

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE JUSTICE B.R.MADHUSUDHAN RAO

CITY CIVIL COURT APPEAL NO: 3 OF 2016

Appeal filed under Section 96 R/W Order 41 Rule 1 of C.P.C., aggrieved by the Judgment and Decree dated 7.10.2015 in O.S. No.383 of 2012 on the file of the III Senior Civil Judge, Secunderabad.

Between:

Rathod Nandu, S/o. Late Rathod Babaiah aged 52 years, Occ Employee, R/o. 10-5-391, Street No.15, Sai Nagar, Near Indira Gandhi Statue, Tukaramgate, Secunderabad.

... **APPELLANT/DEFENDANT**

AND

Rathod Narsing Rao, S/o. Late Rathod Babaiah aged 54 years, Occ Employee, R/o. 10-5-391, Street No.15, Sainagar, Near Indira Gandhi Statue, Tukaramgate, Secunderabad.

... **RESPONDENT/PLAINTIFF**

I.A. NO: 3 OF 2016(CCCAMP. NO: 4 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.NO.383/2012 dated 07.10.2015 on the file of the learned III Senior Civil Judge, Secunderabad including proceedings in E.P.No.381/2015

Counsel for the Appellant : SRI. G RAVI CHANDRAN

Counsel for the Respondent : MS. VEDULA CHITRALEKHA

The Court delivered the following: JUDGMENT

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE JUSTICE B.R.MADHUSUDHAN RAO

CCCA.NO.3 OF 2016

BETWEEN :

Rathod Nandu, S/o. Late Rathod Babaiah

... Appellant/Defendant

AND

Rathod Narsing Rao, S/o. Late Rathod Babaiah,
Aged: 54 years, Occ: Employee,
R/o.10-5-391, Street No.15, Sai Nagar,
Near Indira Gandhi Statue,
Tukaramgate, Secunderabad.

...Respondent/Plaintiff

JUDGMENT:

1. This Memorandum of First Appeal is filed under Section 96 r/w Order 43 Rule 1 of Civil Procedure Code, 1908 (for short 'CPC') assailing the judgment and decree passed in O.S.No.383 of 2012, dated 07.10.2015 by the III Senior Civil Judge, City Civil Court at Secunderabad, wherein the suit filed by the respondent-plaintiff for eviction and damages is partly decreed.

2. Appellant is the defendant and respondent is the plaintiff in OS.No.383 of 2012.

3.1. Respondent-plaintiff has filed suit for eviction and for damages @ Rs.3,000/- per month from August, 2011 against the appellant-defendant in respect of House bearing No.10-5-391 admeasuring 72 Square yards out of 144 Square yards Street No.15, Sai Nagar near Indira Gandhi Statue, Tukaramgate, Secunderabad falling in Sy.No.844/13 P, T.S.No.33, Block No.1, Ward No.132 of Malkajgiri Village of Maredpally Mandal, Hyderabad District with boundaries.

3.2. It is stated in the plaint that respondent-plaintiff is the owner of the suit schedule property and he acquired the same from Government of A.P. under Registered Deed under Conveyance dated 28.01.2010 with document No.158 of 2010. He has constructed a house in a piece of land admeasuring 144 Sq.yrds in the year 2000 and he has applied for regularization of his dwelling house on the Government land under G.O.M.S.No.166, dated 16.02.2008 and accordingly the Government has approved the same. Respondent-plaintiff has paid an amount of Rs.5,76,180/- vide Challan bearing No.157050 dated 06.10.2009, Challan No.190347 dated 26.12.2009 and Challan No.190556 dated 26.12.2009 in favour of Government of A.P.

3.3. The respondent-plaintiff has introduced the defendant who is none other than his own brother into possession of three rooms of

the said house (suit schedule property) by providing all facilities like drainage, electricity and water connection as his licensee. Respondent-plaintiff demanded the defendant to vacate and hand over the suit schedule property but he has developed an evil intention, refused to vacate and hand over the possession to the plaintiff. Appellant-defendant has filed suit in OS.No.604 of 2010 before the I Junior Civil Judge, City Civil Courts, Secunderabad and the same is dismissed on 16.11.2011 and prayed to decree the suit as prayed for.

4.1. Appellant-defendant filed his written statement and contended that originally the mother of the respondent-plaintiff and the appellant-defendant acquired the House No.10-5-391 and she herself constructed two separate houses along with two separate stair cases and entrances with that of separate electricity bills and water connections and distributed each house to the appellant-defendant and respondent-plaintiff and she used to reside in House No.10-5-391 part. The respondent-plaintiff taking advantage of the G.O. without the knowledge of the appellant-defendant got transferred the entire suit schedule property in his name and thereby cheated the appellant-defendant and his family members. Respondent-plaintiff has created a false story of introducing the appellant-defendant as a licensee for the purpose of filing the case and to grab the suit schedule property and other

properties which were acquired by his mother late Smt.R.Laxmi Bai. District Collector, Hyderabad made enquiry with regard to the forgery of documents by the respondent-plaintiff with the help of Tahsildar, Marredpally.

4.2. Tahsildar, Marredpally has submitted his report to the District Collector on 20.04.2012 *vide* Letter No.B/7567/2011. The report of Tahsildar, Marredpally goes to show that the respondent-plaintiff has obtained Transfer Certificate to the extent of 144 Sq.yrds in premises bearing No.10-5-391 with forged documents from Collectorate. Appellant-defendant after knowing the same has lodged a private complaint before X ACMM, and the same was referred to P.S. Tukaramgate for the offences under sections 406, 420, 379 and 506 of Indian Penal Code, 1860 (for short 'IPC') and case in Crime No.16 of 2019 is registered and charge sheet is filed and numbered as CC.No.1022 of 2010, the same is pending. Appellant-defendant has also filed another criminal case against the respondent-plaintiff and his family members for their illegal acts and the same is numbered as CC.No.1861 of 2010 of P.S. Bowenpally pending on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad for the offences under Sections 465, 468 of IPC.

5. The learned trial Court has framed the following issues:
1. Whether the plaintiff is entitled to recover possession of suit schedule property?
 2. Whether the defendant is liable to pay damages at the rate of Rs.3,000/- per month from August, 2011?
 3. To what relief?
6. Respondent-plaintiff is examined as PW.1, got marked Exs.A1 to A8. Appellant-defendant is examined as DW.1 and got marked Exs.B1 to B15, also examined DW.2-A.Sai Baba and his evidence is eschewed as per docket order dated 25.07.2014. Independent Witness is summoned through Court. The learned trial Court instead of showing the Court Witness as CW.1, shown him as DW.2 and got marked Exs.C1 to C3.
- 7.1. The learned trial Court after analyzing the evidence of the parties has decreed the suit in part directing the appellant-defendant to vacate and handover the physical possession of the suit schedule property within two months from the date of judgment (07.10.2015), with regard to damages suit is dismissed.
- 7.2. Respondent-plaintiff has not filed any Appeal against dismissal of the suit for damages in respect of issue No.2.
- 8.1. Learned counsel for the appellant-defendant submits that the learned trial Court has placed more reliance on the evidence of PW.1 and Exs.A1 to A8, erred in not considering the evidence of

DW.1, Exs.B1 to B15 and also failed to consider the evidence of DW.2 and Exs.C1 to C3. Ex.A1 was obtained by the respondent-plaintiff by playing fraud and by submitting forged and fabricated documents which was established by the evidence of DW.2 and erroneously believed Ex.A1 document and decreed the suit.

8.2. The learned trial Court failed to consider Exs.B1 and B4 which categorically speak that the suit schedule property claimed by the respondent-plaintiff was in fact acquired by the mother of the parties herein during her life time and MOU was executed under Ex.B4 to share the property equally among themselves and that the respondent-plaintiff failed to establish that suit property is not part of the property purchased by the mother of the parties. In spite of clear lacunae in the case of the respondent-plaintiff, the Court below decreed the suit. The learned trial Court failed to consider the crucial admission made by PW.1 in his cross-examination with regard to the existence of two houses which are in possession of both the parties and also failed to consider the criminal case filed by the appellant-defendant against the respondent-plaintiff in CC.No.1861 of 2010. The learned trial Court failed to consider Ex.C2 - Enquiry Report and also erred in holding that no proper procedure was followed while conducting the enquiry by the Revenue Inspector. The learned trial Court erred in holding that the respondent-plaintiff has proved his title

by virtue of forged and fabricated sale deed (Ex.A1) and erred in holding that appellant-defendant has not proved his possession under Exs.B1 and B2.

8.3. The learned trial Court has not assigned any reason why the evidence of the MRO is not considered with that of Exs.C1 to C3. The learned trial Court failed to consider MOU (Ex.B4) wherein there is a distribution of properties of late Laxmi Bai who expired on 15.05.2008 and the judgment and decree suffers from serious legal issues and lapses and prayed to set aside the same.

9. Learned counsel for the respondent-plaintiff submits that the learned trial Court has properly considered the evidence adduced by the parties and rightly decreed the suit directing the appellant-defendant to vacate and hand over the physical possession of the suit schedule property within two months from the date of judgment, no interference is called for and prayed to dismiss the Appeal.

10. Learned counsel for the appellant and respondent have filed their written submissions.

11. Heard learned counsel on record, perused the material.

12. Now the point for consideration is: whether the judgment and decree passed by the learned III Senior Civil Judge, City Civil

Courts at Secunderabad in OS.No.383 of 2012, dated 07.10.2015 suffers from any perversity or illegality? If so, does it require interference of this Court?

13.1. Ex.C1 is the letter dated 06.09.2011 from the office of the Collector, Hyderabad District addressed to the Tahsildar, Marredpally Mandal and called for the report in respect of regularization of Government land admeasuring 144 Square yds in premises bearing No.10-5-391, Sai Nagar, Tukaramgate in Sy.No.844/13 P of Malkajgiri Village. The letter (Ex C1) reads as under:

GOVERNMENT OF ANDHRA PRADESH
(REVENUE DEPARTMENT)

OFFICE OF THE COLLECTOR
HYDERABAD DISTRICT.
Dated: 06.09.2011.

Lr.No.R2/7672/2008

To

The Tahsildar,
Marredpally Mandal.

Sir,

Sub: Transfer of Rights of Government Land - Hyderabad District
Secunderabad Division - Marredpally Mandal - Request of Sri
R. Narsing Rao S/o R. Babaiiah for regularization of
Government land encroached admeasuring 144 Sq. Yds
premises No.10-5-391, Sai Nagar, Tukaramgate in Sy. No.
844/13p of Malkajgiri village - Orders issued - Objection
petition filed by Sri Rathod Nandu & (3) others to cancel
the conveyance deed executed in favour of applicant -
Report called for - Request - Reg.

- Ref: 1. G.O.Ms.No.166, Revenue (Assn.Pot) Dept, dt:16.02.08.
2. A/o Sri R. Narsing Rao, Appl.No.4325, dt Nil.
3. Tahsildar, Marredpally Lr.No.B/902/08, dt 04-05-2009.
4. Minutes of the District Level Committee Meeting held on
25.05.09.
5. Proceedings of the Dist. Collector, Hyderabad No. even,
dt 04.01.10.
6. Representation of Sri Rathod Nandu & (3) others, dt 30.08. 010.

Attention is invited to the reference 5th cited, wherein the District Collector, Hyderabad has issued orders to regularize the Govt. land to an extent of 144 Sq. Yds in premises No.10-5-391, Sai Nagar, Tukaramgate, Marredpally falling in Sy.No.844/13p, T.S.No.33, Block I, Ward 132 of Malkajgiri village of Marredpally Mandal in favour of Sri R.Narsing Rao S/o R. Babaiah and conveyance deed was executed on 28.01.2010.

In the reference 6th cited (Copy enclosed), Sri Rathod Nandu & (3) others have filed an objection petition that the said land was acquired by their mother late Smt. R.Laxmi Bai w/o Late Rathod Balaiah during her life time for stay along with grand children in the said premises and further submitted that Sri R.Narsing Rao S/o R.Babaiah have suppressed the above facts and obtained the transfer of rights fraudulently and requested to cancel deed of conveyance executed in favour of Sri R.Narsing Rao for the said land.

In the above circumstances, it is requested to enquire into the representation submitted by Sri Rathod Nandu & (3) others and submit a detailed report for taking further necessary action in the matter.

Yours faithfully,
Sd/-
For Collector,
Hyderabad District

// Attested //

Sd/-
Superintendent

13.2. Ex.C2 is the Report of the Special Revenue Inspector , Marredpally addressed to the Tahsildar, Marredpally Mandal, dated 28.03.2012 which reads as under:

Report of the Special Revenue Inspector, Marredpally.

RI.No.49/12

Dt.28.03.2012

To
The Tahsildar
Marredpally Mandal.

Sir,

Sub: Transfer of Rights of Govt. land, Marredpally Mandal - request of R.Narsing Rao s/o R.Babaiah regularization of admeasuring premises No.10-5-391, Sai Nagar, Tukaramgate in Sy.No. 844/13/P of Malkajiri village - Report submitted- Reg.

Ref: Collector Hyd Lr.No.R2/7672/2008 dt. 06.09.2010 .

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With reference to above, I submit that, I was instructed to conduct detailed enquiry in respect of the objection petition filed by R.Nandu and 3) others on 30-08-2010. In pursuance of the instructions of the Tahsildar I have been to the locality at Premises No.10-5-391, Tukaramgate. Enquiry revealed that above said address Sri Narsing Rao and R.Nandu Family's are residing separately.

Further enquiry reveals that actually the properties (1) 10-5-30 (2) 10-5-824/A (3) 10-5-391/1 belongs to their mother R.Laxmi Bai who expired on 15.04.2008 and left the following family member behind. Further her husband already expired long back.

Family member of deceased Laxmi Bai

Sl.No.	Name	Relationship	Present Residence Address	Remarks
1	Smt.R.Kalavathi	Daughter	10-5-530, Indira Laxmi Nagar	-
2	Sri R.Bheem Rao	Son	Plot No.30 Tukaramgate	-
3	Sri R.Narsing Rao	Son	10-5-391 Sai Nagar	-
4	Sri R.Nandu	Son	10-5-391 Sai Nagar	-
5	Sri R.Umesh	Son	10-5-824/A1	Expired his wife R.Bhagya Laxmi

Therefore the above family members are share holders for the above said deceased mother property. Local enquiry further revealed that one Sri R.Narsing Rao S/o. R.Laxmi Bai under guise of the forged, fabricated documents obtained the Transfer Right Certificate in his own name in respect of premises No.10-5-391 to an extent of 144 Square yds falls in Sy.No.844/13 co-related to T.S.No.33, Block I, Ward No.132 of Malkajiri vg, vide Hyderabad District Collector Proceeding No.R2/7276/2008 dated 04.01.2010.

Further I submit that in the local enquiry it is also noticed that a court case pending before the X Additional M.M. Court above said property against R.Narsing Rao and other family members.

This is for information.

Yours faithfully,

Sd/-
For Special Revenue Inspector,
dt.28.03.2012
Marredpally.

13.3. Ex.C3 is the Report of the Tahsildar, Marredpally Mandal, dated 20.04.2012 addressed to the Collector, Hyderabad District which reads as under:

GOVERNMENT OF ANDHRA PRADESH
REVENUE DEPARTMENT

Officer of the Tahsildar
Marredpally Mandal.

Dated: 20.04.2012.

Lr.No.B/7567/2011

To
The Collector,
Hyderabad District.

Sir,

Sub: Transfer of Rights - Govt. Lands - Marredpally Mandal - Hyderabad District - Request of Sri R.Narsing Rao S/o R.Babaiiah for Regularization of Government land encroached admeasuring 144 Sq. Yds premises No. 10-5-391, Sai Nagar, Tukaramgate, Secunderabad in Sy. No.844/13P of Malkajgiri village Orders issued objection petition filed by Sri Rathood Nandu & (3) others to cancel the conveyance deed executed in favour of applicant - Report - Submitted - Reg.

Ref: 1. Collector Hyderabad Lr.No.R2/7672/2008 dt. 06-09-2011.
2. Report of the Spl.R.I Marredpally report No.49/2012 dt. 28-03-2012.

...

I invite kind attention to the references cited, where in while sending a copy of the representation of Sri. Rathood Nandu and (3) others, it has been asked to enquiry and send report into the matter. The matter has been got enquired into by the Spl. R.I of this office. Enquire revealed that one Smt. R.Laxmi Bai W/o. (Late) Rathod Balaiah during the life time got the self acquired following properties:

1) 10-5-530

2) 10-5-824/A

3) 10-5-391/1

She expired on 15-04-2008, and left following legal heirs behind her:

Sl No	Name	Relationship	Present Residence Address	Remarks
1	Smt R.Kalavathi	Daughter	10-5-530, Indira Laxmi Nagar	-
2	Sri R.Bheem Rao	Son	Plot No. 30, Tukaramgate	-
3	Sri R.Narsing Rao	Son	10-5-391, Sai Nagar	-
4	Sri R.Nandu	Son	10-5-391, Sai Nagar	-
5	Sri R.Umesh	Son	10-5-824/A/1	Expired his wife R. Bhagyamma Laxmi.

Further in local enquiry reveals that Sri. Narsing Rao and Nandu Son of the deceased of Smt. R. Laxmi Bai are residing at premises No.10-5-530, Indira Laxmi Nagar, separately, and the above properties are self acquired property of the deceased Smt. R. Laxmi Bai. Hence all the family members have got right for equal shares. It is further noticed that Sri. R. Narsing Rao one of the family member have obtained Transfer of Rights certificate to an extent of 144 Sq. Yards in premises No.10-5-391 situated at Sai Nagar and falls in Sy.No. 44/13 correlated to T.S.No.33 Block I, Ward No.132 of Malkajgiri village, Marredpally Mandal with forged documents from the Collectorate. This is for favour of kind information.

Yours faithfully,
Sd/-
TAHSILDAAR,
Dt.20.04.2012
Marredpally Mandal.

14. The evidence of the respondent-plaintiff is the same with that of his plaint averments. In his cross-examination he stated that except the suit schedule property he has not purchased any other property and his wife has filed suit in OS.No. 534 of 2012

against the defendant (appellant herein) on the file of XI Junior Civil Judge and also filed IA.No.874 of 2012 seeking ad-interim injunction which came to be dismissed after due enquiry, he also filed suit in OS.No.581 of 2012 against the defendant (appellant herein), also filed application in IA.No.968 of 2012 for ad-interim injunction on the file of XI Junior Civil Judge, Secunderabad. PW.1 denied the suggestion that the suit schedule property was purchased by his mother and he suppressed the said fact, got approved the regularization for the entire property. He also denied the suggestion that his mother is the owner of the property and she gave the same equally to him and to the defendant (appellant and respondent herein), he also denied the suggestion that he forged the documents and filed false suit.

15. Appellant-defendant is examined as DW.1. In his cross-examination, he stated that the boundaries shown in the plaint schedule property are different as with that of the boundaries in Exs.B1 and B2 and in Exs.B1 and B3 name of his uncle by name Balayya is shown and he do not know whether the land in Sy.No.844/13 belongs to the Government or not. So also he do not know in which survey number the suit schedule property is situated and he do not know whether the Government of Andhra Pradesh has executed Ex.A1 document in favour of the plaintiff (respondent herein) and the same is in force and not cancelled.

DW.1 further stated that he do not know whether the Government of Andhra Pradesh has issued G.O. to regularize the Government lands so also he do not know that the plaintiff (respondent herein) has paid an amount of Rs.5,76,180/- for regularization of the schedule property in his favour. As he has not vacated the portion, plaintiff has got issued Ex.A4 notice. DW.1 was cross-examined by putting question and answer which reads as under:

Q. How you got Exs.B11 and B14?

A. Respondent family gave complaint to the Collector, Collector gave letter to the Tahsildar and Sub-Registrar. Sub-Registrar gave Exs.B11 and B14.

DW.1 denied the suggestion that with the permission of plaintiff (respondent herein) he is residing in the portion under his occupation and also denied the suggestion that he is in illegal possession of the suit schedule property and he is bound to vacate the same and the plaintiff (respondent herein) has not forged any documents.

16. Though DW.2 (A.Sai Baba) evidence is eschewed, summoned witness is also examined as DW.2 (Saidulu).

17.1. The evidence of DW.2 (Saidulu) is that he is working as a Mandal Revenue Officer, Marredpally, Secunderabad and he received summons from the Court. Defendant (appellant herein) and his family members filed a complaint before the District

Collector, Hyderabad alleging that the plaintiff (respondent herein) has illegally mutated the property in his name and forged the documents and requested the District Collector to stop the illegal transfer of properties bearing Nos.10-5-530 and 10-5-824/A/2 and House No.10-5-391. After receipt of the complaint from the defendant (appellant herein) by the District Collector, who in turn directed the then Tahsildar on 06.09.2011 to enquire into the matter and submit the report, upon which the then Tahsildar has orally instructed the Revenue Inspector to conduct enquiry. Revenue Inspector has conducted enquiry and submitted his report on 28.03.2012. Basing on the report, the then Tahsildar submitted a report to the District Collector on 20.04.2012. On enquiry, it is revealed that the properties are self acquired by R.Laxmi Bai and all the family members have got equal rights. R.Narsing Rao is one of the family member obtained a transfer of right certificate from the Government to the extent of 144 Sq.yrds in the premises of 10-5-391 situated at Sai Nagar, Tukaramgate in Sy.No.844/13 P co-related to TS No.33, Block-I, Ward No.132 of Malkajgiri village of Marredpally Mandal with forged documents from the Collectorate and got marked Exs.C1 to C3.

17.2. In his cross-examination he stated that Collector has directed the then Tahsildar to enquire about the suit schedule property whether fraud was held earlier. The then Tahsildar has

endorsed the same and directed the Special Revenue Inspector to conduct the enquiry and the general procedure for enquiry is to conduct panchanama and also to collect the documents if any filed by the parties. He has not filed any panchanama, statements or documents filed by the parties and he do not know whether Special Revenue Inspector colluded with defendant (appellant herein) and gave a false report and the properties mentioned in Ex.C2 are concerned with Sy.No.844/1 to 13 and Sy.No.844 belongs to the Government and he did not conduct enquiry of the properties mentioned in Ex.C2 and Revenue Inspector is not competent to decide title of any property, as per Ex.A1 plaintiff is the owner of the suit schedule property. He denied the suggestion that Revenue Inspector exceeded his limits and conducted enquiry in collusion with the defendant (appellant herein) and the same was endorsed by the Tahsildar without any proper enquiry and that the plaintiff (respondent herein) has not played any fraud and got the schedule property regularized by making fair representation. He also denied the suggestion that no such enquiry was conducted by the Special Revenue Inspector on endorsement of the Tahsildar.

18.1. Ex.A1 is the certified copy of Deed of Conveyance dated 28.01.2010 bearing document No.158 of 2010 which is executed by the Government of Andhra Pradesh represented by its District

Collector, Hyderabad in favour of the respondent-plaintiff. The House number mentioned therein is 10-5-391, Sai Nagar, Tukaramgate, Marredpally falling in Sy.No.844/13p. G.O.M.S.No.166, dated 16.02.2008 is for regularisation of encroachment by way of dwelling houses on Government lands in Urban areas of Hyderabad on payment of market value. Respondent-plaintiff has paid an amount of Rs.5,76,180/- *vide* Chalan No.157050, dated 06.10.2009, No.190347, dated 26.12.2009 and No.190556, dated 26.12.2009 in favour of Government of Andhra Pradesh. The sketch annexed to Ex.A1 goes to show that plot number is left blank and House number is mentioned therein i.e., 10-5-391, old Sy.No.844/13p.

18.2. Ex.A2 is the Encumbrance Certificate for the period from 01.01.1977 to 05.08.2011 *vide* application dated 06.08.2011 which shows the execution of Ex.A1 document by Government of Andhra Pradesh in favour of respondent-plaintiff and the name of Union Bank of India, Station Road branch is also mentioned therein.

18.3. Ex.A3 is the Market Value Assistance, dated 13.12.2010 in respect of House bearing No.10-5-391 admeasuring 144 square yards.

18.4. Ex.A4 is the document got issued by Greater Hyderabad Municipal Corporation dated 17.06.2010 in favour of respondent-

plaintiff showing the House number as 10-5-39 , Sai Nagar Tukaramgate in assessment.

18.5. Ex.A5 is the Electricity Bill for the month of November, 2006 in the name of the respondent-plaintiff showing House number as 10-5-391.

18.6. Ex.A6 is the Electricity Bill for the month of July, 2011 in favour of the respondent-plaintiff showing the very same house number.

18.7. Ex.A7 is the office copy of Legal Notice got issued by the respondent-plaintiff to the appellant-defendant on 25.08.2011 wherein he stated that old house was damaged and the respondent-plaintiff has constructed the new house in the year 2000 and introduced the appellant-defendant into the possession of the said house as licensee and he has to pay damages to a tune of Rs.3,000/- per month excluding electricity and water consumption charges for the occupation of three rooms from the month of August, 2011 for not delivering the physical possession and called upon the appellant-defendant to vacate the three rooms under his occupation and hand over the vacant possession to the respondent-plaintiff on or before 01.09.2011.

18.8. Ex.A8 is the Reply Notice got issued by the appellant-defendant contending that the respondent-plaintiff is his own brother and the house was constructed in the year 1972 by their mother Smt.Laxmi Bai who expired on 14.04.2008 and the house is shared by the respective family members which has two portions. Therefore, the respondent-plaintiff purchasing the house is far from belief and the question of allowing the appellant-defendant as a licensee is false and the respondent-plaintiff has committed theft of all the original documents.

19.1. Ex.B1 is the certified copy of registered Sale Deed bearing document No.68 of 1979 dated 12.01.1979 and its fair copy is Ex.B3. Ex.B1-Sale Deed is executed by Hassan Aziz and K.R.Abbaiah in favour of Laxmi Bai, aged 40 years and the schedule property is plot admeasuring 523.32 square yrds in survey No.844/4 and survey No.844/13 land bearing No.24/A and 25/A.

19.2. Ex.B2 is the Rectification Deed rectifying the plot of land bearing No.24/A and 25/A shall be read as 25/A and 35/A.

19.3. Ex.B4 is the certified copy of Memorandum of Understanding dated 04.12.2008 executed between R.Bheem Rao - first party and R.Narsing Rao (respondent- plaintiff)-second party, R.Nandu (appellant herein)-third party and R.Bhagya, wife of late

R.Ramesh-fourth party. Memorandum of understanding reads as under:

WHEREAS the mother of all above mentioned parties who are the legal heirs of late R.LAXMI BAI wife of late R.BABAIAI, who is the absolute owner of below mentioned property bearing No.H use No.10-5-824/a/2, situated at Indira Laxmi Nagar, Tukaramgate, Secunderabad-AP; admeasuring 136 Sq. Yards;

(2) House No.10-5-814/576, consisting of 5 mulgies with an additional adjacent back of the mulgi admeasuring 260 Sq.Yards;

(3) House No.10-5-530, Ground Floor with Asbestos Roof consisting of two rooms and shed situated at Sai Nagar, Tukaramgate, Secunderabad-A.P., admeasuring 267 Sq. Yards;

(4) House No.10-5-391, Budha Nagar, Tukaramgate, secunderabad-A.P. admeasuring 141 Sq. Yards;

WHEREAS the above said mentioned properties belongs to late R. LAXMI BAI as R.LAXMI BAI Expired on 15-5-2008 leaving behind the above said legal heirs For the above said properties and shall divide the property among themselves equally. The Party No.1 to Party No.4 shall remain in their own schedules until sharing the property among themselves and No.1 to No.4 parties have agreed to share the property equally by this Memorandum of Understanding. The No. 1 Party is the wife of late R.Umash as such who has expired on 29.10.2002 and she is a legal heir of R.Umash as such shall have the right over the property equally all among the four.

NOW THE MEMORANDUM OF MUTUAL UNDERSTANDING WITNESSESS AS FOLLOWS:

1. No.1 to No.4 parties have agreed to share the properties of late R.LAXMI BAI who is the absolute owner of the above mentioned properties and No.1 to No.3 are the legal heirs of R.Laxmi Bai and the No.4 party is the daughter-in-law of late R.Laxmi and legal heir of R.UMASH who has expired leaving behind the legal heir his wife R.BHAGYA stood as No.4 for which No.1 to No.3 party has agreed

without any conditions or objections to give equal share in the above mentioned properties.

2. All the Parties here under undertakes that they shall not approach any court of law in respect of sharing the above said property and bind to the Memorandum of Mutual Understanding and shall share their rights towards the property equally from party No.1 to Party No.4.

3. All the Parties here today came to Understanding/Settlement in the execution of the Memorandum of Mutual Understanding to share amicably between them with the intervention of well wishers.

4. All the parties here have come not to create any court litigation or dispute if any dispute arises between them, the approaches the court shall bear costs and consequences and shall not claim for the expenses of court.

5. All the parties have the right to sell, mortgage, gift, release, to any other third party without the consent of other parties, and shall not claim the property of above others said mentioned parties, as per their divided shares.

6. All the parties shall sign any consent documents related to the above said property without any objection to the said consent, government authorities, or any other organisation and shall cooperate with each other and at the time of registration all the 1 to 4 parties agree to sign the paper as per their requirements of the registration process and shall cooperate with each other by furnishing the link documents and appropriate document required for the registrations.

IN WITNESS WHEREOF the parties to this Memorandum of Mutual Understanding, have put their signature, on the day, month and year first above written, before the following witnesses:

WITNESSES

(1) Sd/-
Ch.Bodinarayana

(2) Sd/-
J.Simon

(1) Sd/-
R.Bheem Rao

(2) Sd/-
R.Narsing Rao

(3) Sd/-
R.Nandu

(4) Sd/-
R.Bhagya

19.4. Ex.B5 is the Electricity Bill standing in the name of Laxmi Bai pertaining to House No.10-5-391 for the month of October 1997, November 1997.

19.5. Ex.B6 is also the Electricity Bill standing in the name of Laxmi Bai pertaining to the same House for the month of August 1998 to September 1998.

19.6. Ex.B7 is the Receipt issued by HMWSSB dated 04.10.2001 for payment of Rs.500/- towards processing fee for sanction of water supply, sewerage connection. The House number mentioned therein is 10-5-391 and amount is paid by R.Laxmi Bai.

19.7. Ex.B8 is the Sanction Order issued by HMWSSB dated 30.10.2001 in favour of R.Laxmi Bai showing the House number as 10-5-391.

19.8. Ex.B9 are the Water Consumption Bills five in number which shows the name of R.Laxmi Bai with House bearing No. 10-5-391 dated 13.04.2009, 05.05.2009.

19.9. Ex.B10 is the Electricity Bills three in number which shows the name of Laxmi Bai for House bearing No.10-5-391. The bills are dated 05.02.2007, 05.07.2010 and 10.07.2010.

19.10. Ex.B11 is the certified copy of the letter dated 04.12.2010 of the District Collector, Hyderabad which is addressed to the Sub-Registrar, Marredpally and the tenor of the letter is that R.Narsing Rao (respondent-plaintiff) has stolen the original documents of the property and one Mrs.Balamani impersonated Laxmi Bai and executed a gift deed in favour of R.Narsing Rao *vide* document No.1761 of 2007 before the Sub-Registrar, Marredpally and obtained the transfer of rights in his favour fraudulently.

19.11. Ex.B12 is the Complaint lodged by R.Bheem Rao, R.Nandu, R.Bhagya, Kalavathi to the Assistant Electrical Engineer, Lalaguda Division, Secunderabad, dated 27.04.2011 and they sought information regarding Electricity Service Connection No.VZ22559 for House bearing Nos.10-5-824/A/2, 10-5-391 (suit schedule property), 10-5-530 which stands in the name of Laxmi Bai and requested not to change the name and not to cut the current.

19.12. Ex.B13 is the Endorsement letter dated 06.12.2010 got issued from the office of the Collector, Hyderabad District requesting the complainants to approach the Sub-Registrar, Marredpally and Director of Forensic Department and furnish to them the required documentary evidence of their mother's finger prints available during her life time.

20. It is the specific contention of the respondent-plaintiff in Ex.A7-legal notice dated 25.08.2011 that old house was damaged and thereby he has constructed a new house in the year 2000 and introduced the appellant-defendant into the possession of the said house as licensee. No document is filed by the respondent-plaintiff to show that he has constructed a new house by demolishing the old house in the year 2000. Ex.A1 is dated 28.01.2010. If really the respondent-plaintiff has demolished his own house and constructed a new house in the year 2000 he ought to have filed material documents to substantiate his contention that he was the owner of House No.10-5-391.

21. It is the case of the appellant-defendant that Laxmi Bai mother of the parties has acquired House No.10-5-391 and she herself has constructed two separate houses along with two separate stair cases, entrances, separate electricity bills and water connection and distributed each house to the appellant-defendant and the respondent-plaintiff and late Laxmi Bai used to reside in the house of the appellant-defendant. It is further case of the appellant-defendant that Laxmi Bai has acquired House No.10-5-824/A/2, 10-5-814/576, 10-5-530, 10-5-391, after her death a Memorandum of Understanding is executed between the parties under Ex.B4. DW.1 has denied the suggestion that the signature of the respondent-plaintiff on Ex.B4 is forged.

22. Survey numbers mentioned in Exs.B1 and B2 are 84A/4 and 844/13. Survey No.844/13 is mentioned in Ex.A1 (survey No.844/13 P). Exs.B5 to B10 shows the name of Laxmi Bai in respect of House No.10-5-391 and she has paid the electricity bills, tax receipt to HMWSSB and water consumption charges. Respondent-plaintiff has admitted in his cross-examination that he has not filed any document to show that he has constructed a house in the year 2000.

23. Though the appellant-defendant stated in his cross-examination that he do not know that the suit schedule property is situated in survey No.844/13 so also he do not know that Ex.A1 document is still in force and not cancelled. The documents i.e., Exs.B1 and B2 speaks otherwise that Survey No.844/13 is also part of the extent of land purchased by the mother of the appellant-defendant which is admeasuring 523.32 Square yards situated at Sairam Nagar, Tukaramgate, Lalaguda, Secunderabad.

24. It is the specific case of the respondent-plaintiff that the appellant-defendant is a licensee from the year 2000 and he has permitted him to stay therein. The process of proving license under the Indian Easements Act mainly revolves around demonstrating the use of an immovable property was permissive and did not create an easement or any interest in the property.

License is essentially a right granted by the owner to another person to do something on the immovable property. There is no document placed by the respondent-plaintiff to show that the appellant-defendant is a licensee. So also he has not adduced any independent evidence to prove that the appellant-defendant was a licensee from 2000. Respondent-plaintiff failed to prove that the appellant-defendant was in permissive possession of the suit schedule property.

25. The learned trial Court came to a conclusion that the enquiry conducted by the Inspector is not proper and there is no proof that the property enquired by the Revenue Officer is one and the same property claimed by the respondent-plaintiff and also further observed that respondent-plaintiff has proved that Survey No.844 belongs to the Government. Except Ex.A1 there is no other document filed by the respondent-plaintiff to show that House bearing No.10-5-391 is a Government land. The learned trial Court has wrongly placed burden on the appellant-defendant that he failed to prove that the property claimed by him under Exs.B1 and B2 is in plots bearing Nos.24/A and 25/A in survey No.844/A and 844/13 and there is no identity of the property claimed by him. The case of the appellant-defendant in the written statement is that Laxmi Bai has purchased the property under Exs.B1, rectification deed is executed under B2, thereafter/she has

constructed two separate portions with separate amenities and one portion is given to him and another portion is given to the respondent-plaintiff and apart from the above, the properties covered under Ex.B4 also are that of Laxmi Bai. Exs.A4 to A6 do not help the case of the respondent-plaintiff in view of the fact that Exs.B5 to B9 are much prior to them and that of Ex.A1. Though Ex.A1 is not cancelled the report given by Special Revenue Inspector, Marredpally under Ex.C2 on 28.03.2012 goes to show that the respondent-plaintiff fabricated the documents to obtain the transfer right certificate in his name in respect of House No. 10-5-391 to an extent of 144 Square yards which falls in survey No.844/13.

26. The learned trial Court has misread the evidence adduced by the parties and the admission made by the respondent-plaintiff that he has not filed any document to show that he made construction over the schedule property by dismantling the old house in the year 2000 and Exs.B5 to B9 supports the contention of the appellant-defendant that the electricity connection, consumption of water bills stands in the name of Laxmi Bai. In view of the reasons above, the Judgment and decree passed by the learned trial Court in OS.No.383 of 2013, dated 07.10.2015 suffers from perversity and requires interference of this Court and the same is set aside.

27. Appeal is allowed and the judgment and decree passed by the learned III Senior Civil Judge, Secunderabad, in DS.No.383 of 2012 dated 07.10.2015 is set aside, consequently the suit filed by the respondent-plaintiff is dismissed without costs.

Interim orders if any stands vacated, miscellaneous petition/petitions stands closed.

Sd/- A.V.S S.C.S.M. SARMA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The III Senior Civil Judge, Secunderabad.
2. One CC to SRI. G RAVI CHANDRAN, Advocate [OPUC]
3. One CC to SRI. VEDULA CHITRALEKHA, Advocate [OPUC]
4. Two CD Copies

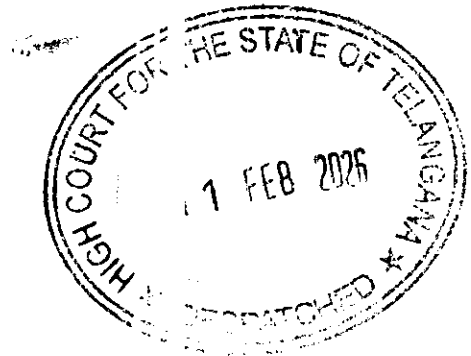
ASR/DL

HIGH COURT

DATED:05/12/2025

JUDGMENT

CCCA.No.3 of 2016



ALLOWING THE APPEAL

C
Asu
19/12/25

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE JUSTICE B.R.MADHUSUDHAN RAO

CITY CIVIL COURT APPEAL NO: 3 OF 2016

Between:

Rathod Nandu, S/o. Late Rathod Babaiah aged 52 years, Occ Employee, R/o.
10-5-391, Street No.15, Sai Nagar, Near Indira Gandhi Statue, Tukaramgate,
Secunderabad. ... **APPELLANT/DEFENDANT**

AND

Rathod Narsing Rao, S/o. Late Rathod Babaiah aged 54 years, Occ
Employee, R/o. 10-5-391, Street No.15, Sainagar, Near Indira Gandhi Statue,
Tukaramgate, Secunderabad ... **RESPONDENT/PLAINTIFF**

Appeal filed under Section 96 R/W Order 41 Rule 1 of C.P.C., aggrieved by
the Judgment and Decree dated 7.10.2015 in O.S. No.383 of 2012 on the file of the
III Senior Civil Judge, Secunderabad.

This appeal coming on for hearing and upon perusing the grounds of appeal,
the Judgment and Decree of the Lower Court and the Material papers In the
case and upon hearing the arguments of Sri G. Ravi Chandran, Advocate for the
appellant and of Ms. Vedula Chitralekha, Advocate for the respondent.

That this Court doth Order and Decree as follows:

1. That the appeal be and the same is hereby allowed;
2. That the judgment and decree passed by the learned III Senior Civil Judge,
Secunderabad in O.S.No. 383 of 2012 , dt.07.10.2015 is set aside.
3. That there shall be no order as to costs.

**Sd/- A.V.S.S.C.S.M. SARMA
JOINT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To

1. The III Senior Civil Judge, Secunderabad.
2. Two CD Copies.

HIGH COURT

DATED:05/12/2025

DECREE

CCCA.No.3 of 2016

ALLOWING THE APPEAL

4
Asu
19/11/25