



**HIGH COURT OF ANDHRA PRADESH**  
**TUESDAY ,THE NINTH DAY OF MAY**  
**TWO THOUSAND AND TWENTY THREE**

**PRSENT**

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**  
**THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**  
**FIRST APPEAL NO: 683 OF 2016**

**Between:**

1. Medikonda Venkata Murali Krishna S/o Late Ramachandra Rao, Hindu, aged about 60 years, Occ: business, R/o old bus stand, M.G. Rood, Governorpet ,Vijayawad.

**...PETITIONER(S)**

**AND:**

1. M/s Venspra Entrprises, Vijayawada Firm Rep by its Mg. Partner Pothina Venkat,eswara Swamy S/o Late Prakasa Rao, Hindu, aged about 45 years, Properties and business, Prakash Market, Tarapet, Vijayawada, Krishna District
2. Chirravuri Ramana Murthy S/o Ch. Venkata Rpo, Hindu, Aged about 59 years, Occ: Business, R/o Post box house, Main Road, Nadadavolu, West Godavari District.
3. Panuganti Venkat Sai Durga @ Laila W/o Srinivasa Rao Panuganti Hindu, Occ: Chief Executive, Tejaswi Graphics R/o H. NO. 8-6-38/2, Venkateswarpuram Colony, Hyderabad.
4. Mastan Bi W/o Late Galib, Muslim Aged about 72 years, Servant, R/o up-stair house bearing Door No. 27-47-10, Pattabhi Ramaiah Street, old bus stand, M.G. Road, Governorpet ,Vijayawad.

**...RESPONDENTS**

**Counsel for the Petitioner(s): P HEMACHANDRA**

**Counsel for the Respondents: NIMMAGADDA REVATHI**

**The Court made the following: ORDER**



2023:APHC:20171

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

**A.S.No.683 of 2016**

Between:

Medikonda Venkata Murali Krishna,  
S/o Late Ramachandra Rao, Hindu, Aged about 60 years,  
Occ: Business, R/o Old bus stand, M.G. Road,  
Governorpet, Vijayawada

..Appellant

And

M/s Venspra Enterprises, Vijayawada,  
A Regd. Firm Rep. by its Mg. Partner  
Pothina Venkateswara Swamy,  
S/o Late Prakasa Rao, Hindu,  
Aged about 45 years, Properties and business,  
Prakash Market, Tarapet, Vijayawada, Krishna District and 3 others.

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 09.05.2023

**SUBMITTED FOR APPROVAL:**

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO  
HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**

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

**U. DURGA PRASAD RAO, J**

**G. RAMAKRISHNA PRASAD, J**



2023:APHC:20171

**\*HON'BLE SRI JUSTICE U.DURGA PRASAD RAO  
AND  
HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**

+A.S.No.683 of of 2016

%09.05.2023

# Medikonda Venkata Murali Krishna,  
S/o Late Ramachandra Rao, Hindu, Aged about 60 years,  
Occ: Business, R/o Old bus stand, M.G. Road,  
Governorpet, Vijayawada

..Appellant

**Vs.**

\$ M/s Venspra Enterprises, Vijayawada,  
A Regd. Firm Rep. by its Mg. Partner  
Pothina Venkateswara Swamy,  
S/o Late Prakasa Rao, Hindu,  
Aged about 45 years, Properties and business,  
Prakash Market, Tarapet, Vijayawada, Krishna District and 3 others.

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for the appellant: Sri M.P.Chandramouli, learned counsel  
appearing for Sri P.Hemachandra,  
counsel for appellant.

Counsel for respondents: Sri E.V.V.S.Ravi Kumar, learned counsel  
representing Smt. Nimmagadda Revathi,  
learned counsel for respondent

? CASES REFERRED:

1. (2017) 7 SCC 342 = MANU/SC/0279/2017
2. (2004) 6 SCC 378
3. (1973) 2 SCC 567
4. MANU/SC/1181/2017 = AIR 2018 SC 334
5. 2012 (2) SCC 628 = MANU/SC/0046/2012



**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO  
AND  
HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD**

**Appeal Suit No.683 of 2016**

**JUDGMENT:** *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

Aggrieved by the judgment and decree dated 29.06.2016 in O.S.No.39/2002 passed by the learned XIII Additional District & Sessions Judge, Vijayawada, decreeing plaintiff's suit and directing the defendants to vacate the plaint A and B schedule property and handover the same to the plaintiff, the 1<sup>st</sup> defendant filed the instant appeal.

2. The facts which led to file this appeal by the 1<sup>st</sup> defendant are succinctly thus:

(a) Admittedly, the plaint schedule property in an extent of 864 square yards with constructions thereon situated in Vijayawada belongs to one Chirravuru Sundarayya Seetharavamma which she obtained under a Gift Deed dated 14.10.1921 executed by her parents towards 'Pasupu Kumkuma'. Her husband is C.Sarveswara Rao. Seetharavamma died intestate and issueless in the year 1974



and consequently her husband C.Sarveswara Rao succeeded her property. While so, the said C.Sarveswara Rao also died on 13.06.1980. To this extent, the facts are not in dispute.

(b) While so, as per plaint averments, C.Sarveswara Rao died issueless and intestate and therefore, Chirravuru Venkata Rao, the father of 2<sup>nd</sup> defendant and brother of C.Sarveswara Rao, succeeded his properties including the plaint schedule property. His further case is that there arose some disputes among the relations of C.Sarveswara Rao resulted in filing of suits O.S.Nos.290/1980, 331/1981 and 460/1981 in the Civil Courts, Vijayawada. At the intervention of elders, the parties compromised and they entered into a registered Partition Deed dated 12.12.1984. As per the terms of said partition, C.Venkata Rao got 864 sq. yards and he sold a portion of the said property to others on 31.03.1981. The remaining portion of 670 sq. yards of the site with superstructures thereon was sold by C.Venkata Rao and his son Ramana Murthy / 2<sup>nd</sup> defendant to the plaintiff in the year 1996 under four Sale Deeds covered by Ex.A1 to A4. Thus, the plaintiff became the absolute owner of the plaint schedule property.



(c) While so, 3<sup>rd</sup> defendant claiming herself as daughter of late C.Sarveswara Rao born through his third wife Lakshmi and that she succeeded the estate of C.Sarveswara Rao, filed Pauper suit in O.P.No.215/1992 on the file of the learned II Additional Senior Civil Judge, Vijayawada against C.Venkata Rao, his son C.Ramana Murthy and some others in respect of the plaint schedule property and sought for recovery of A to D schedule properties in that suit.

(d) Before filing the suit, the 3<sup>rd</sup> defendant executed Sale Agreement dated 24.01.1993 in favour of Devineni Baji Prasad in respect of plaint schedule property in OP No.215/1992. Thereafter she executed GPA in favour of one Ayodhya Balakrishna to deal with the Court litigation in OP No.215/1992. As she was not the daughter of Sri Sarveswara Rao and she had no chance of succeeding in the suit, she entered into a compromise with Sri Venkata Rao and Ramana Murthy through her GPA by taking substantial amount from them and cancelled the Sale Agreement and returned the advance amount received from her vendee. Then she remained absent in Court and O.P.No.215/1992 was dismissed and the interim injunction petition was also dismissed.



(e) Thereafter, C. Venkata Rao and C.Ramana Murthy sold the plaint 'A' schedule property in favour of plaintiff in 1996 under four Sale Deeds covered by Exs.A1 to A4.

(f) The schedule property consists of ground and first floor. In a portion of first floor the 3<sup>rd</sup> defendant was in occupation and she promised to vacate and hand over to the plaintiff, but she failed to do so and claimed some more amount from the plaintiff to hand over the possession. While so, there are several tenants in the ground floor. The 1<sup>st</sup> defendant was running Venkataramana Travels in a portion of the property as a tenant. The plaintiff issued notice dated 26.03.1999 to the tenants to vacate their respective portions except to the 1<sup>st</sup> defendant, as at that time, he took initiation to settle the matter with other tenants to get them vacated. As such the plaintiff has not taken action against the 1<sup>st</sup> defendant. The tenants by taking some amount from plaintiff towards their goodwill handed over their respective portions to the plaintiff. Thus the plaintiff obtained possession of different portions in B schedule from different tenants under receipts.



(g) While so, the 1<sup>st</sup> defendant in order to knock away the plaint schedule property, obtained collusive Sale Deeds from 3<sup>rd</sup> defendant in April, 2000 without the knowledge of plaintiff. The 3<sup>rd</sup> defendant cannot execute Sale Deeds as she had no right. While so, the 1<sup>st</sup> defendant broke open the locks of some of the portions i.e., item Nos.1 to 4 which were in occupation of plaintiff on 30.04.2000 and put his own locks. The plaintiff gave complaint to police. The police registered a case in M.C.No.48/2000 before M.R.O., Vijayawada Urban and the M.R.O. without making proper enquiry wanted to return the keys to the defendant.

(h) His further case is that the plaintiff initially filed the suit under Section 6 of the Specific Relief Act. However, subsequent to the passing of order in M.C.No.48/2000 the 1<sup>st</sup> defendant trespassed into plaint 'A' and 'B' schedule property and demolished constructions standing in all items in 'B' schedule property and won over the tenants in plaint 'A' schedule property and thereby the plaintiff had no access even to the plaint 'A' schedule property. Therefore, the plaintiff got amended the plaint and claimed the relief of recovery of possession of plaint 'A' and 'B' schedule property by





ejecting the 1<sup>st</sup> defendant and his henchmen and tenants and for recovery of Rs.1,00,000/- towards the value of structures demolished by the 1<sup>st</sup> defendant.

(i) Initially the suit was filed against 1<sup>st</sup> defendant and later the defendants 2 to 4 were added as per orders in I.A.No.577/2009 dated 30.09.2014. However, the defendants 2 to 4 did not file counter and they remained *ex parte*.

3. The 1<sup>st</sup> defendant filed written statement opposing the suit contending that he purchased the plaint schedule property in the month of April 2000 under exhibits B25 to B29 registered Sale Deeds from the 3<sup>rd</sup> defendant as she was in actual possession and control of the property and the tenants were paying rents to her. The 1<sup>st</sup> defendant obtained delivery of the plaint schedule property from her and she requested the other tenants of the plaint schedule property to pay rents to 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant paid house tax to the plaint schedule property and the electricity connection was transferred in his name on 13.07.2001.

(a) After purchase of the plaint schedule property, the plaintiff threatened him to dispossess and 1<sup>st</sup> defendant resisted his attempts



and gave complaint to the police, Governorpet, Vijayawada on 29.04.2000 and on the next day, the plaintiff along with some rowdy elements threatened the 1<sup>st</sup> defendant and damaged his office property on the ground that a complaint was lodged against him. The 1<sup>st</sup> defendant gave another report to the police and they referred the dispute to the Mandal Executive Magistrate, Vijayawada. After enquiry in M.C.No.48/2000, the Mandal Executive Magistrate passed orders declaring that the 1<sup>st</sup> defendant was in legal possession of the plaint schedule property. The said order was not challenged, but the plaintiff filed the present suit which is untenable. The 3<sup>rd</sup> defendant, who is the vendor of 1<sup>st</sup> defendant, alone is the lawful owner of the plaint schedule property being the daughter of original owner C.Sarveswara Rao. The Sale Deeds obtained by the plaintiff are nominal and plaintiff cannot get any right over the plaint schedule property. Further, in view of the interim injunction orders, plaintiff's vendor is not entitled to execute the Sale Deeds in favour of the plaintiff.



4. It should be noted that while the suit O.S.No.39/2002 was thus pending, the pauper suit in O.P.No.215/1992 filed by 3<sup>rd</sup> defendant No.3 herein before the learned II Addl. Senior Civil Judge, Vijayawada was initially dismissed for default and later on her application, the O.P. was restored and on payment of court fee, it was numbered as O.S.No.93/1998 and the said suit after trial was decreed on 05.02.2013 in favour of the 3<sup>rd</sup> defendant herein. In the said judgment, learned II Additional Senior Civil Judge gave a finding that the 3<sup>rd</sup> defendant herein was the sole legal heir of Sri Sarveswara Rao and accordingly, decreed the suit partly directing the defendants therein to vacate plaint B to D schedule properties. The suit was dismissed so far as items 1 to 4 of plaint A schedule properties as the 3<sup>rd</sup> defendant herein has not claimed relief thereof in view of her compromise with the concerned defendants therein. The certified copy of decree and judgment in O.S.No.93/1998 was marked as Ex.B64 on behalf of the 1<sup>st</sup> defendant in the present suit.

5. While so, O.S.No.39/2002 is concerned, the trial Court after considering the evidence and arguments of both sides gave the following findings:



(i) The O.P.No.215/1992 filed by the 3<sup>rd</sup> defendant was dismissed for default on 1.2.1996 and later it was restored by allowing I.A.No.3995/1997 filed by 3<sup>rd</sup> defendant. In the interregnum, C.Venkat Rao and C.Ramana Murthy (D2) executed Exs. A1 to A4 in favour of the plaintiff by which time there was no injunction order pending in O.P.No.215/1992 restraining them from alienating plaint schedule property. Plaintiff's vendor got the plaint schedule property through registered partition deed under Ex.A5 registered Partition Deed.

(ii) As per Ex.A10 endorsement dated 19.02.1996 D3 relinquished her right in the Plaint-A schedule in O.P.No.215/1992 in favour of C.Venkata Rao and his son (D2) and hence she is not entitled to any right and title over the said property. Accordingly, she cancelled the Ex.A8-Sale Agreement, which she earlier executed in favour of one Baji Prasad and made an endorsement of Ex.A10 on the reverse of Ex.A8, which was signed by PW-2 and Baji Prasad. Thus the disputes between D3 and C.Venkata Rao and Ramana Murthy were settled and thereafter Venkata Rao and Ramana Murthy executed Exs.A1 to A4 Sale Deeds in favour of plaintiff. Further, since Exs.A1 to A4 were executed after dismissal of O.P.No.215/1992, those Sale Deeds



cannot be said to be invalid. Therefore, D3 cannot have better title than plaintiff.

(iii) Further, in O.S.No.93/1998, the 3<sup>rd</sup> defendant being the plaintiff has withdrawn her claim in respect of items 1 to 4 of the plaint schedule property therein. Since she has not made any claim in respect of the aforesaid property, the suit was dismissed in respect of the plaint A schedule property.

(iv) In O.S.No.93/1998, the trial Court held that the 3<sup>rd</sup> defendant was the daughter of Sarveswara Rao and his legal heir. However, as on the date of dismissal of the O.P.No.215/1992, the 3<sup>rd</sup> defendant was not declared as legal heir of Sarveswara Rao and as such she was not entitled to the property. Hence, during the period of dismissal of O.P. Sarveswara Rao and his son Ramana Murthy (2<sup>nd</sup> defendant) were the legal heirs and property fell to their share as Class-II legal heirs of Sarveswara Rao. Above all, the 3<sup>rd</sup> defendant did not contest the suit O.S.No.39/2002. If at all Exs.A8 to A10 were not true and correct, 3<sup>rd</sup> defendant would have entered the witness box and denied the claim of the plaintiff.

(v) The decree in O.S.No.93/1998 has not yet attained finality since one V. Rajeswari filed



I.A.No.370/2013 and prayed to amend the decree and same is pending.

With the above observations, the trial Court decreed O.S.No.39/2002 and directed the defendants to vacate the Plaint 'A' and 'B' schedule property and handover the same to the plaintiff.

Hence, the appeal by 1<sup>st</sup> defendant.

6. The Parties in this appeal are referred to as they appeared before the trial Court.

7. Heard arguments of Sri M.P.Chandramouli, learned counsel appearing for Sri P.Hemachandra, counsel for appellant / 1<sup>st</sup> defendant and Sri E.V.V.S.Ravi Kumar, learned counsel representing Smt. Nimmagadda Revathi, learned counsel for respondent / plaintiff.

8. Severely fulminating the judgment in O.S.No.39/2002, learned counsel for appellant / 1<sup>st</sup> defendant argued that the trial Court totally misread the legal impact of the judgment in O.S.No.93/1998 (Ex.B64) wherein the 3<sup>rd</sup> defendant in the present suit was declared as the daughter of late C.Sarveswara Rao, who is



the owner of the plaint schedule properties. As such under law the 3<sup>rd</sup> defendant alone is entitled to succeed his estate. Expatiating the impact of the said judgment, learned counsel would strenuously argue that the trial Court has not conferred the daughterhood on D3 for the first time through the judgment but only recognized the already existing fact. Therefore, the decree in O.S.No.93/1998 would relate back to the date when she was born to late Sri C.Sarveswara Rao and her right to succeed his estate shall be reckoned from the date of her birth which is a vested right and enjoyment of the same was only postponed till the death of her father. Learned counsel lamented that unfortunately the trial Court has not properly appreciated this legal aspect in right perspective. He argued that in such misconception, the trial Court erroneously held as if C.Venkata Rao, the brother of late C.Sarveswara Rao, and his son Ramana Murthy sold plaint 'A' schedule property in favour of the plaintiff at a time when O.P.No.215/1992 filed by D3 herein was dismissed and when no injunction order restraining them from alienating the property was in operation and most importantly when at that time D3 was not yet declared as legal heir of Sarveswara Rao



and therefore, exhibits A1 to A4 Sale Deeds executed by them in favour of the plaintiff are valid. Learned counsel would vehemently argue that the said finding is erroneous one for the reason, though O.P.No.215/1992 was not in existence on record, later on the application of D3 it was restored back and registered as regular suit O.S.No.93/1998 and after full-fledged trial, it was decreed in favour of D3 holding that she is the natural daughter of late Sarveswara Rao and entitled to succeed his estate. Further, Venkata Rao and his son Ramana Murthy were defendants 1 and 2 in the said suit and though Venkata Rao died pending suit, Ramana Murthy (D2) initially filed written statement and opposed the suit and later by filing Ex.A5-Memo dated 18.09.2002 gave up his contention in the said suit and reported no objection for granting decree in favour of plaintiff in respect of item No.1 of plaint 'A' schedule property. In that backdrop, Exs.A1 to A4 cannot be termed as legally sanctified documents and they do not confer any right on plaintiff in the suit property. He would submit that at best those documents can be termed as "*lis pendens*" transactions. He placed reliance on **T.Ravi**





**v. B. Chinna Narasimha**<sup>1</sup> to elucidate the impact of Section-52 of the Transfer of Property Act.

(a) Nextly learned counsel while carping the observation of trial Court that as on the date of execution of Exs.A1 to A4 the O.P. No.215/1992 and injunction order in I.A.No.3690/1992 were not in force and thereby the Sale Deeds are valid would argue that though O.P.No.215/1992 was dismissed for default, the injunction order in I.A.No.3690/1992 was not vacated and hence with the restoration of O.P.No.215/92, the injunction order shall be deemed to be revived retrospectively. He placed reliance on the judgment reported in **Vareed Jacob v. Sosamma Geevarghese**<sup>2</sup>.

(b) Learned counsel further argued that the trial Court erred in holding that by virtue of Ex.A10 endorsement, D3 relinquished her right in Plaint-A schedule of O.P.No.215/1992 in favour of Venkata Rao and Ramana Murthy. He would argue that Ex.A10 is not a valid document because D3 was not a signatory thereon but PW2-her GPA was only the signatory. However, under Ex.A7-GPA document, D3 only gave power to PW2 to execute Sale Deed in

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<sup>1</sup> (2017) 7 SCC 342 = MANU/SC/0279/2017

<sup>2</sup> (2004) 6 SCC 378



favour of Devineni Baji Prasad but she did not confer power on PW2 to enter into compromise with third-parties. He would further argue that if really D3 entered into a compromise with Venkata Rao and Ramana Murthy under Ex.A10, certainly all of them would have produced the same before the Court in O.P.No.215/1992 and sought dismissal of the O.P. in the light of compromise, but they would not have allowed D3 to simply remain absent in Court to dismiss O.P. for default. He thus prayed to allow the appeal.

9. Per contra, while supporting the judgment in O.S.No.39/2002, Sri E.V.V.S. Ravi Kumar would argue that the plaintiff purchased the plaint schedule property under Exs.A1 to A4 from C.Venkata Rao and C.Ramana Murthy and by the dates of the Exs.A1 to A4, O.P.No.215/1992 and interim injunction in I.A.No.3690/1992 were not in existence and therefore the Sale Deeds are valid and binding on D3 and her purchaser i.e., 1<sup>st</sup> defendant. He argued that the plaintiff is in possession of the suit properties.

(a) Learned counsel while referring to the background facts relating to dismissal of O.P.No.215/1992 and its subsequent revival would argue that the said OP was dismissed for default on



01.02.1996 and thereafter D3 (Plaintiff therein) filed I.A.No.553/1997 for restoration of the said O.P. which was dismissed by the Court. Later she filed I.A.No.3995/1997 and offered to pay the court fee and requested to number the suit. The said application was allowed on 23.02.1998 and on payment of court fee the plaint was numbered as O.S.No.93/1998. Learned counsel would argue that at the first instance due to her absence both pauper application and plaint were dismissed and subsequently what was revived was only pauper application and the plaint was not revived and therefore technically, O.S.No.93/1998 shall be deemed to be not in existence and judgment in the suit is also not valid. He placed reliance on **Jugal Kishore v. Dhanno Devi (dead) by Lrs**<sup>3</sup>.

(b) Learned counsel further argued that behind the back of plaintiff, D2 filed Ex.A5 Memo in O.S.No.93/1998 admitting the claim of the plaintiff in O.S.No.93/1998. The said memo is not valid because the property was already sold by Venkata Rao and Ramana Murthy (D2) in favour of plaintiff and gave possession and hence the said memo has no impact on Ex.A1 to A4.

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<sup>3</sup> (1973) 2 SCC 567



(c) Learned counsel further argued that pending her suit O.S.No.93/1998, the D3 herein executed Exs.B25 to B29 in favour of D1 and as on that date admittedly she was not in possession of those properties. Hence those Sale Deeds are not legally valid and consequently D1 cannot claim title and possession through those documents.

(d) Learned counsel further argued that in O.S.No.39/2002, D3 remained *ex parte* and thereby the claim of the plaintiff remained unchallenged and deemed to have been proved. On the other hand, the decree in O.S.No.93/1998 is a collusive one as D2 to D4 did not contest the matter. It is further argued that the effect of Section 52 of the Transfer of Property Act is such that it will not render transfer pending *lis* ineffectual. Finally it is argued that D3 has given up her claim in respect of Items 1 to 4 of A schedule in O.S.No.93/1998 and hence her purchaser i.e., the appellant cannot question Ex.A1 to A4. He thus prayed to dismiss the appeal.



10. The points for consideration in this appeal are:

1. Whether the 3<sup>rd</sup> defendant or late C. Venkata Rao and his son C. Ramana Murthy are the legal heirs of late C. Sarveswara Rao to succeed his estate ?
2. Whether the 3<sup>rd</sup> defendant has valid title to execute Exs.B25 to 29 sale deeds in favour of 1<sup>st</sup> defendant ?

**OR**

Whether C. Venkata Rao and his son C. Ramana Murthy (2<sup>nd</sup> defendant) have title to execute Ex.A1 to A4 sale deeds in favour of plaintiff ?

3. Whether the 3<sup>rd</sup> defendant entered into a compromise through her GPA with C. Venkata Rao and C. Ramana Murthy under Ex.A10 and thereby gave up her claim in suit schedule properties in O.S.No.39/2002 and Plaint 'A' schedule properties in O.S.No.93/1998 ?

11. **Points 1 to 3:**

As the above points are intertwined, they are taken up together and answered as below:

At the outset, it should be made clear that the bone of contention among the parties is in respect of the property in an extent of 865 sq. yds of site (656 + 119 + 90) with old Madras Terraced buildings covered by Items 1 to 3 of Plaint-A schedule in O.S.No.93/1998. Though D3 filed the said suit for other properties



also i.e., item No.4 in 'A' schedule, house, agricultural land and vacant sites covered by Items B to D, they are not in dispute in the present suit O.S.No.39/2002. The reason is obvious, as D3 sold the property covered by Items 1 to 3 under Exs.B25 to B29 Sale Deeds in favour of D1/appellant claiming as daughter of the original owner Sarveswara Rao, whereas C. Venkata Rao and C. Ramana Murthy (D2) sold the very same property covered by items 1 to 3 i.e., 670 Sq. Yds under Exs.A1 to A4 Sale Deeds in favour of plaintiff and remaining 195 sq. yds in favour of a third party claiming as brother of C.Sarveswara Rao. Thus the real duel is between the two purchasers from the two sets of claimants over the subject property. Hence it has to be seen whether the 3<sup>rd</sup> defendant or C. Venkata Rao is the legal heir of late C. Sarveswara Rao to claim his estate.

**12.** Admittedly, the disputed property and other properties mentioned in O.S.No.93/1998 originally belonged to C.S.Seetharaavamma which she obtained under a Gift Deed dated 14.10.1921 executed by her parents towards 'Pasupu Kumkuma'. Seetharaavamma died intestate and issueless in the year 1974 and



consequently C. Sarveswara Rao succeeded her property and later he also died intestate on 13.06.1980. To this extent there is no dispute.

**13.** While so, the plaint pleadings would show that immediately after the death of C. Sarveswara Rao, D3 had not emerged on the scene claiming his estate as daughter. Her case is that she was a minor by then. Be that as it may, as per plaint allegations C. Venkata Rao (D1) claimed the estate of Sarveswara Rao as his brother and there were some disputes between him and other relatives of Sarveswara Rao resulted in some suits and ultimately a compromise was entered into between C. Venkata Rao & Ramana Murthy on one hand and T.Lakshmi Kumari and V. Rajeswari (D3 and D4 in O.S.No.93/1998) on the other and all of them executed Ex.A5-Partition Deed dated 12.12.1984. The plaintiff's case is that as per the terms of the said partition C. Venkata Rao got 864 sq. yds of site with constructions and the said property is covered by items 1 to 3 of plaint schedule in O.S.No.93/1998. There are some tenants in the said property. Out of the same, he sold around 194 sq yds of site to some third-party under Sale Deed dated 31.03.1981. The remaining property of 670 Sq. Yds with superstructures was sold by



C. Venkata Rao and C. Ramana Murthy (D2) to plaintiff in the year 1996 under Exs.A1 to A4 Sale Deeds and the said property is the plaint schedule property in O.S.No.39/2002.

(a) In the meanwhile, claiming herself as the daughter of C.Sarveswara Rao, D3 filed pauper O.P.No.215/1992 on the file of the learned II Additional Senior Civil Judge, Vijayawada for ejectment of D1 to D38. In the said suit she impleaded C.Venkata Rao, C. Ramana Murthy, Lakshmi Kumari and V. Rajeswari as defendants 1 to 4 and the tenants and some others as D5 to D38. It is the case of plaintiff that pending said O.P., D3 entered into a compromise through her GPA (PW-2) with C. Venkata Rao and C. Ramana Murthy under Ex.A10 endorsement, whereunder, she gave up her right in the plaint schedule property in favour of C. Venkata Rao and Ramana Murthy for some monetary consideration and as a consequence, she consciously remained absent in O.P.No.215/1992 and thereby said OP was dismissed for default on 01.02.1996. As C. Venkata Rao became full fledged owner of subject property, he sold the same to plaintiff under Ex.A1 to A4 as stated supra. It is the further case of the plaintiff that contrary to Ex.A10-endorsement, D3





filed restoration application in O.P.No.215/1992 and paid Court fee and got numbered the plaint as O.S.No.93/1998 and prosecuted the same and obtained a decree. However, in the said suit she gave up her claim in respect of items 1 to 4 of A-schedule therein (i.e., the present plaint schedule properties) and therefore, decree was passed only in respect of other properties.

(b) The plaintiff thus precisely contends that in view of agreement under Ex.A10 and dismissal of suit O.S.No.93/1998 concerning to Plaint-A schedule therein, D3 lost her right in the present plaint schedule property though she was declared as daughter of C. Sarveswara Rao. Further, since O.P.No.215/1992 and interim injunction were not in force by the dates of Exs.A1 to A4, those Sale Deeds are legally valid.

**14.** We gave our anxious consideration to the impugned judgment and arguments of either side.

(a) Having regard to the chronology of events discussed supra, the crucial question is, what is the impact of judgment in O.S.No.93/1998 on Exs.A1 to A4 Sale Deeds. We perused Ex.B64-CC of judgment in O.S.No.93/1998. As stated supra, C.Venkata



Rao, his son Ramana Murthy, T.Lakshmi Kumari and V.Rajeswari are defendants 1 to 4 in the said suit apart from other defendants who are said to be the tenants and others. D1 died pending the suit and D2 to D4 filed written statements opposing the claim of D3. However, D2 filed Ex.A5-Memo dated 18.09.2002 in the said suit and gave up his contest in respect of item No.1 of the plaint A schedule.

(b) Be that as it may, the trial Court framed issue No.9 as to whether the claim of plaintiff (D3) as daughter of late C.Sarveswara Rao and whether the alleged marriage between him and one Laxmi in 1965 are true. The trial Court elaborately discussed oral and documentary evidence in Paras 26 to 32 of its judgment and ultimately held that the plaintiff (D3) is the daughter of Sarveswara Rao and granted decree in her favour in respect of plaint B to D schedule mentioned properties while dismissing the suit in respect of other items. Neither before the trial Court in O.S.No.39/2002 nor this Court, any material is produced to show that the judgment in O.S.No.93/1998 was either set aside or modified. It is claimed that D4 filed a petition to amend the decree but in that regard also no



material is produced to show about the fate of the said petition. Therefore, we have to assume that the judgment and decree in O.S.No.93/1998 have attained finality.

**15.** The operative sphere of judgment in O.S.No.93/1998 is concerned, in our view, a declaratory relief of a legal status of a party will operate retrospectively unless the judgment restricts its operation to a particular date or prospectively. For instance, a declaration that the plaintiff is wife, son or daughter of the defendant would mean their legal status should be from the date of marriage, date of their birth respectively and not from the date of decree. Similarly, a negative declaratory relief of a legal status would mean there was never such legal relationship among the parties but not from the date of decree alone. Thus, logically speaking the existence or non-existence of a legal status between the parties relates to its occurrence in the past and Court by way of declaration only recognizes such existence or non-existence of legal status with retrospectivity, but it will not be conferring such status for this first time by way of decree.



(a) In **Samar Kumar Roy (D) through L.R. (Mother) v. Jharna Bera**<sup>4</sup>, the plaintiff filed civil suit for a declaration that the defendant was not his legally married wife and for a permanent injunction restraining her from claiming as his wife and disturbing him at his office. Pending suit, the plaintiff died and his mother filed petition to be impleaded as legal representative of the plaintiff. The said petition was allowed and against the said order a revision was filed by the defendant and the High Court set aside the impleadment order on the ground that after the death of plaintiff, no right to sue survived in favour of plaintiff's mother. Aggrieved, the mother filed Civil Appeal before Supreme Court. It was argued that the suit was filed basically for a declaration of a legal character and not for dissolution of marriage under the Special Marriage Act, 1954 or the Hindu Marriage Act, 1955 and therefore, the cause will survive even after the death of the plaintiff. The Apex Court was engaged with the issue, whether the suit can be maintainable at the behest of the legal representative of the deceased plaintiff. The Apex Court has sought to draw a distinction between the reliefs

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<sup>4</sup> MANU/SC/1181/2017 = AIR 2018 SC 334



which can be claimed under the Special Marriage Act or Hindu Marriage Act and the reliefs that can be claimed under Section 34 of the Specific Relief Act. It was observed that under the aforesaid special statutes, suit could be instituted to annul or dissolve the marriage or for restitution of conjugal rights or judicial suppression. However, it does not purport to bar the jurisdiction of the Civil Court to file a suit under Section 34 of the Specific Relief Act for a declaration of legal character of an alleged marriage and the exclusion of jurisdiction of the Civil Courts in that regard cannot be readily inferred. Referring to its own decision in **Yallawwa v. Shantavva** [MANU/SC/0016/1997 = (1997) 11 SCC 159] the Apex Court held that the personal cause of action dies with the person but all the rest of causes of action which have an impact on proprietary rights and social legal status of the parties cannot be said to have died with such a person.

(b) It is true that the above decision has not directly dealt with the aspect of retrospective operation of a decree dealing with the legal status of a person. However, the logical inference that can be drawn is that in the above decision if a decree is ultimately granted



in favour of the LR holding that there was no legal marriage between the parties, it would mean there was never such a marriage at any point of time but not from the date of decree alone. So, in the instant case also, the judgment and decree in O.S.No.93/1998 relates back to the date of birth of D3 as per Ex.A1-birth certificate. Running the risk of pleonasm, the trial Court only recognized her legal status as daughter of Sarveswara Rao as having been born in 1968 under the decree.

**16.** With the above proposition of law, when the claims of the parties are tested, as on the dates of the exhibits A1 to A4 Sale Deeds, the D3 being the daughter of Sarveswara Rao, she was the actual owner of the subject properties but not C.Venkat Rao and his son and therefore, they had no right to convey title in favour of the plaintiff. However, they claimed title on two main grounds which, in our view, are not legally and factually formidable to countenance.

**17.** Firstly, on the ground that after filing O.P.No.215/1992, the D3 through her GPA entered into a compromise with C.Venkat Rao and his son and gave up her claim in subject properties on receiving monetary consideration and in terms thereof she consciously



remained absent and thereby, the trial Court dismissed O.P.No.215/1992 for default. Later her GPA and D.Baji Prasad together made Ex.A10 endorsement dated 19.02.1996 on the reverse of Ex.A8-Sale Agreement which she earlier executed in favour of Baji Prasad. Thereafter, Venkat Rao and his son who became full owners sold the subject property to plaintiff under Exs.A1 to A4.

(a) We carefully scrutinized Exs.A7 to A10 and the evidence of PW2 in this context. Ex.A7 is the registered G.P.A. dated 29.01.1993 executed by D3 in favour of PW2, wherein she stated that Court litigations in O.P.No.215/1992 and RCC No.46/1998 were pending and in order to meet the Court expenses, she executed Ex.A8 – Sale Agreement dated 29.01.1993 in favour of D.Baji Prasad in respect of plaint schedule property and therefore, in order to look after the Court litigation and after disposal of the same, in order to receive the balance amount from Baji Prasad and to execute a regular Sale Deed in his favour or any person of purchaser's choice, she was appointing PW2 as her GPA on her behalf. Since there were tenants in the schedule property, she also gave power to



PW2 to recover rents from them and evict her tenants and attend the concerned offices and submit necessary documents and plans.

(b) While so, Ex.A8 is the Sale Agreement dated 29.01.1993 executed by D3 in favour of Baji Prasad in respect of the plaint schedule property.

(c) Then Ex.A9 is another agreement dated 29.01.1993 executed between D3, her GPA and Baji Prasad mentioning therein that pursuant to the Ex.A8-Sale Agreement, the GPA of D3 will execute registered Sale Deed in favour of Baji Prasad.

(d) While so, Ex.A10 is purported to be an endorsement dated 19.02.1996 made on the reverse of Ex.A8-Sale Agreement by PW2 and D.Baji Prasad, wherein it is stated that D3 after filing O.P.No.215/1992 entered into a compromise at the instance of the mediators and well wishers and she remained absent in Court and thereby O.P.No.215/1992 and injunction orders were dismissed for default and D3 gave up her claim in respect of A schedule property in favour of C.Venkata Rao and thereafter, Venkata Rao and his son sold the schedule property in favour of the plaintiff herein and from out of the sale consideration, the advance amount given by D.Baji





Prasad under Ex.A8 was refunded to him and Ex.A8 was cancelled and so also Ex.A7-GPA was cancelled. PW2 in his evidence deposed in support of Ex.A10 endorsement.

(e) Now, on the strength of aforesaid oral and documentary evidence, the plaintiff claims that D3 gave up her right in the plaint schedule property and therefore, Exs.A1 to A4 are valid documents as they were executed by full-fledged owners. We are unable to countenance this contention. There are a number of suspicious circumstances shrouded Ex.A10. Firstly, it is an unregistered document purportedly endorsed on the reverse of Ex.A8. In essence, the said document spells, D3 relinquished her rights in the plaint A schedule property. Therefore, it requires registration. Secondly, as per Ex.A7, the GPA was given power only to execute registered Sale Deed in favour of D.Baji Prasad but no authority was given to him to enter into agreements, and compromises with third-parties. It is not known how he endorsed on Ex.A10. Thirdly, D3 was not a signatory on Ex.A10. Fourthly, if really D3 entered into compromise with C.Venkat Rao and gave up her claim, nothing prevented them to execute an agreement in that regard and file



before Court in O.P.No.215/1992 to give a quietus to the legal battle. Contrary to it, her mere absence and consequent dismissal of O.P. long before Ex.A10 endorsement will not render trustworthiness to Ex.A10.

(f) Fifthly, in the plaint averments of O.S.No.39/2002, though the plaintiff avouched that D3 gave up her rights due to compromise with Venkata Rao, curiously he did not mention about Ex.A10 endorsement. The conspicuous absence of averments on a crucial document manifests that Ex.A10 was brought forth subsequently to suit the case of plaintiff and his vendors. We do not think that the evidence of PW2 will clear the cloud cast over the genuinity of Ex.A10. No doubt, after being impleaded in O.S.No.39/2002, D3 remained *ex parte* and did not contest the suit. However, her absence will not render strength to Ex.A10 because long prior to her impleadment in O.S.No.39/2002, she already sold the plaint schedule property to the 1<sup>st</sup> defendant / appellant under Exs.B25 to B29 Sale Deeds. As she had no substiting rights in the suit property, her absentism will not add strength to Ex.A10. So, Ex.A10 cannot be believed to be a genuine document.



18. The second ground is that as on the date of exhibits A1 to A4, O.P.No.215/1992 and injunction order in I.A.No.3690/1992 were not in force and hence, C.Venkata Rao being the class II heir of Sarveswara Rao can validly execute Exs A1 to A4. This argument can be heard only to be rejected. It is true on the dates of Exs.A1 to A4, O.P.No.215/1992 and injunction order therein were not in force. However, it must be noted, O.P. was dismissed for default of D3 but no final order was passed on merits. Therefore, the Sale Deeds executed by Venkata Rao and his son shall be construed as subject to final result in O.P.No.215/1992. Therefore, mere dismissal of O.P. and injunction petition for default cannot be construed as conferring right on Venkata Rao to alienate the suit properties. In a given case, after dismissal of plaintiff's suit for declaration and possession of a property and before filing appeal, if the defendants alienate the said property, such alienation will be susceptible to the final outcome in the appeal. Thus, Exs.A1 to A4 are subservient to *doctrine of lis pendens* enunciated in Section 52 of the Transfer of Property Act. The principle envisaged in Section 52 of the Transfer of Property Act is in accordance with equity, good conscience or



justice because a *status quo* has to be maintained in respect of the property till the final disposal as otherwise a chaotic situation will prevail leading to multiplicity of proceedings. In **T.Ravi** (1 supra), the Apex Court while discussing the *doctrine of lis pendens* referred the judgment in **Jagan Singh (Dead) through LRs v. Dhanwanti**<sup>5</sup>, wherein it was observed thus:

**19.** The broad principle underlying section 52 of the T.P. Act is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. Even after the dismissal of a suit, a purchaser is subject to lis pendens, if an appeal is afterwards filed, as held in Krishanaji Pandharinath Vs. Anusayabai AIR (1959) Bom 475 (emphasis supplied). In that matter the respondent (original plaintiff) had filed a suit for maintenance against her husband and claimed a charge on his house. The suit was dismissed on 15.7.1952 under order IX, Rule 2, of Code of Civil Procedure 1908, for non-payment of process fee. The husband sold the house immediately on 17.7.1952. The respondent applied for restoration on 29.7.1952, and the suit was restored leading to a decree for maintenance and a charge was declared on the house. The plaintiff impleaded the appellant to the darkhast as purchaser. The appellant resisted the same by contending that the sale was affected when the suit was dismissed. Rejecting the contention the High Court held in para 4 as follows:-

".....In section 52 of the Transfer of Property Act, as it stood before it was amended by Act XX of 1929, the expression "active prosecution of any suit or proceeding" was used. That expression has now been omitted, and the Explanation makes it abundantly clear that the 'lis' continues so long as a final decree or order has not been obtained and complete satisfaction there of has not been rendered. At

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<sup>5</sup> 2012 (2) SCC 628 = MANU/SC/0046/2012



page 228 in Sir Dinshah Mulla's "Transfer of Property Act", 4th Edition, after referring to several authorities, the law is stated thus:

"Even after the dismissal of a suit a purchaser is subject to 'lis pendens', if an appeal is afterwards filed."

If after the dismissal of a suit and before an appeal is presented, the 'lis' continues so as to prevent the defendant from transferring the property to the prejudice of the plaintiff, I fail to see any reason for holding that between the date of dismissal of the suit under Order IX Rule 2, of the Civil Procedure Code and the date of its restoration, the 'lis' does not continue.

In the light of above jurisprudence, there can be no demur that the alienations made by Venkata Rao and his son under Exs.A1 to A4 are hit by *doctrine of lis pendens*. In that view, whether interim injunction order in I.A.No.3690/1992 was in force or not by the dates of Exs.A1 to A4 and whether it was revived with the revival of O.P.No.215/1992, pales into insignificance and we do not delve on that aspect.

**19.** Learned counsel for the respondent Sri E.V.V.S.Ravi Kumar argued that the 3<sup>rd</sup> defendant has given up her claim in respect of items 1 to 4 of plaint A schedule in O.S.No.93/1998 and the trial Court accordingly dismissed her claim and granted partial decree in respect of other properties and therefore, exhibits B25 to B29 Sale Deeds executed by her in favour of 1<sup>st</sup> defendant have no legal sanctity. We are afraid this argument is not correct for the reason



that the 3<sup>rd</sup> defendant, who inherited estate of her father, has executed exhibits B25 to B29 in favour of 1<sup>st</sup> defendant in the year 2000 itself and conveyed valid title. Long thereafter, she gave up her claim in items 1 to 4 of the plaint A schedule for whatever reason. It should be noted that as on the date of giving up her claim and dismissal of the suit in respect of the plaint A schedule, the 3<sup>rd</sup> defendant had no legal title over the said property as she already conveyed the same in favour of the 1<sup>st</sup> defendant. Therefore, partial dismissal of the suit O.S.No.93/1998, in our view, had no adverse impact on the validity of Sale Deeds covered by Exs. B25 to B29.

**20.** Incidentally Sri E.V.V.S.Ravi Kumar argued as if only pauper application was revived but not the plaint and therefore, O.S.No.93/1998 has no legal existence. This argument has no teeth for the reason that I.A.No.3995/1997 filed by D3 was allowed permitting her to deposit Court fee and thereafter plaint was registered as O.S.No.93/1998. Hence, the aforesaid argument and the judgment in **Jugal Kishore** (3 supra) cannot be considered.

**21.** In the light of above discussion, the points for consideration are answered as below:



(a) Point No.1 is concerned, by virtue of the judgment in O.S.No.93/1998, the 3<sup>rd</sup> defendant is held as a legal heir of late C.Sarveswara Rao to succeed his estate as his daughter.

(b) Point No.2 is concerned, the 3<sup>rd</sup> defendant has valid title to execute Ex.B25 to 29 Sale Deeds in favour of 1<sup>st</sup> defendant and consequently C.Venkat Rao and his son have no title to execute Ex.A1 to A4 Sale deeds in favour of plaintiff.

(c) Point No.3 is concerned, Ex.A10 cannot be treated as a valid and genuine document and the same will not adversely affect the rights of 3<sup>rd</sup> defendant in respect of suit schedule property.

Thus, on a conspectus of facts, evidence and law, the judgment of the trial Court in O.S.No.39/2002 is not sustainable either on facts or in law and liable to be set aside.

**22.** Accordingly, A.S.No.683/2016 is allowed and the judgment dated 29.06.2016 in O.S.No.39/2002 passed by the learned XIII Additional District & Sessions Judge, Vijayawada, is set aside and as a consequence the suit O.S.No.39/2002 is dismissed. No costs.



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

U. DURGA PRASAD RAO, J

G.RAMAKRISHNA PRASAD, J

09.05.2023  
KRR/MVA