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Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

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New Year

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PART - 1 (15TH JANUARY 2018)

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SUBJECT - INDEX

CIVIL PROCEDURE CODE, Sec.39(1) & (4) - Trial court decreed suit and also allowed the Execution petition preferred by the Decree holder/2nd Respondent to send for amounts of the Judgment-debtor/ 1st Respondent, lying to the credit of the petitioner, who is the garnishee – Both the Judgment debtor and also the garnishee are residing outside the jurisdiction of the Trial court, which passed decree – Assailing same, garnishee preferred present revision.

Held – Execution petition filed by decree-holder before court below, which passed decree is not maintainable and said decree has to be transferred, as per provisions under sub sections (1) and (4) of Section 39 of CPC to court of competent jurisdiction for purpose of execution of such decree – Order of execution petition by court below is set aside – Civil revision petition is allowed. **(Hyd.)** ***12***

CIVIL PROCEDURE CODE, Sec. 50 & Order 21 Rule 16 - Executability of a decree for permanent injunction against the Legal representatives of Judgment-debtor – After the death of judgment-debtor, his legal heirs in violation of decree for permanent injunction tried to forcibly dispossess the decree-holder from scheduled property and contended that they were not bound by the decree for permanent injunction.

Held – When right litigated upon is heritable, decree would not normally abate and can be enforced by legal representatives of decree holder and against judgment-debtor or his legal representatives – It is apparent from Section 50 of CPC that when a judgment-debtor dies before decree has been satisfied, it can be executed against legal representatives - It would be against public policy to ask decree-holder to litigate once over again against legal representatives of judgment-debtor when cause and injunction survives – Impugned Order of High court is set aside - Appeal is allowed. **(S.C.) 6**

CIVIL PROCEDURE CODE, Or.6 Rule 17 - **CONSTITUTION OF INDIA,** Art.227 - Appeal against the Judgment of High Court, where by, the Order of Trial Court allowing an application filed by appellant for amendment of written statement was set aside – Case, which was sought to be set up in proposed amendment was an elaboration of what was stated in written statement.

Held – Whether an amendment should be allowed is not dependent on whether case which is proposed to be set up will eventually succeed at the Trial – In enquiring into merits, High Court transgressed limitations on its jurisdiction under Article 227 and in exercise of its jurisdiction under Article 227, High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess evidence upon which the inferior court or tribunal has passed an Order - View taken by High Court is impermissible – Impugned Judgment is set aside – Appeal is allowed.

(S.C.) ***1***

CIVIL PROCEDURE CODE, Or.37 – Summary Procedure – Respondent, who is defendant in original suit filed an application under Order 37 Rule 3(5) of CPC seeking leave of Trial Court to defend suit and court granted him leave on a condition to deposit a certain sum within a time frame – He later filed an IA before Trial Court and it allowed IA of respondent, holding that he was entitled to cross-examine petitioner on affidavit filed by him for passing Judgment and to argue matter – Aggrieved thereby petitioner/plaintiff preferred instant revision.

Held – Thrust of the Summary procedure prescribed under Order 37 CPC is to prevent unreasonable obstruction by a defendant who has no real defence – Right of defendant to cross-examine plaintiff or his witness flows from leave to defend granted under Order 37 Rule 3(5) CPC – Unless and until defendant complies with conditional order, whereby he was granted leave to defend , it is not open to him to seek to cross-examine either plaintiff or any witness examined on his behalf or to advance arguments – Order under revision is set aside – Civil Revision Petition is allowed. ***(Hyd.) 8***

CONSTITUTION OF INDIA, Arts.14, 16, 19 & 21 - In the instant second appeal, appellant contended whether Judicial Courts would have subject matter jurisdiction over any decision taken by an association and whether rules, regulations and bylaws of an unregistered association can be put for the scrutiny of judicial Courts and struck down rule as arbitrary upon touch stone of Articles 14, 16, 19 and 21 of Constitution of India ? - Appellants application for permanent membership in 1st respondent club was refused as he was not elected – He contended that rejection of his permanent membership is illegal and against principles of natural justice as club did not assign any reasons for his rejection.

Held – Unless by express mode or by necessary implication barred, Courts jurisdiction permeates into every civil matter including that of private organisations, associations and even clubs – Secret balloting was conducted wherein appellant was not elected - No violation of principles of natural justice or procedure - Second appeal is dismissed. **(Hyd)** ***18***

ESSENTIAL COMMODITIES ACT, Sec.6-A – **A.P. PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008,** Cl.17 – **A.P. SCHEDULED COMMODITIES (LICENSING, STORAGE AND REGULATION) ORDER, 2008** – Cases filed for illicitly transporting PDS rice without valid documents, u/S.6-A of E.C. Act - Seizure for illicitly transporting PDS rice without any valid documents - Purchasing PDS rice interrupting process of smooth functioning of public distribution system in contravention of Control Order, 2008 - Confiscation of seized stock in favour of government and imposing penalty on owners of lorries.

Sessions Judge in appeals modified the Orders, of Confiscation passed by the Collector to some extent – Once there are violations, which clearly prone to seizure and initiation of proceedings under provisions of E.C. Act for violation of Control Order and prone to confiscation, no way require interference, but for if at all to consider interference on quantum of confiscation of seized stock though not to reduce vehicle penalty.. **(Hyd.) 25**

(INDIAN) PENAL CODE, Secs. 148, 149, 302 & 324 - **CRIMINAL PROCEDURE CODE,** Sec.374(2) – Trial Court convicted all the ten accused – Aggrieved thereby, ten accused preferred instant appeal.

Held – position of law as to contradiction between medical evidence and ocular evidence can be crystallised to effect that ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes ocular testimony improbable – In instant appeal Medical evidence outweighs the ocular evidence – Actual eye witnesses were clearly tutored and planted eye witnesses further diluted their testimony – Prosecution suppressed genesis and origin of occurrence – Benefit of doubt would therefore have to be given to accused – Appeal is allowed and impugned judgment is set aside.. **(Hyd.) 34**

(INDIAN) STAMP ACT, Art.35(a) and Sec.33 – Question as to whether petitioners are to be mulcted with higher stamp duty by treating the mortgage deed as one burdened with transfer of possession to the mortgagee necessitating payment of higher stamp duty.

Held - To attract stamp duty under Article 35(a) mortgagor must hand over possession of subject property to mortgagee – In the instant case possession of scheduled properties was not handed over to mortgagee – Handing over possession to mortgagee cannot be assumed unless clear intention is expressed in the mortgage deed – Hence petitioners cannot be mulcted with higher stamp duty by invoking Article 35(a) of schedule I-A of the Indian Stamp Act – Contrary action of the respondents is not sustainable – Writ petition is not allowed. **(Hyd.)** ***1***

--X--

LAW SUMMARY
2018 (1)
JOURNAL SECTION

EXPANSION OF THE SCOPE OF SECTION 320 OF THE CODE OF CRIMINAL PROCEDURE, 1973 :: NEED OF THE DAY

By
Sri Mohd.Nazeer Ul Ain,
Junior Civil Judge, Parchur

No day passes in a Court, dealing with Criminal cases, where a Magistrate has not heard two words “Hostile” and “Compromise”. Though “Compromise” is identified in Section 17 (2)(vi) of The Registration Act and Order 33 Rule 3 of the Code of Civil Procedure, 1908 and “Hostility” in Defence Laws, these two words are ignored in all Criminal laws, though commonly heard in a Criminal Court across the length and breadth of the Country.

In a case pending for trial, if both the parties arrive at compromise, the matter is referred to Lok Adalat for recording the same. A real controversy arise when the case for trial is a non-compoundable one, but adjusted out of Court. The trial Court cannot refer the matter to Lok Adalat, because, it is a Non- compoundable one. If at all, it is referred, the same will be bounced hack for the same reason. Then what is the remedy? Either the parties shall approach Courts of Equity such as Hon’ble High Court which is vested with power of quashing a Criminal case on several grounds. In *B.S.Joshi Vs. State of Haryana (2003) 4 SCC 675* it was ruled that though an offence is non-compoundable, as it is not inserted in Section 320 Cr.P.C, yet, High Court can Quash U/Sec.482 Cr.P.C, when the parties have arrived at a compromise. If parties to the proceedings are financially sound, they can venture to approach Honourable High Courts, for the relief. What about the poor litigants who stand before a Magistrate seeking closure of case on the account of compromise in a non-compoundable case? Take an example, where an accused is charged with an offence under Section 326 IPC for causing grievous hurt to his younger brother. Either they shall approach the High Court for getting the case quashed, or on the ground of compromise, the injured brother shall take an oath in witness box that “what shall I state....... Nothing but truth” and consciously depose falsehood that accused never caused grievous injury to him. The first one is expensive and the second is against to one’s own conscious. Owing to the poverty or to avoid costs of the litigation to approach higher Courts, the parties opt for the latter and the Magistrate, knowing fully well that the witness is deposing falsehood, on oath, records it for “disposal of the case”. Then, what happened to the saying......”Let heavens fall......... Truth shall prevail”???

No doubt, law should he rigid in some aspects. But, it should be flexible in some causes. After all, it is his/her own cause. Voyage of trial is not to keep an offender behind the bars but only to find out the truth to give him an opportunity to think for the sin committed by him and to change himself in loneliness. When, the accused changed his attitude, begs directly with the victim to pardon him, how could law come in their way by a query that “no....no.... the case is Non- Compoundable one”?

When the Courts are taking liberal approach in cases involved for partition of properties, worth of thousands of crores, by saying that, the parties are real brothers, they can go for amicable settlement; why not the Courts have the same approach in cases such as Sec.326 IPC etc where in also, rival parties are blood related?

At this juncture, I remember a news published, in a News papers, long ago, wherein a mother pardoned a convict, who murdered her son, in some Islamic Country. In that case, the Government of that Country has remitted the capital punishment and let the murderer go free. A charge U/Sec.326 IPC is not grusome than a murder. Then, why not the scope of Sec.320 Cr.P.C be expanded, permitting the victim to compound an offence, though the accused is charged with “Non- Compoundable” case???.

Though not for the sake of parties, but for the sake of Magistrates who are believing the untrue evidence deposed on oath and acquitting the culprit by unbelieving the true allegations in the Charge sheet, supported by wound certificate, the author wishes the expansion of the scope of Section 320 of the Code of Criminal Procedure, 1973 be expanded, as the same is the need of the day.

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LAW SUMMARY

2018 (1)

State of Telangana and the State of Andhra Pradesh High Court Reports

2018(1) L.S. 1

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice
P. Naveen Rao

Bhanu Prasad Alluri & Ors., ..Petitioners

Vs.

The Chief Controlling Revenue Authority & Commissioner & Ors., ..Respondents

INDIAN STAMP ACT, Art.35(a) and Sec.33 – Question as to whether petitioners are to be mulcted with higher stamp duty by treating the mortgage deed as one burdened with transfer of possession to the mortgagee necessitating payment of higher stamp duty.

Held - To attract stamp duty under Article 35(a) mortgagor must hand over possession of subject property to mortgagee – In the instant case possession of scheduled properties was not handed over to mortgagee – Handing over possession to mortgagee cannot be assumed unless clear intention is expressed in the mortgage deed – Hence petitioners cannot be mulcted with higher stamp duty by invoking Article 35(a) of schedule I-A of the Indian Stamp Act – Contrary action of the respondents is not sustainable – Writ petition is allowed.

W.P.NO.5210 /2009 Date:13-11-2017

Cases referred:

AIR 1926 Mad 1038
AIR 1972 Delhi 146
AIR1995AP329=MANU/AP/0056/1995
AIR 1926Mad1038=MANU/TN/0187/1926
(1884) ILR 10 Cal 274

Ms. Neha for Sri S. Ravi, Advocate for the petitioners.
Learned Special Government Pleader for the State, Advocate for the Respondents.

O R D E R

Short but important point that arises for consideration in this Writ Petition is, whether the petitioners are to be mulcted with higher stamp duty by treating the mortgage deed as one burdened with transfer of possession to the mortgagee necessitating payment of higher stamp duty

as per Article 35(a) of the Indian Stamp Act, 1899.

2. Petitioners were served notice under Section 40 of Indian Stamp Act informing them that the Sub Registrar impounded the Deed of Mortgage entered by them with Global Trade Finance Limited under Section 33 of the Act. Petitioners were informed that document requires payment of stamp duty of ?.10,00,000.00 under Article 35 (a) of Schedule I-A to Act. Petitioners were asked to appear and pay deficit duty or to put forth objections. Not satisfied by the explanation offered, the District Registrar passed orders dated 12.9.2008 demanding to pay deficit stamp duty and penalty. Aggrieved thereby, petitioners preferred appeal to Chief Controlling Revenue Authority. Who, in turn, passed orders dated 24.1.2009 affirming the decision of District Registrar. This writ petition is filed seeking declaration that mortgage deed dated 29.2.2008 is an instrument chargeable under Article 35(a) of Schedule I-A of the Act.

3. Heard Ms. Neha, learned counsel representing Sri S. Ravi, learned Senior Counsel for the petitioners, and learned Special Government Pleader for the State.

4.1. Learned counsel for the petitioners contended that it is simple mortgage deed. Taking through the terms of the mortgage deed, she would contend that the terms of deed, particularly Clauses 4, 5, 5.1 and 6 clearly indicate that there was never an intention to handover possession of the schedule mentioned properties to the mortgagee and properties remained in possession and enjoyment of the mortgagor. She would therefore contend that Article 35(a) of the Indian Stamp Act is not attracted and there is no obligation on the part of the petitioners to pay higher stamp duty as demanded.

4.2. Learned counsel further contended that though the opening portion of the agreement mentions to have and to hold and English mortgage, the other clauses of deed clearly point out that possession was not handed over. The cumulative reading of various, Clauses of the agreement would clearly show that there was never an intendment to handover possession of the schedule properties, and possession remained with the mortgagor.

4.3. Learned counsel further contended that the very terms used in paragraph No.1 vis--vis identical provision to that of Article 35 of the Indian Stamp Act was considered by the Full Bench of Madras High Court in the BOARD OF REVENUE V. MOOPANNA SOMARAZU(1) and Full Bench of Madras High Court held that mere using of terms, such as, to have and to hold and the English Mortgage do not amount to handing over possession and the agreement should indicate in clear terms handing over possession and not on happening of a future event. She would submit that in the case on hand also mortgagee was entitled to

1.AIR 1926 Mad 1038

take possession of scheduled property and to deal with the properties only in the event of default in repayment.

4.4. According to learned counsel, the Full Bench of Delhi High Court in DHOOMI MAL RAM CHAND V. THE COLLECTOR OF STAMPS(2) took similar view and the Full Bench decision of the Madras High Court was followed by this Court in MEKAPATHULA LINGAREDDY V. DURGEMPUDI GANGIREDDY(3) .

5.1. Per contra, learned Special Government Pleader contended that the opening portion of the agreement as well as first paragraph of the agreement clearly indicate that it is an English Mortgage and the deed of mortgage is burdened with handing over possession and therefore Article 35(a) of the Stamp Act is attracted. 5.2. By drawing the attention to the definition of English Mortgage as defined in Section 58 (e) of Transfer of Property Act, 1882, learned Special Government Pleader would submit that the parties were conscious of the requirements of the English Mortgage and using the word English Mortgage in the opening part of the agreement and other terms in the first paragraph of the agreement indicate clear intention of parties to the deed to hand over possession to the mortgagee. He would submit that to attract the provision in Article 35 (a) of the Stamp Act intention to transfer possession is sufficient and actual transfer of possession is not required. He would submit that other terms of agreement are worded to mislead and to give an impression as if possession continued to vest in the mortgager and to avoid payment of higher stamp duty.

5.3. He further submitted that it is not possible for the registering authority to verify when the possession was taken to make a demand for payment of required stamp duty under Article 35 (a) and by virtue of such misleading clauses introduced into the agreement mischievously the petitioners cannot avoid payment of specified stamp duty. He submitted that the judgment of the Madras High Court does not come to the aid of the petitioners as the terms used in the said document are not similar to the terms used in the present agreement. The present agreement clearly points out handing over possession to the mortgagee. He would therefore submit that the mortgage deed squarely falls within Article 35(a) and petitioners are required to pay higher stamp duty.

6. Article 35 of Schedule-IA of Indian Stamp Act reads as under:

Article 35. Mortgagee Deed, not being an agreement relating to Deposit of title deeds, Pawn or Pledge (No.7) Bottomry Bond (No.14) Mortgage of a crop (No.36) Respondentia Bond (no.47) or Security Bond (No.48).

2.AIR 1972 Delhi 146

3.AIR1995AP329=MANU/AP/0056/1995

a) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given:	The same duty as a conveyance (no.20) for a consideration or market value equal to the amount secured by such deed.
b) when possession is not given or agreed to be given as aforesaid; such	The same duty as a Bottomry Bond (no.14) for the amount secured by deed.
c) when a collateral or auxiliary or additional or substituted security , or by way of further assurance for the above mentioned purpose where the principal or primary security is duly stamped:	
for every sum secured not exceeding ? 1,000;	Three rupees
and for every ? 1,000 or part thereof secured in excess of ? 1,000	Three rupees

7. A plain reading of this Article makes it clear that to attract stamp duty under Article 35(a), mortgagor must hand over possession of subject property to mortgagee. Thus, what is required to be seen is whether possession was handed over to mortgagee. Thus, it is necessary to consider the terms of deed of mortgage in issue.

8. The relevant paragraphs/clauses on which emphasis is laid by Special government Pleader read as under:

> That in pursuance of the letter of sanction dated June 11,2007 and further amended from time to time, granting to the Borrower the factoring facility and in pursuance to the Mortgagors agreeing to give on English Mortgage and Mortgaged Property in favour of the Mortgagee and in observance of the said guarantee, the Mortgagors doth hereby assign the said Mortgaged Property, more particularly described in the schedule hereunder written, which is owned and held by the Mortgagors as follows:
>
> As hereinbefore recited, all the rights, title and interest of the Mortgagors under the said Sale Deeds and the Mortgagors doth hereby grant, convey, transfer and assign unto the

Mortgagee, all estate, right, title and interest of the Mortgagors on the said mortgaged property TOGETHER WITH all paths, passages, lights, liberties, fixtures, privileges, easements, advantages and appurtenances whatsoever to the said Mortgaged Property as described in the Schedule AND ALSO ALL the deeds and other evidences of title in any way relating to the Mortgaged Property AND TOGETHER WITH all the rights and benefits (including benefits of sanction and permissions) present and future developments under the aforesaid Conveyance TO HAVE AND TO HOLD the Mortgaged Property UNTO AND TO THE USE of the Mortgagee AND TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee absolutely, subject to the provision of redemption herein contained.

9. In juxtaposition to these paragraphs other covenants of mortgage deed leave no doubt in my mind that possession of schedule property remained with mortgagor. It vests authority in the mortgagee to enter upon the mortgaged property and take possession in the event of default in payment of all or any part of mortgaged debt or in the performance or observance of any or all the covenants. Thus, mortgage deed is not burdened with delivery of possession.

10. This leaves me to consider the purport of the terms in the opening part of the mortgage deed, i.e., TO HAVE AND TO HOLD; UNTO AND TO THE USE; AGREED TO BE GIVEN; and English Mortgage, as defined in Section 58 (e) of the Transfer of Property Act.

11. Section 58 (e) does not envisage transfer of possession as important component of English Mortgage. It only signifies transfer of right, title and interest in mortgaged property to mortgagee. The two paragraphs of mortgage deed only emphasize transfer of right, title and interest in the property to mortgagee sans possession.

12. The scope of English Mortgage, agreed to be given were considered by Full Bench of Madras High Court in THE BOARD OF REVENUE VS. MOOPANNA SOMARAZU AND ANR(4) . It was unanimous decision. In their concurring judgments two learned Judges of the Full Bench held as under:

Spencer, J.

3The mortgage deed before us is in the form of an English mortgage. The mortgagor gives a certain parcel or piece of land to the mortgagee "have and to hold", "subject to the proviso for redemption" therein contained. Then there is a covenant that the mortgagee shall permit the mortgagor to retain possession of the premises so long as he shall make the annual payments as stipulated, the net result of which is that the mortgagor remains in possession and thus possession is not immediately given by the mortgagor of the property comprised in the deed. But there is a provision at the end of the document

4.AIR 1926Mad1038=MANU/TN/0187/1926

(1884) ILR 10 Cal 274

providing that, if default is made in payment of certain annual instalments, the mortgagee may at any time thereafter enter into and upon the said piece of land and premises and shall thenceforth quietly possess and enjoy the same. The question is whether this covenant amounts to an agreement to give possession. I think that the main agreement between the parties is that possession should not be given to the mortgagee in the first instance as the result of the execution of the mortgage deed and that this covenant for the mortgagee entering on the property in case of the mortgagor making default in payment is a subsidiary agreement which is only to take effect upon a certain contingent event happening which may never happen.

.

Krishnan, J

7. I am inclined to think that this is the proper connotation of the words "agreed to be given ". These words do not really cover a case where on a breach of covenant power is reserved for the mortgagee to take possession if he thinks fit. That will be putting too large an interpretation upon the words "agreed to be given." The principle is that in cases where a Taxing Act like the Stamp Act imposes a pecuniary burden upon the subject, the construction most beneficial to the subject should be adopted in cases of doubt. I am therefore of opinion that the words "agreed to be given" should not be construed as covering cases of agreement to give possession on the Breach of a certain covenant, or on the happening of a future event which may or may not happen, but only cases where by the words of the document possession is directly agreed to be given. (emphasis supplied)

13. In Re:Anonymous the Full Bench of Calcutta High Court, considered the same issue, though dealing with situation prior to amendment to Stamp Act. On the scope of word given, Justice Milter held as under:

9..The word "given" in the clause in question seems to me to point out that only those transactions are intended to be covered where the transfer of possession takes place in consequence of the agreement on the part of the mortgagor to deliver over possession as part of the security of the mortgage money. But where by virtue of a stipulation in the mortgage deed, the mortgagee becomes entitled to enter upon possession quite irrespective of the consent of the mortgagor to make over possession, the clause in question does not apply, because there it cannot be said that the mortgagor consents to give possession.

14. Clause (a) of Article 40 of pre-amended Stamp Act also contained words agreed to be given as is incorporated in Article 35(a) of Schedule IA. Considering the scope of

these words, the Calcutta High Court went on to hold:

> 13. Clause (a) is divisible into two propositions which are as follow: First, "when at the time of execution possession of the property, or any part of the property comprised in such deed is given by the mortgagor," I may at once say that this proposition is not applicable in the present case, there being no suggestion that possession of the property or any portion of it has been given. The second proposition is: when at the time of execution possession of the property, or any part of the property comprised in such deed, is agreed to be given." The point to be determined really comes to this, whether by the mortgage deeds which form the subject of the reference, or any of them, it was at the time of execution agreed that possession of the property should be given. I understand this to mean given at any time. I take it that the words "at the time of execution" must be construed with "agreed" and not with "given." Now the Stamp Act is a Revenue Act, an Act which imposes pecuniary burdens; and the rule of construction in respect of such Acts is that in case of a doubt the construction most beneficial to the subject is to be adopted. The subject is not to be taxed, and therefore not to be compelled in this case to pay the higher duty, unless the language is clear and unambiguous. I am of opinion that the words "agreed to be given" can only apply where there is an express agreement to give possession-an agreement, that is, in so many words - or an agreement, to be gathered by necessary implication from the whole contents of the documents. I think that Clause (a) of Article 44 does not apply when there is no such agreement, express or implied, but the effect of the document between the parties is such that the mortgagee would have a right, that is a right which he could enforce in a Court of law, to obtain possession if he desired to have possession. (emphasis supplied)

15. Having regard to view taken by two Full Benches of Madras and Calcutta High Courts respectively and on cumulative reading of subject mortgage deed, I am of the considered opinion that possession of schedule properties was not handed over to mortgagee. Further, handing over possession to mortgagee cannot be assumed unless clear intention is expressed in the mortgage deed. Therefore petitioners cannot be mulcted with higher stamp duty by invoking Article 35 (a) of Schedule I-A of the Indian Stamp Act. The contrary action of respondents is not sustainable. The writ petition is allowed. There s/-all be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

–X–

2018(1) L.S. 8

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice
Sanjay Kumar

Sarikonda Srinivasa Raju ..Petitioner
Vs.
K.Ravi Prasad ..Respondent

CIVIL PROCEDURE CODE, Or.37 – Summary Procedure – Respondent, who is defendant in original suit filed an application under Order 37 Rule 3(5) of CPC seeking leave of Trial Court to defend suit and court granted him leave on a condition to deposit a certain sum within a time frame – He later filed an IA before Trial Court and it allowed IA of respondent, holding that he was entitled to cross-examine petitioner on affidavit filed by him for passing Judgment and to argue matter – Aggrieved thereby petitioner/plaintiff preferred instant revision.

Held – Thrust of the Summary procedure prescribed under Order 37 CPC is to prevent unreasonable obstruction by a defendant who has no real defence – Right of defendant to cross-examine plaintiff or his witness flows from leave to defend granted under Order 37 Rule 3(5) CPC – Unless and until defendant complies with conditional order, whereby he was granted leave to defend , it is not open to him to seek to cross-examine either plaintiff or any witness examined on his behalf or to advance arguments – Order under revision is set aside – Civil Revision Petition is allowed.

CRP.No.3465/17 Date: 13.10.2017

Cases Referred:
1. AIR 1955 SC 425
2. AIR 1963 SC 1526
3. (1988) 4 SCC 619
4. (2011) 6 SCC 321
5. (1991) Suppl. 1 SCC 191
6. (2002) 4 SCC 736

Mr.P.Surya Narayana Murthy, Advocate for petitioner.
Smt. G.Jyothi Kiran, Advocate for respondent.

O R D E R

By order dated 04.07.2017, the learned XIII Additional District and Sessions Judge at L.B.Nagar, Ranga Reddy District, allowed I.A.No.393 of 2017 in O.S.No.954 of 2015 holding that the defendant in the suit, the petitioner in the said I.A., was entitled to cross-examine the plaintiff on the affidavit filed by him for passing judgment and to argue the matter. Aggrieved thereby, the plaintiff is before this Court by way of this revision under Article 227 of the Constitution.

O.S.No.954 of 2015 was filed by the petitioner/plaintiff under Order 37 CPC for recovery of money on the strength of promissory notes. Earlier, when the

defendant in the said suit filed an application under Order 37 Rule 3 (5) CPC seeking the leave of the Court to defend the suit, the trial Court granted him leave conditionally. Aggrieved by the condition imposed that he should deposit a sum of Rs.40,00,000/- within a time frame, he filed C.R.P.No.1662 of 2017 before this Court. The said revision petition was dismissed by this Court on 11.04.2017 holding that the condition imposed was not onerous.

Having suffered the said order, it is an admitted fact that the defendant in the suit failed to deposit the amount as directed by the trial Court as a condition precedent for grant of leave to defend the suit. He however filed the subject I.A.No.393 of 2017 therein detailing the alleged erroneous claims made by the plaintiff in his affidavit to pass judgment and asserted that unless he cross-examined the plaintiff, the true facts would not come to light. As the trial Court had already posted the suit for judgment, he prayed for re-opening of the suit so as to enable him to establish his case. He further stated that no prejudice would be caused to the plaintiff if he was permitted to cross-examine him on the affidavit filed for passing judgment. SANGRAM SINGH V/s. ELECTION TRIBUNAL KOTAH(1) was cited, wherein the Supreme Court held that even if a defendant is set ex parte, he would still be entitled to take part in the proceedings from that stage, including the cross-examination of witnesses who are examined thereafter, subject to such terms and conditions as the Court may impose.

Accepting this ratio, the trial Court opined that though the defendant had failed to comply with the earlier order requiring him to make a pre-deposit as a condition precedent for grant of leave to defend the suit, his right to cross-examine the plaintiff and argue would not be barred and accordingly allowed the I.A. Hence, this revision.

Heard Sri P.Surya Narayana Murthy, learned counsel for the petitioner/plaintiff, and Smt.G.Jyothi Kiran, learned counsel for the respondent/defendant.

At the outset, it may be noted that Order 37 CPC prescribes the summary procedure to be followed in the classes of suits to which it applies. The essence of a summary suit is that the defendant therein is not entitled as of right to defend the suit, as in an ordinary suit. He has to apply for leave to defend within a time frame and such leave would be granted only if he succeeds in disclosing facts that would make it necessary for the plaintiff to prove consideration or such facts as the Court may deem sufficient for granting leave. If no leave to defend is granted, the plaintiff would be straightaway entitled to a decree.

The thrust of the summary procedure prescribed under Order 37 CPC is to prevent unreasonable obstruction by a defendant who has no real defence. Order 37 Rule 1 CPC details the Courts and the suits to which such summary procedure would apply. Suits based on bills of exchange, hundies and promissory notes find mention in Order 37 Rule 1(2)(a) CPC. Order 37 Rule 2 details the procedure to be followed for institution of summary suits and sub-rule (3) thereof provides that the defendant shall not defend

1. AIR 1955 SC 425

the suit unless he enters appearance and in default of his entering appearance, allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree. Order 37 Rule 3 CPC deals with the procedure to be followed for appearance of the defendant. Sub-rule (5) thereof states that the defendant may, at any time within ten days from the service of the summons for judgment, disclose such facts as may be deemed to be sufficient to entitle him to defend the suit and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court to be just. Order 37 Rule 4 CPC reserves the power to the Court to set aside a decree under special circumstances and grant leave to the defendant to appear to the summons and defend the suit. Order 37 Rule 7 CPC makes it clear that the procedure in suits instituted in the ordinary manner would be applicable to suits covered by summary procedure only to the extent not already provided for in Order 37 CPC. It is therefore clear that the procedure contemplated under Order 37 CPC, being a summary procedure, cannot be put on par with the procedure followed in ordinary suits in all respects.

Smt.G.Jyothi Kiran, learned counsel, would cite the decisions of the Supreme Court in K.VENKATARAMIAH V/s. A.SEETHARAMA REDDY(2) , MODULA INDIA V/s. KAMAKSHYA SINGH DEO(3) and MAHADEV GOVIND GHARGE V/s. SPECIAL LAND ACQUISITION OFFICER, UPPER KRISHNA PROJECT, JAMKHANDI, KARNATAKA(4) in support of her contention that it would be within the discretion of the trial Court, in the interest of justice, to permit a defendant to cross-examine the plaintiffs witnesses notwithstanding the fact that such defendant has been set ex parte. She would contend that failure on the part of her client to deposit the amount in terms of the earlier order of the trial Court, which was confirmed by this Court, would only result in his being set ex parte and therefore, he should not be denied the right to cross-examine the plaintiff on the affidavit filed by him for passing judgment.

Opposing this plea, Sri P.Surya Narayana Murthy, learned counsel, would contend that once the defendant suffered an order requiring him to make a pre-deposit as a condition precedent for leave to defend the suit and he failed to do so, it is not open to him to get over the same by indirect means. Learned counsel would argue that allowing him to cross-examine the plaintiff would be nothing short of permitting him to defend the suit.

At this stage, it may be noted that none of the judgments cited by Smt.G.Jyothi Kiran, learned counsel, relate to Order 37 CPC. As already noted supra, all principles applicable in ordinary suits cannot be extended mutatis mutandis to suits covered by Order 37 CPC. Only to the extent Order 37 CPC does not provide the procedure to be followed in summary suits, the regular procedure applicable to ordinary suits may be adopted. Be it noted that a defendant cannot claim leave to defend a summary suit as a matter of right, as he would in an ordinary suit. He cannot therefore draw a parallel with a defendant in an ordinary

2. AIR 1963 SC 1526
3. (1988) 4 SCC 619
4. (2011) 6 SCC 321

suit in all respects. Further, failure on the part of a defendant in a summary suit to enter appearance automatically entails the suit being decreed in favour of the plaintiff, as provided in Order 37 Rule 2(3) CPC. The question of setting such a defendant ex parte at that stage does not arise at all. The judgments cited, relating to ordinary suits and a situation therein involving an ex parte defendant, would therefore not be of guidance while dealing with a suit under Order 37 CPC.

In the light of the rival contentions, the core issue that falls for consideration before this Court is whether a defendant in a summary suit under Order 37 CPC can claim the right to cross-examine the plaintiff, having failed to comply with the condition precedent for grant of leave to defend the suit.

The argument of Smt.G.Jyothi Kiran, learned counsel, proceeds on the assumption that leave to defend a summary suit would not encompass the right of the defendant to cross-examine the plaintiff. If not, failure on the part of the defendant in complying with the earlier order passed by the trial Court, to the effect that he should deposit Rs.40,00,000/- as a condition precedent for grant of leave would automatically bar him from claiming the right of such cross-examination.

The next question, therefore, is whether the right to cross-examine the plaintiff in a summary suit would fall within the ambit of the defendants leave to defend the suit in terms of Order 37 Rule 3(5) CPC.

5. (1991) Suppl. 1 SCC 191

Both issues already stand settled. In RAJ DUGGAL V/s. RAMESH KUMAR BANSAL (5) , the Supreme Court was dealing with the question whether leave to defend should be granted to the defendant in a suit filed under Order 37 CPC and observed thus:

> 3. Leave is declined where the court is of the opinion that the grant of leave would merely enable the defendant to prolong the litigation by raising untenable and frivolous defences. The test is to see whether the defence raises a real issue and not a sham one, in the sense that if the facts alleged by the defendant are established there would be a good or even a plausible defence on those facts. If the court is satisfied about that leave must be given. If there is a triable issue in the sense that there is a fair dispute to be tried as to the meaning of a document on which the claim is based or uncertainty as to the amount actually due or where the alleged facts are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine his witnesses leave should not be denied. .. (emphasis is mine)

This observation was reiterated and affirmed by the Supreme Court in VINODAN T. V/s. UNIVERSITY OF CALICUT(6) .

It is manifest from the aforestated observation of the Supreme Court that where the facts in a summary suit are of such a nature as to entitle the defendant to interrogate the plaintiff or to cross-examine

6. (2002) 4 SCC 736

his witnesses, leave should not be denied. In effect, the right of the defendant to interrogate/cross-examine the plaintiff or his witnesses flows from the leave to defend granted to him under Order 37 Rule 3(5) CPC and not independently.

In consequence, it is not open to the defendant to now claim that his right to cross-examine the plaintiff would not be part and parcel of his leave to defend the suit. As such a right cannot be claimed automatically by the defendant and leave to defend was, in fact, granted to him subject to the condition of a pre-deposit, it is not open to the defendant to get over the same and indirectly try to defend the suit by asking for permission to cross-examine the plaintiff.

The trial Court therefore erred in drawing a parallel from a principle that would apply in an ordinary suit and deciding the I.A. in favour of the defendant. Unless and until the petitioner/ defendant complies with the conditional order, whereby he was granted leave to defend the suit in O.S.No.954 of 2015, it is not open to him to seek to cross-examine either the plaintiff or any witness examined on his behalf or advance arguments.

The order under revision is accordingly set aside and the civil revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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2018(1) L.S. 12

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice
A. Rajasheker Reddy

Kerala State Civil Supplies Corpn., Ltd., ..Petitioner

Vs.

Dhanalakshmi Traders & Ors., ..Respondents

CIVIL PROCEDURE CODE, Sec.39(1) & (4) - Trial court decreed suit and also allowed the Execution petition preferred by the Decree holder/2nd Respondent to send for amounts of the Judgment-debtor/ 1st Respondent, lying to the credit of the petitioner, who is the garnishee – Both the Judgment debtor and also the garnishee are residing outside the jurisdiction of the Trial court, which passed decree – Assailing same, garnishee preferred present revision.

Held – Execution petition filed by decree-holder before court below, which passed decree is not maintainable and said decree has to be transferred, as per provisions under sub sections (1) and (4) of Section 39 of CPC to court of competent jurisdiction for purpose of execution of such decree – Order of execution petition by court below is set aside – Civil revision petition is allowed.

CRP.No.668/10 Date:10-8-2017

Cases Referred:
1.2004(1) L.S. 39
2.(2007)4 SCC 795

Mr.P.Vijaya Kiran, Advocate for the Petitioner.
smt.Chandana Madala, Advocate for the Respondents.

O R D E R

The 2nd respondent herein filed suit in O.S.No.32/2000 on the file of I Additional District Judge, Guntur, against the 1st respondent for recovery of amount. By judgment and decree dated 13.10.2008, the suit was decreed. The judgment-debtor is a firm, having business transactions with the petitioner herein, the Kerala State Civil Supplies Corporation. The said Corporation is due certain amount of Rs.14,33,577/- to the judgment-debtor. Both the judgment-debtor and the petitioner herein, are having their offices at Cochin, Kerala State. As the 2nd respondent, obtained decree, filed the present E.P.No.111/2008 in O.S.No.32/2000 on the file of trial court, to send for the amounts from the garnishee petitioner. The trial court by order and decree dated 23.10.2009, allowed the said petition. Aggrieved by the same, the garnishee Corporation, filed the present revision.

2. From the averments made by the petitioner, it could be seen that against the 1st respondent judgment debtor, number of suits have been filed in different courts in Guntur District, Andhra Pradesh, for recovery of amounts. In all the suits, the respective courts, passed orders to attach the amount due to the judgment-debtor from the petitioner Corporation. The judgment-debtor is also due an amount of Rs.61,03,502-00 to Central Bank of India, M.G.Road, Ernakulam. The present judgment-debtor has executed an irrevocable power of attorney in favour of the said Bank to receive the amounts that are due to it from the parties in respect of which bills due to the judgment-debtor. Accordingly, the Bank filed O.A.No.434 of 2002 on the file of Debt Recovery Tribunal, Ernakulam for realization of the amount due to it, against the judgment-debtor and also made the present decree-holder and others, as parties. In these circumstances, the petitioner herein, filed inter-pleader suit in O.S.No.405/2004 on the file of Subordinate Judge, Ernakulam making the persons concerned, including the present decree holder, as parties. The petitioner deposited the amount of Rs.14,33,577/- to the credit of the suit in O.S.No.405/2004. While disposing of the said suit, the Subordinate Court at Ernakulam, directed the petitioner to withdraw the amount lying to the credit of the suit and to deposit the same to the credit of the suit in O.A.No.434/2002 on the file of Debts Recovery Tribunal, Ernakulam. By final order dated 14.3.2006, the Debts Recovery Tribunal in O.A.No.434/2002 directed the petitioner herein to deposit the amount of Rs.14,33,577/- subject to attachment or any other prohibitory order issued by any court. The learned counsel for the petitioner submits that the petitioner has deposited the amount as directed by the Debts Recovery Tribunal to the credit of O.A.No.434/2002.

3. In the above back ground, coming to the

case on hand, as noted above, the 2nd respondent decree holder filed the present execution petition seeking to send for the amounts of the judgment-debtor, lying to the credit of the petitioner, who is the garnishee. By the impugned order, the trial court found that since the order of the Debts Recovery Tribunal directing the garnishee to deposit the amount, is subject to attachment or any other prohibitory orders issued by any court and that since there is already attachment order, the garnishee is not justified in depositing the amount to the credit of the suit before the Tribunal. With these observations, the trial court allowed the E.P. and ordered for sending of the amounts by the garnishee due to the judgment- debtor. Assailing the same, the garnishee Corporation filed the present revision.

4. This court on 19.02.2010 while ordering notice before admission, granted interim stay.

5. The learned counsel for the petitioner submits that the judgment- debtor and the garnishee, who is the present revision petitioner, are having their business establishments at Cochin, in Kerala State. As per Section 39 (1)(a) of CPC, since the judgment debtor is not residing within the jurisdiction of the trial court which passed the decree, for the purpose of its execution, the executing court has to send the decree to the competent court having jurisdiction where the judgment-debtor actually and voluntarily resides and carries on business. Under sub section (4) of Section 39, the court which passed the decree, has no jurisdiction to execute such decree against any person or property outside the local limits of its jurisdiction. He contends that as the garnishee is having its office at Cochin in Kerala State, i.e., outside the jurisdiction of the executing court, it has no jurisdiction to send for the amounts in the execution proceedings. Therefore, in view of sub sections 1 and 4 of Section 39, the court which passed the decree, has to send the decree to the court of competent jurisdiction where the judgment-debtor and garnishee resides and carries on business, for execution of such decree. In support of his contention, the learned counsel for the petitioner relied on the judgment of a learned single Judge of this court reported in ADITYA ELECTRONICS vs. M/S IMPEX LTD., & ORS(1). With these contentions, the learned counsel sought to set aside the impugned order.

6. The revision is of the year 2010 and the matter underwent several adjournments and today there is no representation for the respondents either in the forenoon or in the afternoon. In these circumstances, this court is inclined to dispose of the revision on merits.

7. The learned counsel for the petitioner agitated mainly on the ground of jurisdiction. Therefore, the said aspect of jurisdiction is required to be dealt with in accordance with law.

8. From the above, the undisputed facts are that the suit filed by the 2nd respondent herein in O.S.No.32/2000 on the file of I Additional District Judge Guntur, was decreed on 13.10.2008. The 1st respondent herein who is the judgment-debtor and the

petitioner garnishee, are residing and having their business establishments at Cochin, Kerala State and the amount that is ordered to be sent for in the execution petition, in the impugned order, is lying to the credit of the garnishee, at Cochin. Therefore, it is clear that the judgment debtor in the present case and also the garnishee are residing outside the jurisdiction of the court, which passed the decree. Section 39 (1)(a) and (4) of CPC, contemplates the procedure to be followed for execution of the decree, where the judgment-debtor or any other person again whom execution is sought, resides outside the jurisdiction of the executing court. Sub Section 4 to Section 39 of C.P.C. was inserted by way of amendment by Act 22 of 2002 with effect from 1.7.2002. The relevant provisions under Section 39 of CPC are extracted as under for better appreciation:

39. Transfer of decree:

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another court of competent jurisdiction-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court or, . . .

(4) Nothing in this section shall be deemed to authorize the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

A reading of the above provision would make it clear that under clause (a) of sub section (1) of Section 39, the court which passed a decree may, on the application of the decree holder send the decree for execution to another court of competent jurisdiction, where the judgment-debtor actually and voluntarily resides or carries on business. Under sub section 4 of Section 39, there is bar on the court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction. The Honble Supreme Court in MOHIT BHARGAVA v. BHARAT BHUSHAN BHARGAVA(2) , held that Section 39(4) as inserted by Act 22 of 2002 with effect from 1.7.2002 makes it clear that it is no longer a matter of discretion for the court which passed the decree either to proceed with the execution of the decree itself or to transfer it for execution to the court within whose jurisdiction the property is situate, that in a case where Order 21, Rules 3 and 50 have no application, if the decree-holder wants to proceed against a property situate outside the jurisdiction of the court which passed the decree, he has to get the decree transferred to the appropriate court (the court in whose jurisdiction the property is situate) for execution on moving the executing court in that behalf. The relevant observation is as under:

7. There cannot be any dispute over

1.2004(1) L.S. 39

the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing the decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorized by Order 21 Rule 3 or Order 21 Rule 48 of the code or the judgment- debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1-7-2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the code shall be deemed to authorize the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate.(Emphasis added)

9. A learned single Judge of this court in Aditya Electronics case (1 supra), considering the circumstances where the judgment-debtor and the garnishee therein were residing outside the jurisdiction of the executing court, held that where the debt payable is outside the jurisdiction of the executing court and the judgment-debtor and the garnishee are outside the jurisdiction of the court, the executing court is not competent to attach such debt and the power of the executing court can be exercised only when judgment-debtor or his property is within jurisdiction of court with only one exception regarding attachment of salary. The relevant observation is thus:

32. As per the above rulings, a debt payable within the jurisdiction of the executing court can be attached even though the judgment- debtor is residing outside the jurisdiction of

2.(2007)4 SCC 795

the Court. A debt payable outside the jurisdiction of the Court and when the judgment debtor and a garnishee are outside the jurisdiction of the Court, the executing Court is not competent to attach such debt.

33. . .

34. It is clear from the provisions of the Code of the Civil Procedure, that the powers of the Executing Court can be exercised only when the judgment debtor or his property is within the jurisdiction of the court with only one exception regarding the attachment of salary. As the judgment Debtor or the garnishee in whose custody the property of the judgment debtor is there are not within the jurisdiction of the lower Court, the order prohibiting the respondent Nos.4 to 7 garnishee from making payment of the Judgment Debtor is beyond the jurisdiction of the court. Therefore, the lower court rightly held that the garnishee proceedings cannot sustain. In view of the above legal position and in view of the facts and circumstances of the case, there shall be no interference with the order of the lower Court.

10. In the present case, at the cost of repetition, the judgment-debtor is residing at Cochin and is having its business establishment at Cochin. The garnishee, the petitioner herein, who is due amounts to the judgment-debtor, is also having its office at Cochin. Therefore, under Section 39(1)(a) of CPC., the present executing court, on the application of the decree-holder, has to transfer the decree to the court of competent court having jurisdiction, where the judgment-debtors resides, for execution of such decree. The petitioner herein, who is the garnishee can be termed as any person occurring in sub section 4 of Section 39, is also having its office at Cochin. Therefore in view of bar under sub section 4 of Section 39, the trial court cannot proceed against the garnishee at the court at Guntur, for the purpose of execution of the decree.

11. In view of the above facts and circumstances of the case and the provisions under sub sections (1) and (4) of Section 39 of CPC and the judgments of the Apex Court and the learned single Judge of this court, this court is of the considered view, that the present execution petition filed by the decree-holder before the court below, which passed the decree, is not maintainable and the said decree has to be transferred, as per the said provision, to the court of competent jurisdiction for the purpose of execution of such decree. Without considering the objections raised by the petitioner in this regard, the court below erroneously allowed the execution petition by passing the impugned order and the same is liable to be dismissed.

12. It is brought to the notice of this court that the 2nd respondent decree holder earlier filed similar application in E.A.No.388/2004 and the same was dismissed and suppressing the said fact, filed the present application.

13. For the foregoing reasons, the impugned

order is set aside and the revision petition is allowed.

14. It is made clear that this order will not preclude the 2nd respondent decree holder from taking appropriate steps for execution of the decree in accordance with law.

15. No order as to costs.

16. Miscellaneous petitions pending if any, shall stand closed.

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2018(1) L.S. 18

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice
U.Durga Prasad

Capt.D.K.Giri ..Appellant
Vs.
Secunderabadbad Club
& Ors., ..Respondents

CONSTITUTION OF INDIA, Arts.14, 16, 19 & 21 - In the instant second appeal, appellant contended whether Judicial Courts would have subject matter jurisdiction over any decision taken by an association and whether rules, regulations and bylaws of an unregistered association can be put for the scrutiny of judicial Courts and struck down rule as arbitrary upon touch stone of Articles 14, 16, 19 and 21 of Constitution of India ? - Appellants application for permanent membership in 1st respondent club was refused as he was not elected – He contended that rejection of his permanent membership is illegal and against principles of natural justice as club did not assign any reasons for his rejection.

Held – Unless by express mode or by necessary implication barred, Courts jurisdiction permeates into every civil matter including that of private organisations, associations and even clubs – Secret balloting was conducted wherein appellant was not elected - No violation of principles of natural justice or procedure - Second appeal is dismissed.

S.A.No.340/16 Date: 5-12-2017

Mr.Adnan Mahmood, Advocate for Respondent No.1.
Mr.Zeeshan Adnan Mahmood, Advocate for Respondent No.2.

J U D G M E N T

This Second Appeal does not take much of this Courts time to decide, as the same can be disposed of at the admission stage since the Second Appeal is bereft of involving any substantial questions of law to adjudicate upon.

2) The plaintiff, who lost his suit before both the Courts below, which concurrently rejected his suit for declaration that he is a permanent member of the 1st defendant club and that his termination of the Mess membership is illegal and for a consequential

perpetual injunction restraining the 1st defendant from interfering with the use of facilities as a Mess member is, before this Court in this Second Appeal.

3) Plaintiffs case in nutshell is that he was an ex-captain from the Brigade of Gorkha and was released from Armed Forces in the year 1977; he was a member in the 5th defendant club. On 23.04.1990, the plaintiff made an application for permanent membership in the 1st defendant club through 5th defendant. Till his application was considered, he was granted temporary membership and put on probation period for 4 months. He paid the due charges. While-so on 12.07.2006, it was intimated to the plaintiff that permanent membership in the 1st defendant club was refused to him as he was not elected. Plaintiffs case is that the rejection of his permanent membership is illegal and contrary to the rules of the 1st defendant club, as the said club has failed to assign any reasons for his rejection. Hence the rejection is against the principles of natural justice and the letter is liable to be set aside for assigning no reason.

4) Defendant No.5 remained ex parte.

5) Defendant Nos.1 to 4 put up their written statements inter alia

contending that the 1st defendant is one of the most elite clubs in the country and has restructural arrangements with most of other elite clubs in the country and it was affiliated to clubs in the United Kingdom and United Arab Emirates and it was unregistered voluntary organization of like minded persons. It was governed by its own rules, bylaws and the managing committee of the 1st defendant comprising of 2nd and 3rd defendants and 6 other committee members were duly elected by the general body of the members for a period of 2 years. The applicants, who are admitted as temporary members, were asked to pay Rs.37,500/- and the said amount was collected from plaintiff also. However, payment of the said amount does not constitute any special privilege for the plaintiff and plaintiff was made a temporary member of the 1st defendant for a period of 4 months subject to the ballot. During the said period of 4 months, a temporary membership was given to the plaintiff creating an opportunity to him to meet the managing committee and also other members wherein it could be assessed whether his temporary membership could be made permanent or not. The managing committee in its meeting held on 12.07.2006, rejected the application of the plaintiff for permanent membership. The managing committee was vested with the right to admit or reject the application as per its rules. Its a voluntary association of like minded persons. The managing committee need not set out the reasons for rejecting an application for membership. Therefore, the rejection of the plaintiffs application can by no stretch of imagination be harped as against the principles of natural justice. On the other hand, during the four months period of temporary membership to use to the facilities of the club, he was given ample opportunity to meet the members of the managing committee in order to prove his credentials to be elected as permanent membership. There was absolutely no reason for rejection of

application for permanent membership to be set aside. There is no cause of action for the plaintiff.

6) Both the Courts below rejected plaintiffs suit on the main finding that a decision to reject his application for permanent membership was made by following the due procedure and in that regard, there was no violation of principles of natural justice. The Trial Court in Para 13 of its judgment, has, specifically observed that election of a permanent member is a discretion of the managing committee and ballot was also held in which plaintiff lost his case. Though no reasons were given by the 1st defendant for rejection of the permanent membership to the plaintiff, it cannot be said to be against the principles of natural justice or violation of the rights of the plaintiff. Like any other member, he was given temporary membership and after interview was conducted, ballot was taken and as such there was no material on record to show that principles of natural justice was not followed or that a reasonable opportunity was not given to the plaintiff. On this observation the Trial Court dismissed the suit.

7) Then the lower Appellate Court in its judgment observed that the defendant club is not a registered body and it is only an association governed by its bylaws and rules and the plaintiff did not show single incident that the defendant club acted arbitrarily against the rules and bylaws. When he failed to show the same, he cannot say that the act of the defendants is arbitrary or capricious and against the principles of natural justice.

8) Thus as noted supra, both the Courts have concurrently held that there was no violation of principles of natural justice in the matter of rejecting the application of the plaintiff for permanent membership. Aggrieved, the plaintiff preferred the instant Second Appeal and embossed the following questions dubbing them as substantial questions of law:

> 1)Whether the judicial Courts would have the subject matter jurisdiction over any decision taken by an association?
>
> 2)Whether the rules, regulations and bylaws of an unregistered association of likeminded people can be put for the scrutiny of judicial Courts and can be examined by the Courts and struck down the rule as arbitrary upon the touch stone of Articles 14, 16, 19 and 21 of the Constitution of India?

9) Heard arguments of Sri Milind G.Gokhale, learned counsel for appellant/ plaintiff and Sri Venu Gopal, learned Senior counsel representing for Sri Adnan Mahmood, learned counsel for respondent No.1/defendant No.1 on the aspect of admissibility of the Second Appeal. Both the counsel agreed that their arguments may be treated as arguments in the final hearing, in case the Court holds there existed substantial questions of law for adjudication.

10) Arguing on the substantial questions of law projected by the appellant, learned counsel for appellant/plaintiff would submit, merely because an organization is a private organization or a club as in the

instant case, the Civil Court will not slough off its jurisdiction to test the validity of its decision. When its decision is arbitrary or capricious or in violative of the principles of the natural justice, the Court can certainly declare such action to be illegal. He would vehemently argue that in the instant case the defendants have not assigned any reason, muchless valid reason for denying the permanent membership to the plaintiff, who was a member of the Mess in 5th defendant club for more than a decade. The Courts below failed to exercise jurisdiction in granting the reliefs sought for by the plaintiff. He thus prayed to admit the appeal and allow the same.

11) Per contra, while supporting the impugned judgments Sri Venu Gopal, learned Senior Counsel for 1st respondent would argue that both the Courts have concurrently held that there was no violation of principles of natural justice and in view of a concurrent finding on the question of fact, there involves no substantial questions of law and therefore, the appeal is liable to be dismissed in limini.

12) I bestowed my anxious consideration to the above arguments. The trite law as laid under Section 9 of Code of Civil Procedure is that Civil Courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly barred. Such exclusion is not to be readily inferred, the rule of construction being that every presumption should be made in favour of the existence rather than the exclusion of the jurisdiction of the Civil Courts. In M.P. Electricity Board, Jabalpur vs. M/s. Vijaya Timber Co. , the Apex Court held as follows:

> It is well settled that the exclusion of jurisdiction of civil court cannot be readily inferred and the normal rule is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded.

Therefore, unless by express mode or by necessary implication barred, Courts jurisdiction permeates into every civil matter including that of the private organizations, association and even clubs. There can be no demur on this legal aspect. However the question is, in the matter of administration of the affairs of the private organizations, associations and clubs, what is the operative sphere of the jurisdiction of the Civil Courts. In my considered view, when such private institutions, organizations, associations and clubs etc., are governed by any statute, the Courts have to test the validity of their actions on the touch stone of such statute. On the other hand, if the aforesaid bodies are not governed by any legislated statutes but being administered by their own rules, bylaws etc., their impugned actions shall be tested in the light of those rules to know whether their acts were inconformity with those rules and bylaws and also inconformity with the principles of natural justice.

a) On this aspect we can gainfully refer to the decision in T.P.Daver vs. Lodge Victoria No.363 Belgaum and others , wherein the appellant was a member of the Lodge Victoria since 1948. The Grand Lodge

of Scotland was governed by its own written Constitution and laws. While- so, the appellant was imputed of committing several Masonic offences and hence was served with notices to submit his explanation and thereafter, each of the charge was put to vote and the members present unanimously held that every one of the charges leveled against the appellant was established. They passed a resolution excluding the appellant from the Lodge until the exclusion was confirmed by the district grand lodge under Law 199 of the Constitution. The appeal filed by him was also dismissed. Thereafter, it appears, he filed a civil suit before the Civil Judge, Senior Division, Belgaun for a declaration that the resolution of the Victoria Lodge was illegal and void and that he continued to be a member of the lodge despite the resolution and for a consequential injunction to restrain the officers and servants of the lodge from preventing him from exercising his rights therein. The suit was contested. The Court dismissed the suit. The appeal filed by the appellant was also dismissed by the High Court of Mysore. He preferred appeal before the Apex Court. In that context, the Apex Court after referring various decisions on the aspect of the scope of the jurisdiction of Civil Courts in the matters relating to clubs and lodges had noted thus: Para 8: The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules; whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra.

b) In Arunachal Pradesh Congress Committee (APCC), Arunachal Pradesh and others vs. Kalikho Pul , the petitioners therein challenged the maintainability of the suit and sought for quashing the proceedings of the title suit filed by the respondent on the plea that Civil Court had no jurisdiction. The facts briefly were that respondent was a sitting MLA in Arunachal Pradesh belonging to Indian National Congress (INC). For certain reasons, he was expelled from the said political party for a period of 6 years. Challenging the same, he filed the title suit before the Civil Judge, Senior Division, Capital Complex, Yupia for a declaration that the said order of expulsion was invalid and for further declaration that the plaintiff continued to remain as a member of INC and for other reliefs. He also obtained an ex parte interim injunction against the expulsion order. The petitioners challenged the maintainability of the suit before the High Court of Gauhati. In that context, a learned Judge of the said High Court tested the jurisdiction of the Trial Court in the light of Section 9 CPC. Referring various judgments of Apex Court, he gave a finding that the Civil Court has the jurisdiction to examine whether the decision and the action

of the petitioners in taking the impugned punitive action of expelling the plaintiff from INC was in good faith, inconformity with the Constitution of the petitioners party in question and the disciplinary rules incorporated therein and the established principles of law and natural justice.

c) In the instant case on hand, the 1st defendant is not governed by any legislated statute but admittedly administered by a set of rules called Rules of Secunderabad Club. Therefore, the Civil Court would have jurisdiction to determine whether the action of the respondents/ defendants in denying the permanent membership to the appellant/plaintiff, is in conformity with the aforesaid rules and whether principles of natural justice were indeed followed.

13) At this juncture it must be made clear that in fact the Courts below dismissed the suit of the plaintiff not on the ground that Civil Court had had no jurisdiction but on the finding that the plaintiff failed to prove any infraction of the rules governing the club or the principles of natural justice. It is also pertinent to mention that in fact the Trial Court did not frame any issue touching the jurisdiction of the Civil Court. It was nobodys case that the Trial Court had no jurisdiction to entertain the suit. In that view, the first substantial question of law framed does not require any adjudication because, as already stated supra, jurisdictional issue was not a question at all before the Courts below. Perhaps, this question is conveniently framed by the appellant to get the Second Appeal admitted. Therefore, what is germane in the light of judgments of the Courts below is whether in rejecting the permanent membership, respondents had acted inconformity with the rules and principles of natural justice or not. In this context, certain rules need to be perused. Rule V of Secunderabad Club reads thus:

V) Permanent Members:

Permanent Members shall consist of those persons whose applications for Membership have been duly considered and approved after balloting by the Managing Committee as per the Rules herein (AGM 31.7.13) (1) xx xx .

(2) xx xx .

The above rule would thus show, a temporary member can be admitted as permanent member after balloting by the managing committee as per the rules. The Appellant admittedly applied for permanent membership.

a) Then coming to the method of voting, Rule XI (1) lays down as follows:

XI) Balloting Committee:

(1) All candidates for all categories of Membership except

Hony, Mess, LTT, STT and Affiliate must be permanent residents of the Greater Hyderabad Secunderabad Area and except Hony, STT, Associate Member (Widow/ Widower) and Affiliate also be subject to secret ballot and three negative votes be deemed as rejection. Such a rejected candidate may be allowed to reapply after one year. However, if rejected again such a candidate and his / her spouse cannot

be considered again. The Club Committee shall consider each application openly in Committee. Election shall be by ballot by the Club Committee. Three or more black balls shall disqualify. A person so disqualified shall not, subject to Rule XIII, be introduced as a guest until he becomes eligible to reapply for Membership.

(2) xx xx
(3) xx xx.

The above rule would show that all candidates for all categories of Membership are subject to secret ballot and three negative votes would be deemed as rejection. Ofcourse, such a rejected candidate may be allowed to reapply after one year but if rejected again, such a candidate cannot be considered again. It further laid down that the Club Committee shall consider each application openly in Committee and Election shall be by the ballot by the Club Committee. Three or more black balls shall disqualify. Thus this rule would show that a member can be admitted as permanent member through election process and three black balls or three negative votes by the Club Committee will disqualify him from being elected as a permanent member. Admittedly, in the case of appellant, ballot procedure was followed and he could not get elected. Therefore, he cannot complain of procedural violation. His case, however, is that the defendants have not disclosed reasons for not admitting him into permanent membership. This contention is quite preposterous and untenable. It should be reminded that his is a case of election but not selection. In an election procedure, a candidate will be declared elected only on securing the majority of votes or certain number of votes. In the instant case also, secret balloting was conducted wherein the appellant could not be elected. Therefore, he cannot seek the reasons for his non-election. As rightly contended by the respondents, they do not owe, nor do they oblige to offer, any explanation for not admitting him into a permanent club membership. So the first substantial question of law projected by the appellant is concerned, at the first instance it can be said, the said question does not arise at all, for, jurisdiction of the Civil Court was not an issue throughout and the same cannot be at the Second Appellate Stage. So far as violation of principles of natural justice is concerned, absolutely no such violation of either rules or principles of natural justice.

14) The second substantial question of law projected by the appellant is concerned, the same is also not maintainable. The appellant must note that he has not sought for declaration before the Trial Court that the relevant rules of Secunderabad Club are arbitrary or illegal. Therefore, he cannot now conveniently raise in the Second Appeal. Even otherwise, I do not find any rule as arbitrary, capricious or unjust.

15) So on a conspectus, both the substantial questions of law projected by the appellant are not maintainable and consequently, the Second Appeal is dismissed at the admission stage. No costs.

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

–X–

2018(1) L.S. 25

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Dr. Justice
B.Siva Sankara Rao

Miriyala Renuka Devi & Ors., ..Appellants
Vs.
The State of A.P., & Ors., ..Respondents

ESSENTIAL COMMODITIES ACT, Sec.6-A – A.P. PUBLIC DISTRIBUTION SYSTEM (CONTROL) ORDER, 2008, Cl.17 – A.P. SCHEDULED COMMODITIES (LICENSING, STORAGE AND REGULATION) ORDER, 2008 – Cases filed for illicitly transporting PDS rice without valid documents, u/S.6-A of E.C. Act - Seizure for illicitly transporting PDS rice without any valid documents - Purchasing PDS rice interrupting process of smooth functioning of public distribution system in contravention of Control Order, 2008 - Confiscation of seized stock in favour of government and imposing penalty on owners of lorries.

Sessions Judge in appeals modified the Orders, of Confiscation passed by the Collector to some extent – Once there are violations, which clearly prone to seizure and initiation of proceedings under provisions of E.C. Act for violation of Control Order and prone to confiscation, no way require interference, but for if at all to consider interference on quantum of confiscation of seized stock though not to reduce vehicle penalty.

Crl.R.C.No.182/17 & batch Dt.20.2.2017

Mr.V.H.V.R.R.Swamy,Advocate for the Appellants.
Public Prosecutor for Respondents.

C O M M O N O R D ER

These three revisions almost since involve same questions of law, though facts are different, thereby taken up for common disposal from different hearings.

2. Heard both sides and perused the respective impugned orders of the District Collector vis—vis the lower appellate Court and the respective grounds of revisions and the respective contentions raised with provisions and propositions of law in relation thereto.

3. The common questions of law involved in answering the respective revisions are:

1. Whether the confiscation proceedings of the learned Collector confirmed or to some extent modified, as the case may be, by the respective Sessions Judges, while sitting in appeal, are unsustainable and there are no grounds for initiation of proceedings for confiscation and the very seizure itself is not sustainable and there is no violation of any Statutory provisions or Control Orders and the same are in ignorance of the said provisions or

settled propositions and, if so, liable to be set aside?

2. To what result, respectively?

4. The factual background necessary to mention in dealing with the respective revisions are: Crl.R.C.No.182 of 2017:-

a) The Tahsildar, Kanchikacherla filed a petition under Section 6A of the Essential Commodities Act, 1955 (for short, the Act) before the District Collector, Krishna, Machilipatnam in E.C.P.No.331 of 2012 about the seizure of 182.00 quintals of the so called Public Distribution System (PDS) Rice, which was being transported in the lorry bearing No.AP 16 TB 7459 worth Rs.13,11,220/- of rice @ Rs.1,710/- per quintal without any documents from Kuchipudi Village of Kodada Mandal to various rice mills in Mandapeta of East Godavari District from Miriyala Nageswara Rao of Kodada Village and two others on 09.09.2012 at Kesara Village, Kanchikacherla, in the presence of mediators for contravention of certain Control Orders and handed over the same to the MLS Point, Incharge, Kanchikacherla, and vehicle was handed over to the SHO, Kanchikacherla Police Station, for safe custody and to confiscate the entire seized stock to the Government. The Tahsildar also pointed out that the respondents were illicitly transporting PDS Rice without any documents; that respondent No.1 was in the habit of purchasing rice meant for PDS illicitly and doing business in rice (food grains) without valid licence/permission from the authorities concerned with the active connivance of other respondents. Thus, the respondents interrupted the process of smooth functioning of Public Distribution System in contravention of Clause 17(A) of the Andhra Pradesh Public Distribution System (Control) Order, 2008 (for short, the Control Order, 2008) and in contravention of Clause 2000 of the Andhra Pradesh Scheduled Commodities (LS&R) Order, 2008 without licence and transporting the same without bills illegally that resulted in the seizure of the stock.

The said petition was taken on file as E.C.P.No.331 of 2012 by the District Collector and interim orders were passed on 20.11.2012 directing the Tahsildar, Kanchikacherla, to dispose of the seized stock by conducting public auction and submit sales list for confirmation. Thereby, respondent No.4 filed W.P.No.32764 of 20012 and, by order dated 17.10.2012, has obtained stay orders on sale of the seized stock, pending finalization of the case and the vehicle was released to respondent No.2 on furnishing bank guarantee of Rs.2,00,000/-.

A show cause notice was issued to the respondents about the confiscation of the seized stock and the respondents attended the hearings through Advocate and filed explanation stating that respondent No.4 is doing business in rice with valid licence and he is real owner of the seized stock and respondent No.1 is his son and respondent No.2 is his daughter in law, respondent No.3 is the driver of the vehicle of respondent No.2 and respondent No.1 is only looking after the affairs of his rice mill in his absence and the allegations of illicitly transporting the PDS Rice by

procuring unauthorisedly for sale at various places of Mandapet of East Godavari, are incorrect; that the rice is procured from own mill of respondent No.4, who is doing business with a valid license and, as such, no permit or licence is required for transporting of super fine variety, as he is a food grain licence holder within the State as per G.O.Ms.No.56, dated 30.10.2009, and there are no valid grounds for seizure; that

the only option is to follow the procedure laid down under Cr.P.C. and not to invoke the proceedings under Section 6A of the Act.

From the respective seizure report material and report of the Tahsildar and on contest of the respective respondents, the District Collector vide order dated 09.05.2013 observed that said contentions of the respondents are neither correct nor acceptable, as according to Clause 7(a)(1) of the A.P. Procurement (Levy) Order, 1984, every miller/dealer has to transport the rice for sale along with a release certificate issued by the Collector (Civil Supplies) or District Supply Officer and one of the respondents have been transporting 182 quintals of the food grain (rice) without any valid bill and without even release certificate issued by the Competent Authority, which is clear and also from the statement of respondent No.3 that at the time of inspection for seizure in the presence of the mediators to the Tahsildar that respondent Nos.1 and 4 are in the habit of purchasing PDS Rice from card holders and transporting the same to other places for sale to higher rates to gain illegally and that also supports to the conclusion of the rice is a PDS Rice and clandestinely dealing with the rice that is meant for the consumer beneficiaries, since diverted by intervention of process of smooth functioning of PDS and the same is nothing but violation of Sections 17 and 17A of the Order and they are liable for prosecution under Clause 17B of the Order, besides liable for criminal prosecution, and the seized stock is liable for confiscation in ordering confiscation. by also saying same is also in the contravention of the conditions 5, 6, and 7(i) of the licence issued under the AP Scheduled Commodities (LR & S) Order, 2008, as purchasing PDS rice and transporting the same to other places for illegal profit and that documents are suffice for confiscation of the entire stock and in ordering 100% confiscation of 182 quintals of the seized PDS rice and for levy of penalty on the owner of the vehicle of Rs.1,25,000/- for illegal transportation of PDS Rice.

When respondent No.4 questioned the said proceedings in appeal, the learned Sessions Judge, Krishna, Machilipatnam in E.C.Appeal No.121 of 2013, by the impugned order dated 20.10.2016, modified 100% confiscation to that of 75%; and levy of penalty of Rs.1,25,000/- to that of Rs.75,000/-, while upholding the findings regarding validation of the confiscation proceedings and violation of the provisions and the findings in support of it by learned Sessions Judge are that the rice is a PDS rice and there is contravention of the Orders 2008 with no bills or documents or permit or authorization statutorily required from levy and Control Orders, respectively, that too as on the date of seizure, when the Order and Licence Storage and Regulation Order, 2008 are in force and the violation of which

and the statement of respondent No.3 before the Tahsildar, at the time of seizure, also substantiates the same, and contra to it, but for oral contention of respondent Nos.1 and 4 could produce nothing.

Crl.R.C.No.236 of 2017:-

b) The Tahsildar, Peddamandadi Mandal filed a petition under Section 6A of the Act before the Joint Collector, Mahabubnagar District, in Case No.CS6/ 492/2015 about the seizure of 136.20 quintals of the so called Public Distribution System (PDS) Rice, which was being transported in the lorry bearing No.AP 16 U 0653 worth Rs.2,83,500/- of the rice @ Rs.1,710/- per quintal without any documents from Wanaparthy to Sherpally of Bhoothpur Mandal from the lorry owner Shaik Khaja Moinuddin in the presence of mediators for contravention of certain Control Orders and handed over the stock to Smt.S.Sreedevi, Prop M/s.Sri Lakshmi Venkateswara Rice Mill, Ghanpur, for safe custody under proper acknowledgment and vehicle was handed over to the Station House Officer, Peddamandadi Police Station for safe custody.

At the request of respondent No.3-owner of the seized lorry, for release of the lorry, the same was released on furnishing bank guarantee for an amount of Rs.2,00,000/ -, pending disposal of 6A proceedings. A show cause notice was issued to the respondents framing charges that they were indulging in clandestine business by diverting PDS rice into black market for illegal profits, in violation of the Control Order, 2008 and transporting the same without bills illegally, that resulted the seizure. The respondents attended the hearings through the Advocate and filed explanation, stating that the respondents are doing business in rice with valid licence and that the seized stock is not PDS Rice and the said rice is being transported under valid documents. A show cause notice was issued to the respondents framing charges that they were indulging in clandestine business by diverting PDS rice into black market for illegal profits in violation of the Control Order and transporting the same without bills illegally, that resulted in the seizure. The respondents attended the hearings through the Advocate and filed explanation stating that the respondents are doing business in rice with valid licence and that the seized stock is not PDS Rice and the said rice is being transported under valid documents. From the respective seizure report, material and report of the Tahsildar and on contest of the respective respondents, the Joint Collector vide order dated 28.11.2015 ordered for confiscation of 100% of the value of the seized stock and imposed a fine of Rs.10,000/- on the owner of the seized lorry; that respondent Nos.1 and 2 are indulging in diversion of Government Rice into black market; and also directed the Tahsildar to utilize the seized stock of 136.20 quintals under PDS and adjust the sale proceeds into CS Head of Account.

Crl.R.C.No.237 of 2017:-

The Assistant Supply Officer, Circle-II, Vijayawada filed a petition under Section 6A of the Act before the Joint Collector, Krishna, Machilipatnam in E.C.P.No.93 of 2011 against Miryala Narasimha Rao, respondent No.7, and ten others for

contravention of certain Control Orders and seized the ground stock all worth Rs.2,89,000/- on 30.03.2011. It was also pointed out that the respondents were indulging in clandestine business of diverting PDS Rice into black market, which was meant for distribution under PDS to the BPL families; that respondent No.7 has purchased
170.00 qtls of PDS Rice with the active connivance of respondent Nos.5 and 6 and transporting the same from Vijayawada to other places through lorry bearing No.AP 16 TW 6828; and that the respondents have contravened the condition 2(c) of Annexure-1 & Clause 17(A) & 17(B) of Order, 2008. While so, the seized vehicles were released to the owners on their furnishing bank guarantee, pending finalization of 6A of the Act. The said petition was taken on file as E.C.P.No.93 of 2011 by the Joint Collector and interim orders were passed on 22.06.2011 with a direction to the Tahsildar, Kanchikacherla to dispose of the seized stock to the card holders under Public Distribution System and remit the sale proceeds under Revenue Deposits. Thereby, when the respondents have filed W.P.No.21859 of 2011, this Court directed the first respondent to dispose of the claim petition filed by the writ petitioner and pass appropriate orders in accordance with law. A show cause notice was issued to the respondents about the confiscation of the seized stock and the respondents attended the hearings through the Advocate and filed explanation, stating that the seized stock of rice is not PDS rice and that even assuming that seized rice belongs to PDS, the only option left to the authorities is to follow the procedure laid down under Cr.P.C. and not to invoke the proceedings under Section 6A of the Act and requested to release the seized stock and the vehicles. From the respective seizure report, material and report of the Tahsildar and on contest of the respective respondents, the Joint Collector vide order dated 26.01.2013 ordered for confiscation of 100% value of seized stock in favour of the Government and also imposed a penalty of 20% of Bank Guarantee on each owner of the lorries bearing Nos.AP16 TW 6828, AP 7V 688 and AP 7V 1503, respectively, for illegal transportation of rice and also ordered for disposal of the confiscation of the seized stock by conducting public auction after appeal time is over.

When the respondents questioned the said proceedings in appeal, the learned Sessions Judge, Krishna, Machilipatnam, in E.C. Appeal No.234 of 2013, by the impugned order dated 20.10.2016 modified 100% confiscation to that of 75%, and penalty of 20% to 10% each of the Bank Guarantees on the owners of the lorries bearing Nos.AP16TW 6828, AP 7V 688 and AP 7V 1503, respectively.

5. It is impugning the respective orders, the present revisions are filed with the contentions in the grounds of revisions vis—vis the oral submissions of the learned counsel for the respondents to the collector proceedings and partly successful appellants before the lower Court, by impugning the findings of the lower appellate Court in the revisions are, that the learned Collector and the learned Sessions Judges failed to consider that PDS Rice is not an essential commodity; that clause 2(W) of

the Control Order mentions that for scheduled commodity supplied to the fair price shops and not otherwise, clause 7(a) of the Order has no application and there is no contravention of any of the clauses under the Control Order and once there is no contravention of Section 3 of the Act, no confiscation shall arise; that Section 6A proceedings shall not arise as the seized stocks are not essential commodities; that initiation of Section 6A proceedings would arise only when the seized stocks are essential commodities; that when the seized stocks are essential commodities then only proceedings can be initiated and not otherwise and thereby prayed for setting aside the orders and for release of entire stock and also for refund of the penalty imposed while releasing the vehicles.

6. In deciding the above, points for consideration in the factual matrix in the three revisions arise and before discussing the facts further, it is necessary to mention the legal position:

(a) The Essential Commodities Act 10 of 1955 is an Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in certain commodities for securing availability and equitable distribution of such commodities. It is an undisputed fact that the proceedings under Section 6A of E.C.Act are penal in nature and quasi criminal so far as confiscation is concerned, needless to mention the prosecution under the other provisions of Act, particularly under Section 7 of the Act as a criminal offence for contravention of Section 3 of the E.C.Act. It is apt to mention herein the observations of the Honble High court in the decision reported in 2008(3) LS-106(DB) in A.Siva Reddy vs. Collector, that even the interim disposal order under Section 6A of the Act, involve civil consequences. There is no quarrel on the proposition relied on by the appellants reported in (1) 1977 Cri.L.J.-1800 in Madhav Keshav Mirashi vs., the State at para-17 that, an authority being created as a full fledged appellate authority under Section 6-C it has all the powers of the original authority including to examine whether the discretion has been properly exercised by the Collector in passing the order under Section 6-A and to substitute its own decision regarding discretionary powers in place of the exercise thereof by the original authority. However, coming to the other proposition relied from this decision regarding mens rea required to prove from the contention of the appellants from placed reliance of paras 11 to 16 of the judgment concerned, what was laid down in the above paras in that decision was that the requirement of mens rea as like for a penal offence under Section 7 of E.C.Act also required to be proved for confiscation for the contravention of the Control Order in proceedings under Section 6-A of the Essential Commodities Act, 1955. In fact, the amended E.C.Act, Section 10-C, is crystal clear in its wording that, any prosecution for any offence under this Act, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state (intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact) but it shall be a defence for the accused to prove the fact that he had no such mental

state with respect to the act charged.

(b) When that prima facie material is there for the seizure/detention of their stock validly from the above proceedings of the Enforcement Deputy Tahsildar, that was perused and taken cognizance under Section 6A of the E.C.Act by the Collector (CS), the contention of the appellants that there is no valid seizure shown contravention of any Control Order is unsustainable and baseless. It is needless to say the settled proposition from the Constitutional Bench expressions of the Apex Court that, even any of the procedure regarding the search and seizure not validly done by following the procedural traits, seized article is admissible in evidence to the proceedings, including for criminal in nature, as held in Porammals case of 1974(1)-SCC-345 followed in Alasaray Mohammads case of 1978-SCC (Crl)-198; and State of Punjab vs. Baldev Singhs case for AIR 1999-SC-2355.

(c) Coming to the other decision of 1983-S.R.C.-159 Kerala High Court covered by decision No.8 of list of decisions submitted by the appellants relied upon concerned, it was held that under Section 6-A proceedings for confiscation, the order of confiscation depends upon satisfaction by the Collector (CS), which is a discretionary power vested in him to exercise in a fair and judicious manner, the provisions of Section 6-A and 6-B, though not mandatory, enables the Collector to conduct an enquiry before ordering confiscation rather to proceed on formation of his opinion and the notice to state the proposal to confiscation of the seized article for the person affected with two opportunities, one to make representation in writing and the other of being heard.

7. Coming to the confiscation of respective vehicles in the three cases, the counsel for the revision petitioners, respectively, submits that unless there are findings regarding violation of Section 3 of the Act arrived by the authorities, confiscation order of the vehicles cannot be passed and, even if any passed, they would no way survive. There is no dispute on the proposition, but for to say, that the orders of the respective Collectors, modified or confirmed by the respective Sessions Judges, clearly show that the quantity of rice involved is a PDS Rice. Once that is the report of the Tahsildar and the mediators, including the version of the Drivers in one of the cases i.e., respondent No.3 in Crl.R.C.No.182 of 2017 in relation therein, and even to the contention of respondent No.4 therein much less of petitioner No.1 or in other cases of respective respondents, once as per Section10(c) of the amended Act, the presumption is in favour of the authorities the stock in prosecution for any offence or even for confiscation proceedings from the contention of similar analogy in Kailash Prasad Yadav and anr. V. State of Jharkhand and Anr to apply herein also of existence of culpable mental state on the part of the accused/respondents, respectively, in the Court shall presume so of intention, motive, knowledge and belief or reason to believe the fact within the knowledge and with intention and motive. It shall be for the accused in the reverse onerous to ask to rebut the presumption of lack of such intention, motive and/or

knowledge or belief. Here, in any of these three cases, the respective respondents to the proceedings before the respective Collectors, did not file any record of any licence for rice milling business of trading or non-trading, as the case may be, and no way bills and/or any bills or any other recorded proof of the stock and for what purpose and to which destination the milled rice they were transporting, despite it is a clear case of the PDS Rice at the time of seizure with finding from such identification, which the Court has to take judicial notice from the respective Tahsildars dealing with civil supply commodities out of their day to day dealings to identify, which stock is PDS, apart from the interception, for lack of bills and the presumption in favour of it. Nothing more is required in the case and there is no finding at all of the violation of the provisions. Thereby, the decision has no application to the present facts of these cases.

8. Even coming to the other decision referred to in Sri Sai Traders, rep. by its Proprietor and others vs. Assistant Supply Officer, Cirlce-1, Vijayawada and others where GO Ms.No.79, dated 29.06.2005, and GSR 104(E), dated 15.02.2002, one is of the State Government and the later of the Central Government referred, so also of A.P.State Public Distribution System Control Order, 2001, Clauses 2, (16) and (20) were also on the allegation of the rice meant for PDS black marketing, and the Government by G.O.Ms.No.79 supra stated that rescinding the A.P.Paddy and Rice (Requisitioning of Stocks) Order, 1966 issued in G.O.Ms.No.2121, Food and Agriculture (CS.IV) Dept., dated 29.06.1966, it would indicate that absolutely there is no restriction on movement of rice in the State of Andhra Pradesh and, in fact, Clause 16 of the AP State PDS Control order 2001, once that can be invoked for PDS Rice not exempted, even under the Government of India GSR 104(e) clause (vi) of the order, what was observed is that rice is a scheduled commodity and not an essential commodity, even taken the same, once it is a scheduled commodity, even today there is no licence or permit or way bill for the said rice to transport much less produced any amounts or stock registers of said paddy and conversion of the rice and not even licence in the rice mill trading or any trading produced in any case, especially, that decision has no application, apart from the seizure in the respective cases, is subsequent to the enactment of Licence Storage and Regulation Order 2008 and the Control Order.

9. Now coming to the other contention even referring to the PDS System Control Order, 2008, violation under Clauses 17 and 17A has no application concerned, the counsel placed reliance on the decision of a Division Bench of this Court in Maimuna Begum v. State of Telangana and others , It is in fact, a preventive detention proceeding for illegally and clandestinely doing business in purchasing of PDS rice from other commodities from ration card holders to the petitioners, referring to Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 Sections 3 and 7 of the Act, and Clauses 17 and 17A of the Control Order, what was observed is only based on the respective contentions in setting aside the preventive detention order

by the Division Bench therein is, that Section 3 was not contradicted and so far as Section 55 of ECA Act concerned, Section 7 of the said Act deals with penalties for contravention of any order made under Section 3 of the Act in the punishment prescribed thereunder and to contradict the penal Sections, it must be shown any contravention of any order made under the Act and the Control Order 2008 made by the State in exercise of its power under Section 3 read with Section 5 of the Act, if it is shown that the detenu carries on any of the activities in contravention of the Control Order, then it attracts the penal sections and clause 17 of the Control Order envisages penalty for confiscation of the stock making false entry and diverting stocks and that supplies and to the fair price shop dealers and enumerated dealers and hawkers and not for others thereby has no application to the detenu; and even coming to clause 17 of the Control Order shows that the same is attracted to the fair price shop dealer, or card holder of any person interferes with smooth distribution of essential commodities under the PDS or other Government scheme at any level till schedule commodity reaches the intended beneficiary and from its reading, there is no whisper either in the detention order or in the grounds of detention that any of the detenues is interfering with the smooth functioning of the public commodities from the FCI godown till it reaches the intended beneficiary and the whole allegation is that they have been purchasing the PDS rice from card holders and it is outside the purview of Section 17A that applies upto the rice reaches the card holders and not later. This decision on its reading has no application to the facts. It is because it is not even the contention of any of the revision petitioners that after the PDS Rice reached the beneficiary and they purchased the same from the very beneficiaries, by invoking the express provisions so far as clause 17A of the Order.

10. In fact, in the cases on hand, some of the facts reveal that even FCI sealed bags were there among seized boxes, which clearly show diverting the stocks meant for beneficiaries before distribution to the beneficiaries as part of the PDS. Apart from it, it is important to note that it is not only in violation of the Control Order, but also in violation of the LIcence Order, 2008 and further violation of clause 7(a)(i) for transporting rice from one District to another thereunder. There is no permit obtained either from the District Supply Officer or District Collector (Civil Supplies). Once these are the violations, which clearly prone to seizure and initiation of the proceedings and prone to confiscation, the respective orders of the Collectors, as confirmed to that extent by the lower appellate authority, no way require interference, but for if at all to consider any interference, on the quantum, of confiscation of seized stock respectively, though not to reduce vehicle penalty.

11. Accordingly and in the result:

a) Crl.R.C.No.182 of 2017 is allowed in part viz., so far as the order of the Collector for confiscation of 100% of the seized stock modified to 75% by the learned District Judge is reduced to 50% of the seized stock or its value.

b) Crl.R.C.No.236 of 2017 is

dismissed for the reason of penalty of Rs1,25,000/- imposed by the District Collector, on the vehicle owner (revision petitioner) that was reduced to Rs.75,000/- by the District Judge no way requires interference to reduce even further as it is a clear violation by the owner of the vehicle being none other than the wife of A1 and daughter in law of A4. and

c)Crl.R.C.No.237 of 2017 is allowed in part viz., so far as the order of the Collector for confiscation of 100% of seized stock modified to 75% by the learned Sessions Judge is reduced to 50% of the seized stock or its value.

Pending miscellaneous petitions, if any, shall stand closed.

2018(1) L.S. 34

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Present:
The Hon'ble Mr. Justice
Sanjay Kumar &
The Hon'ble Mr. Justice
A.Shankar Narayana

Vadde Anjanappa & Ors., ..Appellants
Vs.
State of A.P., ..Respondent

INDIAN PENAL CODE, Secs. 148, 149, 302 & 324 - CRIMINAL PROCEDURE CODE, Sec.374(2) – Trial Court convicted all the ten accused – Aggrieved thereby, ten accused preferred instant appeal.

Held – position of law as to contradiction between medical evidence and ocular evidence can be crystallised to effect that ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes ocular testimony improbable – In instant appeal Medical evidence outweighs the ocular evidence – Actual eye witnesses were clearly tutored and planted eye witnesses further diluted their testimony – Prosecution suppressed genesis and origin of occurrence – Benefit of doubt would therefore have to be given to accused – Appeal is allowed and impugned judgment is set aside.

Crl.A.No.272/11 Date:27-10-2017

Cases Referred:

1. 2000 CRI.L.J. 1566
2. (2016) 10 SCC 220
3. (2010) 10 SCC 259
4. AIR 1994 SC 1539
5. AIR 1975 SC 1727
6. (2012) 8 SCC 263
7. (2003) 12 SCC 155
8. (2012) 10 SCC 476
9. (2009) 13 SCC 542
10. (2011) 7 SCC 421
11. AIR 1999 SC 767
12. AIR 1974 SC 1936
13. AIR 1959 AP 325
14. (2013) 4 SCC 422
15. (2008) 16 SCC 99
16. (1995) 5 SCC 518

17. AIR 1965 SC 277
18. (2007) 9 SCC 589
19. (1985) 1 SCC 505
20. (2008) 17 SCC 587
21. AIR 1953 SC 415
22. (1975) 4 SCC 511
23. AIR 1976 SC 2263
24. AIR 1968 SC 1281

Mr.A.Hanumantha Reddy, Advocate for the Appellants.
Public Prosecutor (AP), Advocate for the Respondent.

J U D G M E N T

(Per Honble Mr.Justice
Sanjay Kumar)

By judgment dated 03.03.2011 passed in Sessions Case No.194 of 2008, the learned Additional Sessions Judge, Hindupur, convicted all the ten accused therein of offences under Section 148 IPC; Section 302 read with Section 149 IPC; and Section 324 IPC. They were sentenced to life imprisonment for their conviction under Section 302 IPC r/w Section 149 IPC for the murder of Vadde Subbaramappa. They were also sentenced to rigorous imprisonment for two years each for their conviction under Section 148 IPC and rigorous imprisonment for two years each for their conviction under Section 324 IPC. Aggrieved thereby, the ten accused preferred this appeal under Section 374(2) CrPC.

The charges framed against the accused were as follows:

Charge No.1: That you A1 to A10 on 11-6-2007 at about 8.00 p.m. near the house of the deceased Vadde Subbaramappa were members of an unlawful assembly and did in prosecution of the common object of such assembly to kill the deceased namely Vadde Subbaramappa and at that time, all of you were armed with sticks, sickles and the weapons of offence likely to cause death of the deceased and that you thereby committed an offence punishable u/ sec. 148 of Indian Penal Code and within my cognizance.

Charge No.2: That you A1 to A10 on 11-6-2007 at about 8.00 p.m. near the house of the deceased Vadde Subbaramappa were members of an unlawful assembly and did in prosecution of the common object of such assembly to kill Vodde Guttur Siddaramappa and the deceased namely Vadde Subbaramappa and at that time, all of you were armed with sticks and sickles, A1 of you dealt a blow with a stick on his left hand, A2 of you hacked the deceased on his fore head and waist, A2 and A3 of you hit the deceased with sticks on his hands and legs, causing fractures and the deceased died while undergoing treatment and that you thereby committed an offence punishable u/sec. 302 r/w 149 of Indian Penal Code and within my cognisance.

Charge No.3: That you A2 to A10 on 11-6-2007 at about 8.00 p.m. near the house of the deceased Vadde Subbaramappa were members of an unlawful assembly and did

in prosecution of the common object of such assembly to kill Vodde Guttur Siddaramappa and the deceased namely Vadde Subbaramappa and at that time, all of you were armed with sticks and sickles, A7 to A10 beat Vadde Nija Mallappa with sticks causing injuries on his left hand and right chin, A5 and A6 of you beat Vodde Lakshamma with sticks on her fore head and right hand, A2 to A4 of you beat Vodde Narayanaswamy with sticks and sickles and caused injuries on his both hands and body and also beat Vodde Bharathi with sickles and sticks on her head, A5 and A6 of you beat Vadde Narayappa with sticks on his right leg and thigh and that you thereby committed an offence punishable under Sec. 324 of the Indian Penal Code and within my cognisance.

The accused denied the charges and claimed to be tried. During the trial, the prosecution examined 12 witnesses and marked 14 exhibits in evidence. The accused did not adduce oral evidence but marked Exs.D1 to D5, portions of the Section 161 CrPC statements of P.W.1, P.W.4 and P.W.5. Case properties were shown as M.Os.1 to 4.

Salient points emerging from the evidence may now be noted. P.Ws.1 to 7, all belonged to the Vadde family and were cited as eye-witnesses to the incident which resulted in the death of Vadde Subbaramappa. P.W.2, the sister of P.W.1, was married to the deceased. Srinivasulu, the son of P.W.1, was married to Alivelamma, the daughter of the deceased and P.W.2. Another sister of P.W.1 was married to P.W.3. He was therefore the co-brother of the deceased and the brother-in-law of P.W.1. P.W.4 is the son of P.W.3. P.W.5 is the wife of P.W.4 and also the daughter of P.W.1. P.W.6 is the son-in-law of P.W.1 and also the son of the deceaseds brother. All these family members were stated to have witnessed the incident and were allegedly injured in the course of the attack by the accused upon P.W.1 and the deceased. Their testimony, which was accepted by the Sessions Court, therefore assumes critical importance.

It is well settled that before the evidence of an injured eye-witness can be accepted, the Court should be satisfied that he is a truthful witness and the account furnished by him is in consonance with probabilities, as there is no rule of appreciation of evidence which requires that merely because a witness is injured, his evidence, ipso facto, should be accepted as the gospel truth. (See TULSHIRAM BHANUDAS KAMBALE V/s. STATE OF MAHARASHTRA(1).

P.W.1 stated that he had two sons, Srinivasulu and Balaraju, and three daughters, Sajjakka, Ramanjamma and P.W.5. His son, Srinivasulu, was married to Alivelamma, the daughter of his sister (P.W.2) and the deceased. All of them used to reside in Gadralapalli Village, Chilamathur Mandal, Ananthapur District. While so, there was a rumour in the village that P.W.1s son, Srinivasulu, developed intimacy with Sasikala, wife of Jagannath, the brother of A1. They were stated to have eloped from the village five days prior to the incident. On the fateful day, 10.06.2007, at about 8.00 PM, the deceased and P.W.1 were

1. 2000 CRI.L.J. 1566

discussing about the disappearance of Srinivasulu and Sasikala in front of the house of the deceased. The accused formed into an unlawful assembly, with A1 and A3 to A10 armed with sticks, while A2 was armed with a sickle. A1 abused P.W.1 and the deceased for the elopement of Sasikala and Srinivasulu and enquired as to their whereabouts. P.W.1 claimed that they informed A1 that they could not trace out Sasikala and Srinivasulu in spite of searching for them. A1 abused them and beat P.W.1 with a stick on his left hand fourth finger (ring finger) resulting in a bleeding injury. P.W.1 said that the other accused also beat him with sticks. In the mean time, the deceased intervened and A1 instigated A2 to leave P.W.1 and asked A2 to kill the deceased. Immediately, A2 hacked the deceased with a sickle on the right side of his waist (stomach) and the deceased sustained a bleeding injury. Again, A2 hacked the deceased with the sickle on his fore-head and the deceased fell down. The other accused beat the deceased indiscriminately with sticks and also kicked him and beat him with their hands. In the meanwhile, P.W.3 came there and intervened. A9 and A10 beat P.W.3 with sticks resulting in bleeding injuries. P.W.3 thereupon fell down. P.W.2 also came to the scene on noticing the incident. A5, A1, A10 and the remaining accused beat P.W.2 with sticks resulting in bleeding injuries and she also fell down. She received fracture injuries on her left hand and also sustained injuries on her body. Meanwhile, P.W.4 and P.W.5 came to the scene. A2 hacked P.W.4 with a sickle on his left hand and fore-head resulting in bleeding injuries. A2 also hacked P.W.5 with the same sickle on her head resulting in a bleeding injury. P.Ws.4 and 5 ran away from the spot. A2 chased them armed with a sickle. The other accused also threw away their sticks and followed A2. In the mean time, a 108 ambulance came there and took them to the Government Hospital, Hindupur, for treatment. On the same day night at 10.00 PM, the Sub-Inspector of Police, Chilamathur, came to the Government Hospital, Hindupur, and recorded his statement. By the time the Sub-Inspector of Police, Chilamathur, came there, the deceased had died. P.W.1 added that the deceased succumbed to the injuries immediately after he was brought to the Government Hospital, Hindupur. P.W.1 confirmed that Ex.P.1 was the complaint given by him to the police and identified his left thumb impression therein. P.W.1 stated that the incident happened under the street electrical light. In his cross-examination, P.W.1 stated that he and the deceased were discussing with each other about Srinivasulu and Sasikala, 4 or 5 yards away from his house, on the cement road on that day. P.W.1 denied that he had stated to the police as in Ex.D1 portion of his Section 161 CrPC statement that he was abusing Srinivasulu for leaving the village. He further stated that he and the deceased were talking in a low voice and that the houses of the accused were situated more than one furlong away from his house. He stated that four accused came in the first instance and started a galata. Later six other accused joined them. He affirmed that all the accused beat him with sticks and stated that A1 to A4 did not attack him when they came earlier than the other accused, but all the ten accused

simultaneously beat him together. He denied having stated to the police as in Ex.D2 portion of his Section 161 CrPC statement that A1 to A4 first attacked them with sticks. He further stated that the accused attacked them under the burning street light abutting the tar road in their village and that all of them were drunk. He said that all the accused beat him with sticks all over his body and because of the injuries, he fell down. He said that after receiving the injuries, he was unable to stand and sat underneath the electric pole. He further stated that he was at that place till he was taken to the Government Hospital in an ambulance, along with the other injured. He said that the deceased, who was present there, immediately came to his rescue and A2 hacked the deceased with a sickle on the right side of his waist. A2 also hacked the deceased on his head with a sickle. The deceased thereupon fell unconscious and collapsed facing downwards. P.W.3 came to the scene before the galata. A10 and A9 beat P.W.3 with sticks resulting in injuries. The accused also beat P.W.4 and P.W.5 resulting in injuries in the same incident. P.Ws.4 and 5 raised cries on seeing the attack on the deceased. P.W.1 denied that as they were doing stone-cutting work, there was a possibility of all of them receiving injuries. In his further cross-examination, P.W.1 stated that the electric pole was situated 6 feet away from his house and not 50 feet as suggested. He said that there was a compound wall and plants surrounding the house of the deceased and the electric pole was situated abutting the compound wall of the deceased. He confirmed that the accused beat him under the electric pole and that no galata happened in front of his house. He further stated that the electric pole was situated abutting the tar road where the incident had taken place and asserted that the incident did not happen within the compound wall of the deceased. He said that the accused threw away the sticks (M.O.2) near the electric pole. He denied that there were ill-feelings and enmity between the accused and one Vadde Gangappa, a contractor, who was the son of the junior paternal uncle of the deceased and that Ex.P1 complaint was brought into existence after deliberations and consultations with the said Vadde Gangappa. He denied that the deceased was indulging in criminal activities and was involved in a number of criminal cases. He concluded by stating that 7 or 8 people came to the scene after hearing their cries and, thereupon, the accused went away.

P.W.2s deposition was on the same lines as P.W.1 in almost all respects but for certain crucial variations. She stated that on the fateful day, her deceased husband and her brother (P.W.1) were talking about the affair of Srinivasulu and Sasikala in front of her house at about 8.00 PM. According to her, A1 to A4 then came there. A2 was armed with a sickle, while the others were armed with sticks. A1, upon seeing the deceased and P.W.1, started a galata questioning them as to the elopement of Srinivasulu and Sasikala. P.W.1 told them that they were in no way connected with it and they were also searching for them. A1 thereupon abused P.W.1 and beat him with a stick on the left hand and P.W.1 sustained a bleeding injury on his left hand fourth finger (ring finger). In the meanwhile,

her husband intervened and A1 asked the other accused to leave P.W.1 and to kill her husband. Immediately, A2 hacked her husband on his waist resulting in a bleeding injury and he again hacked him on his fore-head resulting in a bleeding injury. Her husband fell down. The other accused, armed with sticks, indiscriminately beat her husband with their sticks. Her husband sustained fracture injuries and injuries all over his body. In the mean time, P.W.3, her brother-in-law who was present there, intervened. A9 and A10 beat him with sticks resulting in bleeding injuries. A9 and A10 also beat P.W.3 on his right cheek with sticks. P.W.3 immediately fell down. On seeing the incident, P.W.2 said that she also intervened. A5 and A6 beat her with sticks on her left hand and right resulting in fractures and bleeding injuries. A5 beat her with a stick on her fore-head resulting in a bleeding injury. In the meantime, P.W.4 came to their rescue and A2 hacked him on his head resulting in a bleeding injury. He also hacked him on his left shoulder resulting in a bleeding injury. In the meantime, P.W.5 came there and A2 hacked her on her head with a sickle resulting in a bleeding injury. Thereupon, P.W.6 came to their rescue and A10 beat him with a stick on his right leg resulting in a bleeding injury. On receiving injuries, P.W.4, P.W.5 and P.W.6 ran away due to fear. In the meantime, some villagers gathered there. A2 left the scene along with his sickle and the other accused followed him. The other accused threw away their sticks at the scene. In the meantime, the villagers who gathered there informed a 108 ambulance, which came immediately. P.W.2 said that she along with her injured husband, P.W.1, and P.W.3 were taken in the said ambulance to the Government Hospital, Hindupur. She said that her husband succumbed to injuries while he was undergoing treatment at 11.00 PM on the same day. In the meantime, the Sub-Inspector of Police, Chilamathur Police Station, came to the hospital and examined her and P.W.1. Her brother gave Ex.P1 complaint to the police. P.W.2 identified the blood-stained clothes of her deceased husband (M.Os.3 and 4) and the weapons used, M.O.1 sickle and M.O.2 sticks (6 in number). She stated that she could identify the accused and see the entire incident in the burning street pole light in front of her house. In her cross-examination, P.W.2 stated that the incident had happened in front of her house in the village. She said that there was exchange of abuses between the accused, P.W.1 and her deceased husband when she came out from her house. She said that the incident happened within the compound of her house. She stated that the house of P.W.1 was situated opposite her house and denied the suggestion that P.W.1s house was situated 20 yards away from her house. She again stated that the entire incident happened in front of her house and not in front of the house of P.W.1. She stated that immediately after sustaining an injury on her fore-head, she fell down facing upwards and four accused beat her after she fell down. She confirmed that she stated before the police that after the arrival of P.W.4 and Ramachandrappa (L.W.7), some villagers also gathered there and on seeing them, the accused left the cement road towards P.W.2s relations house. She stated that the police did not seize her blood-stained clothes. She said that she could not say

where the accused threw the sticks used in the commission of the offence and as to who seized them. She said that A2 hacked her husband with a sickle and she noticed the same under the focus of the street tube light and that it was attached to an electric pole in the road. She asserted that the incident had happened on the mud road under a street light in between the tar road and the cement road. She denied the suggestion that her deceased husband sustained injuries in a different incident and that the accused were in no way connected or related with the said incident.

P.W.3 stated that he heard a galata in front of the house of the deceased on the fateful day at 8.00 PM. He then rushed there and noticed the presence of P.W.1, the deceased and all the accused. He said that A1 and the other accused beat P.W.1 with sticks and on noticing the same, the deceased intervened. A1 then asked the other accused to leave P.W.1 and to kill the deceased. P.W.1 received stick blows to his left hand. A2, armed with a sickle, hacked the deceased on his waist resulting in bleeding injuries. A2 again hacked him with the same sickle on his fore-head resulting in a bleeding injury and the deceased fell down. A1, A3 to A10 beat the deceased with sticks resulting in fracture injuries. P.W.3 said that he then intervened and A10 and A9 beat him with sticks. A10 beat him with a stick on his left hand ring finger resulting in a bleeding injury. A9 beat him with a stick on his left chin resulting in a bleeding injury. The other accused also beat him with sticks. In the meantime, P.W.2 came running to the scene and A6 and A5 beat her with sticks on both her hands resulting in bleeding injuries. P.W.4 and P.W.5 also came to the scene and A2 hacked P.W.4 with a sickle on his head resulting in a bleeding injury. A2 then hacked P.W.5 with a sickle on her head resulting in a bleeding injury. P.Ws.4 and 5 ran away from the scene. In the meantime, P.W.6 came to the scene. A5, A8 and the other accused beat P.W.6 with sticks resulting in bleeding injuries. P.W.6 also ran away from the scene. Some villagers gathered there and upon seeing them, A2 left the scene along with the sickle. The other accused threw away the sticks at the scene and followed A2. In the meantime, a 108 ambulance came and P.W.3, along with the deceased, P.W.1 and P.W.2, were taken to the Government Hospital, Hindupur. The deceased succumbed to his injuries on the same day at 11.00 PM while he was undergoing treatment in the Government Hospital, Hindupur. P.W.3 said that he noticed the entire incident under the street tube light focus. In his cross-examination, P.W.3 stated that he sustained only stick blows in the incident and became unconscious. He claimed that he regained consciousness at the scene almost immediately. He stated that his house was situated 100 or 150 feet away from the house of the deceased. The incident happened under the focus of the street light in between the house of P.W.1 and the house of the deceased, i.e., in front of the house of the deceased outside the compound wall. He said that he was present in front of the house of the deceased and witnessed the incident within the compound wall. He again said that the incident happened within the compound wall of the deceased but not on the road. He affirmed that he received bleeding injuries on his

hand and his left cheek but said that he did not observe whether his clothes became blood-stained.

P.W.4 said that on the day of the incident, he along with his father (P.W.3) and his wife (P.W.5) were present at their house. He said that he heard a galata from the house of the deceased and on hearing the cries, his father (P.W.3) immediately rushed there. He said that he, along with his wife (P.W.5), followed P.W.3. He said that he noticed the presence of the accused and that A2 was armed with a sickle, while the other accused were armed with sticks. P.W.1, P.W.2 and the deceased were also present there. A1 questioned P.W.1 about the elopement of Srinivasulu and Sasikala in a drunken state and then beat P.W.1 with a stick on his left hand ring finger resulting in a bleeding injury. In the meantime, the deceased intervened and A1 asked the other accused to leave P.W.1 and to kill the deceased. A2 then hacked the deceased with a sickle on his waist resulting in a bleeding injury. Again, A2 hacked the deceased with the same sickle on his fore-head resulting in an injury. Because of the hack injuries, the deceased fell down and the remaining accused beat him with sticks all over his body resulting in fracture injuries. When his father (P.W.3) intervened, A9 and A0 beat him on his left hand, left cheek and right hand resulting in bleeding injuries. When P.W.2 intervened, A5 and A6 beat her with sticks on both her hands resulting in a fracture injury to her left hand. P.W.4 said that on seeing him, A2 hacked him with a sickle on his head and on both hands resulting in bleeding injuries. When his wife (P.W.5) intervened, A2 hacked her on her head with a sickle resulting in bleeding injuries. The remaining accused beat P.W.5 with sticks all over her body. Due to fear, he said that he and his wife (P.W.5) ran away from the scene through the fields towards Gongatipalli Village. The next day morning at about 6.30 AM, he and his wife (P.W.5) came to the Government Hospital, Hindupur, for treatment. He said that he noticed the entire incident under the focus of the street tube light. In his cross-examination, P.W.4 said that he heard cries from the house of the deceased for about ten minutes on the day of the incident. He said that by the time he reached the house of the deceased, the accused were present by the side of the cement road and that no galata happened within the compound wall of the deceased or in front of the house of the deceased. He said that by the time he reached the house of the deceased, four accused were present, i.e., A1 to A4 and the remaining accused followed immediately. He again said that before he reached the scene, all the accused were present there. He said that all the accused came together to the scene. He denied having stated before the police as in Ex.D3 portion of his Section 161 CrPC statement to the effect that when A1 questioned P.W.1 about the elopement, in the meantime A5 to A10 came there armed with sticks. He said that all the accused beat P.W.3, his father, and he received bleeding injuries. He again said that A9 and A10 beat his father and also the other accused. He further stated that the accused beat P.W.3 even after he fell down. He said that he did not notice whether his clothes became blood-stained or not in the incident. He said that they took shelter

in their relations house in Gongatipalli Village after the incident and that he was there at Gongatipalli till dawn. Gongatipalli is situated 2 kilometres from his village but he did not know the distance between Hindupur and Gongatipalli Village. He however stated that he and P.W.5 directly came to Government Hospital, Hindupur, from Gongatipalli on the next day after the incident. He said that they came in a bus and till they reached the hospital, they had no information that P.Ws.1 to 3 were taking treatment there. He denied having stated before the police as in Ex.D4 portion of his Section 161 CrPC statement to the effect that after knowing of the death of the deceased, he and P.W.5 came to the hospital.

P.W.5, in her chief-examination, said that she was present in her house along with P.W.3 and P.W.4 on the fateful day, and at about 8.00 PM she heard a galata from the house of the deceased. She also heard the cries of A1 and upon hearing the galata and cries, they rushed there. She said that when she went to the scene, she found P.Ws.1 and 2 and the deceased. In the meantime, P.W.6 also came there. A1 questioned P.W.1 about the disappearance of Srinivasulu and Sasikala and P.W.1 replied that he did not know their whereabouts. Immediately, A1 beat P.W.1 with a stick on his left hand ring finger resulting in a bleeding injury. The deceased intervened. A1 told the other accused to leave P.W.1 and to kill the deceased. Immediately, A2 hacked on the waist of the deceased with a sickle and again on the fore-head resulting in bleeding injuries. The deceased fell down and A5 to A10 joined with the other accused. She said that immediately they reached the scene armed with sticks. When P.W.3 went to the rescue of the deceased, A9 and A10 beat him with sticks on his left hand and on his right chin. P.W.3 sustained a bleeding injury on his left in the incident. P.W.2 intervened and A5 and A6 beat her with sticks on both her hands resulting in fractures and also an injury on her fore-head. P.W.2 also fell down. A2, on seeing P.W.4, hacked him with the same sickle on both the hands and head resulting in bleeding injuries. A2 also hacked her with a sickle, while A3 and A4 beat her with sticks resulting in bleeding injuries. She said that she sustained injuries on her head and back. Apprehending danger from the accused, she and P.W.4 ran away from that place to Gongatipalli. She said that they noticed the incident under the street tube light focus. She said that she and P.W.4 stayed overnight with one of her relations in Gongatipalli. The next day morning at 6.00 AM, P.W.4 and she came to the Government Hospital, Hindupur, for treatment. In her cross- examination, P.W.5 said that no galata had happened prior to her arrival at the scene. She said that she heard only cries when she was at her house and except that, she did not hear anything. There were loud cries in the mob. When she reached the scene, A1 to A4, P.Ws.1 and 2 and the deceased were alone present. No galata happened between both groups prior to her reaching there. She said that her house is situated 250 yards away from the scene and except herself, P.W.3 and P.W.4, none came to the scene after hearing the galata. P.W.3 went earlier, then followed by P.W.4 and she followed them. She went to the front of the house of the deceased

under the street light. The entire incident, according to her, happened outside the house of the deceased under the street light. She said that she was 10 feet away from the accused when they were attacking the deceased. She said that she, P.W.3 and P.W.4 were standing under the street light at the time of the incident. She denied having stated before the police as in Ex.D5 portion of her Section 161 CrPC statement to the effect that she and P.W.4 were away in a corner and witnessed the incident under the street light and did not go there due to fear. A5 to A10 joined A1 to A4 immediately after they went to the scene. A5 to A10 came along the tar road. She said that A5 to A10 and she, along with P.W.3 and P.W.4, met each other. At that time, A5 to A10 did not do anything. She said that she noticed the incident by standing under the electric street light situated in the bazaar. She then said that the accused beat the deceased 5 or 8 feet away from her and from the electric pole. She said that she did not go to the rescue of anybody and P.W.4 also thought of intervening but due to fear, he did not go. She said that P.W.4 thought of rescuing his father, P.W.3, but she advised him not to go there as the accused may kill him. P.W.3 fell down because of the injuries and he was conscious but was unable to stand. The deceased also fell down but he was conscious and was unable to stand. She said that she and P.W.4 did not go to see other injured at the scene. She said that A2 did not hack P.W.1, her father, but hacked the deceased, P.W.3, P.W.4 and her. She said that A2 hacked her with a sickle on her head only once. The other accused beat her with sticks. She said that she sustained bleeding injuries because of the stick blows. She said that she and P.W.4 stayed overnight in one of her relations house in Gongatipalli. She admitted that neither she nor P.W.4 nor any of her relations came back to their village to know what had happened to the other injured. She said that in the morning, she came to know that the injured were brought to the Government Hospital, Hindupur. She said that she and P.W.4 came to the hospital in a bus and none of her relations accompanied them.

P.W.6 stated that he was present at his house on the fateful day and at 8.00 PM, he heard a galata from the houses of the deceased and P.W.1. Immediately, he rushed there and noticed the presence of A1 to A10, P.Ws.1 and 2 and the deceased at the scene. A2 was armed with a sickle and the other accused were armed with sticks. P.W.3, P.W.4 and P.W.5 were also present at the scene at that time. A1 questioned P.W.1 about the elopement of Srinivasulu and Sasikala and abused them in a drunken state. A1, who was armed with a stick, beat P.W.1 on his left ring finger resulting in a bleeding injury. When the deceased intervened, A2 hacked him with a sickle on his waist and fore-head resulting in bleeding injuries. The deceased fell down and the other accused beat him with sticks resulting in fracture injuries. P.W.3 intervened and A9 and A10 beat him with sticks on his right chin and left hand resulting in injuries. P.W.3 also fell down. P.W.2 intervened and A6 and A10 beat P.W.2 with sticks on both her hands and head resulting in fracture injuries. P.W.2 also fell down. P.Ws.4 and 5 intervened and A2 hacked

them with the sickle resulting in bleeding injuries. The other accused beat P.Ws.4 and 5 with sticks resulting in bleeding injuries. Due to fear, P.Ws.4 and 5 went towards Gongatipalli. A5 and A6 beat him with sticks on his right leg and right thigh resulting in bleeding injuries. Apprehending danger, he also ran away towards the fields. The next day morning at 7.30 AM, he came to the Government Hospital for treatment. He said that he witnessed the incident under the street tube light. In his cross-examination, P.W.6 stated that he did not observe whether he sustained a bleeding injury or not. He said that he noticed that the other injured had sustained bleeding injuries. He however contradicted himself by stating that he did not notice whether P.Ws.1 to 5 sustained bleeding injuries or not and said that he did not specifically observe the bleeding injuries on the persons of P.Ws.1 to 5. He said that P.Ws.1 to 5 fell down because of the injuries sustained by them but he did not try to lift any injured. He said that his house is situated 15 feet away from the scene and that he reached there after P.Ws.3 to 5. He however said that the galata started only after he reached there. The accused also came to the scene immediately after he reached there.

P.W.7 said that on the fateful day at about 8.00 PM, while he was present in his house, he heard a loud galata and cries from the house of the deceased. He immediately rushed there and noticed the presence of all the accused. A2 was armed with a sickle while others were armed with sticks. The deceased, P.W.1, P.W.2, P.W.4, P.W.5 and P.W.6 were also present there. A1 questioned P.W.1 about the disappearance of Srinivasulu and Sasikala and beat P.W.1 with a stick on his left hand ring finger resulting in a bleeding injury. The deceased intervened and A1 asked the other accused to leave P.W.1 and to attack the deceased. A2 hacked the deceased on his waist with a sickle and on his fore-head resulting in hack injuries. The other accused beat the deceased with sticks indiscriminately resulting in fracture injuries. The deceased fell down. In the meantime, P.W.3 intervened and A9 and A10 beat him with sticks on his left hand and right cheek resulting in bleeding injuries. When P.W.2 intervened, A5 and A6 beat P.W.2 with sticks on both her hands and fore-head resulting in bleeding injuries. When P.Ws.4 and 5 went to the rescue, A2 hacked them with a sickle on their heads resulting in bleeding injuries. The other accused also beat P.Ws.4 and 5 with sticks resulting in bleeding injuries. P.Ws.4 and 5 ran away due to life- threat. A5 and A6 beat P.W.6 with sticks resulting in bleeding injuries and P.W.6 also ran away. In the meantime, some villagers gathered there and on noticing them, the accused threw away the sticks at the scene and went away. Somebody informed a 108 ambulance and the injured were taken to the Government Hospital, Hindupur, in the said ambulance. He said that he subsequently came to know that the deceased had succumbed to injuries while undergoing treatment in the hospital. He said that he witnessed the entire incident under a street tube light. In his cross-examination, P.W.7 said that his house was situated 4 or 5 houses away from the scene of the offence. He said that when he reached the scene, there was an exchange of words between the accused,

deceased and P.W.1. He said that when he went to the scene, all the accused and injured were present and he was standing 10 to 15 feet away. The entire incident took place under the street light. He further stated that he did not go under the street light at the time of the incident and did not go to the rescue of P.Ws.1 to 6 and the deceased. He said that P.Ws.1 to 6 were beaten by the accused one after the other and that they were not beaten simultaneously. He further stated that he did not observe whether all the persons received bleeding injuries or not and whether their clothes were blood-stained. He said that 4 or 5 residential houses were near the scene of the offence and some of the inmates of those houses also came there at the time of the incident. He however said that he could not specifically identify those persons. He confirmed that the incident in question happened in front of the house of the deceased. He said that he was standing some distance away from the compound wall of the deceased and did not enter into the compound of the deceased though P.Ws.1 to 6 received injuries and fell down. He said that he did not enter into the compound when the accused left the scene of the offence. He said that he was with the injured till the ambulance came but he did not try to lift the injured into the ambulance.

P.W.8, a witness to the inquest proceedings held on 11.06.2007 at the Government Hospital, Hindupur, from 7.00 AM to 10.30 AM, said that he was thereafter taken by the Circle Inspector of Police along with M.Krishna Murthy (L.W.12) to Gadralapalli, the scene of the offence, and the police observed it in his presence. He said that he found six sticks thrown at the scene of the offence and also found blood-stained marks there. The police seized six sticks (M.O.2), blood- stained earth, controlled earth under cover of a seizure mahazar (Ex.P3). He stated that he was also present when the police recovered M.O.1 sickle from A2, after he was apprehended. In his cross- examination, P.W.8 admitted that the police did not keep M.O.1 sickle in a sealed cover or secure any initials thereon. He further stated that sickles like M.O.1 were available in the villages. He said that the sticks were found in front of the house of the deceased within the compound.

P.W.10, a Civil Assistant Surgeon at the Government Hospital, Hindupur, conducted the autopsy over the body of the deceased. He detailed the following external and internal injuries found by him: External injuries:-

1. 8 cms sutured wound over fore head. Fracture frontal bones, depressed type with EDH.

2. 6 x 4 cms contusion over right side of scapular area and posterior aspect of the chest.

3. 5 x 4 cm contusion over left side of scapular area.

4. 3 x 2 cm contusion over right lumbar area.

5. 2 x 1 cm contusion over left lumber area.

6. 4 x 3 cm contusion over right gluteal

area.

7. 4 x 3 cm contusion over left shoulder.

8. Fracture both bones fore arm right side.

9. 6 x 3 cm contusion over right iliac area posterior aspect.

10. Fracture both bones leg right side.

11. Fracture both bones leg left side.

12. Fracture femur right side.

Internal injuries:-

1. Skull: Fracture of frontal bone with ED H depression type.
2. Heck: Hyoid intact. Neck structures normal.
3. Chest: Multiple rib fractures on both sides with hemothorax with collapsed lungs.
4. Abdomen: Stomach contains about 500 ml partially digested food intestines normal.
5. Spleen, Liver, Both kidneys: Normal.
6. Pelvis: Normal.
7. Spine: Normal.

He opined that the deceased died due to shock and haemorrhage caused by the injuries and confirmed that he had died at the Government Hospital, Hindupur, at 11.00 PM on 10.06.2007. He confirmed that external injury No.1 and the internal injuries to the chest were sufficient to cause death of a person in ordinary circumstances. He said that the injuries found on the body of the deceased would be possible with a sickle and sticks. In his cross- examination, P.W.9 stated that external injury Nos.1, 2, 3, 4, 6, 7 and 9 may be caused by a broad based object and external injury No.1 was definitely caused by a hammer as the fracture underneath was a depression type. He further stated that none of the injuries referred to by him above would have been caused by a sharp-edged weapon. He also stated that contusion injuries are possible by falling on a stone and could also be caused by splinters coming as missiles caused due to breakage of stones by hammer. He said that external injury No.1 also could be possible by falling on a stone. He confirmed that external injury No.1 is corresponding to internal injury No.1. External injury Nos.8, 10, 11 and 12 were fractures but there was no corresponding external injury. He said that as there were no contusions or external injuries over the concerned fractures, these fractures were not caused by direct assault and that they could have been caused by indirect pressure or force. He also confirmed that external injury Nos.2 and 3 corresponded to internal injury No.2.

P.W.10, a Civil Assistant Surgeon at the Government Hospital, Hindupur, spoke of his examination of the injured witnesses. He said that on 10.06.2007 at 10.30 PM, he examined P.W.1 and found the following injury:

1. Pain and tenderness in the right fore arm. No bony lesion. No external injury observed on the body.

He said that the injury would have been caused by a blunt object like a stick. He identified Ex.P6 as P.W.1s wound certificate.

He examined P.W.2 at 10.00 PM and found

these injuries:

1. An abrasion of 4 cm x 3 cm in size on the right fore arm.

2. A diffuse contusion of 4 cm x 4 cm in size on the right side of the fore-head.

He said that both injuries were simple in nature and would have been caused with a hard object like a stick. He confirmed that Ex.P7 was P.W.2s wound certificate.

At 10.15 PM, he examined P.W.3 and found these injuries:

1. A diffuse contusion of 5 cm x 4 cm in size right side mandible, reddish in colour.

2. An abrasion on the left hand on the dorsal side 1 cm x 1 cm in size.

He said that the X-ray showed that P.W.3 had a fracture of the 5th metacarpal bone on the left hand. He said that injury No.1 was simple in nature, while injury No.2 was grievous. The injuries could have been caused with blunt objects like sticks. He confirmed that Ex.P8 was the wound certificate of P.W.3.

He examined P.W.4 on 11.06.2007 at 8.30 AM and found the following injuries:

1. An abrasion on the right fore arm 3 cm x 2 cm in size, reddish brown in colour.

2. A lacerated injury of 4 cm x 1 cm x 0.5 cm in the occipital area.

3. A lacerated injury of 3 cm x 1 cm x 0.5 cm in depth in the middle of the shoulder.

He said that injury No.1 was simple in nature and would have been caused by a stick. He said that injury Nos.2 and 3 could be possible with hard objects like sticks and any blunt object, such as the reverse portion of a sickle. Injury No.1 could be possible by dragging on a hard surface. He confirmed that Ex.P9 was the wound certificate of P.W.4.

On the same day, i.e., on 11.06.2007 at 8.45 AM, he examined P.W.5 and found the following injury:

1. A lacerated injury of 4 cm x 1 cm x 0.5 cm on the left parietal bone.

He said that the injury was simple in nature and could have been caused with a blunt or hard object such as sickle or rod. He confirmed that Ex.P10 was the wound certificate of P.W.5.

In his cross-examination, P.W.10 said that he could not say whether P.W.1 really had any pain or not. As regards P.W.2s wounds, he said that abrasions, as a rule, would be possible on coming into contact with a rough surface and the abrasion referred to in Ex.P7 wound certificate was also possible by contact with a rough surface. He said that such an abrasion would be possible if a person is dragged on a hard surface by folding legs. He said that a diffuse contusion means swelling and the same would be possible and probable by coming into contact with a hard surface. He said that there was a possibility of a contusion injury, as referred to in Ex.P7,

by pressing with a hard or blunt object. He said that the injuries referred to in Ex.P7 could be possible by a fall on the ground or hitting with a hard object. Injury No.2 in Ex.P7 could be possible and would also be more probable by hitting on a wall with a hard surface. He confirmed that no teeth of P.W.3 were damaged and if a forcible blow was given to the right mandible, there could be damage to the teeth, depending upon the force. He said that the injury sustained by P.W.3 was not due to a hard blow but swelling was there. He said that if a person accidentally hits against a wall, injury No.1 referred to in Ex.P8 wound certificate would be possible. He also said that injury No.2 in Ex.P8 would be possible by a fall on the ground. According to him, the injury referred to in Ex.P9 wound certificate is possible by contact with a hard surface. He however denied that injury Nos.2 and 3 in Ex.P9 wound certificate would be possible by a fall on a hard surface. He added that if a person falls on the back, injury Nos.2 and 3 could be caused. He added that lacerations could not be caused with a sharp-edged weapon but could be caused by the reverse side of a sharp-edged weapon. As regards Ex.P10 wound certificate, he said that the injury referred to therein is possible by falling from a certain height. He said that the said injury would not be possible with a sharp-edged weapon. He confirmed that the ages given in Exs.P6 to P10 wound certificates were his own approximations and the margin on either side could be 4 or 5 hours.

P.W.11, the Sub-Inspector of Police, Chilamathur Police Station, stated that he received information at about 11.00 PM on 10.06.2007 about the incident and that the injured were taken to the Government Hospital, Hindupur, and he immediately rushed there at 00.30 hours on 11.06.2007. He recorded Ex.P1 statement from P.W.1 and rushed back to Chilamathur Police Station and registered Crime No.32 of 2007 at 01.45 hours on 11.06.2007 under Sections 147, 148, 324 and 302 IPC read with Section 149 IPC. Ex.P11 is the FIR. In his cross-examination, P.W.11 stated that except recording Ex.P1, he did not examine any witnesses or record their statements. He said that he received a phone message from I Town Police Station, Hindupur, about the injured being admitted in the Government Hospital, Hindupur, while he was present in Chilamathur Police Station at 11.00 PM on 10.06.2007. He said that when he reached the hospital at Hindupur, he found ten members of Gadralapalli present there. He denied the suggestion that Ex.P11 FIR came into existence after due deliberations and consultations. He however admitted that the Judicial First Class Magistrate concerned received Ex.P11 FIR only at 8.00 AM on 11.06.2007.

P.W.12, the Circle Inspector of Police, Hindupur, stated that on 11.06.2007 at about 1.00 AM, he received a phone call from P.W.11. He visited the Government Hospital, Hindupur, at 1.45 AM and found P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 and the dead body of Subbaramappa. At about 3.45 AM, he received a copy of Ex.P11 FIR from P.W.11. He held an inquest over the body of the deceased from 7.00 AM to 10.00 AM. Ex.P2 is the inquest panchanama. During the inquest proceedings, he examined P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.6,

Ramachandrappa (L.W.7), Punyavathamma (L.W.8) and Vadde Sudhakar and recorded their statements. He left Hindupur at about 11.00 AM and reached Gadralapalli, where he examined the scene of the offence in front of the house of P.W.1 on the road side. Ex.P12 is the rough sketch thereof. He seized the blood-stained earth, controlled earth and six sticks at that time, under Ex.P3 observation mahazarnama. He examined P.W.7 on 12.06.2007 and recorded his statement. Upon receiving credible information, he arrested A2, A3, A8 and A9 on 13.06.2007 in the presence of mediators. A2 was found with M.O.1 sickle in his possession, which was seized under Ex.P4 mahazarnama. On 19.06.2007, he arrested the remaining accused. Seized material was sent to the laboratory for examination. Ex.P13 is the letter of advice and Ex.P14 is the Forensic Science Laboratory report from Tirupathi. After completion of the investigation, he laid a charge sheet against the accused. In his cross-examination, P.W.12 stated that one of the injured witnesses accompanied him to show the scene of the offence but he could not give his name. He admitted that he had not even mentioned the same in his case diary. He said that the scene of the offence was shown by the side of the road in front of the house of P.W.1. According to him, the scene of the offence was situated adjoining the house of P.W.1. M.O.2 sticks were seized in front of the house of P.W.1. The electric light pole was stated to be situated by the side of the tar road in the village. He asserted that on the information given by P.W.11, he visited the Government Hospital, Hindupur, at 1.45 AM on the intervening night of 10/11.06.2007 and was present in the hospital till 3.45 AM.

Upon considering the aforestated evidence, the Sessions Court believed the alleged eye-witnesses. The accused were accordingly convicted on all charges and sentenced, leading to this appeal.

Heard Sri A.Hanumantha Reddy, learned counsel for the appellants/accused, and the learned Public Prosecutor, State of Andhra Pradesh, and considered the material on record.

Though Sri A.Hanumantha Reddy, learned counsel, would rely upon various lapses committed by the police in the course of the investigation of the case, we are of the opinion that the same do not have a fatal effect on the prosecutions case. Maintenance of case diaries, seizure of material objects, manner of registration of the FIR, drawing of rough sketches, etc., are important steps, no doubt, in the course of the investigation, but when the case rests on eye-witness testimony and not on circumstantial evidence, such lapses may not, in themselves, be sufficient to disbelieve the prosecutions case.

That having been said, it may be noted that though P.Ws.1 to 6 are projected as injured eye-witnesses, there are several crucial inconsistencies in their versions which dilute the claim that all of them actually witnessed the attack upon the deceased and the further claim that all of them sustained injuries in that process. Ex.P1 complaint given by P.W.1 at 00.30 hours on 11.06.2007 to P.W.11 at the Government Hospital,

Hindupur, reads to the effect that P.W.1 was with his Viyyankudu (Sambandhi) at around 8.00 PM on 10.06.2007 outside his house when A1 to A4 came there, followed by A5 to A10. As per this statement, it is not clear as to who was the Sambandhi who was with P.W.1 and it appears that it was only after A1 beat P.W.1 on his left hand ring finger with a stick that the deceased came there upon hearing the galata. Further, as per Ex.P1, the accused fled from the scene when P.W.4, V. Ramachandrappa (L.W.7) and Gangadharappa came and separated them. As per Ex.P1, only P.Ws.1 to 3 and the deceased suffered injuries in the attack.

Further, though all the eye-witnesses took great trouble to corroborate each other on the specific details of the injuries suffered by each of them, the medical evidence did not support the same. For instance, all the witnesses consistently spoke of P.W.1 being hit by A1 with a stick upon his left hand ring finger resulting in a bleeding injury. This was stated to be the first injury caused in the attack and was also mentioned in Ex.P1. However, the medical evidence showed that P.W.1 did not suffer any such injury and all that the doctor (P.W.10) found was that P.W.1 had pain and tenderness in his right fore-arm. No other external injury was observed on his body and more particularly, the left hand. Further, the medical evidence completely undermined the version put forth by all the eye-witnesses that P.W.1 was beaten all over the body with sticks.

In this regard, reference may be made to the recent decision in MAHAVIR SINGH V/s. STATE OF MADHYA PRADESH (2), wherein the Supreme Court was dealing with a case where the trial Court acquitted the accused on the ground that there were contradictions between the evidence of eye-witnesses and the medical evidence. It was observed that the position of law as to contradiction between medical evidence and ocular evidence can be crystallised to the effect that the ocular testimony of a witness has greater evidentiary value vis--vis medical evidence, when medical evidence makes the ocular testimony improbable. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. Reliance was placed on the decision in ABDUL SAYEED V/s. STATE OF M.P.(3)

Earlier, in SRI NIWAS V/s. RAM BHAROSEY(4) , the Supreme Court was dealing with a case where the High Court found that the evidence of eye-witnesses appeared to be consistent but it was not consistent with the medical evidence creating a doubt as to the real manner in which the incident happened. The Supreme Court affirmed that once it was found that eye-witnesses did not give the correct account of how the incident had taken place, such evidence must be discarded, even though it was consistent otherwise.

RAM NARAIN V/s. THE STATE OF PUNJAB(5) was also a case where the evidence of the eye-witnesses was totally inconsistent with the medical evidence and

2. (2016) 10 SCC 220
3. (2010) 10 SCC 259
4. AIR 1994 SC 1539
5. AIR 1975 SC 1727

the evidence of the ballistic expert, resulting in a fundamental defect in the prosecutions case.

In DAYAL SINGH V/s. STATE OF UTTARANCHAL(6) , the Supreme Court observed that a complete contradiction or inconsistency between the medical evidence and the ocular evidence, on the one hand, and the statement of the prosecution witnesses between themselves, on the other, may result in seriously denting the case of the prosecution in its entirety. Reference was made to KAMALJIT SINGH V/s. STATE OF PUNJAB(7) , wherein it was observed that minor variations between the medical evidence and ocular evidence do not take away the primacy of the latter and unless medical evidence goes so far as to completely rule out all possibility whatsoever of injuries taking place in the manner stated by the eye-witnesses, their testimony cannot be thrown out.

In DARBARA SINGH V/s. STATE OF PUNJAB(8) , dealing with the question of inconsistency between medical and ocular evidence, the Supreme Court again observed that the law is well settled that, unless the oral evidence available is totally irreconcilable with the medical evidence, the oral evidence would have primacy and in the event of contradictions between medical and ocular evidence, the ocular testimony of a witness would have greater evidentiary value vis--vis medical evidence and only when medical evidence makes the oral testimony improbable, the same becomes a relevant factor in the process of evaluation of such evidence. For the purpose of evaluation of such evidence, the Supreme Court held that it is only when the contradiction between the two is so extreme that the medical evidence completely rules out all possibility of the ocular evidence being true at all, that the ocular evidence is liable to be disbelieved. Reference in this regard was made to STATE OF U.P. V/s. HARI CHAND(9) and BHAJAN SINGH V/s. STATE OF HARYANA(10) .

In the light of the aforestated case law, when there is absolutely no medical evidence to support the version that P.W.1 suffered an injury on his left hand ring finger and the medical evidence, in fact, refutes any such possibility, the claim of all the eye-witnesses to that effect smacks of tutoring. Further, the details of the so-called attack upon the deceased also do not find support in the medical evidence. According to all the eye-witnesses, A2 attacked him with a sickle (M.O.1). This weapon was not even shown to P.W.9, the doctor who conducted the post-mortem examination of the body of the deceased. He categorically asserted that the first external injury, being a fracture of the frontal bone, could have been caused only by a hammer. He confirmed that this injury was definitely caused by a hammer as the fracture underneath was a depression type fracture. As to how a sickle could have been used as a hammer is not explained and no question was put to P.W.9 as to whether any part of a sickle could have been used in such a manner. The attribution of this

6. (2012) 8 SCC 263
7. (2003) 12 SCC 155
8. (2012) 10 SCC 476
9. (2009) 13 SCC 542
10. (2011) 7 SCC 421

injury on the deceased to A2 is rendered doubtful. The ocular evidence is therefore clearly outweighed by the medical evidence.

In this regard, reference may be made to BHOLA SINGH V/s. STATE OF PUNJAB(11) , wherein the Supreme Court was dealing with a case where the deceased had suffered injuries from a blunt weapon as per the post-mortem and such injuries would not have been possible with a Gandasa, which was cited as the weapon used by the accused as per the eye-witnesses. The Supreme Court observed that it is highly improbable and unlikely that when the accused was armed with a weapon like a Gandasa, he would have used the blunt-edged side and not the sharp-edged side of the said weapon. It was therefore held that the eye-witnesses version gave rise to a serious doubt as to their presence at the time of the incident.

Earlier, in HALLU V/s. STATE OF M.P.(12) , the eye-witnesses said that the attack was with lathis, spears and axes but the medical evidence did not support it. The High Court refused to attach importance to this discrepancy assuming that the axes and spears must have been used on the blunt side and, therefore, the evidence of the eye-witnesses could be accepted. The Supreme Court observed that normally when a witness says that an axe or a spear is used, there is no warrant to suppose that the witness meant that the blunt side of the weapon was used. The Supreme Court further observed that it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged instrument was used as a blunt weapon. Applying this principle, there is no explanation for injury No.1 on the deceased which could only have been inflicted by a hammer but the weapon used, as per all the eye-witnesses, was a sickle, which they said was used to hack the deceased.

Viewed thus, manipulation of the case by the police so as to strengthen it against the accused is apparent. The endeavour to cook up more eye-witnesses is also clearly manifest, as will be explained hereinafter. In re GADDAM JAYARAMI REDDI(13) , a Division Bench of this Court observed that it is regrettable that in spite of repeated warnings against dishonest practices and emphasising the need to carry on investigation honestly some investigating officers persist in dubious methods and opined that such officers must realise that by tampering with evidence, they are interfering with a fair trial.

Long thereafter, in SUNIL KUNDU V/s. STATE OF JHARKHAND(14) , the Supreme Court rejected the argument of the State that minor contradictions and inconsistencies which do not go to the root of the prosecution version should be ignored, as major lacunae in the prosecutions story were found. Three of the important prosecution witnesses were found to be not truthful as their presence itself was doubtful. The Supreme Court observed that the genesis of the prosecutions case was suppressed and reliance was placed on KAPILDEO MANDAL V/s. STATE OF

11. AIR 1999 SC 767
12. AIR 1974 SC 1936
13. AIR 1959 AP 325
14. (2013) 4 SCC 422

BIHAR(15) , wherein it was held that while appreciating variance between medical evidence and ocular evidence, oral evidence of eye-witnesses has to be given priority as medical evidence is basically opinionative, but when the evidence of the eye-witnesses is totally inconsistent with the evidence given by the medical experts, then such evidence is to be appreciated with a different perspective. It was observed that when medical evidence specifically ruled out the injury claimed to have been inflicted as per the eye-witnesses version, then the Court can draw an adverse inference that the prosecution version is not trustworthy.

This being one viewpoint, the judgment of the Supreme Court in KARNEL SINGH V/s. STATE OF M.P.(16) casts light on the other point of view. That was a case where it was found that the investigating officer had not taken the care expected of him but despite the fact that the investigation was casual and defective, the Courts below had recorded a conviction. The Supreme Court observed that in cases of defective investigation, the Court must be circumspect in evaluating the evidence but it would not be right in acquitting an accused solely on account of the defect as to do so would tantamount to playing into the hands of the investigating officer, if the investigation is designedly defective, and to acquit solely on the ground of defective investigation would be adding insult to injury.

It would therefore be necessary for this Court to balance both these perspectives while dealing with the case on hand.

Significantly, though the eye-witnesses took great pains to parrot, by rote, the injuries sustained by each and every one of them, the same trouble was not taken to corroborate each other as to the place of the attack. P.W.1 said that it did not happen within the compound of the deceased. P.W.2, at one stage, said that the attack occurred within the compound of her house but contradicted herself by saying thereafter that the incident happened on the mud road under the street light, in between the tar road and the cement road. P.W.3 also stated in the first instance that it occurred outside the compound wall and then claimed otherwise. P.W.4 claimed that it did not happen within the compound and P.W.5 said that it happened outside the house of the deceased under the street light. P.W.7 deposed to the effect that the incident occurred within the compound. According to P.W.8, the sticks (M.O.2) were found in front of the house of the deceased, within the compound. This fact demolished the version put forth by the so-called eye-witnesses that the incident took place outside the compound wall and that the accused threw their sticks at the scene of the offence when they left. P.W.4 stated that he heard cries from the house of the deceased for about 10 minutes before he went there. However, all the witnesses claimed to have been present right from the commencement of the attack upon P.W.1 by A1 with a stick and with great precision, they all detailed the attack on each of them. So much so, that P.W.7 went to the extent of stating that P.Ws.1 to 6 were beaten by the accused one after the other and the

15. (2008) 16 SCC 99
16. (1995) 5 SCC 518

accused did not beat them simultaneously. This is also highly implausible as each of the eye-witnesses would not have stood by, patiently waiting for their turn, while the accused finished their attack on the victims, one by one. Though all of them spoke of bleeding injuries, the wound certificates and the evidence of the doctor (P.W.10) demonstrates that no such bleeding injuries were found, as claimed by all these so called injured eye-witnesses.

According to P.W.3, it was only after the attack upon P.W.2 that P.Ws.4, 5 and 6 came there. He said that the incident occurred under the street light in between the house of P.W.1 and the deceased, i.e., in front of the house of the deceased outside the compound wall. However, he contradicted himself thereafter by saying that he was present in front of the house of the deceased and witnessed the incident within the compound wall. He further stated that the incident happened between the compound wall of the deceased but not on the road. According to P.W.10, P.W.3 suffered a contusion on the right mandible and abrasion on the left hand on the dorsal side and had suffered a fracture on the fifth metacarpal bone on the left hand, which were the injuries claimed by P.W.3 to have been suffered in the course of the attack. However, given the fact that owing to the intervening manipulation by the police, he kept changing his version from stage to stage, including the scene of the actual attack, his evidence does not commend credibility.

Similar is the case with P.W.2, the wife of the deceased. She also spoke of P.W.1 sustaining a bleeding injury on his left ring finger. According to her, her husband intervened after P.W.1 suffered this injury and A1 asked the other accused to leave P.W.1 and to kill her husband. She confirmed that A2 hacked her husband on his fore-head with M.O.1 sickle resulting in a bleeding injury. No mention was made by her of the sickle being turned around so as to use the handle as a hammer. She spoke of the attack upon P.W.3 with sticks by A9 and A10 who were stated to have beaten him with sticks and also on his right cheek. This injury found mention in Ex.P8 wound certificate of P.W.3. She further confirmed that A5 and A6 beat her with sticks on her left hand and right fore-arm. She however did not suffer any fractures as claimed by her. A5 was stated to have beaten her on her fore-head resulting in a bleeding injury. This injury stands confirmed to some extent by Ex.P7 wound certificate, wherein a mention was made of a diffuse contusion on the right side fore-head of P.W.2. Again, clear attempts at embellishment and exaggeration by this witness dilute her trustworthiness.

P.W.1, the crucial injured eye-witness, also parroted the concocted version forced upon him by the police. Further, his claim of suffering a non-existent injury on his ring finger discredits him.

The presence of P.Ws.4, 5 and 6 at the scene during the attack and being injured in the course thereof, as claimed, is extremely doubtful. P.Ws.4 and 5 claimed that they were attacked but ran away from the scene and they did not even return or file a police complaint but calmly spent the

night at the house of a relation of P.W.5 at Gongatipalli. This was their story, notwithstanding the fact that P.W.4s father (P.W.3) and P.W.5s father (P.W.1) were injured victims and had admittedly collapsed on the road while they themselves fled. This detachment on their part and lack of concern for their respective fathers is highly unbelievable. That apart, as per Ex.P1, P.W.4 was instrumental, along with others, in breaking up the fight. As per P.W.12, when he went to the hospital on 11.06.2007, between 1.45 AM and 3.45 AM, P.Ws.4 and 5 were both present there This statement is sufficient to demolish the version put forth by P.Ws.4 and 5 to the contrary. Surprisingly, P.W.6, who also claimed to be an injured eye-witness, was not even examined by a doctor.

Given the fact that this incident allegedly occurred at 8.00 PM on 10.06.2007, registration of the FIR only at 1.45 AM on 11.06.2007, followed by receipt thereof by the Magistrate concerned at 8.00 AM on 11.06.2007, indicates there was ample scope for deliberation, consultation and manipulation of the case by the police. This suspicion is fortified by the fact that P.W.11 admitted that he received information from I Town Police Station, Hindupur, about the injured being admitted in the hospital at 11.00 PM but he did not inform the Inspector of Police, P.W.12, till much later. Further, he went to the Government Hospital, Hindupur, at about 00.30 hours on 11.06.2007 and having secured Ex.P1 complaint from P.W.1, he went back to Chilamathur Police Station to register the case. Even at that stage, he claims that he did not inform P.W.12. This conduct on the part of the police raises suspicion. Significantly, P.W.1 let it out that P.W.11 came to the hospital on that night at 10.00 PM itself and not at 12.30 AM, as claimed by P.W.11. This also confirms that the version put forth by the police is not truthful.

According to P.W.12, the inquest over the body of the deceased was conducted from 7.00 AM to 10.00 AM on 11.06.2007 at the Government Hospital, Hindupur. However, P.W.10, the doctor, confirmed that he examined P.W.4 at 8.30 AM and P.W.5 at 8.45 AM on 11.06.2007. When P.Ws.4 and 5 were shown as witnesses in the inquest, which commenced at 7.00 AM and concluded at 10.30 AM, it is doubtful as to whether they would have been allowed to leave during the proceedings so as to undergo examination by P.W.10. Be it noted, the entire family is stated to be involved in stone-cutting activity and the injuries so-called found on P.Ws.4 and 5 could easily be attributed to such activity. P.W.10 confirmed that their injuries were simple in nature. He also confirmed that he could not pinpoint exactly as to when such injuries were suffered by them.

The alleged motive for the attack upon the deceased also defies comprehension. According to all the family members, there was no enmity between their family and the accused prior thereto and it was only because of the elopement of P.W.1s son with A1s sister-in-law that ill-feelings arose between them. This was stated to be the only reason for the attack. If that were so, the ill-feelings and animosity of A1 and his group, if any, would have been much more against P.W.1, the father of Srinivasulu who

had eloped with A1s sister-in-law. The deceased, being the father-in-law of Srinivasulu, would also be an aggrieved party as his daughter was left high and dry by the elopement of her husband with A1s sister-in-law. The version put forth by the eye-witnesses that when the deceased interfered, A1 instigated A2 and the others to leave P.W.1 and to kill the deceased therefore defies logic. No evidence was let in of any prior animosity between the accused and the deceased. If the elopement of Srinivasulu with Sasikala was the only motive for the attack, concentration of the accused upon the deceased leaving aside P.W.1, the father of Srinivasulu, does not appear rational.

Consideration of the ocular and medical evidence leads to a strong possibility that P.Ws.1 to 3 were actual eye-witnesses and suffered injuries in the course of the attack upon the deceased. However, given the various contradictions and inconsistencies in the evidence of these actual eye-witnesses, it is clear that the genesis and origin of the incident was suppressed by the prosecution. The thrust of the attack seems to have been only upon the deceased, as he suffered the maximum number of injuries. However, the version put forth by the prosecution was that P.W.1 was attacked in the first instance and when the deceased intervened, A1, the brother-in-law of Sasikala, turned his ire upon the deceased and instigated all the accused to leave P.W.1 alone and to kill the deceased. As this version is not even logical, it is clear that the actual reason for the attack on the deceased is being withheld.

No doubt, the maxim Falsus in uno, falsus in omnibus (false in one thing, false in all) does not have application in India and it is the responsibility of the Court to sift through the evidence so as to find the truth. In UGAR AHIR V/s. STATE OF BIHAR(17) , it was observed that the maxim falsus in uno, falsus in omnibus is neither a sound rule of law nor a rule of practice as one hardly ever comes across a witness whose evidence does not contain a grain of untruth or, at any rate, exaggerations, embroideries or embellishments. It was further observed that it is the duty of the Court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff but it cannot obviously disbelieve the substratum of the prosecutions case or the material parts of the evidence and reconstruct a story of its own out of the rest.

Again, in JAKKI V/s. STATE(18) , the Supreme Court observed: the maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be discarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called a mandatory rule of evidence.

Thereafter, in STATE OF U.P. V/s. M.K.ANTHONY(19) , the Supreme Court observed as under:

> While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a

17. AIR 1965 SC 277
18. (2007) 9 SCC 589
19. (1985) 1 SCC 505

ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer.

Relying on the aforestated extract, the Supreme Court in STATE REPRESENTED BY INSPECTOR OF POLICE V/s. SARAVANAN(20) observed that it has been said, time and again, that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecutions case, ought not to prompt the Court to reject the evidence in its entirety. It was further observed that on the general tenor of the evidence given by the witness, the trial Court, upon appreciation of such evidence, forms an opinion about the credibility thereof and in normal circumstances, the appellate Court would not be justified in reviewing it without valid reasons. The Supreme Court pointed out that it is the totality of the situation which has to be taken note of and differences in some minor detail, which do not otherwise affect the core of the prosecutions case, even if present, would not prompt the Court to reject the evidence.

However, in MOHINDER SINGH V/s. THE STATE(21) , the Supreme Court observed that in a case where death is due to injuries caused by a lethal weapon, it is the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they were alleged to have been caused. It was observed that it is elementary that where the prosecution has a definite or positive case, it must prove the whole of it.

Again, in BALAKA SINGH V/s. STATE OF PUNJAB(22) , the Supreme Court observed that though the Court must make an attempt to separate grain from the chaff, truth from

20. (2008) 17 SCC 587

21. AIR 1953 SC 415

22. (1975) 4 SCC 511

the falsehood, yet this could only be possible when the truth is separable from the falsehood. However, where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that, in the process of separation, the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.

In the light of this authoritative edict, it is not permissible for the Court to concoct a new case altogether for the prosecution in the course of separating the chaff from the grain while analyzing the evidence of partly truthful witnesses. All the more so, when it is clear that the prosecution has deliberately tampered with the case, whereby the origin and genesis of the occurrence are suppressed, leading to the irresistible conclusion that the prosecution did not come out with the true version of the occurrence. (See KAPILDEO MANDAL15, LAKSHMI SINGH V/s. STATE OF BIHAR(23) and MOHAR RAI V/s. STATE OF BIHAR(24) .

Presently, we find that the medical evidence unquestionably outweighs the ocular evidence. The actual eye-witnesses were clearly tutored and the planted eye-witnesses further diluted their testimony. The motive for the attack upon the deceased was withheld by the witnesses. The prosecution, in effect, suppressed the genesis and origin of the occurrence. This Court would therefore have to come up with a new case for the prosecution by undertaking evaluation of the testimonies of the actual eye-witnesses, which is clearly impermissible in law. We can only respectfully empathize with the sentiments expressed by the Supreme Court in SUNIL KUNDU14:

..We are distressed at the way in which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes.

On the above analysis, we are constrained to hold that the prosecution failed to prove the guilt of the accused in respect of all the charges as it deliberately resorted to suppression of the genesis and origin of the occurrence and did not put forth the true version of what had actually happened. The benefit of doubt would therefore have to be given to the accused.

The appeal is accordingly allowed and the judgment in Sessions Case No.194 of 2008 of the learned Additional Sessions Judge, Hindupur, holding to the contrary is set aside. As the appellants/accused were enlarged on bail during the pendency of this appeal, they shall report before the Superintendents of the prisons where they were incarcerated for completion of necessary formalities in the light of their acquittal. Bail bonds furnished by them at the time of securing bail in this appeal shall stand discharged.

23. AIR 1976 SC 2263
24. AIR 1968 SC 1281

LAW SUMMARY

2018 (1)

Supreme Court Reports

2018 (1) L.S. 1 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Chief Justice of India
Dipak Misra
The Hon'ble Mr.Justice
A.M.Khanwilkar &
The Hon'ble Dr.Justice
D.Y.Chandrachud

Raj Kumar Bhatia ..Appellant
Vs.
Subhash Chander Bhatia ..Respondent

CIVIL PROCEDURE CODE, Or.6 Rule 17 - CONSTITUTION OF INDIA, Art.227 - Appeal against the Judgment of High Court, where by, the Order of Trial Court allowing an application filed by appellant for amendment of written statement was set aside – Case, which was sought to be set up in proposed amendment was an elaboration of what was stated in written statement.

Held – Whether an amendment should be allowed is not dependent on whether case which is proposed to be set up will eventually succeed at the Trial – In enquiring into merits, High Court transgressed limitations on its jurisdiction under Article 227 and in exercise of its jurisdiction under Article 227, High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess evidence upon which the inferior court or tribunal has passed an Order - View taken by High Court is impermissible – Impugned Judgment is set aside – Appeal is allowed.

C.A.Nos.8245-8246/2016 Date:04.10.2016

J U D G M E N T

The present appeal arises from a judgment of the High Court of Delhi dated 5 October 2016 by which an order of the Trial Court allowing an application filed by the appellant for amendment of the written statement was set aside.

On 11October 2002,Sharda Rani Bhatia instituted asuit forthe recovery of possession, arrears of damages and mesne profits against the appellant. The property in dispute is situated on the first floor at 1/6 Ramesh Nagar, New Delhi. The case of the original plaintiff is that Desh Raj Bhatia acquired the leasehold rights on 13 February 1962. On his death, his children are stated to have relinquished their rights and interest in favour of their mother, Lajwanti Bhatia. She executed a will bequeathing the property to her son Ratan Lal Bhatia who is stated to have become the exclusive

owner of the property on her death. The original plaintiff, Sharda Rani Bhatia is the widow of Ratan Lal Bhatia. The appellant is the son of Ratan Lal Bhatia. Ratan Lal Bhatia died intestate. On his death, a registered deed of relinquishment was executed in favour of Sharda Rani Bhatia by the appellant and the respondent, the sons of Ratan Lal Bhatia and by Shakti Bhatia in favour of their mother. The original plaintiff is stated to have permitted the appellant and the respondent to reside along with her in the property. The suit was filed by Sharda Rani Bhatia for recovery of possession from the appellant and for consequential relief. The original plaintiff is stated to have executed a deed of gift in favour of the respondent in 2003 after which he was impleaded as co-plaintiff. The original plaintiff died in 2005 and the suit is being pursued by the respondent. 3 The appellant filed his written statement in the suit on 22 February 2003. According to the appellant, the respondent had exercised undue influence in obtaining the deed of relinquishment. According to him, parties had lived together jointly even after the alleged relinquishment. The appellant claims that an oral understanding was arrived at by which he was to occupy the first and second floors together with the terrace whereas the respondent was to occupy the ground floor exclusively and their mother was to live on the ground floor or, with any of her sons, as she desired. Accordingly, it has been alleged that the family arrangement was acted upon and the appellant is in occupation of the first and second floors together with the terrace while the respondent is in possession of the ground floor. 4 Issues were framed on 14 August 2003. The respondent moved an application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint on 7 February 2013, which was allowed on 21 September 2013. The appellant filed a written statement to the amended plaint. The appellant filed an application for amendment of the written statement in March 2016, which was opposed by the respondent. The Trial Court allowed the application by an order dated 11 April 2016.

5 The respondent filed an application under Order 47 Rule 1 of CPC seeking review of the order dated 11 April 2016. On 3 June 2016, the respondent filed a writ petition under Article 227 of the Constitution. The petition was allowed by the impugned order dated 5 October 2016.

6 By the proposed amendment, the appellant inter alia sought to introduce the following averments in the written statement:

> "22. That as a matter of fact the property in question is the ancestral, joint Hindu Family Property as initially in view of the pleadings as well the same was purchased by Desh Raj Bhatia, grandfather of the plaintiff No. 2 and the defendant. After the death of Desh Raj Bhatia, who died intestate, the suit property was inherited by all the legal heirs namely Smt. Rajwanti Bhatia (widow), Sunita Rani Bhatia (Daughter), Walaityi Ram Bhatia (Son), Om Prakash Bhatia(Son), Tilak Raj Bhatia (Son), Ratan Lal Bhatia (son), Smt Sita Virmani (daughter), Smt Shakuntala

Bhatia (daughter), Jagdish Lal Bhatia (son). All the said legal heirs have relinquished their rights in favour of their widow mother Smt. Lajwanti Bhatia. Thereafter, Smt Lajwati Bhatia before her expiry, have executed a Will in favour of Ratan Lal Bhatia, who is the father of the plaintiff No. 2 and the defendant and after death of Smt. Lajwanti Bhatia, the suit property was inherited by Ratan Lal Bhatia..

24. That it is an admitted position that on the death of Ratan Lal Bhatia, he was survived by his widow Shara Rani Bhatia, plaintiff No. 2, Subhash Chander Bhatia, defendant Raj Kumar Bhatia and one daughter namely Smt. Shakti Rani Bhatia and one daughter namely Smt Sakshi Rani Bhatia and the plaintiff No. 2, defendant and their sister was also having their two children. It is undisputed position that Ratan Lal Bhatia died intestate and the assets as well as the properties left behind by him stands inherited equally in the name of his legal heir and thus the properties left behind by Ratan Lal Bhatia become the coparcenary property for the rights of the grand children of Ratan Lal Bhatia. It is submitted that the grand children of Ratan Lal Bhatia have derived their coparcenary rights in the properties left behind by Ratan Lal Bhatia. Meaning thereby in case of plaintiff No. 2, although he derived 1/4th share in the suit property but legally his own son and daughter being coparcener then his share shall be terms as 1/12th each and likewise the share of defendant which he derived as 1/4 th on the death of his father shall also be deemed as 1/12th each with his two sons and the share of Sharda Rani Bhatia which she derived as 1/4th is also to be legally deemed as 1/12th each alongwith her sons and daughter.

7 The High Court has held that the amendment sought in the written statement was not bona fide and was not necessary for determining the real question in controversy between the parties. The suit was instituted in 2001 and the written statement was filed in 2003. The High Court held that based on facts which were known to the appellant in 2003, a belated attempt was made thirteen years later in 2016 to amend the written statement to introduce an averment on the existence of coparcenary / hindu undivided property. On merits, the High Court held that it is a settled principle that after the enactment of the Hindu Succession Act 1956, property which devolves on an individual from a paternal ancestor does not become HUF property but the inheritance is in the nature of self-acquired property unless an HUF exists at the time of the devolution. This view was based on the judgments of this Court in COMMISSIONER OF WEALTH-TAX, KANPUR V CHANDER SEN 1986 (3) SCC 567 AND YUDHISHTER V ASHOK KUMAR 1987(1) SCC 204. In the view of the High Court, the averments sought to be introduced by the appellant do not lead to a conclusion of the existence of coparcenary property. While accepting that in the course of

considering an application for amendment, its merits or demerits should not be evaluated, the High Court nevertheless held that the amendment in the present case was untenable on merits.

8 On behalf of the appellant, it has been urged that necessary averments about the ancestral nature of the property are contained in the original written statement. Hence, it was urged that the averments which were sought to be elaborated in the amended written statement had their genesis in the original written statement. Based on this premise, it was urged that the amendment was (1986) 3 SCC 567 (1987) 1 SCC 204 correctly allowed by the Trial Court. The High Court, it was urged, ought not to have interfered under Article 227 of the Constitution with an order of the Trial Court allowing the amendment. Moreover, it was urged that at the stage of allowing an amendment, the court is not justified in considering the merits of the case which is sought to be pleaded. The High Court, it was submitted, had declined to allow the amendment after reviewing the merits of the defence raised, which was impermissible. The appellant also urged that the respondent had already filed an application for review of the order passed by the Trial Court on 11 April 2016, allowing the amendment in spite of which, a petition was filed under Article 227. 9 On the other hand, it was urged on behalf of the respondent that the written statement as originally filed was based on a challenge to the deed of relinquishment executed by the appellant in favour of his mother Sharda Rani Bhatia. The appellant also sought to plead an oral arrangement to the effect that his possession of the suit property would not be disturbed. This, it was urged, amounted to an admission that the property was the self-acquired property of Ratan Lal Bhatia and the appellant cannot be permitted to withdraw the admission by amending the written statement. Moreover, it was urged that issues were framed on 14 August 2003. The respondent had filed its evidence on affidavit and the trial had already commenced prior to the filing of the application for amendment of the written statement. In the absence of due diligence on the part of the appellant, the amendment could not have been allowed. The amendment, it was submitted, changes the fundamental nature of the defence and is aimed at delaying the disposal of the suit.

10 In the original written statement, the appellant had set up the plea that the property in dispute was in the nature of joint family property and that even after the alleged deed of relinquishment, parties were living together as members of a joint hindu family. The written statement inter alia contains the following averments :

> "10…The property is the joint family property. The sister of the respondent is married and well settled at her matrimonial home…
>
> The defendant, plaintiff and the said S C Bhatia were jointly occupying the said property as being the undivided joint family property. That even after execution of the alleged relinquishment dee the abovesaid parties were living as joint family and the suit property being the undivided

joint family…

That all family members were using ground floor, first floor and second floor jointly as undivided joint family property."

In paragraph 12 of the written statement, the appellant has set up an oral family arrangement, thus :

"12…That acting upon the oral family arrangement, an amount of Rs. 6, 00, 000/- was taken out of the common fund of the Joint Hindu Undivided Family. The said amount has been handed over to Dr R C Bhatia and Shri Shakti Bhatia both residents of Modi Nagar, U P on interest. The said two persons are regularly paying interest to the plaintiff." In "the reply on merits", the appellant has averred that :

"2… The defendant is in possession of the first floor, second floor and terrace of the said property as owner as per the oral family settlement of the undivided Joint Hindu Property…

That all other assets movable as well as immovable including the factory in the name and style of Rattan Industries situated at 18 DLF Industrial Modi Nagar, are still in joint possession and ownership and no division on metes and bounds has taken place.Though the "said property" has been divided by mets and bound as per the oral family armament. The plaintiff has made the present averment at the behest of her younger son Shri S C Bhatia with an ill intention and motive to deprive the defendant of his lawful occupation. That as per the said oral family arrangements, an amount of Rs. 6 lacs from joint funds has been handed over on interest to Dr R C Bhatia and Smt Shakti Bhatia, son in law and daughter of the plaintiff. That R C Bhatia and Smt Shakti Bhatia have been regularly paying interest to the plaintiff on the said amount."

11 This being the position, the case which was sought to be set up in the proposed amendment was an elaboration of what was stated in the written statement. The High Court has in the exercise of its jurisdiction under Article 227 of the Constitution entered upon the merits of the case which was sought to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction under Article 227. In SADHNA LODH V NATIONAL INSURANCE COMPANY , this Court has held that the (2003) 3 SCC 524 supervisory jurisdiction conferred on the High Court under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence upon

which the inferior court or tribunal has passed an order. The Trial Court had in the considered exercise of its jurisdiction allowed the amendment of the written statement under Order 6 Rule 17 of the CPC. There was no reason for the High Court to interfere under Article 227.
Allowing the amendment would not amount to the withdrawal of an admission contained in the written statement (as submitted by the respondent) since the amendment sought to elaborate upon an existing defence. It would also be necessary to note that it was on 21 September 2013 that an amendment of the plaint was allowed by the Trial Court, following which the appellant had filed a written statement to the amended plaint incorporating its defence. The amendment would cause no prejudice to the Plaintiff.

12 In the view which we have taken, it has not become necessary to consider the alternative submission of the appellant namely, that recourse taken to the jurisdiction under Article 227 by the respondent after filing an application for review before the Trial Court was misconceived. Since the matter has been argued on merits, we have dealt with the rival submissions.

13 Hence, on a conspectus of the facts and having due regard to the nature of the jurisdiction under Article 227 which the High Court purported to exercise, we have come to the conclusion that the impugned judgment and order is unsustainable. We accordingly allow the appeal and set aside the judgment of the High Court. The order passed by the Trial Court allowing the amendment of the written statement is accordingly affirmed.

14 There shall in the circumstances be no order as to costs.

–X–

2018 (1) L.S. 6 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Arun Mishra &
The Hon'ble Mr.Justice
Amitava Roy

Prabhakara Adiga …Appellant
Vs.
Gowri & Ors. …Respondents

CIVIL PROCEDURE CODE, Sec. 50 & Order 21 Rule 16 - Executability of a decree for permanent injunction against the Legal representatives of Judgment-debtor – After the death of judgment-debtor, his legal heirs in violation of decree for permanent injunction tried to forcibly dispossess the decree-holder from scheduled property and contended that they were not bound by the decree for permanent injunction.

Held – When right litigated upon is heritable, decree would not normally

CA.Nos.3007-3008/17 Date:20-2-2017

abate and can be enforced by legal representatives of decree holder and against judgment-debtor or his legal representatives – It is apparent from Section 50 of CPC that when a judgment-debtor dies before decree has been satisfied, it can be executed against legal representatives - It would be against public policy to ask decree-holder to litigate once over again against legal representatives of judgment-debtor when cause and injunction survives – Impugned Order of High court is set aside - Appeal is allowed.

J U D G M E N T

(Per the Hon'ble Mr.Justice Arun Mishra)

1. Leave granted.

2. Singular question involved in the matter is executability of decree for permanent injunction against the legal representatives of judgment- debtor.

3. A suit was filed by the appellant registered as Original Suit No.83/2007 in the Court of II Additional Civil Judge, Kundapura, with respect to immovable property described in Schedule 'A' of the plaint. The plaintiff got converted the land for non-agricultural/ residential purposes. The plaintiff was in possession and enjoyment of the property and defendant had no concern with the same. However, he tried to remove and destroy the wooden fence and made an effort to forcibly dispossess the plaintiff. Hence the suit was filed. The defendant had denied the averments and contended that there was no division of the land and had asserted his ownership and possession. The conversion order of land was also illegal.

4. It was found on the basis of the registered partition deed that the suit schedule property was allotted to the plaintiff and he was in possession thereof. The defendant on partition in his own family had been allotted 1.58 acres and defendant has sold 1.68 acres of land, though the land allotted to him was only 1.58 acres in Survey No.32/ 5. Plaintiff was found to be in possession of Schedule 'A' property on the date of the suit. It was held that the defendant had no right, title or interest in the disputed land. Accordingly, the suit of the plaintiff for permanent injunction was decreed vide judgment and decree dated 13.9.2012.

5. After suffering decree for permanent injunction on 13.9.2012, the judgment-debtor Divira Bolu died on 10.12.2012. The heirs of the judgment- debtor in violation of the decree for permanent injunction tried to forcibly dispossess the decree-holder from Schedule 'A' property. Thus, the decree-holder filed execution petition within two years of the passing of the decree. It was resisted by the heirs of judgment-debtor on the ground that they were not bound by the decree for permanent injunction. The force of decree lapsed with the death of judgment-debtor. The decree was incapable of enforcement against them as the judgment debtor had died. Reliance was placed on the legal maxim "actio personalis moritur cum persona". The executing court held that the heirs of judgment-debtor were bound by the decree and directed them to furnish an undertaking to the effect that they would not disobey the decree of the

court. Aggrieved thereby, the respondents preferred a writ petition in the High Court of Karnataka at Bangalore which has been allowed by the impugned order. The High Court has held that the decree for permanent injunction cannot be enforced against the legal heirs of judgment-debtor as injunction does not travel with land.

6. It was submitted by learned counsel representing the appellant that the High Court has erred in law in holding the decree for permanent injunction to be inexecutable as against the respondents/heirs of judgment- debtor. He has relied upon section 50, section 146, Order 21 Rule 16, Order 21 Rule 32 and section 47 CPC in order to take home the point. On the other hand, learned counsel appearing on behalf of the respondents has also referred to few decisions to contend that the decree for permanent injunction does not go with the land. Thus, the same is inexecutable against the legal heirs of the judgment-debtor.

7. It is apparent in the instant case that on the basis of the title of the plaintiff over the disputed land, decree for permanent injunction had been granted. It was found that the defendant had sold the property which had fallen to his share in the partition of his own family. It was held in the suit that the defendant was not the owner of the disputed property and it belonged to the plaintiff. In execution proceedings filed within 24 months of decree, a question arose whether after the death of judgment debtor, his heirs could start interference in the property and plaintiff was obliged to file another suit for injuncting them or could execute the decree for permanent injunction which was granted in his favour as against the heirs of judgment-debtor.

8. Section 50 of the CPC has been referred to and the same is extracted hereunder :

> “50. Legal representative— (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.
>
> (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree- holder, compel such legal representative to produce such accounts as it thinks fit.”

9. Section 146 CPC has also been referred to and the same is extracted hereinbelow:

> “146. Proceedings by or against representatives— Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him.” 10 The provisions of Order XXI Rule 16 and Order XXI Rule 32

of CPC have also been referred to and they are also extracted below :

"16. Application for execution by transferee of decree— Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree in transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder :

Provided that where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution :

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

[Explanation.—Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.]" "32. Decree for specific performance for restitution of conjugal rights or for an injunction.— (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunctions been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for [six months] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application. (4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [six months] from the date of the attachment, no application to have the property sold has been made, or if made has been refused,

the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

11. Section 50 CPC deals with execution of decrees of all kinds including that of permanent injunction. Section 146 CPC provides that where any application which can be made by or against any person, it may be made by or against any person claiming under him except as otherwise provided in the Code. Order 21 Rule 16 deals with execution of decree by a transferee with which we are not concerned in this case. Order 21 Rule 32 provides the mode for execution of decree for injunction, restitution of conjugal rights and specific performance. Section 50 CPC which is a specific provision with respect to execution of decree against legal representatives, would be attracted read with Order 21 Rule 32 CPC.

12. It is crystal clear from a perusal of section 50(2) CPC that a decree for permanent injunction can be executed against the judgment debtor or his legal representatives. In Muthukaruppa Pillai & Anr. v. Ganesan (1995) Supp 3 SCC 69, a question arose with respect to executability of the decree for injunction in the backdrop of facts that the plaintiff had filed a suit for restraining the defendant-appellant from interfering with her rights as Hakdar and Pujari. The suit was decreed and it was held that the said rights were heritable and partible. On aforesaid foundation, decree was passed. The successor-in-interest of the plaintiff decree-holder had put the decree for execution. It was contended that the decree for injunction was personal in nature and could have been enforced by the decree-holder only. This Court held that there was nothing in the decree for permanent injunction to hold that it lapsed with the death of the plaintiff and it could be executed by heirs of decree holder. This Court has laid down thus :

> "1. This judgment-debtor's appeal is directed against judgment and order of the High Court of Madras. The appellant was a defendant in a suit filed by the predecessor-in-interest of the respondent for permanent injunction restraining the appellant from interfering with her right as Hakdar and Pujari of two temples in Kottarakurichi village. The suit even though decreed by the trial court was dismissed by the first appellate court. But the decree of the trial court was restored by the High Court, which was to the following effect:
>
> "[T]he defendants, their workmen, their agent, etc. be and are hereby restrained by an order of permanent injunction from interfering with the

plaintiff's enjoyment of the plaint schedule property (described hereunder) till the end of 1965 Margali 30th (i.e., till January 13, 1965) and in every alternative years in future…."
The judgment of the High Court was delivered in 1969. The decree-holder died in June 1981. The respondent who claims to be adopted son of the plaintiff in the original suit and also her legatee filed an application for execution in 1981 under Section 146 and Order XXI Rule 16 of the Civil Procedure Code. It was resisted by the appellant on various grounds. The application was allowed against which the appellant filed revision. During pendency of the execution proceedings, the respondent filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowments, Tirunelveli, Tamil Nadu, claiming the rights to do puja and enjoy the share of income from the two temples. The application was allowed by the Deputy Commissioner, but the order was set aside by the Commissioner, Hindu Religious and Charitable Endowments, Madras in revision filed by the appellant. It was held that the respondent could not claim better and more rights than what were granted in favour of his predecessor-in-interest by the civil court. Against this order of the Commissioner, the respondent filed a writ petition. Both, the revision filed by the appellant and writ petition filed by the respondent were decided by a common order. The High Court maintained the order of the trial court in execution, except to certain extent. The writ petition filed by the respondent was dismissed.

2. The principal challenge to the order passed by the High Court is on the nature of the decree. It is claimed that the decree being personal, it could not have been executed by the respondent who claimed to be successor- in-interest of the plaintiff in the suit. The submission appears to be devoid of any merit. In the main suit, out of which these execution proceedings have arisen, it was clearly held by the High Court that the rights were heritable and partible. In view of this finding, it is not clear as to how can the appellant raise the argument of decree being personal in nature. Apart from that, the decree passed by the trial court, copy of which has been produced by the learned counsel for the respondent, the authenticity of which is not disputed by the appellant, and which has been extracted earlier, clearly indicates that the injunction granted did not impose any such restriction expressly nor could it be impliedly held that it lapsed with the death of the plaintiff." This Court has laid down that legal representatives of decree holder can execute decree for permanent injunction relating to property or right which is heritable and partible. When such is the situation, in our opinion, it would be open to decree holder to execute decree against successor of interest

of judgment-debtor also.

13. In Ramachandra Deshpande v. Laxmana Rao Kulkarni AIR 2000 Karnataka 298, a question arose with respect to executability of the decree for permanent injunction restraining the defendant from obstructing plaintiff's use and enjoyment of their right of way through the backyard of the defendant's house, and subsequently, the house was sold by judgment-debtor-defendant. It was held that the decree could have been executed against the transferee judgment-debtor. The rule that a decree for injunction cannot be enforced against a purchaser from a judgment-debtor since injunction does not run with the land for it is a remedy in personam is not applicable considering the nature of rights adjudicated upon. The Court held that enforcement of the decree against legal heirs of the deceased was saved by section 50 CPC and as against the purchaser of the suit property pendente lite was saved by section 52 of the Transfer of Property Act. The High Court has relied upon the decisions of this Court in Muthukaruppa Pillai & Anr. v. Ganesan (supra) and in Kanhaiya Lal v. Babu Ram (dead) by LRs. & Anr. (1999) 8 SCC 529. The High Court has observed that if the remedy of injunction granted by a decree is in respect of any heritable and partible right, it does not get extinguished with the death of a party thereto, but enures to the benefit of the legal heirs of the decree-holder, as such a decree could be executed against the successor-in-interest of the deceased judgment-debtor as well. Similar is the decision in G.M. Venkatappa v. Anjanappa & Anr. ILR 2006 Karnataka 4456, wherein also the question of executability of the decree for permanent injunction arose.

14. Normally personal action dies with person but this principle has application to limited kinds of causes of actions. In Girijanandini Devi v. Bijendra Narain Choudhary AIR 1967 SC 1124, this Court while considering the question whether the decree for account can be passed against the estates, also considered the maxim "actio personalis moritur cum persona" and observed that the postulation that personal action dies with the person, has a limited application. It operates in a limited class of actions, such as actions for damages, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. Death of the person liable to render the account for property received by him does not therefore affect the liability of his estate. This Court has observed thus:

> "(14) Finally, it was urged that since defendants Mode Narain and Rajballav Narain had died during the pendency of the proceedings, the High Court was incompetent to pass a decree for account against their estates. Rajballav who was defendant No.6 died during the pendency of the suit for the Trial Court and Mode Narain who was defendant No.1 in the suit died during the pendency of the appeal in the High Court. But a claim for rendition of account is not a personal claim. It is not extinguished because the party who claims an account, the party who is called upon to account dies. The

maxim "action personalis moritur cum persona" a personal action dies with the person, has a limited application. It operates in a limited class of actions ex delicto such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. An action for account is not an action for damages ex delicto, and does not fall within the enumerated classes. Nor is it such that the relief claimed being personal could not be enjoyed after death, or granting it would be nugatory. Death of the person liable to render an account for property received by him does not therefore affect the liability of his estate. It may be noticed that this question was not raised in the Trial Court and in the High Court. It was merely contended that because the plaintiff Bijendra Narain was receiving income of the lands of his share no decree for accounts could be made. The High Court rejected the contention that no account would be directed in favour of the plaintiff on that account. They pointed out that the mere fact that the plaintiff was in possession of some portion of properties of the joint family since 1941 cannot possibily absolve the defendants, who were in charge of their dealings with the management of the properties, from rendering accounts of the joint family estate. The plaintiff was since September 1941 severed from the joint family in estate and also in mess and residence, and he was entitled to claim an account from the defendants from September 1941, but not for past dealings. The fact that the plaintiff is in possession of some of the properties will, of course, have to be taken into account in finally adjusting the account."

15. The views of the High Courts which are relied upon are by and large in favour of executability of decree. Of course it would depend on the right litigated, findings recorded and the nature of decree granted. In D'souza J. v. Mr. A. Joseph AIR 1993 Karnataka 68, a Single Bench of the Karnataka High Court held that when a decree for injunction against a person can be enforced even against his son, it is obvious that a similar logic should hold good even in the case of the death of the plaintiff who has obtained a decree. There should not be any legal impediment for a heir of a decree-holder to enforce the decree for injunction against the judgment-debtor. There is no such legal impediment on the principle that injunction does not run with the land. Yet another Division Bench of the Kerala High Court in Rajappan and Ors. v. Sankaran Sudhakaran AIR 1997 Kerala 315, also considered the question of violation of decree by the legal representatives of judgment-debtor and has laid down that a decree for permanent injunction can be executed against them. It was observed that if a decree for injunction compels personal obedience, it in appropriate cases would not be enforced against the legal representatives. However, if subject matter

of the suit and the act complained of was on the basis of ownership of an adjacent property of the other side, then such a decree for injunction would be binding not only against the judgment- debtor personally but all those who claim through him. A decree for perpetual injunction was passed restraining the judgment-debtors from trespassing into the decree schedule property destroying the boundaries thereof and from interfering with the rights of the decree-holder. The legal representatives of the judgment-debtor violated the injunction. The Court, in our opinion, rightly held that the executing court could execute the decree of perpetual injunction against the legal representatives of the judgment-debtor.

16. In Krishnabai Pandurang Salagare v. Savlaram Gangaram Kumtekar AIR 1927 Bombay 93 it was held that when a decree is passed against a judgment- debtor, it can on his death be enforced not only against the legal representatives, but also against the transferee from those representatives who take under an alienation pending the execution proceedings.

17. In Amritlal Vadilal v. Kantilal Lalbhai AIR 1931 Bombay 280 it has been observed that a decree for injunction does not run with the land and cannot be enforced in absence of the statutory provision against surviving member of joint family or against purchaser from judgment-debtor but can be enforced against legal representatives joined under Section 50 CPC and so also against transferees from original judgment-debtor as per Section 52 of the Transfer of Property Act. In Ganesh Sakharam Saraf v. Narayan Shriram Mulaye AIR 1931 Bombay 484 it was held that though an injunction is a personal remedy and does not run with the land, ordinarily a decree for an injunction can be executed only against the persons against whom the injunction is issued and cannot be executed against any other person in the absence of a statutory provision. If an injunction decree is capable of being enforced against a person other than the judgment-debtor by virtue of a statutory provision contained in Section 50 CPC, it can be executed equally against the son who inherits the estate of his father as well as against one who was joint with the father and brought on the record as his legal representative. It was also observed that where a decree had been passed against the father as a manager and representative of the joint family, it could be executed against his son who represented the joint family.

18. In Manilal Lallubhai Patel v. Kikabhai Lallubhai AIR 1932 Bombay 482 a Single Bench has held that where a decree for an injunction has been passed against the father, the son not being joined as a party, and the father dies during the pendency of the execution proceedings, the decree can be enforced under Section 50 CPC against the son as his legal representative by proceeding under Order 21, Rule 32.

19. In Somnath Honnappa Bennalkar v. Bhimrao Subrao Patil 1974 ILR Karnataka 1506, a compromise decree was passed in favour of the plaintiff for permanent injunction restraining the judgment-debtor from interfering with the plaintiffs possession and enjoyment of the suit property. Subsequently, the plaintiff sold his suit

property to the assignee and also assigned compromise decree in his favour. The assignee took out execution against the judgment debtor. It was held that the assignee of a compromise decree was not competent to execute the decree. It was further held that the compromise decree for injunction was personal and did not run with the land. However, it was a case of assignment and not covered by section 52 of the Transfer of Property Act.

20. The High Court of Karnataka in Hajaresab v. Udachappa 1984 ILR Karnataka 900 has also held that under the provisions of Section 50 CPC the legal representatives of the deceased defendant against whom the decree for injunction is passed would be liable for violation of that decree. It was also observed that Section 50 CPC does not make any distinction between a decree for permanent injunction and a decree of any other nature. The High Court has referred to the 'Execution Proceedings' by Shri Soonavala, 1958 Edition thus:

> "In Execution Proceedings by Shri Soonavala, 1958 Edition, on page 386 it is said: -
>
> "A decree for injunction does not run with the land and cannot be enforced against a purchaser of the property from the defendant. But it can be enforced against a legal representative of the deceased j.d. Plaintiff obtained a decree against the defendant, restraining the latter from obstructing the access to light and air to her windows. The plaintiff applied for execution praying that the portion of the defendant's house which obstructed her windows should be pulled down. While this application was pending the defendant died and his son and heir was brought on the record. The lower Courts directed that the decree should be executed as prayed for and directed the appellant (the son and heir of the deceased defendant) to pull down the obstructing portion of the house in question within a given time. It was contended for the appellant that the original defendant having died, the injunction could not be enforced against his son (the appellant) as an injunction does not run with the land. It was held that having regard to the provisions of Section 50, the injunction ordered against the deceased defendant might be enforced against his son and his legal representative.

The author has further said on the same page -

> "But a decree for injunction cannot be enforced against a purchaser of the property from the defendant or against a person who is not his legal representative. The plaintiff obtained a decree restraining the defendant in his user of certain land and applied for execution. Mean while the land had been sold in execution of another decree against the defendant and the purchaser at the Court sale obtained possession. The plaintiff thereupon applied that the purchaser should be made a party to the

execution proceedings and that execution should go against him as well as against the defendant, It was held that no order for execution could be made. It could not go on against the defendant as all his interest in the land had been sold in execution of a decree, and it could not go on against the purchaser as an injunction does not run with the land."

The author has further said -

"A decree for injunction does not run with the land and in the absence of any statutory provision, such a decree cannot be enforced against the surviving members of a joint family or against a purchaser from j.d. But where the sons of the j.d. are brought on the record as his legal representatives under Section 50, the decree can be executed against them and so also against the transferees from the legal representatives, under Section 52, Transfer of Property Act. On the same principle, viz., that they are bound by the result of the execution proceedings under Section 52, T.P. Act, the transferees from the original j.d. during the pendency of the execution proceedings against him, can be held to be similarly bound and are liable to be proceeded against in execution".

The author has further said on page 387 as -

"A decree awarding certain reliefs by way of injunction was passed in favour of the plaintiff. Before execution was applied for, the defendant died and the darkhast proceeded against two widows of the deceased j.d. as his legal representatives. During the pendency of the appeal in execution the legal representatives transferred their property to a stranger. A question was raised that execution could not proceed against the legal representatives and their transferee, as the relief granted by way of injunction was purely personal and the original j.d. having died, the injunction has ceased to be operative, it was held that the darkhast originally filed against the legal representatives was in order under Section 50, C.P.C., and was also good against the transferee as the transfer was not made under the authority of the Court and, being effected during the pendency of a contentions proceeding in execution of the decree, could not be allowed to affect the right of the plaintiff under Section 52, T.P. Act. (Krishnabai - v. - Sawlaram, I.L.R. 51 Bom. 37; 100 LC. 582 : A.I.R. (1927) Bom. 93; also see, 9 Bom. L.R. 1173; I.L.R. 26 Bom. 140,

283.) An injunction is a personal remedy and does not run with the land. A decree for an injunction therefore can be executed only against the persons against whom the injunction is issued and cannot be executed against any other person in the absence of a statutory provision. If an injunction decree is capable of being enforced against a

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