



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

A.S.Nos.1541 & 1555 of 1998 and Cross-objections in A.S.1555 of 1998

Between:

Bandaru Manikyala Rao alias Manikya Rao and two others

... APPELLANTS

AND

Kedari Srinivasa Rao and three others

... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED:

SUBMITTED FOR APPROVAL

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

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

M. VENKATA RAMANA



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

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Between:

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... APPELLANTS

AND

Kedari Srinivasa Rao and three others
... RESPONDENTS

! Counsel for appellants : Mr. Raja Reddy Koneti in A.S.1555 of 1998
And for Cross-objector
Mr.D.Krishna Murthy, in A.S.No.1541 of 1998

^Counsel for Respondents : Mr.V. Venugopala Rao

<GIST:

>HEAD NOTE:

? Cases referred:

1. 1997 (6) ALD 247
2. AIR 1974 AP Page 13

M. VENKATA RAMANA



HON'BLE SRI JUSTICE M. VENKATA RAMANA

A.S.Nos.1541 and 1555 of 1998 and Cross-objections in A.S.No.1555 of 1998

JUDGMENT:

The plaintiffs preferred A.S.No.1541 of 1998 against the decree and judgment in O.S.No.79 of 1989 dated 26.06.1998 on the file of the Court of learned Senior Civil Judge, Bapatla. Respondents are the defendants. During pendency of this appeal, the second respondent died. His wife being the legal heir was brought on record, as per order in A.S.M.P.No.1498 of 2012, dated 29.01.2014.

2. The third respondent, who was a subsequent purchaser of a part of the plaint schedule property, during pendency of the suit, is the appellant in A.S.No.1555 of 1998. The respondents 1 to 3 therein are the plaintiffs and whereas respondents 4 and 5 are the defendants 1 and 2 respectively. The second respondent in A.S.No.1541 of 1998, who is also the fifth respondent in A.S.No.1555 of 1998 and the second defendant, presented cross-objections in respect of the findings against him in the judgment of the trial Court in A.S.No.1555 of 1998. A.S.No.1555 of 1998 is preferred by the third defendant in respect of the findings recorded against him in the suit by the judgment of the trial Court, referred to supra.

3. The first defendant in the suit did not prefer any appeal nor present any cross-objections either against the relief granted against him or with reference to the findings recorded against him in the impugned judgment.

4. The property in dispute in this case is about Ac.0.03 cents to Ac.0.03½ cents (for short 'the suit site') in Sy.No.400/1 shown as ANQ SXZ1Z in the plaint plan, of Ponnur town in Guntur district. It is not in dispute that this site was a grant in favour of Sri Komirisetty Bollaiah



somewhere in the year 1941. Smt.Bandaru Narayanamma, is the daughter of Sri Komirisetty Bollaiah. He had constructed a thatty house (hut) in this site and had gifted away to his eldest daughter Smt.Bandaru Narayanamma, under a registered gift deed dated 01.09.1959 (Ex.B4). It is also not in dispute that Smt.Bandaru Narayanamma continued to be in possession and enjoyment of this site, where she got constructed three shop rooms, which are abutting municipal road known as Subbaraya Picture Palace Road in Ponnur Town, facing north. These shop rooms are stated to be in Ac.0.01 cents out of Ac.0.03 ½ cents. Behind these shop rooms, i.e., on the South a dwelling house was constructed with slant of the roof towards further South, and vacant site further south of it. The plaint plan, though disputed on behalf of the defendants in the suit, gives a fair idea of location of this property.

5. For convenience, the parties shall be referred hereinafter as arrayed in the suit, viz., as the plaintiffs and the defendants. The second defendant is the elder brother of the first plaintiff. Plaintiffs 2 and 3 are the sons of the first plaintiff. P.W.2 Smt.Bandaru Chittemma, is the wife of the first plaintiff. The second defendant and the first plaintiff are the sons of Smt.Bandaru Narayanamma. She died on 14.06.1989.

6. It is desirable to consider the pleadings set out by the parties before evaluating and analysing the evidence on record along with other material to know the basis of their claims in the suit.

7. In the plaint, the case of the plaintiffs was as under:

(i) The shop rooms constructed by Smt.Bandaru Narayanamma are shown in the plaint plan as items 1, 2 and 3 specifically demarcating ABCD/BDEF/EFGH respectively. The dwelling part of this site, which was a thatched house earlier, was subsequently improved raising brick walls and



flooring with kadapa slabs and electrification. It is shown as CMHN and MNOP in the plaint plan (items IV & V respectively). Rest of the site towards south shown as OPQR (item VI in the plaint plan) and QRXY (items VII to IX respectively) is vacant.

(ii) In the above thatched house all the plaintiffs and wife of the first plaintiff have been living. The second defendant resides near Srinivasa Picture Palace, Ponnur. Different portions out of items III & II of shop rooms along with items IV, V, VII & VIII gifted to the daughter of the first plaintiff, viz., Smt.Thanneru Tirupathamma @ Triveni on 19.06.1987 under a gift deed, to the second plaintiff under another gift deed dated 20.10.1987, when he was a minor through his father and under another gift deed dated 26.10.1987 in favour of the third plaintiff. All the donees accepted these gifts and were in possession and enjoyment of the same since then.

(iii) However, the second defendant in February 1989, in the absence of the first plaintiff and his wife took away Smt.Bandaru Narayanamma from their house physically though she was not in a position to move out of the bed and was in a state of mental imbalance, to his house, with a dishonest intention to grab her properties.

(iv) During first week of March 1989, the wife of the first plaintiff when came to know that the second defendant was attempting to get a sale deed executed in favour of the first defendant from Smt.Bandaru Narayanamma to knock away the sale proceeds, she got issued a registered notice to the first defendant, who got issued a reply to it with false allegations claiming that he purchased some vacant site and a part of thatched house on 03.03.1989, which is a part of items IV to IX shown in the plaint plan. The said sale is illegal and invalid and was obtained though Smt.Bandaru Narayanamma was not in a disposing state of mind and the sale deed was brought into existence by the defendants 1 and 2.



(v) By the date of her death, viz., 14.06.1989, Smt.Bandaru Narayanamma, possessed of item I, BDJI portion of item II, a portion of thatched house in item VI and vacant site in item IX shown in the plaint plan. The first plaintiff and the second defendant being the only legal heirs to her, succeeded to this property in equal halves.

(vi) Though the plaintiffs have been in possession of the suit site, attempts were made by the defendants to dispossess them, including demolishing a part of the thatched house, removing a part of the roof portion causing immense loss, which made the first plaintiff and his wife to approach the police. They suffered a loss to a tune of Rs.3,000/- in this process.

(vii) In the above circumstances, the plaintiffs were constrained to lay the suit to declare that the sale deed dated 03.03.1989 said to have been executed by Smt.Bandaru Narayanamma in favour of the first defendant is void, unenforceable and is not binding on the plaintiffs, for a consequential injunction against the defendants restraining them from interfering with the peaceful possession and enjoyment of the suit site, for damages to a tune of Rs.3,000/- with interest thereon and also for partition of items I, part of item II (BIJD), items VI & IX shown in the plaint plan into two equal half shares and to allot one such share to the first plaintiff.

8. The first defendant resisted the claim of the plaintiffs in the plaint filing a written statement mainly contending that he purchased a part of the suit site from rightful owner, viz., Smt.Bandaru Narayanamma, under a registered sale deed dated 03.03.1989 and thus he is rightful owner of half of the site and the house together in CHQR plot and southern half of vacant site shown as SRXY along with right of way through the passage shown as GZYZ1 in the plaint plan. He further averred that there was a contract for



sale prior to the sale deed and that he has been in continuous and exclusive possession of the above property. He further averred that when he intended to remove his half share in the house in order to construct building, the first plaintiff and his wife obstructed and threatened with dire consequences that made him to institute O.S.No.149 of 1989 on the file of then Munsif Magistrate Court at Ponnur. Thus, questioning the maintainability of the suit, he sought its dismissal.

9. The second defendant filed a separate written statement opposing the claim of the plaintiffs and denying the averments in the plaint. He specifically contended in his written statement as under:

(a) Smt.Bandaru Narayanamma retained half of the house as well as the site shown in the plaint plan including item I and half of item II of the shop rooms with an intention to give half share in the entire property to the first plaintiff in the name of his children, and half share in the entire property to the second defendant. Smt.Bandaru Narayanamma never lived with the first plaintiff and his family and was living in the house of the second defendant till she died.

(b) Smt.Bandaru Narayanamma, executed a registered Will on 25.01.1988 bequeathing half share in the entire property in a sound disposing state of mind in favour of the second defendant. Subsequently, she sold her half share, viz., half of CHQR site and house therein along with half share in SRXY site as shown in the plaint plan to the first defendant under a registered sale deed dated 03.03.1989 for a consideration of Rs.15,000/-, since the second defendant was not in a position to meet her medical and other expenses. Thus, the second defendant became the rightful owner of the property conferred under the Will by his mother, which he continued to be in possession and enjoyment. He had let out



item I shop room to the first defendant and half of item II to one Sri Shaik Mastan for their respective business.

(c) Thus mainly contending that the plaintiffs resorted to suppression of material facts, it was requested to dismiss the suit.

10. The third defendant was brought on record as per orders in I.A.No.1241 of 1995 to the trial Court dated 13.02.1995.

11. Basing on the above pleadings, the following issues and additional issue were settled for trial:

1. Whether the plaintiff is entitled for declaration as prayed for?
2. Whether the plaintiff is entitled for consequential injunction as prayed for?
3. Whether the plaintiff is entitled for partition as prayed for?
4. Whether the plaintiff is entitled for Rs.3000/- as denied?
5. Whether the plaint plan is correct?
6. To what relief?

Additional issue:

“Whether the Court fee paid is correct or not?”

An additional issue was framed while preparing the judgment by the learned trial Judge regarding Ex.B3 will as under:

“Whether the Will dated 25.01.1988 is true, valid and binding on the plaintiff?”

12. It appears that the suit in O.S.No.79 of 1989 was tried along with O.S.No.50 of 1996, which was originally instituted by the first defendant on the file of Munsif Magistrate Court, Ponnur, which was later on transferred to the Court of learned Senior Civil Judge, at Bapatla, as per orders of the District Court, Guntur, in Transfer O.P.No.128 of 1995. Consolidation of both the suits was ordered and evidence was let in, in O.S.No.79 of 1989 in the trial Court. At the trial, the first plaintiff examined himself as P.W.1



and his wife as P.W.2, who relied on Ex.A1 to Ex.A58 to support their contentions. The first defendant examined himself as D.W.1. The third defendant examined himself as D.W.2. D.W.3 and D.W.4 are the scribe and attester of Ex.B3 Will. They relied on Ex.B1 to Ex.B25 as well as Ex.C1 and Ex.C2 in support of their contentions.

13. Learned trial Judge upon considering the evidence and material on record and having regard to submissions made on behalf of the parties, held additional issue relating to Court fee against the plaintiffs since the relief of cancellation of sale deed is sought in the nature of declaration. Learned trial Judge further held issue Nos.1, 2 and 5 against the plaintiffs and in favour of the defendants. However, on additional issue framed relating to truth and validity of Ex.B3 Will, learned trial Judge recorded findings against the defendants and in favour of the plaintiffs. Similarly, issue No.3 partition of property was directed, which were left over by Smt.Bandaru Narayanamma. With reference to issue No.4 damages to a tune of Rs.1500/- was awarded payable by the first defendant to the plaintiffs. Ultimately, a decree was passed directing division of item No.1 and western half of item No.2 of the plaint plan into two shares, allotable to the first plaintiff and the second defendant, one share each.

14. Sri Koneti Raja Reddy, learned counsel submitted arguments on behalf of the third defendant and whereas, Sri D.Krishna Murthy, learned counsel submitted arguments on behalf of the plaintiffs. Sri V.Venugopala Rao, learned counsel on behalf of the first defendant submitted arguments in these appeals.

15. Now, the following points arise for determination:



1. Whether Ex.A1, Ex.A2 and Ex.A58 Gift Deeds conferred any right, title and interest to the properties concerned thereto in favour of donees there under from Smt.Bandaru Narayanamma?
 2. Whether Ex.B1 sale deed conferred right, title and interest to a part of the suit site to the first defendant?
 3. Whether Ex.A3 Will dated 25.01.1988 is true, valid and binding on the plaintiffs?
 4. Whether the plaintiffs are entitled for damages at Rs.3,000/- as claimed?
 5. Whether the plaintiff is entitled for relief of declaration of cancellation of Ex.B1 sale deed and if they are entitled for permanent injunction against defendants?
 6. Whether the first plaintiff and the second defendant are entitled for division of such portion of the property retained by Smt.Bandaru Narayanamma upon her death in equal halves?
 7. Whether the judgment under appeal requires interference?
 8. To what relief?
16. **POINT No.1:** The plaintiffs have set out their specific case in the plaint, of devolution of title, right and interest by virtue of Ex.A1, Ex.A2 and Ex.A58 Gift Deeds out of such portions in the suit site on them from Smt.Bandaru Narayanamma.
17. The averments in the plaint as well as the testimony of P.W.2 did make out that the eastern part of shop No.3 shown as KGH in the plaint plan and which is a half share in EFGH shop room was gifted to the daughter of P.Ws.1 and 2 Smt.Thanneru Tirupathamma @ Triveni under the Gift Deed dated 19.06.1987. This Gift Deed is not a part of material record in this case. None the less, it remained an undisputed fact.
18. Ex.A1 is the Gift Deed dated 26.10.1987 under which Smt.Bandaru Narayanamma gifted away the eastern part of item II of shop room (EFIJ in the plaint plan) along with vacant site in item V and vacant site in item VIII



shown in the plaint plan. Specific details of this property with measurements are stated in it.

19. Ex.A2 Gift Deed dated 28.10.1987 was executed by Smt.Bandaru Narayanamma, in favour of the second plaintiff, represented by his guardian, viz., Smt.Triveni (his sister) giving away the western half of item III shown as EFKL in the plaint plan, vacant site in item IV and another vacant site in item VII shown in the plaint plan. Similar to the contents of Ex.A1, details of all these properties with specific measurements are stated in Ex.A2.

20. Ex.A58 was marked by consent during trial, which is a Gift Deed dated 27.10.1987 in favour of the third plaintiff executed by Smt.Bandaru Narayanamma. It refers to the property gifted there under in Block No.XVII bearing Dr.No.62, making an apparent reference to a thatched house of 12½ square yards covering a plinth area of 120 sq. Feet.

21. P.W.1 deposed upon producing Ex.A1 and Ex.A2 Gift deeds and nature of gift of property brought out there under. But, in his cross-examination, he failed to support them.

22. Ultimately, it was his wife, viz., P.W.2, who had to bear the burden of making out the case of the plaintiffs. Probably, she is right in deposing that she knew better than P.W.1 and her children regarding the suit claim. She deposed in respect of the nature and extent of gifts made by her mother-in-law to her children in consonance with their contents. It is to be noted that in the written statement of the second defendant, there is no averment as such brought out questioning these Gifts specifically. The first defendant went to the extent of stating that he has nothing to do with the internal disputes in between the first plaintiff and the second defendant.



23. There is no whisper in the written statement of the second defendant denying execution of these Gift Deeds, viz., Ex.A1, Ex.A2 and Ex.A58. The reason appears to be obvious. He is one of the attestors to all these Gift Deeds. Cross-examination of P.W.2 also brought out that it was the second defendant, who got executed these Gift Deeds by her mother-in-law in favour of her children. Perhaps, it is one reason that apparently prevailed on him not to enter the witness box and to depose in the suit, in consonance with the averments in the written statement.

24. The second defendant apparently being affected if at all he had any grouse or cause, he is the best person to question Ex.A1, Ex.A2 and Ex.A58 Gift Deeds. Thus, the principle of non-traverse with reference to the pleadings set up by the plaintiffs in respect of these gift deeds and want of specific and material evidence to question these Gift Deeds is a factor of significance in this case. This circumstance or factor itself prevails upon to hold that there is a touch of truth with reference to these Gift Deeds. Hence, non-examination of any attestor or scribe of these Gift deeds, has no consequence.

25. In this context, it is desirable to consider the contents of Ex.B1 sale deed under which the first defendant is claiming that he has purchased a part of the house and open site in CHQR and QRXY shown in the plaint plan from Smt.Bandaru Narayanamma herself for valuable consideration. The effect of recitals in Ex.B1 are considered only for the purpose of evaluating the claim of the plaintiffs on the strength of Ex.A1, Ex.A2 and Ex.A58. It is made clear that Ex.B1 is not treated as an admitted or proved transaction.

26. As per Ex.B1, there are two items, which were subject matter of this transaction. The site covered by Ex.B1 as item I, as can be made out from



its boundaries is of 151½ square feet or 16 square yards and 7½ square feet. The boundaries in respect of it are:

East - The Wall of house of Sri Shaik Moosa,

South: The site belonging to Sri Shaik Ibrahim Saheb,

West: Site of Smt.Bandaru Rangamma and

North: Site of Sri Bandaru Srinivasa Rao and Sri Bollaiah (plaintiffs 3 and 2) respectively.

27. The second item in Ex.B1 is a site of 42½ square yards within the following boundaries:

East : Gully (lane) of 3” wide and site of Sri Shaik Moosa Saheb

South: The site of Sri Bandaru Srinivasa Rao and Bandaru Bollaiah(plaintiffs 3 and 2) respectively

West: Wall of the daba house of Sri Dopulapudi Ramulamma, and

North: the site belonging to Bandaru Srinivasa Rao and Bollaiah (plaintiffs 3 and 2) respectively.

These contents of Ex.B1 did indicate and confirm that the plaintiffs 2 and 3 had their sites by the date of Ex.B1, i.e., 03.03.1989 abutting the property covered by it. Thus, this transaction was later in point of time to Ex.A1, Ex.A2 and Ex.A58 Gift Deeds.

28. Location of the site covered by Ex.B1, from the boundaries mentioned in the schedule to it can well be culled out. Item VI shown as OPQR in the plaint plan, which is a part of the thatched house - cum - vacant site specifically described as CHQR in the plaint plan, which is south of item V and north of item VII, is the second item of the site described in Ex.B1.

29. The boundaries in Ex.B1 further make out that the site shown as item IX described as VWXY in the plaint plan, which is to the south of item VIII gifted to the third plaintiff is, item I mentioned in the schedule of Ex.B1. Thus, Ex.B1 itself offers strength to the contention of the plaintiffs



that the Gift Deeds Ex.A1, Ex.A2 and Ex.A58 were acted upon during lifetime of Smt.Bandaru Narayanamma herself.

30. It should also be borne in mind that the averments in the plaint to certain extent, get support from the averments of written statement of D1, referred to in Para- 4(c) that item I of shop rooms, eastern portion of item II of shop rooms, shown as BDIJ in the plaint plan were retained by Smt.Bandaru Narayanamma. Similarly, item No.VI shown as OPQR and item IX shown as VWXY were retained by Smt.Bandaru Narayanamma, after execution of these Gift Deeds. Except these extents, Smt.Bandaru Narayanamma did not retain any other property after gifting away to her grand children, as referred to supra. Referring to the boundaries of the sites concerned to Ex.B1, learned trial Judge observed similarly in the judgment under appeal.

31. There is also reference to these properties given away to the children of P.Ws.1 and 2 in Ex.B3 Will in the schedule, while describing the property allegedly bequeathed in favour of the second defendant, particularly with reference to two items, viz., item VI and item IX, which were conferred as per the contents of this Will upon the second defendant. The validity of this Will needs to be discussed while considering point No.4. Nonetheless, to arrive at that the properties conferred on the children of P.Ws.1 and 2 under Ex.A1, Ex.A2 and Ex.A58 Gift Deeds, the description of the property in the schedule to Ex.B3 is now considered.

32. It is further to be noted that one of the alleged attestors of Ex.B3 Gift Deed, viz., D.W.4 stated in cross-examination that Smt.Bandaru Narayanamma told him that she had already given half of the property to her another son. The property covered by Ex.B3 as per its recitals is half the property out of the suit site owned by Smt.Bandaru Narayanamma. It



is an important statement from the witness of adversary to the plaintiffs and has significant effect to support their contention.

33. D.W.2, who is the third defendant, also stated in cross-examination that P.W.1, P.W.2 are residing in the vacant site behind his shop along with their children. Even D.W.1, viz., the first defendant gave the location of one cent site he purchased as claimed by him under Ex.B1 being to the south of the vacant site, which is to the south of the shop rooms. According to D.W.1, this site is lying vacant. It was elicited in cross-examination from P.W.2 that her sons have let out the vacant site behind the shop rooms to a wine shop.

34. Thus, these circumstances do offer sufficient strength and to hold that the contention of the plaintiffs of gifting away the properties by Smt.Bandaru Narayanamma, as referred to in Ex.A1, Ex.A2 and Ex.A58, is established. Therefore, in the above circumstances, it has to be held that the gifts under Ex.A1, Ex.A2 and Ex.A58 are proved and established and whereby Smt.Bandaru Narayanamma had conferred the properties with right, title and interest upon the donees, who also accepted them.

Thus, this point is answered.

35. **POINT No.2:** Ex.B1 is the sale deed dated 03.03.1989 under which the first defendant is claiming that he purchased a part of the house and the open site in CHQR and QRXY from Smt.Bandaru Narayanamma, for valuable consideration of Rs.15,000/- and that he was put in possession of the same.

36. The contents of Ex.B1 are that it was executed by Smt.Bandaru Narayanamma, in favour of Sri Kedari Srinivasa Rao, S/o.Kedari Lakshmaiah(first defendant) selling away two items as described in it's



schedule. The description of the property referred to in Ex.B1 is already considered in point No.1 with reference to its location.

37. The recitals in Ex.B1, which are relevant for the present purpose are that the vendor there under sold away the same to meet her medical and other expenses, since she was ill and to meet her maintainance for consideration of Rs.15,000/-. The recitals further reflect that entire sale consideration of Rs.15,000/- was paid to her there under. There is no endorsement on Ex.B1 that the sale consideration there under was paid to the vendor in the presence of the Sub-Registrar, Ponnur. It purportedly bears the thumb impression of the vendor. D.W.3 is its scribe. The attestors to Ex.B1 are the second defendant and one Katika Ramudu.

38. The contents of Ex.B1 are considered now, in as much as the plaintiffs have questioned this sale deed as an outcome of misrepresentation on account of collusion between defendants 1 and 2, taking advantage of the situation of Smt.Bandaru Narayanamma, who was sick and without maintaining proper balance of mind. Thus, the plaintiffs claimed that this alleged sale is invalid and void in the eye of law, since the alleged vendor was not in a disposing state of mind to know its nature and contents. They also contended that the alleged sale was not supported by consideration. It is specifically pleaded in the plaint referring to such circumstances calling for cancellation of this sale deed.

39. The first defendant asserted that it was a sale deed executed by Smt.Bandaru Narayanamma for consideration transferring right, title and interest of the property concerned thereto in his favour and thus contended possession of this property was delivered to him there under. He also stated in his written statement that this sale deed was preceded by a contract for sale. The second defendant in his written statement



supported the sale under Ex.B1. The contention on behalf of defendants 2 and 3 in this appeal is that the void nature or the alleged fraud attributed by the plaintiffs in relation to execution of Ex.A1 is not established by them and that it is their burden to prove it. It is also contended for them that the plaintiffs did not dispute execution of Ex.A1 as such by Smt.Bandaru Narayanamma and which fact is also adverted to in the judgment under appeal.

40. In this context on behalf of defendants, nature of evidence brought out from P.W.1 and P.W.2 that was considered by the trial Court, in the judgment under appeal, is referred to.

41. The first plaintiff as P.W.1 in this context deposed that he did not know that his mother sold any property to D1 or not. He further deposed that his mother was suffering from Blood Pressure and Diabetics and that the second defendant took away her from him. In cross-examination for defendants 1 and 2, he expressed ignorance if his mother executed Ex.B1 and also Ex.A1 as well as Ex.A2 in a sound state of mind. However, he asserted his ignorance of execution of any document in favour of the first defendant in cross-examination, consistent with his version in examination-in-chief.

42. P.W.2 deposed that her mother-in-law used to live with them in the house behind the shop rooms in the suit site. She also stated that in their absence, the second defendant had taken away her from their house, corroborating the version of P.W.1 and supporting the version in the plaint. P.W.2 also deposed that while her mother-in-law was hale and healthy when she executed Ex.A1, Ex.A2 and Ex.A58 in favour of her children, she was suffering from tuberculosis, asthma, diabetes and blood-pressure. She also deposed that her mother-in-law was admitted in University General



Hospital, Mangalagiri, for treatment for tuberculosis and that she as well as P.W.1 were looking after her. She further deposed that the second defendant and his wife took her away from the hospital at Mangalagiri without their knowledge. In cross-examination for defendants 1 and 2, she asserted that the mental condition of her mother-in-law was not good from the time she was taken away from their house.

43. To support her version that Smt.Bandaru Narayanamma was admitted in the University General Hospital, at Mangalagiri for Tuberculosis, on behalf of the plaintiffs, Ex.A55 and Ex.A56 are relied on. Ex.A55 is a certificate issued by University General Hospital, Mangalagiri, dated 16.01.1998. Its contents are that Smt.Bandaru Narayanamma, W/o. Sri Bandaru Chenchiah, a resident of Bandar Bazar, Ponnur, was admitted in their hospital on 04.02.1989 at 11.45 a.m. and absconded on 12.02.1989 at about 6.00 p.m. She was admitted in that hospital under I.P.No.218/89. This certificate was issued to P.W.2, who had applied for it by paying necessary fee under Ex.A56 receipt. Ex.A55 and Ex.A56 bear the signature of the Superintendent, University General Hospital, Mangalagiri and the official seal. Ex.A56 is a regular printed receipt issued by the hospital. The contents of Ex.A55 and Ex.A56 support the version of P.W.2 in respect of her admission in the hospital at Mangalagiri. Period of her treatment in the above hospital is also relevant. It was in between 04.02.1989 and 12.02.1989. Ex.B1 is dated 03.03.1989. However, when the period of treatment Smt.Bandaru Narayanamma had in that hospital is considered, it was long after execution of Ex.A1 and Ex.A2.

44. Ex.B1 also refers to her sickness. The alleged purpose for which the property was being sold, as referred to above, was to meet her medical expenses including for her maintainance. Cumulative effect of all these circumstances did indicate that Smt.Bandaru Narayanamma was not



maintaining good health, possibly by the date of execution of Ex.B1. A reference can also be made in this context to contents of Ex.B3 Will, where there is a reference to her illness as the purported reason for its execution (the recitals in Ex.B3 in this context are considered only for the purpose of probability about health condition of Smt.Bandaru Narayanamma, by the date of Ex.B1).

45. As seen from cross-examination of P.W.1 and P.W.2 on behalf of defendants 1 and 2, not even a suggestion was made to the effect that Smt.Bandaru Narayanamma was hale and healthy and was mentally and physically fit and in stable condition by the date of Ex.B1 sale deed. Nor any suggestion was made to both these witnesses on their behalf specifically disputing their claim, questioning execution of Ex.B1 sale deed on such grounds.

46. However, learned trial Judge considered the testimony on record and one of the observations in the judgment under appeal is that the ailment so projected by the plaintiffs would not disable Smt.Bandaru Narayanamma to execute a sale deed. On behalf of defendants 1 and 2, not even a suggestion was put to P.W.1 and P.W.2 to that effect. Learned trial Judge thus recorded an observation without any basis laid by the defendants to question the testimony of P.W.1 and P.W.2 in this context.

47. Thus, on a conspectus consideration of the evidence adduced by the plaintiffs in this regard, possible inference is that Smt.Bandaru Narayanamma was sick by the date of Ex.B1.

48. The best person or witness to dispel any doubt in respect of her sickness would be the second defendant. When plaintiffs has specifically attributed so much against him and also to his wife that they took away



Smt.Bandaru Narayanamma in stealth from them, he should have deposed at the trial denying the version of the plaintiffs. He remained silent. His version in the written statement that Smt.Bandaru Narayanamma lived with him always and never stayed in the house of the plaintiffs on account of quarrelsome nature of P.W.2 is not supported by evidence on his behalf. Interestingly, the second defendant did not choose to specifically deny the version of the plaintiffs that Smt.Bandaru Narayanamma was taken away by him in or about February 1989, which they specifically alleged in the plaint. There is no evidence at all from the defendants contra to such version presented by P.W.1 and P.W.2.

49. The first defendant examined as D.W.1 was not in a position to depose in respect of these circumstances. However, in respect of her condition or otherwise of Smt.Bandaru Narayanamma, though there was possibility for the first defendant to depose, his testimony is silent completely in this respect. He claimed to be tenant of his vendor, i.e., Smt.Bandaru Narayanamma running a fancy shop in one of the shop rooms belonging to her, before execution of Ex.B1. He did not depose that his vendor was hale and healthy and in an active state or frame of mind, by the date of Ex.B1 sale deed.

50. One of the strong circumstances relied on for the plaintiffs to question Ex.B1 sale deed is with reference to an alleged prior contract of sale under an agreement and passing of sale consideration there under. Non-examination of second defendant as a witness in this case too, has a significant impact in respect of proof of Ex.B1. Mere production of Ex.B1 itself is not sufficient. He cannot rely on its recitals alone. Ex.B1 and the circumstances surrounding this transaction of sale should necessarily be proved by the first defendant. It is his burden. He cannot rely on latches



or lapses on the part of the plaintiffs, in their attempt to question the nature of the sale.

51. The evidence on record makes out that P.W.2 got issued Ex.A12 notice dated 07.03.1989 to the first defendant on behalf of her minor children informing that Smt.Bandaru Narayanamma had executed gift deeds in respect of half of her properties in favour of her minor children and that Smt.Bandaru Narayanamma was suffering from diabetes etc., who was in an unstable state of mind, who was not in a position to act on her own. Taking advantage of those circumstances, it is stated in Ex.A12 that D1 and D2 in collusion obtained a sale deed in respect of her properties including a part of properties given away by her to the plaintiffs 2 and 3. Thus, it was stated in this notice that Smt.Bandaru Narayanamma was cheated by defendants 1 and 2 and by mis-representation such document was obtained and which was fabricated, that did not affect right and interest of plaintiffs 2 and 3. This notice under Ex.A12 was served on the first defendant as seen from Ex.A13 - postal acknowledgment.

52. A reply was issued to Ex.A12 in Ex.A57 dt.24.03.1989 on behalf of the first defendant denying its contents. There is a reference in Ex.A57 to a contract for sale dated 24.03.1988, under which the first defendant claimed to have had purchased the property covered by Ex.B1 in Ex.A57 (in the judgment under appeal there is a reference to Ex.A57 as an agreement more than once. It is not correct. No agreement for sale with reference to Ex.B1 transaction was produced at the trial on behalf of the first defendant. Ex.A57 is only a reply notice issued to Ex.A12 notice). The first defendant also averred in his written statement of the same. However, the first defendant as D.W.1 clearly deposed that there was no written or oral agreement. Thus, the contents of Ex.A57 notice and his stand in the written statement in respect of such an agreement for sale are not



supported by the first defendant in his testimony, making out a complete departure and as a divergent circumstance.

53. Further, in his evidence the first defendant as D.W.1 stated that he paid the entire sale consideration in the presence of the Sub-Registrar at the time of registration of Ex.B1 sale deed. He also deposed that the Sub-Registrar made the payment endorsement on Ex.B1. But, there is no such endorsement of the Sub-Registrar on Ex.B1.

54. However, D.W.3, who scribed Ex.B1 deposed that the sale consideration under Ex.B1 was given outside the office of Sub-Registrar. He could not give the names of attestors, who were present at the time of execution of Ex.B1. He could not give the extent of the property covered by Ex.B1 in his deposition. Though he claimed in his examination in chief that he obtained the thumb impression of executant on Ex.B1 and that he got it registered, it is clear from his cross-examination that he was not in a position to give details of the entire transaction. He also deposed that he had read out contents of Ex.B1, obtained thumb impressions of the executants thereon and thereafter, she was paid consideration.

55. When this testimony of D.W.3 and that of D.W.1 are considered together, it is manifest that there are serious discrepancies relating to passing of consideration during that transaction. As already stated Ex.B1 did not bear any endorsement of the Sub-Registrar that the sale consideration there under was paid to the vendor in his presence. It is further to be noted as deposed by D.W.3 that Ex.B1 did not refer to prior sale agreement or contract for sale. Thus, the prime document in the nature of Ex.B1, suffers from such inconsistencies and contradictions presented by the version of the first defendant himself at different stages, viz., Ex.A57 reply notice, contents of written statement, contents of Ex.B1,



his testimony as D.W.1 and testimony of D.W.3. In these circumstances, the role of second defendant assumed greater importance, who apparently had withheld himself to figure out as a witness for the reasons best known.

56. The first defendant could have examined at least another attester to Ex.B1 to support his version. Particularly finding the nature of deposition of D.W.3 - the scribe of Ex.B1, who presented an inconsistent version, examination of another attester assumed importance.

57. The cumulative effect of all these factors and circumstances as rightly contended for the plaintiffs, arise any amount of doubt to hold that no proof is offered by the first defendant in respect of this sale of a part of the plaint schedule property and if there is proof with reference to transfer of right, title and interest to the first defendant there under.

58. Learned trial Judge took into consideration absence of reference to contract for sale or an agreement prior to Ex.B1 and held that it did not bear significance. It was further observed in this context referring to **SIDDIREDDY SATYANARAYANA v. K.PAPARAO**¹ that non-payment of consideration cannot be a factor to affect the validity of a sale deed and with reference to passing of title from vendor to vendee. Having regard to the recitals in Ex.B1, learned trial Judge observed that they clearly revealed that the executant had intended to pass on the title to the first defendant thereunder to the property covered by it. This reason is hard to support and accept. Necessary evidence should be produced to prove Ex.B1 sale deed and that right, title and interest to the property covered by it passed on to the first defendant from the vendor, viz., Smt.Bandaru Narayanamma effectively. The evidence let in by the first defendant in this context suffers enormous deficit. Further, his contradictory and

¹ 1997 (6) ALD 247



inconsistent version at the trial as D.W.1 cannot inspire confidence to rest any belief in his version. It is interesting to note that a clear finding is recorded by learned trial Judge against the first defendant in Paragraph 34 holding that the evidence of D.W.1 cannot be trusted. In spite of it, learned trial Judge upheld Ex.B1 in his favour. The inference drawn now to suspect the testimony of D.W.1, also draw support from the observation of learned trial Judge, referred to above. The first defendant did not contest this appeal and question the findings so recorded against him in the judgment of the trial Court.

59. Except Ex.B1 and his interested testimony, the first defendant did not produce any proof that the property covered by Ex.B1 was delivered in his possession by his vendor. He categorically admitted in cross-examination for the plaintiffs that he did not pay any property tax to this property and that it remained vacant. He also stated in cross-examination that except Ex.B1, he did not have any document to show his possession of this property. It is another circumstance that stands against him to support the inference drawn above.

60. Thus, differing with the observations and findings of learned trial Judge, on reconsideration and re-evaluation of evidence and material on record, it has to be held that Ex.B1 sale deed is not proved by the first defendant and that there is no proof of transfer of right, title and interest in respect of the property covered by it in his favour from his vendor. The plaintiffs are right in contending likewise questioning Ex.B1. Thus, this point is answered in favour of the plaintiffs and against D1.

61. **POINT No.3:** Learned trial Judge framed an issue in respect of true, valid and binding nature of Ex.B3 Will in the course of preparation of the judgment. Learned counsel for the third defendant contended that in view



of framing an additional issue regarding nature of Ex.B3 Will, in such manner parties were not given an opportunity to lead evidence and canvass their case in relation thereto.

62. However, as seen from the pleadings as well as the evidence particularly that of D.W.3 and D.W.4, necessary evidence was let in at the trial including on behalf of the plaintiffs in relation thereto, basing on the pleadings. Thus, they were aware of necessity to meet such question relating to nature of Ex.B3. Framing an issue, thus, in the course of preparation of judgment, in my considered opinion did not cause any prejudice to the parties. Therefore, the contention of learned counsel for third defendant in this context stands rejected. Even otherwise, filing cross-objections by the second defendant in the appeal questioning the findings against him, when he himself did not choose to let in any evidence in support of his pleadings in the written statement, did not augur well. This omission has a fatal bearing to the case of the defendants, which is being referred to in this judgment often.

63. The second defendant has set up Ex.B3 Will dated 25.01.1988 in his written statement contending that Smt.Bandaru Narayanamma had created such bequest in respect of half share in her entire property in his favour in a sound and disposing state of mind. The burden is squarely on the second defendant to establish this fact and also to dispel all such circumstances raising suspicion surrounding its execution. Particularly when the plaintiffs have chosen to deny execution of Ex.B3 Will by Smt.Bandaru Narayanamma, it is all the more necessary for him to prove such fact.

64. The second defendant did not choose to examine himself in support of this plea in his written statement. It is a vital and fatal omission to affect his defence. When the propounder of the Will himself did not



choose to examine himself and had kept himself away from the process of trial, a serious adverse inference has to be drawn against him. However, the third defendant, who claimed to be the purchaser of item I of the shop room during pendency of the suit under Ex.B2 sale deed dated 19.07.1995, had taken upon himself to produce Ex.B3. Serious objection was taken at the trial, of competence of D.W.2 to produce Ex.B3. However, the third defendant tried to explain that it was given to him by his vendor. If the second defendant had entered witness box and had deposed such fact of handing over Ex.B3 to D.W.2, his version at the trial could be accepted. Except the interested testimony of D.W.2, there is no supporting evidence to subscribe that he received Ex.B3 from the second defendant.

65. Learned trial Judge rejected the version of the third defendant basing on Ex.B2 sale holding that it is hit by Section 52 of Transfer of Property Act as a lis pendence and also rejected the written statement filed on his behalf on the premise that there was violation of Rule 22 of Civil Rules of Practice. When a party filed a written statement, the trial Court could not have rejected its reception, merely because it did not bear the signatures of the third defendant and since, it had only the signatures of his advocate.

66. The trial Court could have been more gracious by giving an opportunity to the learned counsel for the third defendant to get his signatures on written statement or a fresh copy of the written statement with the signatures of D3 could have been permitted to be presented. Resorting to such undesirable practice by learned trial Judge, has to be considered with certain amount of displeasure and disdain. When there should be a fair trial, it is but necessary to afford an opportunity to the parties particularly when failure to obtain signatures on written statement, in many situations would be on account of sheer accident and not by



intent. Observation so recorded by learned trial Judge in paragraphs 44 and 45 in the judgment under appeal should be rejected outright. Nonetheless and yet learned trial Judge did consider the pleadings in the written statement of the third defendant in the judgment under appeal in paragraph-6.

67. The third defendant examined as D.W.2 cannot be a competent witness to prove Ex.B3. D.W.4 claimed as an attester to Ex.B3. He further stated that one Sri Munagala Rama Rao, brother-in-law of Smt.Bandaru Narayanamma, also figured as another witness to this Will. He deposed that he was present when Smt.Bandaru Narayanamma executed Ex.B3 Will in favour of the second defendant and identified his signature in Ex.B3. He also deposed that she affixed her thumb impression in his presence and she saw him attesting this Will. He and Sri Munagala Rama Rao appeared as identifying witnesses before the Sub-Registrar when Ex.B3 was registered, identifying the testatrix.

68. In cross-examination for the plaintiffs, D.W.4 stated that he had known Smt.Bandaru Narayanamma as a resident of their locality. According to him, she along with Sri Munagala Rama Rao came to the Registrar Office and that Ex.B3 was written in the premises of Sub-Registrar's Office. He further deposed that there was no document referred during that time and a draft of the Will was not prepared. He further deposed that Smt.Bandaru Narayanamma had also called one Sri Bavireddy Ankarao.

69. As seen from the contents of Ex.B3, Sri Bavireddy Ankarao is one of the attestors. Sri Munagala Rama Rao did not figure as an attester to Ex.B3. D.W.4 further deposed that Smt.Bandaru Narayanamma, himself,



Sri Munagala Rama Rao and the second defendant went to the Registrar Office.

70. D.W.3 is the scribe of Ex.B3. It appears that D.W.3 is a regular scribe of all the documents, where ever the second defendant has interest. His testimony reflects that he scribed Ex.B1 to Ex.B3, Ex.B5 and Ex.B25. It shows the affinity he has to the individuals concerned to these transactions and particularly to the second defendant, who is associated with all these documents in one way or other.

71. D.W.3 deposed that the testatrix gave instructions to him to write Ex.B3 who was hale and healthy then. He also deposed that he got the thumb impression affixed on Ex.B3 of the executant and he got it registered. In cross-examination, D.W.3 stated that Ex.B3 was written in his office, which is located opposite to the Sub-Registrar's Office at Ponnur. He claimed that he had known Smt.Bandaru Narayanamma personally. He denied the suggestion for the plaintiffs that Smt.Bandaru Narayanamma has not executed Ex.B3 and that she was bedridden by that time. This witness could not give as to who attested Ex.B3 nor refer to the names of the alleged attestors.

72. Thus, the testimony of D.W.3 did not refer to presence of D.W.4 at the time of the alleged execution of Ex.B3 by Smt.Bandaru Narayanamma or his identity. Nor the testimony of D.W.4 specifically referred that Ex.B3 was scribed by D.W.3. As discussed supra, his evidence reflects that Ex.B3 was prepared at the Sub-Registrar's Office at Ponnur, without referring to the place at which it was exactly scribed or prepared.

73. Thus, D.W.3 and D.W.4 did not present a consistent and acceptable version to the effect that they were associated with the execution of Ex.B3



together. Nor their testimony made out that they identified each other and being parties to the transaction covering Ex.B3. This is a vital circumstance and of significance in the nature of omission to affect the proof of Ex.B3.

74. Learned trial Judge relied on the observations in **KARRI NOOKARAJU v. PUTHA VENKATA RAO AND OTHERS**² with reference to effect of Section 68 of Evidence Act read with Section 63(c) of Indian Succession Act, in proof of a Will. The relevant observations are in Paragraph 49 of the judgment of the trial Court. They are extracted hereunder:

“It is clear from Section 68 of the Evidence Act read with Section 63(c) of Succession Act that it is sufficient even if one attesor is examined. But that attesor should speak not only about the testor’s signature or affixing his mark to the Will or somebody else signing it in his presence and by his direction or that he had attested the Will after taking acknowledgment from the testator of the signature or mark, but he must also speak that each of the witnesses had signed the Will in the presence of the testator.”

75. As rightly observed in the judgment under appeal, attestation in terms of Section 63 of Indian Succession Act, is not proved in this case. D.W.4 did not depose to the effect that he saw another attesor Sri Bavireddy Anka Rao attesting Ex.B3 Will in the presence of the executant Smt.Bandaru Narayanamma, upon her acknowledgment of its contents as well as acceptance and to signify that he attested, knowing the contents of Ex.B3 from the testatrix herself.

76. Therefore, cumulative effect of the deficiencies pointed out above in respect of proof of Ex.B3 Will including failure of the second defendant to support his plea in this respect in his written statement, leads to infer

² AIR 1974 AP Page 13



that Ex.B3 is not proved and established. Strenuous contentions advanced on behalf of the third defendant, in the above circumstances cannot have any bearing, except to reject. Thus, the contention of the plaintiffs is accepted. Thus, this point is answered in favour of the plaintiffs and against the defendants.

77. **POINT No.4:** It is the specific contention of the plaintiffs in the plaint that the defendant No.1 came upon the suit site on 29.07.1989 at about 8.00 a.m. along with several others and damaged the property by pulling down the roof of the thatched portion of the house and demolished the brick walls. The first defendant denied the same in his written statement. However, the second defendant is silent in this respect.

78. P.W.1 deposed that the first defendant removed their thatched house highhandedly and in support of it, he produced Ex.A3 to Ex.A5 photographs as well as their corresponding negatives being Ex.A6 to Ex.A8 respectively. He also claimed that he gave a report under the original of Ex.A9 to the police in this respect. This part of testimony of P.W.1 was not subjected to any cross-examination on behalf of the defendants 1 and 2 and not even a suggestion was put to him denying and disputing such occurrence, on behalf of defendants 1 and 2. P.W.2 also deposed about presenting a complaint by D.W.1 to the police regarding trespass to their property and causing damage to it under Ex.A11. However, the testimony of P.W.1 and P.W.2 is not specific in terms as to extent of damage caused to their property on account of such alleged highhanded act of the first defendant nor any proof was adduced at the trial with reference to value of the property so damaged.

79. The incident as such of attempting to meddle with the property by defendant No.1 is proved from his testimony as D.W.1. He clearly stated in



his examination-in-chief that he removed thatched shed and when he was removing the same, P.Ws.1 and 2 obstructed. In cross-examination for the plaintiffs, he further stated that he went to the above thatched house four days after execution of Ex.B1. He admitted that a police report was given against him in respect of this incident while denying that he is liable to pay Rs.3,000/- towards damages for removing the shed.

80. Learned trial Judge basing on the material and particularly considering that the first defendant himself admitted that he went to the thatched shed and tried to remove it, arrived at Rs.1500/- being the value of the damages suffered by the plaintiffs. In this context, learned trial Judge also took into consideration Ex.C1 and Ex.C2 and the interim report submitted by learned Commissioner appointed in I.A.No.772 of 1989 in the suit. It was only an interim report that was marked on behalf of the party by consent along with a plan in Ex.C2. The observations of learned Commissioner pointed out the collapsed portion of the property in the suit site including the brick walls. Learned Commissioner recorded specific observations pointing them out in Ex.C2 plan. Rightly they were taken into consideration by learned trial Judge.

81. Learned trial Judge also took into consideration the Commissioner report and the plan, which are part of the record in O.S.No.50 of 1986 in this context.

82. Thus, on appraisal of material, the extent of damages was arrived at. The reasons assigned by learned trial Judge in this respect while discussing issue No.4 in Para - 40 of the judgment under appeal are apt and proper. There is no reason to enhance it to Rs.3,000/- or to reject such claim.



83. The findings thus recorded are confirmed on reappraisal and accordingly, this point is answered.

84. **POINT No.5:** In view of the findings on points 1, 2 and 3, it is proved and established that the plaintiffs and P.W.2 were living in the suit property. Though it belonged to Smt.Bandaru Narayanamma, she gave away the considerable extent out of it to the plaintiffs 2 and 3 under Ex.A1, Ex.A2 and Ex.A58. The first defendant failed to make out Ex.B1 sale in his favour attributed to Smt.Bandaru Narayanamma and failed to establish that there was a valid transfer of right, title and interest in respect of the property covered by it in his favour. Therefore, this sale deed is not binding on the plaintiffs and their claim to the suit property is not affected thereby. To this extent, the declaration requested by the plaintiffs has to be granted.

85. Possession of the property is also established from the material on record, by the date of the suit. Reasons are assigned in this context while discussing point No.1 supra including with reference to admissions of D.W.2, which are categorically supporting the version of the plaintiffs in this respect. The property as such, was in possession of the plaintiffs by the date of filing the suit. A circumstance of significance in this context to consider is awarding damages by the learned trial Judge. They were so awarded considering that the property in possession of the plaintiffs was interfered with by the first defendant and his men.

86. When all these factors are considered together and basing on material, the inference to draw is that the plaintiffs are entitled for a permanent injunction against the defendants 1 and 2 restraining them from interfering with possession of items 4, 5, 6 and 9 of the plaint schedule properties, as described in the plaint plan. It is desirable to add a rider in



this context that the plaintiffs should not be dispossessed from the suit site without due process of law. It is necessary to add this rider in view of the effect of the findings so far recorded favouring the plaintiffs and particularly with reference to their claim to the property left behind by Smt.Bandaru Narayanamma on her death. Thus, this point is answered in favour of the plaintiffs and against the defendants.

87. **POINT No.6:** It is an established fact that at the death of Smt.Bandaru Narayanamma, items I and the western part of item II shown as BIJD in the plaint plan along with item VI & IX shown in the plaint plan were available for partition. Except the first plaintiff and second defendant, as per the material on record, none is entitled for these properties. Therefore, they are entitled for equal halves there in. Thus, division of the properties by metes and bounds has to be ordered as requested by the plaintiffs. The second defendant is entitled for a half share out of such estate of Smt.Bandaru Narayanamma. Any proceedings to be initiated by him for division by metes and bounds in furtherance to this decree, as final decree proceedings and consequent delivery of possession of his share shall not be affected by relief of permanent injunction granted to the plaintiffs. He can as well claim possession of such share allotable/alloted to him in the ensuing final decree proceedings and the relief of permanent injunction so granted does not come in the way of such proceedings or affect them in any manner, since the remedy to pursue is through process of law. Thus, this point is answered.

88. **POINT No.7:** The judgment under appeal suffers from many contradictions and evidence on record has not been properly appreciated. Therefore, to the extent of the claim of the plaintiffs, as was rejected by the judgment of the trial Court, the appeal should be allowed. The appeal preferred by third defendant as well as his cross-objections shall be



dismissed. Since the first defendant resorted highhanded act in meddling with the property and that had driven the plaintiffs to approach the Court for appropriate relief and in which act, the second defendant also joined in collusion, it is desirable to direct the defendants to pay costs to the plaintiffs throughout directing that they shall suffer their own costs. The third defendant is also liable to pay costs to the plaintiffs, who had purchased the property pending litigation knowing well about pendency of the dispute and he shall be directed to suffer his own costs.

89. **POINT No.8:** In the result, A.S.No.1541 of 1998 is allowed setting aside that part of the decree and judgment in O.S.No.79 of 1989, which went against the appellants (plaintiffs). Consequently, the suit is decreed declaring that sale deed dated 03.03.1989 standing in favour of the first defendant is unenforceable and is not binding on the plaintiffs, that defendants 1 and 2 are restrained by way of permanent injunction from interfering with peaceful possession and enjoyment of items 4, 5, 6 and 9 of the properties described in the plaint plan, which are part of the suit property described in the plaint schedule, that there shall be partition and division of items I, part of item II shown as VIJD in the plaint plan, items VI and IX shown in the plaint plan as OPQR and VWXY respectively, into two equal half shares, and that the first plaintiff and the second defendant are entitled for each half out of such two shares.

90. Accordingly, a preliminary decree is passed and the first plaintiff and the second defendant are entitled to apply for final decree pursuant to this preliminary decree.

91. The decree and judgment of the trial Court in awarding damages of Rs.1500/- stand confirmed. The defendants 1 to 3 shall pay costs to the plaintiffs throughout and shall suffer their own costs.



92. Consequently, A.S.No.1555 of 1998 is dismissed and order as to costs in this appeal shall abide by the terms awarding costs in A.S.No.1541 of 1998. Similarly, cross-objections in A.S.No.1555 of 1998 stand dismissed and award of costs shall abide by the terms awarding costs in A.S.No.1541 of 1998. Interim orders, if any, stand vacated. All pending petitions, stand closed.

M. VENKATA RAMANA, J

Dt:26.05.2020

Note:

Judgment is pronounced through Blue Jeans (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.Nos.1541 and 1555 of 1998 and Cross-objections in A.S.No.1555 of 1998

Date: 26.05.2020

Rns