

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION NOS:3325 & 3807 of 2020; 15383, 15403 of 2021, 13966 & 16510 of 2023; AS Nos.645 of 2013 & 707 of 2014 & C.C No.5225 of 2023

WP No.3325 of 2020

Between:

- 1.MUPPAVARAPU CHOWDARY AND LEELA KRISHNA PRASAD TRUST, REP BY ITS TRUSTEE KUDARAVALLI RADHA KRISHNA MURTHY S/O LATE PURUSHOTHAM, AGED 89 YEARS, R/O 1079 BELVEDERE LN. SAN JOSE, CA 95129, U.S.A PRESENTLY R/O A-6, SANTHI APARTMENTS, P AND T COLONY, NEAR SAIBABA TEMPLE, VIJAYAWADA, KRISHNA DISTRICT.
- 2.MUPPAVARARU DEVANADH CHOWDARY, S/O LATE SUBBA RAO, AGED 34 YEARS, BUSINESS, D.NO. 10-89, ASHOKNAGAR, KANURU, VIJAYAWADA, KRISHNA DISTRICT. DISMISSED AS WITHDRAWN INsofar CONCERNED VIDE COURT ORDER DT. 16.08.2022.

...PETITIONER(S)

AND

- § 1. THE MANDAL LEGAL SERVICES AUTHORITY, REP BY ITS CHAIRMAN, LOK ADALAT, ELURU, WEST GODAVARI DIST.
- 2.MUPPAVARAPU HEMANTH KUMAR, S/O LATE CHOWDARY, HINDU, AGED ABOUT 62 YEARS, D.NO. 11-140, ASHOKNAGAR, M.G.ROAD, VIJAYAWADA, KRISHNA DIST.
 - 3.MANCHIKALAPUDI PARVATHI, W/O LATE SAMBASIVA RAO, AGED ABOUT 71 YEARS, NEAR RTC COLONY, PATAMATA, VIJAYAWADA, KRISHNA DISTRICT.
 - 4.MUPPAVARAPU PADMAJA, W/O LATE LEELA RAMA KRISHNA PRASAD, AGED ABOUT 50 YEARS, R/O 110-27-64, AVE, FOREST HILLS NY 11375, NEWYORK, U.S.A, REP BY HER GPA HOLDER SMT VELLANKI JAYA W/O RACHERLA RAJENDRA NAIDU, R/O D.NO. 29-14-56, PRAKASAM ROAD, SURYARAOPET, VIJAYAWADA, KRISHNA DISTRICT.

5.THE DISTRICT REGISTRAR, VIJAYAWADA, KRISHNA DISTRICT.

6.THE SUBREGISTRAR, PATAMATA, KALANAGAR, VIJAYAWADA,
KRISHNA DISTRICT.

...RESPONDENT(S):

Date of Judgment pronounced on : 06.03.2026

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

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

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

*** HON'BLE SRI JUSTICE T.C.D. SEKHAR**

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% Dated:06.03.2026

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 - 4.MUPPAVARAPU PADMAJA, W/O LATE LEELA RAMA KRISHNA

PRASAD, AGED ABOUT 50 YEARS, R/O 110-27-64, AVE, FOREST HILLS NY 11375, NEWYORK, U.S.A, REP BY HER GPA HOLDER SMT VELLANKI JAYA W/O RACHERLA RAJENDRA NAIDU, R/O D.NO. 29-14-56, PRAKASAM ROAD, SURYARAOPET, VIJAYAWADA, KRISHNA DISTRICT.

5.THE DISTRICT REGISTRAR, VIJAYAWADA, KRISHNA DISTRICT.

6.THE SUBREGISTRAR, PATAMATA, KALANAGAR, VIJAYAWADA, KRISHNA DISTRICT.

...RESPONDENT(S):

Sri M.R.S. Srinivas learned counsel, appearing for the plaintiff, Sri Y.N. Vivekananda learned counsel appearing for defendants 2 and 4 to 10, who are the appellants in A.S.No.645 of 2013 and Sri O. Manohar Reddy, the learned Senior Counsel appearing for the appellant in A.S.No.707 of 2014.

Sri S. Lakshminarayana Reddy (S.C for GVMC), Narayana Raju Uddaraju and Krishna C.V Grnadh, learned counsel appearing for the respondents.

<GIST :

>HEAD NOTE:

? Cases referred:

¹(2012) 8 SCC 148 (paras 12 and 21)

² (1972) 4 SCC 562 (para 15)

³ (2009)1 SCC 354 (paras 18 to 24, 27 to 34)

⁴ (2012) 4 ALD 732

⁵ (2020) 12 SCC 480

⁶ 2016 SCC Online Karnataka 3997

⁷ AIR 1938 Calcutta 507

⁸(2020) 17 SCC 284

⁹AIR 1999 SC 1441: (1999) 3 SCC 573

¹⁰(1999) 3 SCC 573 (para 17)

11(2025) SCC online SC page 868 (paras 19 and 20)

12(2023) 13 SCC page 1 (paras 64 & 65)

13(AIR 1959 SC 443 (paras 18 to 22)

14(1990) 1 SCC 266 (paras 22 and 23)

¹⁵(2009) 3 SCC 687 (paras 14 to 23)

¹⁶(2025) 4 SCC 289 (paras 16 to 33)

¹⁷(2023) 9 SCC 734 (paras 9 to 14)

¹⁸1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443

¹⁹(2009) 3 SCC 687 (paras 14 to 23)

²⁰(2025) 4 SCC 289 (paras 16 to 33)

²¹(2023) 9 SCC 734 (paras 9 to 14)

²²(2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934 : 2008 SCC OnLine SC 1867 at page 699

²³(2021) 11 SCC 277 : 2020 SCC OnLine SC 385 at page 309

²⁴2012 SCC OnLine AP 778 : (2012) 4 ALD 732 at page 742

25 AIR 1999 SC 1441: (1999) 3 SCC 573

²⁶(1997) 7 SCC 110 : 1997 SCC OnLine SC 122 at page 121

27. 2016 SCC ONLINE KAR 3997 in Re: Parameshwaran Subramani

²⁸(2018) 13 SCC 480 (paras 22 to 24 and 33)

²⁹(2008) 2 SCC 660 (para 12)

³⁰ (1994) 1 SCC page 1 (paras 5 and 6)

³¹ (2010) 8 SCC 383 (paras 28 to 36)

³² (2021) 13 SCC 587 (paras 19 to 21)

³³ (2012) 1 SCC 656 (para 17)

³⁴ (2025) SCC Online SC 1879 (paras 25 and 26)

³⁵ MANU/AP/1964/2024 (paras 22 and 23)

³⁶(2008) 2 SCC 660 : (2008) 1 SCC (Civ) 669 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535 : 2008 SCC OnLine SC 137 at page 666

³⁷. (2018) 13 SCC 480 : (2018) 4 SCC (Civ) 243 : 2017 SCC OnLine SC 1053 at page 486

38. 2025 SCC Online SC 2737 (paras 14 & 15)

³⁹ 2024 (1) ALT 164 : 2024 SCC Online AP 5159

⁴⁰. AIR 1941 MAD 535 and 1975 SCC Online MP 38

⁴¹1962 SCC OnLine SC 159 : (1963) 3 SCR 623 : AIR 1963 SC 309

⁴²1972 SCC OnLineGuj10 : AIR 1973 Guj 113 : (1972) 13 GLR 828 at page 114

⁴³(2022) 8 SCC 210 : (2022) 3 SCC (Cri) 354 : (2022) 4 SCC (Civ) 284 : 2022 SCC OnLine SC 544 at page 235

⁴⁴ AIR 1958 SC 886

APHC010055262020



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

[3529]

FRIDAY, THE SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

**WRIT PETITION NOS:3325 & 3807 of 2020; 15383, 15403 of 2021, 13966 &
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- 4.MUPPAVARAPU PADMAJA, W/O LATE LEELA RAMA KRISHNA PRASAD, AGED ABOUT 50 YEARS, R/O 110-27-64, AVE, FOREST HILLS NY 11375, NEWYORK, U.S.A, REP BY HER GPA HOLDER SMT VELLANKI JAYA W/O RACHERLA RAJENDRA NAIDU, R/O D.NO. 29-14-56, PRAKASAM ROAD, SURYARAOPET, VIJAYAWADA, KRISHNA DISTRICT.
- 5.THE DISTRICT REGISTRAR, VIJAYAWADA, KRISHNA DISTRICT.
- 6.THE SUBREGISTRAR, PATAMATA, KALANAGAR, VIJAYAWADA, KRISHNA DISTRICT.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased to issue a Writ, order or direction, especially one in the nature of Writ of Mandamus, declaring the award dated 21-1-2020 passed in Lok Adalat Case No 04 of 2020 O.S.No. 446 of 2019 on the file of the Court of the Principal Junior Civil Judge, Eluru) in respect of property of an extent of Ac.1-05 cts in R.S.No. 80/5 and Ac. 1-93 cts in R.S.No. 45/1 of Yanamalakuduru, Penamaluru Mandal, Krishna District described as Item No.2 (excluding Ac 0-03 cts in R.S.No. 80/10) since the award came to be passed by virtue of fraud played by 2nd and 3rd respondent on Court as well as petition and contrary to the provisions of Legal Services Authority Act, 1987 and consequently set aside the award in respect of property of an extent of Ac. 1-05 cts in R.S.N a. 80/5 and Ac. 1-93 cts in R.S.No. 45/1 of Yanamalakuduru, Penamahru Mandal, Krishna District described as Item No.2 (excluding Ac 0-03 cts in R.S.No. 80/10) in Lok Adalat Award No. 04 of 2020 (O.S.No.446 of 2019 PJCJ, Eluru)

IA NO: 1 OF 2020

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 direct the 5th and 6th respondents not to entertain any documents presented seeking registration in respect of property of an extent of Ac. 1-05 cts in R.S.No. 80/5 and Ac. 1-93 cts in R.S.No. 45/1 of Yanamalakuduru, Penamaluru Mandal, Krishna District described as Item No.2 (excluding Ac 0-03 cts in R.S.No. 80/10) in Lok Adalat Award No. 04 of 2020 (O.S.No.446 of 2019 PJCJ, Eluru) pending disposal of the above writ petition

IA NO: 2 OF 2020

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 suspend the operation of award in Lok Adalat Case No. 04 of 2020 (O.S.No. 446 of 2019 PJCJ, Eluru) in relation to property of an extent of Ac. 1-05 cts in R.S.No. 80/5 and Ac. 1-a3 cts in R.S.No. 45/1 of Yanamalakuduru, Penamaluru Mandal, Krishna District described as Item No.2 (excluding Ac 0-03 cts in R.S.No. 80/10) in Lok Adalat Award No. 04 of 2020 (O.S.No.446 of 2019 PJCJ, Eluru) pending disposal of the above Writ Petition

IA NO: 3 OF 2020

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 permit the petitioner as Muppavarapu Chowdary and Leela Rama Krishna Prasad Trust instead of Muppavarapu Chowdary and Leela Krishna Prasad Trust in the above Affidavit as well as miscellaneous petitions and pass

IA NO: 1 OF 2022

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 direct the respondents no.5 and 6 not to entertain any documents submitted for registration, pertaining to the land to an extent of Ac.1.05 cents in R.S.No.80/5 and Ac.1.93 cents in R.S.No.45/1 of YanamalakuduruPenamaluru Mandal Krishna District pending disposal the above writ petition and pass such other

IA NO: 2 OF 2022

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 direct the respondents no.2 and 3 not to enter into the land to an extent of Ac.1.05 cents in R.S.No.80/5 and Ac.1.93 cents in R.S.No.45/1 of YanamalakuduruPenamaluru Mandal Krishna District pending disposal the above writ petition and pass such other

IA NO: 3 OF 2022

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 extend the interim order dated 11.02.2020 (Lastly on 24-01-2022) passed in the Writ Petition No.3325 of 2020 pending disposal the above writ petition and pass such other order or

IA NO: 4 OF 2022

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 permit the petitioner to contest W.P.No.3325 of 2020 as the GPA agent of Mr.Kudaravalli Radha Krishna Murthy, the Trustee of the 1st petitioner Trust in the writ petition pending disposal of the above writ petition and pass such other

IA NO: 5 OF 2022

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 be disclosed in the accompanying affidavit it is humbly prayed to this Honble court that no prejudice would be caused to file additional affidavit at this stage. On the other hand if this application is rejected, irreparable loss and injury would incur to the petitioner in as much as the respondent no.1 alleged trust would be successful in establishing a fictitious right. Therefore it is just and necessary that the present application be allowed and the petitioner be permitted to bring the additional affidavit on record in Wp.3325/2020

IA NO: 1 OF 2023

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 grant leave to the Respondents 5 and 6 in the WP.No. 3325/2020 to file counter affidavit in the above writ petition and pass

Counsel for the Petitioner(S):

1. MEKA RAHUL CHOWDARY
2. TURAGA SAI SURYA

Counsel for the Respondent(S):

1. S LAKSHMINARAYANA REDDY(SC FOR GVMC)
2. M R S SRINIVAS
3. NARAYANA RAJU UDDARAJU
4. KRISHNA C V GRANDHI

Date of Reserved :30.12.2025

Date of Pronouncement :06.03.2026

Date of upload :06.03.2026

The Court made the following Common Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

The dispute, in all these cases, is in relation to the estate of late Dr.M.Leela Rama Krishna Prasad (herein after referred to as Dr.Prasad). Dr.Prasad, after completion of his medical course, emigrated to the United States of America and continued his practice, as a Doctor, in the United States of America. He was a resident of the State of Illinois. After divorcing his first wife, Dr. Prasad married Smt. Padmaja, on 28.12.1992. Dr. Prasad was diagnosed with Cancer and after treatment for some months, passed away on 19.4.1999 in Henry Medical Center, Stock Bridge, Georgia.

2. Dr. Prasad had executed an unregistered power of attorney, in favour of his brother Sri M.Hemanth Kumar, on 11.08.1981. Dr.Prasad executed a second power of attorney, in favour of his brother Sri Hemanth Kumar, on 23.12.1992. This power of attorney was registered as document No.3021 of 1992 in the Office of Sub Registrar, Vijayawada.

3. After being diagnosed with Cancer, Dr.Prasad underwent treatment, including Chemo Therapy. In the course of his illness, he had executed a Will, dated 30.12.1998. This Will is related to the properties of Dr. Prasad, in the United States of America, and the same is accepted by all the parties.

4. Two more Wills, dated 05.04.1999 and 17.04.1999, said to have been executed by Dr. Prasad, have been produced as evidence in this suit. Under these Wills, Dr. Prasad is said to have made arrangements, for devolution of his properties, in India, in favour of some of his family members, with a major part of his properties being constituted into a trust and to be used for the purposes set out in the two wills. These wills were initially produced by Sri Hemanth Kumar, and marked as exhibits, in O.S No.69 of 2002, filed before the XII Additional District Judge, Krishna at Vijayawada. One of the sisters of Dr. Prasad, namely Smt. Nirmala Kumari, has accepted these two Wills and it has been her stand, before this Court, that these two Wills have been executed by Dr. Prasad and the wishes of Dr.Prasad, in constituting a trust for these properties, should be honoured. Sri Hemanth Kumar and the other sisters of Dr. Prasad dispute the Will. Similarly, Smt. Padmaja, the wife of Dr. Prasad, disputes the two Wills.

5. Smt. Padmaja, claiming that Dr. Prasad had passed away, intestate, in relation to his properties in India, filed O.S. No.69 of 2002, before the XII Additional District Judge, Vijayawada for partition of the properties of Dr. Prasad, between herself and the mother of Dr. Prasad as they were the sole legal heirs, on whom the estate of Dr. Prasad would devolve, in equal shares upon herself and her mother in law, who is the mother of Dr. Prasad.

6. The above suit was originally filed against the mother of Dr. Prasad and Sri Hemanth Kumar, the younger brother of Dr. Prasad. The

mother of Dr. Prasad, passed away during the pendency of the suit. Her legal heirs, namely her sons and daughters, were impleaded as defendant Nos.2 and 4 to 10. Similarly, the Muppavarapu Chowdary and Leela Rama Krishna Prasad Trust (hereinafter referred to as the Trust), which is the main beneficiary of the two Wills, was impleaded as defendant No.11 and two persons said to be trustees of this trust were impleaded as defendant Nos.12 & 13.

7. The trial Court, after completion of the trial and after hearing the contentions raised by all the opposing parties, disbelieved the Wills and had allowed the suit, by judgment and preliminary decree, dated 08.04.2013. Aggrieved by this judgment, Sri Hemanth Kumar and other sisters of Dr. Prasad have filed A.S No.645 of 2013 before this Court. Similarly, the Muppavarapu Chowdary and Leela Rama Krishna Prasad Trust filed A.S No.707 of 2014, before this Court, against the same judgment and decree.

8. While these appeals were pending, Sri Ch.Koteswara Rao and Smt. M. Parvathi had filed O.S No.445 & 446 of 2019, respectively, before the Principal Junior Civil Judge, Eluru, for permanent injunctions, restraining Sri Hemanth Kumar from interfering with their possession over certain properties, which are said to have been transferred in their favour, by way of agreements of sale, and also by way of lease agreements. Some of the properties mentioned in the suit, belong to Dr. Prasad. Subsequently, the parties in these suits are said to have arrived at a settlement and the terms of the settlement

were placed before the Lok Adalat, at Eluru, and awards came to be passed, by the Lok Adalat, on 21.01.2020. Under these awards, some of the properties of Dr.Prasad, which were the subject matter of these suits, were to be transferred to Sri Ch. Koteswara Rao and Smt. Parvathi by Sri Hemanth Kumar.

9. The trust challenged these two awards, by way of writ petitions *vide* W.P Nos.3325 and 3807 of 2020. Similarly, Smt. Padmaja challenged the awards, by way of writ petitions *vide* WP Nos.1538 and 15403 of 2021. The Division Bench of this Court, had granted suspension of the awards, in the writ petitions, filed by the trust. As deeds of sale, *vide* document Nos.3567 & 3568, dated 14.04.2023, had been executed and registered by Sri Hemanth Kumar in favour of Sri Ch.Koteswara Rao, the trust had filed W.P No.13966 of 2023 challenging the registration of the said deeds of sale. Apart from this, the trust also moved a contempt case *vide* C.C No.5225 of 2023 against Sri Hemanth Kumar on the ground of violation of the directions of this Court.

10. In view of the contradictions surrounding the execution of deeds of sale, an enquiry had been initiated under Section 81 of the Registration Act, into the execution and registration of the said deeds of sale. Aggrieved by the initiation of such an enquiry, Sri Ch. Koteswara Rao moved this Court, by way of W.P No.16510 of 2023. Apart from this, both Ch. Koteswara Rao and Smt. M. Parvathi have filed applications to implead themselves in A.S.No.645 of 2013. The applications, filed by Sri Ch. Koteswara Rao, have been numbered

as I.A.No.1 of 2023 in A.S.No.707 of 2014 and I.A.No.1 of 2023 in A.S.No.645 of 2013. Similarly, the implead petitions, filed by Smt. M. Parvathi, have been numbered as I.A.No.2 of 2023 in A.S.No.707 of 2014 and I.A.No.2 of 2023 in A.S.No.645 of 2013.

11. Heard Sri M.R.S. Srinivas learned counsel, appearing for the plaintiff, Sri Y.N. Vivekananda learned counsel appearing for defendants 2 and 4 to 10, who are the appellants in A.S.No.645 of 2013 and Sri O. Manohar Reddy, the learned Senior Counsel appearing for the appellant in A.S.No.707 of 2014.

12. As can be seen from the above facts, all these cases are interconnected and the results of these cases are dependent on each other. Further, all the parties in these cases are, more or less, parties in all the cases. In that view of the matter all these cases are being disposed of, by way of this common order.

13. The appeals and writ petitions, in the present litigation, can be considered in three parts.

PART I :A.S.No. 645 and A.S.No.707 of 2013, dealing with the question of whether the Wills of 5.4.1999 and 17.04.1999 had been executed by Dr. Prasad; whether they have been proved, in accordance with law and whether the property of Dr. Prasad would devolve, according to the Wills, on the Trust or whether the property of Dr. Prasad would devolve on his legal heirs.

PART II: The writ petitions filed on the issue of whether the Lok Adalat awards, obtained in Eluru, West Godavari District are valid and whether these awards and subsequent sale deeds would create any right over the property of Dr. Prasad, in favour of Sri Ch. Koteswara Rao and Smt. M. Parvathi.

PART III: The interlocutory applications filed in A.S.No. 645 and 707 of 2013, for impleading Sri Ch. Koteswara Rao and Smt. M. Parvathi in A.S.No. 645 and 707 of 2013.

PART I: A.S. 645 of 2013 and A.S. No. 707 of 2013

14. Before going in to the respective contentions of the learned counsel for the petitioner, appearing for the parties before this Court, it would be necessary to review the pleadings raised before the trial Court.

15. Smt. M. Padmaja, filed O.S.No.69 of 2002, claiming half share in the property and estate of late Dr. Prasad. The plaintiff contended, in the plaint, that Dr. Prasad had been diagnosed with cancer in 1997. His prolonged illness required treatment as an inpatient in the hospital. At that time, the close relatives of Dr. Prasad, living in the United States took undue advantage of the grief and helplessness of Smt. Padmaja and Dr. Prasad and made out that Dr. Prasad had created a trust for his properties, in India. Dr. Prasad was admitted to Henry Medical Centre, Stock Bridge, Georgia on 05.04.1999 and passed away, intestate, on 19.04.1999. During this period, Dr. Prasad, while he was in hospital, was put on a heavy dosage of pain killer drugs due to which, Dr. Prasad was not in a sound state of mind. After completing the

cremation ceremonies of Dr. Prasad, after his death on 19.07.1999, Smt. Padmaja had come to India on 25.04.1999 for performing the remaining ceremonies for Dr. Prasad. Smt. Padmaja remained in India till the end of January, 2000 and pursued a computer course in Hyderabad. She went back to the United States of America on 02.02.2000 and was able to obtain the benefit of the Will, executed by Dr. Prasad, on 30.12.1998, in relation to the property of Dr. Prasad situated in the United States of America. Smt. Padmaja could obtain the benefits only after initiating litigation in the Circuit Court in Illinois. At that stage, Smt. Padmaja, having come out of the influence of the defendants took up steps to ascertain the properties of Dr. Prasad and to get her rightful share in the said property.

16. Smt. Padmaja also contended, in the plaint, that her signatures were taken, by Sri Hemanth Kumar, on various typed papers. She was unaware of the contents of these papers and that the defendants were misusing those papers to state that she had accepted reduction of the share of her husband, which devolved on her, in certain firms. She executed a power of attorney in favour of Sri Hemanth Kumar, who was the 2nd defendant, in O.S.No.69 of 2002, to represent her interest in the said firm. Later, having come to know of all the steps being taken by the defendants to deprive her of her rightful share in the property, of Dr. Prasad, she had issued a legal notice, dated 11.01.2002, calling upon Sri Hemanth Kumar to render proper accounts

to her and also to furnish copies of Wills alleged to have been executed by Dr. Prasad, in relation to the properties in India.

17. Smt. Padmaja claimed that Dr. Prasad was the owner of six items of immovable property which were set out in Schedule-A of the plaint and that he was a partner having 40% share in M/s. Muppavarapu Chowdary Builders and Real Estate Developers and that she would be entitled to half this share. The said share in the firm, which was also arrayed, as defendant No.3, in the suit, was set out in Schedule-B of the plaint.

18. Defendants 1, 2 and 6 to 8 filed a common written statement. In this written statement, it was contended that Dr. Prasad had executed two Wills, dated 05.04.1999 and 17.04.1999, relating to his properties situated in India and that a Trust known as "Muppavarapu Chowdary and Leela Rama Krishna Prasad Trust" had been constituted, under these Wills, in relation to these properties, which were to be used for the benefit of the mother of Dr. Prasad and thereafter to be used for various charitable purposes. Smt. Padmaja knowing about the said execution of the two Wills had deliberately ignored these two Wills and had filed the suit as if Dr. Prasad had passed away, intestate, and that she would be entitled to half the property of Dr. Prasad. Further, items 2 and 5, set out in Schedule-A, had already been sold away during the lifetime of Dr. Prasad, in 1980-81 and 1989-90 and consequently were not properties of Dr. Prasad by the time he had passed

away. A specific statement was also made that items 1, 3, 4 and 6 of Schedule-A were in the possession and management of the Trust.

19. It may also be noted that the aforesaid recital of the pleadings, does not include all the details of the pleadings and is only a *prima facie* recital of the pleadings, for the purposes of the present judgment. Smt. Padmaja was examined as P.W.1 and Dr. M. Kishore Babu was examined as P.W.2. Four witnesses were examined on behalf of the defendants including Sri M. Hemanth Kumar as D.W.1 and Dr. Raju Vanapalli, an attesor of the Wills, dated 05.04.1999 and 19.04.1999, as D.W.4. Various facts were deposed by these witnesses and certain other facts also came to light on account of the cross examination of these witnesses. Such facts would be discussed in detail hereinafter. The Trial court disbelieved the two Wills, and held that Smt. Padmaja would be entitled to a half share of the property set out in the Schedules to the suit. Aggrieved by this judgment and decree dated 08.04.2013. Aggrieved by this judgment, Sri Hemanth Kumar and other sisters of Dr.Prasad have filed A.S No.645 of 2013 before this Court. Similarly, the Muppavarapu Chowdary and Leela Rama Krishna Prasad Trust filed A.S No.707 of 2014, before this Court, against the same judgment and decree.

20. Though the appeals have been filed by the defendants, in the suit, it would be appropriate to first consider the contentions raised, in the present appeal, by the plaintiff. The contentions of Sri M.R.S. Srinivas, the learned counsel appearing for Smt. Padmaja, are that:

i) The Wills which were said to have been executed in the United States of America, were produced by the defendants, during the course of cross examination of Smt. Padmaja. There is no pleading in the written statement as to how the defendants came to be in possession of the Wills, dated 05.04.1999, and 17.04.1999. The 2nd defendant, in the reply notice sent on his behalf, states that copies of the Will were given by Smt. Padmaja herself to Sri Hemanth Kumar in April, 1999 but Sri Hemanth Kumar was not in possession of the original Will or Wills. In the written statement, there is no mention as to which defendant and when Smt. Padmaja had handed over the original Will. In substance, there is no pleading, recording the manner in which the originals of the Wills, dated 05.04.1999 and 17.04.1999, came to be in the possession of the defendants. Sri Hemanth Kumar, in the course of his cross examination, as D.W.1, had stated that the documents had been handed over by Smt. Padmaja, to the mother of Dr. Prasad, who inturn handed over the same to Sri Hemanth Kumar in the last week of April, 1999. The same cannot be accepted. The statement in the reply notice of 17.01.2002 that he was not in possession of the original Wills clearly contradicts his statement in the cross examination.

ii) The Wills, said to have been executed, on 05.04.1999 and 17.04.1999, were not within the knowledge of the plaintiff. However, Sri Hemanth Kumar giving evidence as D.W.1 contended that the Wills were

handed over by the plaintiff herself. As such, the chain of custody of these Wills is highly suspect and consequently the Wills cannot be looked into.

iii) The evidence of D.W.1 would have to be totally eschewed as the said evidence has various discrepancies. The plaintiff, had come into India, after the demise of Dr. Prasad only on 25.04.1999 which can be seen from the entries in the passport of the plaintiff, which has been marked as Ex.A9. However, a deed of reconstitution of a partnership firm, dated 20.04.1999, has been produced by D.W.1 and marked as Ex.B2. This reconstitution deed is said to have been signed by the plaintiff, on 20.04.1999, in Vijayawada, while she was actually in the United States of America. The manner, in which the share of Dr. Prasad, in the partnership firm M/s Muppavarapu Chowdary Builders & Real Estate Developers, had been handled and given away to persons, who are not entitled to such shares, would also demonstrate the falsity of the case put forward by the defendants in the suit.

iv) The further discrepancies and contradictions in the evidence of D.W.1 is that in his cross examination he first states that the suit schedule property had been handed over to the trust in April, 1999. Subsequently he changes his version and says that the property was handed over to the Trust, in December, 1999. The signature of Dr. Prasad, in Ex.A6, which was the Will executed by Dr. Prasad, in relation to the properties in United States of America is totally different to the signature of Dr. Prasad, in the disputed Wills

Ex.B.18, which is the Will executed on 05.05.1999 as well as Ex.B.19 which was executed on 17.04.1999.

v) The Wills in question, are said to have been in the custody of the plaintiff and handed over to the defendants. The plaintiff had clearly denied possession of the Will or knowledge of the Wills. The defendants have not proved how it was brought to India and who had handed over the Wills to the defendants. There is no cross examination in this regard nor is there any admission by the plaintiff in her cross examination. It is only in the cross examination of D.W.1 that it was stated that the Wills had been given by the plaintiff to the mother of Dr. Prasad, who was arrayed as defendant No.1 in the suit and that no such statement was made either in the written statement filed by the defendants or in the chief examination of D.W.1. In the absence of clear line of custody, the Will cannot be accepted in view of the judgment of the Hon'ble Supreme Court in **Union of India vs. Ibrahim Uddin and Another**¹.

vi) Once custody of the Wills is doubtful, the said Wills cannot be relied upon. **Sait Tarajee Khimhanda and Others vs. Yelamarti Satyam Alias Satteyya and Ors.**,² **K. Laxmanan vs. Thekkayil Padmini and Ors.**³

vii) All the attestors to the Wills have not given evidence recording the execution of the said Wills by Dr. Prasad;

¹(2012) 8 SCC 148 (paras 12 and 21)

² (1972) 4 SCC 562 (para 15)

³ (2009)1 SCC 354 (paras 18 to 24, 27 to 34)

viii) Section 228 read with Section 57 and Section 213 of the Indian Succession Act requires probate of the Will, executed outside India, in the Courts, in the country where the Will was executed, and only then can a subsequent probate, of the Will, take place in the Court in India. The two Wills marked as Exs.B.11 and B.12 have been produced in the Court in India directly without going through the process of probate in the Courts in United States of America. This infraction of the provisions of the Indian Succession Act would require the two Wills to be eschewed.

ix) Both the Wills have been attested by the Consular Officer in the Indian Consulate in San Francisco. Such an endorsement is impermissible as the appropriate Indian consulate for this purpose is the Indian Consulate in Atlanta and not in San Francisco. Once there is no valid attestation by the consulate, the said document cannot be looked into especially in view of the Hague convention on conflict of laws relating to the form of testator dispensation concluded on 5.10.1961.

x) The signature of Dr. Prasad has not been proved by way of independent evidence and in any event the admitted signature of Dr. Prasad in Ex.A.6 is at total variance with the signatures of Dr. Prasad in the impugned Wills marked as Exs.B.11 and B.12.

xi) The Will, executed on 05.04.1999, had mentioned certain trustees to whom the property is to be entrusted. However, one of the said trustees died, even before Dr. Prasad, and as such, the said trust, even if it

is accepted to be genuine, becomes void as one of the trustees had passed away, even before the Trust had come into existence. It is the case of the trust, that this necessitated the execution of a second Will, dated 17.04.1999. However, there is no mention of the Will, dated 05.04.1999, in the Will dated 17.04.1999 and this version of the trust would have to be rejected.

xii) The Will cannot be believed and would have to be eschewed because a) execution of the Will is implausible b) there is huge variation in the signatures of Dr. Prasad on the Wills on one hand and the Will executed in relation to the properties in America, c) Dr. Prasad, who was under heavy sedation, could not have been of a sound and disposing mind when he is said to have executed these two Wills.

xiii) There is no discernible scribe, who had prepared the said Wills and consequently the said Will would have to be disbelieved and finally the attestation of these Wills by the consular officer in San Francisco when it should be done by the consulate in Atlanta, is sufficient to disbelieve the said Wills .

xiv) The judgment of the erstwhile High Court of Andhra Pradesh in **Gajanan Stores, Hyderabad and Ors., vs. Shailaja Khadilkar and Ors.**,⁴ relating to the exemption under Section 57 of the Succession Act as well as the judgments in **Sameer Kapoor and Another vs. State through Sub-Divisional Magistrate South, New Delhi and**

⁴ (2012) 4 ALD 732

Ors.,⁵ Parameshwaran Subramani vs. Nil.,⁶ D.E.D. Cohen vs. Baidyanath Mukherje.,⁷ and Ramesh Nivrutti Bhagwat vs. Dr. Durendra Manohar Parakhe.,⁸ militate against acceptance of the Wills and it must be held that the said Wills have not been proved in accordance with law and cannot be looked into.

xv) The evidence of D.W.4 is not sufficient to prove the Wills as there are no details, given in the pleadings about how the Wills were executed nor is there any mention of the second attester.

xvi) D.W.4 in his evidence clearly stated that the affidavit filed in lieu of examination-in-chief had been prepared by K.R.K. Murthy, who is one of the trustees who would benefit from the Will and as such, the neutrality of D.W.4 is highly suspect. Reliance is placed on **Vidhyadhar vs. Manikrao and Another⁹**. The evidence of D.W.1 about the time when possession was taken by the Trust, contains too many discrepancies to be believed. In such suspicious circumstances, the Wills would have to be discarded.

xvii) Non examination of K. Radha Krishna Murthy, who is also an attesting witness, is fatal. **Vidyardhar vs. Manikrao and Another¹⁰**.

Finally, no evidence could have been adduced regarding the will etc., as

⁵ (2020) 12 SCC 480

⁶ 2016 SCC Online Karnataka 3997

⁷ AIR 1938 Calcutta 507

⁸ (2020) 17 SCC 284

⁹ AIR 1999 SC 1441: (1999) 3 SCC 573

¹⁰ (1999) 3 SCC 573 (para 17)

there was no pleading in support of such evidence. **Kanchhu vs. Prakash Chand and Ors.**,¹¹ **Shivshankara and Another vs. H.P. Vedavyasa Char.**¹²

xviii) The Wills have to be discarded, on the basis of **H. Venkatachala Iyengar vs. B.N. Thimmajamma and Ors.**,¹³ **Kalyan Singh, London Trained Cutter, Hohri Bazar, Jaipur vs. Smt. Chhoti and Ors.**,¹⁴(no proof of custody and no pleading) **Bharpur Singh and Ors., vs. Shamsheer Singh.**,¹⁵ involvement of legal representatives, in execution of the Wills are suspicious circumstances. **Leela and Ors vs. Muruganantham and Ors.**,¹⁶ **Meena Pradhan and Ors., vs. Kamla Pradhan and Another**¹⁷.

xix) Dr. Prasad had been suffering from Cancer and had been on pain killers, due to which he was not in a sound and disposing mind. The first Will is said to have been executed on 05.04.1999. On that day, Dr. Prasad had suffered a heart attack and was hospitalized. As such, the execution of the Will on 05.04.1999, by Dr. Prasad is highly implausible. After being admitted in hospital, on 05.04.1999, Dr. Prasad was given

¹¹(2025) SCC online SC page 868 (paras 19 and 20)

¹²(2023) 13 SCC page 1 (paras 64 & 65)

¹³AIR 1959 SC 443 (paras 18 to 22)

¹⁴(1990) 1 SCC 266 (paras 22 and 23)

¹⁵(2009) 3 SCC 687 (paras 14 to 23)

¹⁶(2025) 4 SCC 289 (paras 16 to 33)

¹⁷(2023) 9 SCC 734 (paras 9 to 14)

heavy doses of pain killers. One of the consequences of such dosage was that the mental condition of Dr. Prasad was very hazy and he could not have executed the Will knowing fully well, the contents and consequences of such a Will. The mental condition of Dr. Prasad, on 17.04.1999, can be ascertained from Ex.A.6, which is the medical record of the treatment given to Dr. Prasad from 05.04.1999 till his demise. The effect, of the medicines and pain killers given to Dr. Prasad, has been explained by P.W.2 who is a competent forensic specialist.

xx) In the course of their arguments, Sri D.V. Sitarama Murthy and Sri Krishna Grandhi, learned senior Counsel appearing for the implead petitioners, contended that the authorities, of the Endowments Department, in reply to a query, raised under the Right to Information Act, had stated that they do not have any record of the trust, in their records, which would mean that the trust is not in existence. This contention was also adopted by Sri M.R.S. Srinivas, appearing for Smt. Padmaja and is treated as a contention raised by Sri M.R.S. Srinivas also.

21. Sri O. Manohar Reddy, the learned Senior Counsel, appearing for the Trust, which is the appellant in A.S.No.707 of 2014, contends as follows:

i) Smt. Padmaja, was aware of the execution of the wills, in question. This can be seen from the statements in the notice, dated 11.01.2002, sent on her behalf. She does not deny or dispute the execution of the Wills, by her late husband, Dr. Prasad. In fact, she states that the relatives of Dr Prasad, taking

advantage of the situation had been spreading stories that Trusts had been created over the properties of Dr. Prasad. Apart from that Smt. Padmaja had asked for copies of documents because she knew about the execution of the Wills.

ii) There was a clear statement, in the notice sent in reply, that Dr. Prasad had executed a Will and that Smt. Padmaja had acknowledged this fact in an affidavit signed by her, on 31.01.2000, marked as Exhibit B6. Apart from this the reply also stated that Smt. Padmaja herself had given copies, of the Wills, to Sri Hemanth Kumar. However, these statements were not rebutted, in any manner, by Smt. Padmaja, except a bald and vague statement that these statements were false. In the absence of any rebuttal, Smt. Padmaja cannot take the stand that there were no such Wills or that she was unaware of the Wills. Consequently, the production of the Wills, by the defendants, cannot be treated as production of documents from improper custody.

iii) The evidence given by D.W.4, which has not been controverted or shaken, is that Dr. Prasad had executed the first Will in the afternoon of 05.04.1999 while he had been admitted in the Hospital, in the evening of that day, after he had a heart attack. The material, in Ex.A.7, would show that Dr. Prasad had suffered a Heart Attack, in the evening of 05.04.1999, when he was hospitalized and as such, the occurrence of the heart attack would not affect the execution of the Will. The learned Senior Counsel would also submit

that the details, set out in Ex.A.7, clearly show that Dr. Prasad was not only in a sound and disposing mind but was in control of all his mental faculties. The learned Senior Counsel would submit that this is obvious from the notations in the medical records, contained in Ex.A7, which shows that Dr. Prasad was participating in decisions regarding the treatment that should be given to him and that the views of Dr. Prasad were being accepted by the doctors treating Dr. Prasad.

iv) The medical record of treatment given to Dr. Prasad during the relevant period has been marked as Ex. A7. These records would show that Dr. Prasad was in full control of all his faculties and was, in fact, supervising his treatment by discussing about the medication that was given to him etc. The contention of the plaintiff, as well as the implead applicants, that the quantum of painkillers being given to Dr. Prasad deadened the faculties of Dr. Prasad and he would not have been aware of what he was doing during this period also cannot be accepted. The evidence of P.W.2, who had given his opinion, about the treatment given to Dr. Prasad, cannot be accepted as P.W.2 was not physically present at the place of treatment and the evidence given by P.W.2 is extremely sketchy and has obviously been given for the purposes of assisting Smt. Padmaja.

v) Dr. Prasad, had executed three Wills. The first Will related to the properties in the United States of America and would not be relevant for the purposes of this suit as none of the properties covered by the said Will are the

subject matter of the present litigation. Dr. Prasad apart from this Will, had executed two Wills, dated 05.04.1999 and 17.04.1999. Both these Wills were witnessed and attested by Dr. Raju Vanapalli, who was examined as D.W.4. Both these Wills have been marked as Exs.B.18 and B.19 and have been proved by the evidence of D.W.4. The cross examination of D.W.4 also does not contain anything which shakes the evidence of D.W.4. D.W.4, is an unconnected person, of impeccable reputation and standing, which can be seen from the positions he had held and which have been recorded in his deposition. The evidence of such a person cannot be doubted.

vi) The trial Court, had disbelieved the evidence of D.W.4 on totally extraneous grounds and the evidence of D.W.4 could not have been rejected in that manner.

vii) The contentions of the plaintiff and the objections sought to be raised by the implead petitioners Ch. Koteswara Rao and Smt. M. Parvathi that Dr. Prasad was in no condition to execute the Wills, dated 05.04.1999 and 17.04.1999 would have to be rejected.

22. In view of the aforesaid pleadings, and in view of the depositions of the witnesses, as well as the contentions raised by the learned counsel appearing for the parties, the following issue would arise for consideration before this Court.

1. Whether the Wills, of 05.04.1999 and 17.04.1999, have been proved according to Law and are valid?

2. Whether, the trust, which is the appellant in A.S.No. 707 of 2014, has come into existence?

3. Whether, Dr. Prasad had passed away Intestate, entitling Smt. Padmaja to a half share of the properties, of Dr. Prasad, in India or whether the devolution of the estate of Dr. Prasad is to be according to the Will of 17.04.2019 ?

Consideration of the Court:

ISSUE No. 1: “Whether the Wills, of 05.04.1999 and 17.04.1999, have been proved according to Law and are valid”?

23. The law regarding the manner in which Wills have to be proved and what circumstances, should be looked into, while considering a Will and in what circumstances, such Wills can be disregarded has been considered by the Hon'ble Supreme court, in various judgments. Sri M.R.S. Srinivas had cited various judgments, set out above, on how a Will is to be proved and in what circumstances a Will could be disbelieved. The judgments cited by Sri M.R.S. Srinivas, have, consistently, set out certain guideline and principles. These guidelines are best summarized in **H. Venkatachala Iyengar v. B.N. Thimmajamma.**,¹⁸ in the following manner:

¹⁸1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443

18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved

like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt

as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced

before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson* [(1946) 50 CWN 895] “where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth”. It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.

24. The aforesaid principles have been reiterated in **Kalyan Singh, London Trained Cutter, Hohri Bazar, Jaipur vs. Smt. Chhoti and Ors., Bharpur Singh and Ors., vs. Shamsher Singh,**¹⁹ **Leela and Ors vs. Muruganantham and Ors.,**²⁰ **Meena Pradhan and Ors., vs. Kamla Pradhan**

¹⁹(2009) 3 SCC 687 (paras 14 to 23)

²⁰(2025) 4 SCC 289 (paras 16 to 33)

and Another²¹. Though, all these judgments have reiterated the principles laid down above, it would be instructive to extract the observations in some of the above judgments as they have elucidated the judgment in **Venkatachala Iyengar v. B.N. Thimmajamma**.

In **Bharpur Singh v. Shamsheer Singh**,²² the Hon'ble Supreme Court held as follows:

23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

(iv) The dispositions may not appear to be the result of the testator's free will and mind.

(v) The propounder takes a prominent part in the execution of the will.

(vi) The testator used to sign blank papers.

(vii) The will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts.

In Meena Pradhan v. Kamla Pradhan, (2023) 9 SCC 734 : 2023 SCC

OnLine SC 1198 at page 736:

²¹(2023) 9 SCC 734 (paras 9 to 14)

²²(2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934 : 2008 SCC OnLine SC 1867 at page 699

10. Relying on *H. Venkatachala Iyengar v. B.N. Thimmajamma* [*H. Venkatachala Iyengar v. B.N. Thimmajamma*, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), *Bhagwan Kaur v. Kartar Kaur* [*Bhagwan Kaur v. Kartar Kaur*, (1994) 5 SCC 135] (three-Judge Bench), *Janki Narayan Bhoir v. Narayan Namdeo Kadam* [*Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91] (two-Judge Bench), *Yumnam Ongbi Tamphalbema Devi v. Yumnam Joykumar Singh* [*Yumnam Ongbi Tamphalbema Devi v. Yumnam Joykumar Singh*, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and *Shivakumar v. Sharanabasappa* [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has

received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.

10.9. The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277]”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.

In *Kalyan Singh v. Chhoti*, (1990) 1 SCC 266 : 1989 SCC OnLine SC

340 at page 275:

22. The Privy Council in *Mt. Biro v. Atma Ram* [AIR 1937 PC 101 : 64 IA 92 : (1937) 1 MLJ 646] had an occasion to consider an analogous case where the wife was practically disinherited and there was unexplained delay in producing the will in public. There the alleged will by a testator gave only a life estate to his daughter who was the only child and who was to get some property at her marriage. The bulk of the estate was vested in the widow of the testator and three other women, namely, his mother, his step-mother and his paternal aunt. These women though entitled under the Hindu law only to maintenance, were made joint owners equally with the widow of the testator. None of the devisees could get the estate partitioned or alienate it for necessity. It was however, provided that the lady, who survived the other three devisees, would become the absolute owner of the estate. The widow of the testator would not get her husband's estate, if she predeceased any of her co-devisees. The will was not produced until after 22 years its execution though there were occasions to

produce it, had it been in existence. Considering these circumstances, the Privy Council observed (at 104):

“It is most unlikely that a person having a wife and a minor unmarried daughter, who should be the objects of his affection, would make a will which would practically disinherit them.

That the testament is unnatural and runs counter to the ordinary sentiments of persons, having a status in society similar to that of Harbans Lal, cannot be seriously disputed. But this is not the only circumstance which tells against its genuineness. The will purports to have been executed on August 24, 1900, and the testator died within a month of that date. But it is strange that it was not produced until 1922, after the commencement of the present litigation. During this long period of 22 years, which intervened, there were occasions when the widow or her advisers could have produced the document, if it had been in existence; but they did not do so.”

The will in the present case, constituting the plaintiff as a sole legatee with no right whatever to the testator's wife seems to be unnatural. It casts a serious doubt on genuineness of the will. The will has not been produced for very many years before the court or public authorities even though there were occasions to produce it for asserting plaintiff's title to the property. The plaintiff was required to remove these suspicious circumstances by placing satisfactory material on record. He has failed to discharge his duty. We therefore, concur with the conclusion of the High Court and reject the will as not genuine.

It would also be apt to extract the following relevant passage, in **Shivakumar v. Sharanabasappa**,²³ which has been cited by Sri O. Manohar Reddy, to set out the contours of the examination of a Will and the circumstances surrounding the execution of the Will:

12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:

²³(2021) 11 SCC 277 : 2020 SCC OnLine SC 385 at page 309

12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is

again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious features must be “real, germane and valid” and not merely the “fantasy of the doubting mind”.

12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to

offer cogent and convincing explanation of the suspicious circumstances surrounding the will.

This issue, applying the above guidelines, would have the following sub issues:

- A. Whether, the Wills are signed, witnessed and proved, in accordance with the requirements of the Evidence Act and the Indian Succession Act?
- B. Whether there are any suspicious circumstances, relating to the Wills, which would render the Wills invalid?
- C. Whether the Wills executed in the United States of America can be produced in the Court, in India, without obtaining probate of such Wills in the United States of America?
- D. Whether, the Wills meet the requirement of the Convention on the conflict of laws relating to the form of testamentary dispositions?

25. Before going into these issues, a preliminary contention raised by Sri M. R.S. Srinivas would have to be noticed. The Will of 05.04.1999, created a trust with certain trustees. However, one of the prospective trustees, Sri V. Natarajeswara Rao, had passed away, on 12.04.1999. Sri M.R.S. Srinivas would contend, without prejudice to the contentions that Wills are invalid, that the Will, of 05.04.1999, became void as one of the trustees, on whom the properties were to devolve had passed away. Further, the Will of 17.04.1999,

appears to have been executed to get over this difficulty. In such a situation, the said Will of 17.04.1999, which does not mention about the Will of 05.04.1999, is also invalid for non mention of the Will of 05.04.1999. This court must reject this contention. Once, the Will of 17.04.1999, has been executed, it would supersede the Will of 05.04.1999. The execution of the Will of 17.04.1999, expresses the intent of Dr. Prasad to revoke the earlier Will. Even otherwise, the demise of Sri Nata Rajeswara Rao had invalidated the Will, of 05.04.1999.

ISSUE NO. 1 (A): “Whether, the Wills are signed, witnessed and proved, in accordance with the requirements of the Evidence Act and the Indian Succession Act ?

26. Any Unprivileged Will, has to be executed, in accordance with the provisions of Section 63 of the Succession Act, which reads as follows:

Section 57. Application of certain provisions of Part to a class of wills made by Hindus, etc.--The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply--

(a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and

(b) to all such wills and codicils made outside those territories and limits so far as relates to immoveable property situate within those territories or limits, 2[and

(c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b):]

Provided that marriage shall not revoke any such will or codicil.

Section 63. Execution of unprivileged wills.

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:--

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Any Will has to be proved, in accordance with the provisions of Section 68 of the Evidence Act. This provision reads as follows:

“S. 68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.”

27. The erstwhile High Court of Andhra Pradesh, in **Sri Gajanan Stores v. Shailaja Khadilkar**,²⁴ had set out the manner in which a Will has to be proved and the requirements of a valid Will, in terms of attestation, in the following terms, in this regard:

34. The rule is that Section 68 is mandatory and cannot be relaxed except under the circumstances provided for in the Act itself. A document, which is required to be attested compulsorily by the attesting witness, is required to be proved in compliance with the procedure contemplated in Section 68 of the Evidence Act. It was held that proof by attesting witnesses of not merely the execution but also the attestation by two witnesses is necessary under the section. The section no doubt speaks of proving its execution; but under Section 59 of the T.P. Act, the actual execution must be seen and attested by at least two witnesses. ‘Attestation’ and ‘Execution’ are different acts one following the other. In the case of documents whose attestation is not compulsory, proof of execution under Section 67 is enough (ante); but in the case of documents required by law to be attested, e.g., Will mortgage, gift etc, ‘execution’ must include both execution and attestation as without proof of the latter such documents are not legally valid. In these cases there can be no valid execution without due attestation and if due attestation is not also proved, the fact of execution is of no avail. It has, therefore, been held in numerous cases that in the case of documents, which are compulsorily attestable, execution means something more than mere signing. It includes delivery and signing in the presence of witnesses,

²⁴2012 SCC OnLine AP 778 : (2012) 4 ALD 732 at page 742

or on personal acknowledgment of execution by executants. It includes the whole series of acts or formalities which are necessary to give the document validity.

28. The requirement of these provisions is that every Will should be attested by at least two witnesses and at least one witness should be produced before the Court to state that the executor of the Will had either signed the Will in front of at least two attestors after which the attestors had also affixed their signatures or that the executor of the Will informed at least two attestors, that he had signed the Will earlier, and required the attestors to affix their signatures, which was done, on that request. In the present Case, D.W.4 states that the Will, dated 05.04.1999, had been executed by Dr. Prasad, in the house of D.W.4, in Georgia, in front of himself, Sri K.R.K. Prasad, who was the second witness, to the Will and a public notary, after which they had all signed as witnesses to the Will. This Will was marked as Ex. B12. Similarly, D.W.4 stated that Dr. Prasad had executed another Will, on 17.04.1999, in the hospital, in the presence of Dr. Amaraneni Swarajya, D.W.4 and the public notary who had all signed the Will, after Dr. Prasad, as attestors of the Will. This Will was marked as Ex. B19.

29. It is the clear statement of D.W.4, that Dr. Prasad had initially executed a Will, on 05.04.1999, in his presence, and in the presence of the other witness and a public notary and that he, the other witness and the public notary, had attested this Will. D.W.4 also stated that Dr. Prasad had executed

another Will, on 17.04.1999, which was also attested in a similar manner. DW.4, was a practicing doctor, in the United States of America, who had acquaintance and friendship with Dr. Prasad from 1972, when they were studying in Guntur Medical College This friendship had been renewed, from 1991, when they had participated in a TANA meeting in the United States of America. The fact that Dr. Prasad had initially stayed at the house of D.W.4, in Georgia, before he was admitted to a hospital in Georgia State, would clearly show the friendship between D.W.4 and Dr. Prasad. The evidence of D.W.4 has not been shaken in cross examination. D.W. 4, in his affidavit in chief examination, had given the details of the positions held by D.W.4, in various hospitals and organisations, in the United States of America. These statements have not been disputed. In fact, Smt. Padmaja, in the course of her cross examination, had admitted that D.W.4 was a highly respected doctor, in TANA circles. Looking at the background of D.W.4 as well as the various positions he had held, this Court does not find any reason, to disbelieve the evidence of D.W.4

30. The evidence of D.W.4 was sought to be discredited on the ground that he had identified the signature on Ex.A6, which was a certified copy of the Will, executed by Dr. Prasad, in relation to his properties in the United States of America, as the signature of Dr. Prasad, even though the said signature did not belong to Dr. Prasad. A closer look at the evidence, of

D.W.4, would read otherwise. The relevant part of the cross examination is as follows:

“I do not know about Ex.A6; and except in two occasions I have not seen the signature of Leela Rama Krishna Prasad. Witness after gone through Ex A6, states that signature on Ex A6 might belongs to Ramakrishna Prasad. It is not true to suggest that I am deposing falsely and signature on Ex. A6 is belongs to Ramakrishna prasad and signatures on Ex. B18 and B19 are not belongs to Ramakrishna Prasad.”

In the above deposition, D.W. 4 had stated that he had seen the signature of Dr. Prasad, only twice. When confronted with Ex.A6 he had stated that it might belong to Dr. Prasad. Such a statement is not a clear admission that the signature on Ex. A6 was the signature of Dr. Prasad. His statement, in the chief examination, that these two Wills, were signed by Dr. Prasad, is on the basis of having been present, when Dr. Prasad put his signature on the Wills. This Court cannot draw a conclusion that the evidence of D.W. 4 has to be discarded on this ground.

31. The trial Court, took the view that there was some confusion as to whether D.W.4 was a friend of Dr. Prasad or a colleague of Dr. Prasad and had held that the evidence of D.W.4 cannot be accepted. We do not agree with this line of reasoning, given by the trial Court and are of the view that the

evidence of D.W.4 is believable, especially in view of the fact that P.W.4 is totally unrelated to the family and had acted as an attester on account of his friendship with Dr. Prasad.

32. Another attempt has been made to discredit the evidence of D.W.4 by pointing out that, DW4 had admitted that the affidavit in lieu of his chief examination, filed by D.W.4 was initially drafted by Sri K.R.K. Prasad, one of the trustees, under the Will of 17.04.1999. This fact, in the opinion of this Court, would not make any difference to the credibility of D.W.4. It must be remembered that D.W.4 had come down from U.S.A only for the purposes of giving evidence in the case and had to suspend his practice, for the trip to India. D.W.4 would have no knowledge of the proceedings in the suit and would have made his arrangements to come down to India, only upon being informed by the defendants, in the suit. In such circumstances, we do not find any reason to disbelieve D.W.4, merely because he took the assistance of Sri K.R.K. Prasad for drafting the affidavit.

33. An objection was raised that there is no pleading regarding the Wills. In the absence of such pleadings, the said Wills cannot be looked into. This contention does not appear to be correct, in view of the pleadings of the defendants. In the Written statement, filed by the defendants, it is stated, in paragraph 5, that Dr. Prasad had executed a Will, constituting a trust with regard to the properties in India and that Smt. Padmaja, in her notice of 11.01.2002, had tacitly admitted this fact. It was also stated that Smt.

Padmaja, being aware of the Will, had also implemented the terms of the Will. In paragraphs 6, 10 and 12, of the Written statement, the allegation, of Smt. Padmaja, that Dr. Prasad had been heavily sedated and drugged and was not in a sound disposing mind was denied and it was asserted that Dr. Prasad had executed the Wills, while in control of his faculties. There are further references to the Will, in various places of the said written statement.

34. Sri M.R.S. Srinivas, would contend that the non examination of Sri K.R.K. Murthy, is fatal to the case of the proponents of the Will and relies upon the judgment of the Hon'ble Supreme Court in **Vidhyadhar vs. Manikrao and Another**²⁵. In this case, the Hon'ble Supreme Court, while considering the admissibility of certain pleas, by the defendant to the suit, when he had not chosen to enter the witness box, had held as follows:

17. Where a party to the suit does not appear in 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* [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh* [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in *MartandPandharinath Chaudhari v. RadhabaiKrishnarao Deshmukh* [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in *GullaKharagjit Carpenter v. Narsingh Nandkishore Rawat* [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in *Sardar Gurbakhsh Singh case* [AIR 1927 PC 230 : 32 CWN 119] . The

²⁵ AIR 1999 SC 1441: (1999) 3 SCC 573

Allahabad High Court in *Arjun Singh v. Virendra Nath* [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand* [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.

As contended by Sri M. R. S. Srinivas, himself, the Will dated 05.04.199 was superseded by the Will dated 17.04.1999. The Wills would have to be proved by examining, at least one attesting witness. The two attesting witnesses, of the Will, dated 17.04.1999, were Dr.Amaraneni Swarajya and D.W.4. As D.W. 4 has been examined, the requirements of Section 68 of the Evidence Act, are complied. Further, the Will has also been propounded by Sri Hemanth Kumar, who is defendant No.2 in the suit and he had examined himself as D.W. No.1 and spoke about the Wills and identified the signature of Dr. Prasad, on the Wills. The non examination of Sri K.R.K. Murthy, would not mean that the Will, dated 17.04.1999, has not been proved.

35. All the requirements, of Section 68 of the Evidence Act, have been met, in view of the evidence of D.W.4, who has deposed that the Wills of both 05.04.199 and 17.04.1999 had been signed by Dr. Prasad, in the presence of two witnesses and a public notary and that the witnesses and the public notary had, thereafter, signed the Wills as witnesses.

ISSUE NO. 1 (B):

“Whether there are any suspicious circumstances, relating to the Wills, which would render the Wills invalid”?

36. Sri M.R.S. Srinivas would contend that the Will, of 17.04.1999, cannot be believed and would have to be discarded, on account of the various suspicious circumstances, surrounding the said Will. The said, suspicious circumstances, would include:

A. Dr. Prasad, due to the pain medication and sedatives, being administered to him, was not in a sound and disposing mind, to execute the Wills.

B. The chain of custody, of the Wills of 05.04.1999 and 17.04.1999, is highly doubtful and the Wills have to be discarded.

C. There is no identification of the scribe to the Wills and no details as to how the Wills came to be scribed. Consequently, the Wills should be discarded.

D. The difference in the admitted signature of Dr. Prasad, in Ex. B1 partnership deed, dated 13.01.1997 and the signatures of Dr. Prasad on the disputed Wills are sufficient to non suit the proponents of the Wills.

E. The attestation of the Indian Consulate in San Francisco, when the Wills reached India in April 1999, casts sufficient doubt as to the custody of the Wills and whether they were created subsequently.

A. The first circumstance, which has to be looked into is whether, Dr. Prasad was in a sound and disposing mind, when he executed the Wills of 05.04.1999 and 17.04.1999?

37. Sri M.R.S. Srinivas had contended that Dr. Prasad, was in no condition to execute the Will, of 05.04.1999, or the Will, of 17.04.1999, on account of the medication being administered to Dr. Prasad. Apart from this, it was contended that Dr. Prasad had suffered a heart attack, on 05.04.1999, on account of which he could not have executed any Will on 05.04.1999. A perusal of the cross examination of D.W.4 would show that Dr. Prasad had executed the Will, on 05.04.1999, in the afternoon, in the house of D.W.4. Dr. Prasad was admitted to the hospital, on 05.04.1999, as per Ex.A7, only in the evening on account of his complaint of chest pain etc. This can only mean that Dr. Prasad was not suffering from any cardiac complications at the time when he had executed the Will and it is only thereafter that he required hospitalization.

38. Ex.A.7, is the medical summary of the treatment given to Dr. Prasad from 05.04.1999 to 19.04.1999. Sri O. Manohar Reddy, the learned Senior Counsel appearing for the trust, drew the attention of this Court to various notations in Ex.A.7. These notations indicate that Dr. Prasad was participating in the decisions about his treatment. Further, it is the evidence of Smt. Padmaja herself that Dr. Prasad showed signs of improvement and was on the verge of discharge from the hospital, on 18.09.1999. The notations, in

Ex.A7, were that, Dr. Prasad was improving, on 17th and 18th of April. However, he had subsequently suffered a cardiac arrest on 19.04.1999 and passed away. In view of the admission of Smt. Padmaja that Dr. Prasad had been recovering and the doctors, treating Dr. Prasad, had come to a conclusion that he could be discharged, on 18.04.1999, can only mean that on 17.04.1999, Dr. Prasad, was in a condition to make his own decisions.

39. Smt. Padmaja had examined P.W.2, who is said to be a forensic specialist. P.W.2, on the basis of Ex.A.7, states that the pain killers and sedations, prescribed for Dr. Prasad, in Ex.A7, makes it very clear that he would not be in a mental state where he would be able to think clearly or execute a Will. However, the notations in Ex.A7 would show that the doctors were not inclined to administer pain killers to Dr. Prasad on the ground that his creatine levels were on the higher side. In the circumstances, the evidence of P.W.2, would not be sufficient to hold that Dr. Prasad was not in a sound and disposing state of mind.

B. The chain of custody, of the Wills. Of 05.04.1999 and 17.04.1999, is highly doubtful and the Wills have to be discarded.

E. The attestation of the Indian Consulate in San Francisco, when the Wills reached India in April 1999, casts sufficient doubt as to the custody of the Wills and whether they were created subsequently?

40. Both these issues, can be taken together. The first time, the execution of the Wills, comes up, in the exhibits marked before this Court,

is Ex.B.6, which is said to have been signed by Smt. Padmaja, in front of a Notary, on 31.01.2000. In this affidavit, Smt. Padmaja acknowledged that her husband, Dr. Prasad, had executed a Will dated 17.04.1999, which was attested by a Public Notary as well as the Consulate General of India, in San Francisco. The Notary, who had attested the signatures of Smt. Padmaja, on Ex.B.6, was examined as D.W.2. In his chief affidavit, D.W.2, who was a practicing advocate and Notary, at Vijayawada, had stated that Smt. Padmaja had signed Ex.B.6 affidavit, in his presence, after he had read over the contents of the affidavit to Smt. Padmaja, and that he had, thereafter, attested the affidavit and affixed notary stamps. The cross examination of D.W.2, by the learned counsel of Smt. Padmaja, does not reveal any admission which raises doubts about the evidence of D.W.2. Smt. Padmaja, does not dispute her signature on Ex.B.6. Smt. Padmaja, in the course of her cross examination, was confronted with Ex.B.6 affidavit, admitted her signature on the affidavit, but stated that she had signed a blank paper which had been used to fill up the contents of the affidavit later. This statement does not appear to be believable. Smt. Padmaja, after having decided to look after her interests, had got issued a notice, dated 11.01.2002, to Sri Hemanth Kumar. In this notice, Smt. Padmaja only stated that her signature had been obtained on a typed piece of paper, for creating a power of attorney, in favour of Sri Hemanth Kumar, in relation to the Firm, M/s Muppavarapu Chowdary Builders and Real Estate Developers. There is no mention of her signatures being

taken, on blank papers. It is hard to believe that a person who has decided to get a legal notice issued, as a preliminary to litigation, would not mention that the noticee was in possession of her blank signed sheets of paper and that they should be returned to her.

41. The next written reference, on the existence of the Wills or otherwise, is the legal notice, dated 11.01.2002, issued on behalf of Smt. Padmaja. The allegations in the notice, dated 11.01.2002, are as follows:

“Before the death of our client’s husband his close relations had taken undue advantage of the grief and helplessness of our client and got up some documents and gave out that as the said deceased Prasad had not got any children even out of the second marriage with our client he had created trusts for his estate. Our bereaved client, was made to come over to India for the sake of performing the obsequies i.e., customary, funeral ceremonies.”

“But you are not providing her even a copy of the will or wills executed by her husband, any deed of trust or any other documents executed by him in favour of yourself or others, including the original power of attorney.”

“So you are hereby called upon to treat this notice as most urgent, furnish the copies of the will or wills, trust deed, the partnership deed, Form ‘A’ certificate of the firm with the names and shares of other partners, the balance.....”

42. In response to this notice, Sri Hemanth Kumar, got a reply issued, on 17.01.2002. In this reply, the following statements were made:

“After the death of Dr. Prasad, your client visited India during April, 1999 and served a copy of late Prasad’s Will on my client and stayed in India till February, 2000.”

“Your client, being well educated, and going round the countries and constantly in touch with her legal counsels at U.S.A and India, cannot now plead ignorance or innocence of the G.P.A. and Will of late Dr. Prasad. At the time of registering the G.P.A. and partnership deed, your client give an affidavit asserting the execution of a Will by Dr. M.L.R.K. Prasad, she further stated that she was verified the accounts of the partnership till 20-04-1999 and joined as partner having Ten Ps. Share as per the terms of the Will.

“My client is not in possession of the Will or Wills, trust deed or any other documents pertaining to late Dr.Prasad. Your client is alone in possession of these documents, if any, as she last lived with late Dr. Prasad.”

43. The exchange of these notices took place in January, 2002. No reply was given by Smt. Padmaja to the statements in the reply notice of 17.01.2002. Thereafter, Smt. Padmaja filed O.S.No.69 of 2002, through her mother, who was acting as her power general of attorney. This suit came to be filed on 14.11.2002. In the plaint, Smt. Padmaja only states that the allegations in the reply notice of 17.01.2002 are false allegations.

44. Smt. Padmaja was confronted with the Wills, dated 05.04.1999 and 17.04.1999, during her cross examination as P.W.1. She denied the signatures of Dr. Prasad on these two Wills. Thereafter, the signatures on these two Wills were marked, as Exs.B.11 and B.12, in the chief examination of Sri Hemanth Kumar, who was examined as D.W.1. Sri Hemanth Kumar did

not explain how he had got custody of the documents from Smt. Padmaja, either in the written statement or in his chief examination. In the course of his cross examination, Sri Hemanth Kumar stated that the originals were handed over by Smt. Padmaja to his mother and thereafter his mother handed over the originals to him in the last week of April, 1999.

45. The statement in the notice dated, 11.01.2002, issued on behalf of Smt. Padmaja is that the copies of the Will or Wills executed by Dr. Prasad were not being given to her. There was no assertion that Dr. Prasad had never executed any such Will. In fact, the statement, in the legal notice, states that close relatives of Dr. Prasad, taking undue advantage of the grief and helplessness of Smt. Padmaja, had got some documents executed by Dr. Prasad. Effectively, Smt. Padmaja appears to have taken the stand that there were claims by the relatives of Dr. Prasad, that certain documents, were executed by Dr. Prasad, disposing of his properties, in India, in favour of a trust and that she did not have copies of such documents. The above facts make it clear that Smt. Padmaja was aware of the execution of the Wills and her statements in the legal notice, issued on her behalf, as well as her evidence is consistent with this fact.

46. On the question of custody of the Will, and how it came into the custody of the defendants, there is no evidence on behalf of Smt. Padmaja. However, her stand is that she was not in custody of these Wills nor did she handover the Wills to either Sri Hemanth Kumar or to the mother of Dr.

Prasad. D.W. 4, in the course of his cross examination, had stated that the Wills of 05.04.1999 and 17.04.1999, were handed over to Smt. Padmaja. It is the evidence of Sri Hemanth Kumar, in his cross examination, as D.W.2, that Smt. Padmaja had handed over the Wills, to the mother of Dr. Prasad and Sri Hemanth Kumar, in April, 1999 and subsequently his mother handed over the Wills to him in the last week of April, 1999. However, D.W.1, in his reply notice of January, 2002, stated that Smt. Padmaja had given him copies of the Wills but the originals were not in his possession. This statement in the notice contradicts his statement in the cross examination that he was already in possession of the originals of the Wills, dated 05.04.1999 and 17.04.1999, by the last week of April, 1999.

47. Another factor, which draws the attention of this Court, is the attestation by the Consulate General in San Francisco. There is no date of attestation attached to the attestation of the Wills. These Wills were executed on 05.04.1999 and 17.04.1999, during the period that Dr. Prasad was in hospital in Georgia. Thereafter, according to the version of the defendants, the Wills were brought by the Smt. Padmaja to India by 25.04.1999 and handed over to the mother of Dr. Prasad. The chain of events makes it clear that there was no possibility of Wills being taken to San Francisco for attestation. Consequently, the attestation could have happened only by the Wills being sent back from India to the U.S.A and the attestation was obtained on these Wills in the Consulate in San Francisco. There have been no submissions

made, on this aspect, by any of the parties before this Court. Another interpretation could be that the Wills were in the custody of the relatives of Dr. Prasad who had subsequently got the said Wills attested in the Indian Consulate in San Francisco and thereafter forwarded the same to India. There is ambiguity about the manner in which the Wills came into the hands of Sri Hemanth Kumar.

48. At this stage, it is necessary to consider the credibility of the evidence of Sri Hemanth Kumar, who was examined as D.W.1. As pointed out by Sri M.R.S. Srinivas, the evidence of Sri Hemanth Kumar is riddled with inconsistencies. His further conduct, in suppressing the pendency of this appeal, before the Court, in Eluru, in O.S.No. 445 and 446 of 2019 and the execution of the Sale deed, which is the subject matter of the Writ petition filed by the trust, in favour of Sri Koteswara Rao, does not inspire confidence in the evidence of Sri Hemanth Kumar.

49. However, this lack of credibility, of Sri Hemanth Kumar, would have to be balanced with the manner in which Smt. Padmaja has prosecuted this case. She gets a notice issued on 11.01.2002, to Sri Hemanth Kumar, asking for copies of the Will, the partnership deed, and other papers, after stating that she had signed only on a typed power of attorney. She does not make any statement about having signed any blank papers. The reply notice, dated 17.01.2002, issued on behalf of Sri Hemanth Kumar, states that she had signed a partnership deed, in February 2000 and a General Power of

Attorney, on 30.01.2000 and also an affidavit, asserting the execution of the Will, by Dr. Prasad. The conduct of any person, at that stage, would be to deny the execution of any affidavit or partnership deed and state that these documents were prepared on blank signed papers. However, Smt. Padmaja did not send any such reply. Even in the plaint, there is no mention of Sri Hemanth Kumar, having obtained the signatures of Smt. Padmaja, on any blank papers. It is only when she is confronted with the Deed of partnership, dated 20.04.1999, marked as Ex.B2, that she takes the stand that her signatures, obtained on blank papers, were used to create Ex.B2. This document, contains, according to her evidence, about 15 signatures. Similarly, she admits her signature on Ex. B3, which is the printed Form-V, which has to be submitted to the Registrar of Firms. She again states that this was obtained on a blank paper. Exhibit B3, is a printed form. She stated that she had only signed blank stamp papers and blank sheets. There is no mention of signing blank printed forms. These statements, even on their face value, are not believable. The placement of the signatures, of Smt. Padmaja, on Ex.B2, makes it very hard to accept that the partnership deed was prepared using signatures of Smt. Padmaja, on blank signed papers. It is true that the said document, which is dated 20.04.1999, could not have been signed by Smt. Padmaja, on that day, as she was not in India, on that day. This is a document which has been back dated. This court would have to consider the consequence of this back dating. The back dating would not take

away the knowledge of the changes in the partnership firm, or the execution of the Wills, if Smt. Padmaja had signed the document after it had been prepared. This court is of the opinion that Smt. Padmaja had signed the typed partnership deed and not blank papers which have been subsequently used to create the partnership deed.

50. Smt. Padmaja, in her cross examination, took the stand that the power of attorney, executed by her, in favour of Sri Hemanth Kumar, in relation to the firm, and marked as Ex. B4, was created on blank papers signed by her. However, she subsequently states, in the cross examination, that she had appeared before the sub registrar to present this document. These statements cannot stand together. It is obvious that, Smt. Padmaja, had signed the completed affidavit, marked as Ex.B6, on 30.01.2000 and it was not a blank signed paper. The Notary, before whom she had signed Ex.B6 was examined as D.W.2 and had deposed that she had signed Ex.B6 before him.

51. Taking into account the depositions of both Sri Hemanth Kumar and Smt. Padmaja, it must be held that even if the evidence of Sri Hemanth Kumar is ignored, the affidavit signed by Smt. Padmaja, marked as Ex. B6 is sufficient to hold that she was aware of the execution of the Will, dated 17.04.1999, and that an attestation, of that Will, had been obtained from the consulate in San Francisco. The guidelines set out in the above judgments regarding the consideration of the surrounding circumstances, requires this

court to satisfy it's judicial conscience, that the surrounding circumstances do not affect the overall acceptability of the Will, as being executed by the testator and that the Will reflects the wishes of the testator. This court is of the opinion that both Sri M. Hemant Kumar and Smt. Padmaja, had sought to portray facts, which were convenient for them and this resulted in changing stances by both of them. This requires this court to take an overall view of the matter, to come to a conclusion as to whether the Wills produced in court were actually executed by Dr. Prasad and reflect his wishes. We are convinced that these Wills were executed by Dr. Prasad and reflect his wishes.

C. There is no identification of the scribe to the Wills and no details as to how the Wills came to be scribed. Consequently, the Wills should be discarded.

52. Sri M.R.S. Srinivasa had also contended that the Wills cannot be believed as there is no information regarding the scribe of the Will or where and when the Will had been drafted. It is clear from the evidence given by the witnesses and more specifically Smt. Padmaja, that Dr. Prasad, kept his affairs confidential and was not discussing all the issues even with Smt. Padmaja. Even D.W.4 states that Dr. Prasad, except confiding that he was wishing to execute a Will, regarding his properties in India, was not forthcoming about any details. In the circumstances, pleadings regarding these details would not be available. A comparison of the Will, dated 05.04.1999 and the Will dated 17.04.1999 would show that the Wills are

identical except to the extent of the change in the names of trustees and the additional bequest made in favour of one sister namely defendant No.6. This Court can only conclude that Dr. Prasad had got the Will, dated 05.04.1999, drafted confidentially, and thereafter got the changes in the Will, which were minimal, made after he was informed of the demise of Sri V. Natarajeswara Rao, who was named as one of the trustees, on 12.04.1999. This issue does not cast any suspicion about the preparation or execution of the Will, dated 17.04.1999.

D. The difference in the admitted signature of Dr. Prasad, in Ex. B1 partnership deed, dated 13.01.1997 and the signatures of Dr. Prasad on the disputed Wills are sufficient to non suit the proponents of the Wills.

53. Smt. Padmaja, admitted the signature of Dr. Prasad, on Ex.B1. This exhibit is the Partnership Deed, executed by Dr. Prasad, on 13.01.1997, which is about two years, before the disputed signatures B11 and B18, in the Wills marked as B12 and B19. No steps were taken, by either side, to get some expert opinion for comparison of the signatures on Ex. B1, with the signatures Ex. B11 and B18. However, this Court can also undertake this task, under Section 73 of the Evidence Act. The Hon'ble Supreme Court, in the judgment , cited by Sri M.R.S. Srinivas, in **Ajit Savant Majagvai v. State of Karnataka**,²⁶ had held as follows:

²⁶(1997) 7 SCC 110 : 1997 SCC OnLine SC 122 at page 121

36. The original records were also placed before us and we have perused those records. Since the learned counsel for the appellant contended that the appellant had not stayed in “Ashoka Lodge”, we looked into the “Register of Lodgers”. It contains the relevant entry against which the signature of the appellant also appears. His signature also appears on the “vakalatnama” filed by him in this appeal. In the presence of the learned counsel for the parties, we compared the signature of the appellant on the “vakalatnama” with the signature in the “Register of Lodgers”. A mere look at the signatures was enough to indicate the similarity which was so apparent that it required no expert evidence. This comparison was done by us having regard to the provisions of Section 73 of the Evidence Act, 1872 which provides as under:

“73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.”

37. This section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in court, to give his specimen writing or fingerprints for the purpose of enabling the Court to compare it with the writing

or signature allegedly made by that person. The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act. [See: *State (Delhi Admn.) v. Pali Ram* [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14] .]

54. We have compared the signatures marked as Ex. B11 and B18 and the admitted signature of Dr. Prasad, on Ex.B1 the signatures marked as Ex.B11 and B18 do not show any hesitancy. They also appear to be similar to the signatures in Ex.B1.

This issue would have to be held in favour of the appellants, in A. S. No. 645 and A. S. No. 707 of 2014.

ISSUE NO.1 (C)

E. Whether the Wills executed in the United States of America can be produced in the Court, in India, without obtaining probate of such Wills in the United States of America?

55. A contention has been raised that the provisions of section 213 and 228 of the Indian Succession Act require any Will executed in the U.S.A, or any foreign country, to be proved and probated in the Court of competent jurisdiction within that country before the Will can be produced before a Court in India. Section 213 and 228 of the Indian Succession Act read as follows:

213. Right as executor or legatee when established.—

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans [or Indian Christians], and shall only apply—

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the [ordinary-original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.

Section 228. Administration, with copy annexed, of authenticated copy of will proved abroad.

When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of 1[India], and a properly

authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

56. Section 213 stipulates that no Will can be relied upon to make any claim over any property, unless such a Will has been granted probate or letters of administration under Section 213 of the Indian Succession Act. In the normal course, a Will is proved, by producing the original of the Will, and proving it in the manner set out in Section 68 of the Evidence Act. In certain situations, the requirement to produce the original can be waived, if a certified copy of the Will is produced, before the Court. Section 228 operates in one such situation. It states that, when a Will has already been proved and deposited in any court outside the State or even outside the Country, a certified copy of the said Will lodged with such a court can be produced, instead of the original Will and letters of administration can be granted, without insisting on the original being produced. This provision cannot be understood or read to mean that no Will can be proved in Andhra Pradesh, unless it is already proved in the court having jurisdiction, over the area, where the Will had been executed.

57. Sri M.R.S. Srinivas, relies upon the judgment of the Hon'ble High Court of Karnataka, in **2016 SCC ONLINE KAR 3997 in Re: Parameshwaran Subramani**, to contend the converse. In this case, the testatrix, who was residing in Australia, and her brother, together owned a property in Bengaluru. Both the testatrix, as well as her brother, had executed separate Wills,

bequeathing their share in the property, to the beneficiaries, named in the respective Wills. The testatrix, had also named her grandson as the executor for her Will. Initially, the Supreme Court of Victoria, Australia had granted probate of the Will executed by the Testatrix. Subsequently, the executor of the Will had given a power of attorney to a person, in India, who moved a petition, under section 228, for grant of ancillary letter of Administration. The Hon'ble High Court held that such letters of administration can be given in favour of the petitioner, in India, in the place of the absentee executor. This court has not found any observation, in the judgment of the Hon'ble High Court of Karnataka, to the effect that letters of administration cannot be granted in a Will executed abroad, unless it is proved in a court of competent jurisdiction, in the country where it is executed.

58. This Court, may also add that this provision has been set out, for a practical reason. Once a Will is probated in a foreign Court, the said foreign Court would retain custody of the Will. In such circumstances, parties who seek to implement the Will, in relation to properties in India, would be without a remedy for probate of the Will, as the original would not be available for production in the Court in India. The said provision does not in any manner prohibit production of a Will, executed outside India, before a Court in India without obtaining probate of the Will in a competent Court in the foreign country.

59. Another aspect of this issue also requires to be considered. The requirement of obtaining probate and whether a Will could be relied upon for claiming rights, under that Will, in a regular suit, came to be considered by the erstwhile High Court of Andhra Pradesh. The following extracts of two of these judgments would be sufficient to hold that no probate or letters of administration need to be obtained, for relying upon a Will, if such Will is otherwise proved, in accordance with Section 63, for properties situated in Andhra Pradesh.

Gangavath Lalu v. GangavathiTulsi, 2001 SCC OnLine AP 130 : (2001) 1 AP LJ 129 : (2001) 3 ICC 228 : AIR 2001 AP 326 : (2001) 2 ALD 379 : (2001) 2 ALT 437 : (2001) 1 An WR 52 at page 132

12. A Division Bench of this Court in *A.S. Murthy v. D.V.S.S. Murthy* (2) (1979 (2) ALT 347) after referring to clause (4) of section 57 and section 213 (1) and (2) of the Act and after elaborate consideration of the matter held in categorical terms that section 213 (2) excludes wills executed by persons residing in the State of Andhra Pradesh in respect of properties situated in Andhra Pradesh from the prohibition contained in section 213(1) of the Act. It is also held by the Court that even without probate or letters of administration the legatees are entitled to establish their right under the wills. The only other wills executed by Hindus in which the prohibition contained in section 213 (1) of the Act applies, are the wills though made outside the territories referred to in clause (4) of section 57 relate to immovable properties situated within those territories or limits.

13. In *M. Narayana v. M. Suryakantam* (3) 1997 (5) ALT 459, a learned single Judge of this Court after referring to the judgment of the Supreme Court in *T.V. Narayana's case* (1 supra) and the

Division Bench judgment of this Court in *A.S. Murthy case* (2 supra) observed that a plain reading of section 213(1) would definitely indicate that it prohibits any executor or legatee under will from establishing his or her right under the will in any Court of justice without obtaining a probate of the will or letters of administration. But, it is clear from subsection (2) of section 213 of the Act that section 213 of the Act would not at all apply to the wills made by Mohammedans and shall apply only to the wills made by any Hindu, Buddhist, Sikh or Jain where such wills are of classes specified in clauses (a) and (b) of section 57 of the Act. The learned judge observed:

“It is unfortunate that none of the above statutory provisions which are of utmost relevance have been brought to the notice of the Supreme Court in *T.V. Venkatanarayana's case* (1 supra). Moreover, in that case there was no occasion for the Supreme Court to consider, directly or indirectly, the question whether the prohibition contained in subsection (1) of section 213 of the Act would apply to the wills executed by Hindus residing in the State of Andhra Pradesh in respect of properties situate in Andhra Pradesh.”

15. A plain reading of sections 213 (2) and 57 of the Act would make it clear that whatever prohibition contained in sub-section (1) of section 213 has no application in respect of wills executed by Hindus within the State of Andhra Pradesh in respect of immovable properties situated within the territorial limits of the State of Andhra Pradesh. It is not necessary to obtain probate of a will or letters of administration. The wills upon which reliance is sought to be placed can always be permitted to be proved in any civil proceeding.

Inkollu Sasikala v. Inkollu Venkata Murthy, 2004 SCC OnLine AP 586 : (2004) 5 ALD 449 : (2005) 26 AIC 784 : (2004) 6 ALT 18 : (2005) 1 HLR 9 at page 452

9. A reading of sub-section (2) clearly discloses that Courts, outside the limits of the towns of Calcutta, Madras and Bombay, do not

have the power to receive application for grant of probate or letters of administration unless the State Government confers such power by a notification published in the Official Gazette. It is not in dispute that such a notification has not been issued by the Government of Andhra Pradesh. This question was specifically dealt with by a Division Bench of this Court in *A.S. Murthy v. D.V.S.S. Murthy*, 1979 (2) ALT 347 and it was held that the Courts in the State of Andhra Pradesh do not have the power to grant probate. It is also beneficial to refer to the judgment of this Court in *Gangavathi Lulu v. GangavathiTulsi*, 2001 (2) ALD 379 : 2001 (2) ALT 437, in this regard, wherein, it was summed up as under.

“A plain reading of Sections 213(2) and 57 of the Act would make it clear that whatever prohibition contained in sub-section (1) of Section 213 has no application in respect of Wills executed by Hindus within the State of Andhra Pradesh in respect of immovable properties situated within the territorial limits of the State of Andhra Pradesh. It is not necessary to obtain probate of a Will or letters of administration. The Wills upon which reliance is sought to be placed can always be permitted to be proved in any civil proceeding.”

10. Learned Counsel for the respondents attempted to persuade this Court to sustain the jurisdiction of the Trial Court in receiving the application by making reference to Sections 57 and 214 of the Act. Section 57 of the Act is a general provision dealing with testamentary succession. It mainly deals with the applicability of the provisions set out in Schedule III of the Act, to a Will or codicil that may be made by any Hindu, Buddhist, Sikh or Jain. It is in the form of extension of the concept of testamentary successions to the persons belonging to communities referred to above. To appreciate the real purport of Section 214, it is necessary to refer to Section 213. The former deals with the Wills in general, and the latter, with the succession to debts and securities. Section 213 of the Act prescribes the procedure for establishing the rights arising out of a Will in respect of the immovable properties (See *K. Laxminarayan v. V. Gopala Swami*, AIR 1963 AP 438). Section 214

of the Act deals with the rights in respect of the debts relatable to such disposition. Section 213 clearly bars recognition of the rights in respect of the immovable properties under a Will except on the strength of a probate. It is not as if the persons residing outside the limits of the cities of Calcutta, Madras and Bombay are without any relief since the Courts in most of the other places are not conferred with the jurisdiction to receive applications for grant of probate. The validity of a Will or the rights flowing out of it can certainly constitute the subject-matter of a suit and other related proceedings. The section does not preclude the parties to reap the benefits under a Will through other remedies (See *Clarence Pais v. Union of India*, (2001) 4 SCC 325 : AIR 2001 SC 1151 and *Arjun Prasad v. Biteshwar Singh*, AIR 1982 Patna 208).

ISSUE 1 (D): “Whether, the Wills meet the requirement of the Convention on the conflict of laws relating to the form of testamentary dispositions”?

59. The contention raised, in regard to this issue, is that no testamentary Disposition, including Wills and other official document can be produced, without the said document being certified, by way of attestation, that the document has been executed by the concerned official. It is further contended that the method of such certification is contained in the “Convention on the Conflict of Laws” concluded on 05.10.1961, as India is a signatory to the said convention. The relevant provisions of the Convention are extracted herein below:

11. CONVENTION ON THE CONFLICTS OF LAWS RELATING TO THE FORM OF TESTAMENTARY DISPOSITIONS

(Concluded 5 October 1961)

The States signatory to the present Convention,
Desiring to establish common provisions on the conflicts of laws relating to the form of testamentary dispositions,
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

A testamentary disposition shall be valid as regards form if its form complies with the internal law:

- a) of the place where the testator made it, or
- b) of a nationality possessed by the testator, either at the time when he made the disposition, or at the time of his death, or
- c) of a place in which the testator had his domicile either at the time when he made the disposition, or at the time of his death, or
- d) of the place in which the testator had his habitual residence either at the time when he made the disposition, or at the time of his death, or
- e) so far as immovables are concerned, of the place where they are situated.

For the purposes of the present Convention, if a national law consists of a non-unified system, the law to be applied shall be determined by the rules in force in that system and, failing any such rules, by them most real connexion which the testator had with any one of the various laws within that system.

The determination of whether or not the testator had his domicile in a particular place shall be governed by the law of that place.

12 CONVENTION ON THE CONFLICTS OF LAWS RELATING TO THE FORM OF TESTAMENTARY DISPOSITIONS

(Concluded 5 October 1961)

The States signatory to the present Convention,
Desiring to abolish the requirement of diplomatic or consular legalisation for foreign public documents. Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply to public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State.

For the purposes of the present Convention, the following are deemed to be public documents:

- a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server ("huissier de justice");
- b) administrative documents;
- c) notarial acts;
- d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply.

- a) to documents executed by diplomatic or consular agents;
- b) to administrative documents dealing directly with commercial or customs operations.

Article 2

Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.

60. The first extract of the "Convention on the Conflicts of Laws relating to the form of Testamentary Dispositions" states that any Testamentary Disposition, would be valid, in terms of the form of such Testamentary Disposition, if such disposition meets even one of the requirements set out above. In the present case, the immoveable properties are in India, Consequently, the Will executed by Dr. Prasad, in the United States of America, would be valid in India, if the Form is in accordance with the requirements of the Law in India. As there is no dispute that the form of

the Will, dated 17.04.1999, is in accordance with the provisions of Indian Law, the Will, of 17.04.1999, is valid, according to the said Convention. Apart from this, there is no contention, by either side, that the form of the Will, of 17.04.1999, is not in accordance with American law either.

61. The Convention on the Conflicts of laws relating to the form of Testamentary Dispositions recognises an earlier system where certain documents executed in one country could not be produced in another country, unless a consular agent, of the country, where the documents were to be produced, legalised such documents, by certifying that the documents had been signed by an official who was competent to sign and issue such documents etc., the Convention has granted an exemption, for legalisation of such documents, which have been enumerated in Article 1, in the second extract. These Articles also do not bar the production of the Will, of 17.04.1999. Apart from this, the Will, of 17.04.1999, is a private Will, executed by a private person. It would come within the ambit of the Convention because it has been notarised and, for the purposes of the Convention, be treated as an official document. However, the signature of the Public Notary is not relevant to the case as D.W.4, one of the attesting witnesses, had deposed about the execution of the Will. Viewed from either angle, the Convention does not bar the production of the Will of 17.04.1999.

ISSUE No.2. “ Whether, the trust, which is the appellant in A.S.No. 707 of 2014, has come into existence”?

62. This issue arises, in view of the contention that the trust itself is not in existence and as such the Will of Dr. Prasad would have to fail. This issue would also arise, in Part II, while dealing with the maintainability of the writ petitions filed against the awards and the deeds of sale, executed between Sri Hemanth Kumar, on one hand, and Sri Ch. Koteswara Rao and Smt. M. Parvathi on the other hand. Accordingly this issue was considered, in Part II of this judgment. In view of the findings therein, it is held that the Trust has come into existence.

ISSUE No 3. “Whether, Dr. Prasad had passed away Intestate, entitling Smt. Padmaja to a half share of the properties, of Dr. Prasad, in India or whether the devolution of the estate of Dr. Prasad is to be according to the Will of 17.04.2019 “?”

63. In view of the findings in the above issues, it is held that Dr. Prasad had passed away, testate, as the Will executed by Dr. Prasad, on 17.04.1999, is a valid Will and the devolution of the properties of Dr. Prasad, in India, would have to be in accordance with the Will of 17.04.1999.

64. Before parting with this part of the judgment, it would be necessary to consider the judgment and decree of the trial court. The learned trial judge, took up the central issue of proof of the Will. The learned trial judge disbelieved the evidence of D.W. 4, and held that the Will was not proved. The

learned Trial judge came to this conclusion on the basis of certain discrepancies he found in the evidence of D.W.4. The learned Trial judge held that D.W.4, had stated that Smt. Padmaja had stayed in Georgia, till the 11th day ceremony of Dr. Prasad, who passed away on 19.4.1999, while she had arrived in India on 25.4.1999 and D.W.4 had not explained this discrepancy when he was confronted with the passport of Smt. Padmaja; there was no contact between D.W.4 and Dr. Prasad for six years before the demise of Dr. Prasad, and the claim of D.W.4, that he was a friend of Dr. Prasad cannot be believed; D.W.4 stated , in his chief examination, that the Wills were drafted in his presence, but stated in his cross examination that Dr. Prasad did not dictate the Wills in his presence; DW 4 stated that his chief affidavit was prepared after comparing the documents in court, but in cross examination DW4 stated that he had not gone through the documents; Dw4's statement that he had got Dr. Prasad admitted in hospital is not supported by any document, etc.

65. The Trial Judge, may not have considered these alternatives , while coming to his conclusions. The evidence of D.W.4, only states that Smt. Padmaja was there till the 11th day ceremony. There is no statement that she was there for 11 days after the demise of Dr. Prasad. Actually, there is no cross examination of D.W.4 on this issue, to elicit that Smt. Padmaja had stayed back for 11 days. The learned trial Judge, while holding that DW4 was not a close friend of Dr.Prasad, did not consider the fact that Dr. Prasad and

Smt. Padmaja, had stayed in the house of D.W.4, prior to the admission of Dr. Prasad, in the hospital on 05.04.1999.

66. The circumstances and facts noticed by the trial court, would raise doubts about the execution and custody of the Wills. However, these circumstances cannot be viewed in isolation or with a magnifying glass. This Court would have to take an overall view of the entire case and satisfy itself as to whether the Wills are surrounded by such suspicious circumstances as to reject the Wills. While the evidence of Sri M. Hemanth Kumar cannot be relied upon, the evidence of Smt. Padmaja, also does not inspire confidence. The facts as can be gleaned, from her cross examination, show that Smt. Padmaja was aware that Dr. Prasad had executed Wills regarding his property in India. Her execution of an Affidavit and Power of Attorney, in January 2000, acknowledging the existence of the Wills, her silence for a few months and the ambivalent manner in which her legal notice was sent, can only lead to the inescapable conclusion that the Wills were executed by Dr. Prasad and that she was aware of these Wills. In the light of these facts, we do not agree with the view of the trial court that the Wills have to be rejected.

PART II

67. Sri Ch. Koteswara Rao, filed O.S.No. 445 of 2019, on 25.09.2019, before the 1st Additional Junior Civil Judge, Eluru against Sri M. Hemanth Kumar, in his individual capacity, on the ground that Sri Ch. Koteswara Rao, was in possession of an extent of Ac.0.65 cents of land in R.S.No.143/5 of

Thallagokavaram Village, West Godavari District, described as Item No.1 , in the schedule to the suit, on the basis of a lease given to him by Sri M. Hemanth Kumar and two separate pieces of land admeasuring Ac.1.50 cents in R.S.No.45/1 of Tadigadapa, Vijayawada Rural and Ac.1.32 cents situated in Kanuru of Vijayawada Rural, collectively described as Item No. 2 of the suit schedule, on the basis of an agreement of sale dated 04.09.1997 and that Sri Hemanth Kumar had tried to interfere with his possession over the land described in Item No.1 of the suit schedule.

68. Smt. M. Parvathi filed O.S.No.446 of 2019 before the 1st Additional Junior Civil Judge Court, Eluru against Sri M. Hemanth Kumar, in his individual capacity, on the ground that Smt. M. Parvathi, was in possession of an extent of Ac.0.61 cents of land in R.S.No.143/4 of Thallagokavaram Village, West Godavari District, described as Item No.1 , in the schedule to the suit, on the basis of a lease given to her by Sri M. Hemanth Kumar and two separate pieces of land admeasuring Ac.1.05 cents in R.S.No.80/5 along with the right to draw water from a Well in R.S.No.80/10 of Yenamalakuduru Village, Vijayawada Rural Mandal is an extent of Ac.1.93 cents in R.S.NO.45/1 of Yenamalakuduru Village, Vijayawada Rural Mandal, described as item No. 2, of the suit schedule, on the basis of an agreement of sale, dated 04.09.1997, and that Sri Hemanth Kumar had tried to interfere with her possession over the land described in Item no.1 of the suit schedule.

69. Sri Hemanth Kumar, who had already filed caveats, in both cases, entered appearance, in both cases and filed his written statements, in both cases. Thereafter, the parties to these suits are said to have compromised and filed their terms of settlement which were recorded, by the Lok Adalat and two separate awards, dated 21.01.2020, were passed in the cases. These awards have been challenged by the trust, by way of writ petitions *vide* W.P Nos.3325 and 3807 of 2020. Similarly, Smt. Padmaja challenged the awards, by way of writ petitions *vide* WP Nos.1538 and 15403 of 2021. A Division Bench of this Court, had granted suspension of the awards, in the writ petitions, filed by the trust. As deeds of sale, *vide* document Nos.3567 & 3568, dated 14.04.2023, had been executed and registered by Sri Hemanth Kumar, in favour of Sri Ch.Koteswara Rao, the trust had filed W.P No.13966 of 2023 challenging the registration of the said deeds of sale. Apart from this, the trust also moved a contempt case *vide* C.C No.5225 of 2023 against Sri Hemanth Kumar on the ground of violation of the directions of this Court.

70. In a parallel proceeding, an enquiry had been initiated, under Section 81 of the Registration Act, into the execution and registration of the said deeds of sale. Aggrieved by the initiation of such an enquiry, Sri Ch. Koteswara Rao moved this Court, by way of W.P No.16510 of 2023. All the aforesaid Writ Petitions, which are still pending, are now being considered for disposal.

71. The contentions, raised by both Sri O. Manohar Reddy and Sri M. R. S. Srinivas, are as follows:

1. The Lok Adalat, in Eluru, would have jurisdiction to pass awards, only if the suits, under which these awards were passed, were maintainable before the courts in Eluru. O.S.No.445 of 2019, filed before the Civil Court in Eluru, was not maintainable as the lease in question was a lease of agricultural land and only an agricultural tenancy case was maintainable and the suit itself was not maintainable. Apart from this, item No.1 property in the suit schedule was in Eluru while items 2 and 3 were within the jurisdiction of the Courts in Vijayawada. So is the case for O.S. No. 446 of 2019. There was no common cause of action to club these properties together. Accordingly, the suit itself was not maintainable before the Court in Eluru.
2. The contention that the suits were filed in Eluru, because the caveats were filed in the junior civil judge court Eluru is also an afterthought. The caveats, by Sri Hemanth Kumar, were filed on 09.09.2019. The Suits were filed on 25.09.2019, with the complaint that Sri Hemanth Kumar, was seeking to interfere with the possession, of the plaintiffs therein, over the land in West Godavari District. These suits were returned, from time to time and got numbered only on 18.10.2019, which is about 23 days after the urgent need, to file these cases, was felt. Thereafter, Written statements and affidavits are filed by Sri Hemanth Kumar, and a

settlement is arrived and recorded, by the Lok Adalat, on 21.01.2020. The entire timeline shows that the whole exercise is a contrived attempt to create a story for passing off the awards as genuine awards passed for resolving disputes between the parties.

3. Even otherwise no title flows from the proceedings of the Lok-Adalat or the deed of sale. The property, in question, belonged to Dr. Prasad. Sri Hemanth Kumar was only the General Power of Attorney of his brother. However, the suit has been filed against Sri Hemanth Kumar in his individual capacity and not as the representative of Dr. Prasad. In fact, neither Dr. Prasad nor his legal heirs have been made parties to the suit or the sale deeds. Any decree against Sri Hemanth Kumar, in his personal capacity would not bind the estate of Dr. Prasad. Similarly, any deed of sale executed by Sri Hemanth Kumar, in his personal capacity, would also not bind the estate of Dr. Prasad as Sri Hemanth Kumar himself has no title to this land and any document executed by him would not confer title, on the purchasers.
4. The Awards, dated 21.01.2020, passed in O.S.No.446 of 2019 and O.S.No.445 of 2020 are highly suspect and a result of collusion and not on account of any genuine rights being conferred on the parties. O.S.No.445 of 2020 and 446 of 2019 relate to properties situated in Eluru as well as Vijayawada. The cause of action for the filing of the suit in Eluru is supposed to be an attempt made by Sri Hemanth Kumar to

interfere with the possession of the plaintiffs in the property in Eluru. There is no averment or even a whisper of an averment, in the plaint, about any attempt by Sri Hemanth Kumar to interfere with the possession of the plaintiffs, in the property situated in Vijayawada. In the absence of any cause of action, in relation to the properties in Vijayawada, a suit would not be maintainable, in the Eluru Court, against property situated in Vijayawada. The said award as well as the subsequent sale deed would have to be set aside on the ground that the entire exercise was a sham exercise, based on fraud, suppression of fact and with malicious intent to deprive the fruits of the preliminary decree. Apart from this, the Court itself had no jurisdiction. In such circumstances, the Writ Petitions to set aside such an award would be maintainable in view of **Bhargavi Constructions and Another vs. Kothakapu Muthyam Reddy and Ors.**,²⁷ and **State of Punjab and Another vs. Jalour Singh and Others.**²⁸

5. The award would also have to be set aside on the ground of fraud. **S.P. Chengalvaraya Naidu (Dead) by L.Rs. vs. Jagannath (Dead) by L.Rs and Ors.**,²⁹ **Meghmala and Ors vs. G. Narasimha Reddy and Ors.**,³⁰ **Sukh Sagar Medical College and Hospital vs. State of**

²⁷(2018) 13 SCC 480 (paras 22 to 24 and 33)

²⁸(2008) 2 SCC 660 (para 12)

²⁹(1994) 1 SCC page 1 (paras 5 and 6)

³⁰(2010) 8 SCC 383 (paras 28 to 36)

Madhya Pradesh and Ors.,³¹, Suraj Lamp and Industries Private Limited through Director vs. State of Haryana and Another³², Ramesh Chand (D) Thr. Lrs., vs. Suresh Chand and Another³³.

69. The respondents in these Writ Petitions, contend that the awards passed by the Lok-Adalat are valid for the following reasons:

- 1) The Writ Petitions filed by the Trust against the awards of the Lok Adalat and the subsequent Sale deeds are not maintainable, as the Trust itself never came into existence. Apart from this, any suit or petition, filed by a trust would have to be presented by all the trustees. In the present case all the trustees have not filed the petitions and the Petitions would fail on the ground of non joinder of necessary parties.
- 2) The suits were filed before the Courts in Eluru, as Sri Hemanth Kumar had filed caveats, in the Court, in Eluru. Even otherwise, the courts, in Eluru, have jurisdiction, over the suit schedule properties, including the properties situated in Vijayawada. The suits were filed, for protecting the possession of the plaintiffs therein, from Sri M. Hemanth Kumar, in view of the threats made out by Sri M. Hemanth Kumar to interfere with the possession of the plaintiffs, over the property, situated in Eluru as well as the property situated in Vijayawada.

³¹ (2021) 13 SCC 587 (paras 19 to 21)

³² (2012) 1 SCC 656 (para 17)

³³ (2025) SCC Online SC 1879 (paras 25 and 26)

- 3) Even if such suits were not within the jurisdiction of the Courts in Eluru, it would always be open to the parties to approach the Lok-Adalat with respect to disputes which are not pending before it, to put an end to the disputes between the parties. Reliance is placed upon **Chinthala Adi Lakshmi vs. State of Andhra Pradesh,**³⁴ in W.P.No.6690 of 2000 before the **Board of Trustees of the Port of Visakhapatnam vs. Presiding Officer, District Legal Services Authority, Visakhapatnam (para 10).**
- 4) Even if the award of the Lok-Adalat is said to be without jurisdiction, the subsequent deed of sale executed by Sri M. Hemanth Kumar in favour of Sri Chadalawada Koteswara Rao would continue to be valid and the cancellation of the sale deed cannot be sought, by way of the Writ Petitions before this Court. The only forum for such relief would be the Civil Court. As the trust had already filed O.S.No.1692 of 2023, for such a relief, the said sale deed cannot be revoked by this Court.
- 5) The documents filed by the Trust regarding their possession over the properties, in the possession of the plaintiffs, in the suits filed in Eluru, cannot be accepted as they have been found to have been obtained in collusion with the revenue authorities.

Consideration of the Court:

70. The aforesaid contentions raise the following issues:

³⁴ MANU/AP/1964/2024 (paras 22 and 23)

- i) Whether, a Lok Adalat Award can be challenged by way of a Writ Petition?
- ii) Whether, the Writ petitions, filed by the Trust, against the Lok Adalat Award and the Sale deeds in favour of Sri Ch. Koteswara Rao, are maintainable as no such Trust exists and even otherwise all the trustees who are necessary parties have not been added?
- iii) Whether the deed of sale executed by Sri M. Hemanth Kumar in favour of Chadalavada Koteswara Rao can be set aside by this Court, in a Writ Petition?
- iv) Whether the pendency of O.S.No.1692 of 2023 would bar this Court from considering the validity of the deed of sale registered in favour of Sri Chadalavada Koteswara Rao?
- v) Whether the Court of the 1st Additional Junior Judge, Eluru had jurisdiction and whether the Lok Adalat, in Eluru, had jurisdiction to pass awards, in the suits filed by Sri Chadalavada Koteswara Rao and Smt. Parvathi in relation to the property situated in Vijayawada?
- vi) Whether the awards had been obtained by fraud and misrepresentation, requiring the same to be set aside?
- vii) Whether the awards are binding on the estate of Dr. Prasad?

ISSUE NO. 1: “Whether, a Lok Adalat Award can be challenged by way of a Writ Petition”?

71. The aforesaid issue had come up before the Hon’ble Supreme Court, in various judgments. The Hon’ble Supreme court had taken a consistent view that, a Lok Adalat Award can be challenged, by way of a writ petition. The following extracts would be instructive:

In **State of Punjab v. Jalour Singh**,³⁵ the Hon’ble Supreme Court had held as follows:

12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.

Following this judgment, the Hon’ble Supreme Court in **Bhargavi Constructions v. Kothakapu Muthyam Reddy**,³⁶ had held as follows:

³⁵(2008) 2 SCC 660 : (2008) 1 SCC (Civ) 669 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535 : 2008 SCC OnLine SC 137 at page 666

³⁶(2018) 13 SCC 480 : (2018) 4 SCC (Civ) 243 : 2017 SCC OnLine SC 1053 at page 486

22. The question arose before this Court (three-Judge Bench) in *State of Punjab [State of Punjab v. Jalour Singh, (2008) 2 SCC 660 : (2008) 1 SCC (Civ) 669 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535]* as to what is the remedy available to the person aggrieved of the award passed by the Lok Adalat under Section 20 of the Act. In that case, the award was passed by the Lok Adalat which had resulted in disposal of the appeal pending before the High Court relating to a claim case arising out of the Motor Vehicles Act. One party to the appeal felt aggrieved of the award and, therefore, questioned its legality and correctness by filing a writ petition under Articles 226/227 of the Constitution of India. The High Court dismissed the writ petition holding it to be not maintainable. The aggrieved party, therefore, filed an appeal by way of special leave before this Court. This Court, after examining the scheme of the Act allowed the appeal and set aside the order of the High Court. This Court held that the High Court was not right in dismissing the writ petition as not maintainable. It was held that the only remedy available with the aggrieved person was to challenge the award of the Lok Adalat by filing a writ petition under Article 226 or/and Article 227 of the Constitution of India in the High Court and that too on very limited grounds. The case was accordingly remanded to the High Court for deciding the writ petition filed by the aggrieved person on its merits in accordance with law.

23. This is what their Lordships held in para 12: (*Jalour Singh case [State of Punjab v. Jalour Singh, (2008) 2 SCC 660 : (2008) 1 SCC (Civ) 669 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535]* , SCC p. 666, para 12)

“12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that

too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.”

24. In our considered view, the aforesaid law laid down by this Court is binding on all the courts in the country by virtue of mandate of Article 141 of the Constitution. This Court, in no uncertain terms, has laid down that challenge to the award of Lok Adalat can be done only by filing a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court and that too on very limited grounds. In the light of clear pronouncement of the law by this Court, we are of the opinion that the only remedy available to the aggrieved person (respondents herein/plaintiffs) was to file a writ petition under Article 226 and/or Article 227 of the Constitution of India in the High Court for challenging the award dated 22-8-2007 passed by the Lok Adalat. It was then for the writ court to decide as to whether any ground was made out by the writ petitioners for quashing the award and, if so, whether those grounds are sufficient for its quashing.

This issue again came up before the Hon'ble Supreme Court in **Dilip Mehta vs. Rakesh Gupta and Others.**³⁷ The Hon'ble Supreme Court, following the earlier judgments cited above had also held as follows:

9. This Court has, in a series of decisions, explained the consequence of this statutory finality. In *State of Punjab v. Jalour Singh (Supra)*, it was held that where an award is made by a Lok Adalat in terms of a settlement between the parties, it is final and binding and executable as a decree, and that no appeal lies

³⁷ 2025 SCC Online SC 2737 (paras 14 & 15)

against it. It was further held that any challenge to such an award must be brought before the High Court in proceedings under Articles 226 or 227 of the Constitution of India and only on limited grounds such as lack of consent, jurisdictional error or fraud. In *Bhargavi Constructions v. Kothakapu Muthyam Reddy (Supra)*, this Court applied the same principle to a civil suit which sought to impeach a Lok Adalat award and held that a civil suit to set aside such an award is not maintainable and that the only proper remedy is a writ petition before the High Court.

10. The principle that emerges is that the statutory finality attached to a Lok Adalat award leaves no room for an appellate or plenary civil remedy against the award treated as a decree. The award may be executed as a decree, but its validity cannot be reopened through an ordinary civil suit or by treating some other civil proceeding as a vehicle for setting it aside. The only recognised avenue of challenge is the constitutional jurisdiction of the High Court, which is supervisory and exceptional in nature.

72. Sri Krishna Grandhi, the learned Senior Counsel, appearing for Sri Ch Koteswara Rao, relied upon certain decisions of this court, to contend that a Lok Adalat Award cannot be challenged, by way of a Writ Petition. However, these judgments have been explained, by a Division Bench, (in which one of us was a member), in **Sadara Hotels Pvt.Ltd Vs. Lok Adalat and Ors.**³⁸, in the following manner:

9. At the outset, the question of Locus of the petitioner, to file this writ Petition has to be decided. Sri S. Lakshmi Narayana Reddy, citing *Sri Durga Malleswara Educational Society, Vijayawada vs. District Legal Services Authority (Lok Adalath), Vijayawada; Vadiga Amose vs. Vadiga Anjaneyulu; and Nellore Sujannamma vs. Attipalli Nagi Reddy and Ors.*, would contend that the petitioner as a third party to the suit and award cannot file a writ petition assailing the award. All the three judgments cited above placing reliance on *Balchu Subba Lakshmi vs. Sannidhi Srinivasulu* MANU/AP/0554/2009 : (2010) 1 ALT 483, had held that a party to the award, can file a writ petition assailing such an award and the only course available to a third party is to assail the award, by way of a suit. However, it was also

³⁸2024 (1) ALT 164 : 2024 SCC Online AP 5159

noticed in these judgments, that even a third party can assail an award, by way of a writ petition, if special circumstances are made out. These judgments have not shutout writ petitions completely. They have only held that writ petitions, cannot be instituted normally, but such petitions can be maintainable, on the facts of that case. PARA 9

73. In the light of the above exposition of law, by the Hon'ble Supreme Court, it must be held that the present set of writ petitions, filed by Smt. Padmaja and the trust (subject to the other objections) are maintainable, subject to a case of fraud and lack of jurisdiction being made out.

ISSUE NO.2:

“Whether, the Writ petitions, filed by the trust, against the Lok Adalat Award and the Sale deeds in favour of Sri Ch. Koteswara Rao, are maintainable as no such trust exists and even otherwise all the trustees who are necessary parties have not been added”?

74. Sri Krishna Grandhi, would contend that:

- A. The Trust is a Public trust, which is governed by the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as the Endowments Act). He would contend that the Trust has not come into existence as it never registered itself and a Charitable Trust will not come into existence till it is registered, under the provisions of the Endowments Act.
- B. The Trust is still born and never functioned. It does not have an office, nor has it discharged any functions, for which it is said to have been

constituted. Thus, the Trust did not come into existence, either by operation of Law or by actual functioning of the Trust.

C. The Trust is not a judicial entity and is only a compendium of all the Trustees. Any case or proceeding initiated for the Trust would have to be done by all the Trustees. The absence of any of the Trustees, would be fatal to the case. As all the Trustees of this Trust have not been impleaded, the Writs, filed by the Trust, are not maintainable. Reliance is placed on AIR 1963 SC 309.

75. Sri O. Manohar Reddy, appearing for the Trusts, would contend that the Writs are maintainable as the Trust, would have to be considered as a public Trust and the Principles applicable to private Trusts would not be applicable to Public Trusts.

This issue, again, contains the following sub issues:

A. Whether the Trust has come into existence?

B. Whether the Trust is a private Trust or a Public Trust?

C. Whether, all the Trustees have to be parties, to a suit or other proceedings, initiated by a Trust?

ISSUE No. 2 (A) and (B):

These two issues are interconnected and are being taken up together.

76. The Law permits the owner of property, to transfer the legal title of the property to another person/other persons, with a stipulation to hold the

property, for the benefit of a third person (s). The Owner who transfers such property is called the Settlor, the person(s) to whom legal title is transferred is called the Trustee(s) and the persons for whose benefit such transfer is made, are called beneficiaries.

77. Trusts, fall in two categories. The first category are Private Trusts, The second category are Public Trusts. The law relating to Private Trusts is contained in the Indian Trusts Act, 1882. The Law relating to Public Trusts, in the State of Andhra Pradesh, is the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987.

78. Section No. 1 of the Indian Trusts Act, 1882, reads as follows:

1. Short title and commencement:

This Act may be called the Indian Trusts Act, 1882; and it shall come into force on the first day of March, 1882.

Local extent, Saving: It extends to the whole of India except the State of Jammu and Kashmir and the Andaman and Nicobar Islands; but the Central Government may, from time to time, by notification in the Official Gazette, extend it to the Andaman and Nicobar Islands or to any part thereof. But nothing herein contained affects the rules of Mohammedan law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary, or personal law, or applies to public or private religious or charitable endowments or to trusts to distribute prizes taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day.

By virtue of the savings clause, all public and private religious and charitable Trusts are excluded from the ambit of the Indian Trusts Act, 1882. Sri Krishna Grandhi, has relied upon the judgments of the Hon'ble high Court of Madras and the Hon'ble High Court of Madhya Pradesh, in **Commissioner**

of Income Tax, Madras vs. M. Jamal Mohamad Sahib,³⁹ to contend that the Trust, in this case, is a public Trust. The above judgments may not be fully relevant, as they were deciding the issue, on the basis of the definitions contained in the Income Tax Act and the Madhya Pradesh Land Revenue Code. It would be better to decide this issue on the basis of the definitions given in the Endowments Act.

79. Section 2 (3) and 2 (4) of the Endowments Act define Charitable Institution and Charitable purposes to mean:

2(3)'charitable endowment' means all property given or endowed for any charitable purpose;

Explanation I. - Any property which belonged to or was given or endowed for the support or maintenance of a charitable institution or which was given, endowed or used as of a right for any charitable purpose shall be deemed to be a charitable endowment within the meaning of this definition, notwithstanding that before or after the commencement of this Act, the charitable institution has ceased to exist or ceased to be used for any charitable purpose or the charity has ceased to be performed.

Explanation II. - Any Inam granted to a service holder or to an employee of a Charitable Institution for the performance of any charity or service in connection with a charitable institution shall not be deemed to be a personal gift to the service holder or to the employees notwithstanding the grant of ryotwari patta to such service holder or employee under the Andhra Pradesh

³⁹AIR 1941 MAD 535 and 1975 SCC Online MP 38

(Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, but shall be deemed to be a charitable endowment;

2(4) 'charitable institution' means any establishment, undertaking, organisation or association formed for a charitable purpose and includes a specific endowment and dharmadayam;

80. Dr. Prasad, by virtue of the Will, of 17.04.1999, had created a Trust, initially for the benefit of his mother. Thereafter, the Trust was to be a non-profitable Trust for the benefit of public services, with particular focus being on using the Trust for the education and health of deserving candidates both within and outside Dr. Prasad's family. Dr. Prasad described the Trust to be a "Private Charitable Trust".

81. The savings clause of section No.1 of the Indian Trusts Act, 1882, excludes private charitable trust also, from the purview of the said Act. The provisions of Section 2 of the Endowments Act, stipulate that any Trust which provides education or medical relief would be a charitable Trust, which falls within the ambit of the Endowments Act. The grant of the initial benefit, of the Trust, to the mother of Dr. Prasad would not make any difference to the ultimate character of the Trust and it is held that the Trust, created under the Will, of 17.04.1999, is a Public Charitable Trust, regulated by the Endowments Act.

82. Sri Krishna Grandhi, contends that the Trust has not come into existence as it has not been registered under the provisions of the

Endowments Act and has remained non functional, without any office or activities. The first contention has to be rejected, in the light of Section 1 (3) of the Endowments Act, extracted above, which states that all public charitable institutions, whether registered or not, fall within the contours of the Endowments Act. Section 44, of the Endowments Act also empowers the Commissioner, to get charitable and religious institutions to be registered, if the persons in management do not get such institutions registered. This would only mean that there can be Public Charitable Institutions, which are not registered with the Endowments Department.

83. The second contention, that the Trust has not been functional, cannot be accepted, in view of the voluminous documentation filed by Sri Ch. Koteswara Rao himself. The said documentation shows the continual fight, between the Trust and Sri Ch. Koteswara Rao and Smt. Parvathi, over the possession of the lands, which are claimed to have been purchased by Sri Ch Koteswara Rao and Smt. Parvathi. The trust has also been a party to this litigation from the trial court itself. Hence, it is held that the Trust has come into existence and is a Public Charitable Trust.

ISSUE NO 2 (C):“Whether, all the Trustees have to be parties, to a suit or other proceedings, initiated by a Trust” ?

84. Sri Krishna Grandhi, would contend that the Writs, filed by the Trust, are not maintainable as all the Trustees have not been impleaded as

Petitioners or as Respondents. He contends that a Trust does not have a juristic personality and is only a compendium of the Trustees. It is the trustees, to whom the trust property is transferred and all of them have to act together, for implementing the purposes of the trust. This function cannot be delegated. He would also rely upon the principles of the Indian Trusts Act, on the ground that the Act only embodies settled principles of Law, which are applicable to all Trusts and relies upon the judgment of the Hon'ble Supreme court in **Sk. Abdul Kayum v. Mulla Alibhai**,⁴⁰ and the Hon'ble High Court of Gujarat in **AtmaramRanchhodbhai v. Gulamhusein Gulam Mohiyaddin**⁴¹.

85. The Hon'ble Supreme Court, had held as follows:

23. It is true that Section 1 of the Indian Trusts Act makes provisions of the Act inapplicable to "public or private religious or charitable endowments; and so, these sections may not in terms apply to the trust now in question. These sections however embody nothing more or less than the principles which have been applied to all trusts in all countries. The principle of the Rule against delegation with which we are concerned in the present case, is clear : a fiduciary relationship having been created, it is against the interests of society in general that such relationship should be allowed to be terminated unilaterally. That is why the law does not permit delegation by a trustee of his functions, except in cases of necessity or with the consent of the beneficiary or the authority of the trust deed itself; apart from delegation "in the regular course of business", that is, all such functions which a prudent man of business would ordinarily delegate in connection with his own affairs.

⁴⁰1962 SCC OnLine SC 159 : (1963) 3 SCR 623 : AIR 1963 SC 309

⁴¹1972 SCC OnLineGuj10 : AIR 1973 Guj 113 : (1972) 13 GLR 828 at page 114

24. What we have got in the present case is not delegation of some functions only, but delegation of all functions and of all powers and is nothing short of abdication in favour of a new body of men. Necessarily there is also the attempt by the old trustees to divest themselves of all properties vested in them by the settlor and vesting them in another body of persons. We know of no principle of law and of no authority which permits such abdication of trust in favour of another body of persons.

86. A Full Bench of the Hon'ble High court of Gujarat, had held as follows:

2. The determination of these two questions must depend on the true nature and character of the office of co-trustees. The classic statement of the law describing what is the true nature and character of the office of co-trustees is to be found in the following passage from *Lewin on Trusts*, (Sixteenth Edition), page 181:—

“In the case of co-trustees of a private trust, the office is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one collective trustee and therefore must execute the duties of the office in their joint capacity. Sometimes, one of several trustees is spoken of as the acting trustee, but the Court knows of no such distinction: all who accept the office are in the eyes of the law acting trustees. If anyone refuses or is incapable to join, it is not competent for the others to proceed without him, and, if for any reason they are unable to appoint a new trustee in his place under Section 36(1) of the Act, the administration of the trust must devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both, though such sanction or approval must be strictly proved.”

12. Turning now to the second question which arises for consideration, it is clear that all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. That must follow as a necessary and logical consequence from the nature and character of the office of co-trustees to which we have referred in the opening part of the judgment — Section 48 of the Indian Trusts Act provides that when there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides. The principle embodied in this section must apply equally to a public religious or charitable trust as pointed out by the Supreme Court in AIR 1963 SC 309 (supra). Since all co-trustees must join in the execution of the trust, and recovery of possession of the property from the tenant after determination of the lease would be a duty arising in the execution of the trust, all co trustees must join in filing a suit to recover possession of the property from the tenant. The only exception to this rule would be where the instrument of trust otherwise provides. If the instrument of trust provides that one co-trustee may institute a suit to recover possession of the property from the tenant, he would be competent to institute such a suit and it would be no answer on the part of the tenant to say that the other co-trustees have not joined in such suit. But where the instrument of trust does not so provide all co-trustees must join in the suit to recover possession of the property from the tenant for their office is a joint office and they all form as it were but one collective trustee. This position in law is now well settled and there is complete unanimity of opinion amongst the High Courts about it. We may mention only a few of the decisions which have taken this view : *Vedakannu v. Annadana Chatram*, AIR 1938 Mad 982 and *Ramesh Chandra v. Hemendra Kumar*, AIR 1949 Cal 519.

87. We are in respectful agreement, with the law laid down by the Hon'ble High Court of Gujarat and are bound by the law laid down by the Hon'ble Supreme court. However, there is one additional factor which needs to be looked at. The Trust is governed by the Endowments Act. Sections 14 and 29 of the Endowments Act are relevant for this purpose. Section 14 states that all properties of a Charitable Institution shall vest in that institution. This would effectively give a juristic entity to the Charitable Institution. This view is further fortified by Section 29 (3) (b) (iii) which stipulates that, it is the Executive officer who should sue or be sued, in the name of the Institution or Endowment, in all legal proceedings. By virtue of the provisions of the Endowments Act, the aforesaid judgments would not be applicable to the Trust, which is a charitable Institution, governed by the Endowments Act.

88. In the present case, the Charitable Institution, that is the Trust, is the 1st Petitioner. The Executive officer, should have sued, in the name of the Trust. However, the writ petitions have been filed, on behalf of the Trust by one of the Trustees. Such a course of action is also permissible, in view of Section 29 itself, which envisages a situation where there no Executive Officer has been appointed. The Proviso to Section 29 (1) states that a Trustee, in the absence of an executive officer can file a suit, if authorisation is given by the Commissioner. However, this authorisation is needed, if the income of the Trust exceeds Rs. 2 lakhs per year. In the present case, it is obvious that the Trust has not been able to obtain any income, on account of

it's disputes with Sri Ch. Koteswara Rao and Smt. M. Parvathi. In such a situation, the Writ Petitions filed by a trustee, on behalf of the trust would be maintainable.

ISSUE Nos. 3 and 4: “Whether the deed of sale executed by Sri M. Hemanth Kumar in favour of ChadalavadaKoteswara Rao can be set aside by this Court, in a Writ Petition”?

“Whether the pendency of O.S.No.1692 of 2023 would bar this Court from considering the validity of the deed of sale registered in favour of Sri Chadalavada Koteswara Rao”?

As both these issues are interconnected, they are being taken up together. The Hon'ble Supreme Court had dealt with the question of whether a deed of alienation, including a deed of sale, could be set aside by a Court acting under Article 226 of the Constitution of India. The Hon'ble Supreme Court in **Asset Reconstruction Co. (India) Ltd. v. S.P. Velayutham**,⁴² had dealt with this issue in the following manner:

53. Actually, the registration of a document comprises of three essential steps among others. They are:

(i) execution of the document, by the executant signing or affixing his left hand thumb impression;

(ii) presenting the document for registration and admitting to the registering authority the execution of such document; and

(iii) the act of registration of the document.

⁴²(2022) 8 SCC 210 : (2022) 3 SCC (Cri) 354 : (2022) 4 SCC (Civ) 284 : 2022 SCC OnLine SC544 at page 235

57. In suits for declaration of title and/or suits for declaration that a registered document is null and void, all the aforesaid three steps which comprise the entire process of execution and registration come under challenge. If a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the civil court. But where a party questions only the failure of the registering authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law.

58. It must be noted that when a High Court, in exercise of its jurisdiction under Article 226 finds that there was utter failure on the part of the registering authority to stick to the mandate of law, the Court merely cancels the act of registration, but does not declare the very execution of the document to be null and void. A declaration that a document is null and void, is exclusively within the domain of the civil court, but it does not mean that the High Court cannot examine the question whether or not the registering authority performed his statutory duties in the manner prescribed by law.

89. The contention of the Trust, In W.P.No. 13966 of 2023, is that the Registrar had registered the deeds of Sale, without going through the contents of the deeds of sale and had abdicated his responsibility and duty cast on him, under the provisions of the Registration Act. The further contention is that the Sale deeds were executed by a person who has no right over the property and was making false claims of ownership.

90. The Sale deeds executed by Sri Hemanth Kumar, recite that, the property belongs to his Brother Dr. Prasad, who had appointed him as his

Power of Attorney holder; Sri Hemanth Kumar, as the power of Attorney holder of his brother had entered into an agreement of sale with Sri Ch. Koteswara Rao, for sale of the land, in the sale deeds and received the entire sale consideration; Dr. Prasad passed away on 19.04.1999 and his wife Smt. Padmaja had affirmed and ratified the sale agreements; the sale deeds could not be executed due to various reasons, due to which Sri Ch. Koteswara Rao had instituted O.S. No. 445 of 2019, before the 1st Additional Junior Civil Judge, Eluru, for execution of the sale deed; there was a compromise in the suit and an award was passed by the Lok Adalat, which directed Sri Hemanth Kumar to execute a sale deed; and that the required sale deed was being executed by him. The sale deed does not record that Sri Hemanth Kumar is executing the Sale deeds as the power of attorney holder of Dr. Prasad. The description of Sri Hemanth Kumar, shows that he is executing the Sale deeds, in his individual capacity.

91. The Registrar, while registering the deeds of sale, was required to ascertain *prima facie* title over the property. The recitals in the sale deeds, presented before the Registrar, specifically stated that the property belonged to Dr. Prasad and Sri M. Hemanth Kumar has executed the agreement of sale as his Power of Attorney Holder. The Registrar, has apparently, permitted registration of the document, despite the statement, in the sale deed, that Dr. Prasad had passed away, which would automatically extinguish the Power of Attorney granted to Sri Hemanth Kumar over the property. There is no

statement that this Power of Attorney is coupled with interest and would survive the death of Dr. Prasad. Such a claim is now being made and would have to be decided by the trial court, in the suit filed for cancellation of the said documents. However, the fact remains that the registrar did not look into this fact.

92. The Writ petitioners have not only questioned the failure of the registering authority to perform his mandatory duties but also the right and title of the executant of the deeds of sale. The Hon'ble Supreme Court, in the above judgment, had held that a writ petition would be maintainable only if the Writ is filed on the ground of the failure of the registering authority to discharge his duties and that a suit would have to be filed if a declaration of nullity is sought on any other ground. Further, O.S.No. 1692 of 2023 has been filed for the same relief. In view of the fact that an alternative remedy has been invoked, it would only be appropriate to relegate the petitioners to vindicate their rights through the said suit.

93. It would also be appropriate to deal with W.P. No. 16510 of 2023 here, as the issues raised in that writ petition, cover some of the issues discussed above

ISSUE NO.5: “Whether the Court of the I Additional Junior Judge, Eluru had jurisdiction and whether the Lok Adalat, in Eluru, had jurisdiction to pass awards, in the suits filed by Sri Chadalavada Koteswara Rao and Smt. Parvathi in relation to the property situated in Vijayawada?”

94. The Legal Services Authorities Act, 1987 gave a statutory basis for the Lok Adalat system. Section 19 (5) sets out the jurisdiction of the Lok Adalat, within which it can take on record any settlements and pass awards on such settlements. Section 19 (5) reads as follows:

19. Organisation of Lok Adalats.—

(5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of—

- (i) any case pending before; or
- (ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised:

Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

95. Under this provision, a Lok Adalat has jurisdiction to arrive at and record a compromise or settlement, between parties to a dispute, if such disputes are already pending before the court, which constitutes the Lok Adalat, or such disputes, which would fall within the jurisdiction of that Court, if such disputes have not yet been filed before that Court. In the present case, the concerned Lok Adalat was constituted, for the court of the I Additional Junior Civil Judge, Eluru. The awards were passed, in relation to suits which were already filed and pending before the said Court. At first blush, the awards would appear to have been passed by a Lok Adalat, which had

jurisdiction. However, the contention of the Writ Petitioners is that the court, in Eluru, was approached under false pretences and to create a stage for obtaining an award from the Lok Adalat, away from Vijayawada, where there was a possibility of the scheme becoming known to the litigants, in O.S. No. 69 of 2002.

96. O.S.No.445 of 2019 was filed by Sri Chadalavada Koteswara Rao, against Sri M. Hemanth Kumar, who was the sole defendant, in the Court of the Junior Civil Judge, Eluru. The suit related to two items of property. Item No.1 was Ac.0.65 cents of land in R.S.No.143/5 of Thallagokavaram Village, West Godavari District. Item No.2 consisted of two separate bits of land admeasuring Ac.1.50 cents in R.S.No.45/1 of Tadigadapa, Vijayawada Rural and Ac.1.32 cents situated in Kanuru of Vijayawada Rural. The pleadings, in the plaint were that item No.1 was leased out to Sri Chadalavada Koteswara Rao and that the two pieces of land, described in item No.2 were sold to Sri Chadalavada Koteswara Rao, by way of an agreement of sale, dated 04.09.1997. It was contended that the entire sale consideration had already been paid out and Sri Chadalavada Koteswara Rao was in peaceful continuous possession and enjoyment of the property from 1997 itself.

97. It was further pleaded that Sri M. Hemanth Kumar attempted to re-occupy the lands taking advantage of his influence in the area. The cause of filing the suit was stated to be the attempt of Sri M. Hemanth Kumar to enter into the property, situated in West Godavari District, and described as

item No.1 in the schedule to the suit, on 24.09.2019. There is no pleading of any attempt by Sri M. Hemanth Kumar to interfere with the possession of Sri Chadalavada Koteswara Rao in the properties situated in Vijayawada Rural Mandal. The cause of action, pleaded, by Sri Chadalavada Koteswara Rao was that he was in possession of lands described in item Nos.1 and 2 and that his possession was threatened by Sri M. Hemanth Kumar, on 24.09.2019, over the land situated in West Godavari District.

98. Smt. M. Parvathi filed O.S.No.446 of 2019 before the Junior Civil Judge Court, Eluru. The property described in the suit was Ac.0.61 cents of land in R.S.No.143/4 situated at Thallagopavaram in item No.1 of the schedule. Item No.2, consisted of two separate pieces of land admeasuring Ac.1.05 cents in R.S.No.80/5 along with the right to bring water from a Well in R.S.No.80/10 of Yenamalakuduru Village, Vijayawada Rural Mandal. Item No.2 is an extent of Ac.1.93 cents in R.S.NO.45/1 of Yenamalakuduru Village, Vijayawada Rural Mandal. In this suit also, the cause of action for the filing of the suit is said to be the attempt of Sri M. Hemanth Kumar to interfere with the possession of Smt. Parvathi over the land situated in West Godavari District, on 24.09.2019. There is no pleading, in this suit also, that Sri M. Hemanth Kumar had made any attempts to interfere with the possession of Smt.M. Parvathi over the land situated in Vijayawada Rural Mandal.

99. Section 16 of C.P.C. stipulates that suits relating to rights over the immovable property, including recovery of immovable property etc., shall be

instituted in the Court within the local limits of whose jurisdiction the property is situated. Section 17 of C.P.C. stipulates that where the property is situated within the jurisdiction of different Courts, a suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated. Under Section 16, the suit would have to be filed only in the Court within whose jurisdiction, the immovable property is located. However, the suit, may be maintainable, in relation to property which is not situated within the jurisdiction of the Court, when a common cause of action may arise in relation to different extents of immovable property. In the present case, there is no such cause of action, due to which the suit could have been filed, in the Court in Eluru, in relation to land situated in Vijayawada Rural Mandal. To that extent, the Court in Eluru did not have jurisdiction, in both O.S.No.445 of 2019 and O.S.No.446 of 2019. Once, it is found that the court, in Eluru, did not have jurisdiction, in O.S.No. 445 and 446 of 2019, over the properties situated in Krishna Rural Mandal, the Lok Adalat, constituted for the court of the 1st Additional Junior Civil Judge, Eluru, also would not have jurisdiction to pass any award, in relation to the said properties.

100. Sri M. R. S. Srinivas, had also contended that, the lands said to have been leased out to Sri Ch. Koteswara Rao and Smt. M. Parvathi, were agricultural lands. He contends that any dispute between a tenant and a land lord, over agricultural lands, can only be filed as an Agricultural Tenancy case, before the Tribunal and a suit, before a civil court was barred. The bar against

suits, in relation to disputes between a land lord and a cultivating tenant, contained in section 13 and 16 of the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, was considered by a Full Bench of the erstwhile High Court of Andhra Pradesh, in **D. Venkata Reddy vs. B. Bushireddy AIR 1971 AP 87**. The full Bench had held that any dispute between a landlord and a tenant, can be decided by the special officer. However, a suit would not be barred, once issues beyond that relationship are raised.

ISSUE NO.2: “Whether the awards had been obtained by fraud and misrepresentation, requiring the same to be set aside”?

101. The Hon’ble Supreme Court, considered the question of what acts, would constitute “fraud”, which would vitiate an Award, in the following judgments, wherein the Hon’ble Supreme court had held as follows:

***S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1 :
1993 SCC OnLine SC 318 at page 5***

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to

playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

Meghmala v. G. Narasimha Reddy, (2010) 8 SCC 383 : (2010) 3 SCC (Civ) 368 : (2010) 3 SCC (Cri) 878 : 2010 SCC OnLine SC 894 at page 395

32. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* [(1990) 3 SCC 655 : 1990 SCC (L&S) 520 : (1990) 14 ATC 766] , *Union of India v. M. Bhaskaran* [1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162 : (1996) 32 ATC 94] , *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav* [(2004) 6 SCC 325 : 2005 SCC (L&S) 785] , *State of Maharashtra v. Ravi Prakash Babulalsing Parmar* [(2007) 1 SCC 80 : (2007) 1 SCC (L&S) 5] , *Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.* [(2007) 8 SCC 110 : AIR 2007 SC 2798] and *Mohd. Ibrahim v. State of Bihar* [(2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] .)

33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression “fraud” involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. [Vide *Vimla (Dr.) v. Delhi Admn.* [AIR 1963 SC 1572 : (1963) 2 Cri LJ 434] , *Indian Bank v. Satyam*

Fibres (India) (P) Ltd. [(1996) 5 SCC 550] , *State of A.P. v. T. Suryachandra Rao* [(2005) 6 SCC 149 : AIR 2005 SC 3110] , *K.D. Sharma v. SAIL* [(2008) 12 SCC 481] and *Central Bank of India v. Madhulika Guruprasad Dahir* [(2008) 13 SCC 170 : (2009) 1 SCC (L&S) 272] .]

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide *S.P. Chengalvaraya Naidu* [(1994) 1 SCC 1 : AIR 1994 SC 853] , *Gowrishankar v. Joshi Amba Shankar Family Trust* [(1996) 3 SCC 310 : AIR 1996 SC 2202] , *Ram Chandra Singh v. Savitri Devi* [(2003) 8 SCC 319] , *Roshan Deen v. Preeti Lal* [(2002) 1 SCC 100 : 2002 SCC (L&S) 97 : AIR 2002 SC 33] , *Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education* [(2003) 8 SCC 311 : AIR 2003 SC 4268] and *Ashok Leyland Ltd. v. State of T.N.* [(2004) 3 SCC 1 : AIR 2004 SC 2836])

102. The facts, in this case require to be considered, on the basis of the aforesaid guidelines. Both the suits were filed on 25.09.2019. Both the suits, were returned, for compliance with objections, from time to time and the suits were finally numbered only on 18.10.2019. Sri M. Hemanth Kumar filed

his written statement, in both cases, on 18.12.2019. Thereafter, the awards came to be passed on 21.01.2020. These awards recorded the terms and conditions of the agreement between the plaintiffs, in these two suits, and Sri M. Hemanth Kumar. Under the terms and conditions, which became part of the award, the property in West Godavari District was to be given back to Sri Hemanth Kumar. Further, Sri M. Hemanth Kumar was to execute registered deeds of sale in favour of the plaintiffs in relation to the properties situated in Vijayawada Rural Mandal. This settlement was entered into by Sri M.Hemanth Kumar in his individual capacity. Even the suits filed by the plaintiffs, were against Sri M. Hemanth Kumar in his individual capacity. The pleadings, in the complaints, were that the plaintiffs, in these suits, had purchased the properties in Vijayawada Rural Mandal under agreements of sale. The agreements of sale, which were filed, along with the suits, would show that the agreements were executed by Sri M. Hemanth Kumar acting as the Power of Attorney Holder of Dr. Prasad. A compromise, promising to alienate the property of Dr. Prasad, could not have been entered into by Sri M. Hemanth Kumar, in his individual capacity. The terms and conditions, which became part of the award, are terms and conditions accepted by a person, in relation to a property, over which he did not have any title. This fact is also known to the Plaintiffs, in the said suits, as they have produced the agreements of sale, in the said suits. Arriving at a settlement that one party was to execute a sale deed, in favour of the other party, with the full knowledge of both sides, that the transferor has

no title over the said property, is a clear suppression of fact and an act of misleading the court. Apart from this, Sri M. Hemant Kumar, who was fully aware of the judgment and decree of the trial court and the pendency of the present set of appeals, had deliberately suppressed these facts, while presenting a compromise before the Lok Adalat. Further, Sri Hemant Kumar, deliberately suppressed the fact that the Trial Court had passed a judgment giving half the property to Smt. Padmaja, and that she would have to be made a party to the Lok Adalat proceedings. The same, in terms of the observations of the Hon'ble Supreme Court, would amount to fraud, which vitiates the awards and they are set aside.

ISSUE NO.3: “Whether the awards are binding on the estate of Dr. Prasad?”

103. The agreements of sale, which are the basis of the awards, passed by the Lok-Adalat, clearly stipulate that the properties belong to Dr. Prasad. The said agreements of sale were signed by Sri M. Hemanth Kumar, on behalf of Dr. Prasad as his power of attorney holder. Sri M. Hemanth Kumar, did not have any title over the property, when he executed the agreements of sale, nor did he obtain any further title, by devolution of the property from Dr. Prasad to himself. In the circumstances, any compromise executed by Sri M. Hemanth Kumar, in his individual capacity, would not bind the estate of Dr. Prasad.

104. Before parting with this part of the judgment, it would be necessary to consider W.P.No. 16510 of 2023, which has been filed against the enquiry initiated, against the deeds of sale executed by Sri Hemanth Kumar in favour of Sri Ch Koteswara Rao.

105. This Writ Petition came to be filed by Sri CH. Koteswara Rao to stop and set aside the enquiry initiated, under Section 81 and 82 of the Registration Act, 1908, for determining whether the deeds of sale registered as document Nos.3567 of 2023 and 3568 of 2023 in the office of the Sub-registrar, Patamata had been done fraudulently and whether such deeds could be cancelled. The primary contention of the petitioner herein is that neither Section 81 nor Section 82 empowers the authorities under the Registration Act to cancel any document which has been registered.

106. Section 81 and 82 provide for penalties in the event of the conditions set out in these provisions arising in any registration. Section 81 relates to penalties that can be imposed on authorities under the Registration Act while Section 82 imposes penalties on persons, making false statements or believing false activities or transactions or abetting such activities to be penalized in accordance with Section 82. There is no provision under either Section 81 or Section 82 for cancellation of the deeds of sale registered as document Nos.3567 of 2023 and 3568 of 2023. In such circumstances, an enquiry for the purposes of cancellation may not be permissible. However, an enquiry to ascertain whether compliance would have to be filed before the

appropriate authorities, for punishing the petitioner or any other person, including the registration authorities, can be taken up under these provisions.

107. In such circumstances, the enquiry initiated under Section 81 and 82 of the Registration Act, 1908 cannot be deemed to be totally without jurisdiction. In such circumstances, this Writ Petition is disposed of with a direction that the enquiry initiated under the impugned show cause notices may go on. However, the scope of such enquiry would be restricted to ascertaining whether there is any infraction, covered under Section 81 or 82 of the Registration Act and to take appropriate action thereafter. Needless to say, the petitioner shall be given adequate notice and opportunity of hearing before any decision is taken. It is also made clear that the enquiry can extend to the question of cancellation of the documents if there is any other provision in the act or the rules empowering the registering authorities to take such step.

Part-III

108. Sri CH. Koteswara Rao filed I.A.No.1 of 2023 in A.S.No.707 of 2014 and I.A.No.1 of 2023 in A.S.No.645 of 2013 to implead himself as a respondent in the appeal. Similarly, Smt. M. Parvathi filed I.A.No.645 of 2013 to implead herself as a respondent in these two appeals.

109. The contention of Sri CH. Koteswara Rao, for making out a case for impleading him as a respondent is as follows:

Dr. Prasad, had entered into an agreement of sale, dated with CH. Koteswara Rao, through his General Power of Attorney Holder Sri M.

Hemanth Kumar for selling Ac.1.32 cents of land in Sy.No.256/4 of Kanuru Village, Vijayawada, and Ac.1.50 cents of land in R.S.No.45/1 of Tadigadapa Village, Vijayawada for a total consideration of Rs.17 lakhs which had been paid in full, by way of payment of Rs.8 lakhs at the time of executing the agreement of sale and the balance amount of Rs.9 lakhs, on various occasions. These payments were also recorded, by way of endorsement, on the said agreement of sale. Sri CH. Koteswara Rao was also put in possession over the said properties from the date of agreement of sale and has remained in possession of this property. These two properties are said to be the subject matter of A.S.No.645 of 2013 and A.S.No.707 of 2014 as item No.1 and item No.6 of A-schedule annexed to the plaint in O.S.No.69 of 2002.

110. The death of Dr. Prasad, and the alleged execution of the Wills, dated 05.04.1999 and 17.04.1999, were not brought to the notice of Sri CH. Koteswara Rao. Smt. Padmaja filed O.S.No.69 of 2002 concealing the agreement of sale, executed by Sri M. Hemanth Kumar, on behalf of Dr. Prasad and obtained a decree by playing fraud upon the Court. Sri CH. Koteswara Rao became aware of the decree in O.S.No.69 of 2002 and the prior death of Dr. Prasad, only when W.P.No.3807 of 2020 and W.P.No.15403 of 20221, challenging the Lok-Adalat Award, dated 21.01.2020, came to the knowledge of CH. Koteswara Rao. The judgment and decree would need to be set aside as the trust, to whom the property is said to have devolved, by virtue of the Wills executed by Dr.Prasad, is an illegal, sham and non-existent

entity created solely for the purposes of claiming the properties belonging to Sri CH. Koteswara Rao as well as the properties of Dr. Prasad. The General Power of Attorney executed by Dr. Prasad, while he was alive would remain valid as the said General Power of Attorney is coupled with interest and there was no revocation of the General Power of Attorney, by Dr. Prasad, before he passed away. Sri CH. Koteswara Rao, was constrained to file O.S.No.445 of 2018 before the I Additional Junior Civil Judge, Eluru to seek a decree for permanent injunction against Sri M. Hemanth Kumar on account of Sri M. Hemanth Kumar seeking to interfere with the possession of Sri CH. Koteswara Rao over the aforesaid properties. This litigation ended in a compromise which was recorded by the Lok-Adalat at Eluru consequent to which Award No.3 of 2020, dated 21.01.2020, was also passed by the said Lok-Adalat. Pursuant to this award, Sri CH. Koteswara Rao and Sri Hemanth Kumar approached the office of the Sub- Registrar and executed two deeds of Will dated 14.03.2023, which were registered as documents number 3567 of 2023 and 3568 of 2023.

111. Sri CH. Koteswara Rao contends that he is a bonafide purchaser for value coupled with possession which was given as part of the performance of the agreement and his possession would be protected under Section 53(A) of the Transfer of Property Act, 1882.

112. Sri CH. Koteswara Rao, relying upon the judgment of the Hon'ble Supreme Court in the case of **Razia Begum vs. Sahebzadi Anwar Begum**

and Ors.,⁴³ contends that a person who has a direct interest in a property may be added as a party to any suit relating to such property. The contention of Smt. M. Parvathi, in the application filed by her, to implead herself as a respondent to the aforesaid appeals is as follows:

Dr. Prasad, who was permanently settled in the United States of America had entrusted complete management and control over his properties, in India, to Sri Hemanth Kumar, by way of notarized General Power of Attorney on 11.08.1981 and subsequently by a registered General Power of Attorney, dated 23.12.1992. On the basis of this Power of Attorney, Sri Hemanth Kumar had executed an agreement of sale, on behalf of Dr. Prasad, with Smt. M. Parvathi on 04.07.1998 for sale of Ac.1.05 cents of land in R.S.No.80/5 of Yenamalakuduru Village and Ac.1.93 cents of land in R.S.No.45/1 of Yenamalakuduru Village for a total consideration of Rs.5 lakhs. This consideration was paid in the form of Rs.2,50,000/- at the time of execution of the agreement of sale and by way of instalments for the balance amount of Rs.2,50,000/-. The payment of the balance consideration was endorsed on the agreement of sale deeds. Smt. M. Parvathi was put in possession over the property from the date of agreement of sale and remains in possession. The death of Dr. Prasad on 19.04.1999 and the alleged execution of the Wills dated 05.04.1999 and 17.04.1999 were suppressed and Smt. M. Parvathi was not aware of all these facts till she became aware of

⁴³AIR 1958 SC 886

filing of W.P.No.3325 of 2020 and W.P.No.15383 of 2021 challenging the Lok-Adalat Award, dated 21.01.2010. Smt. M. Parvathi reiterated the contentions of Sri CH. Koteswara Ro, to the effect that the trust is an illegal, sham and non-existent entity and that the Wills are bogus and sham documents. Smt. M. Parvathi would further contend that she was constrained to file O.S.No.446 of 2019, before the I Additional Junior Civil Judge, to protect her possession over the property, on account of the attempts of Sri M. Hemanth Kumar to interfere with her possession over the said properties. Subsequently, the matter resulted in a settlement which was recorded by the Lok-Adalat at Eluru and consequently Award bearing Nos.4 of 2020, dated 21.01.2020 was passed. Smt. M. Parvathi, also relied upon the Judgment of the Hon'ble Supreme Court in **Razia Begum vs. Sahebzadi Anwar Begum and Ors.**, along with her contention that she is protected by Section 53-A of Transfer of Property Act. However, there is no claim that any deed of sale had been executed by Sri M. Hemanth Kumar in her favour, after the passing of the Award by the Lok-Adalat.

113. Smt. M. Padmaja, did not file any counter affidavit to these applications. However, the trust has filed counter affidavits. Apart from this, both Sri O. Manohar Reddy and Sri M.R. S. Srinivas, had advanced arguments. The case that is sought to be made out is that Sri M. Hemanth Kumar, had admitted, in the suit, that only sale transactions were done by him in relation to items 2 and 5 of 'A' schedule properties and no other agreements

or sale deeds had been executed by him with respect to the other properties. This would show that the claims of the implead petitioners is illegitimate and that the said implead petitioners were never in possession of the properties allegedly obtained by them.

114. It is further stated that the agreements of sale relied upon by the implead petitioners are sham documents, fabricated by the implead petitioners and Sri M. Hemanth Kumar to deprive the trust of the property. Further the suits filed by the implead petitioners against Sri M. Hemanth Kumar are collusive suits, filed for creating documents, in favour of the implead petitioners. As the documents relied upon by the implead petitioners are sham documents, no rights arise under those documents in favour of the implead petitioners. The trust further contends that Section 53-A is not applicable to the case.

115. It is also contended that the implead petitions are not maintainable as agreements of sale do not create any right and an agreement holder cannot file implead petitions. In fact, the implead petitioners do not have possession and no recent documents to prove possession had been produced before the Court.

116. The primary contentions of the implead petitioners, for being impleaded in the present appeals, is that they have entered into agreements of sale even before the demise of Dr. Prasad and have been in possession of

the respective extents of land under the agreements of sale. Thus, they have obtained clear right and title over the land which they would be entitled to protect. For such purposes, they are entitled to be impleaded as respondents in the appeals. It is the further contention of the implead petitioners that they would be entitled to assail the Wills executed by Dr. Prasad and also demonstrate that the Power of Attorney granted by Dr. Prasad to Sri M. Hemanth Kumar, which is coupled with interest, would not be affected by the demise of Dr. Prasad.

117. The contention that the implead petitioners wish to raise, in the appeal proceedings are that the Wills executed by Dr. Prasad are not valid Wills as he was under heavy medication due to which Dr. Prasad was not in a sound and disposing of mind to execute a valid Will; the Wills have not been proved, in accordance with Law; the trust that is said to have been created under the aforesaid Wills, is a sham trust which never came into existence and as such, the Wills of 05.04.1999 and 17.04.1999 are still born Wills which do not result in devolution of any property in favour of the trust.

118. The implead petitioners have also sought to press into service, a large number of documents, to demonstrate their possession over the properties in question and to prove the payment of the sale consideration set out in the agreements of sale. This court, in view of the course of action being adopted by this court, does not propose to go into these documents.

Consideration of the Court:

119. The claim of the implead petitioners, is that they are in possession of the properties handed over to them when Sri M. Hemanth Kumar had executed agreements of sale in their favour. Further, the entire consideration payable under these agreements had been paid and consequently their right and title over the said property, which has been further crystalized, by virtue of the Awards passed by the Lok-Adalat in Eluru, requires to be protected. This can be done only when they are permitted to implead themselves and adduce necessary evidence. They have also produced a large number of documents in support of their claims.

120. The aforesaid contentions, reveal that the implead petitioners seek to implead themselves on two grounds. Firstly, for the purposes of demonstrating that the Wills, said to have been executed by Dr. Prasad are non-existent and in any event the trust itself is non-existent. Secondly, their rights over the land, created by virtue of the agreements of sale, mentioned above, cannot be taken away on the basis of the aforesaid Wills.

121. The claim of the implead petitioners, is based on the agreements of sale, said to have been executed in their favour, by the power of attorney of Dr. Prasad, while he was still alive. This claim of the implead petitioners, does not get affected whether the Wills of Dr. Prasad are valid or not. In the event of the Wills being proved, as has been held in this case, the property would

devolve upon the trust. However, any such devolution, would be subject to any claim that could be raised by the implead petitioners.

122. Even if it was to be assumed that the implead petitioners are permitted to implead themselves, at this stage and are able to bring material or obtain admissions, in the cross examination of witnesses, to the effect that the Wills are invalid, the property would simply devolve upon Smt. Padmaja on one side and the sisters and brothers of Dr. Prasad on the other side. Even if the Will claimed by Sri M. Hemanth Kumar, under which the property is said to have been bequeathed to him by his mother, is also accepted, the implead petitioners would still have to obtain deeds of sale from Smt. M. Padmaja as a legal heir of Dr. Prasad.

123. In such circumstances, it does not matter whether the property devolved upon Smt. Padmaja and her mother-in-law or whether the property devolves upon a trust. It would only be in a case where the trust is non-existent that the impleaded petitioners would lose a right to prove such a point and would therefore be entitled to implead themselves for reopening the trial in the matter. This question has already been answered, in favour of the trust, while dealing with the writ petitions filed by the trust, challenging the awards and the subsequent sale deeds.

124. Another aspect that needs to be mentioned is the effect of the death of Dr. Prasad, on the registered power of attorney that had been

executed in favour of Sri Hemanth Kumar. In the Will marked as Ex.B.19, Dr. Prasad had recorded that the said power of attorney given by him, to Sri M. Hemanth Kumar, would lapse upon his death. The general law relating to termination of powers of attorney is that a power of attorney given to an agent lapses upon the death of the principal or upon the principal rescinding such General Power of Attorney. However, the death of the principal would not terminate a power of attorney, if such a power of attorney is coupled with interest. Elaborate arguments have been addressed, by both sides, to demonstrate that the General Power of Attorney executed by Dr. Prasad is coupled with interest. This Court is not going into the question of whether the General Power of Attorney is coupled with interest and whether the General Power of Attorney is still valid, or remained valid after the death of Dr. Prasad.

125. The implead petitioners, seek to implead themselves on the question of law as to whether the Wills marked as Ex.B12 and B.19 can be marked in evidence on the grounds that the said Wills cannot be produced in India without a probate in the United States of America and that the Wills have not been properly attested. Both these issues have been raised by Sri M.R.S. Srinivas appearing for Smt. Padmaja. Sri Krishna Grandhi as well as Sri D. V. Sita Ramamurthy, This issue has been considered in this judgment and the said contentions have already been negatived. In such circumstances, nothing further would be served by impleading the implead petitioners at this stage, for the purposes of raising the aforesaid issue.

126. While the presence of the implead petitioners is not necessary for adjudicating the question of the validity and applicability of the Wills to the estate of Dr. Prasad, it would still be necessary to permit the implead petitioners to agitate their rights, in relation to the agreements of sale, that they propose to place before the Courts as well as the question of whether the power of attorney executed in favour of Sri Hemanth Kumar would remain valid even after the demise of Dr. Prasad.

127. In view of the finding of this Court that the Will of Dr. Prasad is proved and valid, nothing further would survive for further adjudication, before the Trial Court. However, the issue of what properties, of Dr. Prasad, have not been alienated and remain in the estate of Dr. Prasad and the rights of the implead petitioners, over the suit schedule property remain for consideration. To that extent these appeals would have to be remanded back to the trial court, for giving an opportunity to the implead petitioners to adduce evidence, to the limited extent of demonstrating their rights over the lands claimed by them.

128. For the restricted purpose of ascertaining the rights of the implead petitioners, regarding possession and claims over the said property, before the trial court, the implead petitions are allowed.

129. Accordingly the Appeals, Writ Petitions and contempt case are disposed of in the following manner:

AS Nos.645 of 2013 & 707 of 2014

1. The Will, of 17.04.1999, of Dr. Prasad is proved and valid.
2. The shares of the firm, set out in Schedule 'B' of the Suit Schedule and the immovable properties set out in Schedule 'A' of the Suit Schedule shall devolve, according to the Will, of Dr. Prasad, dated 17.04.1999.
3. The implead petitioners in I.A.Nos.1 and 2 of 2023 in A.S.No.645 of 2013 are impleaded as respondents 10 and 11 in A.S.No. No. 645 of 2013 and the implead petitioners in I.A.Nos.1 and 2 of 2023 in A.S. No. 707 of 2014 are impleaded as respondents 14 and 15 in A.S.No.707 of 2014 respectively, for the purposes of giving them an opportunity to demonstrate their rights over the lands claimed by them, before the trial court.
4. A.S. No.645 of 2013 and A.S.No.707 of 2014 are allowed to that extent and the matters are remanded back to the trial court, to the extent set out hereinbelow.
5. The Trial Court, shall permit the implead petitioners to adduce evidence, for ascertaining their possession and rights over the lands said to be in their possession, by virtue of the agreements, said to have been executed in their favour, by Sri Hemanth Kumar, as the power of attorney holder of Dr. Prasad and whether they can be evicted from such possession, if they are found to be in possession of these lands. The scope of this enquiry shall be restricted to this aspect only and shall

not be extended, in any manner, to the validity of the Will, of 17.04.1999.

6. The Trial Court, after ascertaining the rights and claim of the implead petitioners, shall determine the suit schedule properties, which are available for devolution, according to the Will of Dr. Prasad, and pass necessary Final Judgment and Decree.
7. None of the observations of this court, over the right and claims of the implead petitioners, shall be taken into account by the trial court and the trial court shall decide the said issues, in accordance with law, and uninfluenced, by the observations of this court.
8. **W.P. No.3325 & 3807 of 2020; 15383, 15403 of 2021, are allowed and** the Awards of the Lok Adalat, in Eluru in Adalat Case No. 3 of 2020 dated 21.01.2020 and Lok Adalat case No.4 of 2020, dated 21.01.2020, in O.S.No.446 of 2019, before the Principal Junior Civil Judge, Eluru are set aside.
9. **W.P.No.13966 of 2023**, is dismissed leaving it open to the Trust, to pursue O.S.No.1692 of 2023, pending before the III Additional Junior Civil Judge-cum- III Additional Metropolitan Magistrate, Vijayawada.
10. **W.P.No.16510 of 2023**, is disposed of, in terms of this order.
11. In view of the above findings and directions, it would be appropriate to close **C.C. No.5225 of 2023** and the same is closed.

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

There shall be no order as to costs.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J
RJS

**THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR**

**WRIT PETITION NOS:3325 & 3807 of 2020; 15383, 15403 of 2021, 13966 &
16510 of 2023; AS Nos.645 of 2013 & 707 of 2014 & CC No.5225 of 2023**
(per Hon'ble Sri Justice R.Raghunandan Rao)

06.03.2026

RJS