex.B6 was issued basing on the report of D.W.4. Even D.W.4 did not

conduct an enquiry by himself in this context. He merely relied on the report of the Mandal Revenue Inspector. The evidence of D.W.1 and D.W.4 is not throwing any light as to who were the witnesses that were examined during this enquiry or source of required information.

36. The circumstances how the alleged date of death 11-11-1972 was arrived at, is not explained from the material collected during the alleged enquiry, basing on which Ex.B6 was issued. According to D.W.1, he had seen this date inscribed on the tomb of Sri Naganna. This tomb is located in the suit land along with the tombs of the wives of the appellants 1 and 2. There is reference to it in Ex.B12 - the proceedings of the Mandal Revenue Officer, Rayachoti. However, it did not record the fact that the date of death of father of the respondent was inscribed on his tomb.

37. The appellants did not make any effort at the trial to get this fact proved. As rightly observed in the judgement under appeal, they did not take out any commission to note down this feature and to produce such material before the trial court. None of the witnesses examined on behalf of the appellants at the trial deposed in respect thereof. Neither, on behalf of the appellants the witnesses of the respondent were cross-examined with reference to the above date and as an inscription on the tomb of the father of the respondent. If at all there was such date on the tomb, the Mandal Revenue Inspector, who alleged to have had enquired into this matter could

have observed the same and even otherwise, the appellants could have brought the same to his notice. Thus the sole testimony of D.W.1 in this respect, without there being any corroboration from any other source or support from any other quarter, cannot be an implicit factor to rely on. When this date is crucial for the purpose of issuing a certificate, when there is no satisfactory evidence in this respect much less any material on record, with reference to an alleged enquiry conducted before issuing the same, it is rather unsafe to rely on Ex.B6.

38. Particularly the manner in which it was obtained by the appellants, leaves much to be desired. It is a clear instance where it was manipulated by the appellants with the help of the Revenue Authorities. In this backdrop, the contention of Sri A. Subbarao, learned counsel for the appellants that this certificate offers statutory presumption, has to be rejected. Particularly in the presence of the testimony of P.W.3, which is proved to be reliable and acceptable, who clearly deposed that the father of the respondent alone had executed Ex.A2 Gift Deed, the circumstances sought to be made out against its execution, by the appellants could not have been relied on nor could have been accepted.

39. Thus, Ex.B6, Ex.X1 and Ex.X3 as well as the testimony of D.W.4 have to be rejected. In the circumstances, the respondent cannot be called to establish the date of death of her father. It was the specific contention of

the appellants at the trial without any basis in the pleadings namely the written statement. It was for them to establish this fact at the trial, the burden being on them.

40. Sri A. Subbarao, learned counsel for the appellants further contended that neither the plaint nor the evidence adduced by the respondent at the trial established that Sri Rayachoti Naganna had right and interest to the suit property and therefore, the case of the respondent cannot stand.

41. Sri K.S.Gopalakrishnan, learned counsel for the respondent contended that Ex.A5 - 10(1) account extract is reflecting that the father of the respondent Sri Rayachoti Naganna was one of the pattadars along with three others during Fasli 1390 (the year 1980) of Survey Number 63/1 along with other lands and that in Ex.A6 - a copy of adangal for Faslies 1413 and 1414 in the relevant column relating to cultivation, the name of the respondent is shown describing her interest in the suit land by means of gift. Thus, learned counsel for the respondent contended that there is sufficient proof to make out right, title and interest to the suit property of the respondent. It is on account of Ex.A2 Gift Deed. Thus, the contentions of the appellants are sought to be repelled on behalf of the respondent.

42. The appellants have specially contended in the written statement and at the trial that they acquired the suit property from Smt. Lakshmakka, who is their great grandmother by virtue of Ex.B10 -registered will dated

07-07-1959 in their favour and her another daughter, Smt.Subbamma. Thus, they specially contended that the suit property is in the nature of their self-acquisition. It was not their case that the suit property is their ancestral extent and that they have equal right and interest along with their father in it.

43. In the written statement, it was the version of D.W.1 (3rd appellant) that this property was not included in the Will of Smt. Lakshmakka, since it is a Kummari Inam.

44. Added to it, in Ex.B12 proceedings, D.W.4 observed that the original of Ex.B10 did not include this Survey Number 63/2. It's original was sent for in the above proceedings by D.W.4 and had compared the same and Ex.B10. He also deposed confirming this fact. D.W.1 also confirmed this fact at the trial. D.W.5, one of the sons of it's attestor Sri.Yerrapu Reddy, who identified the signature of his father in this Will, cannot be expected to clarify this situation.

45. Strangely, Survey number 63/1 is appearing, but as an interpolation in 'B' Schedule of Ex.B10. The contents of Ex.B10 are that the properties mentioned in 'A' schedule are allotted to the appellants 1 and 2 and whereas, the properties mentioned in 'B' schedule are allotted to Smt. Subbamma. It's contents are further that on the demise of Smt. Subbamma, the properties in 'B' schedule should revert to the appellants 1

and 2 with absolute right and interest.

46. When all these circumstances are considered cumulatively, it is manifest that survey number 63/1 was interpolated in this Will later on and thus, a false recital was brought out by the appellants in it, to suit their case at the trial by manipulation. Therefore, Ex.B10 will has to be rejected from consideration. Learned trial Judge rightly considered all these circumstances and recorded clear findings to reject the same.

47. This land in survey number 63/1 is proved being Kummari Inam land. Ex.X2 an entry in Resurvey and Resettlement Register proves this fact. There is also evidence of D.W.4 in this respect. Ex.B8 also refers to the Survey Number 63, without referring to it's sub-divisions nor names of the pattadars. The appellants also produced Ex.B5 registration extract of a gift deed dated 28-06-1919 executed by Sri Balasubbarayudu in favour of Sri Venkatappa. According to the appellants, Sri Balasubbarayudu was the original owner of Survey Number 63 and he had given away half extent out of it to his son-in-law Sri Venkatappa. This Survey Number 63 is described as Kummari Inam land in it. However, neither nature of this land being Kummari Inam nor these documents in any manner advance the case of the appellants when they specifically relied on Ex.B10 Will nor they prove that Smt.Lakshmakka owned any extent in this survey number.

48. Learned trial Judge basing on suggestions to P.W.1 Sankar on behalf of the appellants, observed that the suit property is their ancestral extent

belonging to them and their father Sri Rayachoti Naganna. These findings have not been specifically questioned or challenged by the respondent in this appeal. Nor any specific contention is advanced questioning the same while supporting the decree and judgement under appeal in terms of Order 41 Rule 22 CPC. Therefore, it is binding on the respondent.

49. However, Sri K.S.Gopalakrishnan, learned counsel for the respondent sought to contend that the suit property was the self-acquired property of Sri Rayachoti Naganna and therefore, giving this land under Ex.A2 to his daughter is proper. Reliance is placed in this context on the fact that possession of this land is with the respondent, where, in a part she had constructed a three portioned house. Location of a house in the suit property was admitted by D.W.1, though he claimed that it belonged to them. However, there is no proof in respect of it. One of the suggestions to P.W.1 Sankar on behalf of the appellants at the trial was that they gave away about five cents of land to the respondent, since she did not have a house, where she got constructed the house. Thus, the suggested defence at the trial confirms that the respondent got constructed this house.

50. D.W.1 though deposed referring to Ex.B1 to Ex.B4, they did not in any manner prove that the appellants were in possession of the suit property. There is no reference to Survey Number 63/1 in Ex.B1 to Ex.B4. Ex.B1 passbook did not indicate that the first appellant raised a loan for the purpose of this land from the Bank.

51. Ex.A5 and Ex.A6 prove the case of the respondent, of her possession of the suit property. Authenticity of Ex.A6 is established from the testimony of D.W.4. He deposed referring to adangals brought by him including for Fasli 1414 covered by Ex.A6, confirming that the respondent was shown as the person cultivating this land. His evidence also established that Ex.B9 - an extract of adangal for Fasli 1410 did not match the entries in the original adangal. This witness deposed verifying the original adangal of Fasli 1410 in this respect. Sub-divisions referred to in Ex.B9 are not reflected in its original. Thus, it is proved being a fabricated document. Though he deposed that the name of Sri Rayachoti Naganna did not appear in the adangals for Faslies 1401 and 1406, proof offered relating to Ex.A5, Ex.A6 and admitted location of the house of the family of the respondent in the suit property, clearly leads to hold that the respondent and her family members have been in possession and enjoyment of the suit property.

52. Thus, the respondent is proved being in possession of this property, as rightly observed by learned trial Judge.

53. An attempt is made to rely on the presumption under Section 110 of the Indian Evidence Act on her behalf to support her title to the suit property in view of established possession and in consideration of Ex.A2. In this context, reliance is placed on her behalf in "***THE STATE OF A.P. v. M/S STAR BONE MILL & FERTILISER CO.***, where the effect of the

presumption under section 110 of the Indian Evidence act was considered in relation to title to the property. In this ruling, the relevant observations in Para 13 are, as under:

> "13. The principle enshrined in Section 110 of the Evidence Act, is based on public policy with the object of preventing persons from committing breach of peace by taking law into their own hands, however good their title over the land in question may be. It is for this purpose, that the provisions of Section 6 of the Specific Relief Act, 1963, Section 145 of Code of Criminal Procedure, 1973, and Sections 154 and 158 of Indian Penal Code, 1860, were enacted. All the aforesaid provisions have the same object. The said presumption is read under Section 114 of the Evidence Act, and applies only in a case where there is either no proof, or very little proof of ownership on either side. The maxim "possession follows title" is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one-way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land, he is necessarily in possession of it. It in fact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment etc. Where the apparent title is with the plaintiffs, it is incumbent upon the defendant, that in order to displace this claim of apparent title and to establish beneficial title in himself, he must establish by way of

> satisfactory evidence, circumstances that favour his version. Even, a revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof, both forward and backward, can also be raised under Section 110 of the Evidence Act."

54. In this context, it should be borne in mind that in the plaint, the respondent did not plead that the suit property was the exclusive and self acquired property of Sri Rayachoti Naganna. Nor it was her case at the trial based on the fact of possession, as is sought to be contended, on her behalf in this appeal. Therefore, this contention raised for the first time in this appeal for the respondent cannot be countenanced. Ex.A2 Gift Deed did not set out how father of the respondent, had right and interest to the suit property. The burden is on the respondent to prove and establish that Sri Rayachoti Naganna had a right and interest to make a gift under Ex.A2. The burden of proof in the circumstances cannot rest on the appellants.

55. It is an established fact and which is not disputed that during his lifetime, Sri Rayachoti Naganna was the head and the manager of this Hindu Joint Family. The right of the manager of a Hindu joint family to gift away a part of it's properties requires consideration now.

56. Sri A. Subbarao, learned counsel for the appellants relied on a ruling of Hon'ble Supreme Court in ***"BALJINDER SINGH v. RATTAN SINGH"*** in this context, contending that the manager of an undivided Hindu family cannot make a gift of the nature in Ex.A2, since he has no authority when it is

against the interests of other coparceners or sharers and that it is void. In this ruling, Paras - 27 to 29 refer to observations in ***"THAMMA VENKATA SUBBAMMA v. THAMMA RATTAMMA"***and passages from Mulla's Hindu Law 17th Edition as well as Sir Henry Mayne's Hindu Law XIV edition in this context. They are as under:

> "27. In Thamma Venkata Subbamma (dead) by Lrs. V. Thamma Rattamma and Others (1987 (3) SCC 294) it was observed as follows:
>
> "12. There is a long catena of decisions holding that a gift by a coparcener of his undivided interest in the coparcenary property is void. It is not necessary to refer to all these decisions Instead, we may refer to the following statement of law in Mayne's Hindu Law, eleventh Edn., Article 382:
>
> "It is now equally well settled in all the Provinces that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid....A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a stranger or to a relative except for purposes warranted by special texts.
>
> 13. We may also refer to a passage from Mulla's Hindu Law, fifteenth Edn., Article 258, which is as follows:
>
> Gift of undivided interest. - (1) According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners.

14. It is submitted by Mr. P. P. Rao, learned counsel appearing on behalf of the respondents, that no reason has been given in any of the above decisions why a coparcener is not entitled to alienate his undivided interest in the coparcenary property by way of gift. The reason is, however, obvious. It has been already stated that an individual member of the joint Hindu family has no definite share in the coparcenary property. By an alienation of his undivided interest in the coparcenary property, a coparcener cannot deprive the other coparceners of their right to the property. The object of this strict rule against alienation by way of gift is to maintain the jointness of ownership and possession of the coparcenary property. It is true that there is no specific textual authority prohibiting an alienation by gift and the law in this regard has developed gradually, but that is for the purpose of preventing a joint Hindu family from being disintegrated.

17. It is, however, a settled law that a coparcenary can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid".

28. We may also refer to a passage from Mulla's Hindu Law, Seventeenth Edn., Article 258, which is as follows:

"Gift of undivided interest- (1)According to Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which precludes the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparcener".

29. In Mayne's Hindu Law, XIV Edn. It has been noted as follows:

"Gifts of affection- The father's power to make gifts through

> affection within reasonable limits of ancestral movable property has been fully recognized. In Ramalinga v Narayana (1922 (49) IA 168) the Privy Council held that "the father has undoubtedly the power under the Hindu Law of making within reasonable limits, gifts of movable property to a daughter".

57. In ***"KUPPAYEE & ANOTHER v. RAJA GOUNDER"***, relied on in the trial court for the respondent and followed by learned trial judge, right of the father to make a gift of ancestral immovable property within reasonable limits was considered referring to earlier rulings of Madras High Court and its own decisions, including ***"GURAMMA BHRATAR CHANBASAPPA DESHMUKH v. MALLAPPA CHANBASAPPA DESHMUKH"***. The relevant observations in this ruling are, as under:

> "…… This point was again examined in depth by this Court in **Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chanbasappa Deshmukh,** and it was held:
>
> 18. The legal position may be summarized thus: The Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is

discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard-and-fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the maintenance of a daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one, cannot make the gift nonetheless a valid one. (emphasis supplied)

20. Extended meaning given to the words —pious purposes enabling the father to make a gift of ancestral immovable property within reasonable limits to a daughter has not been extended to the gifts made in favour of other female members of the family. Rather, it has been held that a husband could not make any such gift of ancestral property to his wife out of affection on the principle of —pious purposes. Reference may be made to **'Ammathayee v. Kumaresan'**. It was observed —we see no reason to extend the scope of the words 'pious purposes' beyond what has already been done in the two decisions of this Court and the contention rejected that a husband could make any such gift of ancestral property to his wife out of affection on the principle of pious purposes.

21. On the authority of the judgments referred to above, it can

safely be held that a father can make a gift of ancestral immovable property within reasonable limits, keeping in view, the total extent of the property held by the family in favour of his daughter at the time of her marriage or even long after her marriage.

22. The only other point which remains for consideration, is as to whether a gift made in favour of the appellants was within the reasonable limits, keeping in view, the total holding of the family. The total property held by the family was 3.16 acres. 12 cents would be approximately 1/26th share of the total holding. The share of each daughter would come to 1/52ndnor 1/26th share of the total holding of the family, which cannot be held to be either unreasonable or excessive under any circumstances. Question as to whether a particular gift is within reasonable limits or not has to be judged according to the status of the family at the time of making a gift, the extent of the immovable property owned by the family and the extent of property gifted. No hard-and-fast rule prescribing quantitative limits of such a gift can be laid down. The answer to such a question would vary from family to family."

58. This question relating to the right of a father to make a gift of ancestral immovable property of an undivided Hindu Family within reasonable limits, was not considered in the ruling relied on by learned counsel for the appellants in Baljinder Singh, referred to above.

59. Sri Rayachoti Naganna gifted away the properties making a provision for her under the original of Ex.A2 assigning a reason suggestive of being unattended to or want of care by her husband and setting out the purpose. This reason is rather pious and just. The gift was made to none other than his daughter and not a stranger. The burden now is on the appellants to

make out that this provision of gift is unreasonable and that did not stand in reasonable limits. Neither there is a pleading in the written statement nor any evidence on behalf of the appellants to this effect.

60. P.W.1 Sankar deposed that by the date of the marriage of his mother, viz., the respondent his grandfather had about Ac.7.00 of land apart from the suit property. He also deposed that his maternal uncle had sold away certain extent in Survey Number 67 during pendency of the suit. The statements were elicited from him in cross-examination for the appellants. When the extent of the suit property is considered, whatever gifted under Ex.A2 to the respondent by her father was within reasonable limits by then. Possibly for this reason, the appellants 1 and 2 did not choose to enter the witness box. It was only for the third appellant to carry on this litigation against his paternal aunt.

61. One of the contentions of the appellants is that the husband of the respondent was not tendered for cross-examination at the trial even though his affidavit in lieu of examination-in-chief was filed and thus, purposely he was withheld from deposing in this case. Non-examination of the husband of the respondent, in the presence of proof offered on her behalf and the falsity exposed at every stage in the case set up by the appellants, cannot lead to an inference adversely affecting the case of the respondent. She could not be examined at the trial for the reason that she is residing in another country on account of her employment. It should also be noted

that the appellants 1 and 2 who could have been the best witnesses for them, did not enter the witness box. No reasons are assigned why they kept themselves away from deposing against their elder sister in the suit. It is a serious question to consider and to draw an adverse inference against them.

62. Therefore, applying the ratio in the ruling of the Hon'ble Supreme Court in **'R. Kuppayee and another vs Raja Gounder'** referred to above, it has to be held that the gift under Ex.A2 is proper and is legally valid. It was acted upon. It did confer right, title and interest to the respondent in respect of the property given there under. The appellants, in these circumstances, cannot question this gift. Added to it, the nature of defence set up by them fringing on falsity, leads to hold that it has to be rejected. Rightly, the learned trial judge recorded the findings in this respect declaring the right, title and interest to the suit property in favour of the respondent and against the appellants.

63. Learned counsel for the respondent relied on ***"K.C CHINNA SWAMY v. K.C.PALANI SWAMY"***, wherein the well settled principle that the evidence cannot be adduced beyond the pleadings and that it shall not be at variance with the pleadings is reiterated. In the same context, ***"RAJAGOPAL DEAD BY LRs v. KISHAN GOPAL AND ANOTHER"*** is relied on by learned counsel for the respondent. The effect of the evidence let in by the appellants at the trial is referred to above, without basis in pleadings and beyond the averments or the case set up in the written statement.

Findings recorded supra, are in accordance with this settled proposition of law.

64. On behalf of both the parties, contentions are advanced referring to application of Andhra Pradesh Rights in Land and Pattadar Passbooks act, 1971. Learned counsel for the respondent relied on "***A. PRABHAKARA RAO v. EMMADI KOTESWAR AND ANOTHER"*** and ***"KUTHURU NARASIMHA REDDY v. PUSALA VENKATAIAH AND OTHERS***", in this context. In the light of findings above upholding the right, title and interest of the respondent to the suit property, it is not necessary to consider the application of this law/enactment now.

65. Thus, this point is held in favour of the respondent and against the appellants.

66. <u>Point No.2</u>: Findings are recorded on point No.1 holding that the possession of the suit property stood rested in the respondent, by virtue of the gift under Ex.A2 and that she and other members of her family have been in possession and enjoyment of the same, including the house. In view of these findings, this point should be answered in favour of the respondent rejecting the contentions of the appellants.

67. **<u>Point No.3</u>:** In view of the findings on the points above, the decree and judgement of the trial court should be confirmed, warranting no interference, either on facts or in law upon re-evaluating the material on

record. Hence, this appeal has to be dismissed.

68. In the result, this appeal suit is dismissed confirming the decree and judgement of the trial court. In the circumstances, the parties are directed to bear their costs throughout, particularly having regard to their close relationship. Interim orders, if any, stand vacated. All pending petitions, stand closed.

_____

M. VENKATA RAMANA, J

Dt:20.04.2020

Note:

Judgment pronounced through Zoom (Virtual) mode, since this mode is adopted on account of the prevalence of Covid-19 pandemic, from the 15th Court.

Rns

HON'BLE SRI JUSTICE M. VENKATA RAMANA

A.S.No.450 of 2007

Date:20.04.2020

Rns