APHC010031571999

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3397]
(Special Original Jurisdiction)

MONDAY,THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

APPEAL SUIT NO: 238/1999

Between:

Y.bhaskara Rao and Others **...APPELLANT(S)**

AND

K Gangamma Died Per Lr No 2 and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. VAKATI VENKATA GNANUSHA

Counsel for the Respondent(S):

1. M RADHAKRISHNA
2. K V SATYANARAYANA

TRANSFER APPEAL NO: 310/2006

Between:

Y. Siva Venkata Krishna Rao (died) and Others **...APPELLANT(S)**

AND

K Gangamma **...RESPONDENT**

Counsel for the Appellant(S):

1. VAKATI VENKATA GNANUSHA

Counsel for the Respondent:

1. M RADHAKRISHNA

The Court made the following:

Reserved on 31.03.2026
Pronounced on 15.06.2026
Uploaded on 15.06.2026

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

A.S.No.238 of 1999 and Tr.A.S.No.310 of 2006

COMMON JUDGMENT:

The A.S.No.238 of 1999 is filed by defendants against the decree and common judgment, dated 05.10.1998, passed in O.S.No.11 of 1994 on the file of the Senior Civil Judge, Machilipatnam. The plaintiff filed the suit in O.S.No.47 of 1991, before the Sub-Court, Gudivada, against the defendants for seeking relief of cancellation of sale deeds dated 02.01.1991 and 16.02.1991 and for consequential relief of permanent injunction, against Yadavareddi Bhaskara Rao and Yadavareddi Siva Venkata Krishna Rao. Later it was transferred to the Senior Civil Judge Court, Machilipatnam and the same is re-numbered as O.S.No.11 of 1994.

2. The Tr.A.S.No.310 of 2006 is filed by the plaintiff in O.S.No.145 of 1993, on the file of the Senior Civil Judge, Machilipatnam. The appellant/plaintiff filed the said suit i.e. O.S.No.128 of 1992, for seeking relief of permanent injunction restraining the defendant, her men, followers and agents etc., from ever interfering with the peaceful possession and enjoyment of the plaintiff over the plaint schedule properties and for costs of the suit, before the District Munsif Court, Gannavaram, and the same was transferred to the Senior Civil Judge Court, Machilipatnam and re-numbered as O.S.No.145 of 1993

3. The trial Court after completion of a full-fledged trial, partly decreed the suit in O.S.No.11 of 1994 and dismissed the suit in O.S.No.145 of 1993, vide its common judgment dated 05.10.1998. Aggrieved against the decree and common judgment dated 05.10.1998 passed in O.S.No.11 of 1994 and O.S.No.145 of 1993, the unsuccessful defendants in O.S.No.11 of 1994 filed A.S.No.238 of 1999 and the unsuccessful plaintiff in O.S.No.145 of 1993 filed Tr.A.S.No.310 of 2006.

4. Both the appeal and transfer appeal are filed against the common judgment dated 05.10.1998 passed in O.S.No.11 of 1994 and O.S.No.145 of 1993, on the file of the Senior Civil Judge, Machilipatnam, and both the appeals were heard together and they are being disposed of by this common judgment.

5. The parties to the above two appeals are referred to as they were arrayed before the trial Court.

6. The case of the plaintiff in O.S.No.11 of 1994, in brief is as follows:

I. The plaintiff pleaded that she lost her husband about 30 years ago and that she is an illiterate woman having no worldly knowledge and the defendant Nos.1 and 2 are father and son. The plaintiff further pleaded that the defendant No.1 had been projecting himself as an elder and respectable person in the village and the brothers of the plaintiff are also illiterate and are not on cordial terms with her. The plaintiff further pleaded that the defendant No.1, taking advantage of her vulnerable

situation and absence of any male member in her family to assist her, began showing interest in her welfare and pretended to sympathize with her plight. The plaintiff further pleaded that the defendant No.1 professed himself to be her well-wisher and the defendant No.1 was also assisting the plaintiff in her Court matters as well as in her money-lending transactions and, thereby, gained her confidence and trust.

II. The plaintiff further pleaded that the defendant No.1, while representing the miserable condition of defendant No.2, requested her to execute a sale deed conveying a small extent of land in favour of defendant No.2 for his residential purpose. Out of sympathy towards the defendants, the plaintiff agreed to convey an extent of Ac.0.04 cents in R.S.No.68/2A out of the total extent of Ac.0.18 cents situated in the said survey number. The plaintiff further pleaded that acting upon the representations made by defendant No.1, she agreed to execute the necessary conveyance deed in respect of the said extent in favour of defendant No.2 and accordingly, defendant No.1 got the document prepared and took her to the office of the Sub-Registrar at Vuyyuru for registration of the same. The plaintiff further pleaded that thereafter, the defendant No.1 informed the plaintiff that there was an error in the recital relating to the survey number in the said deed and represented that a rectification deed had to be executed for correcting the said recital. Believing the representations made by defendant No.1 to be true and having no reason to suspect the same, the plaintiff agreed to

execute the document said to be required for rectification purposes. The plaintiff further pleaded that the defendant No.1 once again took her to the office of the Sub-Registrar, Vuyyuru, on or about 16.02.1991, where she affixed her thumb impression on the document presented before her. The plaintiff pleaded that she was partially deaf and was under the bona fide impression that the second document related only to correction of the survey number in the earlier deed. The plaintiff further pleaded that neither of the said documents were explained nor read over to her by anybody.

III. The plaintiff further pleaded that no consideration was paid by the defendants under the two sale deeds, dated 02.01.1991 and 16.02.1991, and that the recitals therein regarding payment of consideration and delivery of possession are false. The plaintiff further pleaded that she had no necessity to sell the properties covered under the said documents and she also pleaded that she had already been cured of cancer in the year 1980 itself and was not suffering from any illness at the relevant point of time as falsely recited in the documents. The plaintiff further pleaded that the defendants had neither the means nor the financial capacity to purchase the properties covered under the said sale deeds. The plaintiff further pleaded that possession of the properties was never delivered to the defendants and that she herself has been continuing in possession and enjoyment of the same. The plaintiff further pleaded that she never intended to convey the

properties absolutely in favour of the defendants and that the defendants, by taking advantage of her old age, illiteracy, partial deafness, and the trust and confidence reposed by her, defendant No.1, played fraud upon her and induced her to execute the said documents by misrepresentation. As such the plaintiff was constrained to file the suit in O.S.No.11 of 1994.

7. The case of the defendants in O.S.No.11 of 1994, in brief is as follows:

I. The defendants pleaded that the suit is not maintainable either in law or on facts and is liable to be dismissed and the plaintiff is not entitled to the reliefs of declaration and permanent injunction as prayed for in the suit. The defendants further pleaded that the plaintiff sold away item Nos.1A and 1B of the plaint schedule property, admeasuring Ac.0.60 cents, in favour of defendant No.2 under a registered sale deed dated 29.12.1990 for a valid sale consideration of Rs.30,000/-. The defendants further pleaded that the said property was sold by the plaintiff for meeting her medical expenses towards treatment for cancer at Hyderabad, and the entire sale consideration was paid to the plaintiff in cash at the time of execution of the sale deed itself, as recited therein, and possession of the said property was also delivered to defendant No.2 on the very same day. The defendants further pleaded that ever since then, defendant No.2 has been in possession and enjoyment of the said property in his own right.

II. The defendants further pleaded that the said sale deed was duly registered on 02.01.1991 after the plaintiff admitted execution of the document and its contents before the Sub-Registrar, Vuyyuru. The defendants further pleaded that the plaintiff also sold away item No.2 of the plaint schedule property, admeasuring Ac.1.57¾ cents, in favour of defendant No.2 under a registered sale deed dated 16.02.1991 for a consideration of Rs.70,987.50/-. The defendants further pleaded that the said property was sold by the plaintiff as it was not convenient for her to cultivate the same and with an intention to purchase lands at a place convenient to her. The defendants further pleaded that the entire sale consideration under the said sale deed was also paid in cash to the plaintiff at the time of execution of the document itself and possession of the property was delivered to defendant No.2 on the date of execution of the sale deed. The defendants further pleaded that the plaintiff delivered possession of item Nos.1A and 1B of the plaint schedule properties together with the standing second crop of black gram and that defendant No.2 alone enjoyed the yield from the said crop.

III. The defendants further pleaded that both the sale deeds are true, valid, binding, and supported by consideration. The defendants further pleaded that the plaintiff had lent amounts to one K.K.Chintaiah for starting a hotel business and that the said K.K.Chintaiah requested the plaintiff to sell her properties and provide him financial assistance for the said business. The defendants further pleaded that the said K.K.

Chintaiah himself counted the sale consideration amounts paid under the aforesaid sale transactions. The defendants pleaded that no fraud or misrepresentation was played by them to the plaintiff and as such, they requested to dismiss the suit with costs.

8. Based on the above pleadings, the following issues were settled by the trial Court in O.S.No.11 of 1994:

1) Whether the two sale deeds executed by the plaintiff in favour of the 2nd defendant were executed under the circumstances narrated in the plaint and by playing fraud on the plaintiff?
2) Whether the plaintiff is entitled to the reliefs of cancellation of sale deed dated 02.01.1991 and 16.02.1991?
3) Whether the plaintiff is entitled to the relief of permanent injunction prayed for?
4) To what relief

9. The case of the plaintiffs in O.S.No.145 of 1993, in brief is as follows:

I. The defendant No.2 in O.S.No.11 of 1994, namely, Yadavareddi Siva Venkata Krishna Rao, originally instituted a suit before the Court of the District Munsif, Gannavaram, in O.S.No.128 of 1992, against Kolusu Gangamma, seeking the relief of permanent injunction. Subsequently, the said suit in O.S.No.128 of 1992 was transferred to the Senior Civil Judge Court, Machilipatnam, pursuant to the orders passed in

Tr.O.P.No.1514 of 1992 by the District Court, Krishna at Machilipatnam, and was thereafter renumbered as O.S.No.145 of 1993.

II. The plaintiff in O.S.No.145 of 1993 pleaded that he purchased the plaint schedule properties from K.Gangamma under two registered sale deeds dated 29.12.1990 and 16.02.1991 and that possession of the said properties was delivered to him pursuant to the said sale transactions. The plaintiff further pleaded that ever since the date of purchase, he has been in possession and enjoyment of the plaint schedule properties. The plaintiff further pleaded that the defendant therein, namely, K. Gangamma, attempted to interfere with his peaceful possession and enjoyment of the plaint schedule properties, as such the plaintiff was constrained to file the suit in O.S.No.145 of 1993.

10. The case of the defendant in O.S.No.145 of 1993, in brief is as follows:

I. The defendant pleaded that she reposed absolute faith and confidence in the father of the plaintiff and used to seek his assistance in all her affairs. The defendant further pleaded that the father of the plaintiff represented the miserable condition of the plaintiff and requested her to sell an extent of four Ac.0.04 cents of land in favour of the plaintiff. The defendant further pleaded that out of sympathy towards the plaintiff, she agreed to convey only an extent of Ac.0.04 cents out of the total extent of Ac.0.16 cents and accordingly, she was taken to the office of the Sub-Registrar and, under the impression that she was executing a

document only in respect of the said extent of Ac.0.04 cents, she executed the document dated 29.12.1990. The defendant further pleaded that subsequently the father of the plaintiff again approached her stating that there was a mistake in the recital relating to the survey number in the sale deed and represented that a rectification deed had to be executed, believing the said representation, she was again taken to the office of the Sub-Registrar for execution of the alleged rectification deed.

II. The defendant further pleaded that being an illiterate, helpless, timid, and partially deaf woman, she could not realize the fraud allegedly played upon her by the father of the plaintiff and she further pleaded that the recitals contained in the said sale deeds are incorrect and false. The defendant further pleaded that she never delivered possession of the suit schedule property to the plaintiff at any point of time and that the plaintiff is not entitled to the relief of permanent injunction as prayed for in the suit. As such, she requested to dismiss the suit with costs.

11. Based on the above pleadings, on 23.08.1994, the following issues were settled by the trial Court in O.S.No.145 of 1993:

1) Whether the plaintiff is entitled for permanent injunction as prayed?
2) Whether the suit for mere permanent injunction is suitable?
3) Whether there is cause of action to file the above suit?
4) To what relief?

12. Both the suits are clubbed by the trial Court and common evidence was recorded in O.S.No.11 of 1994 and common judgment is pronounced by the trial Court. Therefore, this Court is also inclined to club both the appeals and a common judgment is being pronounced in both these appeals.

13. During the course of trial in the trial Court, on behalf of the Plaintiffs, P.W.1 to P.W.8 were examined and Ex.A-1 and Ex.A-49 were marked. On behalf of the Defendants D.W.1 to D.W.4 were examined and Ex.B-1 to Ex.B-14 were marked and further Ex.X-1 was marked.

14. After completion of the trial and on hearing the arguments of both sides, the trial Court partly decreed the suit in O.S.No.11 of 1994, by cancelling the registered sale deeds dated 02.01.1991 and 16.02.1991 in favour of the defendant No.2, document Nos.1/91 and 149/91 registered in the office of Sub-Registrar, Vuyyuru, and the relief of permanent injunction sought by the plaintiff in O.S.No.11 of 1994 is dismissed but the suit in O.S.No.145 of 1993, filed for the relief of permanent injunction is dismissed, vide its common judgment, dated 05.10.1998, against which A.S.No.238 of 1999 is preferred by defendants in the Suit questioning the Decree and Judgment passed by the trial Court in O.S.No.11 of 1994. The plaintiffs in O.S.No.145 of 1993 filed Tr.A.S.No.310 of 2006 insofar as rejecting the relief of permanent injunction is concerned.

15. One Smt. Kolusu Gangamma filed a suit before the learned Senior Civil Judge, Gudivada, in O.S.No.47 of 1991, for seeking relief of cancellation of

registered sale deeds dated 29.12.1990 and 19.02.1991 and the said suit was subsequently transferred to the Senior Civil Judge Court, Machilipatnam, as per the orders of the Principal District Court, Machilipatnam, and the said suit is re-numbered as O.S.No.11 of 1994. One Sri Siva Venkata Krishnarao, who is defendant No.2 in the aforesaid suit, filed a suit in O.S.No.128 of 1992 against Kolusu Gangamma, before the District Munsif Court, Gannavaram, for seeking relief of permanent injunction against Kolusu Gangamma and her men from interfering with the possession and enjoyment of Siva Venkata Krishnarao in respect of the plaint schedule property. Subsequently, the said suit was transferred to the Senior Civil Judge Court, Machilipatnam, as per the orders of the District Court, Machilipatnam, vide Tr.O.P.No.1514 of 1992. Both the suits are clubbed and common evidence is recorded by the trial Court in O.S.No.11 of 1994 and passed a common judgment in both the suits. Therefore, this Court is also inclined to club both the appeals and a common judgment is being pronounced in both these appeals.

16. The learned counsel for the appellants would contend that the common judgment of the trial Court in O.S.No.11 of 1994 and O.S.No.145 of 1993 is contrary to law, weight of evidence and probabilities of the case. The learned counsel for the appellants would contend that the trial Court erred in dismissing the suit in O.S.No.145 of 1993 and decreed the suit in part in O.S.No.11 of 1994 and the trial Court erred in holding that no consideration passed under Ex.B-1 and Ex.B-2 sale deeds under which the appellants purchased the property. The learned counsel for appellants would further

contend that the trial Court ought to have seen that the appellants herein examined the scribe of Ex.B-1 and Ex.B-2 sale deeds as D.W.2, to prove the execution of sale deeds as well as passing of sale consideration to the respondent herein and he would further contend that both the appeals may be allowed by setting aside the decree and common judgment passed by the trial Court.

17. Heard Sri P.Rajasekhar, learned counsel, representing Ms. Vakati Venkata Gnanusha, learned counsel appearing for the appellants and Sri M.Radhakrishna, learned counsel appearing for the respondents.

18. Now the points for determination in both these appeals are as follows:

1) ***Whether Ex.B-1 and Ex.B-2 sale deeds are brought into existence as narrated in the plaint by Kolusu Gangamma?***
2) ***Whether the plaintiff in O.S.No.11 of 1994 is entitled to the relief of cancellation of Ex.B-1 and Ex.B-2 Registered sale deeds?***
3) ***Whether the plaintiff in O.S.No.145 of 1993 i.e. the defendant No.2 in O.S.No.11 of 1994/appellant is entitled to the relief of permanent injunction as sought for?***
4) ***Whether the decrees and common judgment in O.S.No.11 of 1994 and O.S.No.145 of 1993 needs any interference?***

19. **Point Nos.1 and 2:**

Whether Ex.B-1 and Ex.B-2 sale deeds are brought into existence as narrated in the plaint by Kolusu Gangamma?

Whether the plaintiff in O.S.No.11 of 1994 is entitled to the relief of cancellation of Ex.B-1 and Ex.B-2 Registered sale deeds?

The case of the plaintiff is that she lost her husband about 30 years ago and she is an illiterate lady having no worldly wisdom and the defendant Nos.1 and 2 are the father and son and the defendant No.1 has been projecting himself as the elder of the village and the brothers of the plaintiff are also illiterate and they are not having cordial terms with the plaintiff. The plaintiff further contended that defendant No.1, taking advantage of the peculiar plight of the plaintiff, began evincing interest in the plaintiff and pretending to be sympathizing with her position, having no male member in the family to assist her, the defendant No.1 professed himself as the well-wisher of the plaintiff and he also has been assisting the plaintiff in the Court affairs and also in money lending affairs. The case of defendant Nos.1 and 2, as pleaded by both defendant Nos.1 and 2 in the written statement, is that it is a fact that the plaintiff lost her husband immediately after her marriage and by that time the plaintiff was childless and propertyless and defendant No.1 helped her in many ways in acquiring the site and a house in it to live in and about Ac.1.00 cents of land and subsequently, out of which the plaintiff sold Ac.1.00 cents of land to defendant No.2 and purchased Ac.0.50 cents of land from the defendant. The defendants further admitted that the brothers of the plaintiff

are also the residents of Kadavakollu and Veeravalli Village, but they never cared for the plaintiff and defendant No.2 is in a normal mental condition and he appeared for SSC examination and failed and defendant No.1 used to help the plaintiff whenever the occasion demanded, but the plaintiff had no money lending affairs.

20. As could be seen from the averments of the plaint and averments of the written statement of both the defendants, it is evident that defendant No.1 has been looking after the affairs of the plaintiff including her properties and Court affairs and used to look after her needs and the same is well supported by D.W.2, who is the scribe of alleged Ex.B-1 and Ex.B-2. D.W.2 stated the same in Ex.X-1. Ex.X-1 is the statement recorded by the Police under Section 161 of the Code of Criminal Procedure. D.W.2 admits in cross-examination that Kolusu Gangamma gave a Police report and the Police enquired into the matter and recorded his statement under Ex.X-1.

21. The learned counsel for appellants would contend that the plaintiff cannot cross-examine D.W.2 with respect to the statement which is neither there in Ex.X-1 statement nor in the alleged 3rd party affidavit. As seen from the deposition of D.W.2, in chief-examination. The statement of D.W.2, under Section 161 of the Code of Criminal Procedure is marked by the appellant/defendant as Ex.X-1 before the trial Court but not by the plaintiffs.

22. In a case of ***Khatri and others etc., Vs. State of Bihar and others***[1], wherein the Hon'ble Apex Court held as follows:

> *"protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is, unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding.*

The Hon'ble Apex Court further held as follows:

> *It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 of the Constitution provided it is relevant under the Indian Evidence Act and neither section 162 be urged as a bar against its production or use."*

23. In a case of ***Malakala Surya Rao and others Vs. Gundapuneedi Janakamma***[2], wherein the Composite High Court of Andhra Pradesh held as follows:

> *"We are not here concerned with the rest of the judgment because that is really confined to the procedure to be adopted in contradicting witnesses with those statements and the manner in which they should be proved and what constitutes contradictions, i.e., whether omissions on material matters would be contradictions so that the whole of the statement could be marked. I do not find anything in the judgment of the Supreme Court or in any of the judgments*

[1] **AIR 1981 Supreme Court 1068**
[2] **AIR 1964 Andhra Pradesh 198**

of any Courts brought to my notice to warrant a conclusion that statements made by witnesses to a police officer' and reduced to writing cannot be used for contradicting witnesses in a civil proceeding under Section 145 of the Evidence Act. Where the policy of the legislature in enacting Section 162 was to throw a solicitous protection round the accused, that very legislature has permitted the use of these statements for the purposes of contradiction under Section 145 of the Evidence Act. Much more so, such statements can be used in civil cases to achieve the same purpose, where neither Section 145, nor any other provision of law specifically precludes their use."

24. In a case of ***(Kovuru) Subbayya and Ors. Vs. Peta Veerayya***[3], wherein the High Court of Madras held as follows:

"*A statement made to the police is as good evidence as a statement made to any other person save for certain exceptions to be found in the Evidence Act and in the Code of Criminal Procedure. In Section 162, Criminal Procedure Code, it is laid down that a statement made to the police in the course of an investigation of an offence cannot be used as evidence at any trial in respect of that offence, with the proviso that such a statement may be used by the accused to contradict a prosecution witness. But when the statement has not been made in the course of investigating the offence in respect of which the trial is held neither the main part of Section 162 nor the proviso has any application."*

On considering the ratio laid down in the aforesaid case laws, it is clear that a statement recorded under Section 161 of the Code of Criminal Procedure can be used in civil proceedings and the bar under Section 162 of the Code of Criminal Procedure does not extend to such civil proceedings. The pleadings of both the parties show that defendant No.1 used to look after the affairs of the plaintiff since 30 years i.e. after the death of her husband. By giving cogent reasons and on considering the own admissions of the

[3] **AIR 1933 Madras 65(1)**

defendants in the written statement itself, the trial Court rightly came to the conclusion that defendant No.1 is in a position to dominate the will of plaintiff by name Kolusu Gangamma.

25. Learned counsel for the plaintiff would contend that the recitals of Ex.B-1 and Ex.B-2 are not correct and the plaintiff has no need for alienation of the properties mentioned in Ex.B-1 and Ex.B-2. As seen from Ex.B-1 sale deed dated 29.12.1990, the necessity for alienation of the property mentioned in Ex.B-1 is that for obtaining treatment for cancer at Hyderabad and for family necessities, the vendor intends to alienate the property under Ex.B-1. The appellants did not place any material to show that in the year 1990, the plaintiff suffered from cancer and obtained treatment at Hyderabad. D.W.2 admits that Gangamma executed Ex.B-1 sale deed for obtaining treatment for cancer. P.W.1 admitted in her evidence in cross-examination that about 15 years back i.e. in the year 1979, it was found in the medical check-up that she was attacked with 'Uterus Cancer' and she took treatment at Hyderabad and she was there at Hyderabad for about two (02) months. The plaintiff by name Kolusu Gangamma gave evidence before the trial Court in the month of December, 1994 i.e. after four (04) years of the alleged sale deeds under Ex.B-1 and Ex.B-2. As noted supra, Ex.B-1 and Ex.B-2 sale deeds relate to the years 1990 and 1991, but do not relate to the year 1979.

26. As seen from the recitals of Ex.B-2, registered sale deed dated 16.02.1991, the need for alienation of the property by Kolusu Gangamma is

for family benefit and she intends to purchase land at some other place. The time gap between both Ex.B-1 and Ex.B-2 sale dates is about 1½ months only. It is not the case of Kolusu Gangamma that for cancer treatment or for improvement of her health condition in cancer disease, she intends to alienate Ex.B-1 and Ex.B-2 property. The appellants did not place any other material to show that after alienation of Ex.B-2, Kolusu Gangamma purchased landed property at some other place. Therefore, it is also one of the strong suspicious circumstances to disbelieve the case of the appellants.

27. The learned counsel for appellants would contend that no consideration is passed under Ex.B-1 and Ex.B-2. The plaintiff by name Kolusu Gangamma narrated in the plaint as well as in her evidence that she did not receive any sale consideration as mentioned in Ex.B-1 and Ex.B-2 and defendant Nos.1 and 2 have no capacity to pay an amount of approximately more than Rs.1,00,000/- as sale consideration for both the sale deeds i.e. on the date of sale deeds in the month of December, 1990 and in the month of February, 1991. The learned counsel for appellants would contend that Ex.B-6 to Ex.B-9 show that the appellants are having sufficient money and they have capacity to pay the amount. Ex.B-6 is the cane supply card for the year 1991-92. Ex.B-7 is the cane supply passbook in the name of defendant No.1. There is no supporting evidence in Ex.B-7 that defendant No.1 possessed either an amount of Rs.30,000/- in the month of December, 1990 or Rs.70,987/- in the month of February, 1992. Ex.B-8 is the cane supply passbook in the name of defendant No.1. Ex.B-9 is the cane supply passbook for the year 1995. There

is no evidence on record to show that the appellants possessed an amount of Rs.1,00,000/- as on the date of Ex.B-1 and Ex.B-2 sale deeds. There is no positive evidence to show that the appellants are having sufficient money to pay the amount of Rs.30,000/- on the date of sale deed under Ex.B-1 and Rs.70,987/- on the date of sale deed under Ex.B-2 within a time gap of 1½ months from the date of Ex.B-1.

28. As stated *supra*, no other evidence is produced by the appellants except the evidence of D.W.1 to show that the appellants possessed cash of Rs.1,00,000/- in those days i.e. in the months of December, 1990 and February, 1991, the appellants also did not produce any bank passbooks or any other evidence to show that by the date of Ex.B-1 and Ex.B-2 sale deeds, they possessed cash of Rs.30,079/- and Rs.70,987/- i.e. total amount of Rs.1,00,000/- in those days i.e. in the months of December, 1990 and February, 1991.

29. The learned counsel for appellant would contend that the plaintiff herself admitted that she received an amount of Rs.4,000/- on the date of Ex.B-1 sale deed. No doubt, P.W.1 stated that in the year 1990, defendant No.1 requested her to sell Ac.0.04 cents of land in the name of defendant No.2 for the purpose of construction of a house and she agreed to sell Ac.0.04 cents of house site only for Rs.4,000/- and she executed a sale deed in favour of defendant No.2 for Ac.0.04 cents only and at that time defendant No.1 and the scribe alone were present in the house of Karnam and defendant No.1 already paid an

amount of Rs.4,000/- in the house of Village Karnam after preparation of a document for Ac.0.04 cents only. It does not mean that the plaintiff has received sale consideration of Rs.30,000/- for Ac.0.06 cents of land. Moreover, the plaintiff admitted that the Sub-Registrar or scribe did not read over the contents of Ex.B-1.

30. P.W.7 is the 2nd attestor in Ex.B-1 sale deed and he stated that the contents of Ex.B-1 were not read over to him and he signed on Ex.B-1 as an attestor at the request of Village Karnam. P.W.8 is the 2nd identifying witness before the Sub-Registrar for Ex.B-1 and the wife of defendant No.1 is the 1st identifying witness before the Sub-Registrar for Ex.B-1. P.W.8 stated in his evidence that he does not know the contents of Ex.B-1 sale deed and the contents of the documents were not informed to him and the wife of defendant No.1 is another identifying witness before the Sub-Registrar. Both P.W.7 and P.W.8 have not stated in their evidence that the plaintiff received consideration of Rs.30,000/- under Ex.B-1 sale deed and Ex.B-1 sale deed was executed for Ac.0.60 cents of land. As could be seen from Ex.B-1, the 1st attestor is defendant No.1 herein and the 1st identifying witness is his wife, whereas, the 2nd attestor is P.W.7. P.W.7 has not stated in his evidence that the plaintiff received sale consideration of Rs.30,000/- under Ex.B-1. Therefore, passing of sale consideration under Ex.B-1 from the defendant to the plaintiff is highly doubtful. Moreover, it is the specific case of defendant No.1 that he purchased Ex.B-1 and Ex.B-2 property for his son i.e. defendant No.2.

31. The vendor to both the sale deeds under Ex.B-1 and Ex.B-2 is plaintiff by name Kolusu Gangamma and the vendee to both the sale deeds is defendant No.2 by name Siva Venkata Krishnarao. Defendant No.1 in O.S.No.11 of 1994 is none other than the father of defendant No.2. It is the admitted case of both parties that defendant No.2 by name Siva Venkata Krishnarao was aged about 25 years by the date of Ex.B-1 and Ex.B-2 sale deeds and he is not a minor. As per the evidence of defendant No.1, defendant No.2 studied old SSLC, he failed and he is worldly wise. As per the recitals of Ex.B-1 sale deed, defendant No.2 paid sale consideration of Rs.30,000/- to the plaintiff on the date of Ex.B-1 sale deed. Here the plaintiff is seeking relief of cancellation of registered sale deed on the ground that defendant No.1 played fraud. Defendant No.2 did not enter into the witness box to say that he paid sale consideration of Rs.30,000/- under Ex.B-1 on the date of sale deed. The cancellation of the sale deed has to be sought with regard to the parties to the document only therefore, necessary parties to Ex.B-1 and Ex.B-2 are the plaintiff and defendant No.2 by name Siva Venkata Krishnarao. As per the case of the plaintiff, defendant No.1 played fraud and defendant No.1 is also added as a party.

32. The learned counsel for appellants contended that there is an evidence of the scribe of Ex.B-1 and Ex.B-2 and so also there is an evidence of D.W.3, one of the attestors to Ex.B-2 sale deed. The evidence of D.W.2 and D.W.3 shows about the passing of sale consideration of Rs.30,000/- under Ex.B-1 on 29.12.1990, and an amount of Rs.70,987/- under Ex.B-2 on 19.02.1991 and

both the alleged sale deeds are obtained within a gap of 1½ months by defendant No.2 from the plaintiff by name Kolusu Gangamma. It is the specific case of Kolusu Gangamma that defendant No.1, Baskara Rao, took her to the Sub-Registrar Office to execute a sale deed for Ac.0.04 cents in favour of his son and after 1½ months again he came and represented that there was a mistake of survey number in the 1st sale deed and requested the plaintiff that she has to go over to the Sub-Registrar Office for executing the rectification deed. At that time, the plaintiff has no reason to suspect the representation of defendant No.1 and having believed the same, she proceeded to the Sub-Registrar Office for executing a rectification deed at the instance of defendant No.1. She further pleaded that one Kommu Kanaka Chintaiah, who is the grandson of the sister of the plaintiff, happened to casually go over to Kadavakolu and during the conversation with said Chinthayya, the plaintiff casually revealed to him about the execution of two documents as noticed supra and said Kanaka Chinthayya grew suspicious about the manner in which the said two sale deeds were obtained from the plaintiff and having not satisfied with the information submitted by plaintiff-Kolusu Gangamma, he proceeded to the Sub-Registrar Office and obtained registration extract of sale deeds and after obtaining the said sale deeds, the alleged fraud was noticed by the plaintiff.

33. The defendants relied on the evidence of D.W.2. D.W.2 is the scribe of Ex.B-1 and Ex.B-2, and D.W.2 stated in his evidence in chief-examination that he is the scribe of both the documents under Ex.B-1 and Ex.B-2 and the

attestors signed on Ex.B-1 and Ex.B-2 in his presence and the contents of both the sale deeds were read over to the parties and also to the attestors who were present. He further deposed that the executant and attestors signed on Ex.B-1 and Ex.B-2 after knowing the contents in Ex.B-1 and Ex.B-2. As seen from Ex.B-1 and Ex.B-2, the executant of the said document is not a signatory. Ex.B-1 and Ex.B-2 show that parties to the documents are the plaintiff and the defendant No.2. It is not the case of defendant No.1 that the defendant No.2 was present on the date of two (02) sale deeds. D.W.2 admitted in his evidence in cross-examination that Kolusu Gangamma gave a Police report and in that connection, the Police called him and enquired him and recorded his statement and he stated the true facts before the Police and he does not remember whether the said statement given to the Police by him is in complete variation of the statement in the suit. He further stated that his signature was obtained on the affidavit by force at the time of performing his son's marriage and he did not give any Police report stating that his signature was obtained forcefully on his affidavit. He further admits that at the time of execution of Ex.B-1, the old title deeds of Kolusu Gangamma were handed over to the vendee. He further admits that at the time of execution of Ex.B-2, the previous title deeds of Kolusu Gangamma were also handed over to the vendee as recited in Ex.B-2. He further admits in the affidavit filed by him in the present suit proceedings in O.S.No.11 of 1994, he himself stated that under Ex.B-1 and Ex.B-2, no consideration was passed and again he further contended that the said affidavit was obtained by force at the time of marriage

of his son. He further admits that he did not inform the Police or the Court that the said affidavit was obtained by force.

34. The evidence on record shows that the title deeds are deposited by Kolusu Gangamma in KDCC Bank. P.W.2, who is the Secretary of Veeravalli Co-operative Credit Society, deposed that plaintiff Kolusu Gangamma has deposited title deeds relating to the land in R.S.No.109/3B of an extent of Ac.0.06 cents of Veeravalli Mokasa and availed a loan. P.W.4 also deposed that the title deeds of Kolusu Gangamma are in their possession. The said title deeds are dated 15.03.1965 and 14.04.1980 and those two (02) title deeds are in their custody from 1985 and on seeing the said title deeds, their bank advanced a loan to Kolusu Gangamma. He further admits on 02.03.1991, a sum of Rs.10,000/- was advanced to Kolusu Gangamma. P.W.4, who is another official in the Bank stated in his evidence that the original title deeds are deposited in the Bank. For the aforesaid reasons, it is evident there is no possibility of effecting delivery of original title deeds by Kolusu Gangamma to the vendee on the date of Ex.B-1 and Ex.B-2 sale deeds as mentioned in Ex.B-1 and Ex.B-2. Therefore, the recitals as mentioned in Ex.B-1 and Ex.B-2 that the title deeds were handed over by the vendor to the vendee as mentioned in Ex.B-1 and Ex.B-2 documents is not at all correct. For the aforesaid reasons, the evidence of D.W.2 is not trustworthy.

35. The defendant relied on the evidence of D.W.3, who is one of the attestors to Ex.B-2 sale deed, who is none other than the close relative of

defendant No.1. D.W.3 admits that the defendant No.1 is his maternal uncle, therefore, in view of the aforesaid suspicious circumstances as narrated supra, it is not safe to rely on the evidence of D.W.3 because he is a close relative of the vendee, that too, the contention of Kolusu Gangamma is that both the sale deeds were obtained by the defendant No.1 by playing fraud on Kolusu Gangamma. Moreover, another attestor to the sale deed under Ex.B-2 is not at all examined by the appellants. Therefore, passing of consideration under Ex.B-1 and Ex.B-2 alleged sale deeds is highly doubtful.

36. The learned counsel for the appellants placed a case law of the Hon'ble Apex Court in ***Range Forest Officer Vs. S.T.Hadimani***[4].

The ratio laid down in the aforesaid case law relates to the Industrial Disputes Act for retrenchment of an employee. In the case at hand, D.W.2 himself admitted in his evidence that in the affidavit which was filed in the present suit proceedings, he stated that no consideration was passed under Ex.B-1 and Ex.B-2 sale deeds. The contention of D.W.2 is that his signature was obtained by force on the affidavit. There is no evidence on record to show that the signature of D.W.2 was obtained on the affidavit which was filed in the present suit proceedings and the same is not at all proved by the appellants.

37. The learned counsel for the appellants would contend that non-payment of sale consideration will not invalidate the sale deeds and relied on a case law of the High Court of Kerala in ***Ayanikkal Achunni and Others Vs.***

[4] **2002 (2) Supreme 58**

Bhanumathi and another[5]. No doubt, because of non-payment of sale consideration was not paid, a registered sale deed cannot ordinarily be cancelled. However, in the present case, the specific contention of the plaintiff is that defendant No.1 obtained Ex.B-1 and Ex.B-2 sale deeds by playing fraud on her by taking advantage of her illiteracy and helplessness. Therefore, non-payment of sale consideration coupled with the surrounding suspicious circumstances assumes significance in deciding the genuineness of Ex.B-1 and Ex.B-2 sale deeds. The evidence on record, as discussed supra, creates serious doubt regarding passing of consideration under Ex.B-1 and Ex.B-2. Further, the non-examination of the vendee/defendant No.2, in whose favour both the sale deeds allegedly came to be executed, is also one of the strong suspicious circumstances to doubt the genuineness of Ex.B-1 and Ex.B-2 sale deeds.

38. The learned counsel for the plaintiff would contend that in both the sale deeds under Ex.B-1 and Ex.B-2, the vendee is defendant No.2 and despite serious allegations of fraud and non-payment of consideration, the defendant No.2 did not enter into the witness box and therefore adverse inference is liable to be drawn against him. It is well settled that when a party, who is expected to depose about the material facts within his exclusive knowledge, abstains from entering into the witness box, the Court is entitled to draw an adverse inference against such party under Section 114(g) of the Indian Evidence Act. In the present case, defendant No.2 is the alleged purchaser

[5] **AIR 2005 Kerala 83**

under Ex.B-1 and Ex.B-2 sale deeds and as per the recitals therein, he allegedly paid the sale consideration amounts to the plaintiff. However, he did not choose to enter into the witness box to speak about the execution of the sale deeds or passing of consideration. In the light of the specific plea of fraud taken by the plaintiff against defendant No.1 and in the absence of any satisfactory explanation for non-examination of defendant No.2, an adverse inference has to be drawn against the defendants.

39. In a case of ***Vidhyadhar vs Manikrao & Anr.***[6], wherein the Hon'ble Apex Court held as follows:

> *"**16**. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning **from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr.** This was followed by the Lahore High Court in **Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1** and the Bombay High Court in **Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AIR (1931) Bombay 97**. The Madhya Pradesh High Court in **Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat** also followed the Privy Council decision in **Sardar Gurbakhsh Singh's case (supra)**. The Allahabad High Court in **Arjun Singh v. Virender Nath and Anr.** held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in **Bhagwan Dass v. Bhishan Chand and Ors.**, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box."*

[6] **AIR 1999 SC 1441**

40 In the present case, it was not stated in the written statement of defendant Nos.1 and 2 that defendant No.1 used to look after the needs of defendant No.2. As seen from the written statement of defendant Nos.1 and 2, both defendant Nos.1 and 2 signed their written statement. As stated supra, defendant No.2 was aged about 25 years by the date of Ex.B-1 and Ex.B-2 sale deeds. Here, defendant No.2 is claiming ownership under Ex.B-1 and Ex.B-2 sale deeds. If the sale deeds are cancelled by the Court, defendant No.2 is the affected party, but defendant No.1 is not an affected party. Therefore, defendant No.2/vendee is the best person to speak about the passing of consideration under two (02) sale deeds under Ex.B-1 and Ex.B-2, and he is a proper person to say that the recitals in Ex.B-1 and Ex.B-2 are correct. Therefore, non-examination of the vendee is fatal to the defence. Therefore, an adverse inference must be drawn against defendant No.2 for not entering into the witness box.

41. It was contended by the learned counsel for appellants that, according to the plaintiff, defendant No.1 played fraud, but defendant No.2 had not played any fraud, therefore, non-examination of defendant No.2-Siva Venkata Krishnarao is not fatal to the defence. I am not accepting the aforesaid contention of the learned counsel for appellants, because, as noticed supra, defendant No.2 is the affected party if Ex.B-1 and Ex.B-2 sale deeds are cancelled, being the alleged vendee, he will suffer irreparable loss, and defendant No.1 is not the affected party. Moreover, defendant No.2 alone filed another suit vide O.S.No.145 of 1993, subsequent to filing of the suit for

cancellation of sale deeds by Kolusu Gangamma, seeking relief of permanent injunction, restraining Kolusu Gangamma and her followers from entering into the possession and enjoyment over the plaint schedule property. Therefore, defendant No.2 is the best person to reveal that no fraud was played by his father and the recitals in Ex.B-1 and Ex.B-2 are correct.

42. Learned counsel for the plaintiff would contend that possession of the property was not delivered to the plaintiff as recited in Ex.B-1 and Ex.B-2 registered sale deeds. The learned counsel for appellants would contend that possession of the property was delivered to the appellants on the date of sale itself. The recitals in Ex.B-1 and Ex.B-2 sale deeds go to show that the property was delivered to the vendee on the date of Ex.B-1 and Ex.B-2 sale deeds dated 29.12.1990 and 19.01.1991. The plaintiff/P.W.1 stated in her evidence, as well as in the plaint, that she never delivered possession of the property as mentioned in Ex.B-1 and Ex.B-2 sale deeds. The plaintiff relied on the evidence of the Village Administrative Officer of Kadavakollu group village, and he was examined as P.W.3. P.W.5 and P.W.6 are the residents of Veeravalli Village. The plaintiff relied on the evidence of P.W.3, P.W.5 and P.W.6 and Ex.A-31 to Ex.A-43, whereas the appellants relied on Ex.B-11 to Ex.B-13 land revenue receipts. P.W.3, Village Administrative Officer of Kadavakollu group of villages, deposed in his evidence that he issued Ex.A-31 and Ex.A-32 adangals for Faslies 1402 and 1403, that is, for the years 1992 and 1993. The above revenue adangals show that, by the years 1992 and 1993, plaintiff Kolusu Gangamma was in possession of the plaint schedule

property. He further deposed that Ex.A-33 to Ex.A-35 are land revenue receipts for Fasli 1403 corresponding to the year 1993. Ex.A-36 adangal was issued for the year 1993, for Fasli 1403, i.e., for the year 1993, which shows that plaintiff Kolusu Gangamma was in possession and enjoyment of the plaint schedule property. The plaintiff also relied on Ex.A-37 adangal, which was issued for the year 1994, wherein the name of the plaintiff was shown as possessor. Ex.A-38 to Ex.A-40 are the land revenue receipts for Fasli 1403 relating to the year 1993. Ex.A-42 and Ex.A-43 are the Form-1B Katta Nos.69 and 74, respectively, given to the plaintiff, and the plaintiff had been in possession and enjoyment of the land up to 1994. P.W.5 narrated in his evidence that he had land nearby Item No.2 of the plaint schedule property. P.W.6 is also a resident of Veeravali Mokasa Village. Both P.W.5 and P.W.6 deposed that the plaintiff cultivated the plaint schedule land till 1994.

43. As noted supra, the appellants relied on Ex.B-3 to Ex.B-5 land revenue receipts. Kolusu Gangamma contended that the defendant forcibly entered into the plaint schedule property after obtaining Interim Injunction in the year 1994, and later the Interim Injunction was vacated. As stated supra, appellants relied on Ex.B-3 to Ex.B-5 land revenue receipts. Ex.B-3 is the land revenue receipt, which shows the payment of land revenue in respect of Survey No.114 for the year 1991 on 20.02.1992 by defendant No.2. Ex.B-4 is the drainage cess payment receipt showing payment of drainage cess for Survey No.114 for the year 1992. Ex.B-5 is also another receipt which relates to R.S.No.114. The appellants relied on Ex.B-6, Revenue Adangal for Fasli

No.1401. Ex.B-6 shows that the plaintiff is in possession of the land covered by R.S.No.109/3 and R.S.No.109/3B in total extent of Ac.1.56 cents. Similarly, in respect of the land in R.S.No.68/3C and R.S.No.68/3A, the name of the plaintiff is shown as 'Occupier', and the name of D.W.1/defendant No.1 was not shown as 'Occupier' for Item Nos.1 and 2 of the plaint schedule property. Furthermore, the aforesaid documentary evidence relied upon by the defendants is in no way helpful to the defendants to show that possession of the scheduled property was delivered to the appellants on the date of the alleged Ex.B-1 and Ex.B-2 sale deeds. It is the specific case of the plaintiff that, under the guise of Interim Injunction orders in the year 1994, the defendants forcibly occupied the plaint schedule property. Moreover, the appellants did not choose to examine any of the neighboring landholders to show that they came into possession of the plaint schedule property by virtue of Ex.B-1 and Ex.B-2 sale deeds. The appellants relied on the evidence of D.W.4, there is nothing in the evidence of D.W.4 to show that he had land adjacent to the plaint schedule property. As noticed supra, the vendee under Ex.B-1 and Ex.B-2 sale deeds being under challenge failed to enter into the witness box to prove that possession was delivered to him on the date of sale deeds. As per the own case of defendant No.1, the vendee is worldly wise and was aged about 25 years by the date of Ex.B-1 and Ex.B-2 and had studied up to old SSLC. As per the evidence of the scribe/D.W.2, vendor Kolusu Gangamma signed on Ex.B-1 and Ex.B-2. But, whereas Ex.B-1 and Ex.B-2 reveal that Kolusu Gangamma is not a signatory. During the pendency of the

appeal, defendant No.2/Siva Venkata Krishnarao, in O.S.No.11 of 1994, died, and his son, who was aged about 32 years, was brought on record as the legal representative of deceased defendant No.2.

44. The learned counsel for appellants would contend that the contention of Kolusu Gangamma is that Ex.B-1 and Ex.B-2 documents were obtained by playing fraud by defendant No.1, therefore, the alleged fraud has to be pleaded and proved by the plaintiff/Kolusu Gangamma.

45. The learned counsel for appellants placed a case law of the Hon'ble Apex Court in ***Raja Ram Vs. Jai Prakash Singh and Ors.***[7]

The facts and circumstances in the aforesaid case law are different to the instant case.

46. The learned counsel for appellants placed a case law of the Hon'ble Apex Court in ***M.Rangasamy Vs. Rengammal and others***[8]***.***

The ratio laid down in the aforesaid case law relates to the settlement deeds but not to the sale deeds.

47. The learned counsel for appellants placed a case law of the Hon'ble Apex Court in ***Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others.***[9]

[7] **AIR 2019 Supreme Court 4374**
[8] **AIR 2003 Supreme Court 3120**
[9] **AIR 1994 Supreme Court 626**

The facts and circumstances in the aforesaid case law are different to the instant case.

48. The learned counsel for appellants placed a case law of High Court of Punjab (Delhi Bench) in ***Amir Chand Tota Ram, Delhi Vs. Smt. Sucheta Kripalani, Delhi.***[10]

The learned counsel for appellants placed another case law of High Court of Rangoon in ***Ma Phaw and Anr. Vs. S.B. Dutt and Anr.***[11]

The facts and circumstances in the aforesaid two (02) case laws are different to the instant case.

49. The learned counsel for appellants placed a case law of the Hon'ble Apex Court in ***Vinod Kumar Vs. State (Government of NCT of Delhi).***[12]

The ratio laid down in the aforesaid case law relates to a Sessions Case for an offence punishable under Section 302 of Indian Penal Code, 1860.

50. The learned counsel for appellants placed a case law in ***Hemalatha (D) by Lrs. Vs. Tukaram (D) by Lrs. & Ors.***[13], wherein the Hon'ble Apex Court held as follows:

> *"**31**. It is a settled position of law that a registered Sale Deed carries with it a formidable presumption of validity and genuineness. Registration is not a mere procedural formality but a solemn act that imparts high degree of sanctity to the document. Consequently, a Court must not lightly or casually*

[10] **AIR 1961 Punjab 383**
[11] **AIR 1938 Rangoon 412**
[12] **(2025) 3 Supreme Court Cases 680**
[13] **(2025) 3 Supreme Court Cases 680**

declare a registered instrument as a "sham". Adopting the principles enunciated in Prem Singh and Ors. vs. Birbal and Ors., (2006) 5 SCC 353, ["27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption……"], Jamila Begum (Dead) Through Lrs. vs. Shami Mohd. (Dead) Through Lrs. and Anr., (2019) 2 SCC 727, ["16. Sale deed dated 21-12-1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.….."], and Rattan Singh and Ors. v. Nirmal Gill & Ors., (2021) 15 SCC 300, [" 33. To appreciate the findings arrived at by the courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered……"], this Court reiterates that the burden of proof to displace this presumption rests heavily upon the challenger. Such a challenge can only be sustained if the party provides material particulars and cogent evidence to demonstrate that the Deed was never intended to operate as a bona fide transfer of title.

***32**. The grounds typically accepted to challenge a registered Deed at the instance of the vendee/executant are fraud or want of capacity in any party or mistake of fact or fundamental illegality like where the Deed was executed under deceit or sold by a fraudster who did not own the land or where the Deed was executed without consideration, namely, if no money or value was actually exchanged despite recitals in the Deeds or where there was coercion or intimidation like where the seller was forced to sign without free consent.*

***33**. While the aforementioned grounds are illustrative and not exhaustive, this Court must caution against the growing tendency to challenge registered instruments 'at the drop of a hat'. If the sanctity of registered documents is diluted, it would erode public confidence in property transactions and jeopardize the security of titles. In a society governed by the Rule of Law,*

registered documents must inspire certainty; they cannot be rendered precarious by frivolous litigation."

51. The learned counsel for appellants placed a case law in ***Anil Rishi Vs. Gurbaksh Singh***[14], wherein the Hon'ble Apex Court held as follows:

*"**16**. Thus, point for determination of binding interests or which are the cases which come within the rule of active confidence would vary from case to case. If the plaintiff fails to prove the existence of the fiduciary relationship or the position of active confidence held by the defendant- appellant, the burden would lie on him as he had alleged fraud. The trial Court and the High Court, therefore, in our opinion, cannot be said to be correct in holding that without anything further, the burden of proof would be on the defendant.*

***19.** There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."*

52. The learned counsel for appellants placed a case law in ***Ladli Prashad Jaiswal Vs. The Karnal Distillery Co.Ltd., Karnal and others***[15], wherein the Hon'ble Apex Court held as follows:

*"**20**. Order 6 Rule 4 of the Code of Civil Procedure provides that in all cases in which the party pleading relies on any misrepresentation, fraud,*

[14] **AIR 2006 Supreme Court 1971**
[15] **AIR 1963 Supreme Court 1279**

breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in the Appendix, particulars (with dates and items if necessary) shall be stated in the pleading. The reason of the rule is obvious. A plea that a transaction is vitiated because of undue influence of the other party thereto, gives notice merely that one or more of a variety of insidious forms of influence were brought to bear upon the party pleading undue influence, and by exercising such influence, an unfair advantage was obtained over him by the other. But the object of a pleading is to bring the parties to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues, and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. A vague or general plea can never serve this purpose; the party pleading must therefore be required to plead the precise nature of the influence exercised, the manner of use of the influence, and the unfair advantage obtained by the other. This rule has been evolved with a view to narrow the issue and protect the party charged with improper conduct from being taken by surprise. A plea of undue influence must, to serve that dual purpose, be precise and all necessary particulars in support of the plea must be embodied in the pleading: if the particulars stated in the pleading are not sufficient and specific the Court should, before proceeding with the trial of the suit, insist upon the particular, which give adequate notice -to the other side of the case intended to be set up."

53. The learned counsel for appellants placed a case law in ***Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and others***[16], wherein the Hon'ble Apex Court held as follows:

"4. Under S.16 (1) of the Indian Contract Act a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the

[16] **AIR 1967 Supreme Court 878**

donee such that the donee is in a position to dominate the will of the donor and (2) has the donee used that position to obtain an unfair advantage over the donor'?

5. *Sub-section (2) of the section is illustrative as to when a person is to considered to be in a position to dominate the will of another. These are inter alia (a) where the donee holds a real or apparent authority over the donor or where he stands in a fiduciary relation to the donor or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.*

6. *Sub-section (3) of the section throws the burden of proving that a contract was not induced by undue influence on the person benefiting by it when two factors are found against him, namely that he is in a position to dominate the will of another and the transaction appears on the face of it or on the evidence adduced to be unconscionable."*

54. The learned counsel for appellants placed a case law in ***Sathi Sattemma Vs. Sathi Subbi Reddy and another***[17], wherein a Division Bench of the Composite High Court of Andhra Pradesh at Hyderabad held as follows:

"To hold a contract as vitiated by undue influence, two conditions must be satisfied. Firstly, the relationship subsisting between the parties must be such that one party is in a position to dominate the will of the other and secondly, that the person so placed should have used that position to obtain an unfair advantage over the other. Both the conditions are complementary and not mutually exclusive and hence both together and not each by itself can satisfy the test under Section 16.

If it be shown that a party exercised his dominance over the mind and will of the other undermining substantially latter's independence of judgment and obtained undue advantage thereby, the aggrieved party whose will is thus overborne is entitled to relief against the effects of such undue influence. But such undue influence must be satisfactorily established. It may be proved by evidence, direct or circumstantial. Circumstances of the transaction and relationship of the parties may even shift the onus of proof, but there should

[17] **AIR 1963 Andhra Pradesh 878**

be material on which the Court is satisfied that undue influence as defined in Section 16 of the Contract Act has been exercised. It is necessary that not only such relationship should be found to be subsisting between the parties as to lead to the inference that one party is in a position to dominate the will of the other but it is also necessary that this position must have been used to obtain an unfair advantage over the other. That such an influence has been used may sometimes be apparent on the face of the transaction."

55. The learned counsel for appellants placed a case law in ***Ayanikkal Achunni and others Vs. Bhanumathi and another***[18], wherein a Division Bench of High Court of Kerala held as follows:

*"**14**. .....There is no reason to think that even if the defendant wanted to deceive the plaintiff, the document writer, the Sub Registrar and D.W. 2 will become party to the fraud as they have no reason to give evidence against the interest of the plaintiff. It is therefore a case where the plaintiff has miserably failed either to allege or to prove the case of fraud in showing that the entire property which belonged to the plaintiff in the schedule to Ext. B1 was not really sold to the defendant."*

56. In the present case, the plaintiff produced prima facie evidence to show that the recitals mentioned in Ex.B-1 and Ex.B-2 sale deeds are incorrect, and Kolusu Gangamma contended that possession was not delivered on the date of sale deeds, and the sale consideration was also not passed from the vendor, and the title deeds were not delivered to the vendee as mentioned in Ex.B-1 and Ex.B-2. The plaintiff, Kolusu Gangamma, produced evidence to show that defendant No.1 was in a position to dominate the will of Kolusu Gangamma. Defendant No.1 himself admitted that he has been looking after the affairs of the plaintiff, including her properties, and used to look after her

[18] **AIR 2005 Kerala 83**

needs, but the vendee, who is the party to Ex.B-1 and Ex.B-2 alleged sale deeds, did not enter into the witness box to prove that the recitals in Ex.B-1 and Ex.B-2 are correct and his father has not played any fraud. Though defendant No.1, as D.W.1, deposed that he used to look after the affairs of his son, nothing was mentioned in the written statement of defendant Nos.1 and 2 that defendant No.1 used to look after the affairs of defendant No.2. The learned counsel for respondent/plaintiff contended that Kolusu Gangamma is an illiterate and aged woman. The burden of proving bona fide of sale transaction lies upon the beneficiary or a dominant party, i.e., the person in a position of active confidence.

57. The learned counsel for the respondent/plaintiff placed a case law in ***Krishna Mohan Kul alias Nani Charan Kul and another Vs. Pratima Maity and others***[19], wherein the Hon'ble Apex Court held as follows:

> *"**12.** …The Court was dealing with a case where an old, ailing illiterate person was stated to be the executant and no witness was examined to prove the execution of the deed or putting of the thumb impression. It has been rightly noticed by the High Court that the courts below have wrongly placed onus to prove execution of the deed by Dasu Charan Kul on the plaintiffs. There was challenge by the plaintiffs to validity of the deed. The onus to prove the validity of the deed of settlement was on defendant No. 1. When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, he has to prove that there was fair play*

[19] **AIR 2003 Supreme Court 4351**

in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with zealously all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been engrained in Section 111 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The rule here laid down is in accordance with a principle long acknowledged and administered in Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places a confidence in him is bound to show that a proper and reasonable use has been made of that confidence.

16. *...In* ***Mst. Farid-Un-Nisa v. Munshi Mukhtar Ahmad and another., (AIR 1925 PC 204)*** *it was observed as follows:*

> *'It is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not".*

17. The logic is equally applicable to an old, illiterate, ailing person who is unable to comprehend the nature of the document or the contents thereof. It should be established that there was not mere physical act of the executant involved, but the mental act. Observations of this Court, though in the context of pardahnashin lady in Mst. Kharduja Kuer v. Jang Bahadur Rai and Ors., (AIR 1963 SC 1203) are logically applicable to the case of the old, invalid, infirm (physically and mentally) and illiterate persons.

58. In a case of ***Mst. Sethani Vs. Bhana***[20], a Three Judge Bench of the Hon'ble Apex Court held as follows:

> *"**4.** …No evidence was led by the respondent to discharge the onus that the sale deed was executed under no undue influence, even though the vendor was old, blind, illiterate and tribal woman totally at the mercy of the respondent, with whom she was living till her death. The parties were so situated that Bhana-respondent was in a position to dominate the will of Putlibai and was in a position to obtain any unfair advantage over her. It is also in evidence that Putlibai was dependent on the respondent. The trial Court had given cogent reasons to come to the finding that the sale deed was vitiated on account of the condition in which Putlibai was put due to her relationship with Bhana-respondent, as well as the manner and nature of the transaction. The High Court, in our view, erroneously took the view that the plaintiff-appellant was unable to discharge the onus that the transaction was as a result of undue influence. There was no cogent reason to come to that view and more so to upset the well reasoned finding recorded by the trial Court. Therefore, opting for the view of the trial Court, we reverse the finding that the sale deed was executed by the mother of the appellant under undue influence of the respondent who took advantage of the helplessness of the old widow of his brother. The advantage thus obtained by him must thus be returned."*

59. In a case of ***Mst. Kharduja Kuer Vs. Jangbahadur Rai and Ors.,***[21] a Three Judge Bench of the Hon'ble Apex Court held as follows:

> ***"…**In the first place, the lady was a parda- nashin lady, and the law throws round her a special cloak of protection. It demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the grantor. In such cases it must also, of*

[20] **AIR 1993 Supreme Court 956**
[21] **AIR 1963 Supreme Court 1203**

course, be established that the deed was not signed under duress, but arose from the free and independent will of the grantor".

…The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardanashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it, but also by other evidence, direct and circumstantial."

60. In a case of ***Sm. Sonia Parshini Vs. Sheikh Moula Baksh,***[22] a Division Bench of the High Court of Calcutta held as follows:

*"**12**. We accordingly hold that the appellant was entitled to the protection of the rule by reason of her ignorance and illiteracy despite the fact that she was not strictly pardanashin and that the respondent who was in a position of active confidence failed to discharge the onus of proving' intelligent understanding of the document by the appellant and the evidence far from proving the fairness of the deal, proved the contrary, namely, the transaction resulted in an unconscionable advantage to the respondent."*

54. In a case of ***Parasanath Rai and others Vs. Tileshra Kuar,***[23] the High Court of Allahabad held as follows:

*"**6**. Admittedly, the plaintiff is totally illiterate. It is also not disputed that at the time of the execution of the deed of gift the plaintiff was over sixty years of age and this fact is mentioned in the deed, itself.*

***12.** In addition to the disabilities of the plaintiff arising from her age, illiteracy, hardness of hearing, and mental deficiency, there I the fact that the defendants are not only closely related to the plaintiff but they were also living with her at the time of the execution of the deed of gift and were looking after her and helping her, as the recitals in the deed themselves bear out. These things must have created in her a sense of dependence and a feeling of trust*

[22] **AIR 1955 Calcutta 17**
[23] **1965 SCC OnLine ALL 68**

and confidence towards the defendants. The point to be considered is whether, in these circumstances, the lower appellate court was in error in judging the evidence led in the case and determining the validity of the gift in the light of the principles applicable to deeds of pardahnashin ladies."

61. In the case at hand, it is the admitted case that the plaintiff lost her husband about 30 years ago and Kolusu Gangamma is an illiterate old lady having no worldly knowledge. It is admitted by defendant No.1 that the brothers of the plaintiff are not cordial with the plaintiff and the plaintiff lost her husband about 30 years ago. Defendant Nos.1 and 2 pleaded in the written statement that it is a fact that the plaintiff lost her husband immediately after her marriage and, by that time, the plaintiff was childless and property-less, and defendant No.1 helped her in many ways, as in securing sites and a house therein to live, and it is a fact that the brothers of the plaintiff are also residents of Kadavakollu and Veeravalli Villages, but they never looked after the plaintiff, and defendant No.1 used to help Kolusu Gangamma after the death of her husband.

62. The specific case of the plaintiff is that she lost her husband about 30 years ago, she is not having any children, and she is an illiterate lady having no worldly knowledge, and defendant Nos.1 and 2 are father and son, and defendant No.1 used to assist the plaintiff in her Court affairs after the death of her husband and also in her money lending affairs, and defendant No.1 managed to win over the confidence of the plaintiff. The plaintiff further pleaded that defendant No.1, representing the miserable plight of defendant No.2, requested the plaintiff to execute a sale deed and convey Ac.0.04 cents

of land in favour of defendant No.2 for his residence, and the plaintiff, out of her sympathy towards the defendants, agreed to convey an extent of Ac.0.04 cents of land in R.S.No.68/2A out of an extent of Ac.0.18 cents of land in R.S.No.68/2A, but defendant No.1, by playing fraud, obtained a sale deed for Ac.0.60 cents for Rs.30,000/-, and she came to know the same subsequently. The plaintiff further pleaded that, subsequent to obtaining of the said sale deed, defendant No.1 informed her that there was a mistake in the recitals in respect of re-survey number in the said sale deed and that a rectification deed had to be executed for amending the recital with regard to survey number correctly and requested the plaintiff to go over to the Sub-Registrar Office, and defendant No.1 took the plaintiff to the Sub-Registrar Office and fraudulently obtained a sale deed in respect of Item No.2 of the schedule property for Rs.70,980/-. The plaintiff further pleaded that later she came to know about the alleged fraud played by defendant No.1 after obtaining the registration extract of sale deeds through his relative by name Kommu Kanaka Chintaiah.

63. The plaintiff-Kolusu Gangamma is an aged widow, who lost her husband at a young age and was completely dependent upon defendant No.1. It is also the admitted case of defendant No.1 that he used to help her on all occasions, since she lost her husband about 30 years ago, nobody including her brothers looking about her needs and welfare. Therefore, defendant No.1 was in a position to dominate the will of Gangamma and the burden heavily lies on defendant No.1. In the present case, the plaintiff discharged her initial burden and produced prima facie evidence of suspicious

circumstances, under which circumstances; the alleged Ex.B-1 and Ex.B-2 sale deeds were brought into existence. The plaintiff also proved that the sale consideration under Ex.B-1 and Ex.B-2 was not passed under Ex.B-1 and Ex.B-2 sale deeds and possession was not delivered and the title deeds were not delivered from the vendor to the vendee as mentioned in the alleged sale deeds Ex.B-1 and Ex.B-2, and the plaintiff-Kolusu Gangamma also produced circumstantial evidence to show that defendant No.1 obtained two (02) sale deeds in the name of his son by playing fraud and defendant No.1 was in a position to dominate the will of Kolusu Gangamma. Therefore, the burden shifts to the appellants to prove that defendant No.1 has not played any fraud. But the evidence produced by the appellants is not sufficient to prove the same. Therefore, the appellants failed to prove that Gangamma executed Ex.B-1 and Ex.B-2 sale deeds with full knowledge and that the transactions under Ex.B-1 and Ex.B-2 sale deeds are valid and free from undue influence. The trial Court, in its judgment, dismissed the relief of permanent injunction sought by the plaintiff by name Kolusu Gangamma by narrating reasons, and the plaintiff/Kolusu Gangamma did not choose to file any Cross-objections in the first appeal filed by the appellants.

64. For the aforesaid reasons, this Court is of the considered view that Ex.B-1 and Ex.B-2 sale deeds were brought into existence as narrated in the plaint and the appellants have fraudulently obtained the sale deeds from Kolusu Gangamma, who is the plaintiff in O.S.No.11 of 1994. Therefore, Ex.B-1 and Ex.B-2 sale deeds are liable to be cancelled. By giving cogent reasons,

the trial Court rightly came to the conclusion that plaintiff Gangamma is entitled to the relief of cancellation of Ex.B-1 and Ex.B-2 sale deeds.

Accordingly, Point Nos.1 and 2 are answered in favour of the respondent/plaintiff.

65. **Point No.3:**

Whether the plaintiff in O.S.No.145 of 1993 i.e. the defendant No.2 in O.S.No.11 of 1994/appellant is entitled to the relief of permanent injunction as sought for?

The contention of the appellant/plaintiff in O.S.No.145 of 1993, i.e., defendant No.2 in O.S.No.11 of 1994, is that he is the owner of the plaint schedule property under Ex.B-1 and Ex.B-2 sale deeds. As noted supra, the appellant/plaintiff in O.S.No.145 of 1993 did not enter into the witness box to prove the case set up by him in the plaint. As stated supra, Ex.B-1 and Ex.B-2 sale deeds were obtained by defendant No.1 in the name of defendant No.2 i.e. the plaintiff in the suit in O.S.No.145 of 1993by playing fraud and the same are liable to be cancelled. The appellant No.2/plaintiff in O.S.No.145 of 1993 failed to establish his title to the plaint schedule property. As noticed *supra,* he entered into possession under the guise of Interim Injunction orders obtained during the pendency of the suit. As noticed *supra,* the plaintiff in the suit in O.S.No.1145 of 1993 failed to prove that he came into possession of the plaint schedule property through Ex.B-1 and Ex.B-2 sale deeds. For the aforesaid reasons, the plaintiff in O.S.No.145 of 1993 is not entitled to the relief of

permanent injunction as sought for. The trial Court, by giving cogent reasons, has rightly dismissed the suit in O.S.No.145 of 1993 filed by Siva Venkata Krishnarao for granting the relief of permanent injunction as prayed for in the plaint.

Accordingly, Point No.3 is answered against the appellants.

66. ***Point No.4:***

Whether the decrees and common judgment in O.S.No.11 of 1994 and O.S.No.145 of 1993 needs any interference?

In view of my findings on Point Nos.1 to 3, as stated *supra*, the decree and common judgment passed by the trial Court in O.S.No.11 of 1994 and in O.S.No.145 of 1993 is perfectly sustainable under law and there is no need to interfere with the decree and common judgment passed by the trial Court.

67. Resultantly, A.S.No.238 of 1999 and Tr.A.S.No.310 of 2006 are dismissed. Each party do bear their own costs in both the appeals.

As a sequel, miscellaneous petitions, if any, pending in the Appeals shall stand closed.

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V.GOPALA KRISHNA RAO, J

Date: 15.06.2026
SRT