

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE TWENTY NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

SANo.393/23 **SECOND APPEAL NO: 393 AND 395 OF 2023**

Appeal under section 100 of C.P.C against the Judgment and Decree Dated 13.02.2023 made in A.S.No.6 of 2018 on the file of the Court of the Principal District and Sessions Judge, Rajanna Siricilla preferred against the Decree in O.S.NO.50 of 2007 dated 04.01.2012 on the file of the Court of the Senior Civil Judge, at Sircilla.

Between:

1. Varala Ravinder, S/o. Late Varala Ramulu, Aged. 47 years, Occ. Radio Mechanic, R/o.H.No.8-2-112, Anjaninagai, Vemulawada, Karimnagar District.
2. Varala Sobha, W/o. Varala Ravinder, Aged. 37 years, Occ. House Hold, R/o. H.No.8-2-112, Anjaninagar, Vemulawada, Karimnagar District.

...Appellants/Defendant Nos.2 & 3

AND

Smt.Ananthamma @ Vippapoovula Lakshmi, W/o. Vippapoovula Shankar, Aged. 53 years, Occ. House wife, R/o.H.No.17-1-186/23, Keshavnagar,Saidabad, Hyderabad.

...Respondent

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, It is prayed that this Hon'ble Court that the Order dated 13.02.2012, in A.S. No.6 of 2012 on the file of the Principal District and Sessions Judge, Rajanna Siricilla, to be Stayed, pending outcome of the main Second Appeal.

**Counsel for the Appellants: Sri Rachana Reddy representing
Sri Mohd Baseer Riyaz**

Counsel for the Respondent: Sri Rakesh Sanghi

SECOND APPEAL NO: 395 OF 2023

Appeal under section 100 of C.P.C against the Judgment and Decree Dated 13.02.2023 made in A.S.No.7 of 2018 on the file of the Court of the Principal District and Sessions Judge, Rajanna Siricilla preferred against the Decree in O.S.No.23 of 2010 dated 30.10.2012 on the file of the Court of the Senior Civil Judge, at Siricilla.

Between:

Varala Shobha, W/o. Ravinder, Aged about. 33 years, Occupation. House Hold, R/o.H.No.8-2-112, College Road, Vemulawada Proper and Mandal, District. Karimnagar.

...Appellant

AND

1. Smt.Ananthamma @ Vippapoovula Lakshmi, W/o. Vippapoovula Shankar, Aged about. 50 years, Occupation: House Hold, R/o.H.No.17-1-386-1-23, Keshavanagar, Saidabad, Hyderabad.
2. Vippapoovula Shankar, S/o. Bhoomaiah, Aged about. 67 years, Occupation. Govt. Employee, R/o. H.No.17-1-386-1-23, Keshavanagar, Saidabad, Hyderabad.

...Defendants/Respondents

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, It is prayed this Honourable Court that the Order dated 13/02/2012, in A.S.No.7 of 2012 on the file of the Principal District and Sessions Judge, Rajanna Siricilla, to be Stayed, pending outcome of the main Second Appeal.

**Counsel for the Appellant: Sri Rachana Reddy representing
Sri Mohd Baseer Riyaz**

Counsel for the Respondents: Sri Rakesh Sanghi

The Court delivered the following Common Judgment:

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

SECOND APPEAL Nos.393 & 395 of 2023

COMMON JUDGMENT:

The parties and the subject matter of the property involved in both these Second Appeals are one and the same and hence, they are being heard together and disposed of by common judgment.

2. Second Appeal No.393 of 2023 is filed questioning the judgment and decree, dated 13.02.2023, passed by Principal District Judge, Rajanna Sircilla in AS.No.6 of 2018, whereunder and whereby the judgment and decree dated 04.01.2012 passed by the Senior Civil Judge, Sircilla in O.S.No.50 of 2007, which was filed seeking partition of the suit schedule properties, was confirmed.

3. Second Appeal No.395 of 2023 is filed questioning the judgment and decree, dated 13.02.2023, passed by Principal District Judge, Rajanna Sircilla in AS.No.7 of 2018, whereunder and whereby the judgment and decree dated 30.10.2012 passed by the Senior Civil Judge, Sircilla in O.S.No.23 of 2010, which was filed seeking the relief of perpetual injunction restraining the defendants, their agents from interfering with the peaceful

possession and enjoyment of the plaintiff over the suit schedule properties, was confirmed.

4. The brief facts of the case, shorn off unnecessary details, which led to filing of Second Appeal No.393 of 2023, are that the plaintiff is the natural daughter of defendant No.1 through Late Varala Ramulu. Defendant No.2 is adopted son of defendant No.1. Late Varala Ramulu acquired the suit schedule property during his life time and enjoyed the same with absolute rights.

4.1. It was averred that the father of the plaintiff by name Varala Ramulu died in year 1971, without any male issues, leaving behind the plaintiff and defendant No.1 as his legal heirs to succeed the suit schedule property.

4.2. It was further averred that at the time of marriage of the plaintiff in the year 1968, during the life time of Varala Ramulu, no money or articles were given and the plaintiff's father promised that he would divide the suit schedule property into two parts and bequeath half share to the plaintiff. After the death of Varala Ramulu, the said property has become joint family property. The plaintiff and defendant No.1 are having half share each in the suit

schedule property. Defendant No.1 used to manage the suit schedule property as the plaintiff is residing at Hyderabad.

4.3. After death of plaintiff's father, the defendant No.1 took defendant No.2 in adoption in the year 1978, performed his marriage and he was blessed with three daughters. The plaintiff's request to defendant No.1 to settle the property was postponed on one pretext or the other. The plaintiff used to visit Vemulawada frequently to look after the welfare of defendant No.1, who became old and was suffering from ill health and the plaintiff regularly provided medical treatment to her.

4.4. It was further averred that since the plaintiff did not agree for marriage alliance to her son, the defendants bore grudge against her and threatened that defendant No.1 would not settle the property in favour of plaintiff. While so, on 10.06.2007, the plaintiff got issued a legal notice to the defendant No.1 for partition of the suit property, but defendant No.1 gave a reply by attributing baseless allegations and claimed that she was the absolute owner of the suit schedule property. Defendant No.1 is making efforts to transfer the suit schedule property in favour of defendant No.2.

~ Hence, the suit for partition of the suit schedule properties.

5. Defendant Nos.1 and 2 filed common written statement denying the averments of the plaintiff and further contended that Late Varala Ramulu and defendant No.1 took defendant No.2 in adoption in the year 1966 by following the caste and customary rites, but defendant No.1 executed a registered adoption deed on 16.12.1978, i.e., after the demise of Varala Ramulu.

5.1. It was further contended that after the death of Varala Ramulu, defendant No.1 purchased the suit schedule property for a consideration of Rs.210/- from its original owner Chitlabolta Venkataiah through a simple sale deed dated 06.04.1976 and thus, she became absolute owner therefor. The plaintiff and defendant No.2 did not succeed to any property as Varala Ramulu did not acquire any property during his life time. The plaintiff never looked after the welfare of defendant No.1. Defendant No.2 has been looking after the defendant No.1. Defendant No.1 being the actual owner, has every right to deal with the suit schedule property according to her wish and will. The plaintiff has no right or interest in the suit schedule property and she is not in joint possession along with defendant No.1. Hence, prayed to dismiss the suit.

5.2. Defendant No.3 filed a memo adopting the written statement of defendants Nos.1 and 2.

6. On the basis of the above pleadings, the trial Court framed the following issues and additional issues for trial:-

"(1) Whether the suit property belonged to late Vara Ramulu? If so, is the plaintiff and D.1 inherited the same?

(2) Whether D.1 purchased the suit open plot for valuable consideration from Ch.Venkataiah, S/o Chandraiah under simple sale deed date 06.04.1976? If so, is she exclusive owner of the same?

(3) Whether the plaintiff is entitled for partition and separate possession as prayed for?

(4) To what relief?

(5) Whether late Varala Ramulu and D.1 took D.2 in adoption in the year 1966 as pleaded in the written statement and whether adoption deed dated 16.12.1978 is true and valid?

(6) Whether the Will deed dated 07.03.2007 was executed by D.1 in favour of D.2? If so, whether it is valid and binding on the plaintiff?"

7. On behalf of the plaintiff, P.Ws.1 to 4 were examined and Exs.A.1 to A.16 were marked. The evidence of P.W.3 was eschewed as he failed to appear before the Court to face cross-examination. On behalf of the defendants, D.Ws.1 to 7 were

examined and Exs.B.1 to B.39 were marked. The evidence of D.W.3 was eschewed as he expired.

8. The trial Court after perusing the material on record and after hearing both sides, *vide* its judgment dated 04.01.2012, while answering issues Nos.1 and 2, observed as under:-

"None of the attesting witnesses to the document Ex.B-1-simple sale deed, through which defendant No.1 claims title over the suit schedule property, were examined and hence, the said document which was impounded is not proved according to law. Therefore, title over the suit schedule property is not vested in defendant No.1 under Ex.B-1."

It appears from Exs.A-3 and A-4 that by the date of Ex.A-1 i.e., 15.01.1977, the property stood recorded in the name of late Varala Ramulu and as such the property tax was received from him and accordingly, Exs.A-3 and A-4 were issued in his name.

It can be gathered from the evidence of P.W-4, Exs.A-1 to A-4, A-12 and A-13 that till 1974-75 the name of Varala Ramulu stood recorded in the Gram Panchayat records and since he died in 1971, the name of defendant No.1 has been mutated."

8.1. Further, the trial Court while answering the issue as regards the validity of the Adoption deed, dated 16.12.1978, observed as hereunder:-

"It is an admitted fact that Ex.B2 is registered in accordance with the provisions of the Indian Registration Act and though it is a compulsorily attestable document, it shall not be necessary to call an attesting witness to prove its execution for the reason that D1 had never disputed its execution. Moreover, the present litigation between the plaintiff and the defendants was never in contemplation as on the date of execution of Ex.B2 and as such, there was no occasion for D1 to execute Ex.B2 with an evil intention of extending a helping hand to D2 to the detriment of the plaintiff and similarly, there was no occasion for defendant No.2 to get Ex.B2 executed through defendant No.1 for the reason that he was just 14 years as on the date of Ex.B2.

While answering additional issue No.2 i.e., with regard to validity of the Will- Ex.B-3, the trial Court observed that it was not necessary to deal with the new and different case set up by the defendants as regards the execution of Ex.B-3 by defendant No.1 and accordingly, did not answer the said issue.

9. By observing so, the trial Court held that the suit schedule property originally belonged to late Veerula Ramulu and on his death, plaintiff and defendant No.2 succeeded to the suit schedule property and accordingly, passed a preliminary decree allotting half share each to the plaintiff and defendant No.2.

10. On appeal, the first Appellate Court, being the final fact-finding Court, re-appreciated the entire evidence and the material available on record and observed as hereunder:-

"It is evident from the documents-Exs.A-1 to A-4 and A-13 that the suit property stood in the name of Varala Ramulu till 1977 and thereafter, the name of defendant No.1 started reflecting in the Grampanchayat records. Thus, the plaintiff proved that the suit property is the property of her father Varala Ramulu and she is entitled for her share in the suit property.

10.1. The first appellate Court vide its judgment dated 13.02.2023 confirmed the judgment dated 04.01.2012 of the trial Court by observing as under:-

"The defendants failed to prove that defendant No.1 is the exclusive owner of the suit property and as already decided supra the suit property stood in the name of Varala Ramulu during his last time and the name of defendant No.1 was mutated only after his death, the question of exclusive ownership of defendant No.1 over the suit property does not arise. When defendant No.1 has no exclusive right over the suit property, she has no right to execute Ex.B-3-Will Deed.

It is held proved that the suit property is the property of Varala Ramulu and the plaintiff being the

legal heir of Varala Ramulu is entitled to a share in the suit property. Further, as defendant No.1 died during the pendency of the suit, the plaintiff and defendant No.2 who are the legal heirs of Varala Ramulu and defendant No.1 are entitled for equal share in the suit property."

11. The brief facts of the case, shorn off unnecessary details, which led to filing of Second Appeal No.395 of 2023, are that the plaintiff is the owner and possessor of suit schedule property having purchased the same from her mother-in-law i.e., one Varala Devamma for a valid consideration under a registered sale deed bearing document No.814 of 2007 dated 14.03.2007. Since the date of purchase, the plaintiff is in peaceful possession and enjoyment of the suit schedule land by paying the house taxes to the Grampanchayath concerned. The name of the plaintiff has been mutated in the Grampanchayath records in respect of the suit schedule land.

11.1. It was averred that the defendants who have no right or interest over the suit schedule property developed ill-intention against the plaintiff and are trying to occupy the same by

dispossessing the plaintiff from the suit schedule land. Hence, the suit seeking the relief of perpetual injunction.

12. The defendants filed common written statement *inter alia* denying the averments of the plaint and further contended that the suit is filed with a malafide intention to have a wrongful gain and by suppressing the facts. The vendor of the plaintiff by name Varala Devamma is none other than the natural mother of defendant No.1 and adoptive mother of Varala Ravinder, who is the husband of the plaintiff. Defendant No.2 is the husband of defendant No.1. Varala Devamma being the mother-in-law of the plaintiff, the plaintiff could not purchase the suit schedule property and the said registered sale deed is created and not supported by consideration and delivery of possession.

12.1. It was further averred that during his life time, the said Ramulu acquired the suit schedule property and enjoyed the same with absolute rights and he died in the year 1971 leaving behind his wife Varala Devamma and his daughter, i.e., defendant No.1 as his only legal heirs to succeed to the suit schedule property. After the death of Varala Ramulu, Varala Devamma took the husband of the

plaintiff by name Ravinder in adoption, performed their marriage and they were blessed with three daughters.

12.2. It was further averred that about one year ago, there was a proposal from the plaintiff, her husband, and Varala Devamma requesting defendant No.1 to have marriage alliance to her son with the daughter of the plaintiff, but the defendants did not agree for it. Since then, the plaintiff, her husband and Varala Devamma bore grudge against the defendants and threatened that Varala Devamma would not settle the property in favour of defendant No.1 unless she agrees to the said proposal of marriage. After seeing the indifferent attitude of Varala Devamma, defendant No.1 got issued a legal notice dated 10.06.2007 to her demanding partition of the suit schedule property. Varala Devamma in her reply notice, claimed that she was the absolute owner of the suit schedule property.

12.3. It was further averred that Varala Devamma in collusion with her adopted son and the plaintiff, dismantled the old structures in the suit schedule property. Defendant No.1 filed suit in O.S.No.50 of 2007 on the file of this Court for partition and separate possession against Varala Devamma and the husband of

the plaintiff by name Ravinder and during the pendency of the said suit, the plaintiff was also impleaded as defendant No.3 therein. After full-fledged trial, the said suit was decreed. Thus, the judgment and decree dated 04.01.2012 passed in O.S.No.50 of 2007 would operate as *res-judicata* against the plaintiff in this suit. The registered sale deed in favour of the plaintiff is illegal, invalid and sham and has no legal sanctity in the eye of law. Hence, prayed to dismiss the suit with costs.

13. Based on the above pleadings, the trial Court framed the following issues for trial:-

- "(1) Whether the plaintiff is the owner in possession of the plaint schedule property?*
- (2) Whether the plaintiff is entitled for permanent injunction as prayed for?*
- (3) To what relief?*
- (4) Whether the judgment and decree in O.S.No.50/2007 on the file of this Court operates as *res judicata* against the plaintiff?"*

14. On behalf of the plaintiff, P.Ws.1 to 3 were examined and Exs.A.1 to A.5 were marked. On behalf of the defendants, D.W-1 was examined and Exs.B.1 to B.15 were marked.

15. The trial Court, after perusing the material on record and on hearing both sides, observed as hereunder:-

"The documentary evidence filed by the plaintiff is not sufficient to answer the issues in her favour in the light of the specific case of the defendants that a total extent of 561 square yards of property originally belonged to late Varala Ramulu and that Varala Devamma had no competency to alienate a part of it to the exclusion of defendant No.1, who is admittedly legal heir of Varala Ramulu.

It is only from the year 1987-88 the name of Varala Devamma has been recorded in Revision Register as is evident from Exs.B-6 to B-8. Thus, Exs.B-1 to B-5 strengthen the case of the defendants that the property originally belonged to Varala Ramulu only."

16. The trial Court accordingly answered issue Nos.1 and 2 against the plaintiff holding that Ex.A-1 does not confer title on the plaintiff and that the plaintiff is deemed to be out of possession unless the suit schedule property is divided by metes and bounds.

16.1. Further, the trial Court observed that O.S.No.50 of 2007 was filed before the Court on 21.09.2007 for partition, whereas, the present suit was originally instituted on 21.01.2008; that the parties in both the suits are one and the same and the issues settled in

O.S.No.50 of 2007 are akin to issue No.1 of the present suit and hence, the judgment in O.S.No.50 of 2007 operates as *res judicata* in the present suit.

17. Thus, in the light of the above findings, the trial Court dismissed the suit-O.S.No.23 of 2010 *vide* its judgment 30.10.2012.

18. On appeal, the first Appellate Court, being the final fact-finding Court, re-appreciated the entire evidence and the material available on record and observed as hereunder:-

"As already held above, the plaintiff filed this suit equitable relief of perpetual injunction and she has approached the Court with unclean hands. However, the attitude of the plaintiff not disclosing the true facts in O.S.No.50 of 2007 gives an inference that the plaintiff has not approached the Court with clean hands. Further, as already discussed, the alleged vendor of the plaintiff by name Varala Devamma has no exclusive right to alienate the property in favour of the plaintiff, as such, the plaintiff will not get valid title over the suit property through Ex.A.1. When once Ex.A-1 is not proved, the judgment and decree in O.S.No.50 of 2007 comes into operation and as per the said judgment, defendant No.1 and the husband of the plaintiff namely Varala Ravinder are entitled for half share each in the entire suit schedule property

and the plaintiff becomes stranger of the suit property. As such, the suit filed by the plaintiff is not maintainable."

19. Heard Ms. Rachana Reddy, learned senior counsel, representing Sri Mohd. Basheer Riyaz, learned counsel on record for the appellants and Sri Rakesh Sanghi, learned counsel for the respondents. Perused the record.

21. Learned counsel for appellants argued that the trial Court rendered the judgments impugned herein without proper appreciation of the evidence and the first Appellate Court also committed an error in confirming the judgments passed by the trial Court.

22. Learned counsel for the appellants relied upon the following decisions of the Hon'ble Apex Court:-

(1) ***Rashmi Kumar v. Mahesh Kumar Bhada***¹

(2) ***Govindbhai Chhotabai Patel & Ors. v. Patel Ramanbhai Mathurbhai***²

(3) ***Prabhagiya Van Adhikari, Awadh Van Prabhag v. Arun Kumar Bharadwaj (dead) thr. L.Rs & Ors***³

¹ (1997) 2 SCC 397

² AIR 2019 SC 4822

³ AIR 2021 SC 4739

(4) *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors*⁴,

(5) *S.Kaladevi v. V.R. Somasundaram & Ors*⁵

(6) *Prakash Sahu v. Saulal & Ors.*⁶

(7) *Gurmail Singh v. Amarjit Singh*⁷

(8) *Venkalakshmi Ammal & Ors. v. Jagannathan & Ors.*⁸

(9) *Gurunath v. Kamalabai & Ors*⁹

(10) *R. Hemalatha v. Kasthuri*¹⁰,

(11) *M/s Paul Rubber Industries Private v. Amit Chand Mitra*¹¹

(12) *Vidyadhar v. Manik Rao & Ors.*¹²

(13) *Eruka Builders & Ors. v. Gulabchand & LRs.*¹³

(14) *P. Kishore Kumar v. Vittal K. Patkar*¹⁴

22.1. Learned counsel for the appellants also relied upon the decision of the High Court of Delhi at New Delhi in **Anita Anand v. Gauri Kapur & Ors**¹⁵.

⁴ AIR 2019 SC 3827

⁵ 2010 (89) AIC 97

⁶ MANU/SC/1530/2019

⁷ R.S.A. No.5813 of 2014

⁸ 1963 MAD 316

⁹ AIR 1955 SC 206

¹⁰ C.A. No.7210 SC 2011

¹¹ 2023 SC 304

¹² 1999 (3) SCC 573

¹³ 2018 (8) SCC 67

¹⁴ C.A. No.7210 of 2011

¹⁵ 2018 SCC Del 11372

23. In ***Rashmi Kumar's case (1st cited supra)***, the Hon'ble Apex Court in Para 11 held that properties gifted to the wife either during, at the time or after the marriage are called Sthridhan properties and the said properties are her absolute properties which the husband may use during the time of distress, but has the moral obligation to restore the same or of its value to the wife. It was further held that therefore the said Sthridhan property does not become a joint property of the wife and the husband, and the husband has neither any title or independent dominion over the property is given to the husband.

24. In ***Govindbhai Chhotabai Patel's case (2nd cited supra)***, the Hon'ble Apex Court at para 21 of its judgment held that the burden of proof that the property was ancestral is on the plaintiff/s alone. It was for the plaintiff/s to prove that the Will intended to convey the property for the benefit of the family so as to be treated as ancestral property. In the absence of any such averment or proof, the property in the hands of donor has to be treated as self-acquired property. Once the property in the hands of donor is held to be self-acquired property, he was competent to deal with his property in

such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family.

25. In *Prabhagya Van Adhikari's case* (3rd cited *supra*), the Hon'ble Apex Court at Para 26 of the judgment relied on the judgment rendered in *Prahlad Pradhan & Ors. v. Sonu Kumhar & Ors* reported in {(2019) 10 SCC 259}, in which it was held that the revenue record neither confers title to the property nor do they have any presumptive value on the title.

26. In *Ravinder Kaur Grewal's case* (4th cited *supra*), the Supreme Court case dealt with the issue as to whether Article 65 and Section 27 of Limitation Act only enables a person to set up adverse possession as a shield and such plea cannot be used to protect the possession of immovable property or to recover it in case of dispossession.

27. In *S.Kaladevi's case* (5th cited *supra*), the Hon'ble Apex Court, while dealing with regard to admissibility of an unregistered sale deed in suit for specific performance of contract, at Para 12 held that document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act

and such unregistered document can be used as evidence of collateral purpose. Further, it was held that admission of an unregistered sale deed in evidence in suit for specific performance as evidence of contract does not affect the provisions of the Registration Act, 1908; and rather courts act in consonance with provision under Section 49 of the Registration Act, 1908.

28. In *Prakash Sahu's case* (6th cited supra), the Hon'ble Apex Court in Para 4 reiterated the principles laid down in *S. Kaladevi's case* (cited supra) and held that unregistered document could be taken into consideration for collateral purposes under proviso to Section 49 of Registration Act, 1908.

29. In *Gurmail Singh's case* (7th cited supra), the Hon'ble High Court of Punjab and Haryana held that a sale deed being more than thirty years old document and having come from proper custody, has presumption of correctness u/s 90 of Evidence Act, 1872. It was further held that onus of proving the document is discharged once the document was produced and the attesting witness of the said document was examined and thereby, the other party is expected to lead the evidence.

30. In *Venkalakshmi Ammal's case (8th cited supra)*, the High Court of Madras at Para 48 of its judgment held that it is well settled that proof of the existence of a joint family does not lead to the presumption that property held by any member is joint and the burden rests upon anyone asserting that any item of property was joint to establish the fact, but where it is established that the family possessed some joint property which from its nature and value may have formed the nucleus from which the property in question may have been acquired, burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.

31. In *Gurunath's case (9th cited supra)*, the Hon'ble Apex Court at Para 23 of its judgment held that it is well known that in the absence of any clear Shastric text the courts authority to decide cases on principles of justice, equity and good conscience and it is not possible to hold that the reasons stated in support of the rule are not consistent with these principles. Hindu law generally and in particular in matters of inheritance, alienation and adoption gives to the widow powers of a limited character and there is nothing in the limitations laid down by the course of decisions above referred

to repugnant to that law. For the reasons given above, we are unable to depart from the rule that a widow's power to make an adoption comes to an end by the interposition of a grandson or the son's widow competent to continue the line by adoption.

32. In ***R. Hemalatha's case (10th cited supra)***, the Hon'ble Apex Court at Para 13 of its judgment held that as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required to be registered by the Registration Act or Transfer of Property Act, may be received as evidence of a contract in suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument subject to Section 17(1A) of Registration Act.

33. In ***M/s Paul Rubber Industries Private's case (11th cited supra)***, the Hon'ble Apex Court at Para 13 of its judgment placed reliance on the judgment rendered in ***Rai Chand Jain v. Miss Chandra Kanta Koshla* {(1991) 1 SCC 422}**, in which it was held that a lease deed even though unregistered, could be considered for collateral purposes to show the purpose for which the premises was

leased out and held that nature and character of possession contained in a flawed document (being unregistered) can form collateral purpose when the character and nature of possession are not the main terms of the lease and does not constitute the main dispute for the adjudication by the court. Furthermore, at Para 15 of its judgment, the Hon'ble Apex Court placed reliance on the judgment rendered in *Park Street Properties Pvt. Ltd. v. Dipak Kumar Singh & Anr.* {(2016) 9 SCC 268} in which it was held that in the absence of a registered document, courts are not precluded from determining the factum of tenancy from other evidence on record as well as for the purpose of tenancy.

34. In *Vidyadhar's case (12th cited supra)*, the Hon'ble Apex Court at Para 36 of its judgment observed that the words "price paid or promised or part-paid and part-promised" indicate that actual payment of the whole of the price at the time of the execution of sale deed is not a *sine qua non* to the completion of the sale. Even if the whole of the price is not paid, but the document is executed and thereafter registered, if the property is of the value of Rs.100, the sale would be complete. Further, at Para 37, the Hon'ble Apex Court, placing reliance on catena of

judgments, held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction and that non-payment of a portion of the sale price would not affect validity of sale. It was further observed that part-payment of consideration by the vendee itself proved the intention to pay the remaining amount of the sale price.

35. In *Eureka Builders's case (13th cited supra)*, the Hon'ble Apex Court at Para 35 of its judgment observed that it is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property, so once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfer.

36. In *P. Kishore Kumar's case (14th cited supra)*, the Hon'ble Apex Court at Para 18 observed it is a settled law that a vendor cannot transfer a title to the vendee better than what he possesses, the principle arising from the maxim *nemo dat quod non habet* i.e., no one can transfer better title than what he himself has. It was further held at Para 22 that in a suit filed for declaration of title, merely pointing out the lacunae in the defendant's title does not suffice and the burden of proof lies on the plaintiff to reasonably establish the probability of better title.

37. In *Anita Anand's case (15th cited supra)*, the Hon'ble High Court of Delhi Court at Para 29 of its judgment held that in order to succeed in prayer for partition, it has to be proved that the property is capable of being partitioned; that the plaintiff has a share in the property; that such share can be ascertained and granted either by metes and bounds or by sale of property.

38. This Court has carefully gone through the aforesaid citations relied upon by the learned counsel for the appellants. The facts and circumstances in the aforesaid cases are entirely distinct to that of the instant case and are delivered in different factual context. The

nature of the suits and the reliefs sought in those suits are predominantly for declaration of title, recovery of possession etc. The present suit is filed for partition. In a suit for partition, the plaintiff has to prove that the subject property is ancestral/joint family property and the same is amenable to partition and that the plaintiff is entitled for share in the said property.

39. A perusal of the record discloses that both the trial Court as well as the first Appellate Court concurrently held that the oral and documentary evidence adduced by both the parties categorically proves that the suit schedule property originally belongs to one Varala Ramulu and on his death, his natural daughter- Anantahamma and his adopted son by name Varala Ravinder, succeeded to the suit schedule property. Varala Devamma, wife of Varala Ramulu, has not proved her contention of purchase of the suit schedule property from one Chitlabotala Venkataiah and as such, she has no exclusive right to alienate the property in favour of Varala Shobha. Therefore, the said Varala Shobha is not entitled for a decree of perpetual injunction in her favour in respect of the suit schedule property.

40. Thus, in the light of the above, the decisions relied upon by the learned counsel for the appellants cannot be made applicable to the facts of the present case and they are of no aid to the appellants.

41. Learned counsel for appellants failed to raise any substantial question of law to be decided by this Court in these Second Appeals. In fact, all the grounds raised in these appeals are factual in nature and do not qualify as the substantial questions of law in terms of Section 100 C.P.C.

42. It is well settled principle by catena of decisions of the Apex Court that in the Second Appeal filed under Section 100 C.P.C., this Court cannot interfere with the concurrent findings on facts arrived at by the Courts below, which are based on proper appreciation of the oral and documentary evidence on record.

43. Further, in *Gurdev Kaur v. Kaki*¹⁶, the Apex Court held that the High Court sitting in Second Appeal cannot examine the evidence once again as a third trial Court and the power under Section 100 C.P.C. is very limited and it can be exercised only

¹⁶ (2007) 1 Supreme Court Cases 546

where a substantial question of law is raised and fell for consideration.

44. Having considered the entire material available on record and the findings recorded by the trial Court as well as the first Appellate Court, this Court finds no ground or reason warranting interference with the said concurrent findings, under Section 100 C.P.C. Moreover, the grounds raised by the appellants are factual in nature and no question of law much less a substantial question of law arises for consideration in these Second Appeals.

45. Hence, both the Second Appeals fail and the same are accordingly dismissed at the stage of admission. No costs.

46. Pending miscellaneous applications, if any, shall stand closed.

Sd/- M.RAMANA KRISHNA
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

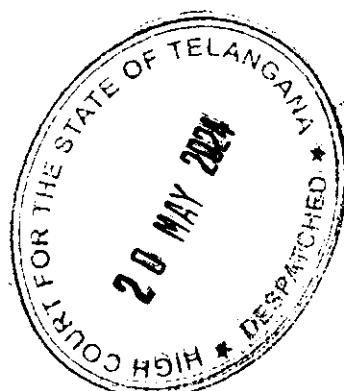
To,

1. The Principal District and Sessions Judge, Rajanna Sircilla
2. The Senior Civil Judge, at Sircilla.
3. One CC to Sri Mohd Baseer Riyaz, Advocate [OPUC]
4. One CC to Sri Rakesh Sanghi, Advocate [OPUC]
5. Two CD Copies

ADK/gh

HIGH COURT

DATED:29/02/2024



COMMON JUDGMENT

SA.No.393 AND 395 of 2023

**DISMISSING THE SECOND APPEALS AT THE
STATE OF ADMISSION WITHOUT COSTS**

⑧ vw
8/4/24