



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

WEDNESDAY, THE TWENTY FOURTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

SECOND APPEAL NO: 191/2013

Between:

Kommineni Lalitha

...APPELLANT

AND

Kolasani Veeraiah and Others

...RESPONDENT(S)

Counsel for the Appellant:

1.A RADHAKRISHNA

Counsel for the Respondent(S):

1.

PEETA
RAMAN

SECOND APPEAL NO: 192/2013

Between:

Kommineni Lalitha

...APPELLANT

AND

Kolasani Venkateswara Rao and
Others

...RESPONDENT(S)

Counsel for the Appellant:

1.A RADHAKRISHNA

Counsel for the Respondent(S):

1.D.GAYATHRI

2.PEETA RAMAN

SECOND APPEAL NO: 193/2013

Between:

Kommineni Lalitha,

...APPELLANT

AND

Kolasani Venkateswara Rao and
Others

...RESPONDENT(S)

Counsel for the Appellant:

1.A RADHAKRISHNA

Counsel for the Respondent(S):

1.D.GAYATHRI

2.

3.PEETA RAMAN

The Court made the following:

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

SECOND APPEAL Nos.191, 192 and 193 of 2013

COMMON JUDGMENT:

The second appeal in S.A.No.191 of 2013 is filed against the Judgment and decree dated 28-01-2013 in A.S.No.18 of 2012 on the file of the Senior Civil Judge, Mangalagiri, confirming the Judgment and decree dated 09-04-2012 in O.S.No.306 of 2004 on the file of the Principal Junior Civil Judge, Mangalagiri.

2. The second appeal in S.A.No.192 of 2013 is filed against the Judgment and decree dated 28-01-2013 in A.S.No.19 of 2012 on the file of the Senior Civil Judge, Mangalagiri, confirming the Judgment and decree dated 09-04-2012 in O.S.No.126 of 2004 on the file of the Principal Junior Civil Judge, Mangalagiri.

3. The second appeal in S.A.No.193 of 2013 is filed against the Judgment and decree dated 28-01-2013 in A.S.No.20 of 2012 on the file of the Senior Civil Judge, Mangalagiri, confirming the Judgment and decree dated 09-04-2012 in O.S.No.12 of 2006 on the file of the Principal Junior Civil Judge, Mangalagiri.

4. The trial Court clubbed all the aforesaid three suits *vide* O.S.No.306 of 2004, O.S.No.126 of 2004 and O.S.No.12 of 2006, common evidence was recorded and a common judgment is pronounced in all

the three suits. Against which the appeal suits vide A.S.No.18 of 2012, A.S.No.19 of 2012 and A.S.No.20 of 2012, on the file of the Senior Civil Judge, Mangalagiri have been preferred by one Kommineni Lalitha. The First Appellate Court also clubbed all the three (03) first appeals and a common judgment is pronounced in all the three (03) appeal suits. Against which the second appeal in S.A.No.191 of 2013 was preferred by the defendant No.1 in O.S.No.306 of 2004, S.A.No.192 of 2013 was preferred by the plaintiff in O.S.No.126 of 2004 and S.A.No.193 of 2013 was preferred by the defendant No.1 in O.S.No.12 of 2006. Therefore, all the three second appeals are heard together and they are being disposed of by way of a common judgment.

5. Originally, the trial Court clubbed all the three suits *vide* O.S.No.306 of 2004, O.S.No.126 of 2004 and O.S.No.12 of 2006. The plaintiff initiated action in O.S.No.306 of 2004, on the file of the Principal Junior Civil Judge, Mangalagiri, seeking to declare the plaintiff is absolute owner of the suit schedule property and put the plaintiff in possession and enjoyment of the plaint schedule property free from encumbrances by removing the defendant No.1 and to cancel the document No.320 of 1998 dated 28.04.1998 of Sub-Registrar Office, Amaravati for costs.

The plaintiff initiated action in O.S.No.126 of 2004, on the file of the Principal Junior Civil Judge, Mangalagiri, seeking for a relief of permanent injunction restraining the defendants, their men, from ever interfering with the plaintiff's peaceful possession and enjoyment over the plaint schedule and for costs.

The plaintiff initiated action in O.S.No.12 of 2006, on the file of the Principal Junior Civil Judge, Mangalagiri, seeking to declare that the plaintiff is the absolute owner of the plaint schedule property in view of the sale deed jointly executed by the defendant Nos.2 to 4 in favour the plaintiff and also to put the plaintiff in possession and enjoyment of the plaint schedule property free from encumbrances by removing the defendants from plaint schedule land and for costs of the suit.

6. The learned Principal Junior Civil Judge, Mangalagiri, decreed the suit in O.S.No.306 of 2004, in favour of the plaintiff, dismissed the suit in O.S.No.126 of 2004 with costs and decreed the suit in O.S.No.12 of 2006, in favour of the plaintiff. Felt aggrieved thereby, the unsuccessful defendant No.1 in O.S.No.306 of 2004 filed the appeal suit vide A.S.No.18 of 2012, the unsuccessful plaintiff in O.S.No.126 of 2004 filed the appeal suit vide A.S.No.19 of 2012 and the unsuccessful defendant No.1 in O.S.No.12 of 2006, filed the appeal suit vide A.S.No.20 of 2012, before the learned Senior Civil Judge, Mangalagiri. The learned first appellate Judge clubbed all the three (03) appeals, a common judgment is pronounced and dismissed all the appeal suits by confirming the decree and the common judgment passed by the learned trial Judge. Aggrieved thereby, the defendant No.1 in O.S.No.306 of 2004, the plaintiff in O.S.No.126 of 2004 and the defendant No.1 in O.S.No.12 of 2006, approached this Court by way of second appeals.

7. For the sake of convenience, both parties in the appeals will be referred to as they are arrayed in the original suits.

8. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.12 of 2006, is as follows:

Originally, Kolasani Veeraiah and Nelluri Atchamma, purchased the plaint schedule property from one Jonnalagadda Koteswara Rao, under a registered sale deed dated 24.05.1988, *vide* Doc.No.287/1988 and ever since they were in possession and enjoyment of the said property. Later on 11.02.1988, they sold the plaint schedule property to the plaintiff for a consideration of Rs.39,000/-. The plaintiff paid Rs.38,800/- to the defendants, by name Kolasani Veeraiah and Nelluri Atchamma, and obtained a sale letter from them. Subsequently, on 31.05.2004, on payment of the remaining balance amount including interest of Rs.346, the plaintiff obtained a registered sale deed dated 31.05.2004, on the file of the Sub-Registrar Office, Amaravati, and delivered the possession of the schedule property to the plaintiff in O.S.No.12 of 2006, on the same day. Therefore, the plaintiff became the absolute owner of the plaint schedule property, by virtue of Ex.A-1 registered sale deed dated 31.05.2004, and had been in possession and enjoyment of the said property by raising cotton crop.

Thereafter the plaintiff came to know that the defendant No.1 by name Kommineni Lalitha colluding with the defendant No.3, filed O.S.No.126 of 2004, on the file of Principal Junior Civil Judge, Mangalagiri, against the plaintiff herein and the defendant Nos.2 to 4 and obtain interim injunction *vide* I.A.No.709 of 2004. Under the guise of the said injunction orders, the plaintiff was dispossessed from the plaint schedule property forcibly and that the

plaintiff filed a suit in O.S.No.12 of 2006 for declaration of his title over the plaint schedule property and consequential relief of recovery of possession of the same.

The case of the plaintiff in O.S.No.126 of 2004 and the defendant No.1 in O.S.No.12 of 2006 and O.S.No.306 of 2004 is as follows:

She purchased the plaint schedule property of Ac.2.00 cents from Nelluri Ramaiah and his wife Nelluri Siva Naga Parvathi under a valid sale consideration of Rs.72,000/- under a registered sale deed dated 28.04.1998 and delivered the possession of the same. As such, she became the absolute owner of Ac.2.00 cents of plaint schedule property covered under O.S.No.126 of 2004, by virtue of a registered sale deed dated 28.04.1998 and she has been in possession and enjoyment of the said property. Consequently, the appellant herein filed O.S.No.126 of 2004, for permanent injunction, simplicitor, restraining the plaintiffs in other two suits and other defendants from interfering with possession over the plaint schedule property in O.S.No.126 of 2004.

The case of the plaintiff in O.S.No.306 of 2004 i.e. the defendant No.4 in O.S.No.12 of 2006 by name Kolasani Veeraiah is as follows:

He and Nelluri Atchamma, together purchased Ac.2.00 cents of land, which is the plaint schedule property in O.S.No.126 of 2004, from one Jonnalagadda Koteswara Rao, and became absolute owners therein, by virtue of registered sale deed dated 24.05.1988. Subsequently, on 31.05.2004,

Nelluri Atchamma, sold her northern half share in an extent of Ac.1.00 cents to the plaintiff and executed a registered sale deed dated 31.05.2004, in favour of the plaintiff in O.S.No.12 of 2006. As both himself and Nelluri Atchamma, jointly purchased the plaint schedule property together, he also joined along with Nelluri Atchamma, in execution of the registered sale deed dated 31.05.2004, in favour of the plaintiff in O.S.No.12 of 2006. He remains with the southern half to an extent of Ac.1.00 cents, which is with him and he has been in possession and enjoyment of the said Ac.1.00 cents, which is the plaint schedule property in O.S.No.306 of 2004. The defendant No.1 filed the suit in O.S.No.126 of 2004, for permanent injunction simplicitor, with false allegations and obtained interim injunction against them, and that he was constrained to file the suit in O.S.No.306 of 2004, for declaration of his title over the plaint schedule property in O.S.No.306 of 2004, and for cancellation of the registered sale deed dated 28.04.1998. He further pleaded that since the appellant/Kommineni Lalitha, is not having any title in the plaint schedule property and her title is in dispute, she has to file a suit for declaration of title, instead of injunction simplicitor, and that he was constrained to file a suit in O.S.No.306 of 2004, for seeking relief of declaration of title in respect of Ac.1.00 cents of the southern portion of Ac.1.00 cents out of Ac.2.00 cents and also cancellation of the registered sale deed said to have been obtained by Kommineni Lalitha from Nelluri Ramaiah and Nelluri Siva Naga Parvathi.

9. On the basis of above pleadings, the learned Principal Junior Civil Judge, Mangalagiri, framed the following issues for trial:

Issued framed in O.S.No.12 of 2006:

1. Whether the plaintiff purchased the plaint schedule property from defendants 2 to 4 on 11-2-1998 for a consideration of Rs.99,000/- or not?
2. Whether the plaintiff is entitled for declaration as prayed for or not?
3. Whether the plaintiff is entitled for recovery of possession of plaint schedule property as prayed or not?

Issued framed in O.S.No.306 of 2004:

1. Whether the plaintiff is entitled for declaration as prayed or not?
2. Whether the plaintiff is entitled for consequential possession over the plaint schedule property or not?
3. Whether the plaintiff is entitled for cancellation of the registered document bearing No.320 of 1998 dated 28-4-1998 or not?

Issued framed in O.S.No.126 of 2004:

1. Whether the plaintiff is entitled for grant of permanent injunction as prayed or not?
2. To what relief?

10. The trial Court clubbed all these three suits and common evidence is recorded in O.S.No.12 of 2006. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A-1 to A-3 were marked. On behalf of the defendant Nos.1, 2, 4 and 6 to 8, D.Ws.1 to 4 were examined and Exs.B-1 to B-8 were marked.

11. The learned Principal Junior Civil Judge, Mangalagiri, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, decreed the suit in O.S.No.306 of 2004, dismissed the suit in O.S.No.126 of 2004 with costs and decreed the suit in O.S.No.12 of 2006, by passing a common judgment dated 09.04.2012. Felt aggrieved thereby, the defendant No.1 in O.S.No.306 of 2004 filed the appeal suit vide A.S.No.18 of 2012, the unsuccessful plaintiff in O.S.No.126 of 2004 filed the appeal suit vide A.S.No.19 of 2012 and the unsuccessful defendant No.1 in O.S.No.12 of 2006, filed the appeal suit vide A.S.No.20 of 2018, before the learned Senior Civil Judge, Mangalagiri, wherein the following point came up for consideration:

1. Whether the defendant No.2/Nelluri Ramaiah and his wife Nelluri Siva Naga Parvathi have got any right to sell the plaint schedule properties of all the three suits in O.S.No.12 of 2006, O.S.No.306 of 2004 and O.S.No.126 of 2004, on the file of the Principal Junior Civil Judge, Mangalagiri?

12. The learned Senior Civil Judge, Mangalagiri, i.e., the first appellate Judge, after hearing the arguments, answered the point, as above, against the defendant No.1 in O.S.No.12 of 2006, O.S.No.306 of 2004 and the plaintiff in O.S.No.126 of 2004 and dismissed all the three (03) appeal suits *vide* common judgment dated 28.01.2013. Felt aggrieved of the same, the defendant No.1 in O.S.No.306 of 2004, the plaintiff in O.S.No.126 of 2004 and

the defendant No.1 in O.S.No.12 of 2006 filed the present second appeals before this Court.

13. On hearing both side counsels at the time of admission of the second appeals on 09.04.2013, the Composite High Court of Andhra Pradesh framed the following substantial questions of law:

- 1) Whether a person, who purchased the property at a later point of time, can seek the relief of declaration against the one, who purchased it much before?
- 2) Whether the agreement of sale even if it is said to be anterior to the sale deed, under which the defendant in a suit purchased the property, can be taken into account unless it is placed before the Court.

14. Heard Sri A.Radha Krishna, learned Counsel for the appellants and Smt. A.Chaya Devi, learned Senior Counsel representing Ms. D.Gayathri, learned counsel for the respondents and Sri Peeta Raman, learned counsel for the respondents.

15. Law is well settled that under Section 100 of CPC, the High Court cannot interfere with the findings of fact arrived at by the first appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of **Bhagwan Sharma v. Bani Ghosh**¹, the Apex Court held as follows:

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature.”

In the case of **Kondira Dagadu Kadam v. Savitribai Sopan Gujar**², the Apex Court held as follows:

“The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

16. The undisputed facts are that the total extent of the plaint schedule property in O.S.No.126 of 2004, is Ac.2.00 cents, the said suit is filed by the appellant herein, seeking simple relief of permanent injunction in respect of the plaint schedule property of Ac.2.00 cents and for northern half in an extent of Ac.1.00 cents out of Ac.2.00 cents, the plaintiff in O.S.No.12 of 2006, by name Kolasani Venkateswara Rao, filed a suit for seeking relief of declaration of title and also possession of the said Ac.1.00 cents of the said land and for remaining southern half to an extent of Ac.1.00 cents. Kolasani Veeraiah i.e. the plaintiff in O.S.No.306 of 2004 filed a suit with a specific pleading that, he and Nelluri Atchamma together jointly purchased total Ac.2.00 cents, which is the plaint schedule property in O.S.No.126 of 2004, on 24.05.1988 from

¹ AIR 1993 SC 398

² AIR 1999 SC 471

Jonnalagadda Koteswara Rao, and they became the absolute owners of the schedule property by virtue of Ex.A-3 is equal to Ex.B-5 registered sale deed dated 24.05.1998.

17. The contention of the appellant is that she purchased the total extent of Ac.2.00 cents from Nelluri Ramaiah and his wife Nelluri Siva Naga Parvathi on 28.04.1998, under a registered sale deed under original of Ex.B-7.

18. The plaint schedule property in O.S.No.126 of 2004 is Ac.2.00 cents of land and the case of Kolasani Veeraiah, is that he and Nelluri Atchamma, jointly purchased the said Ac.2.00 cents of land from Jonnalagadda Koteswara Rao, under a registered sale deed dated 24.08.1988 and the original registered sale deed is exhibited as Ex.B-5. In the said sale deed, there was a specific recital that after receiving the entire sale consideration of Rs.24,000/-, the said Koteswara Rao, executed a registered sale deed under Ex.B-5, and delivered the possession to Kolasani Veeraiah and Nelluri Atchamma. In the said registered document itself, it was specifically recited by the vendor that his wife Lakshmi got the property from her grandfather and father, later she obtained a registered gift settlement deed *vide* Doc.No.27/1988, and after her death he got the same by way of succession. The link document to Ex.B-5 i.e. the gift settlement deed in favour of Lakshmi is also filed and got exhibited as Ex.B-8.

19. To prove the title in the plaint schedule property, Kolasani Veeraiah examined one of the boundary holders by name Puchakayala Sambasiva Rao

as D.W.4. As per his evidence, Kolasani Veeraiah and Nelluri Atchamma jointly purchased Ac.2.00 cents of land, situated in the eastern side of his land. The specific case of the appellant by name Kommineni Lalitha is that she purchased the plaint schedule property on 28.04.1998, from Nelluri Ramaiah and his wife Siva Naga Parvathi. The appellant relied on the sale deed under Ex.B-1. As per Ex.B-1 sale deed, the vendor of the appellant got the property from their ancestors. The alleged vendors of the property under Ex.B-1 are Nelluri Ramaiah and his wife Siva Naga Parvathi, are also the parties to the suit proceedings. The title of the vendors of the appellant is strongly disputed by the disputed by the respondents, but for the reasons best known to the appellant, the appellant did not choose to examine her vendors by name Nelluri Ramaiah and Nelluri Siva Naga Parvathi, who are none other than the husband and wife. Though they are party to the suit proceedings, they did not enter into the witness box to prove that they are having valid title in Ex.B-1 property. They also did not enter into the witness box to state that how they got Ex.B-1 property. The vendors of the appellants, who are the parties to the suit proceedings did not, came forward to depose that they are the absolute owners of the plaint schedule property and they conveyed the property of Ac.2.00 cents under Ex.B-1 to the appellant. Furthermore, Nelluri Ramaiah and Nelluri Siva Naga Parvathi, are none other than the son and the daughter-in-law of Nelluri Atchamma, who is the defendant No.3 in O.S.No.12 of 2006. By the date of the alleged sale deed under Ex.B-1, Nelluri Atchamma was alive and she died in the year 2004, and her brother Kolasani Veeraiah

was also alive by the date of Ex.B-1 sale deed. The original owners of the property by name Nelluri Atchamma and Kolasani Veeraiah are alive by the date of Ex.B-1 sale deed and the appellant did not obtain the sale deed from the original owners' i.e. Kolasani Veeraiah and Nelluri Atchamma. Furthermore, no documentary evidence is produced by the appellant to show that her vendors are having absolute right and title and possession in Ex.B-1 property. There is no documentary evidence to show that the name of Nelluri Ramaiah and his wife Siva Naga Parvathi are mutated in the revenue records.

20. The recitals in Ex.B-1 goes to show that the appellant Kommineni Lalitha obtained Ex.B-1 sale deed on 28.04.1998, from one Nelluri Ramaiah and his wife Siva Naga Parvathi. As stated *supra*, in the said sale deed it was specifically recited that the title of the alleged vendors of the appellant is that they got the same by way of ancestral. Admittedly, by the date of the said sale deed dated 24.08.1998, the mother of Nelluri Ramaiah, by name Nelluri Atchamma, was alive and the brother of Nelluri Atchamma, by name Kolasani Veeraiah was also alive. Nelluri Atchamma died during the pendency of the suit proceedings in the year 2004. Originally, Nelluri Atchamma and her brother Kolasani Veeraiah, purchased the property under Ex.B-5 registered sale deed on 24.05.1988, a way back in the year 1988, from their vendor Jonnalagadda Koteswara Rao, and the same is not in dispute. Moreover, as seen from Ex.B-1 sale deed of the appellant, the vendors received an amount of Rs.12,000/- only from out of Rs.72,000/- and the remaining sale

consideration of Rs.60,000/- was paid to the alleged creditors of the vendors of the appellant under Ex.B-1 to discharge their promissory notes.

21. Ex.B-1 sale deed is strongly disputed by the respondents. It is the contention of the respondents that the said Ex.B-1 sale deed of the appellant is a collusive one and it is brought into existence and no consideration was passed under Ex.B-1. Therefore, it is for the appellant to prove that the said sale deed is a valid one and consideration was also passed under the said sale deed. Admittedly, the discharged promissory notes are not filed by the appellant; the creditors of the said three (03) pro-notes are not examined as witnesses. Moreover, D.W.2, who is the scribe of Ex.B-1 sale deed, admits that the entire sale consideration under the said sale deed is paid to the vendors under Ex.B-1 at Amaravati. Therefore, the evidence of the appellant is not at all corroborated by the evidence of D.W.2. Learned counsel for the appellant would contend that Nelluri Atchamma signed as an attestor in the said sale deed. But the fact remains that the status of the attesting witness in the sale deed is not equal to the executants of the sale deed. Moreover, Nelluri Atchamma and her brother Kolasani Veeraiah are having valid title by the date of Ex.B-1 both are alive by the date of Ex.B-1. The appellant has not obtained any sale deed from Nelluri Atchamma and her brother. Therefore, the appellant will not get any title under Ex.B-1, the appellant failed to prove that her vendors are having right and title in the plaint schedule property. Since the vendors of the appellant viz., Nelluri Ramaiah and his wife are not having any title in the plaint schedule property by the date of Ex.B-1, they will

not transfer any right in the plaint schedule property to the appellant, moreover, the original owners of the property by name Nelluri Atchamma and Kolasani Veeraiah, were alive by the date of Ex.B-1.

22. The defendant No.4 in O.S.No.12 of 2006 i.e. the plaintiff in O.S.No.306 of 2004 by name Kolasani Veeraiah, to prove his right and title in Ac.2.00 cents property got examined himself as D.W.3 and also examined one Puchakayala Sambasiva Rao as D.W.4. D.W.3/Kolasani Veeraiah deposed in his evidence that on 24.05.1988, himself and the defendant No.3/Nelluri Atchamma jointly got an extent of Ac.2.00 cents of agricultural land in Sy.Nos.31/C and 36/B of Vadlamanu village for a valid sale consideration of Rs.24,000/- from Jonnalagadda Koteswara Rao under a registered sale deed. He further deposed that on 31.05.2004, Nelluri Atchamma sold away her northern half share in an extent of Ac.1.00 cents out of Ac.2.00 cents covered under the aforesaid sale deed and the same was registered in the Sub-Registrar Office, Amaravati, *vide* Doc.No.661/2004, at the request of the vendee himself joined as a party along with Nelluri Atchamma and the property was conveyed as a joint document to the vendee, and he remains with the southern half to an extent of Ac.1.00 cents. He further deposed that the defendant No.1 herein by name Kommineni Lalitha filed a suit in O.S.No.126 of 2004, for seeking relief of permanent injunction based on the nominal and collusive document executed by Nelluri Ramaiah and his wife Siva Naga Parvathi, which included the plaint schedule property under a fictitious sale deed. He further deposed that under the guise of *exparte*

injunction obtained by the appellant in O.S.No.126 of 2004, he was dispossessed from the property in O.S.No.306 of 2004.

23. D.W.4 deposed in his evidence that in the year 1988, Kolasani Veeraiah and Nelluri Atchamma purchased an extent of Ac.2.00 cents of agricultural land at Vadlamanu village from Jonnalagadda Koteswara Rao and there upon they had been enjoying the same as absolute owners. He further deposed that his property is situated on the western side and also southern side to the said Ac.2.00 cents of land and ever since, Kolasani Veeraiah cultivated the said land up to the year 2004 and he provided water to the said land. In cross-examination nothing was elicited from the mouth of D.W.3 and D.W.4 by the learned counsel for the appellant to disprove the case of the plaintiff in O.S.No.306 of 2004. Kolasani Veeraiah relied on Ex.B-5 registered sale deed, said to have been executed by Jonnalagadda Koteswara Rao, in his favour and in favour of his sister by name Nelluri Atchamma. In the said sale deed it was specifically recited that the title of the said J.Koteswara Rao was obtained through his wife by way of succession and his wife Lakshmi got the same by virtue of a registered gift settlement deed *vide* Doc.No.27/1988.

24. Learned counsel for the appellant would contend, during the course of arguments in the second appeals, for the first time in the year 2025, that the vendor Jonnalagadda Koteswara Rao, does not even assert that his wife i.e. late Lakshmi had any issues and she obtained it by way of Ex.B-8 gift deed dated 18.01.1988, from her father and grandfather. Learned counsel for the appellant would further contend that the said omission is crucial, because the

devolution of a female Hindu's property depends entirely upon whether she died with or without children. He would further contend that even if it is assumed that the deceased had issues, the husband could not have conveyed the property exclusively, as the children would also inherit along with him. Learned counsel for the appellant further contend that in the absence of such statement, the statutory presumption under Section 15(2)(a) of the Hindu Succession Act applies and the property inherited from her father devolves upon her father's heirs, but not on her husband. The material on record clearly reveals that the aforesaid plea taken by the appellant during the second appeal proceedings in the year 2025 about the applicability of Section 15(2) of the Hindu Succession Act, has been taken by the appellant for the first time in the year 2025 during the course of arguments in the second appellate stage. In the present case, the property was acquired by a female Hindu, by way of Ex.B-8 registered gift settlement deed dated 18.01.1988. In the said gift settlement deed, the settlors expressed their intention in the gift deed itself that the property was gifted prior to the gift settlement deed and from that day onwards, the said property is in possession of the settlee, but no gift deed was executed earlier and that they are executing a registered gift settlement deed dated 18.01.1988, in favour of the settlee, Jonnalagadda Aadilakshmi, who is none other than wife of Jonnalagadda Koteswara Rao. It is not in dispute that Jonnalagadda Aadilakshmi was no more and she died prior to 24.05.1988.

25. In a case of **Arunachala Gounder (Dead) by Legal Representatives Vs. Ponnuswamy and others**³, the Apex Court held as follows:

“75. The scheme of sub-Section (1) of Section 15 goes to show that property of Hindu females dying intestate is to devolve on her own heirs, the list whereof is enumerated in Clauses (a) to (e) of Section 15 (1). Sub- Section (2) of Section 15 carves out exceptions only with regard to property acquired through inheritance and further, the exception is confined to the property inherited by a Hindu female either from her father or mother, or from her husband, or from her father-in-law. The exceptions carved out by sub-Section (2) shall operate only in the event of the Hindu female dies without leaving any direct heirs, i.e., her son or daughter or children of the pre-deceased son or daughter.

76. Thus, if a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband. In case, a female Hindu dies leaving behind her husband or any issue, then Section 15(1)(a) comes into operation and the properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act.”

In the case at hand, there is no pleading in the plaint in O.S.No.126 of 2004, by the appellant/plaintiff and also in the written statement of the appellant/defendant No.1 in other two suits that Jonnalagadda Lakshmi died issueless. Admittedly, no such pleading has been taken by the appellant either before the trial Court or before the First Appellate Court that Jonnalagadda Aadilakshmi died by leaving issues or issueless. Therefore, the said plea cannot be raised during the second appeal proceedings of the year 2013, in the year 2025, before this Second Appellate Court. By virtue of Section 15(2)

³ (2022) 11 Supreme Court Cases 520

of the Hindu Succession Act, the husband of Lakshmi by name Koteswara Rao had executed Ex.B-5 sale deed, which was registered on 24.05.1988, in favour of Kolasani Veeraiah and his sister Nelluri Atchamma, in respect of total property of Ac.2.00 cents. Moreover, the right of the vendor of Kolasani Veeraiah and Nelluri Atchamma by name Jonnalagadda Koteswara Rao, was undisputed by the appellant till so far except during the course of the second appeal proceedings in the year 2025, for the first time. Therefore, the said point cannot be looked into in the second appeal proceedings without any pleading and the said aspect cannot be looked into unless there is a substantial question of law in the second appeal proceedings.

26. Nelluri Atchamma and Kolasani Veeraiah, who are the defendant Nos.2 and 4 in O.S.No.126 of 2004, filed common written statement and pleaded that they have jointly purchased Ac.2.00 in D.No.31-C and 36-B, out of total extent of Ac.9.78 cents from Jonnalagadda Koteswara Rao for Rs.24,000/- and obtained a registered sale deed way back in the year 1988, under Ex.B-5. They further pleaded that they were surprised to know that the appellant/Kommineni Lalitha, said to have been purchased the property covered under the sale deed dated 24.05.1988, which includes the plaint schedule property from the defendant No.3, under a fictitious sale deed dated 24.05.1998, from Nelluri Ramaiah and his wife Siva Naga Parvathi. In order to prove the title of Kolasani Veeraiah and Nelluri Atchamma, they relied on a registered sale deed dated 24.05.1988, said to have been executed by Jonnalagadda Koteswara Rao, and her vendor referred in Ex.B-5 sale deed

that Ex.B-8 is a link document to Ex.B-5, Kolasani Veeraiah also paid land revenue for Faslis 1400 and 1401 i.e. in the year 1990-91 respectively. Moreover, the appellant, who is the plaintiff in O.S.No.126 of 2004, by name Kommineni Lalitha, will not get any title from Ex.B-1 property, since her alleged vendors Nelluri Ramaiah and his wife Siva Naga Parvathi are not having any right or title in Ex.B-1 property. In the Ex.B-1 itself it was referred that the vendors title is of their ancestors. Moreover, the mother and mother-in-law of the vendor of the appellant, by name Nelluri Atchamma was alive by the date of Ex.B-1 sale deed. Furthermore, no link document is referred in Ex.B-1.

27. The material on record reveals that the appellant herein obtained a sale deed from Nelluri Ramaiah and his wife Siva Naga Parvathi, who are not the real owners of that property and they have no legal right or title to execute the said sale deeds. Therefore, original of Ex.B-1 equivalent to Ex.B-7 sale deed is Void-Ab-Initio, the said sale deed will not create any right and title or interest in favour of the transferee/appellant in whose name the document was executed. Therefore, the said document has no value in the eye of Law. The learned trial Judge by giving cogent reasons, decreed the suit in O.S.No.306 of 2004, cancelled the said registered sale deed obtained by Kommineni Lalitha dated 28.04.1998, in O.S.No.306 of 2004.

28. Learned counsel for the appellant would contend that the First Appellate Court without following the procedure under Order XLI Rule 31 of the Code of Civil Procedure, 1908, delivered a judgment in the first appeals, therefore the

judgment passed by the First Appellate Court is not in accordance with law. Learned counsel for the appellant placed reliance on a judgment High Court of Karnataka in ***Sharnama claims to be wife of Annayya Vs. Renuka Alias Kavitha***, in ***R.S.A.No.7034 of 2011***. In the aforesaid case law, the High Court of Karnataka at Kalaburagi Bench held as follows:

*"16. Thus the aforesaid provision of Civil Procedure Code mandates the first appellate court to frame the points for determination and dispose of the appeal afresh. The Apex Court in the case of **B.V.Nagesh and another Vs H.V.Sreenivasa Murthy** reported in (2010) 13 SCC 530 at paragraphs 3 and 4 has held as under:*

"3. How regular first appeal is to be disposed of by the appellate Court/High Court has been considered by this Court in various decisions. Order XLI C.P.C. deals with appeals from original decrees.

Among the various rules, Rule 31 mandates that the judgment of the appellate Court shall state:

- a) the points for determination;*
- b) the decision thereon;*
- c) reasons for the decision; and -*
- d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by

reasons, on all the issues arising along with the contentions put- forth and pressed by the parties for decision of the appellate Court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. [Vide Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 188, para 15 and Madhukar and Others vs. Sangram SCC P.758, para 5.]

17. Aforesaid principle of law has been reiterated by the Apex court in the case of **State Bank of India and Another Vs Emmsons International Limited and Another reported in (2011)12 SCC 174, H.Siddiqui (dead) by LRs Vs A.Ramalingam reported in (2011) 4 SCC 240** and has held that sitting as a court of first appeal it is the duty of the appellate court to deal with all the issues and evidence led by the parties before recording its findings.”

29. In a case of **Nafees Ahmad and Another Vs. Soinuddin and others**⁴, by referring the earlier judgments of the Privy Council and also the judgments of the Apex Court, very recently the Hon’ble Apex Court held on 16.04.2025 as follows:

“13. We must also look into the provisions of Rule 30 of Order 41 for the purpose of fortifying our interpretation of Rule 31. Order 41 Rule 30 CPC reads thus:

“30. Judgment when and where pronounced.— (1) The Appellate Court, after hearing the parties or their pleaders and

⁴ 2025 SCC OnLine SC 826

referring to any part of the proceedings, whether on appeal or in the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.”

14. Thus, this Rule does not make it incumbent on the Appellate Court to refer to any part of the proceedings in the court from whose decree the appeal is preferred. The Appellate Court can refer, after hearing the parties and their pleaders, to any part of these proceedings to which reference be considered necessary. It is in the discretion of the Appellate Court to refer to the proceedings. It is competent to pronounce judgment after hearing what the parties or their pleaders submit to it for consideration. It follows therefore that if the appellant submits nothing for its consideration, the Appellate Court can decide the appeal without any reference to any proceedings of the courts below and, in doing so, it can simply say that the appellants have not urged anything which would tend to show that the judgment and decree under appeal were wrong”

In the case at hand, the First Appellate Court by giving reasons passed a judgment and there is no illegality or irregularity in the judgment of the First Appellate Court as pointed out by the appellant.

30. The plaintiff in O.S.No.12 of 2006 is claiming the relief of declaration of title that the plaintiff in O.S.No.12 of 2006 is the absolute owner of the suit schedule property of Ac.1.00 cents, in view of the sale deed jointly executed by defendant Nos.2 to 4 viz, Nelluri Atchamma, Nelluri Ramaiah and Kolasani

Veeraiah and also for recovery of possession therein. The specific case of the plaintiff in O.S.No.12 of 2006 by name Kolasani Venkateswara Rao is that he purchased the schedule property under a sale agreement dated 11.02.1998, for a valid sale consideration of Rs.39,000/- and on the same day he paid Rs.38,800/- to the defendant Nos.2 and 4 and obtained unregistered sale letter from the defendant Nos.2 and 4 and subsequently, the defendant Nos.2 to 4 executed a registered sale deed in favour of the plaintiff on 31.05.2004, under Ex.A-1 in the Sub-Registrar Office, Amaravati. It was contended by the learned counsel for the appellant that the alleged unregistered sale agreement did not come into light till so far and that Ex.A-1 sale deed is not a valid sale deed. The said registered sale deed is marked as Ex.A-1 and the recital in Ex.A-1 sale deed supported the averments in the plaint in O.S.No.12 of 2006, moreover, the P.W.2., who is the scribe of the agreement support P.W.1 in respect of the earlier agreement dated 11.02.1998, as referred in Ex.A-1 sale deed, since the registered sale deed under Ex.A-1 is proved, the entire sale transaction is completed, therefore the question of production of earlier unregistered agreement of sale is not at all required. Moreover, the original vendor Kolasani Veeraiah i.e. D.W.3 in cross-examination when elicited he admits that himself and Nelluri Atchamma jointly purchased the plaint schedule property and himself and Nelluri Atchamma executed a registered sale deed in respect of Ac.1.00 cents in favour of the plaintiff and himself and the defendant No.3 got absolute ownership over the schedule property and also the plaint schedule in O.S.No.306 of 2004. Therefore, Ex.A-1 registered

sale deed is proved through one of the vendor of the plaintiff by name Kolasani Veeraiah and the plaintiff also produced his vendor's registered sale deed dated 24.05.1988, which is a registered document of the year 1988. Therefore, the title of the plaintiff in O.S.No.12 of 2006 is proved through the vendor of the plaintiff and also by producing Ex.A-1 original registered sale deed.

31. As stated *supra*, the right and title of the appellant by name Kommineni Lalitha in the plaint schedule property of Ac.2.00 cents is not at all proved by the appellant. The appellant herein obtained a sale deed from one Nelluri Ramaiah and his wife Siva Naga Parvathi, who are not the real owners of the property and they have no legal right or title to execute the said sale deed, therefore, the original of Ex.B-1 equal to Ex.B-7 is Void-Ab-Initio, the said sale deed will not create any right, title or interest in favour of the transferee/appellant in whose name the document was executed. Therefore the said document has no value in the eye of Law. As such, the sale under Ex.B-1 of the appellant itself is illegal. Since, inception a vendor under Ex.B-1 cannot transfer title to the vendee/appellant better than they themselves possess. Hence, the plaintiff in O.S.No.12 of 2006, Kolasani Venkateswara Rao is entitled for declaration of title to the schedule mentioned property therein and also for relief of possession without seeking cancellation of Ex.B-1 sale deed. The Ex.B-1 sale deed is not binding on the plaintiff, since the said document is a Void-Ab-Initio, because Ex.B-1 is not obtained from the real owners by the appellant. Furthermore, Nelluri Atchamma and Kolasani

Veeraiah, who are the real owners under Ex.B-5, executed Ex.A-1 sale deed in favour of Kolasani Venkateswara Rao.

32. As per the own case of the plaintiff in O.S.No.12 of 2006, under the guise of ex-parte injunction orders obtained by the appellant in O.S.No.126 of 2004, P.W.1 was forcibly dispossessed in the year 2004 and he filed a suit in the year 2006. Admittedly, the appellant herein filed a simple suit for permanent injunction without seeking relief of declaration of title in the suit schedule property in O.S.No.126 of 2004. The legal position in this regard is no more *Res Integra* and the same has been well settled in a catena of judgments by the Apex Court.

33. In a case of ***T.V.Ramakrishna Reddy Vs. M.Mallappa and Another***⁵, the Apex Court held as follows:

“Where there are necessary pleadings regarding title and appropriate issue relating to the title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, such cases are the exception to the normal rule that question of title will not be decided in suits for injunction. Where the plaintiff’s title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. But if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.”

In the case at hand, the title of the appellant is strongly disputed by the respondents and Kolasani Veeraiah and Nelluri Atchamma obtained a sale deed from Jonnalgadda Koteswara Rao, who is the real owner of the schedule property, moreover, by the date of sale deed under Ex.B-1 obtained by the

⁵ (2021) 13 Supreme Court Cases 135

appellant in the year 1998, the real owners i.e. Kolasani Veeraiah and Nelluri Atchamma are alive and the appellant obtained a sale deed from the son and daughter-in-law of Nelluri Atchamma. Moreover, the recitals in Ex.B-1 show that the vendor in Ex.B-1 got the same from their ancestors. For the aforesaid reasons, in view of the cloud in the title of the alleged vendor of the appellant, the appellant has to seek a relief of declaration of title in addition to the relief of permanent injunction; therefore, injunction simplicitor *vide* O.S.No.126 of 2004, is not at all maintainable. Therefore, simple suit for permanent injunction filed by the appellant *vide* O.S.No.126 of 2004 is not at all maintainable.

34. On appreciation of the entire evidence on record, the learned trial Judge as well as the learned first appellate Judge arrived at concurrent finding and decreed the suits in O.S.No.306 of 2004 and O.S.No.12 of 2006 and rightly dismissed the suit filed by the appellant *vide* O.S.No.126 of 2004. The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized 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. The present case does not come within the ambit of aforesaid exceptions as stated supra.

35. In the case at hand, on appreciation of the entire evidence on record, the learned trial Judge rightly decreed the suit and on re-appreciation of the entire evidence on record on all issues decided by the trial Court and after

framing the points for consideration as required under Section 96 of C.P.C., the learned first appellate Judge rightly dismissed the first appeals. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellant did not arise or remain for consideration. This Court is satisfied that all the three second appeals did not involve any substantial question of law for determination.

36. In the result, the second appeals *vide* Second Appeal Nos.191, 192 and 193 of 2013 are dismissed, confirming the common judgment and decree passed by the first appellate Court. Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeals.

V.GOPALA KRISHNA RAO, J

Date: 24.12.2025
SRT