



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

[3397]

MONDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY SIX

PRESENT

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

SECOND APPEAL NO: 78/2025

Between:

Chodiseti Sreenivasa Rao and Others

...APPELLANT(S)

AND

Vasamsetti Somasundeswara Rao and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1. V S K RAMA RAO

Counsel for the Respondent(S):

1. KANAKALA DEVI PRASANNAKUMAR

2. T RAGHU PRASAD

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.78 of 2025

JUDGMENT:

This second appeal is filed aggrieved against the Judgment and decree dated 24.09.2024, in A.S.No.149 of 2015, on the file of the I Additional Senior Civil Judge, Kakinada, confirming the Judgment and decree dated 25.08.2015 in O.S.No.836 of 2007, on the file of the II Additional Junior Civil Judge, Kakinada.

2. The appellants herein are the defendant Nos.1 and 2, the respondent Nos.1 to 5 are the plaintiffs and the respondent No.6 is the defendant No.3 in O.S.No.836 of 2007, on the file of the II Additional Junior Civil Judge, Kakinada. During the pendency of appeal suit, the respondent No.3 herein i.e. the plaintiff No.4 in O.S.No.836 of 2007, died and the respondent Nos.7 to 9 herein were brought on record as the legal representatives of the deceased respondent No.3 herein.

3. The plaintiffs initiated action in O.S.No.836 of 2007, on the file of the II Additional Junior Civil Judge, Kakinada, with a prayer for declaration and possession of the schedule mentioned property. During the pendency of the suit, the plaintiff No.1 died and the plaintiff Nos.4 to 6 are added as the legal representatives of the deceased plaintiff No.1.

4. The learned II Additional Junior Civil Judge, Kakinada, after conclusion of trial, decreed the suit without costs. Felt aggrieved of the same, the

unsuccessful defendant Nos.1 and 2 in the above said suit filed the appeal in A.S.No.149 of 2015, before the learned I Additional Senior Civil Judge, Kakinada. The learned I Additional Senior Civil Judge, Kakinada, dismissed the first appeal by confirming the judgment and decree passed by the trial Court. Aggrieved thereby, the unsuccessful defendant Nos.1 and 2/appellants approached this Court by way of second appeal.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in the original suit.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.836 of 2007, is as follows:

The plaintiff No.1 is the father of the plaintiff Nos.2 and 3 and the plaint schedule property is the joint family property of the plaintiff No.1, which was purchased under registered sale deed dated 06.05.1968. The plaintiff No.1 pleaded that he purchased the property from one Siddana Sathiraju and the plaintiffs vendors are in possession since 1907. The plaintiffs further pleaded that the plaint schedule property is a Gramakantam in Sy.No.402/1 and it is vacant site. The plaintiffs further pleaded that the defendant Nos.1 and 2 created a gift deed dated 16.10.2006, in their favour and they also created a sale deed dated 15.03.2007, in favour of the defendant No.3. The plaintiffs further pleaded that the alleged sale deed and the gift deed created by the defendants is not binding on them and on 15.03.2007, the defendant Nos.1 and 2 along with the defendant No.3 trespassed into the schedule property.

The plaintiffs further pleaded that on 12.03.2007, the defendants came to know about the encroachment and subsequently, the defendants created a sale deed. Hence, the plaintiffs are constrained to file the present suit.

7. The defendant No.2 filed written statement before the trial Court and the same was adopted by the defendant No.1. The brief averments in the written statement filed by the defendant No.2 are as follows:

The plaintiff schedule property and the house property situated to its west in a single plot admeasuring 165 feet X 65 feet, which is the ancestral property of the defendants. The defendant No.2 pleaded that the father of the defendant Nos.1 and 2 constructed the house abutting the road on the west and kept the vacant site on the east for the purpose of thatching cattle as it is a coconut garden and they planted 11 coconut trees aged about 20 years and they left a passage with a door way in the northeast corner of the house property leading into the plaintiff schedule property. The defendant No.2 further pleaded that a septic latrine tank was constructed in the southwest corner of the house property of the defendant Nos.1 and 2 and further, the plaintiffs' vendor Sathiraju is not the owner of the plaintiff schedule property and he was never in the possession. The defendant No.2 further pleaded that on 16.10.2006, the defendants' mother and sisters executed a gift deed and the defendants sold the house property to the defendant No.3 and since then the defendant No.3 is in possession of the property.

The defendant No.2 filed the additional written statement stating that the plaintiff No.1 is having two daughters and they were not added as parties and that the suit is bad for mis-joinder and non-joinder of necessary parties and as such, he prayed for dismissal of the suit with costs.

8. Defendant No.3 filed a written statement before the trial Court. The present second appeal is preferred by the defendant Nos.1 and 2. The defendant Nos.3 has not preferred the second appeal along with the defendant Nos.1 and 2.

9. On the basis of above pleadings, the learned II Additional Junior Civil Judge, Kakinada, framed the following issues for trial:

- 1) Whether the plaint schedule property is the ancestral property of defendant Nos.1 and 2 as contended by the defendant Nos.1 and 2?
- 2) Whether the sale deed dated 06.05.1986 executed in favour of 1st plaintiff is true?
- 3) Whether the plaintiffs are entitled for declaration of title and possession over plaint schedule property as prayed for? and
- 4) To what relief?

The trial Court had also framed the following Additional Issue:

- 1) Whether the suit is bad for mis-joinder and non-joinder of necessary parties?

10. During the course of trial before the trial Court, on behalf of the plaintiffs, P.Ws.1 and 2 was examined and Exs.A-1 to A-4 were marked. On behalf of the defendant Nos.1 and 2, D.Ws.1 to 4 were examined and Exs.B-1 to B-3 were marked.

11. The learned II Additional Junior Civil Judge, Kakinada, after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, decreed the suit without costs. Felt aggrieved thereby, the unsuccessful defendant Nos.1 and 2 in the aforesaid suit filed the appeal suit in A.S.No.149 of 2015, on the file of the I Additional Senior Civil Judge, Kakinada, wherein the following points came up for consideration:

- 1) Whether there are any irregularities either in appreciating the evidence or giving findings by the trial Court in its judgment in O.S.No.836 of 2007 dated 25.08.2015 and if so, interference of appellate Court is warranted? and
- 2) What relief?

12. The learned I Additional Senior Civil Judge, Kakinada, i.e., the first appellate Judge, after hearing the arguments, answered the points, as above, against the defendant Nos.1 and 2 and dismissed the appeal suit filed by the defendant Nos.1 and 2. Felt aggrieved of the same, the defendant Nos.1 and 2 in O.S.No.836 of 2007 filed the present second appeal before this Court.

12. Heard Sri V.S.K.Rama Rao, learned counsel for the appellants, Sri T.Raghu Prasad, learned counsel appearing for the respondent No.1 and Sri Kanakala Devi Prasanna Kumar, learned counsel appearing for the respondent Nos.4, 7 to 9.

13. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. It is regulated in accordance with law. A second appeal preferred under Section 100 of C.P.C., could be admitted only when the appellants satisfy the Court that substantial question of law between the parties arise in the case. A proper test for determining whether a question of law raised in the case is substantial would be or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by the superior Courts or is not free from difficulty or cause for discussion of alternative views. In a case of **Boodireddy Chandraiah v. Arigela Laxmi**¹, the Apex Court held that it is not within the domain of High Court to investigate grounds on which the findings were arrived at by the last Court of fact namely, the first appellate Court. In a case where from a given set of circumstances two inferences of facts are possible, one drawn by the lower appellate Court will not be interfered by the High Court in a second appeal. Adopting any other approach is not permissible. Where, the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. Mere appreciation of facts,

¹ (2007) 8 SCC 155

documentary evidence and contents of documents cannot be held to be raising a substantial question of law.

14. The defendant Nos.1 and 2 having chosen to invoke the jurisdiction of this Court under Section 100 of Civil Procedure Code, it is for them to meet the above principles and satisfy the Court whether there exists any substantial question of law.

15. This second appeal is filed against the concurrent findings arrived by both the Courts below, therefore, the grounds urged in the second appeal are to be scrutinized to find out whether the appellants has shown any substantial question of law. The contention of appellants is that the judgment and decree of the trial Court as well as the first appellate Court are contrary to law and that the second appeal may be allowed by setting aside the judgment and decree passed by both the Courts below i.e. the trial Court as well as the first appellate Court.

16. The suit for declaration of title and possession is filed by the plaintiff Nos.1 to 3 against the 3rd parties and during the pendency of the suit, the plaintiff No.1 died and his other sons and wife were added parties i.e., as plaintiff Nos.4 to 6 in the suit. The claim of the plaintiffs is that the plaintiff No.1 purchased the plaint schedule property under a registered sale deed dated 06.05.1968, and since then the plaintiff No.1 is in possession of the plaint schedule property as a manager of joint family. As noticed *supra*, the plaintiff Nos.2 to 5 are the sons and the plaintiff No.6 is the wife of the plaintiff No.1

and the plaintiff No.1 is aged about 80 years as on the date of filing of the suit in the year 2007. The claim of the plaintiff No.1 is that he purchased the plaint schedule property vacant site to an extent of 435 Sq.yds with coconut trees under a registered sale deed dated 06.05.1968. The plaintiffs relied on Ex.A-1 registered sale deed dated 06.05.1968, said to have been executed by his vendor in favour of the plaintiffs. The suit for relief of declaration of title and possession is filed before the trial Court on 23.03.2007, and the plaintiffs pleaded that they came to know that the defendant Nos.1 and 2 have created a gift deed dated 16.10.2006, in their favour with regard to the plaint schedule property and trespassed into the plaint schedule property and on 15.03.2007, the defendant No.3 purchased the property from the defendant Nos.1 and 2 and they came to know about the trespass into the plaint schedule property by the defendants in the year 2007. The suit for declaration of titled and possession has been filed by the plaintiff Nos.1 to 3 in the year 2007 against the defendants before the trial Court.

17. The claim of the defendant Nos.1 and 2 is that it is their ancestral property and their mother and sister executed a gift deed on 16.10.2006, and sold the house property to the defendant No.3 under a registered sale deed dated 15.03.2007, i.e. just eight (08) days prior to the filing of the suit and the plaintiffs are no way concerned with the plaint schedule property.

18. The trial Court after full-fledged trial decreed the suit in favour of the plaintiffs on contest by both the parties. The First Appellate Court confirmed the findings arrived by the trial Court. The learned counsel for the appellants

contended that except mere filing of Ex.A-1 registered sale deed, the Ex.A-1 registered document is not at all proved by the plaintiffs and the attestors of Ex.A-1 are not examined by the plaintiffs and both the Courts below erroneously came to a conclusion that under Ex.A-1 registered sale deed dated 06.05.1968, the plaintiff No.1 is having valid title in the plaint schedule property.

19. The plaintiffs relied on Ex.A-1 registered sale deed dated 06.05.1968, under which the plaintiff No.1 purchased the total plaint schedule property of vacant site to an extent of 435 Sq.yds. The defendant No.2 also admitted in his evidence that he came to know that the plaint schedule property was sold to the plaintiff No.1 by Siddana Sathiraju and he knows the Siddana Sathiraju. As stated *supra*, Ex.A-1 registered sale deed is dated 06.05.1968, which is more than thirty (30) years document. The sale deed produced was executed in the year 1968, and the suit came to be filed in the year 2007, i.e. thirty eight (38) years after the execution of the sale deed in favour of the plaintiff No.1. According to the defendant No.2, the vendor of the plaintiffs by name Siddana Sathiraju died. By the date of filing of the suit the defendant Nos.1 and 2 are aged about 44 years and 42 years respectively. Therefore, by the date of Ex.A-1 registered sale deed, both the defendants are aged about 8 years and 4 years respectively.

20. Section 90 of the Indian Evidence Act, 1872, reads as follows:

Section 90- Presumption as to documents thirty years old –

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested."

21. The plaintiff No.1 herein is the purchaser of the plaint schedule property vacant site to an extent of 435 Sq.yds, under Ex.A-1 registered sale deed dated 06.05.1968, Ex.A-1 registered sale deed is more than thirty five (35) years old document. When a thirty (30) years document is produced from a proper custody, question of examining such document by examining the witnesses or scribe does not arise in view of the presumption under Section 90 of the Indian Evidence Act, 1872. Therefore, admittedly the property stands in the name of the plaintiff No.1 and he purchased the same by paying sale consideration to his vendor. Even as per the own case of the defendant Nos.1 and 2, the vendor of the plaintiff No.1 Siddana Sathiraju died, therefore, the contention of the defendants that Ex.A-1 is not at all proved is unsustainable.

22. The claim of the defendant Nos.1 and 2 is that the schedule property site is the ancestral property and except the self-serving statement of the defendant Nos.1 and 2, no other evidence is produced by the defendant Nos.1 and 2 to show that the plaint schedule property is their ancestral property. Admittedly, the defendant No.1 did not enter into the witness box and the defendant No.2 admits that no registered document is in their favour in respect of the plaint schedule property site and there is no document to show that the plaint schedule property is their ancestral property, even he do not remember the survey number and he is working in a private company at

Visakhapatnam, and the suit schedule property is situated at Korangi Village of East Godavari District, which is situated at a distance of 200Kms from Visakhapatnam. The defendant No.2 relied on Ex.B-3, registration extract of the sale deed, which relates to the 1996, dated 21.11.1996, it relates to the Eastern boundary holder by name Kunchanapalli Seetharatnam, who is no way connected with the suit schedule property vacant site. The defendants relied on Ex.B-1 and Ex.B-2 photos. Ex.B-1 and Ex.B-2 are not the conclusive proof of the title of defendant Nos.1 and 2. The defendant Nos.1 and 2 relied on the gift dated 16.10.2006, said to have been executed by their mother and sister just five (05) months prior to the filing of the suit. In fact the original gift deed is not at all filed by the defendants. The registration extract of the said gift deed is filed by the plaintiffs and got exhibited the same as Ex.A-2. Moreover, the alleged gift deed does not contain that it is the ancestral property of the defendant Nos.1 and 2. The defendant Nos.1 and 2 without having any valid title, alienated the said property to the defendant No.3 under a registered sale deed dated 15.03.2007, i.e. just eight (08) days prior to the filing of the suit. Moreover, the defendant No.3 also failed to produce the original registered sale deed and he did not enter into the witness box. The registration extract of the said sale deed is filed and got exhibited as Ex.A-3 by the plaintiffs.

23. The law is well settled that *“The execution of or registration of a document by itself will not create any new title, and the execution of or registration of such document covering an immovable property is governed by*

*the principle **Nemo Dat Quad Non Habet**, which means 'no person can transfer/pass a better title than what he possesses in the property so transferred'. Given the fact that transfer of an immovable property is governed by this principle, the registering authority when receives a document and registers it, does not decide title of the persons executing the document. Therefore, mere registration of a document will not confer any new title, and in the case of any title disputes arising out of such registrations, they are subject to and decided under the provisions of various other laws, governing the transfer of immovable property”.*

24. The contention of the defendant Nos.1 and 2 is that the plaint schedule property to an extent of 435 Sq.yds, and their house property, which is situated to the Western side is a single plot and it is their ancestral property. Even according to the own witness of the defendant Nos.1 and 2 viz., D.W.3, the defendant Nos.1 and 2 are the sons of his maternal uncle and there is a wall in between the suit property and the house property of the defendant Nos.1 and 2. Therefore, it is evident that the suit schedule property and its Western side house property of the defendant Nos.1 and 2 are separated by wall, even, if it is assumed that the defendant Nos.1 and 2 are in possession of the plaint schedule property site and house as a single plot, there is no need to separate the suit schedule property vacant site and the house property by constructing a wall. Moreover, the parties to the suit the defendant Nos.1 and 3 did not enter into the witness box to prove their witness.

25. In a case of ***Vidhyadhar Vs. Manikrao and another***², the Apex Court held as follows:

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.”

26. In the present case, the defendant Nos.1 to 3 did not enter into the witness box. The defendant No.3, who is the alleged purchaser of the property also did not enter into the witness box to prove the defence. Even as per the own admissions of the defendant No.2, there is no scrap of paper to show that the plaint schedule property is their ancestral property. The plaintiff relied on the evidence of P.W.2. P.W.2 asserts in his evidence that the deceased plaintiff No.1 purchased the plaint schedule property in the year 1968, and since the date of purchase, the plaintiffs are in peaceful possession and enjoyment of the same. He further deposed that the defendant No.3 is the owner of the property, which is situated on the Western side of the plaint schedule property and previously one Vatsavai Veerabhadra Rao, used to reside in the western portion of the plaint schedule property and the defendants have no manner of right in the plaint schedule property. He further deposed that the defendants highhandedly encroached upon the plaint schedule property in the year 2007. His evidence also clearly goes to show that the plaint schedule property vacant site is a separate property, whereas

² AIR 1999 Supreme Court 1441(1)

the defendant No.3 property is a separate property and the defendants encroached into the plaint schedule property in the year 2007.

27. It was contended by the learned counsel for the appellants that P.W.2 admits coconut trees were planted by one Chodisett Sriramulu are aged about 40 years. D.W.3 himself admitted in his evidence that there are coconut trees in the defendants house premises. It does not mean that the suit schedule property belongs to the defendant. The fact remains that the suit schedule property site is a vacant site in an extent of 435 Sq.yds, the defendant No.2 as D.W.1 asserts in his evidence in cross-examination that one Bhulokamma is having house towards Eastern side of the schedule property and there is a road on the Southern side of the suit schedule property and one Nagabothula Rama Rao is having property in Northern side and the same boundaries were mentioned in Ex.A-1. According to the plaintiff/P.W.1, the defendants occupied the vacant site in the year 2007.

28. It was contended by the learned counsel for the appellants that the daughters of the plaintiff No.1 are not added as the parties to the suit and that the suit itself is not maintainable. Here, the suit for relief of declaration of title and possession is filed against the 3rd parties and the defendants herein are not the co-sharers. In the case at hand, the plaintiff No.1 himself purchased the plaint schedule property under a registered sale deed a way back in the year 1968 and he himself filed the suit along with his sons for the declaration of title against the 3rd parties and the defendants are in possession of the schedule property. As stated *supra*, the father of the plaintiff Nos.2 to 5 and

the husband of the plaintiff No.5 himself filed a suit against 3rd parties for seeking relief of declaration of title and also possession of the property. During the pendency of the suit, the plaintiff No.1 died and his other sons and wife were added as parties i.e. as plaintiff Nos.4 to 6. Therefore, the aforesaid objection raised by the appellants is unsustainable. For the aforesaid reasons, this Court is of the considered view that the plaintiffs have proved their title in the plaint schedule property. Therefore, the plaintiffs are entitled for recovery of possession of the suit schedule property.

29. Having regard to the reasons assigned, this Court is satisfied that the concurrent findings of fact recorded by both the Courts below on all the issues/points in favour of the plaintiffs and against the defendant Nos.1 and 2 do not brook interference and that both the Courts below are justified in decreeing the suit of the plaintiffs. The findings of fact recorded by both the Courts below were based on proper appreciation of evidence and the material on record and there was neither illegality nor irregularity in those findings and therefore, the findings do not require to be upset. Further, the existence of a substantial question of law is a sine qua non for the exercise of jurisdiction by this Court as per Section 100 of Code of Civil Procedure. The questions raised, strictly speaking, are not even pure questions of law, let alone substantial questions of law.

30. In the result, the second appeal is **dismissed** at the stage of admission, confirming the judgment and decree of both the Courts below and three (03) months time is granted to the defendants to deliver the vacant possession of

the plaint schedule property to the plaintiffs in O.S.No.836 of 2007, on the file of the II Additional Junior Civil Judge Court, Kakinada. Pending applications, if any, shall stand closed. No costs.

V. GOPALA KRISHNA RAO, J.

Date: 16.03.2026

SRT