

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**  
**HONOURABLE SRI JUSTICE M. VENKATA RAMANA**  
**SECOND APPEAL No.1453 of 2018**

Between:

Gogineni Danunjaya, S/o.late Ankaiah

... APPELLANT

AND

Gogineni Anusha, W/o. Gogineni Sunil

... RESPONDENT

DATE OF JUDGMENT PRONOUNCED :04.09.2020

SUBMITTED FOR APPROVAL

**HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

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

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M.VENKATA RAMANA, J

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

**\*HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

**+ S.A.No.1453 of 2018**

**% Dated : 04.09.2020**

**Between:**

**# Gogineni Danunjaya**

**... APPELLANT**

**AND**

**\$ Gogineni Anusha**

**... RESPONDENT**

**! Counsel for appellant : Mr. N.Sai Phanindra Kumar**

**^Counsel for Respondent : Mr.M.Chalapathi Rao**

**<GIST :**

**>HEAD NOTE:**

**? Cases referred:**

1. AIR 2019 SC 3027
2. 2001(3) ALT 439
3. ALR 2013 KERALA 30
4. 2019 (5) ALT 99(SC)
5. 2019(5) ALD 36 (AP)
6. AIR 1989 SC 1809
7. (2001) 3 SCC 179
8. 2018(4) SCC 562
9. 2013(5) ALD 711
- 10.2017(2) ALD 733
11. (2012) 2 ALD 659
12. 1996(2) LW 600(Madras High Court)
13. AIR 1951 SC 280
14. 2012(3) ALD 404
15. 2012(2) ALT 57
16. 2017(4) ALD 12
17. 2012(1) ALD 90(SC)
18. 2013(3) ALT 467
19. (2014) 9 SCC 445
20. (1997) 2 SCC 636
21. AIR 2007 AP 50
22. AIR 2016 SC 2250

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**M.VENKATA RAMANA, J**

**HON'BLE SRI JUSTICE M. VENKATA RAMANA**  
**SECOND APPEAL No.1453 of 2018**

**JUDGMENT:**

This second appeal is directed against the decree and judgment in A.S.No.71 of 2015 dated 25.06.2018 on the file of the Court of learned XI Additional District Judge, Guntur, at Tenali. It was in turn preferred against the decree and judgment in O.S.No.44 of 2011 dated 16.09.2015 on the file of the Court of learned Additional Senior Civil Judge, Tenali.

2. The defendant is the appellant. The plaintiff is the respondent.

3. Smt.Gogineni Rayamma is the mother of the appellant. Smt.Paturi Nirmala was the daughter of Smt.Gogineni Rayamma. She died about 23 years prior to the institution of the suit. The respondent is her only daughter. Thus, she is the grand-daughter of Smt.Gogineni Rayamma and the niece of the appellant. The respondent was brought up by Smt.Gogineni Rayamma from the time her mother passed away and when she was 1½ years old. Smt.Gogineni Rayamma performed her marriage also. Sri Suneel (P.W.2) is the husband of the respondent. While Smt.Gogineni Rayamma and the appellant have been the residents of Pedaravuru village of Tenali Revenue Mandal, the respondent and her husband have been residing at Gudivada of Tenali Revenue Mandal.

4. Smt.Gogineni Rayamma was the owner and title holder of items 1 to 3 of plaint schedule properties. Item - 1 is a R.C.C. building in an open site of 217-8-1 square yards in Door Number 352/2 of Pedaravuru village. Item - 2 of plaint schedule is an open site of 170.2 square yards at Pedaravuru village. While item - 3 is Ac.0.46 cents of wet land in D.No.72/B of Pedaravuru village. These properties shall be referred to hereinafter as 'the suit properties' for convenience.

5. It is the case of the respondent that Smt.Gogineni Rayamma gifted away the suit properties to her under a registered gift deed dated 09.06.2010 out of love and affection, free will and voluntarily in her favour conferring absolute rights, that this gift was acted upon and that Smt.Gogineni Rayamma had delivered possession of these suit properties to her on the same day. Thus, according to the respondent, she continued to be in possession and enjoyment of these properties till she was dispossessed by the appellant therefrom.

6. It is the further case of the respondent that on behalf of Smt.Gogineni Rayamma, a registered notice dated 21.08.2020 was issued purportedly from the office of Sri Gaddipati Rambabu, advocate, Tenali, alleging that she had revoked the afore stated gift deed by a registered revocation deed dated 28.10.2010 on the premise that it was obtained from her, playing fraud and that on the same day, Smt.Gogineni Rayamma had executed a registered gift deed in favour of the appellant conferring the suit properties. These allegations are all false and concocted according to the respondent. She further claimed that she never played any kind of fraud nor prevailed upon Smt.Gogineni Rayamma in getting the suit properties gifted in her favour and hence, she got issued a reply to the above notice through her advocate. It is the further case of the respondent that the appellant prevailed upon Smt.Gogineni Rayamma to get the revocation deed as well as the gift deed executed on 20.08.2010, having had developed grudge against her. She further alleged that on 28.11.2010, the appellant had got the standing paddy crop harvested from item No.3 of the suit properties, though the crop was raised by her highhandedly and illegally and also occupied items 1 and 2 of the suit properties highhandedly without any manner of right. Her further case is that her attempts to present

complaints to the police and the Tahsildar, Tenali, did not yield any result and since the wife of the appellant was then MPTC of their place on account of such influence, items 1 and 2 of the suit properties could not be mutated in her favour nor she could pay property tax therefor.

7. Therefore, in the above circumstances, according to the respondent, she was constrained to lay the suit against the appellant. The following reliefs were sought, as seen from her plaint against the appellant:

- “1. for recovery of the possession of the suit properties from the appellant and hand over the same to the respondent;
2. for permanent injunction restraining the appellant and his men from in any way interfering with the respondent’s peaceful possession and enjoyment of the suit properties after she is put in possession of the same;
3. for recovery of damages of Rs.20,000/- from the appellant towards paddy crop cut and carried away by him on 28.11.2010;
4. to award mesne profits from the date of the suit till the date when the respondent is put in possession of the suit properties.”

8. The appellant resisted the claim of the respondent denying the case set up by her against him. The specific contention of the appellant is that his mother Smt.Gogineni Rayamma was old and suffered a fracture to her right leg due to fall, for which he got her treated in the hospital of one doctor Anil Kumar, at Tenali as an in-patient from 03.02.2010 to the last week of March 2010. His further case is that thereafter, his mother was brought to their village Pedaravuru and

during that time, the respondent offering to take care of Smt.Gogineni Rayamma, at Gudivada village, prevailed on Smt.Gogineni Rayamma as well as the appellant, made them believe the purpose for which she was to be taken to Gudivada and thus, the respondent had taken Smt.Gogineni Rayamma to her house. It is further case of the appellant that when Smt.Gogineni Rayamma was staying with the respondent, she and her husband on the pretext of getting her treated at Tenali by a doctor brought her to Tenali, got her thumb impressions affixed on some papers inspite of protest by Smt.Gogineni Rayamma and that after some time, the respondent revealed to Smt.Gogineni Rayamma that she executed a gift deed in respect of the suit properties in his favour, which Smt.Gogineni Rayamma questioned.

9. It is the further case of the appellant that when Smt.Gogineni Rayamma started pestering the respondent raising hue and cry, the appellant was sent for to Gudivada and that he had brought his mother to his house at Pedaravuru, where Smt.Gogineni Rayamma informed him about the registered gift deed in favour of the respondent, while expressing her desire to cancel the same as well as to execute a fresh gift deed in respect of the suit properties in his favour. Accordingly, it is the case of the appellant that a cancellation deed was executed by her as well as a gift deed in favour of the appellant on 20.08.2010 in respect of the suit properties.

10. It is the further case of the appellant that Smt.Gogineni Rayamma got issued a legal notice dated 21.08.2010 to the respondent stating that she had executed the cancellation deed as well as the gift deed in favour of the appellant with reference to the suit properties and that the gift deed dated 09.06.2010 stood in the name of the respondent was got cancelled by her. It is the further case of the appellant that he was

in possession and enjoyment of the suit properties even during life time of Smt.Gogineni Rayamma and by virtue of the gift deed executed on 20.08.2010, he began to enjoy these properties peacefully as an owner. It is further case of the appellant that Smt.Gogineni Rayamma did all these acts on her own, and also filed caveat petitions against the respondent.

11. The appellant denied of highhandedly carrying away the standing paddy crop from item - 3 of the suit properties or with reference to alleged highhanded occupation of items 1 and 2 of the suit properties. He alleged that the husband of the respondent is a well versed litigant and that the registered gift deed dated 09.06.2010 in the name of the respondent was not properly attested nor registered nor was it executed by Smt.Gogineni Rayamma voluntarily and out of free will and that it was got registered on misrepresentation, playing fraud on her and by coercion. The appellant also questioned the nature of the relief sought in the suit contending that the respondent should have sought relief of declaration of her title, in as much as a cloud is cast on the alleged title set up by the respondent, before seeking possession of the suit properties.

12. On the pleadings of the nature stated above with reference to the case set up by the parties, learned trial Judge settled the following issues for trial:

1. Whether the gift deed dated 09.06.2010 is true, valid, executed by Smt.Gogineni Rayamma voluntarily?
2. Whether the gift deed dated 20.08.2010 in favour of defendant is true, valid and executed by Smt.Gogineni Rayamma and binding on the plaintiff?

3. Whether the defendant came into possession of plaint schedule property by virtue of the gift deed dated 20.08.2010?
4. Whether this suit is not maintainable without seeking relief of declaration?
5. Whether the plaintiff is entitled to possession of the plaint schedule property?
6. Whether the plaintiff is entitled to permanent injunction as prayed for?
7. Whether the plaintiff is entitled for damages of Rs.20,000/- claimed by her?
8. Whether the plaintiff is entitled for future mesne profits?
9. To what relief?

13. At the trial, the respondent examined herself as P.W.1, her husband as P.W.2, P.W.3 being one of the attestors to Ex.A1 gift deed dated 09.06.2010 as well as Ex.A9 - a registered will, P.W.5 being the scribe of Ex.A1 and further examined P.W.4, P.W.6 and P.W.7 in proof of her case as to visit of Smt.Gogineni Rayamma to her house as well as delivery of possession of the suit properties in her favour and their enjoyment. She relied on Ex.A1 to Ex.A16 at the trial. The appellant examined himself as D.W.1 while relying on the testimony of D.W.2 to D.W.5 and Ex.B1 to Ex.B26 in support of his contention.

14. Basing on the material, learned trial Judge accepted the case set up by the respondent, mainly holding that by virtue of Ex.A1 gift deed dated 09.06.2010, Smt.Gogineni Rayamma had divested herself of the right, title and interest to the suit properties, which she transferred by this gift deed in favour of the respondent and that it was acted upon. Further holding that in view of this gift in favour of the respondent, Smt.Gogineni Rayamma had no right to execute either Ex.B1 revocation



deed or Ex.B2 gift deed dated 20.08.2010 with reference to the suit properties in favour of the appellant, learned trial Judge also held that possession of the suit properties was delivered under Ex.A1 gift deed to the respondent by Smt.Gogineni Rayamma - the donor, who continued to be in possession and enjoyment of the suit properties and that the appellant had highhandedly dispossessed her therefrom without any manner of right. Thus observing, the case of the respondent was accepted, while holding that the respondent did not prove the actual damages suffered by her to an extent of Rs.20,000/- as claimed by her on account of harvest of paddy crop from item-3. Thus, except in respect of issue No.7, all other issues stood answered in favour of the respondent by the learned trial Judge and against the appellant.

15. The appellant, aggrieved thereby preferred, A.S.No.71 of 2015 and whereas the respondent also preferred A.S.No.80 of 2015 questioning the findings recorded on issue No.7 against her. Learned appellate Judge by common judgment in both these appeals dated 25.06.2018, accepting the case set up by the respondent, concurring with the findings so recorded by the learned trial Judge, dismissed the appeal of the appellant, while allowing the appeal preferred by the respondent in part directing that the appellant should pay a damages of Rs.5,000/- to the respondent, on account of the alleged act of cutting and carrying away the standing paddy crop from item - 3 of the suit properties.

16. In this second appeal, Sri N.Sai Phanindra Kumar, learned counsel for the appellant and Sri M.Chalapathi Rao, learned counsel for the respondent, presented their respective arguments. Since both the learned counsel agreed, this second appeal is being disposed off on merits, including with reference to application of Section 100 CPC now.

17. Sri N.Sai Phanindra Kumar, learned counsel for the appellant assailed the findings recorded by learned trial Judge as well as the first appellate Court mainly on the ground that both the courts were carried away by Ex.A1 Gift Deed, to hold that it made out an imperative necessity to accept the contention of the respondent that the suit properties were absolutely conveyed to her transferring right, title and interest, by Smt.Gogineni Rayamma, though there is no acceptable proof as such, with reference to delivery of possession of the suit properties thereunder. Even otherwise, according to learned counsel for the appellant, whatever evidence let-in by the respondent in this context is not on sound foundation, which is liable to be rejected. While elaborating with reference to the evidence on record, particularly questioning the execution of Ex.A1 by Smt.Gogineni Rayamma, which the respondent sought to establish by means of highly interested testimony of her husband, viz., P.W.2 and their close associate P.W.3 who was the clerk of P.W.2, contentions are advanced to reject the oral testimony of other witnesses.

18. While referring to the proof offered as to holding possession of these suit properties by the respondent, particularly Ex.A8 cist receipt, it is contended that when it is dated 12.06.2010, the claim of the respondent that she paid land revenue for the years 2010-11, is preposterous in as much as there could not have been any payment of cist before hand.

19. Thus pointing out that there is any amount of misreading of evidence and improper appreciation of oral as well as documentary evidence, learned counsel for the appellant contended that the substantial questions of law set out in the grounds of appeal as well as additional substantial questions of law raised on behalf of the appellant

need to be considered in this appeal and a request is made to accept the contention of the appellant setting aside the decrees and judgments of both the Courts below.

20. Sri M.Chalapathi Rao, learned counsel for the respondent strenuously contended that when there is acceptable proof of execution of gift deed by Smt.Gogineni Rayamma under Ex.A1 in favour of the respondent in the presence of the primary evidence in the nature of Ex.A1 itself, which validly transferred the right, title and interest in the suit property in her favour, there cannot be any further proof required. Supporting the findings recorded by both the Courts in respect of holding on possession of the suit properties by the respondent under Ex.A1, learned counsel for the respondent contended that in the presence of contents of Ex.B1 and Ex.B2 relied on for the appellant that refer to Ex.A1 Gift deed, there is definite proof offered by the respondent, of valid execution of Ex.A1 Gift Deed in her favour by Smt.Gogineni Rayamma, which has been acted upon.

21. Referring to the material on record as to possession delivered under Ex.A1 to the respondent by the donor, learned counsel for the respondent further contended that sufficient evidence is placed on record to prove that the appellant had highhandedly dispossessed the respondent from the suit properties, while assailing the evidence relied on by the appellant in support of his contention.

22. Thus, learned counsel for the respondent requested to confirm the decrees and judgments of both the Courts below, while further contending that having regard to the nature of the dispute and findings recorded by learned trial Judge as well as the appellate Judge, application of Section 100 CPC nor framing any question of law as such in

this case, did not arise. Thus, learned counsel for the respondent requested to dismiss this second appeal at the admission stage itself calling for no interference with the decrees and judgments of the both the Courts below.

23. In this second appeal on behalf of the appellant, copies of documents of Ex.A1 in I.A.No.3 of 2018, Ex.A2, Ex.B1 and Ex.B2 in I.A.No.2 of 2018 and Ex.B11 to Ex.B13, Ex.B17, Ex.B18 and Ex.A8 in I.A.No.1 of 2020 are filed by learned counsel for the appellant. No formal objection is raised with reference to these petitions for the respondent and having regard to the purpose for which they are filed, they are required to be allowed with a view to place such material on record. Even otherwise, it has to be stated at this stage that since the paper book filed on behalf of the appellant did not contain all the required documents and the depositions of the witnesses are not in complete shape, the original records have been sent for, from the Courts below and which are now available for consideration in this matter. Therefore, allowing the above petitions did not and cannot in any manner prejudice or affect the interest of the respondent. Hence, all these three petitions stand allowed.

24. In the grounds of appeal, on behalf of the appellant, the following substantial questions of law are raised:

- “1. Whether the findings of the Lower Appellate Court are  
perverse and contrary to law and weight of evidence?
2. Whether the Lower Appellate Court is right in confirming the  
judgment of the trial Court?
3. Whether the Gift is valid in the absence of the handing over  
the possession of the suit schedule property during the  
lifetime of the Donor?

4. Whether the Courts below are justified in decreeing and confirming the suit without appreciating the circumstances under which the alleged gift deed has been executed and whether it can be held valid in the circumstances of the execution?
  5. Whether the Courts below adopted and applied the principle of law that the Court should see that the party who approached the Court should prove his case relying upon his strength but not taking advantage of the lacunae of the defendant?
  6. Whether the lower Appellate Court is justified in holding that the Gift deed executed by the Donor i.e. late Smt.Gogineni Rayamma remains valid and the respondent/plaintiff became the absolute owner of the plaint schedule properties even after the donor revoked the same?
  7. Whether the lower Appellate Court is justified in holding that the Respondent/plaintiff is entitled for recovery of item Nos.1 to 3 of the suit schedule property from the plaintiff without appreciating the well placed evidence of the appellant/defendant?
  8. Whether the lower Appellate Court is right in confirming the judgment of trial Court in regard to the possession of the suit schedule properties by granting permanent injunction in relation to the possession of the suit schedule property?"
25. In the course of hearing and on behalf of the appellant, I.A.No.1 of 2019 was filed raising the following additional substantial questions of law:
1. Whether suit for delivery of possession is maintainable without seeking declaration of title in case where there is serious title dispute?
  2. Whether the suit of possession is maintainable based on revoked Gift-deed without seeking cancellation of revocation deed?

3. Whether the Notice issued by the Donor and caveat filed by her, can be ignored while determining the Validity of Gift-deed?
4. Whether there is valid gift in favour of plaintiff as per Section 126 of Transfer of Property Act?

This petition in I.A.No.1 of 2019 is allowed.

26. In terms of Section 100 CPC, certain questions, which have imperative bearing in considering and deciding a matter, including those based on facts stand attracted. It is not as though at this stage the Court should be carried away by the nature of the concurrent findings recorded by the trial Court and appellate Court including on facts. A duty is cast on the Court in terms of Section 100 CPC, in case of necessity to appraise the material on record afresh and when the interests of justice warrant such situation, when the findings recorded by the Courts below are perverse, absurd, did not base on material evidence or in misreading or due to omission to consider the same.

27. The course to follow in such circumstances and the role when the respondent can have or can be heard, are well explained in the judgment of Hon'ble Supreme Court in **ARULMIGHU NELLUKADAI MARIAMMAN TIRUKKOIL V. TAMILARASI (DEAD) BY LRS.**<sup>1</sup> Nonetheless, having regard to the nature of the dispute in this case and the material on record and considering the manner in which both the Courts below have appreciated the material and recorded the findings, among the questions raised in the grounds of appeal on behalf of the appellant in the considered opinion of this Court, question Nos.5, 6 and question No.3 in the additional question in I.A.N o.1 of 2019 stand pertinent for consideration and determination in this second appeal.

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<sup>1</sup> AIR 2019 SC 3027

28. Reasons shall be assigned infra for preferring these substantial questions of law in this matter, attracting application of Section 100 CPC in given facts and circumstances of the case and particularly having regard to serious contentions advanced on behalf of the respondent against application of Section 100 CPC. This second appeal stands admitted.

29. These three substantial questions of law, which are extracted hereunder, for convenience stand considered now in this judgment together, since the facts and material in relation thereto either admitted or dispute overlap:

- “5. Whether the Courts below adopted and applied the principle of law that the Court should see that the party who approached the Court should prove his case relying upon his strength but not taking advantage of the lacunas of the defendant?
6. Whether the lower Appellate Court is justified in holding that the Gift deed executed by the Donor i.e. late Smt.Gogineni Rayamma remains valid and the respondent/plaintiff became the absolute owner of the plaint schedule properties even after the donor revoked the same?
3. Whether the Notice issued by the Donor and caveat filed by her, can be ignored while determining the Validity of Gift-deed?”

30. Ex.A1 Gift deed dated 09.06.2010, is the foundation of the case set up by the respondent against the appellant. In terms thereof, the suit properties were gifted by Smt.Gogineni Rayamma to the respondent, out of love and affection, since the respondent was brought up by her from the time her mother passed away, about 23 years prior to the date of Ex.A1. Its recitals are further that Smt.Gogineni Rayamma

conferred right, title and interest to the suit properties in favour of the respondent and that possession was delivered to her on the same day, i.e., 09.06.2010. Thus, the recitals of Ex.A1 are that Smt.Gogineni Rayamma divested herself of right, title and interest to the suit properties since then.

31. There are certain admitted facts, which require attention in this context. Smt.Gogineni Rayamma was 73 years old by the date of Ex.A1. She suffered a fracture to her right leg above the ankle. At the time of her visit to item No.1 of the suit properties, viz., the house, according to the appellant, she suffered such fracture. According to the respondent as deposed by her as P.W.1, it occurred on 03.02.2010. She was admitted in the hospital of one doctor Anil Kumar, at Tenali. She was treated as an in-patient in that hospital in between 03.02.2010 and 24.03.2010. After discharge from the hospital, Smt.Gogineni Rayamma returned to Pedaravuru, to the house of the appellant. Evidence on record also makes out that the appellant as well as the respondent attended on her when she was undergoing treatment in that hospital. It is but natural for them to attend on her, in those circumstances.

32. It is also admitted that in or about ten days from the date of discharge from the above hospital, viz. 24.03.2010, Smt.Gogineni Rayamma went to the house of the respondent at Gudivada village from Pedaravuru. However, there is dispute as to whether she was taken by the respondent, coaxing her and the appellant, offering to attend on her or that the appellant himself had left her at the place of the respondent. But the fact remained established is that Smt.Gogineni Rayamma stayed with the respondent during that time. Her stay was for about four months, as the consistent evidence on record makes out.



P.W.1, viz., the respondent herself deposed more than once at the trial that Smt.Gogineni Rayamma was taken back to Pedaravuru from Gudivada on 18.08.2010.

33. It was during her stay at Gudivada, Ex.A1 Gift Deed came into existence on 09.06.2010. It was executed voluntarily, on her own volition by Smt.Gogineni Rayamma, according to the respondent. However, the contention of the appellant is that Smt.Gogineni Rayamma was enticed to accompany the respondent and her husband to Tenali, as if they were taking her for medical treatment and during that time, they obtained thumb impressions of Smt.Gogineni Rayamma on certain documents, by which process, they created Ex.A1. After coming to know from the respondent later that it was Ex.A1 Gift Deed, according to the version of the appellant, she raised hue and cry and unable to bear her remonstrations, since Smt.Gogineni Rayamma went on questioning the respondent in bringing out such document, as seen from the testimony of the appellant as D.W.1, one Sri Subba Rao was sent him, who informed the wife of the appellant that Smt.Gogineni Rayamma was intending to return to Pedaravuru. These circumstances are denied by the respondent. However, the fact established from the evidence on record is that the appellant accompanied by three or four, who according to him, included D.Ws.2 to 5 went to Gudivada on 18.08.2010 and thus, she was brought back to Pedaravuru. It is the version of the appellant that she began to stay in his house from then onwards.

34. At Gudivada, it is the evidence on behalf of the appellant that, when D.W.1 (appellant) and others met Smt.Gogineni Rayamma, she divulged as to the document obtained by the respondent and her husband in respect of the suit properties and which she again revealed upon returning to Pedaravuru, while expressing her desire to cancel

Ex.A1 Gift Deed and to confer these properties on the appellant. Thus, execution of Ex.B1, the deed of cancellation of Ex.A1 Gift Deed and execution of Ex.B2 Gift Deed by Smt.Gogineni Rayamma in favour of the appellant, on the same day, viz. 20.08.2010 are explained by the appellant. During all these events and occasions, the evidence on record makes out that Smt.Gogineni Rayamma was active mentally and physically though she was suffering from pain due to leg injury.

35. The respondent has questioned validity and nature of Ex.B1 and Ex.B2 documents, while asserting that pursuant to Ex.A1, she continued to be in possession and enjoyment of all these three items in the suit property, from which she was dispossessed by the appellant later on highhandedly.

36. Smt.Gogineni Rayamma died on 29.08.2010, i.e. within nine days of execution of Ex.B1 and Ex.B2. It was during the time when she was at Pedaravuru, a legal notice was served on her behalf from the office of one Sri Gaddipati Rambabu, advocate, Tenali, on the respondent. Ex.A2 is this legal notice dated 21.08.2010. That is to say, next day after Ex.B1 and Ex.B2 documents, this legal notice was sent to the respondent. The circumstances under which Ex.A1, as described above was allegedly obtained by the respondent and her husband at Tenali, taking advantage of her disability or inability either due to old age or due to the fracture, are stated in this Ex.A2 legal notice. It further referred to the circumstances under which Smt.Gogineni Rayamma returned to Pedaravuru along with the appellant on 18.08.2010 and that the appellant came to know the above circumstances under which Ex.A1 was obtained, while referring to execution of Ex.B1 and Ex.B2 by her. A reply was sent to this legal notice as per Ex.A3 on 25.08.2010.

37. Significance has to be attached to Ex.A2 notice in as much as it's contents reflect that it was issued on the instructions of Smt.Gogineni Rayamma through her advocate setting out her version surrounding execution of Ex.A1, Ex.B1 and Ex.B2. Further significance has to be attached to the contents of Ex.A3 reply, wherein the claim set out in Ex.A2 on behalf of Smt.Gogineni Rayamma was refuted by the respondent asserting her stand in respect of execution of Ex.A1 in her favour by Smt.Gogineni Rayamma, while seriously questioning the nature and effect of Ex.B1 and Ex.B2.

38. As seen from Ex.A3, there is no denial that Ex.A2 legal notice was not issued upon instructions of Smt.Gogineni Rayamma. The tenor of contents of Ex.A3 reflects that Ex.A2 legal notice was issued in fact and indeed upon the instructions of Smt.Gogineni Rayamma. Nor it is stated in Ex.A3 reply notice that, at the instance of the appellant, it was issued.

39. It was only in the plaint, the respondent sought to attribute nature of Ex.A2 legal notice to the appellant suggesting that at his instance, it was got issued. Similar is the version of the respondent as P.W.1 in her affidavit in lieu of examination-in-chief. It was only in the cross-examination of the appellant as D.W.1., it was suggested on behalf of the respondent that Ex.A2 legal notice was not issued upon the instructions of Smt.Gogineni Rayamma.

40. Unfortunately in the judgment of the trial Court, there is absolutely no reference to Ex.A2 legal notice and reply to it in Ex.A3 or their contents. A passing reference is seen in the judgment of the first appellate Court without specifically mentioning Ex.A2 in para-18. Import and effect of the contents of Ex.A2 legal notice and Ex.A3 it's

reply vis-à-vis the stand of the respondent at the trial were not discussed nor any findings were recorded by the learned trial Judge or the first appellate Judge. This circumstance has assumed significance and importance in the context of application of Section 100 CPC and presenting a substantial question of law. The substantial question of law additionally raised in I.A.No.1 of 2019 with reference to Ex.A2 legal notice, caveat petition in Ex.B3 in O.P.No.39 of 2010 dated 24.08.2010 on the file of the Court of learned Principal Senior Civil Judge, Tenali and Ex.B5 caveat petition in O.P.No.45 of 2010 dated 24.08.2010 on the file of the Court of learned Principal Junior Civil Judge, Tenali, now comes into play. Smt.Gogineni Rayamma is described as one of the caveators as seen from Ex.B3 and Ex.B5 along with the appellant.

41. Ignorance or rather failure to consider Ex.A2, Ex.A3, Ex.B3 and Ex.B5, though based on fact, did attract forming a substantial question of law.

42. Nonetheless, these reasons did make out that there is a substantial question of law, which requires consideration under Section 100 CPC in this case. Other two questions referred to supra, also stand for determination similarly, in this second appeal.

43. On behalf of the appellant, **GURUBILLI SREERAMULU AND OTHERS v. JOGA VERRODU AND OTHERS<sup>2</sup>**, is relied on contending that misconstruing a document amounts to serious error of law, which can be interfered with in second appeal. **C.V.SURESH v. TOBIN AND ANOTHER<sup>3</sup>** is also relied on for the appellant in the same context.

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<sup>2</sup> 2001 (3) ALT 439

<sup>3</sup> ALR 2013 Kerala 30

**STATE OF RAJASTHAN AND OTHERS v. SHIV DAYAL AND ANOTHER<sup>4</sup>** is also relied on for the appellant in this respect.

44. However, on behalf of the respondent, strong reliance is placed in **ANDE SAMBASIVA RAO v. GUNTI RAMA SUBBA RAO AND ANOTHER<sup>5</sup>** contending that in similar facts and circumstances, it is held in the above ruling, by one of learned Judges of this Court that there are no substantial questions of law, where execution of a Gift Deed vis-à-vis a deed of cancellation came up for consideration. **CORPORATION OF THE CITY OF BANGALORE v. M.PAPAI AH<sup>6</sup>** is relied on in this respect for the respondent, where the question was with reference to nature of revenue record and in those circumstances, finding in respect of interpretation of revenue record was not held as a question of law.

45. Further reliance is placed on behalf of the respondent in **SANTOSH HAZARI v. PURUSHOTTAM TIWARI (DECEASED) BY LRs.<sup>7</sup>**

46. In a latest judgment of Hon'ble Supreme Court, the legal parameters within which substantial questions of law in terms of Section 100 CPC appear, is considered in **NAZIR MOHAMED v. J. KAMALA AND OTHERS**, in Civil Appeals No.2843 and 2844 of 2010, dated 27.08.2020 in para - 37 as under:

“37. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

1. An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of

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<sup>4</sup> 2019(5) ALT 99 (SC)

<sup>5</sup> 2019(5) ALD 36 (AP)

<sup>6</sup> AIR 1989 SC 1809

<sup>7</sup> (2001) 3 SCC 179

any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

2. The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.
3. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.
4. The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

(Santosh Hazari v. Purushottam Tiwari (deceased) by Lrs, referred to above, is also considered in this judgment of Hon'ble Supreme Court).

47. In view of legal position so emerged, it is manifest in this case that there are substantial questions of law requiring determination, referred to supra. Hence, contention of learned counsel for the respondent that there are no questions of law, much less, substantial questions of law that stand for consideration in this case, stands rejected.

48. The procedure, the High Court is expected to follow in terms of Section 100 CPC is well explained in *Arulmighu Nellukadai Mariamman Tirukkoil V. Tamilarasi (Dead) by Lrs.*, case, referred to supra. In terms of Section 100 CPC, it is for the Court to consider upon hearing the appellant at the time of admission that there are substantial questions of law for determination and the High Court should specify in this regard. Thereupon, notice is required to be issued to the respondent, who is entitled to point out that such substantial question of law, which, in the opinion of the High Court, requires consideration, did not arise and further to put forth his contentions in support of the findings recorded by the first appellate Court or the trial Court, as the case may be.

49. Observations in *SURAT SINGH (DEAD) v. SIRI BHAGAWAN AND OTHERS*<sup>8</sup>, in para - 21 of the said ruling, are extracted therein and pertinent for the present purpose are referred to hereunder:

“21. Sub-section (1) of Section 100 says that the second appeal would be entertained by the High Court only if the High Court is "satisfied" that the case involves a

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<sup>8</sup> 2018(4) SCC 562

"substantial question of law". Sub section (3) makes it obligatory upon the appellant to precisely state in memo of appeal the "substantial question of law" involved in the appeal. Sub-section (4) provides that where the High Court is satisfied that any substantial question of law is involved in the case, it shall formulate that question. In other words, once the High Court is satisfied after hearing the appellant or his counsel, as the case may be, that the appeal involves a substantial question of law, it has to formulate that question and then direct issuance of notice to the respondent of the memo of appeal along with the question of law framed by the High Court. Sub-section (5) provides that the appeal shall be heard only on the question formulated by the High Court under sub-section (4). In other words, the jurisdiction of the High Court to decide the second appeal is confined only to the question framed by the High Court under sub-section(4). The Respondent, however, at the time of hearing of the appeal is given a right under sub section (5) to raise an objection that the question framed by the High Court under sub-section (4) does not involve in the appeal. The reason for giving this right to the respondent for raising such objection at the time of hearing is because the High Court frames the question at the admission stage which is prior to issuance of the notice of appeal to the respondent. In other words, the question is framed behind the back of respondent and, therefore, sub-section (5) enables him to raise such objection at the time of hearing that the question framed does not arise in the appeal. The proviso to sub-section (5), however, also recognizes the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High Court under sub-section(4). However, this power can be exercised by the High Court only after assigning the reasons for framing such



additional question of law at the time of hearing of the appeal.”

50. There is evidence on record of P.W.1, viz., the respondent, who is the donee, under Ex.A1 and direct beneficiary apart from P.W.2, who is her husband, P.W.3 who are the attestors and identifying witnesses to Ex.A1 and P.W.5 it's scribe. This oral testimony supports the claim of the respondent based on Ex.A1 to the effect that Smt.Gogineni Rayamma herself had executed Ex.A1 voluntarily out of free will and without any undue influence or coercion brought upon her, due to love and affection for her.

51. The circumstances under which Smt.Gogineni Rayamma was seen at the time of execution of Ex.A1 were also prevailing and continued when Ex.B1 and Ex.B2 were executed by her in favour of the appellant. In the sense, she was recuperating from the fracture to her right leg. It was immediately after discharge from the hospital, she stayed with the respondent and sometime later, she joined her son, viz., the appellant at Pedaravuru. In or about first week of April, 2010, she joined the respondent and Ex.A1 was executed approximately two months later. The recitals in Ex.A1 clearly reflect the stand of the respondent that it was a voluntary act of Smt.Gogineni Rayamma and not otherwise.

52. One important circumstance in this context is admission of its execution upon proof of her identity before the Sub-registrar concerned at Tenali, by Smt.Gogineni Rayamma. As rightly observed by both the Courts below, there was an opportunity for Smt.Gogineni Rayamma to protest against execution of this document before the above authority. It was not so done. This important circumstance stands against the appellant and having regard to the testimony of P.W.3 and P.W.5, the

above circumstance stands strengthened. Even if P.W.1 and P.W.2 are treated as highly interested witnesses in this respect, there is no reason to reject the testimony of P.W.3 and P.W.5.

53. P.W.3 also figured as an attesor to Ex.A9 a registered will executed by Smt.Gogineni Rayamma with reference to items 2 and 3 of the suit properties. However, as seen from the contents of Ex.A1 itself, out of 356.2 square yards of item - 2 of the suit properties referred to in Ex.A9 will, 186 sq. yards was gifted to the appellant under a registered deed dated 26.03.2009. It is not in dispute that appellant has constructed a house in this 186 square yards of site, where he is now living at Pedaravuru. Apparently, Ex.A9 will did not become the last and final testament of Smt.Gogineni Rayamma though items 2 and 3 of the suit properties were intended to be bequeathed in favour of the respondent. Contents of Ex.A9 will reflect that it was the respondent and her husband, who were attending to the necessities of Smt.Gogineni Rayamma by the date of its execution, i.e. 18.02.2005. Registration of this will is an additional feature, which was rightly relied on for the respondent at the trial to establish the nature of execution of Ex.A1 being voluntary by Smt.Gogineni Rayamma.

54. Execution of Ex.A9 will is admitted by the appellant not only in his written statement but also at the trial as D.W.1. Nonetheless, the circumstances in this case make out that this will was revoked in view of admitted situation of conferring a part of the site upon the appellant. In this context, the contents of the deposition of the appellant as D.W.1 in examination-in-chief assumed importance. He clearly stated therein that the respondent got Ex.A1 Gift Deed executed by his mother in her favour, referring to execution of Ex.A9 will dated 18.02.2005, at the

desire of his mother. This circumstance relating to Ex.A9 will was also appreciated by both the Courts below in favour of the appellant.

55. Execution of Ex.A1 by Smt.Gogineni Rayamma, is not a matter in issue, as such. In view of the stand of the appellant himself in this case, and reference made to it in Ex.B1, Ex.B2, Ex.B3, Ex.B5 and Ex.A2 make it clear.

56. In view of these positive circumstances, despite the testimony of D.W.1 to D.W.5 in support of defence of the appellant against Ex.A1 and as if Smt.Gogineni Rayamma informed them the manner by which Ex.A1 was obtained by the respondent and her husband, it cannot have any bearing.

57. Issuance of Ex.A2 legal notice or statements attributed to Smt.Gogineni Rayamma in Ex.B1 and Ex.B2 or Ex.B3 as well as Ex.B5 caveat petitions have no impact to affect validity of Ex.A1 Gift deed. Failure of the trial Court or the first appellate Court to refer them in their judgments and evaluate, cannot cause any prejudice to the appellant. Particularly, having regard to the legal effect of execution of Ex.A1 in favour of the respondent by Smt.Gogineni Rayamma, in terms of Section 122 and Section 126 of Transfer of Property Act, such defence cannot stand.

58. Learned counsel for the respondent relied on **NAKKA PARTHASARATHY v. NAKKA KRISHNAVENI AND OTHERS**<sup>9</sup> contending that revocation of gift in terms of Section 126 of Transfer of Property Act is not permissible in the absence of any specific recital in the Gift Deed in question as to contingency that would arise in future or happening of a specific event, whereby such gift is intended to be

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<sup>9</sup> 2013(5) ALD 711

cancelled. In the same context, a reference is also made to **SYAMALA RAJA KUMARI AND OTHERS v. ALLA SEETHARAVAMMA AND OTHERS**<sup>10</sup>.

59. Nor Ex.B1 Revocation deed and the oral testimony let-in in proof of it by the appellant can have any effect nor withdraw or take away the right, title and interest conferred on the respondent by Smt.Gogineni Rayamma in respect of the suit properties. Neither there are any circumstances making out that Smt.Gogineni Rayamma was subjected to undue influence or coercion nor that she was prevailed upon to execute Ex.A1 in favour of the respondent. Contentions are advanced on behalf of the appellant in this respect, relying on **DUDDUMPUDI VENKATARAYUDU v. DUDDUMPUDI RAJAGOPAL**<sup>11</sup> and **DHARMAN AND SIX OTHERS v. MARIMUTHU**<sup>12</sup> can have no application on facts.

60. On the other hand, strenuous contentions are advanced on behalf of the respondent particularly relying on **BISHUNDEO NARAIN v. SEOGENI RAI**<sup>13</sup> with reference to the admitted and proved facts in this case that the question of undue influence or applying coercion did not arise and that there are no pleadings as such in this context giving all required particulars in terms of Order VI Rule 4 CPC. There are pleadings either as seen from the written statement or Ex.A2 notice referring to certain circumstances, sought to be fortified by the testimony of D.W.1, D.W.2, D.W.4 and D.W.5.(testimony of D.W.3 stood eschewed, since he did not face cross-examination, by the order of the trial Court dated 05.03.2013. Unfortunately, this fact is not mentioned either by the learned trial Judge or appellate Judge nor referred in their respective judgments). However, proof offered by the appellant on

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<sup>10</sup> 2017 (2) ALD 733

<sup>11</sup> (2012) 2 ALD 659

<sup>12</sup> 1996 (2) LW 600 (Madras High Court)

<sup>13</sup> AIR 1951 SC 280

whom, burden lies to establish these circumstances is not sufficient and it is not trustworthy.

61. Learned counsel for the respondent specifically relied on the procedure, the registering authority is required to follow in case of revocation of documents referring to Rule 26(i)(k)(i) of A.P.Registration Rules. This rule requires the registering authority, whenever a deed of cancellation is sought to be registered referring to cancellation of a previously registered deed of conveyance on sale. It requires the registering authority to ensure at the time of presentation of such cancellation deed that the said deed is executed by all the executants and claimant parties to the previously registered conveyance of sale. Such cancellation deed as per this rule should be accompanied by a declaration showing mutual consent of the parties to the earlier registered deed, which is intended to be cancelled.

62. Remedy as such available is also considered in ***KAPUGANTI JAGANNADHA GUPTA v. DISTRICT REGISTRAR, SRIKAKULAM AND OTHERS<sup>14</sup>***, ***HAJI MOHAMMAD AHMED v. STATE OF ANDHRA PRADESH, REP. BY ITS DISTRICT REGISTRAR, HYDERABAD AND OTHERS<sup>15</sup>***, including in ***EDIGA CHANDRASEKAR GOWD AND ANOTHER v. STATE OF ANDHRA PRADESH AND OTHERS<sup>16</sup>***. Effect of the above rule is referred to by Hon'ble Supreme Court in ***THOTA GANGA LAXMI AND ANOTHER v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS<sup>17</sup>***.

63. Though this rule refers to a registered conveyance on sale, required to be cancelled by another deed, it appears that the nature of this conveyance is treated by a wider connotation to include deeds of

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<sup>14</sup> 2012(3) ALD 404

<sup>15</sup> 2012(2) ALT 57

<sup>16</sup> 2017 (4) ALD 12

<sup>17</sup> 2012(1) ALD 90 (SC)

sale or gift or exchange, by which the immovable property could be transferred from one person to another. The effect of the above rule to meet such eventualities is stated in **EDIGA CHANDRASEKAR GOWD AND ANOTHER v. STATE OF ANDHRA PRADESH AND OTHERS**, referred to supra by one of the learned Judges of this Court at Hyderabad.

64. Another contingency considered by this rule for presentation of such deed of cancellation is, orders of a competent civil Court or High Court or State or Central government annulling the transaction contained in the previous registered Deed of Conveyance of sale.

65. As rightly observed by the trial Court and the first appellate Court, no attempt was made during lifetime of Smt.Gogineni Rayamma or later by the appellant to question Ex.A1 Gift Deed under Section 31 of Specific Relief Act, and for its cancellation.

66. Therefore, the contention of the appellant cannot stand nor Ex.B1 and Ex.B2, as rightly observed by the Courts below, stand to consideration. They do not in any manner interdict transfer of title under Ex.A1 Gift Deed in favour of the respondent, since they are legally invalid and are rightly held void by the Courts below. Ex.B2 Gift deed in favour of the appellant did not invest him with right, title and interest to the suit properties, in these circumstances, since Smt.Gogineni Rayamma had no such right by then, in view of Ex.A1 Gift deed favouring the respondent.

67. One of the contentions on behalf of the appellant to question Ex.A1 Gift Deed is that in given facts and circumstances of the case, there is no proof that Ex.A1 Gift Deed was acted upon, upon acceptance by the respondent and that the possession of suit properties was never delivered to the respondent. Thus, it is contended that these properties

remained within the domain and control of the appellant, who infact was enjoying them during the lifetime of Smt.Gogineni Rayamma.

68. The respondent came out with a clear case in her pleadings as well as the evidence that she was dispossessed from item - 3 wet land, where she raised paddy crop, on 28.11.2010 by the appellant, who had cut and carried away the standing crop, which was ripe for harvest. As rightly contended for the respondent, one factor to consider in this respect is, failure of the appellant to question the outcome of A.S.No.80 of 2015 further in this appeal or by a separate appeal, where the first appellate Court directed the appellant to pay damages of Rs.5,000/- to the respondent for carrying away such crop. It is a serious lapse on the part of the appellant.

69. Whatever be the nature of finding recorded by the learned appellate Judge in this context, who simply relied on the statement of P.W.1 elicited in cross-examination, obviously in response to a suggestion on behalf of the appellant, that this item - 3 of suit properties could fetch 20 to 22 bags of paddy worth Rs.5,000/-, this particular finding is not questioned further. Thus, a clear finding recorded against the appellant that he had resorted to unlawful dispossession of the respondent from item-3 of the suit properties remained on record and outstanding against him. No explanation is offered on behalf of the appellant in this context for such serious omission. It being a finding on question of fact, it gains importance in this second appeal. This finding is binding on the appellant.

70. In the above circumstances, apart from the evidence adduced by the respondent either through herself as P.W.1 or her husband P.W.2 and P.W.7, who according to them was attending to agriculture in this

land on their behalf, the inference drawn by the learned appellate Judge holds the field. It is further to be noted that the appellant as D.W.1 clearly stated in his cross-examination that P.W.7 has no axe to grind against him. Nor he had attributed any reason or motive for P.W.7, who is a resident of Pedaravuru to support the respondent in respect of possession and enjoyment of item-3 of the suit properties by her. Ex.A8 cist receipt, nature of which is seriously assailed on behalf of the appellant, in this respect takes a back seat and recedes.

71. The wife of the appellant was then a MPTC member. On account of this fact and political influence, the appellant could wield in that village, in as much as Surpanch of the Gram Panchayat of this village, is supported by the wife of the appellant, there was certain impediment faced by the respondent either to pay the property tax in respect of items 1 and 2 of the suit properties or to get them mutated in her favour. These factors and circumstances are abundantly discussed in the judgments of the trial Court and the first appellate Court.

72. Even otherwise, as rightly observed in the judgments under appeal, acceptance of the Gift can well be inferred from the fact that the respondent herself is the custodian of Ex.A1, who had produced it at the trial from her custody. Production of Ex.A9 Will is an added factor to strengthen her contention. This circumstance was considered in a ruling of this Court in **PAGADALA BHARATHI AND ANOTHER v. J.RADHA KRISHNA**<sup>18</sup> while further observing that delivering possession of the property is not a condition precedent in terms of Section 122 of Transfer of Property Act to make a gift valid.

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<sup>18</sup> 2013(3) ALT 467



73. In **RENIKUNTLA RAJAMMA(DEAD) BY LEGAL REPRESENTATIVES v. K.SARWANAMMA**<sup>19</sup>, holding that delivery of possession to donee under a gift is not an essential condition in view of Section 123 of Transfer of Property Act. In Paras 9 to 11 of this ruling, the following observations are recorded.

“9. Chapter VII of the Transfer of Property Act, 1882 deals with gifts generally and, *inter alia*, provides for the mode of making gifts. Section 122 of the Act defines ‘gift’ as a transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. In order to constitute a valid gift, acceptance must, according to this provision, be made during the life time of the donor and while he is still capable of giving. It stipulates that a gift is void if the donee dies before acceptance.

10. Section 123 regulates mode of making a gift and, *inter alia*, provides that a gift of immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. In the case of movable property, transfer either by a registered instrument signed as aforesaid or by delivery is valid under Section 123. Section 123 may at this stage be gainfully extracted:

“123. **Transfer how effected** - For the making of a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.”

11. ....

A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that “transfer of possession” of the property

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<sup>19</sup> (2014) 9 SCC 445

covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of Transfer of Property Act, 1882.”

74. Reliance placed in **BABY AMMAL v. RAJAN ASARI**<sup>20</sup> to support his contention that proof of delivery of possession and acceptance under a gift being essentials to prove such transaction, is not proper since the facts considered therein stand differently. In the said ruling itself, it was observed that the document in question, in given facts and circumstances of the case, could not be construed as a Gift Deed, while considering the effect of Sections 122 and 123 of Transfer of Property Act.

75. Thus, having regard to law in this respect and the fact situation concurrently held in favour of the respondent by the trial Court and the first appellate Court, the contentions advanced on behalf of the appellant, needs rejection.

76. A vain attempt is also made on behalf of the appellant contending that a suit for mere possession without seeking the relief of declaration is not maintainable and even otherwise the burden is on the respondent to establish his case, who cannot rely on the weaknesses or lacunae in the case of the appellant. This contention in fact did not call for consideration in this second appeal. It being purely based on facts, is not covered by Section 100 CPC. Reliance is placed for the appellant in **MUDDASANI SAROJANA v. MUDDASANI VENKAT NARSAIAH & OTHERS**<sup>21</sup> in support of this contention. This ruling however, is overruled by

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<sup>20</sup> (1997) 2 SCC 636

<sup>21</sup> AIR 2007 AP 50

Hon'ble Supreme Court in **MUDDASANI VENKATA NARSAIAH (DEAD) THROUGH LRs v. MUDDASANI SAROJANA**<sup>22</sup>.

77. Thus, on a conspectus of the material, the findings to record in this second appeal are that Ex.A1 Gift Deed is not affected in any manner in its purpose and effect in relation to the suit properties by the stand of deceased Smt.Gogineni Rayamma reflected in Ex.A2 legal notice, Ex.B3 and Ex.B5 caveat petitions including the contents of Ex.B1 deed of cancellation and Ex.B2 the Gift deed in favour of the appellant. The right, title and interest to the suit properties stood transferred and vested in the respondent by virtue of Ex.A1 and that, they are not divested. Thus, the respondent remained absolute owner of the suit properties with lawful right, title and interest transferred in her favour from Smt.Gogineni Rayamma during her lifetime under Ex.A1.

78. All these substantial questions of law are thus answered.

79. In the result, this second appeal is dismissed confirming the judgment of the learned XI Additional District Judge, Guntur, at Tenali in A.S.No.71 of 2015 dated 25.06.2018. In the circumstances, having regard to the close relationship in between these parties, they are directed to bear their own costs throughout. Miscellaneous petitions in I.A.No.2 of 2018, I.A.No.3 of 2018, I.A.No.1 of 2020 and I.A.No.1 of 2019 stand allowed. Interim order granted on 16.09.2019 stands vacated. Pending petitions if any, shall stand closed.

Dt:04.09.2020  
Rns

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M. VENKATA RAMANA, J

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<sup>22</sup> AIR 2016 SC 2250

**HON'BLE SRI JUSTICE M. VENKATA RAMANA**

**SECOND APPEAL No.1453 OF 2018**

**Date:04.09.2020**

Rns