Regd.No.PRAKASAM/13/2018-20 R.N.I.No.APENG/2004/15906

Pages:1 to 84

Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

2019 Vol.(1) Date of Publication 28-2-2019 PART - 4

MODE OF CITATION: 2019 (1) L.S

LAW SUMMARY PUBLICATIONS

SANTHAPETA EXT., 2ND LINE, ANNAVARAPPADU , (☎:09390410747)

ONGOLE - 523 001 (A.P.) INDIA,

URL : www.thelawsummary.com E-mail: lawsummary@rediffmail.com

WE ARE HAPPY TO RELEASE

THE DIGITAL VERSION OF THE

LAW SUMMARY JOURNAL

TO ALL OUR SUBSCRIBERS

AT FREE OF COST

visit : www.thelawsummary.com

Law Summary

(Founder : Late Sri G.S. GUPTA)

FORTNIGHTLY

(Estd: 1975)

PART - 4 (28TH FEBRUARY 2019)

Table Of Contents

Interested Subscribers can E-mail their Articles to

lawsummary@rediffmail.com

NOMINAL - INDEX

SUBJECT - INDEX

CIVIL PROCEDURE CODE - Appeal by Plaintiffs against Judgment and Decree of Trial Court – Suit was filed before lower Court for a declaration of title - Appellants claim ownership of the suit schedule property both by inheritance from a common ancestor and also by adverse possession.

Held - Burden is squarely on the appellants to prove their title and possession of the suit schedule property - Appellants have not proved title to property and respondents on contrary have established their right and title to the property - Evidence coupled with the fact that the appellants pleaded adverse possession leads this Court to come to a conclusion that the Judgment and Decree of the Lower Court is correct – Appeal stands dismissed. **(Hyd.)** ***146***

CIVIL PROCEDURE CODE – Appeal filed by Plaintiff-bank against Judgment and Decree passed by lower Court.

Held - No 'valid mortgage' - on the basis of carbon copies of documents and with an uncertified copy of an account, no liability can be fastened on the defendants plus the oral evidence is also does not support the appellants case - Discrepancies in the evidence about contents of so-called documents evidencing deposit of title deeds and failure to prove the actual payment of the money to the Excise Department are correct - Appellant/ Plaintiff-bank did not prove the due execution of the documents evidencing the deposit of title deeds or the liability incurred - Neither the actual loan amount paid nor the alleged security created are proved – Appeal stands dismissed. **(Hyd.)** ***137***

CIVIL PROCEDURE CODE, Sec.100 – Legality of document – Whether Lower Appellate Court was right in construing Exhibit marked as settlement deed because of its nomenclature despite reading of entire document would reflect that it was Will as it comes into effect only on death of deceased Plaintiff.

Held – When Exhibit is examined, the crucial recital is to effect that after demise of maker or executant, properties mentioned in schedule were to be taken possession by beneficiary/Defendant No.1, thereafter to enjoy as absolute owner with right to alienation either by way of gifting or by selling the property with all absolute rights - Present particular recital was completely misconstrued by Lower appellate Court - Lower appellate Court, went to the extent of making an observation that right in praesenti was transferred in favour of the beneficiary by the settlor which finding runs completely contra to what has been mentioned in Exhibit by the executants - Thus, it is abundantly clear that aforesaid recital vests the settlee or beneficiary with absolute right only after demise of the executant but not the interest in praesenti with absolute rights - Second Appeal stands allowed. **(Hyd.) 156**

CIVIL PROCEDURE CODE, 1908, Order II, Rule 3, Secs.39, 19, 16, Order II, Rule 2, Secs.15, 20 & 17; Order VI, Rule 16, Sec.18 - GENERAL CLAUSES ACT, 1897, Sec.13 - For a suit filed in a Court pertaining to properties situated in jurisdiction of more than two Courts, the suit is maintainable only when suit is filed on one cause of action. **(S.C.)** ***114***

CONSTITUTION OF INDIA, 1950, Art.227 - **CODE OF CIVIL PROCEDURE, 1908,** Secs.96 & 21, Order 9, Rule 13, Sec.47, Order 7, Rule 11, Sec.21-A - Territorial jurisdiction - Objection regarding lack of territorial jurisdiction of Court passing decree was raised at execution Court - Declined - High Court vide its order reversed order of executing Court.

Held - An objection to the want of territorial jurisdiction does not travel to root of or to inherent lack of jurisdiction of a civil Court to entertain the suit - It has to be raised before Court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement - It is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained - High Court was manifestly in error in coming to conclusion that it was within jurisdiction of executing Court to decide whether the decree in the suit for partition was passed in the absence of territorial jurisdiction - Appeal allowed. **(S.C.)** ***89***

CRIMINAL PROCEDURE CODE, Sec.482 - **INDIAN PENAL CODE,** Secs. 34, 294 and 307 - Criminal Appeal against Judgment and Order passed by High Court by which application preferred by the Respondents/Accused has been allowed and criminal proceedings against them were quashed by High Court, exercising its power u/Sec.482 of Cr.P.C. - Existence of settlement between the parties.

Held - High Court did not consider fact that offences alleged were non-compoundable offences as per Section 320 of Cr.P.C. - High Court did not consider the distinction between a personal or private wrong and a social wrong and social impact - Offences u/sec.307 of IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and

not against the individual one - High Court ought to have appreciated that it is not in every case where the complainant has entered into a compromise with the accused, there may not be any conviction - Appeal stands allowed - Impugned Judgment and Order of High Court is set aside - FIRs/Investigation/Criminal proceedings he proceeded against accused. **(S.C.)** ***100***

MOTOR VEHICLES ACT - Sec.166 – Quantum of compensation - Income of deceased, for purpose of calculation of compensation is around Rs.5,000/- - Rate of interest awarded is 9% per annum while the claim was for 12% per annum.

Held - Rate of interest awarded does not require any interference as 9% per annum is just and reasonable - There is no hard and fast rule and no fixed norm under the Motor Vehicles Act with regard to rate of interest - Tribunal has arrived at a compensation of Rs.6,80,000/-, but granted Rs.5,00,000/- in view of the total claim for Rs.5,00,000/-. - It is obvious that the Tribunal has not granted any compensation towards loss of love and affection, funeral expenses, loss of estate and other conventional Heads - Petitioners/Claimants would be entitled to more amount than that was awarded by the Tribunal - Appeal stands dismissed. **(Hyd.)** ***144***

NEGOTIABLE INSTRUMENTS ACT, 1881, Sec.138 - **CRIMINAL PROCEDURE CODE, 1973,** Sec.482 -Complaint - Quashing thereof - Dishonor of cheque - Compliant was filed after second notice- High Court quashed the complaint- Complaint filed based on the second statutory notice is not barred-Appeal allowed. **(S.C.)** ***97***

(INDIAN) STAMP ACT, Secs.2(12 & 14), 33 and 35 - Civil Revision Petition is filed by Petitioners/Defendants against the Order passed by the Lower Court whereby objection raised by petitioners herein regarding admissibility of suit agreement of sale on the ground that it is not signed by parties and properly stamped is overruled.

Held - It is settled law that suit for specific performance is maintainable on oral agreement of sale - Admittedly, suit document contains a clause that suit property is delivered and it is also the case of the plaintiff that possession of the suit property is delivered and if that is the case, suit document has to be charged as sale as per Explanation-I to Article 47-A of Schedule 1-A of the Stamp Act - Stamp duty is not paid on suit document as sale, and as such the same cannot be received in evidence as per Sec.35 of the Stamp Act - For impounding said document, it has necessarily to be executed as per Sec.33 of the Stamp Act - But since same is not signed by parties, it is not executed as per Sec.2 (12) of the Stamp Act which cannot be impounded as such, same cannot be received in evidence - Impugned order is set aside and accordingly, the Civil Revision Petition is allowed. **(Hyd.)** ***131***

--X--

2019(1) L.S. 131 (Hyd.)

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

ASU Venkatanarsamma
& Anr., ..Petitioners

Vs.

Pindi Ramanuja & Ors., ..Respondents

INDIAN STAMP ACT, Secs.2(12 & 14), 33 and 35 - Civil Revision Petition is filed by Petitioners/Defendants against the Order passed by the Lower Court whereby objection raised by petitioners herein regarding admissibility of suit agreement of sale on the ground that it is not signed by parties and properly stamped is overruled.

Held - It is settled law that suit for specific performance is maintainable on oral agreement of sale - Admittedly, suit document contains a clause that suit property is delivered and it is also the case of the plaintiff that possession of the suit property is delivered and if that is the case, suit document has to be charged as sale as per Explanation-I to Article 47-A of Schedule 1-A of the Stamp Act - Stamp duty is not paid on suit document as sale, and as such the same cannot be received in evidence as per Sec.35 of the Stamp Act - For impounding said document, it has necessarily to be executed as per Sec.33 of the Stamp Act - But since same is not signed by parties, it is not executed as per Sec.2 (12) of the Stamp Act which cannot be impounded as such, same cannot be received in evidence - Impugned order is set aside and accordingly, the Civil Revision Petition is allowed.

Mr.T. Sharath, Advocates for the Petitioners.

J U D G M E N T

1. The civil revision petition is filed by the defendants in the suit OS No.22 of 2011 against the order dated 05-01- 2018 passed by the Senior Civil Judge at Narsapur, West Godavari District whereby and whereunder the objection raised by revision petitioners herein (defendants) regarding the admissibility of suit agreement of sale dated 18-11-2010 on the ground that it is not signed by parties and properly stamped is overruled.

2. 1st respondent herein, the plaintiff in the suit, filed the suit for specific performance of agreement of sale dated 18-11-2010. During the pendency of the suit proceedings, plaintiff sought to mark the document styled as sale agreement dated 18-11-2010 curiously, not signed by either of the parties. The trial Court, on the plea of the plaintiff that the document is being brought on record only to prove that the plaintiff got the document prepared by reducing the terms of the sale agreement, as agreed to by the 1st defendant owner of the suit schedule

property (1st petitioner herein), brought it to the office of the Sub-Registrar for registration, but the 1st defendant denied to execute the same, admitted the same into evidence subject to assessing its evidentiary value at a later stage. Aggrieved by the same, this civil revision petition.

3. Facts of the case as emerging from the pleadings are; the 1st defendant-petitioner herein is the owner of the suit schedule property and other defendants are her close relatives. Plaintiff offered to purchase the suit schedule property for a sum of Rs.7,50,000/- which was accepted by the 1st defendant. An advance amount of Rs.1,40,000/- was paid on 15-11-2010 in the presence of 2nd defendant and one Seelam Rajesh, after settling the terms of sale at the house of 1st defendant. Further amount of Rs.5,10,000/- was paid to the 1st defendant, in respect of the same transaction on 18-11-2010 on the understanding that the 1st defendant would execute registered sale agreement and handover possession of the suit schedule property to the plaintiff. The latter condition was complied with as defendants 1 and 2 seems to have gone to the suit schedule property and handed over possession thereof to the plaintiff.

4. The grievance of the plaintiff is that the 1st defendant, though agreed to execute the registered sale agreement did not come forward to execute the sale agreement dated 18-11-2010 though it was drafted and prepared for registration, which necessitated him to file the above suit.

5. Sri T. Sharath, learned counsel for the defendantsrevision petitioners contended under Section 3 of the Indian Evidence Act, 1872, a document can be anything like letters, figures or marks, a map, words printed, lithograph, photograph and even inscriptions made on the metal plate or stone and a caricature can be considered as document. Under Section 2(14) of the Indian Stamp Act, 1889, (for short, "the Stamp Act") a document to become an instrument, it has necessarily to be executed by the parties and unless the parties to a document execute the document, it does not become an instrument chargeable with duty and unless a document fulfils the requirement to be considered as an instrument, it does not attract stamp duty and for the purpose of collecting stamp duty, a document must assume the character of an instrument.

6. Though notices are served, none appears for the 1st respondent-plaintiff.

7. Now the point that falls for consideration is whether the agreement of sale dated 18-11-2010, which none of the parties have signed can be construed as evidence in the eye of law and; if so can it be received in evidence, particularly when possession of the suit schedule property is alleged to have been delivered to the plaintiff under that document?

8. It is to be seen from the contents of the document dated 18-11-2010, the parties have agreed to enter into transaction in respect of sale of the suit schedule property by the 1st defendant to the plaintiff and the plaintiff is stated to have paid part sale consideration on two occasions on 15-11-2010 and on 18-11-2010 and on receipt of these amounts by the 1st defendant, both 1st and 2nd defendants went to the suit schedule property and handed over

possession thereof to the plaintiff, implies that the sale agreement, though not signed by the 1st defendant, for reasons best known to her, it is a sale agreement with possession. By pressing the document into service, the plaintiff is trying to make out a case of contract between himself and the 1st defendant in relation to sale of the suit schedule property. The interesting feature of the document styled as sale agreement dated 18-11-2010 is that it is not signed by either of the parties raising a question whether an unsigned document can be received in evidence. The word **'evidence'** signifies in its original sense something in the state of being evident and obvious. As soon as the document is produced before the Court it becomes evidence, and the Court can rely upon it, when the same is proved. Evidence is one thing, proved, disproved or not proved are different altogether.

9. A look at few provisions of law, relevant to the extent and for the purpose of the facts in issue would be worthwhile. As per Section 3 of the Indian Evidence Act, 1872, (for short, "the Evidence Act") interpretation clause, the term **"evidence**" is described as follows:-

> "Evidence" means and includes -
>
> (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;
>
> (2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence."

10. This speaks of all statements required by law, to be made before the Court or all the documents including the electronic one, for the inspection of the Court are called oral and documentary evidence. It, nowhere, speaks of proving or disproving the document or the statements at the stage of leading evidence meaning, thereby the evidentiary value of a document can be assessed at a later stage. The term **"document"** is described as follows under Section 3 of the Evidence Act.

"Document"—"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document; Words printed, lithographed or photographed are documents; A map or plan is a document; An inscription on a metal plate or stone is a document; A caricature is a document.

11. From the above definition clause it is understood that any letters, figures or marks, each of such expression is a document. The illustrations further clarify that a writing, words printed, lithographed or photographed are documents; a map or a plan, an inscription on a metal plate, on a stone or even a caricature are all documents. It goes to show that anything can be a document which conveys a meaning or an indication, but it was not stipulated that to become a **"document"**, the document is to be signed or authenticated by the executant thereof. In **EMPEROR vs. KRISHTAPPA KHANDALA** (AIR 1925

BOMBAY 327), the Bombay High Court dealing with similar issue held that a document need not necessarily be something which is signed, sealed or executed. Section 3 (18) of the General Clauses Act, 1897 which is in pari-materia with the interpretation given to the word **"document"** in Section 3 of the Evidence Act, is as follows:-

"document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter;

12. But in the instant case, it would suffice to refer to the interpretation of the word **"document"** given in the Indian Evidence Act, 1872 as reference to General Clauses Act, 1897, is required only when relevant enactment in that behalf is silent. Section 2(12) of the Stamp Act refers to **"executed"** and **"execution"** with reference to an instrument, which is thus:-

"(12) "Executed" and "execution", used with reference to instruments, mean "signed" and "signature".

13. Section 2 (14) of the Stamp Act refers to an **"instrument"**. Section 2(14) reads as follows:-

"(14) "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

14. Section 2 (14) explains that instrument includes every document by which any right is, or purports to be created, transferred, limited, extended, extinguished or recorded. It is discernable that every document is not an instrument, but every instrument is a document. For the purpose of charging a document with stamp duty as also for impounding as Section 33 of the Stamp Act, statute mandates that the document must necessarily be executed so as to satisfy the definition of instrument under Section 2 (12).

15. Learned counsel for the revision petitioners raised two objections for marking the document, regarding its admissibility, firstly; it is not signed by parties and secondly; it contains an averment that possession was delivered, it being an agreement of sale has to be charged as sale under Article 47-A of Schedule 1-A of the Stamp Act as same is insufficiently stamped and not admissible in evidence as per Section 35 of the Stamp Act. Regarding the second objection, had there been no clause in the document as to delivery of possession of suit property, it would have been admissible in evidence, since it is a document and documentary evidence creating rights falling within the definition of instrument. But it is not properly stamped, the same is inadmissible in evidence and requires to be impounded under Section 33 of the Stamp Act.

16. Section 33 of the Stamp Act, deals with examination and impounding of instruments not duly stamped. Sub- Section (2) of Section 33 of the Stamp Act, is thus:-

> "(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in

order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument **was executed or first executed:** Provided that:

(emphasis supplied)

(a)……..

(b)……..”

17. Analogous provision Section 74 of the Registration Act, 1908, also makes it incumbent upon the Registrar, when a document is refused registration by the Sub-Registrar on the ground of denial of execution of such a document, to enquire whether the document has **been executed** and the requirement of the law have been complied with by the person presenting the document for registration.

18. Section 17 of the Registration Act, 1908, speaks of what documents are compulsorily registerable and Section 18 about the documents whose registration is optional. Proviso to Section 49 is an exception to Section 17 of the Registration Act, 1908, which reads as follows:-

> “…..Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument.

19. Proviso to Section 49 prohibits the Court to receive in evidence any document affecting immovable property which is not registered as required under Section 17 of the Registration Act, 1908, of any provisions of the Transfer of Property Act, 1882. The proviso contains three exceptions, viz., i) part performance of a contract for the purpose of Section 53-A of the Transfer of Property Act; ii) contract in a suit for specific performance and iii) an unregistered document affecting immovable property required to be registered under law may be received as evidence of any collateral transactions not required to be affected by registered instrument.

20. In **GOVT. OF UP vs. RAJA MOHAMMAD AMIR AHMAD KHAN (**AIR 1961 SC 787), the Supreme Court while interpreting Sections 31, 32 and 33 of the Stamp Act, at para 5 held thus:-

> “……It was conceded that if the instrument is unexecuted, i.e., not signed and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to those instruments are the same, that is, when he is asked to give his opinion, he has to determine the duty with which, in his judgment the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows Section 32. Under that section, the Collector has to certify by endorsement on the instrument brought to him under

> Section 31 that fully duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the enforcement can be made only if the instrument is presented within a month of its **execution**…"

21. In **TIRKHA vs SOHLU (**AIR 1923 LAHORE 242)**,** the Lahore High Court observed that before a document can be treated as such for the purpose of registration, in fact for almost any purpose it must be executed. The operative portion thereof reads thus:-

"Now, before a document can be treated as such for purposes of registration, or, in fact, for almost any purpose, it must be executed, and, as defined in Section 2 (12) of the Stamp Act, "Executed" means "signed" a point explained in 22 I.C., 75, a Full Bench ruling of the Lower Burma Chief Court. If unsigned, the document is not liable to stamp duty and a fortiori is not compulsorily remittable, nor, in fact, remittable at all. The Registration Act presumes throughout that the document tendered for registration has been executed (see section 58 and section 74). Under section 58 the Registration Officer must endorse the signature of every person admitting the execution of the document. The first ground on which Registrar can refuse to register a document under section 74 is that it has not been **executed**.

22. It is settled law that suit for specific performance is maintainable on oral agreement of sale. Admittedly, suit document contains a clause that suit property is delivered and it is also the case of the plaintiff that possession of the suit property is delivered and if that is the case, suit document has to be charged as sale as per Explanation-I to Article 47-A of Schedule 1-A of the Stamp Act. Explanation-I to Article 47-A of Schedule 1-A reads as follows:-

> "Explanation-I
>
> An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "sale" under this Article:
>
> Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in Clause (b) of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed."

23. Admittedly, stamp duty is not paid on suit document as sale, as such the same cannot be received in evidence as per Section 35 of the Stamp Act, unless it is impounded as per Section 33 of the Stamp Act. For impounding said document, it has necessarily to be executed as per Section 33 of the Stamp Act. But since same is not signed by parties, it is not executed as per Section 2 (12) of the Stamp Act which cannot be impounded as such, same cannot be received in evidence.

24. For the reasons stated above, the impugned order is set aside and accordingly, the civil revision petition is allowed. It is needless to state that any observations

made hereinabove is for the purpose of disposal of this revision. The trial Court is to dispose of the suit OS No.22 of 2011 on its own merits and in accordance with law without being influenced by any of the observations made hereinabove. Miscellaneous petitions if any pending shall stand disposed of. There shall no order as to costs.

--X--

2019(1) L.S. 137 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
D.V.S.S. Somayajulu

Andhra Bank, A Govt. of India,
rep. by its Manager ..Appellant
Vs.
Dega Venkatasubaiah &Ors., ..Respondents

CIVIL PROCEDURE CODE – Appeal filed by Plaintiff-bank against Judgment and Decree passed by lower Court.

Held - No 'valid mortgage' - on the basis of carbon copies of documents and with an uncertified copy of an account, no liability can be fastened on the defendants plus the oral evidence is also does not support the appellants case - Discrepancies in the evidence about contents of so-called documents evidencing deposit of title deeds and failure to prove the actual payment of the money to the Excise Department are correct - Appellant/ Plaintiff-bank did not prove the due execution of the documents evidencing the deposit of title deeds or the liability incurred - Neither the actual loan amount paid nor the alleged security created are proved – Appeal stands dismissed.

Mr.V. Raghu, Advocate for the Appellant.
Mr.P. Sridhar Reddy, Advocate for the Respondnet R.1.
Mr.M. Venkata Narayana, Advocates for the R4, R9 & R11, .

J U D G M E N T

This appeal is filed by the plaintiff-bank against the judgment and decree dated 18-09-1997 passed in O.S.No.76 of 1991 by the Subordinate Judge, Kovur, Nellore District.

For the sake of convenience, the parties are referred to as the 'plaintiff-bank' and 'defendants' only.

Initially, the plaintiff-bank filed a mortgage suit against the defendants 1 to 6 for recovery of a sum of Rs.96,166.37 paise from defendants 1 to 6 and also for a preliminary decree for recovery of the sum due seeking liberty to file a final decree petition for the sale of mortgaged property etc. The case of the plaintiff-bank before the lower Court is that defendants 1 & 2 are arrack contractors. At their request, the plaintiff-bank provided a bank guarantee to the Excise Department on 01.10.1986 for

a sum of Rs.1,09,355.52 paise. The defendants 3 to 6 are the guarantors for defendants 1 & 2. According to the plaintiff-bank, they have also deposited their title deeds with an intention to create a mortgage. As per the pleadings, the first mortgage created on 23.09.1985 which was extended on 08.05.1986 and the last mortgage extension was on 11.05.1987. The case of the plaintiff-bank is that based on the demand of the Excise Department, they had to pay the money and so the suit is filed for recovery of the sum paid to the Excise Department on behalf of the defendants 1 & 2. They sought a decree against all the defendants.

The defendants entered appearance and contested the suit. The 1st defendant filed a written statement stating that the initial guarantee of 01.10.1986 is agreed but they strongly denied that 5th defendant stood as guarantor and executed a counter guarantee also. The transaction of 1986-87 was specifically denied. This defendant took the plea that taking advantage of an earlier deposit of title deeds, the plaintiff-bank created the documents for the so-called extension of the mortgage. The amount due was also denied.

The 2nd defendant filed a written statement with similar averments and denied the amounts demanded. He also denied the interest claim. The amount demanded has been strongly refuted by 2nd defendant.

The 5th defendant filed a separate written statement denying the mortgage particularly the last mortgage that is purportedly created. He strongly pleaded that his consent was never taken for the extension of the mortage and that he never stood as guarantor for the suit loan. He states that he demanded the return of the title deeds also by the letter dated 23.03.1987.

The 6th defendant filed a separate written statement denying the transaction, denying the deposit of title deeds etc.

Basing on these pleadings, the following 14 issues were settled by the lower Court.

i) Whether D5 stood as guarantor for D1 and D2 and deposited his title deeds with an intention to create equitable mortgage over the schedule mentioned properties and executed the counter guarantee in favour of the plaintiff on 1-10-86 and the plaintiff forged the signature of the D5 to claim security over the schedule mentioned property?

ii) Whether the defendants are liable to pay a sum of Rs.96,166.37 ps. as per the statement of account, but only liable to pay Rs.17,520/- as on 1.10.87?

iii) Whether the plaintiff suppressed the amounts taken and adjusted from the personal account of the 1st defendant?

iv) Whether there is no joint privity of contract between the D1, D2 and the plaintiff?

v) Whether the plantiff is entitled to include Rs.6,735/- for which the plaintiff/bank furnished bank guarantee to the D2, in the

account of 1st defendant?

vi) Whether D2 is not liable to pay interest as per the statement of account?

vii) Whether the counter guarantee executed by the defendants is invalid and does not bind D2?

viii) Whether the plantiff is entitled to adjust the Kalpatharu deposit of D2 towards the suit claim and whether such adjustment is invalid?

ix) Whether the suit is bad for misjoinder of parties and causes of action?

x) Whether the D2 is not liable to pay any amount?

xi) Whether the D4 stood as guarantee for any of the defendants and did not deposit her title deeds and also did not execute any memo of deposit of title deeds in favour of the plaintiff and the memo of deposit of title deeds said to have been executed is materially altered and it is invalid?

xii) Whether D6 has not stood as guarantor either for D1 or D2 and did not deposit title deeds and execute any memorandum of deposit of title deeds and whether there any material alteration and it is invalid?

xiii) Whether the plaintiff demanded the defendants for payment of the debt?

xiv) To what relief?

The parties went to trial. For the plaintiff-bank, one witness was examined as PW.1 and Exs.A.1 to A.19 were marked. For the defendants, two witnesses were examined as DWs.1 & 2 and Exs.B.1 7 B.2 were marked. After the trial and after hearing the arguments, the lower Court dismissed the suit filed by the plaintiff-bank. The present appeal is filed challenging the judgment and decree of the lower Court, dated 18.09.1997 passed in O.S.No.76 of 1991.

This Court has heard Sri V. Raghu, learned counsel for the appellant/plaintiff-bank, Sri P. Sridhar Reddy, learned counsel for the first respondent/2nd defendant, Sri M. Venkata Narayana, learned counsel for the respondents 4, 9 & 11/defendants 6, 11 & 13.

The learned counsel appearing for the appellant and the contesting respondents essentially advanced their arguments on the creation of the mortgage, the guarantees and also the amounts demanded. All the counsel concentrated on these fundamental aspects. This Court will also proceed to decide the matter in line with the arguments advanced by all the learned counsel.

The admitted fact is that there was an initial mortgage created for the loan. This is not really denied by the parties. The entire argument of the learned counsel for the appellant and the respondents was upon Ex.A.9 which is the extension of the mortgage pertaining to the suit transaction, dated 11.05.1987. The learned counsel for the respondents first and foremost pointed out that PW.1, who is examined as the sole witness on behalf of the plaintiff-bank,

did not have any personal knowledge of the transaction. The suit transaction pertains to the years 1986-87. The evidence of PW.1 clearly shows that he joined in the branch in 1990 and worked upto June, 1994. Therefore, the learned counsel argued that the witness is not competent to speak about the contents of the documents which are in issue. The learned counsel for the appellant/plaintiff-bank in reply argued that the plaintiff is an admitted borrower. He also argued that the initial mortgage and initial transaction are not denied and therefore, there was no need to examine the Officer or employee concerned with each of the documents.

While it is true that in any nationalized bank, officers are transferred and it is difficult to get a witness concerned with the every document, still the law on the subject is fairly clear. If the truth of the contents of a document itself is an issue, a person concerned with the document has to be examined (as per **Ramji Dayawala and Sons (P) Ltd. v. Invest Import (**AIR 1981 SC 2085). Mere marking of a document is not proof of the contents particularly with the same is denied (as per **Sait Tarajee Khimchand v. Yelamarti Satyam** (1972) 4 SCC 562).

The learned counsel for the respondents pointed out that the dispute in this case centres around Exs.A.5, A.7, A.9 & A.11. All these documents are purported to be the documents evidencing the deposit of title deeds by the respective defendants. All these documents are dated 11.05.1987. It is the case of the appellant that on 08.05.1987 the defendants have approached the bank and extended the existing deposit. These documents are executed on 11.05.1987 confirming the deposit of title deeds/extensions made earlier on 08.05.1997. Therefore, the appellant contends that these documents disclose the 'intention' of the defendants to extend the mortgage. In reply thereto, the learned counsel for the defendants argued that these documents are inherently doubtful and contain many corrections/extra-polations. These documents in the words of the learned counsel for the respondents do not disclose the 'intention' that is necessary for creation of mortgage by deposit of title deeds.

The learned counsel points out that Exs.A.5, A.7, A.11 contain clear extra-polations and changes. There is a clear correction of the date on the top right side corner of the documents with the figures in two inks/ pens. A very large part of the document is written on a carbon paper and what is filed in the court is a copy, as can be seen from the hand writing. It shows the carbon paper was used and the details were filled up. In one part of the document on the left top side, the address of the bank is written in ink in these three documents. The date 08.05.1987 in the preamble is in carbon and in deep blue colour whereas the other part of the document is written in light blue. The learned counsel argued that two different carbon papers were used for preparing these documents. 08.05.1987 is the date in the body of the document and the correction in the top right corner of the date 11.05.1987 is in dark blue/violet carbon. Similarly, in the case of Ex.A.9, the earlier deposit was

supposed to have been made on 29.09.1985 and the extension is supposed to have been deposited on 11.05.1987. According to the learned counsel, Ex.A.9 did not contain any details and he argues that there is no evidence to show that on 11.05.1987 the 5th defendant actualy went to the bank. In the crossexamination, PW.1 admits that he is not aware if 5th defendant signed in Ex.A.9 or not. He also says that he did not obtain confirmation from his predecessor whether 5th defendant signed on Ex.A.9 or not. He also pointed out that the corrections in Exs.A.5, A.7 & A.11 are very similar indicating that they were all made at the same time. The appellant submits that the witness did not have any personal knowledge of the same. He pointed out that Ex.A.11 is neither a copy nor an original.

Further, the argument of the learned counsel for the respondents is that there is no documentary proof to show that the Excise Department in fact demanded the money and the respondents actually paid the same. The documents filed viz., Exs.A.1 to A.19 do not disclose that the Excise Department had in fact invoked the security and that consequently, the plaintiff-bank paid the money. PW1 admits that the revocation/ invocation from the Excise Department is not filed. The only document available is on Ex.A.19, which is the statement of account. The learned counsel for the respondents submits that when the statement of account is denied, the entries therein have to be proved. A certified copy of the statement of account even if duly certified under the Banker's Books Evidence Act, 1891 is not sufficient evidence to fasten liability. He relied upon **Chandradhar Goswami v. The Gauhati Bank Ltd. (**AIR 1967 SC 1058) for this proposition. He therefore, argues that neither the extension of mortgage of May 1987 nor the demand and payment is proved. Therefore, he argues that the suit was rightly dismissed by the lower Court.

This Court on an examination of the facts and the law highlighted by the learned counsel notices the following:

a) The essence of an equitable mortgage is the deposit of title deeds with an 'intention' to create a mortgage. The three essentials for creating a mortgage by deposit of title deeds are a) debt; b) deposit of title deeds; and c) intention that the deposit of title deeds is to create a security for the debt. Section 58 (b) of the Transfer of Property Act, 1882 and **K.J. Nathan v. S.V. Maruty Reddy (**AIR 1965 SC 430) are relevant. The deposit should therefore be made by the owner of the property; with the intention that the property will be a security for the loan advanced. Mortgage by deposit of title deeds is a type of mortgage where the mere deposit of the title deed with an intention to create a mortgage is enough to make the mortgage enforceable. Hence, in the absence of a 'document' creating a mortgage; the intention to deposit becomes very important. This Court notices the case law wherein the Courts have held that in case of

equitable mortgage documents showing sufficient title and not perfect title are enough if the intention is clear or if the 'intention' of the parties is manifested clearly (as per **M/s. Panwar Brothers v. Seth Laxmandas Goverdhan Das (**1970 APLJ (SN) 70); and **Angu Pillai v. M.S.M. Kasiviswanathan Chettiar (**AIR 1974 Madras 16). In the case on hand, the extrapolations made in Exs.A.5, A.7, A.9 and A.11 do not inspire confidence at all. The corrections made on the documents, usage of carbon paper for filling up of the blanks in the documents and the documents in the carbon clearly shows that these documents are not trustworthy. If the defendants actually called upon the bank on 08.05.1987 or on other dates, there is no reason why the document should be filled up in the carbon and with so many corrections. Even in the oral evidence, this Court finds that PW.1 did not have personal knowledge about the corrections. He was not present on 11.05.1987 when the four documents evidencing the past deposits were supposedly signed by the defendants. Therefore, this Court holds that the 'intention' that was necessary to prove the deposit of title deeds has not been proved in this case. The witness examined is not competent to speak about these disputed documents. A witness present on the said dates should have been examined. Failure to do so is in the opinion of this Court fatal to the appellant's case particularly in view of the defence in this case.

b) The original memorandum of deposit or the equitable mortgage register or such other documents should have been filed to support the contents of these four documents. In the absence of any such documents, this Court holds that Exs.A.5, A.7, A.9 and A.11 do not prove the extension of the mortgage nor do they prove the 'intention' of the owner to create a security.

c) There is also no reason forthcoming why the demand made by the Excise Department and the payment of the said sum has not been proved. As a public sector bank, the plaintiff would not have paid the money due unless and until the demand is made by the Excise Department. No document is filed to show the demand or the invocation of the guarantee as also the consequential payment.

d) There is a presumption under the provisions of the Banker's Books Evidence Act that the the copy of statement of account is true under Section 3 of Banker's Books Evidence Act. However, in the case hand, this Court notices that Ex.A.9 account copy is not certified at all let alone under the Banker's Books Evidence Act. In addition, the account copy marked as Ex.A.9, starts from 11.05.1987 and ends on 05.09.1989, whereas as per the pleaded case of the plaintiff, the initial mortgages were in September 1985 and the last transaction in 1989. Thus, this document is not a copy of the entire account. As noticed by the lower Court, the copy of the account merely

shows the name of the first defendant only and not of the others.

The case law relied upon by the learned counsel for the respondents in **Chandradhar Goswami** (3 supra) squarely applies to the facts and circumstances of the case. The liability cannot be fastened by the borrowers/guarantors merely on the basis of the entries in the certified copy of the account. Evidence to support the entries is not filed. Further, in the absence of any proof to show the amount demanded by the Excise Department and also the payment of the demanded amount by the bank, pursuant to the said demand, this Court holds that the entries in Ex.A.19 are not sufficient to fasten liability on the respondents/defendants.

Therefore, this Court holds that neither the payment of the loan amount, nor the deposit of title deeds with an intention to create mortage are proved in this case. This Court holds that the findings of the lower Court that there is no 'valid mortgage' created is correct. The Court notices that both on the basis of carbon copies of documents and with an uncertified copy of an account, no liability can be fastened on the defendants plus the oral evidence is also not supporting the appellants case. The lower Court also came to the conclusion that the discrepencies in the evidence about the contents of the so-called documents evidencing deposit of title deeds and failure to prove the actual payment of the money to the Excise Department are correct.

As the learned counsel essentially concentrated on the two issues of the liability and on the security created to secure that liability, this Court also is concentrating on these two issues. Decision on these facts virtually decides the entire appeal. This Court therefore holds that the appellant/ plaintiff-bank did not prove the due execution of the documents evidencing the deposit of title deeds or the liability incurred. Neither the actual loan amount paid or the alleged security created are proved. Therefore, this Court concurs with the findings of the lower Court and holds that the suit is rightly dismissed. There are no merits in the appeal.

In the result, the appeal is dismissed. The judgment and decree dated 18-09-1997 passed in O.S.No.76 of 1991 by the Subordinate Judge, Kovur, Nellore District, is confirmed in all respects. In the circumstances of the case, there shall be no order as to costs. As a sequel, miscellaneous Petitions, if any, pending in this appeal shall stand closed.

--X--

2019(1) L.S. 144 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
Gudiseva Shyam Prasad

The New India Assurance Co. Ltd., Rep. by its B.M. ..Appellant

Vs.

Jayalakshmi & Ors., ..Respondents

MOTOR VEHICLES ACT - Sec.166 – Quantum of compensation - Income of deceased, for purpose of calculation of compensation is around Rs.5,000/- - Rate of interest awarded is 9% per annum while the claim was for 12% per annum.

Held - Rate of interest awarded does not require any interference as 9% per annum is just and reasonable - There is no hard and fast rule and no fixed norm under the Motor Vehicles Act with regard to rate of interest - Tribunal has arrived at a compensation of Rs.6,80,000/-, but granted Rs.5,00,000/- in view of the total claim for Rs.5,00,000/-. - It is obvious that the Tribunal has not granted any compensation towards loss of love and affection, funeral expenses, loss of estate and other conventional Heads - Petitioners/Claimants would be entitled to more amount than that was awarded by the Tribunal - Appeal stands dismissed.

Mr.J.K. Anitha, Advocates for the Appellant.
Mr.Madhava Rao, Advocate for the Respondents.

J U D G M E N T

1. This appeal is arising out of the order dated 15.09.2003 in O.P. No.148 of 1999 on the file of Motor Vehicle Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Courts, Secunderabad. The appellant is the New India Assurance Company Limited, respondent No.2 in the O.P. The O.P. was filed by the petitioners/respondents 1 to 3 herein, under Section 166 of the Motor Vehicles Act, against the owner and insurer of the lorry bearing No.AHT 2264, claiming compensation of Rs.5,00,000/- on account of the death of K. Mallaiah in a motor vehicle accident that occurred on 25.06.1998 at 2:30 PM, while the deceased was going on his scooter bearing No.AP 10H 9654 from Nacharam towards Kushaiguda, and the offending lorry driven by its driver in a rash and negligent manner, dashed his scooter.

2. The Tribunal, on consideration of evidence of witnesses PWs.1 and 2, and the documents Ex.A1 to A8, and Ex.B1-copy of insurance policy; allowed the petition and awarded compensation of Rs.5,00,000/- with interest at 9% per annum holding the owner and insurer of the offending lorry jointly and severally liable to pay the compensation. Aggrieved by the Judgment passed by the Tribunal, the New India Assurance Company Limited preferred this

The New India Assurance Co. Ltd., Rep. by its B.M. Vs. Jayalakshmi & Ors.,145

appeal.

3. Heard Ms. J.K. Anitha, learned counsel appearing for the appellant-insurance company. Though one Mr. Madhava Rao is shown as counsel for the respondents-claimants, none appeared on their behalf though notices have been served on them.

4. The point for consideration is whether the compensation awarded by the Tribunal is excessive.

5. Learned counsel for the appellant-insurance company is not disputing the findings of the Tribunal with regard to the rash and negligence on the part of the driver of the offending lorry. The dispute is only with regard to the age, income and the rate of interest considered by the Tribunal. It is argued that the correct income of the deceased is not taken into consideration by the Tribunal. Placing reliance on the document Ex.A7-Salary Slip, it is submitted that the deceased was working as a Fitter in South Central Railway and drawing a salary of Rs.4,263/- per month, whereas the Tribunal has taken the income of the deceased as Rs.5,000/- for the purpose of calculating the compensation. Therefore, it is argued that the Tribunal has taken excessive income for awarding compensation.

6. It is pertinent to note that the Tribunal has not awarded any compensation for future prospects of the deceased. Admittedly, the deceased was working as Fitter in South Central Railway and though his job is permanent in nature, the Tribunal has not taken into consideration future prospects like promotion and increments. The Honble Supreme Court in National Insurance Company Limited v. Pranay Sethi (2017 SCC OnLine SC 1270), held in paragraph 64(iv), as under:

In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

7. Therefore, if the ratio laid down in Pranay Sethi is applied, the income of the deceased, for the purpose of calculation of compensation, would exceed Rs.5,000/-. Insofar as the rate of interest is concerned, the rate of interest awarded is 9% per annum while the claim was for 12% per annum. The rate of interest awarded does not require any interference as 9% per annum is just and reasonable. There is no hard and fast rule and no fixed norm under the Motor Vehicles Act with regard to rate of interest.

8. The last submission of the learned counsel for the appellant-insurance company is that the correct age of the deceased was not taken into consideration by the Tribunal. It is argued that the age of the deceased was 54 years by the date of accident, whereas the Tribunal has taken 43 years basing on the post mortem examination (PME) report. Therefore, there

is some force in the argument of the learned counsel for the appellant. If the Salary Slip of the deceased is taken into consideration, it shows the date of birth as 16.04.1944, and on calculation, the age comes to 54 years by the date of accident. The multiplier applicable to the age of 54 years as per Sarla Verma v. Delhi Transport Corporation (2009) 6 SCC 121), would be 11. Taking the salary of the deceased as Rs.5,000/- per month, the annual income comes to Rs.60,000/-. Now, deducting 1/3rd towards personal expenses, and applying multiplier 11, the loss of dependency on account of death of the deceased would come to Rs.40,000 x 11, which is Rs.4,40,000/-. Further, in view of the judgment in Pranay Sethi, the claimants would be entitled for an amount of Rs.70,000/- under the conventional Heads of loss of estate, loss of consortium and funeral expenses.

9. It is pertinent to note that the Tribunal has arrived at a compensation of Rs.6,80,000/-, but granted Rs.5,00,000/- in view of the total claim for Rs.5,00,000/-. It is obvious that the Tribunal has not granted any compensation towards loss of love and affection, funeral expenses, loss of estate and other conventional Heads. On calculation as per the ratio laid down by the Hon ble Supreme Court in Pranay Sethi, the petitioners/claimants would be entitled to more amount than that was awarded by the Tribunal. Therefore, I do not see any merits in this appeal and the appeal is liable to be dismissed.

10. In the result, the appeal is dismissed, confirming the award passed by the Tribunal in O.P.No.148 of 1999. The appellant-insurance company is directed to deposit the compensation amount within one month from the date of receipt of this order and on such deposit the respondents 1 to 3/claimants are permitted to withdraw the amount. Miscellaneous petitions, if any pending, shall stand closed.

--X--

2019(1) L.S. 146 (Hyd.)

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

Present:
The Hon'ble Mr.Justice
D.V.S.S. Somayajulu

Uppara Anjinappa (died)
& Ors., ..Petitioners

Vs.

T. Khasim Sab (died)
per LR. & Ors., ..Respondents

CIVIL PROCEDURE CODE - Appeal by Plaintiffs against Judgment and Decree of Trial Court – Suit was filed before lower Court for a declaration of title - Appellants claim ownership of the suit schedule property both by inheritance from a common ancestor and also by adverse possession.

Held - Burden is squarely on the appellants to prove their title and possession of the suit schedule property - Appellants have not proved title to

property and respondents on contrary have established their right and title to the property - Evidence coupled with the fact that the appellants pleaded adverse possession leads this Court to come to a conclusion that the Judgment and Decree of the Lower Court is correct – Appeal stands dismissed.

Mr.O. Manoher Reddy, Advocates for the Petitioners.
Mr.P. Narahari Babu, Advocate for the Respondents.

J U D G M E N T

This appeal is filed by the unsuccessful plaintiffs against the judgment and decree dated 12.08.1996 passed in O.S.No.9 of 1996 by the Subordinate Judge, Hindupur, Anantapur District.

The suit O.S.No.9 of 1996 was filed by Uppara Anjinappa and Uppara Aswartha Narayanappa against T. Khasim Sab and Uppara Venkamma. After the first plaintiff died, his legal representatives were added as plaintiffs 3 to 5. The suit was filed for a declaration that the plaintiffs and the 2nd defendant are the owners of Ac.2.92 cents of land in Survey No.391/3 and Ac.1.67 cents of land in Survey No.393/4 of Kotnuru Revenue Village, Hindupur Mandal, Anantapur District. The case of the plaintiffs case is that Ac.2.92 cents + Ac.1.67 cents = Ac.4.59 cents is one single bit of land. The plaintiffs claim ownership of the suit schedule property both by inheritance from a common ancestor and also by adverse possession. They relied upon the sale deeds of 1890 and 1911, apart from survey and settlement to prove their title. Their case is that they are in possession and enjoyment of the land and that they are paying the cist every year.

The first defendant, on the other hand, filed a written statement admitting the family genealogy, but denying the title of the plaintiffs. The defendants also raised issues about the existence of the land with specific boundaries and also the correlation between the sale deeds of 1890/1911 with the present suit schedule property. The first defendant's case is that he is the absolute owner of the suit schedule property having purchased the same along with T. Narayanacharyulu on 11.08.1993 and subsequently the said Narayanacharyulu also executed a deed in his favour giving up his share in the property in October 1987. The defendants claim title and ownership independently. They deny that the plaintiff can claim title by inheritance and also adverse possession.

Basing on the pleadings, the lower Court framed the following issues:

i) Whether the plaintiffs have got title over the suit schedule property?

ii) Whether the plaintiffs perfected their title to the suit schedule property by adverse possession?

iii) Whether the plaintiffs were in possession of the suit schedule property of the date of the institution of the suit?
iv) Whether the plaintiffs are entitled for permanent injunction as prayed for?

v) To what relief?

The parties thereafter went to trial. For the plaintiffs, PWs.1 to 3 were examined and Exs.A.1 to A.12 were marked. For the defendants, DWs.1 & 2 were examined and Exs.B.1 to B.22 were marked. After the trial and hearing, the lower Court dismissed the suit. It is this judgment that is now challenged in this appeal.

This Court has heard Sri O. Manohar Reddy, learned counsel for the appellants/plaintiffs and Sri P. Narahari Babu, learned counsel for the respondents/defendants.

At the very outset, this Court is of the clear opinion that since the suit is one for a declaration of title and for possession, the burden is squarely on the plaintiffs to prove their title and also their possession and enjoyment of the suit schedule property. The learned counsel for the respondents/ defendants cited a judgment which reiterated the position of law that is well-settled viz., **Union of India v. Vasavi Co-op. Housing Society Ltd. (**AIR 2014 SC 937) in which the Hon'ble Supreme Court has held in paras-12, 14 &15 as under:

> "12. It is trite law that, in a suit for declaration of title, burden always lies on the Plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the Defendants would not be a ground to grant relief to the Plaintiff.

14. At the outset, let us examine the legal position with regard to whom the burden of proof lies in a suit for declaration of title and possession. This Court in Maran Mar Basselios Catholicos v. Thukalan Paulo Avira reported in MANU/SC/0181/1958 MANU/ SC/0181/1958 : AIR 1959 SC 31 observed that "in a suit for declaration if the Plaintiffs are to succeed, they must do so on the strength of their own title." In Nagar Palika, Jind v. Jagat Singh, Advocate MANU/SC/ 0260/1995MANU/SC/0260/1995: (1995) 3 SCC 426, this Court held as under:

> the onus to prove title to the property in question was on the Plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the Plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit.

15. The legal position, therefore, is clear that the Plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the Defendants have proved their case or not. We are of the view that even if the title set up by the Defendants is found against, in the absence of establishment of Plaintiff's own title, Plaintiff must be non-suited."

Against this backdrop, the pleadings and evidence in this case have to be established. The plaintiffs have filed Exs.A.1 & A.2 sale deeds, which are of the years 1890 and 1911 respectively. Ex.A.1-sale deed deals with land measuring Ac.4.00 cents in Survey No.26 and Ex.A.2 deals with the land

Uppara Anjinappa (died) & Ors., Vs. T. Khasim Sab (died) per LR. & Ors., 149

measuring Ac.1.28 cents in Survey No.556/3.

The plaint contains a description about the manner and method in which the title devolved upon the plaintiffs. They stress on initial sale deed of 1890 by which Shyamanna, s/o. Aswartha Narayanappa purchased the property. They trace the derivation of their title in paras-4, 5 and 10. They also plead about the survey and settlement of the years 1890 and 1929 by virtue of which, according to the plaintiffs, plaint properties were carved out of older survey numbers and there was some reallocation of new survey numbers. Ultimately, they state that the plaint schedule property was carved out of old survey No.556-C measuring Ac.5.11 (para-8 of the plaint deals with the same). After setting out the flow of title, the plaintiffs denied that the defendants' vendor-Achamma, the wife of Ugrappa had any title to the property.

The defendants denied the correlation of the survey numbers. They also denied that the link between the suit properties and Exs.A.1 & A.2. They also stated emphatically that the old survey numbers supposedly shifted and the resurvey conducted are all not correct. They also asserted and stated that in the revenue records, their vendor was shown as owner of the property and the plaintiffs do not have any title to the property. In para-8 in reply to the case of the adverse possession set up by the plaintiffs, they have also asserted that the plaintiffs cannot set up a mutually destructive case of independent title and also adverse possession.

Against this backdrop, the issue that is to be decided first is the plea of adverse possession set up by the plaintiffs (issue No.2).

As has been held repeatedly in catena of decisions, the plea of adverse possession is a double edged sword. Any plea of adverse possession contains an admission that the opposite party is the owner of the property, but the said title of the opposite party has been extinguished because of the open hostile possession with animus by the claimant for the statutory period. Therefore, by pleading adverse possession a party admits the initial title of the opposite party which however is said to be extinguished. The law is also wellsettled and the case of **Karnataka Board of Wakf v. Government of India** (2004) 10 SCC 779) is relevant for this case. Paras-11 & 12 of the said judgment is reproduced here.

"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is

adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

(See: **S M Karim** v. **Bibi Sakinal** MANU/SC/0236/1964 : [1964] 6 SCR 780, **Parsinni** v. **Sukhi** MANU/SC/0575/1993 : (1993) 4 SCC 375 and **D N Venkatarayappa** v. **State of Karnataka** MANU/SC/0766/1997 : AIR 1997 SC 2930).

Physical fact of exclusive possession and the animus posited to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

(Dr. Mahesh Chand Sharma v. **Raj Kumari Sharma** MANU/SC/0231/1996 : AIR 1996 SC 869)."

"12. Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: **S M Karim** v. **Bibi Sakinal** MANU/SC/0236/1964 : [1964]6SCR780). In **P Periasami** v. **P Periathambi** MANU/SC/0821/1995 : (1995)6SCC523 this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with **Mohan Lal** v. **Mirza Abdul Gaffar** MANU/SC/1039/1996 : (1996)1SCC639 that is similar to the case in hand, this Court held:

"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53A, it goes without saying that he admits by implication that he came into possession of land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

Therefore, by pleading adverse possession very specifically in their plaint, the plaintiffs admitted that the defendants had title to the suit schedule property. But, as per them the title was extinguished by the plaintiff hostile possession of the property. The plaintiffs have therefore admitted in the

pleading filed that the defendants had title over the plaint schedule property. The question is – whether the suit title is extinguished? The evidence on record is not enough to prove the open hostile possession of the plaintiffs over the suit schedule property for the statutory period or the extinction of the same. Neither the intention to hold the property with hostile animus nor the period of possession is proved by evidence. The plaintiffs have failed to prove that the title that is there in the defendants has been extinguished. None of the essential facts which are discussed in paras-11 & 12 of the **Karnataka Board of Wakf**'case reproduced earlier (2 supra) have been pleaded and clearly proved. Equity is also not in the plaintiffs favour. Issue No.2 is therefore held against the plaintiffs and in favour of the defendants.

Even apart from this, as per the case law that has been reproduced earlier and relied upon by the learned counsel for the respondents/ defendants, the burden is squarely upon the plaintiffs to prove that they have title over the suit schedule property and also possession on the date of the suit. These are issues 1 and 3 of the suit. If the plaintiffs proved their possession, they will be entitled to injunction as per issue No.4.

An examination of the oral and documentary evidence filed in this case shows that the documents filed by the plaintiffs do not show the existence of the suit schedule property with the definite boundaries in any of their documents. Neither the sale deeds nor the other documents filed show that the plaintiffs are in possession and enjoyment of the property measuring Ac.2.92 cents or Ac.1.67 cents in Survey No.391/3 or 393/4. The boundaries are also not established by any documentary evidence. As was pointed out by the learned counsel for the respondents/defendants in this case, Exs.A.1 & A.2 are not in any way correlated to the suit schedule property. The learned counsel argued the same vehemently and also submitted his written submissions. The lack of correlation between Ex.A.1 & Ex.A.2 and the suit schedule property is clear. The learned counsel also points out rightly that no official from the Revenue Department was examined nor there any record summoned to show that the property covered by Exs.A.1 & A.2 is now the suit schedule property pursuant to the reorganization/resurvey and the allocation of fresh survey numbers. This Court agrees with the submission that the mere fact that Exs.A.1 & A.2 are old documents does not lead to a conclusion that they pertain to the present suit schedule property. Apart from this, the Court notices basing on the submissions by the learned counsel for the appellants that the cist receipts that are filed by the plaintiffs do not establish their title or possession. The relief claimed is of declaration of title. Therefore, the burden was heavily upon the plaintiffs to establish that the documents filed by them relate to the suit schedule property and that the taxes paid as evidenced by the few tax receipts filed relate to the suit schedule property only. The plaintiffs failed to correlate the same.

On the other hand, Ex.A.6 is the proceeding of the Mandal Revenue Officer, Hindupur Mandal under which the MRO traced the

title of the present defendants. The MRO noted that the lands which are the subject matter of the suit are registered in the name of Karnam Narayanappagari Ugrappa, the minor represented by his guardian Venkappa. The MRO traced the title in 1929. In fact, this document is an order passed by the MRO after Ex.B.1 reply. An objection was raised by the plaintiffs in the suit for the mutation in the defendants favour. After considering all the aspects, the name of the first defendant and the co-owner was incorporated in the revenue records while holding that their vendor-Achamma had title to the property. Even Ex.A.8 shows that Ac.2.92 cents and Ac.1.67 cents are in the name of Achamma, the wife of Ugrappa. Ex.A.8 is the 10 (1) account showing the mutation of their names. Similarly, Ex.A.10 also shows the possession and enjoyment of the land by the defendants in their favour. The defendants have also filed Ex.B.1-relevant entry in the diglot resettlement register. Page-52 of the Diglot/A-register shows the new survey No.391 as three items of which item 556 (1) measuring Ac.2.92 cents is in the name of Ugrappa, minor represented by his guardian-Venkappa. Similarly, Survey No.393 item No.4 is old survey No.556 (c) measuring Ac.1.67 cents in the name of Ugrappa, minor represented by his guardian. This register is of the year 1929 showing the entire resettlement exercise that was carried out in 1929. The defendants have also filed the list showing the names of the joint pattadars in the village of Kotnuru. Ex.B.8 shows that the survey No.396 is in the name of Anjinappa, the guardian of Ugrappa. The mutation of the name of the first defendant is proved by Ex.B.5, which is issued on 20.06.1988. Similarly, the copy of adangal of the village Kotnuru, which is marked as Ex.B.6 shows that the name of Khasim Sab was included after correction of the name of the original pattadar-Ugrappa. The first defendant has also filed the cist receipts showing the payment of tax by him. These documents are marked as Exs.B.15 to B.19. To assert that these documents cannot be the basis for 'title', the learned counsel for the appellants relied on -

i) **Union of India v. Vasavi Cooperative Housing Society Limited** (2014) 2 SCC 269)

ii) **State of Andhra Pradesh v. Hyderabad Potteries Private Limited** (2010) 5 SCC 382)

iii) **Penumarthy Veera Panasa Ramanna v. Penumarthy Sambamoorthy (**AIR 1961 AP 361)

iv) **Hyderabad Potteries Private Limited v. Collector, Hyderabad District (**2001 (3) ALD 600).

On the basis of first three judgments, the learned counsel for the appellants argued that the entries in the revenue records are not evidence of title. It is his contention that the entries in the revenue records by themselves cannot be relied upon to prove the title. In reply thereto, the learned counsel for the respondents/defendants relied upon **Varthamma v. Kanappa (Died) and others (**2013 (5) ALT 241) and **G. Satyanarayana v. Government of Andhra Pradesh (**2014 (3) ALT 473).

It is a fact that the revenue records by themselves cannot be treated as documents of title. However, the fact remains that both under Section 35 of the Indian Evidence Act and because of the fact that they are the result of a 'physical exercise' done on the land, they do have a certain evidentiary value, particularly the 1929 Resettlement Register. Even the judgments relied upon by the learned counsel for the appellants clearly show that the documents/entries in the revenue records and registers have to be considered along with other documents that are filed before they are accepted as proof of title. In the two cases relied upon by the learned counsel for the respondents, particularly **G. Satyanarayana**'s case (8 supra), a learned single judge of this Court has carried out a very extensive and a detailed study of the revenue administration pertaining to the State of Andhra Pradesh and Telangana. At page 496, para-60 clause (1) the Settlement Register also known as the diglot or A-register was held to be the basis/foundation upon which the entire revenue administration rests. In para-119, while discussing the evidentiary value of entries in the revenue records, the learned single Judge held that the diglot or A-register could be held to be the core revenue record (Ex.A.9). The learned single Judge also discussed the case law including Section 35 of the Indian Evidence Act and came to the conclusion at para-137 that the A-register is the mother of all registers. Similarly, in the conclusions, the learned single Judge also held that when there are two rival claims relying upon the entries in the revenue records, the person whose name is recorded in the basic record, such as the A-register and their successors-in-interest will be considered to be the rightful owner.

The next judgment relied upon by the learned counsel for the respondents is of another single Judge who held that once pattadar passbook and title deed were issued in favour of the opposite parties, the other party should have filed an appeal or gone to a court of law to get the entry set aside. The learned counsel for the respondents points out that Ex.A.6 is the order passed by the MRO for mutation of the name of the first defendant. The objection raised by the plaintiffs to the proposed mutation was overruled. The history of the property was traced and the revenue officials came to a conclusion that the first defendant and his vendor had the title to the property. The learned counsel for the respondents submitted that Ex.A.6 dated 15.10.1987 shows that it was marked to the counsel for the plaintiffs at Hindupur. Therefore, he submitted that the plaintiffs had the benefit of legal advice at the time they filed the objections and at the time the order under Ex.A.6 was passed. The findings of the revenue officials were not challenged by the plaintiffs. The plaintiffs did not even choose to examine any of the revenue officials or summon any records to prove the contents of Ex.A.6 were wrong. The learned counsel also argued that subsequent mutation of the name in favour of the first defendant was also not challenged anywhere by the plaintiffs. The order in Ex.A.6 is also corroborated in material aspects by the other records filed by the defendants.

This Court on an examination of all the facts and figures including the evidence

introduced by both sides shows that 1929 onwards the name of Ugrappa was recorded in the relevant record - diglot or A-register. The exact land that is the subject matter of the transfer by Ugrappa's wife under Ex.A.2 sale deed is referred to in the settlement register from 1929 onwards. Ugrappa's wife executed a registered sale deed in favour of first defendant and another. The tax receipts that are filed show the possession and enjoyment of the property by the first defendant. The documents filed by the plaintiffs do not show the enjoyment of the plaint schedule properties by the plaintiffs. The records from 1929 read with other documentary evidence in this case clearly prove the title and enjoyment of the property by the defendants and their predecessors-in-title.

The learned counsel for the appellants/ plaintiffs also argued that there is no effective cross-examination on many of the aspects that are raised by his clients and that therefore, the contents of the chief examination by way of affidavit should be treated as admitted. He relies upon **Muddasani Venkata Narasaiah (dead) through LRs v. Muddasani Sarojana** (2016) 12 SCC 288) and **A.E.G. Carapiet v. A.Y. Derderian (**AIR 1961 Calcutta 359). This Court while agreeing with the submission that failure to cross-examine can amount to an admission also notices the fact that the defendants expressly denied the correlation of Exs.A.1 & A.2 sale deeds with the present suit schedule property. The defendants denied the flow of title and also the survey and settlement. The learned counsel argued that the chief examination with regard to the survey and settlement, which is deposed in by PW.1, is not touched upon in the cross-examination and that therefore the plaintiffs cannot raise any issue about the sub-division or the extents.

However, a perusal of the cross-examination clearly reveals that PW.1 admits that 'at the time of 'resettlement in 1926 to 1929, they did not file any objection for change of the patta. I do not know what happened at the time of resettlement. I do not know whether my father approached the revenue authorities for change of the pattadars name in the diglog'. The witness also admits that 'the name of Ugrappa, minor represented by guardian might be there as pattadar in the diglot of 1929'. It is also settled law that the Court has to see the entire evidence on record to come to a conclusion about the truth or otherwise of the same.

A reading of the entire evidence shows that the defendants had cross examined the witness on the material aspects in this case. The cross-examination reveals that PW.1 obviously did not have any knowledge of the resettlement, that he is not aware whether his father approached the revenue authorities for change of pattadars name. He admits that the name of Ugrappa is shown in the diglog. He admits that after the Ex.A.6-order, he did not file any application or petition to change the orders of MRO and that he was represented by the plaintiffs before the MRO. A suggestion was also put to him that the receipts filed under Ex.A.3 to A.5 do not pertain to the suit lands and that they were created for filing of the suit. Therefore, this Court on a reading of the entire evidence comes to a conclusion that the learned counsel for

the respondents/defendants did not fail to put his case to the witness. Even otherwise, as per the case law cited by the appellants themselves, the defendants weakness will not entitle the plaintiffs to get a declaration of title. The plaintiffs must establish their case themselves.

The last issue raised by the learned counsel for the appellants/plaintiffs that there is no clear denial in the written statement about the flow of title and particularly the learned counsel relied upon the fact that paras-3 & 4 of the plaint were not correctly denied in the written statement. The learned counsel relied upon **Jahuri Sah v. Dwarika Prasad Jhunjhunwala (**AIR 1967 SC 109) and **Muddasani Venkata Narasaiah**'s case (9 supra) and argued that the denial should be very specific otherwise it amounts to an admission. This Court finds that the failure to deny Exs.A.4 & A.5 of the plaint is not very fatal to the case of the defendants. A reading of the entire written statement that is filed shows that the plaintiffs have denied the so-called readjustments of the survey numbers and also the correlations. Paras-4 to 7 of the written statement read with para-9 of the written statement makes it clear that the first defendant was denying the survey and settlement, the title and the possession of the plaintiff and asserting their own independent title. Therefore, on a reading of the written statement in its entirety, this Court is of the opinion that the objections raised by the learned counsel for the appellants/plaintiffs are not sustainable in the facts and circumstances of the present case. A reading of the entire written statement leads to a conclusion that the title and possession of the plaintiffs has been expressly denied. Therefore, this Court is of the opinion that the case law cited by the learned counsel for the appellants is not really applicable to the facts and circumstances of the present case. In any view of the matter, by pleading adverse possession the plaintiffs have themselves admitted the title of the defendant. A plea of adverse possession implies an admission of title which is supposedly extinguished.

Therefore, this Court comes to a conclusion that the appellanats/plaintiffs have not proved the title to the property and that the defendants on the contrary have established their right and title to the property. This evidence coupled with the fact that the plaintiffs pleaded adverse possession leads this Court to come to a conclusion that the judgment and decree of the lower Court is correct and valid and that there are no infirmities in the same. This Court concurs with the finding of the lower Court on all the issues and holds that there are no merits in the appeal. The passage from para-15 of **Vasavi Co-op. Housing Society Ltd.**'s case (1 supra) relied on by both sides is very apt and is reproduced once again:

> "15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge 18 the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view

that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

In the result, the appeal is dismissed and the judgment and decree of the lower Court dated 12.08.1996 passed in O.S.No.9 of 1996 by the Subordinate Judge, Hindupur, Anantapur District is confirmed. In the circumstances of the case, there shall be no order as to costs.

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

--X--

2019(1) L.S. 156 (Hyd.)

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

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

Kirala Venkatamma,& Ors., ..Petitioners

Vs.

K.Munuswamy & Ors., ..Respondents

CIVIL PROCEDURE CODE, Sec.100 – Legality of document – Whether Lower Appellate Court was right in construing Exhibit marked as settlement deed because of its nomenclature despite reading of entire document would reflect that it was Will as it comes into effect only on death of deceased Plaintiff.

Held – When Exhibit is examined, the crucial recital is to effect that after demise of maker or executant, properties mentioned in schedule were to be taken possession by beneficiary/ Defendant No.1, thereafter to enjoy as absolute owner with right to alienation either by way of gifting or by selling the property with all absolute rights - Present particular recital was completely misconstrued by Lower appellate Court - Lower appellate Court, went to the extent of making an observation that right *in praesenti* was transferred in favour of the beneficiary by the settlor which finding runs completely contra to what has been mentioned in Exhibit by the executants - Thus, it is abundantly clear that aforesaid recital vests the settlee or beneficiary with absolute right only after demise of the executant but not the interest *in praesenti* with absolute rights - Second Appeal stands allowed.

Mr.K.S. Gopalakrishnan, T.C. Krishnan, Advocates for the Petitioners.
Mr.P. Vidya Sagar, P. Jagadish Chandra Prasad, Advocates for the Respondent R1,

J U D G M E N T

1. Plaintiff - Smt. Kirala Venkatamma in O.S. No.327 of 1984 on the file of the Principal District Munsif, Puttur, who

SA.No.106/96 Date:6-6-2018

succeeded, lost in Appeal Suit No.14 of 1991 on the file of the Subordinate Judge of Puttur and, thus, she preferred the present Second Appeal under Section - 100 of the Code of Civil Procedure, 1908 (for short 'Code').

2. She filed the suit in O.S. No.327 of 1984 for declaration of her right and title to the suit schedule property and consequential perpetual injunction to restrain defendant Nos.1 to 5 therein from interfering with her possession and enjoyment over the suit schedule property.

3. The suit schedule property consists of item Nos.1 and 2. Item No.1 is dry land to an extent of Ac.0-49 cents out of Acs.1.66 cents situated in Survey No.173/1 with right in the Well in Survey No.173/6 to which Well a pump set is installed and the right of 1/12th share in the Well and appurtenance therein, the Channels, trees etc., and item No.2 is a house site measuring east - west 25yards and north - south 20 yards within specific boundaries.

4. During pendency of the present second appeal, the sole appellant died and her brother's daughter came on record as appellant No.2 being her legal representative. Respondent No.2 also died and his legal representatives are already on record as other respondents.

5. Appellant No.1 herein is plaintiff in the aforesaid suit, while respondent Nos.1 to 5 are the defendants.

6. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid suit.

7. O.S. No.327 of 1984 was filed for the aforesaid reliefs by the deceased plaintiff - Kirala Venkatamma. Her case had been that defendant No.2 was her brother. Defendant Nos.1 and 3 are his sons. Defendant Nos.4 and 5 are wives of defendant Nos.1 and 3 respectively, and all of them were living together.

i) Originally the suit schedule property belonged to husband of the plaintiff, Kirala Narasaiah, and after his demise, she succeeded by way of inheritance to the suit property as they were issueless.

ii) On 19.12.1969, she executed a document terming it as settlement deed in favour of defendant No.1, who was minor then under the guardianship of his father, defendant No.2, stipulating therein that she should possess and enjoy the plaint schedule properties until her life time, and that defendant Nos.1 and 2 should treat her properly and, thereafter, defendant No.1 would derive absolute rights in case he performs her obsequies.

iii) But, subsequent to the execution of the said deed, it is alleged that she was ill-treated by the defendants and, therefore, by execution of a registered deed, dated 21.01.1971, she had cancelled the earlier deed. According to her case, she did not deliver the possession to the beneficiary under the former deed and she had been

in continuous possession and enjoyment of the suit schedule properties and, therefore, she sought the aforesaid reliefs.

8. Before the trial Court, defendant No.1 filed written statement and defendant Nos.2 and 4 filed a memo adopting the written statement of defendant No.1. Defendant Nos.3 and 5 remained *ex parte*.

i) They admitted the relationship and execution of the registered deed of 1969, but, they claimed that the possession was delivered by her. They admit that the plaintiff cancelled the settlement deed, but they state that they gained knowledge about the execution of that deed a week prior to 25.04.1975, the date on which a letter was executed by the plaintiff.

ii) They claimed that the plaintiff had no right to cancel the settlement deed. They admit that though, defendant No.1 was not put in possession of the suit schedule properties on the date of settlement deed, but subsequently the plaintiff had delivered the possession of suit schedule properties to him as evidenced by the letter, dated 25.04.1975. Further allegations were denied stating that though, cist was paid, but the amount was actually paid on his (defendant No.1) behalf.

iii) They state that the plaintiff without intimation to them allowed her another brother - Balaramaiah, who intended to knock away the suit schedule properties for his son - Balachandraiah and started living with him having joined him in the month of October, 1971 and had not returned despite requests made by them. According to them, only in the second week of April, 1975, she came to their house and expressing that she was duped by the said Balaramaiah, executed the letter, dated 25.04.1975, affirming the delivery of possession over the suit schedule properties.

9. The trial Court framed as many as seven (7) issues thus:

"1. Whether the plaintiff got title to the suit property?

2. Whether the deed of cancellation dt.20.1.71 is valid and binding on the defendants?

3. Whether the plaintiff is in possession of the suit property?

4. Whether the plaintiff pe3rfected her title by adverse possession also?

5. Whether the plaintiff is entitled to the declaration as prayed for?

6. Whether the plaintiff is entitled to the permanent injunction?

7. To what relief? "

10. Before the trial Court, on behalf of the plaintiff, PWs.1 to 3 were examined and Exs.A-1 to A-6 were marked. On behalf of the defendants, DWs.1 to 4 were examined and Exs.B-1 to B-4 were marked. Amongst

the documents, Ex.A-5 is the registered settlement deed executed by the plaintiff in favour of defendant No.1 and Ex.A-6 is the cancellation deed, dated 21.01.1971, which are relevant for the present purpose. Ex.B-1, which is registered settlement deed executed by Kailasamma in favour of PW.1, dated 27.12.1967 and Ex.B-3, letter, dated 25.04.1975, said to have executed by the plaintiff on 25.04.1975 are relevant documents besides certified copies of the documents obtained from the revenue department by both sides.

11. The trial Court had taken up issue Nos.2, 3 and 4 together for discussion. Ex.B-1, a registered settlement deed, dated 27.12.1967, reflects that the mother of the plaintiff originally held the suit schedule properties and under the said registered settlement deed, she gave the suit schedule properties to the plaintiff. To prove the same, the said document was filed. The trial Court interpreting Ex.A5, a copy of registered settlement deed, observing that the nomenclature of the document is not important, but the recitals and intention of the person is to be seen, and thereby by examining Ex.A-5 found that the intention of the plaintiff was only to execute a will but not a settlement deed as she retained the interest during her life time and that the property becomes vested absolutely only after her demise and even retaining the possession are all sufficient to consider it as a will and merely because it is captioned as settlement deed, it cannot be said that it is a settlement deed when intention is culled out and thereby rejected the stand taken by the defendants and even observed that taking undue advantage of her illiteracy, it appears the nomenclature of the document was also wrongly mentioned and even observed that the evidence of DWs.3 and 4 is of no use, nor their evidence would improve the case of defendants, found the aforesaid issues in favour of the plaintiff and against the defendants.

i) On issue No.1, since there is no dispute between the parties that the suit schedule properties are the absolute properties of the plaintiff and referring to Ex.B-1 and the stand of the defendants, however, held that Exs.A-1 to A-4 would prove the title of the deceased plaintiff over the suit schedule properties.

ii) On issue Nos.5 and 6, basing on the findings recorded on other issues, held them in favour of the plaintiff, and thereby decreed the suit with costs, as prayed for on 30.09.1991.

12. The defendant No.1 got aggrieved over the said judgment and decree, dated 30.09.1991, has preferred the Appeal Suit No.14 of 1991, making other defendants as respondent Nos.2 to 5.

i) The learned lower appellate Court referring to what has been observed by the trial Court and findings recorded on issues settled for trial, formulated the point for consideration to the effect whether the appeal of the appellant - defendant No.1 is sustainable under Law.

ii) The learned lower appellate Court mainly concentrated on the original registered settlement deed, dated 19.12.1969, marked as Ex.B-2, copy of which is also marked as Ex.A.5 on behalf of the plaintiff, and also Ex.A-6, which is cancellation deed, dated 21.01.1971, referred to in the above in interpreting the nature of Ex.A.5/B.2 document whether to construe it as will or gift and elaborately dealt with the recitals therein by extracting certain recitals in vernacular language in paragraph No.10 and observing that the Settlor disposed of her interest in the property in *praesenti*, and what all was reserved for her was only enjoyment of the income on the schedule properties and nothing more and that even she has clarified that she had no further right over the property and also asserted that she had no right either to alter it or cancel in future and even she got included a clause that she had no right to revoke and basing on the rulings in **Ramaswami Naidu & another v. Gopalakrishna Naidu & others (**AIR 1978 Madras 54)and **Ponnuchami Servai vs Balasubramanian (**AIR 1982 Madras 281)for the proposition that no importance can be attached to the nomenclature alone and the contents of the document are to be considered, and also relying on the decisions in **Narsimhan v. Perumal (dead) by legal representatives (**AIR 1994 NOC 39 Madras)**, Duraisami Reddiar and another v. Saroja Ammal and others (**AIR 1981 Madras 351), to the effect that on the transfer of interest *in praesenti* is the criteria; **Mst. Samrathi Devi v. Parasuram Pandey & Others (**AIR 1975 Patna 140), **Adhikari Narayanamma v. Adhikari Thabitunaidu (**AIR 1964 Orissa 212), **Revappa v. Madhava Rao & another (**AIR 1960 Mysore 97), relied on by the appellant and concluded that Ex.B-2, which is equivalent to Ex.A-5 is a settlement deed and settlor had no right to cancel and the cancellation deed is of no avail and is of no consequence and thus, allowed the appeal suit on 12.06.1995, setting aside the judgment and decree passed by the trial Court in the original suit.

12. Aggrieved over the said judgment and decree, dated 12.06.1995, passed by the learned lower appellate Court, the deceased plaintiff preferred the present second appeal. During pendency of the appeal, the sole appellant died and second respondent died. K. Thulasamma, the daughter of brother of the deceased plaintiff, came on record as the legal representative, as appellant No.2, and respondent Nos.1 and 3 were treated as legal representatives of the deceased defendant No.2. The said orders were made on 08.02.2011 by this Court.

13. Since originally substantial questions of law as such were not formulated, but only referred to ground Nos.1, 2 and 3 constituting substantial questions of law, the following substantial questions of law are formulated.

i) Whether the learned lower appellate Court was right in reversing the judgment and decree of the trial Court without meeting the reasoning of the trial Court?

ii) Whether the learned lower appellate Court was right in construing Ex.A-5/B-2 as settlement deed because of its nomenclature despite a reading of entire document would reflect that it is a will as it comes into effect only on the death of the deceased plaintiff and got vested in defendant No.1 on her demise and possession of the property was retained by the deceased plaintiff?

iii) Whether the learned lower appellate Court was right in reversing the judgment of the trial Court when Ex.A-3 was not proved when revenue records through Exs.A-1 to A-4 would prove the possession of the deceased plaintiff, more particularly, when defendant No.1 did not file any document to substantiate his possession?

14. Heard Sri K.S. Gopalakrishnan, learned counsel, representing Sri T.C. Krishnan, learned counsel for the appellants - plaintiffs, and Sri P. Vidya Sagar, representing Sri P. Jagadish Chandra Prasad, learned counsel for respondent No.1 - defendant No.1. 15. Both the learned counsel have come up with the argument that only the nature of Ex.A-5/B-2 is to be decided in view of reversal finding recorded by the learned lower appellate Court construing it as settlement deed, whereas the trial Court construed it as will, and that would suffice in resolving the controversy in the present second appeal. Therefore, it is necessary to examine the recitals in the said document in the light of the rulings relied on by both sides.

i) Sri K.S. Gopalakrishnan, learned counsel for the appellant - plaintiff would rely on the decision in **Ramaswami Naidu (supra)**. The Hon'ble Madras High Court in paragraph No.2 referred to the document therein which was styled as a settlement deed and referred to the contents therein. Then referred to the broad tests or characteristics as to what constitutes a will and what constitutes a settlement deed that have been noticed in various decisions. But, the main test to find out whether the document constitutes a will or a settlement deed is to see whether the disposition of the interest in the property is *in praesenti* in favour of the settlee or whether the disposition is to take effect on the death of the executant, and if the disposition is to take effect on the death of the executant, it would be a will. But, if the executant divests his interest in the property and vests his interest *in praesenti* in the settlee, the document will be a settlement, and then referred to the important clauses in the document marked therein in paragraph No.4 thus:

"4. In this case, one other important circumstance which calls for special mention and consideration is the clause to the effect that the executant was to enjoy the income from the properties during her lifetime and that she will not have any right to encumber the property or in any way dispose of the same during her lifetime. This clause is normally consistent with a document being a settlement and a transfer of an interest in praesenti but the right to possession and the right to income being postponed to a future date. But as already stated, the fundamental and the only reliable test is to find out whether under the main

dispositive clause an interest in praesenti was transferred or the disposition is to take effect on the death of the executant. If this is construed and we come to a conclusion that, there was no present disposition and that the disposition is to take effect on the death of the executant, the clause relating to the enjoyment of the income and restraining the powers of alienation of the executant would be ineffective and will not enlarge the disposition nor affect the rights available to the executant under law.

Since in the present case according to the main disposition clause, as I already pointed out, the plaintiffs have to take the properties only on the death of the executant and that they have to enjoy the properties absolutely only after her death, the clause restricting the powers of the executant would not enlarge their interest and make it a, disposition in praesenti. Though a document has to be construed with reference to the language used in the document and the decisions rendered for the construction of other documents cannot be called in aid, it is useful to refer to some of the decided cases where similar clauses were construed as a guide for the interpretation. In Halsbury's Laws of England, Simonds Edn., Volume 39, at page 844, it has been observed as follows-

"The revocable nature of a will cannot be lost, even by a declaration that it is irrevocable or by a covenant not to revoke it."

At page 838 of the same edition, it has been observed as follows –

> "A will is of its own nature revocable, and therefore though a man should make his testament and last will irrevocable in the strongest and most express terms, yet he may revoke it, because his own act and deed cannot alter the judgment of law to make that irrevocable which is of its own nature revocable."

To the same effect is the decision in one of the earliest cases in Sagarchandra Mandal v. Digambar Mandal. (1909) 10 Cal LJ 644 at p. 645, wherein it has been observed as follows-

> "If therefore an instrument is on the face of it a testamentary character, the mere circumstance that the testator calls it irrevocable, does not alter its quality, for as Lord Coke said in Vynior's case, (1610) 8 Coke 82 (a). "If I make my testament and last will irrevocable, yet I may revoke it for my act or my words cannot alter the judgment of the law to make that irrevocable which is of its own nature revocable". The principal test to be applied is whether the disposition made takes effect during the lifetime of the executant of the deed or whether it takes effect after his decease. If it is really of this latter nature, it is ambulatory and revocable during his lifetime."

On the clause relating to enjoyment of income by the executant during her lifetime

and provision to the effect that the executant should not in any way alienate the property during her lifetime, a Division Bench of this Court in T. C. No. 372 of 1970, dated 13-7-1976 : (reported in 1977 Tax LR 1187) has held on almost similar facts, that those restrictive clauses do not in any way affect the disposition and that the document is a will. The above decisions support the construction which I have placed on the document in question. I therefore hold that the document is a will and not a settlement. The second appeal fails and the same is accordingly dismissed There will be no order as to costs."

ii) The learned counsel for the respondents - defendants, Sri P. Vidya Sagar, relies on the ruling **Revappa (supra)**,for the proposition that probative value of admission made by a party previously may reasonably be presumed to be so and until the presumption is rebutted, the fact admitted should be taken to be established, and in a gift of immovable property by person governed by Hindu Law and delivery of possession is not an essential.

a) The learned counsel also relies in **Kasi Gounder v. Chinnapaiya Gounder (**AIR 2002 Madras 1), for the proposition that a settlement deed executed when registered and accepted cannot be revoked and ground of failure to maintain settlor on the part of settlee not a ground to revoke and execution of subsequent settlement deed in favour of another is of no use for another and the settlee under first deed can recover possession of the land, subject matter of the settlement.

b) The learned counsel also relies in **Adhikari Narayanamma (supra)**,, for the proposition that provisions of Section 123 of the Transfer of Property Act, 1882 applicable to gifts of immovable property made by persons governed by Hindu Law and the Section lays emphasis on the due execution of the instrument of the gift and not so much on the actual delivery of possession of the property. Therefore, the learned counsel for the defendants would submit that the learned lower appellate Court did not go wrong in analyzing the document putting it to the requisite test and arrived at the conclusion that Ex.A-5/B-2 is a settlement deed, but not will and, therefore, no interference is warranted as no substantial questions of law are involved.

iii) The learned counsel, Sri K.S. Gopalakrishnan, would contend in vehemence, that all attributes of a will are occurring in Ex.A-5/B-2, since the very recital that it shall come into effect only after her demise retaining possession over the property evidenced by the revenue documents marked as Exs.A-1 to A-4 are all sufficient to hold that the document in question is will but not settlement deed as no interest *in praesenti* was vested in defendant No.1 on the date of execution of Ex.A-5/B-2 and, therefore, the learned lower appellate Court went wrong completely and unjustly reversed the finding tendered by the trial Court without assigning proper reasoning.

16. On the anvil of the rulings referred to and relied on by learned counsel for both sides the contents of document, Ex.A-5/ B-2, require examination putting it to test whether it has got attributes of a will or a settlement deed.

17. The Courts below subjected Ex.A-5/B-2 to test, and the primary Court held that all attributes of a will are occurring and nomenclature is not the criteria, and thereby held that Ex.A-5/B-2 is will and cannot be construed as settlement deed as levelled.

18. Contra to the said finding recorded by the trial Court, the learned lower appellate Court referring to certain recitals in Ex.A-5/ B-2 arrived at the finding that it is a settlement deed but cannot be construed as will. In arriving at such conclusion, the learned lower appellate Court, mainly taken into consideration certain expressions occurring in Ex.A-5/B-2. The first recital considered by the learned lower appellate Court is to the effect that schedule properties were given free of cost or without consideration and the Settlor can only enjoy the income derived on the schedule properties and also considering that neither Settlor nor her heirs could not have any rights in the schedule properties, opined that it confirms that the Settlor disposed of her interest in the property *in praesenti*, and what all she reserved for her is only enjoyment of income on the schedule properties and nothing more, and thereby construed Ex.A-5/B-2 as a settlement deed, but not a will.

19. It is no doubt true, the rulings relied on by the learned counsel for the defendants are to the effect that the ground of failure to maintain settlor on the part of settlee not a ground so far as revocation deed is concerned and that in a gift of immovable property by a person governed by Hindu Law delivery of possession is not essential. But, something more is required to be examined in the present case. In the decision relied on by the learned counsel for the appellant in **Ramaswami Naidu (supra)**, rendered by a learned Single Judge of Madras High Court, His Lordship had the occasion to refer to one of the earliest cases in **Sagarchnadra Mandal v. Digambar Mandal** (1909) 10 Cal. L.J. 644), extracting the relevant portion thus:

> "If therefore an instrument is on the face of it a testamentary character, the mere circumstance that the testator calls it irrevocable, does not alter its quality, for as Lord Coke said in Vynior's case, (1610) 8 Coke 82 (a). "If I make my testament and last will irrevocable, yet I may revoke it for my act or my words cannot alter the judgment of the law to make that irrevocable which is of its own nature revocable". The principal test to be applied is whether the disposition made takes effect during the lifetime of the executant of the deed or whether it takes effect after his decease. If it is really of this latter nature, it is ambulatory and revocable during his lifetime."

Thus, it is clear from the law declared in **Sagarchnadra Mandal (supra)**, the principal test to be applied as to whether the disposition made takes effect during life time of the executant of the deed or whether it takes effect after his decease, if it is really of the latter nature it is ambulatory and revocable during the maker's life time. Therefore, the clause occurring in Ex.A-5/B-2 that maker has no right to alter it is no ground to hold that it attracts attribute of settlement deed but not will. The learned Single Judge has also relied on a decision of Division Bench of Madras High Court in T.C. No.372 of 1970, dated 13.07.1976 [reported in 1977 Tax L.R. 1187] that restrictive clauses in the document occurring therein do not in any way affect the disposition and that the document is a will where the executant in relation to the clause as to enjoyment of income during her life time and provision to the effect that the executant should not in any way alienate the property during her life time got mentioned. The learned Single Judge of Madras High Court was testing the document of alike nature occurring in the present case marked as Ex.A-5/B-2 as could be seen from the factual aspect projected in paragraph No.3 thus:

"3. The broad tests or characteristics as to what constitutes a will and what constitutes a settlement have been noticed in a number of decisions. But the main test to find out whether the document constitutes a will or a gift is to see whether the disposition of the interest in the property is in praesenti in favour of the settlees or whether the disposition is to take effect on the death of the executant. If the disposition is to take effect on the death of the executant, it would be a will. But if the executant divests his interest in the property and vests his interest in praesenti in the settlee, the document will be a settlement. The general principle also is that the document should be read as a whole and it is the substance of the document that matters and not the form or the nomenclature the parties have adopted. The various clauses in the document are only a guide to find out whether there was an immediate divestiture of the interest of the executant or whether the disposition was to take effect on the death of the executant.

If the clause relating to the disposition is clear and unambiguous, most of the other clauses will be ineffective and explainable and could not change the character of the disposition itself. For instance, the clause prohibiting a revocation of the deed on any ground would not change the nature of the document itself, if under the document there was no disposition in praesenti. In such a case the clause prohibiting revocation will be contrary to law and will be ineffective. If, on the other hand, the document is a settlement, merely because 3 right of revocation is given, it would not change the character of the document as a settlement 'because such a clause will be against law and will be invalid. The nomenclature of the document nor the fact that it had been registered also will not be of any assistance in most of the cases unless the disposition is very ambiguous and extraneous mid is

required to construe that clause."

When Ex.A-5/B-2 is examined, the crucial recital is to the effect that after demise of maker or executant, the properties mentioned in the schedule were to be taken possession by the beneficiary i.e., defendant No.1 herein and, thereafter to enjoy as absolute owner with right to alienation either by way of gifting or by selling the property with all absolute rights. This particular recital was completely misconstrued by the learned lower appellate Court. On the other hand, the learned lower appellate Court, somehow, went to the extent of making an observation that right *in praesenti* was transferred in favour of the beneficiary by the settlor which finding runs completely contra to what has been mentioned in Ex.A-5/B-2 by the executant. Thus, it is abundantly clear that the aforesaid recital vests the settlee or the beneficiary with absolute right only after demise of the executant but not the interest *in praesenti* with absolute rights. Thus, dispositive rights in the properties were postponed and provided to take effect by the beneficiary only after the demise of the executant but not *in praesenti*, in the sense, on the date when the executant executed Ex.A-5/B-2. Therefore, viewed from any angle, the original document of Ex.A-5/B-2 can only be construed as will but not settlement deed when put to the test in the light of the principles laid down in the aforesaid decisions referred by the learned Single Judge rendered by a Division Bench of Madras High Court and in **Sagarchnadra Mandal (supra)**, no other view is possible. Therefore, the mere nomenclature terming the original of Ex.A-5/B-2 as a settlement deed would not make the document a settlement deed, but it is will with all attributes of a will. Hence, the finding recorded by the learned lower appellate Court contrary to the finding recorded by the trial Court on Ex.A-5/B-2 is patently perverse and, therefore, liable to be set aside. Thus, it accounts for substantial question of law is involved in the present Second Appeal.

20. The present Second Appeal, is therefore, allowed setting aside the judgment and decree, dated 22.06.1995, passed in A.S. No.14 of 1991 by the learned Subordinate Court, Puttur, and restoring the judgment and decree, dated 30.09.1991, passed in O.S. No327 of 1984, by the learned Principal District Munsif, Puttur. In the circumstances, both the parties shall bear their own costs. As a sequel thereto, miscellaneous applications, if any pending in the second appeal, stand closed.

--X--

2019 (1) L.S. 89 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Dhananjaya Y Chandrachud &
The Hon'ble Mr.Justice
Hemant Gupta

Sneh Lata Goel ...Appellant
Vs.
Pushplata & Ors. ...Respondent

CONSTITUTION OF INDIA, 1950, Art.227 - CODE OF CIVIL PROCEDURE, 1908, Secs.96 & 21, Order 9, Rule 13, Sec.47, Order 7, Rule 11, Sec.21-A - Territorial jurisdiction - Objection regarding lack of territorial jurisdiction of Court passing decree was raised at execution Court - Declined - High Court vide its order reversed order of executing Court.

Held - An objection to the want of territorial jurisdiction does not travel to root of or to inherent lack of jurisdiction of a civil Court to entertain the suit - It has to be raised before Court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement - It is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained - High Court was manifestly in error in coming to conclusion that it was within jurisdiction of executing Court to decide whether the decree in the suit for partition was passed in the absence of territorial jurisdiction - Appeal allowed.

J U D G M E N T
(per the Hon'ble Mr.Justice
Dhananjaya Y Chandrachud)

Leave granted.

[2] This appeal arises from a judgment and order of the High Court of Jharkhand at Ranchi dated 15/17 July 2018.

[3] The facts lie in a narrow compass:

On 9 May 1985, a partition suit(154/1985) was instituted by Smt. Saroja Rani, daughter of Late Rai Sri Krishna (since deceased), in respect of her 1/4th share in the suit property which comprises of properties at Ranchi and Varanasi. The suit was instituted at Ranchi in the Court of the Special Subordinate Judge. The defendant in that suit (since deceased) filed a petition before the High Court of Judicature at Patna questioning the jurisdiction of the Ranchi Courts. The petition was disposed of by the High Court on 10 May 1989 with the direction that any objection to jurisdiction would be decided by the Special Subordinate Judge at Ranchi as a preliminary issue. A preliminary decree was passed ex-parte on 13 June, 1990 granting the Petitioner her extent of 1/4th share in the schedule property. A final decree was passed on 5 April 1991 confirming the preliminary decree passed on 13 June, 1990.

One of the defendants in the partition suit filed a title suit(114/1998) before the Court

of Subordinate Judge, Ranchi. On 22 July 2003, the suit was dismissed for non-prosecution. The first respondent filed a title suit(176/2000) before the Court of Subordinate Judge at Varanasi which was dismissed under Order VII, Rule 11 of the CPC on 12 April 2005 on the ground of being barred under Section 21A of the Code of Civil Procedure 1908 ("CPC"). The first respondent filed an application under Order IX Rule 13 in respect of the title suit filed at Ranchi which was also dismissed as withdrawn on 19 February 2008.

Since the mother of the appellant was alive when the suit was instituted, the claim was confined to a 1/4th share. During the pendency of the suit, the mother died. As a result, there was a modification in the share of the three sisters at 1/3rd each. On 18 December 2013, the Subordinate Judge at Ranchi passed a supplementary final decree in view of the death of the mother of the appellant and the first respondent on 9 February 1996.

[4] On 12 May 2014, the appellant filed proceedings for the execution of the final decree at Ranchi.(5/2014) On 1 January 2015, the first respondent filed an objection under Section 47 of the Code of Civil Procedure contending that the decree dated 13 June 1990, the final decree dated 5 April 1991 and the supplementary final decree dated 18 December 2013, were without jurisdiction and therefore, a nullity. On 10 March 2015, the first respondent challenged the decree dated 13 June, 1990 in appeal under Section 96 of the CPC.(43/2015) The appeal is pending.

[5] On 10 March 2016, the executing court dismissed the objections of the first respondent under Section 47 of the CPC with the following observations:

"The decree holder is entitled to get the fruits of the decree and the executing court cannot go behind the decree. When a decree is made by a court which has no inherent jurisdiction, an objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. Where the objection as to the jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at trial, which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree on the ground of jurisdiction."

Aggrieved by the order of the executing court, the first respondent initiated proceedings under Article 227 of the Constitution of India. The High Court by its impugned judgment and order came to the conclusion that the executing court was in error in holding that it lacked jurisdiction to entertain the objection as to the validity of the decree on ground of an alleged absence of territorial jurisdiction.

[6] The High Court observed that the plea that the decree could not be executed on the ground that it had been passed by a court which had no territorial jurisdiction to entertain the partition suit could have been raised under Section 47 of the CPC. The High Court held thus:

"The executing court fell in serious error in law where it has observed that the executing court will have no jurisdiction to

entertain an objection as to the validity of the decree on the ground of jurisdiction. Under Section 47 CPC, the petitioner has not challenged the validity of the decree on merits, rather the plea taken by her is that the decree cannot be executed for it has been passed by a court which had no territorial jurisdiction to entertain Partition Suit No.154 of 1985."

The application raising the objection was hence restored to the file of the executing court for disposal.

[7] Assailing the judgment of the High Court, these proceedings have been instituted.

Mr Mukul Rohatgi, learned senior counsel appearing on behalf of the appellant submitted that an objection to territorial jurisdiction does not relate to the inherent jurisdiction of the civil court. Such an objection has to be addressed before that court and in the event that the court rejects such an objection, it must be raised before the competent court in appeal. Consequently, the High Court was in error in directing the executing court to deal with such an objection. Moreover, it was urged that the respondent was aware of the proceedings which were taking place, which is evident from the following circumstances:

(i) The respondent had filed a title suit before the Court at Ranchi which was dismissed for non-prosecution on 22 July 2003;

(ii) The respondent filed a title suit before the Court at Varanasi which was dismissed under Order VII, Rule 11 of the CPC on 12 April 2005; and

(iii) The respondent filed an application under Order IX Rule 13 in respect of the title suit filed at Ranchi which was also dismissed as withdrawn on 19 February 2008.

Based on these circumstances, it was urged that the objection which has been allowed to be raised in execution is merely an effort to delay and obstruct the implementation of the decree which has been passed in the suit for partition.

[8] On the other hand, Mr. S. R. Singh, learned senior counsel appearing on behalf of the respondents, has urged the following submissions:

(i) An objection to the lack of territorial jurisdiction is an objection to the subject matter of the suit and hence of a nature that can be raised before the executing court. In support, reliance is placed on the decisions of this Court in Kiran Singh v Chaman Paswan, 1954 AIR(SC) 340 and Harshad Chiman Lal Modi v DLF Universal Ltd., 2005 7 SCC 791;

(ii) The impugned order of the High Court is an interlocutory order and hence it is not appropriate at this stage to entertain a proceeding under Article 136 of the Constitution of India; and

(iii) The case of the respondents all along has been that the property on the basis of which jurisdiction was founded at Ranchi did not belong to the common ancestor and in which event, the civil court at Ranchi had no jurisdiction to entertain the suit for partition.

[9] In assessing the merits of the rival submissions, it would, at the outset, be necessary to advert to the provisions of

Section 21 of the CPC.

"Section 21(1) postulates that no objection as to the place of suing shall be allowed by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled on or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

Sub-section (1) of Section 21 provides that before raising an objection to territorial jurisdiction before an appellate or revisional court, two conditions precedent must be fulfiled:

i) The objection must be taken in the court of first instance at the earliest possible opportunity; and

ii) There has been a consequent failure of justice.

This provision which the legislature has designedly adopted would make it abundantly clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. Hence, it has to be raised before the court of first instance at the earliest opportunity, and in all cases where issues are settled, on or before such settlement. Moreover, it is only where there is a consequent failure of justice that an objection as to the place of suing can be entertained. Both these conditions have to be satisfied.

[10] The learned counsel appearing on behalf of the respondents has submitted that the objection as to the lack of territorial jurisdiction was raised in the written statement before the trial court. But evidently the suit was decreed ex-parte after the respondents failed to participate in the proceedings. The provisions of Section 21(1) contain a clear legislative mandate that an objection of this nature has to be raised at the earliest possible opportunity, before issues are settled. Moreover, no such objection can be allowed to be raised even by an appellate or revisional jurisdiction, unless both sets of conditions are fulfilled.

[11] Learned counsel appearing on behalf of the respondent has placed a considerable degree of reliance on the judgment of four Judges of this Court in Kiran Singh (supra). In that case, there was a dispute in regard to the valuation of the suit. The issue would ultimately determine the forum to which the appeal from the judgment of the trial court

would lie. If the valuation of the suit as set out in the plaint was to be accepted, the appeal would lie to the district court. On the other hand, if the valuation as determined by the High Court was to be accepted, the appeal would lie before the High Court and not the District Court. It was in this background that this Court held that as a fundamental principle, a decree passed by a court without jurisdiction is a nullity and that its validity could be set up wherever it is sought to be enforced or relied upon, even at the stage of execution in a collateral proceeding. Moreover, it was held that a defect of jurisdiction, whether pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass the decree and cannot be cured even by the consent of the parties.

The Court then proceeded to examine the effect of Section 11 of the Suit Valuation Act 1887 on this fundamental principle. This Court held thus:

"7. Section 11 enacts that notwithstanding anything in Section 578 of the Code of Civil Procedure, an objection that a court which had no jurisdiction over a suit or appeal had exercised it by reason of overvaluation or undervaluation, should not be entertained by an appellate court, except as provided in the section...a decree passed by a court, which would have had no jurisdiction to hear a suit or appeal but for overvaluation or undervaluation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on overvaluation or undervaluation, should be dealt with under that section and not otherwise. The reference to Section 578, now Section 99 CPC, in the opening words of the section is significant. That section, while providing that no decree shall be reversed or varied in appeal on account of the defects mentioned therein when they do not affect the merits of the case, excepts from its operation defects of jurisdiction. Section 99 therefore gives no protection to decrees passed on merits, when the courts which passed them lacked jurisdiction as a result of overvaluation or undervaluation. It is with a view to avoid this result that Section 11 was enacted. It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it. With reference to objections relating to territorial jurisdiction, Section 21 of the Civil Procedure Code enacts that no objection to the place of suing should be allowed by an appellate or Revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the Civil Procedure Code and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as

technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits." (Emphasis supplied)

[12] Dealing with the question of whether a decree passed on appeal by a court which had jurisdiction to entertain it only by reason of undervaluation or overvaluation can be set aside on the ground that on a true valuation that court was not competent to entertain the appeal, the Court held that a mere change of forum is not 'prejudice' within Section 11 of the Suits Valuation Act. This Court held thus:

"12. it is impossible on the language of the section to come to a different conclusion. If the fact of an appeal being heard by a Subordinate Court or District Court where the appeal would have lain to the High Court if the correct valuation had been given is itself a matter of prejudice, then the decree passed by the Subordinate Court or the District Court must, without more, be liable to be set aside, and the words "unless the overvaluation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits" would become wholly useless. These words clearly show that the decrees passed in such cases are liable to be interfered with in an appellate court, not in all cases and as a matter of course, but only if prejudice such as is mentioned in the section results. And the prejudice envisaged by that section therefore must be something other than the appeal being heard in a different forum. A contrary conclusion will lead to the surprising result that the section was enacted with the object of curing defects of jurisdiction arising by reason of overvaluation or undervaluation, but that, in fact, this object has not been achieved. We are therefore clearly of opinion that the prejudice contemplated by the section is something different from the fact of the appeal having been heard in a forum which would not have been competent to hear it on a correct valuation of the suit as ultimately determined." (Emphasis supplied)

The Court disallowed the objection to jurisdiction on the ground that no objection was raised at the first instance and that the party filing the suit was precluded from raising an objection to jurisdiction of that court at the appellate stage. This Court concluded thus:

"16. If the law were that the decree of a court which would have had no jurisdiction over the suit or appeal but for the overvaluation or undervaluation should be treated as a nullity, then of course, they would not be stopped from setting up want of jurisdiction in the court by the fact of their having themselves invoked it. That, however, is not the position under Section 11 of the Suits Valuation Act."

Thus, where the defect in jurisdiction is of kind which falls within Section 21 of the CPC or Section 11 of the Suits Valuation Act 1887, an objection to jurisdiction cannot be raised except in the manner and subject to the conditions mentioned thereunder. Far from helping the case of the respondent, the judgment in Kiran Singh (supra) holds that an objection to territorial jurisdiction and pecuniary jurisdiction is different from an objection to jurisdiction over the subject matter. An objection to the want of territorial jurisdiction does not travel to the root of

or to the inherent lack of jurisdiction of a civil court to entertain the suit.

[13] In Hiralal v. Kalinath, 1962 AIR(SC) 199, a person filed a suit on the original side of the High Court of Judicature at Bombay for recovering commission due to him. The matter was referred to arbitration and it resulted in an award in favour of the Plaintiff. A decree was passed in terms of the award and was eventually incorporated in a decree of the High Court. In execution proceedings, the judgment-debtor resisted it on the ground that no part of the cause of action had arisen in Bombay, and therefore, the High Court had no jurisdiction to try the cause and that all proceedings following thereon where wholly without jurisdiction and thus a nullity. Rejecting this contention, a four judge Bench of this Court held thus:

"The objection to its [Bombay High Court] territorial jurisdiction is one which does not go to the competence of the court and can, therefore, be waived. In the instant case, when the plaintiff obtained the leave of the Bombay High Court on the original side, under clause 12 of the Letters Patent, the correctness of the procedure or of the order granting the leave could be questioned by the defendant or the objection could be waived by him. When he agreed to refer the matter to arbitration through court, he would be deemed to have waived his objection to the territorial jurisdiction of the court, raised by him in his written statement. It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand, an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure." (Emphasis supplied)

In Harshad Chiman Lal Modi v DLF Universal Ltd., 2005 7 SCC 791 , this Court held that an objection to territorial and pecuniary jurisdiction has to be taken at the earliest possible opportunity. If it is not raised at the earliest, it cannot be allowed to be taken at a subsequent stage. This Court held thus:

"30. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity."

In Hasham Abbas Sayyad v Usman Abbas Sayyad, 2007 2 SCC 355 a two judge Bench

of this Court held thus:

"24. We may, however, hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure, and a decree passed by a court having no jurisdiction in regard to the subject-matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

Similarly, in Mantoo Sarkar v Oriental Insurance Co. Ltd, 2009 2 SCC 244 a two judge Bench of this Court held thus:

"20. A distinction, however, must be made between a jurisdiction with regard to the subject-matter of the suit and that of territorial and pecuniary jurisdiction. Whereas in the case falling within the former category the judgment would be a nullity, in the latter it would not be. It is not a case where the Tribunal had no jurisdiction in relation to the subject-matter of claim in our opinion, the court should not have, in the absence of any finding of sufferance of any prejudice on the part of the first respondent, entertained the appeal."

[14] The objection which was raised in execution in the present case did not relate to the subject matter of the suit. It was an objection to territorial jurisdiction which does not travel to the root of or to the inherent lack of jurisdiction of a civil court to entertain the suit. An executing court cannot go behind the decree and must execute the decree as it stands. In Vasudev Dhanjibhai Modi v Rajabhai Abdul Rehman, 1970 1 SCC 670 the Petitioner filed a suit in the Court of Small Causes, Ahmedabad for ejecting the Defendant-tenant. The suit was eventually decreed in his favour by this Court. During execution proceedings, the defendant-tenant raised an objection that the Court of Small Causes had no jurisdiction to entertain the suit and its decree was a nullity. The court executing the decree and the Court of Small Causes rejected the contention. The High Court reversed the order of the Court of Small Causes and dismissed the petition for execution. On appeal to this Court, a three judge Bench of this Court, reversed the judgment of the High Court and held thus:

"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.

8. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding."

[15] In this background, we are of the view that the High Court was manifestly in error in coming to the conclusion that it was

within the jurisdiction of the executing court to decide whether the decree in the suit for partition was passed in the absence of territorial jurisdiction.

[16] The respondent has filed a first appeal (First Appeal No. 43/2015) where the issue of jurisdiction has been raised. We must clarify that the findings in the present judgment shall not affect the rights and contentions of the parties in the first appeal.

[17] The High Court has manifestly acted in excess of jurisdiction in reversing the judgment of the executing court which had correctly declined to entertain the objection to the execution of the decree on the ground of a want of territorial jurisdiction on the part of the court which passed the decree.

[18] We have also not found merit in the contention that the impugned order of the High Court, being an order of remand, is in the nature of an interlocutory order which does not brook any interference. By the impugned order, the High Court has directed the executing court to entertain an objection to the validity of the decree for want of territorial jurisdiction. Such an objection would not lie before the executing court. Moreover, the objection that the property at Ranchi did not belong to the common ancestor is a matter of merits, which if at all, has to be raised before the appropriate court in the first appeal.

[19] For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court. The executing court shall conclude the execution proceedings expeditiously. There shall be no order as to costs

--X--

2019 (1) L.S. 97 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Justice
R.Banumathi &
The Hon'ble Justice
Indira Banerjee

Sicagen India Ltd ...Appellant
Vs.
Mahindra Vadineni
& Ors ...Respondent

NEGOTIABLE INSTRUMENTS ACT, 1881, Sec.138 - CRIMINAL PROCEDURE CODE, 1973, Sec.482 - Complaint - Quashing thereof - Dishonor of cheque - Compliant was filed after second notice- High Court quashed the complaint- Complaint filed based on the second statutory notice is not barred - Appeal allowed.

J U D G M E N T
(per the Hon'ble Mr.Justice
R. Banumathi)

Leave granted.

2. These appeals arise out of the judgment and orders dated 14.11.2011 in Crl.O.P.No. 20401 of 2011 and 15.12.2014 in Crl.O.P.S.R.No. 55782 of 2014 passed by the High Court of Judicature at Madras in and by which the High Court has quashed the criminal complaints filed by the appellant - complainant under Section 138 of the

Negotiable Instruments Act.

3. For convenience, the facts in C.C.No. 4029/2010 (Crl.O.P. No. 20401 of 2011) are referred to. Case of the appellant-complainant is that they had business dealings with the respondents and in the course of business dealings, the respondents had issued three cheques viz.

1. Cheque 316693 dated 20.07.2009 for Rs.1,44,362/-

2. Cheque 316663 dated 30.07.2009 for Rs.4,26,400/-

3. Cheque 316692 dated 10.08.2000 for Rs.4,48,656/-

The three cheques were presented for collection and the same were dishonoured and returned with the endorsement "insufficient funds". The appellant-complainant had issued first notice to the respondent(s) on 31.08.2009 demanding the repayment of the amount. The cheques were again presented and returned with the endorsement "insufficient funds". The appellant had issued a statutory notice on 25.01.2010 to the respondent(s). Since the cheque amount was not being paid, the appellant-complainant had filed the complaint under Section 138 of the Negotiable Instruments Act based on the second statutory notice dated 25.01.2010.

4. The respondent(s)-accused filed petition before the High Court under Section 482 Cr.P.C. seeking to quash the criminal complaint filed by the appellant-complainant on the ground that the complaint was not filed based on the first statutory notice dated 31.08.2009 and the complaint filed based on the second statutory notice dated 25.01.2010 is not maintainable. The High Court quashed the complaint by holding that "the amount has been specifically mentioned in the first notice and, thereafter, the complainant himself has postponed the matter and issued the second notice on 25.01.2010 and the complaint filed on the same cause of action was not maintainable .

5. We have heard Mr. K.K. Mani, learned counsel appearing on behalf of the appellant as well as Mr. B. Karunakaran, learned counsel appearing on behalf of the respondents.

6. The issue involved whether the prosecution based upon second or successive dishonour of the cheque is permissible or not, is no longer *res integra.* In *Sadanandan's* case it was held that while second and successive presentation of the cheque is legally permissible so long as such presentation is within the period of six months or the validity of the cheque whichever is earlier, the second or subsequent dishonour of the cheque would not entitle the holder/payee to issue a statutory notice to the drawer nor would it entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment. The correctness of the decision in *Sadanandan's* case was doubted and referred to the larger bench.

7. Three-Judge Bench of this Court in *2013 ((1) SCC 177 MSR Leathers vs. S. Palaniappan and Another* held that there is nothing in the provisions of Section 138 of the Act that forbids the holder of the Cheque to make successive presentation

of the cheque and institute the criminal complaint based on the second or successive dishonour of the cheque on its presentation. In paragraphs 29 and 33 this Court held as under:

29 It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations giving creditability to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. *(See Mosaraf Hossain Khan V. Bhagheeratha Engg. Ltd. Reported in (2006) 3 SCC 658; C. C. Alavi Haji v. Palapetty Muhammed reported in (2007) 6 SCC 555 and Damodar S. Prabhu v. Sayed Babalal H. reported in (2010) 5 SCC 663*. Having said that, we must add that one of the salutary principles of interpretation of statues is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a lonh line of decisions recognized purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. We may only refer to the decision of this Court in *New India Sugar Mills Ltd. v. CST reported in 1963(2) Suppl. SCR 459 = 1963 AIR 1207* wherein this Court observed:

"8. … It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statue, and which effectuate the object of the legislature. If an expression is susceptible of narrow or technical meaning, as well as a popular meaning the court would be justified in assuming that the legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid"

……..

33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not

rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time. (underlining added)

8. In the present case as pointed out earlier that cheques were presented twice and notices were issued on 31.08.2009 and 25.01.2010. Applying the ratio of *MSR Leather*s (supra) the complaint filed based on the second statutory notice is not barred and the High Court, in our view, ought not to have quashed the criminal complaint and the impugned judgment is liable to be set aside.

9. Learned counsel appearing on behalf of the respondent(s), *inter alia,* raised various points including, that :- (i) the cheques were not issued; (ii) that the amount payable is not legally enforceable debt and (iii) the person who issued cheques whether was in effective control of the management of the respondent(s). All the contentions raised by the respondent are refuted by the learned counsel for the appellant. Since the matter is remitted back to the Trial Court, all contentions raised by the parties are left open to be raised before the Trial Court. The impugned judgment of the High Court is set aside and the appeals are allowed.

10. The Complaint CC No. 4029 of 2010 before the Court of XVIII, Metropolitan Magistrate at Saida pet, Chennai is restored to the file of the Trial Court and the Trial Court shall proceed with the matter in accordance with law after affording sufficient opportunity to both the parties.

11. The respondents are at liberty to make appropriate application before the Trial Court for dispensing with personal appearance and the same be considered by the Trial Court in accordance with law.

--X--

2019 (1) L.S. 100 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
L. Nageswsara Rao &
The Hon'ble Mr.Justice
M.R.Shah

The State of Madhya Pradesh ..Appellant

Vs.

Dhruv Gurjar & Anr.,, ..Respondent

CRIMINAL PROCEDURE CODE, Sec.482 - INDIAN PENAL CODE, Secs. 34, 294 and 307 - Criminal Appeal against Judgment and Order passed by High Court by which application preferred by the Respondents/Accused has been allowed and criminal proceedings against them were quashed by High Court, exercising its power u/Sec.482 of Cr.P.C. - Existence of settlement between the parties.

Crl.A.Nos.336&337/2019 Date: 22-2-2019

Held - High Court did not consider fact that offences alleged were non-compoundable offences as per Section 320 of Cr.P.C. - High Court did not consider the distinction between a personal or private wrong and a social wrong and social impact - Offences u/sec.307 of IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual one - High Court ought to have appreciated that it is not in every case where the complainant has entered into a compromise with the accused, there may not be any conviction - Appeal stands allowed - Impugned Judgment and Order of High Court is set aside - FIRs/Investigation/ Criminal proceedings he proceeded against accused.

J U D G M E N T

(per the Hon'ble Mr.Justice M.R. Shah)

Leave granted in both the special leave petitions.

2. As common question of law and facts arise in both these appeals, they are being disposed of by this common judgment and order.

Criminal Appeal @ SLP(Criminal) No. 9859 of 2013

3. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 8.4.2013 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Miscellaneous Criminal Petition No. 2572/ 2013, by which the High Court has allowed the said application preferred by the respondents herein/original accused (hereinafter referred to as the 'Accused'), and in exercise of its powers under Section 482 of the Code of Criminal Procedure, has quashed the proceedings against the accused for the offences punishable under Sections 307, 294 and 34 of the IPC, the State of Madhya Pradesh has preferred the present appeal.

4. The facts leading to this appeal are, that an FIR was lodged against the accused at police station, Kotwali, District Datia for the offences punishable under Sections 307, 294 and 34 of the IPC, which was registered as Crime No. 552/2012. It was alleged that at about 8:00 p.m. in the night on 17.12.2012 when after distributing the milk, Cheeni @ Devasik Yadav came in front of his house situated at Rajghat Viram, at the same time, Dhruv Gurjar (accused) being armed with 12 bore gun, Sonu Khamaria, Rohit Gurjar, Avdhesh Tiwari and 3 to 4 other persons came there and asked him to take out his nephew, and they will kill him as on account of enmity of scuffle took place between his nephew Anand and the accused persons. When complainant told them that my nephew is not here at the same time all of them started to abuse the complainant with filthy language and when he asked them not to do so, at the same time, Sonu Khamaria, Rohit Gurjar, Avdhesh Tiwari and 3-4 other persons spoken that "kill this bastard", at the same time, Dhruv Gurjar

made a fire with intention to kill him, whose pellets struck on three places of his body, i.e., on his forehead, left shoulder and left ear, due to which, he sustained injuries and blood started oozing from it. According to the complainant, Rampratap Yadav and Indrapal Singh were present on the spot, who had witnessed the incident. On hearing the noise of fire, when other people of vicinity reached there, then, all of these persons fled away from the spot of the incident.

4.1 On the basis of a report, a Dehati Nalishi bearing No. 0/12 was registered under Sections 307, 294 and 34 of the IPC. As the complainant sustained injuries, his MLC was performed. On the basis of the contents of the said report, a Crime bearing No. 552/2012 was registered under Sections 307, 294 and 34 of the IPC and the criminal investigation was triggered. Thereafter, the investigation team reached the spot and prepared the spot map and articles were seized.

4.2 That on 18.12.2012, the statements of the witnesses were recorded under Section 161 of the Cr.P.C. That on 21.03.2013, the police arrested the accused.

4.3 The accused filed Miscellaneous Criminal Petition No. 2572 of 2013 under Section 482 of Cr.P.C. before the High Court of Madhya Pradesh, Bench at Gwalior for quashing the criminal proceedings against the accused arising out of the FIR, on the basis of a compromise arrived at between the accused and the complainant.

5. That, by the impugned judgment and order, the High Court, in exercise of its powers under Section 482 of Cr.P.C., has quashed the criminal proceedings against the accused on the ground that the accused and the complainant have settled the disputes amicably. While quashing the criminal proceedings against the accused, the High Court has considered and relied upon the decision of this Court in the case of Shiji @ Pappu and others vs. Radhika and another, (2011) 10 SCC 705.

6. Feeling aggrieved and dissatisfied by the impugned judgment and order, quashing the criminal proceedings against the accused for the offences punishable under Sections 307, 294 and 34 of the IPC, the State of Madhya Pradesh has preferred the present appeal.

Criminal Appeal @ SLP(Criminal) No. 9860 of 2013

7. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 15.3.2013 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Miscellaneous Criminal Petition No. 1936/ 2013, by which the High Court has allowed the said application preferred by the respondents herein/original accused (hereinafter referred to as the 'Accused'), and in exercise of its powers under Section 482 of the Code of Criminal Procedure, has quashed the proceedings against the accused for the offences punishable under Section 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and 25/27 of the Arms Act, the State of Madhya Pradesh has

preferred the present appeal.

8. The facts leading to this appeal are, that on 21.12.2012 one truck driver by name Janki Kushwah informed the complainant - Malkhan Singh Yadav, who is also a truck driver that his truck was having some problem and he is near Sitapur village. The complainant reached there and found that his brother Mangal had also reached there with his truck. It is alleged that when they were busy in repairing the truck, four persons at around 5:00 a.m. came from the Sitapur village and they had beaten all of them with legs and fists and snatched cash of Rs. 7,300/- and two Nokia mobiles having Sim Nos. 9411955930 & 7599256400 from the complainant - Malkhan Singh Yadav, Rs. 19,000/- from Mangal and Rs. 16,500/- from Janki Kushwah and a Spice mobile having Sim No. 8756194727. That the complainant is driving on that route since last 7 to 8 years and sometimes also stayed in Sitapur village. According to the complainant, all the four persons were known to him and one of them, namely, accused Tinku Sharma was having 'Addhi' in his hand, the second one was Ravi Sharma, who was having gun in his hand, and the other two were Babloo Sharma and Bhurerai. All the accused persons after robbing the complainant, Mangal and Janki Kushwah, went towards Sitapur village.

8.1 That at 6:30 a.m., the complainant went to Goraghat Police Station, District Datia and lodged the first information report, which was registered as Crime No. 159 of 2012 against the accused under Section 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and 25/27 of the Arms Act. Thereafter, the investigation was started and the police reached the spot of the incident and prepared spot map and also recorded the statement of witnesses. Thereafter, they sent the complainant and two other persons to the District Hospital, Datia for medical examination, where the Medical Officer found simple injuries on various body parts of them.

8.2 The police on 27.01.2013 reached to the house of the accused persons and in the village but could not found them and ultimately prepared the ascendance panchnama. On 14.03.2013, the learned Chief Judicial Magistrate, Datia issued proclamation under Section 82 of the Cr.P.C. against the accused persons to appear before him on 16.04.2013. Meanwhile, on 12.03.2013, the accused persons approached the High Court of Madhya Pradesh, Bench at Gwalior for quashing of FIR No. 159/2012, registered against them at Police Station Goraghat, District Datia for the offences punishable under Section 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and 25/27 of the Arms Act.

9. That, by the impugned judgment and order, the High Court, in exercise of its powers under Section 482 of Cr.P.C., has quashed the criminal proceedings against the accused on the ground that the accused and the complainant have settled the disputes amicably. While quashing the criminal proceedings against the accused, the High Court has considered and relied upon the decision of this Court in the case of Shiji (supra).

10. Feeling aggrieved and dissatisfied by the impugned judgment and order, quashing the criminal proceedings against the accused for the offences punishable under Section 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and 25/27 of the Arms Act, the State of Madhya Pradesh has preferred the present appeal.

11. So far as the criminal appeal arising out of SLP (Crl.) No. 9859/2013 is concerned, it is required to be noted that the accused were facing the criminal proceedings for the offences punishable under Sections 307, 294 and 34 of the IPC. It was alleged against the accused that at the time of commission of the offence, the accused Dhruv Gurjar fired from his fire arm on the original complainant with an intention to kill him, and the original complainant sustained serious injuries and the pellets struck on three places of his body, i.e., on the forehead, left shoulder and left ear. That incident took place on 17.12.2012 and the investigating officer commenced the investigation, recorded the statement of the witnesses under Section 161 of the Cr.P.C. on 18.12.2012. The investigating officer also seized the articles. The Investigating officer also collected the medical evidence. It appears that one of the co-accused, namely, Rohit Gurjar was arrested on 21.03.2013. Nothing in on record to show, whether in fact the respondent no. 1 herein, the main accused - original accused no.1 was arrested or not. It appears that during the investigation, immediately, the original accused no.1 - Dhruv Gurjar approached the High Court on 5.4.2013 by filing an application under Section 482 of the Cr.P.C. for quashing the FIR. Immediately on the fourth day of filing of the application, by the impugned judgment and order dated 8.4.2013, the High Court has quashed the FIR solely on the ground that there is a settlement arrived at between the complainant and the accused. While quashing the FIR, the High Court has relied upon the decision of this Court in the case of Shjji (supra), specially the observations recorded by this Court "that where there is no chance of recording conviction against the accused persons and the entire exercise of a trial destined to be exercise of futility, the criminal case registered against the accused persons, though it may not be compoundable, can be quashed by the High Court in exercise of powers under Section 482 of the Cr.P.C".

12. Now so far as the criminal appeal @ SLP(Crl.) No. 9860/2013 is concerned, original accused were facing the criminal proceedings for the offences under Section 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and Sections 25/27 of the Arms Act. The incident was alleged to happen on 21.12.2012. Immediately, the investigating officer started the investigation. All the accused were absconding. That when the investigation was in progress, the original accused approached the High Court by way of an application under Section 482 of the Cr.P.C. on 12.03.2013 and prayed for quashing of the FIR. That on 14.03.2013, the learned Chief Judicial Magistrate issued proclamation under Section 82 of the Cr.P.C. against the accused persons to appear

before him on 16.04.2013. That, by the impugned judgment and order dated 15.03.2013, the High Court has quashed the FIR solely on the ground that the original complainant and the accused has entered into a compromise. Hence, the present appeals.

13. Shri Varun K. Chopra, learned advocate appearing on behalf of the State of Madhya Pradesh has vehemently submitted that in both these cases, the High Court has committed a grave error in quashing the respective FIRs which were for the offences under Sections 307, 294 and 34 of the IPC and 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and Sections 25/27 of the Arms Act respectively.

13.1 It is vehemently submitted by the learned counsel appearing on behalf of the appellant-State that in the present cases the High Court has quashed the respective FIRs mechanically and solely on the basis of the settlement/compromise between the complainant and the accused, without even considering the gravity and seriousness of the offences alleged against the accused persons.

13.2 It is further submitted by the learned counsel appearing on behalf of the appellant-State that while exercising the powers under Section 482 of the Cr.P.C. and quashing the respective FIRs, the High Court has not at all considered the fact that the offences alleged were against the society at large and not restricted to the personal disputes between the two individuals.

13.3. It is further submitted by the learned counsel appearing on behalf of the appellant-State that the High Court has misread the decision of this Court in the case of Shiji (supra),while quashing the respective FIRs. It is vehemently submitted by the learned counsel that the High Court ought to have appreciated that in all the cases where the complainant has compromised/entered into a settlement with the accused, that need not necessarily mean resulting into no chance of recording conviction and/or the entire exercise of a trial destined to be exercise of futility. It is vehemently submitted by the learned counsel appearing on behalf of the appellant-State that in a given case despite the complainant may not support in future and in the trial in view of the settlement and compromise with the accused, still the prosecution may prove the case against the accused persons by examining the other witnesses, if any, and/or on the basis of the medical evidence and/or other evidence/material. It is submitted that in the present cases the investigation was in progress and even the statement of the witnesses was recorded and the medical evidence was also collected. It is submitted that therefore in the facts and circumstances of the case, the High Court has clearly erred in considering and relying upon the decision of this Court in the case of Shiji (supra).

13.4 It is further submitted by the learned counsel appearing on behalf of the appellant-State that as such in the appeal arising out of SLP(Crl.) No. 9860/2013, in fact, the accused were absconding from the day of

the commission of the offence and, in fact, the learned Chief Judicial Magistrate, Datia issued a proclamation under Section 82 of the Cr.P.C. against the accused persons to appear before him. It is submitted that in between the day of the alleged commission of the offence and filing of the application before the High Court under Section 482 Cr.P.C., and while they were absconding, the accused managed to get the affidavits of the complainant and other witnesses, which were dated 9.2.2013. It is submitted that all these aforesaid circumstances and the conduct on the part of the accused were required to be considered by the High Court while quashing the FIR in exercise of its inherent powers under Section 482 of the Cr.P.C., and more particularly when the offences alleged were against the society at large, namely, robbery and under the Arms Act, and in fact non-compoundable. In support of his submissions, learned counsel for the appellant-State has placed reliance on the decisions of this Court in the cases of Gian Singh vs. State of Punjab (2012) 10 SCC 303; State of Madhya Pradesh vs. Deepak (2014) 10 SCC 285; State of Madhya Pradesh vs. Manish (2015) 8 SCC 307; J. Ramesh Kamath vs. Mohana Kurup (2016) 12 SCC 179; State of Madhya Pradesh vs. Rajveer Singh (2016) 12 SCC 471; Parbatbhai AAhir vs. State of Gujarat (2017) 9 SCC 641; and 2019 SCC Online SC 7, State of Madhya Pradesh vs. Kalyan Singh, decided on 4.1.2019 in Criminal Appeal No. 14/2019.

13.5 Making the above submissions and relying upon the aforesaid decisions of this Court, learned counsel appearing on behalf of the appellant-State has prayed to allow the present appeals and quash and set aside the impugned judgments and orders passed by the High Court quashing and setting aside the respective FIRs, in exercise of its inherent powers under Section 482 of the Cr.P.C.

14. Per contra, learned counsel appearing on behalf of the accused has supported the impugned judgments and orders passed by the High Court.

14.1 It is vehemently submitted by the learned advocate appearing on behalf of the accused that in the facts and circumstances of the case and when the complainant and the accused entered into a compromise and settled the disputes amicably among themselves, and therefore when the High Court found that there is no chance of recording conviction against the accused persons and the entire exercise of a trial would be an exercise of futility, the High Court has rightly exercised the powers under Section 482 Cr.P.C. and has rightly quashed the respective FIRs. In support of his submissions, learned counsel for the accused has placed reliance on the decisions of this Court in the cases of Jitendra Raghuvanshi vs. Babita Raghuvanshi (2013) 4 SCC 58; Anita Maria Dias vs. State of Maharashtra (2018) 3 SCC 290; and Social Action Forum for Manav Adhikar vs. Union of India (2018) 10 SCC 443.

14.2 Making the above submissions and

relying upon the aforesaid decisions of this Court, it is prayed to dismiss the present appeals.

15. Heard learned counsel for the respective parties at length.

16. At the outset, it is required to be noted that in the present appeals, the High Court in exercise of its powers under Section 482 of the Cr.P.C. has quashed the FIRs for the offences under Sections 307, 294 and 34 of the IPC and 394 of the IPC,11/13 of M.P.D.V.P.K. Act and Sections 25/27 of the Arms Act respectively, solely on the basis of a compromise between the complainant and the accused. That in view of the compromise and the stand taken by the complainant, considering the decision of this Court in the case of Shiji (supra), the High Court has observed that there is no chance of recording conviction against the accused persons and the entire exercise of a trial would be exercise in futility, the High Court has quashed the respective FIRs.

16.1 However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 of the Cr.P.C. From the impugned judgments and orders, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more particularly the seriousness of the offences and its social impact. From the impugned judgments and orders passed by the High Court, it appears that the High Court has mechanically quashed the respective FIRs, in exercise of its powers under Section 482 Cr.P.C. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in the case of State of Maharashtra vs. Vikram Anantrai Doshi, (2014) 15 SCC 29, the Court's principal duty, while exercising the powers under Section 482 Cr.P.C. to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the respective FIRs by the High Court in the present cases for the offences under Sections 307, 294 and 34 of the IPC and 394 of the IPC, 11/13 of M.P.D.V.P.K. Act and Sections 25/27 of the Arms Act respectively, and that too in exercise of powers under Section 482 of the Cr.P.C. is just contrary to the law laid down by this Court in a catena of decisions.

16.2 In the case of Gian Singh (supra), in paragraph 61, this Court has observed and held as under:

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is

distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

16.3 In the case of Narinder Singh vs. State of Punjab (2014) 6 SCC 466, after considering the decision in the case of Gian Singh (supra), in paragraph 29, this Court summed up as under:

"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and

exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings: 29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such

injury is inflicted on the vital/delegate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

16.4 In the case of Parbatbhai Aahir (supra), again this Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 Cr.P.C. Considering a catena of decisions of this Court on the point, this Court summarised the following propositions:

"(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which

inhere in the High Court.

(2) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) the decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulate.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain

of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

16.5 In the case of Manish (supra), this Court has specifically observed and held that, when it comes to the question of compounding an offence under Sections 307, 294 and 34 IPC (as in the appeal @ SLP(Crl.) No. 9859/2013) along with Sections 25 and 27 of the Arms Act (as in the appeal @ SLP(Crl.) No. 9860/2013), by no stretch of imagination, can it be held to be an offence as between the private parties simpliciter. It is observed that such offences will have a serious impact on the society at large. It is further observed that where the accused are facing trial under Sections 307, 294 read with Section 34 IPC as well as Sections 25 and 27 of the Arms Act, as the offences are definitely against the society, accused will have to necessarily face trial and come out unscathed by demonstrating their innocence.

16.6 In the case of Deepak (supra), this Court has specifically observed that as offence under Section 307 IPC is non-compoundable and as the offence under Section 307 is not a private dispute between the parties inter se, but is a crime against the society, quashing of the proceedings on the basis of a compromise is not permissible. Similar is the view taken by this Court in a recent decision of this Court in the case of Kalyan Singh (supra).

17. Now so far as the decisions of this Court upon which the learned counsel appearing on behalf of the accused has placed reliance, referred to hereinabove, are concerned, none of the decisions shall be of any assistance to the accused in the present case. In all the aforesaid cases, the dispute was a matrimonial dispute, and/or the dispute predominantly of a civil dispute, and/or of the dispute where the wrong is basically private or personal.

18. Now so far as the reliance placed upon the decision of this Court in the case of Shiji (supra), while quashing the respective FIRs by observing that as the complainant has compromised with the accused, there is no possibility of recording a conviction, and/or the further trial would be an exercise in futility is concerned, we are of the opinion that the High Court has clearly erred in quashing the FIRs on the aforesaid ground. It appears that the High Court has misread or misapplied the said decision to the facts of the cases on hand. The High Court ought to have appreciated that it is not in every case where the complainant has entered into a compromise with the accused, there may not be any conviction. Such observations are presumptive and many a time too early to opine. In a given case, it may happen that the prosecution still can prove the guilt by leading cogent evidence and examining the other witnesses and the relevant evidence/material, more particularly when the dispute is not a commercial transaction and/or of a civil nature and/or is not a private wrong. In the case of Shiji

(supra), this Court found that the case had its origin in the civil dispute between the parties, which dispute was resolved by them and therefore this Court observed that, 'that being so, continuance of the prosecution where the complainant is not ready to support the allegations...will be a futile exercise that will serve no purpose'. In the aforesaid case, it was also further observed 'that even the alleged two eyewitnesses, however, closely related to the complainant, were not supporting the prosecution version', and to that this Court observed and held 'that the continuance of the proceedings is nothing but an empty formality and Section 482 Cr.P.C. can, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below. Even in the said decision, in paragraph 18, it is observed as under:

"18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked."

18.1 Therefore, the said decision may be applicable in a case which has its origin in the civil dispute between the parties; the parties have resolved the dispute; that the offence is not against the society at large and/or the same may not have social impact; the dispute is a family/matrimonial dispute etc. The aforesaid decision may not be applicable in a case where the offences alleged are very serious and grave offences, having a social impact like offences under Section 307 IPC and 25/27 of the Arms Act etc. Therefore, without proper application of mind to the relevant facts and circumstances, in our view, the High Court has materially erred in mechanically quashing the respective FIRs, by observing that in view of the compromise, there are no chances of recording conviction and/or the further trial would be an exercise in futility. The High Court has mechanically considered the aforesaid decision of this Court in the case of Shiji (supra), without considering the relevant facts and

circumstances of the case.

18.2 Even otherwise, in the facts and circumstances of the case of the appeal arising from SLP(Crl.) No. 9860/2013, the High Court has erred in quashing the FIR. It is required to be noted that the FIR was lodged on 21.12.2012 for the offence alleged to happen on 21.12.2012. All the accused were absconding. After a period of approximately three months, they approached the High Court by way of filing a petition under Section 482 of the Cr.P.C., i.e., on 12.03.2013. The learned Chief Judicial Magistrate issued a proclamation under Section 82 of the Cr.P.C. against the accused persons on 14.03.2013. In the meantime, the accused managed to get the affidavits of the complainant and the two witnesses dated 09.02.2013, and the High Court quashed the FIR on 15.03.2013, i.e., within a period of three days from the date of filing the petition. The High Court has also not considered the antecedents of the accused. It has come on record that the accused persons were facing number of trials for the serious offences. The aforesaid would be relevant factors, while exercising the inherent powers under Section 482 Cr.P.C and while considering the application for quashing the FIR/complaint/ criminal proceedings. In fact, in such a situation, the High Court ought to have been more vigilant and ought to have considered relevant facts and circumstances under which the accused got the settlement entered into. The High Court has not at all considered the aforesaid relevant circumstances, while exercising the power under Section 482 Cr.P.C.

19. In view of the above and for the reasons stated, both these appeals succeed, and are hereby allowed. The impugned judgments and orders passed by the High Court are hereby set aside, and the respective FIRs/investigation/criminal proceedings be proceeded against the respective accused, and they shall be dealt with, in accordance with law.

--X--

2019 (1) L.S. 114 (S.C)

IN THE SUPREME COURT OF INDIA
NEW DELHI

Present:
The Hon'ble Mr.Justice
Ashok Bhushan &
The Hon'ble Mr.Justice
K.M.Joseph

Shivnarayan (D) By Lrs ...Appellant
Vs.
Maniklal (D)Thr Lrs
& Ors ...Respondent

CIVIL PROCEDURE CODE, 1908, Order II, Rule 3, Secs.39, 19, 16, Order II, Rule 2, Secs.15, 20 & 17; Order VI, Rule 16, Sec.18 - GENERAL CLAUSES ACT, 1897, Sec.13 - For a suit filed in a Court pertaining to properties situated in jurisdiction of more than two Courts, the suit is maintainable only when suit is filed on one cause of action.

CA.No.1052/19 Date: 6-2-2019

J U D G M E N T

(per the Hon'ble Mr.Justice Ashok Bhushan)

This appeal has been filed by the appellant against the judgment of High Court of Madhya Pradesh dated 13.11.2013 by which judgment writ petition filed by the appellant challenging the order dated 17.08.2011 of the III Additional District Judge, Indore in Civil Suit No.60-A of 2010 has been upheld dismissing the writ petition.

[2] Brief facts of the case necessary to be noticed for deciding this appeal are:-

2.1 The appellant filed Civil Suit No.60-A of 2010 before the District Judge praying for declaring various transfer documents as null and void with regard to suit property mentioned in Para No. 1A and Para No.1B of the plaint. Plaintiff also prayed for declaration that suit properties mentioned in Para Nos.1A and 1B are Joint Family Property of plaintiff and defendant Nos. 1 to 3 and plaintiff is entitled to receive 1/ 3rd part of the suit property. A Will executed by one Lt. Smt. Vimal Vaidya was also sought to be declared to be null and void. Certain other reliefs were claimed in the suit. The parties shall be referred to as described in the suit. The plaintiff in Para No.2 of the plaint has set the following genealogy of the parties:-

img

2.2 In Para No.1 of the plaint, description of the property was mentioned to the following effect:-

1.A) Plot No. SP 79, Sudama Nagar Indore (M.P.) size 30 ft. X 50 ft. area 1500 Sq. Ft. through membership no. 2905 of Shikshak Kalyar Samiti, Sudama Nagar, Indore.

B) Bombay Suburban District S. No. 341, Pt. of Bandra Grant Flat No.C/1/3, Sahitya Sahavas Co-op. Housing Society, Second Floor, building known as "Abhang" Bandra (E), Mumbai400 051 situated on the plot bearing no. C.T.S. No. 629, (S. No. 341-A.B.S.D.) Madhusudan Kalekar Marg, Gandhinagar, Bandra (East) Mumbai - 51.

2.3 The plaintiff sought relief with regard to two properties (hereinafter referred to as Indore property, situate at Indore, State of Madhya Pradesh and Mumbai property situate at Mumbai, State of Maharashtra). Plaintiff's case in the plaint was that Indore Property was purchased by plaintiff's father in the year 1968-1969. Plaintiff's father died on 15.08.1969. Thereafter, Indore property was joint family property of the plaintiff and defendant Nos. 1 to 3. Plaintiff's brother Babulal shifted to Pune. Babulal was allotted Mumbai property under a Government Scheme for extraordinary persons like writers and educationist. Babulal died in the year 1975. Thereafter, the Mumbai property, on the basis of succession certificate issued by Court of Civil Judge (Senior Division), Pune came in the name of widow of Babulal, Smt. Vimal Vaidya. Smt. Vimal Vaidya transferred the Mumbai flat by sale deed dated 15.10.2007 in favour of defendant Nos. 7 and 8. It was further pleaded in the plaint that Smt. Vimal Vaidya also dealt with Indore Property. The name of Smt. Vimal Vaidya was mutated in the

year 1986 in the Indore property and thereafter she transferred the Indore property in favour of defendant Nos. 9 and 10. One set of pleadings was with regard to a Will executed in the year 2000 by Smt. Vimal Vaidya in favour of defendant Nos. 4 to 6. On aforesaid pleadings, following reliefs were prayed in Para No. 25 of the plaint:-

"A) The property mentioned in Para No.1 of the Plaint and its deed of transfer documents be declared null and void which is not binding on the part of the plaintiff.

B) The property mentioned in Para No.1B of Plaint and document related to its registered deed to transfer be declared null and void and which is not binding on the part of Plaintiff.

C) The property mentioned in Para No. 1A and 1B of the Plaint is joint family property of the Plaintiff and defendant No. 1 to 3 be declared joint family property and Plaintiffs right to receive 1/3 part of the suit property.

D) Court Commissioner be appointed to make division of suit property and 1/3 part possession be given to the Plaintiff.

E) During the hearing of the suit injunction order be passed in respect of the property not to create third party interest by the Defendants.

F) Plaintiff's suit be declared decreed with the expenses.

G) To grant any other relief which this Hon'ble Court may be fit in the interest of justice.

H) The forged will executed by Late Vimal Vaidya under influence of defendant No. 4 and his associates relatives Defendant No. 5 and 6 and other relatives of Kher family. Because, Late Babulal Vaidya was a member of undivided Hindu family. Therefore, Late. Vimal Vaidya was not authorized to execute that alleged will as per the Law. Therefore, the registered alleged will be declared null and void and be declared that it is not binding on the part of the Plaintiff."

2.4 The defendant Nos. 7 and 8 appeared in suit and filed an application with the heading "application for striking out pleadings and dismissing suit against defendants No.7 and 8 for want of it territorial jurisdiction and mis-joinder of parties and causes of action." The defendant Nos. 7 and 8 pleaded that for property being situated at Bandra East, Mumbai, the Court at Indore has no territorial jurisdiction. It was further pleaded by the defendant that suit suffers fatally from mis-joinder of parties as well as causes of action. The defendant Nos. 7 and 8 pleaded that there is no nexus at all between the two properties - one situate at Indore and other at Mumbai. Details of different causes of action and nature of the properties, details of purchasers for both different sale transactions have been explained in detail in Para No. 6 of the application. It was further pleaded that Mumbai property does not form asset of any Hindu Undivided Family. Mumbai property was acquired by Babulal in his own name and after his death on the basis of succession, it has come to his sole heir Smt. Vimal Vaidya in the year 1975. It was

pleaded that no part of the cause of action for the Mumbai property took place in Indore. In the application, following reliefs has been prayed for by the defendant Nos. 7 and 8:-

"(a) All the pleadings and the relief clauses relating to the property situate at Mumbai may kindly be ordered to be struck off from the plaint, in exercise of powers conferred on this Hon'ble Court under Order 6 Rule 16 of the Civil Procedure Code, and as a consequence the suit against the defendants No.7 and 8 may kindly be dismissed with costs for the answering defendants; while the Suit relating to the Indore property may be continued if otherwise round maintainable under the law;

OR in the alternative, An order may kindly be passed declining to entertain the part of the suit relating to the property in Mumbai with costs for the answering defendants; and

(b) Such other order may kindly be passed as may be deemed appropriate in the circumstances of the case."

2.5 The trial court after hearing the parties on the application dated 19.03.2011 filed by the defendant Nos. 8 and 9 passed an order dated 17.08.2011 allowed the application. An order was passed deleting the property mentioned In Para No. 1B of the plaint and the relief sought with regard to the said property. The trial court held that separate cause of actions cannot be combined in a single suit.

2.6 Aggrieved by the order of the trial court, a writ petition was filed in the High Court, which too has been dismissed by the High Court vide its order dated 13.11.2013 affirming the order of the trial court. High Court referring to Section 17 of the Civil Procedure Code, 1908 held that for property situated at Mumbai, the trial court committed no error in allowing the application filed by defendant Nos. 7 and 8. The plaintiffappellant aggrieved by the order of the High court has come up in this appeal.

[3] We have heard Shri Vinay Navare for the appellant. Shri Chinmoy Khaladkar has appeared for respondent Nos. 7 and 8.

[4] Learned counsel for the appellant submits that High Court did not correctly interpret Section 17 of the Code of Civil Procedure. The partition suit filed by the appellant with regard to Mumbai and Indore properties was fully maintainable. He submits that Order II Rule 2 of CPC mandates that the plaintiff must include the whole claim in respect of a cause of action in the suit. The cause of action claimed by the plaintiff was denial of the plaintiff's right to share in the Joint Family Property. Restrictive interpretation of Section 17 will do violence to the mandate of Order II Rule 2. Section 39(1)(c) of the CPC itself contemplate that there can be a decree of an immovable property, which is situated outside the local limits of the jurisdiction. The words "immovable property"' used in Section 17 is to be interpreted by applying Section 13 of the General Clauses Act. It provides that in all Central Acts and Regulations, unless the context and subject otherwise requires, "any singular term shall include plural". In event, it is accepted that with regard to

separate properties situated in different jurisdictions, separate suits have to be filed that shall result in conflicting findings of different Courts and shall involve the principles of res judicata.

[5] Learned counsel appearing for defendant Nos. 8 and 9 refuting the submissions of learned counsel for the appellant contends that no error has been committed by trial court in deleting the property at Para No.1B in the plaint as well as pleadings and reliefs with regard to said property. It is submitted that Section 17 of the CPC contemplate filing of a suit with respect to immovable property situated in jurisdiction of different courts only when any portion of the property is situated in the jurisdiction of a Court, where suit has to be filed. The word "any portion of the property" indicate that property has to be one whose different portions may be situated in jurisdiction of two or more Courts. He further submits that there is no common cause of action with regard to property situate at Indore and property situate at Mumbai. Transfer deed with regard to Indore Property as well as transfer deeds of Mumbai property are different. The purchasers of both the properties, i.e. Indore property and Mumbai property are also different. According to pleadings in the plaint itself, the Mumbai property was purchased by Babulal, the husband of Smt. Vimla Vaidya in his own name, which after death of Babulal in the year 1975 was mutated in the name of Smt. Vimla Vaidya. The plaintiff has sought to club different cause of actions in one suit. There is mis-joinder of the parties also in the suit since the defendants pertaining to different transactions have been impleaded in one suit whereas there is no nexus with the properties, transactions and persons. Learned counsel for the defendant Nos. 8 and 9 submits that by order of Court of Civil Judge (Senior Division), Pune, the property is already mutated in the year 1975 in the name of Smt. Vimla Vaidya after death of her husband, which was rightfully transferred by her to defendant Nos. 8 and 9 on 15.10.2007. It is submitted that the Court at Indore might proceed with the property at Indore with the defendants, who are related to Indore property but suit pertaining to Mumbai property, transactions relating thereto and defendants relating to Mumbai property have rightly been struck off from the case.

[6] Before we consider the submissions of the learned counsel for the parties, relevant provisions pertaining to place of suing as contained in Code of Civil Procedure needs to be noted. Section 15 to Section 20 contains a heading "place of suing". Section 16 provides that Suits to be instituted where subject-matter situate. Section 16 is as follows:-

16. Suits to be instituted where subjectmatter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in

the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.- In this section "property" means property situate in India.

[7] Section 17, which falls for consideration in the present case, deals with suits for immovable property situate within jurisdiction of different courts is as follows:-

17. Suits for immovable property situate within jurisdiction of different Courts.— Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

[8] We need to notice the Scheme under Code of Civil Procedure as delineated by Sections 16 and 17. Section 16 provides that suit shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. Section 16(b) mentions "for the partition of immovable property".

[9] Now, we look into Section 17, which deals with suits for immovable property situated within jurisdiction of different Courts. As per Section 17, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated. What is the meaning of the word "any portion of the property"? There may be a fact situation where immovable property is a big chunk of land, which falls into territorial jurisdiction of two courts in which fact situation in Court in whose jurisdiction any portion of property is situated can entertain the suit. Whether Section 17 applies only when a composite property spread in jurisdiction of two Courts or Section 17 contemplate any wider situation. One of the submissions of the learned counsel for the appellant is that the word "property" as occurring in Section 17 shall also include the plural as per Section 13 of General Clauses Act, 1897. Section 13 of the General Clauses Act provides:-

13. Gender and number.-In all Central Acts and Regulations, unless there is anything repugnant in the subject or context.-

(1) Words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.

[10] Applying Section 13 of General Clauses Act, the Bombay High Court explaining the word "property" used in Section 17 held that it includes properties. We are also of the same view that the word "property" used in Section 17 can be more than one property or properties.

[11] The word "property" under Section 17 of the Civil Procedure code may also be properties, hence, in a schedule of plaint, more than one property can be included. Section 17 can be applied in event there are several properties, one or more of which may be located in different jurisdiction of courts. The word "portion of the property" occurring in Section 17 has to be understood in context of more than one property also, meaning thereby one property out of a lot of several properties can be treated as portion of the property as occurring in Section 17. Thus, interpretation of word "portion of the property" cannot only be understood in a limited and restrictive sense of being portion of one property situated in jurisdiction of two courts.

[12] We now look into the decisions of various Courts in reference to Section 17 of Civil Procedure Code. How the word "property" and "portion of the property" occurring in Section 17 has been understood by different High Courts. There are few decisions of the Privy Council also where Section 17 of the Civil Procedure Code came for consideration. In Nilkanth Balwant Natu and Others Vs. Vidya Narasinh Bharathi Swami and Others, 1930 AIR(PC) 188, Privy Council had occasion to consider Section 17 of Civil Procedure Code. The properties in respect of which relief was sought by the plaintiff were situated in Satara, Belgaum and Kolhapur. Although Satara and Belgaum were situated in British India but Kolhapur was not. The Privy Council after noticing the provision of Sections 17 and 16(c) laid down following:-

"The learned Judge had jurisdiction to try the suit so far as it related to the mortgaged properties situate in Satara; and, inasmuch as the mortgaged properties in Belgaum are within the jurisdiction of a different Court in British India, he had jurisdiction to deal with those properties also."

[13] The Privy Council, thus, held that Satara Court had jurisdiction to entertain suit with regard to property situated at Satara and Belgaum whereas it has no jurisdiction to entertain suit pertaining to Kolhapur, which was not in the British India. In another case of Privy Council, Nrisingha Charan Nandy Choudhry Vs. Rajniti Prasad Singh and Others, 1936 AIR(PC) 189, mortgage lands were in the Sonthal Parganas, State of Bihar and also in the Gaya district of State of Bihar. In Paragraph 9, following was laid down:-

"9. Now, the mortgage deeds include, as

already stated, lands situated, not only in the Sonthal Parganas, but also in the Gaya District. What is the ordinary rule for determining the court which can take cognizance of a suit for immovable property situated within the local limits of two or more tribunals? The answer is furnished by Section 17 of the Code of Civil Procedure (Act V. of 1908), which provides that where a suit is to obtain relief respecting immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate."

[14] Different High Courts have also while interpreting Section 17 of Civil Procedure Code laid down that Section 17 is applicable in case where properties are situated in the jurisdiction of more than one court. In Rajendra Kumar Bose Vs. Brojendra Kumar Bose, 1923 AIR(Cal) 501, the Division Bench of the Calcutta High Court noticed following:-

"Exceptions to the rule that a suit cannot lie for partition of a portion of the family property have been recognised when different portions of the family property are situated in different jurisdictions, aid separate suits for separate portions have sometimes been allowed, where different rules of substantive or adjective law prevail in the differed Courts; Hari v. Ganpat Rao,1883 7 ILR(Bom) 272; Ramacharia v. Anantacharia,1894 18 ILR(Bom) 389; Moti Ram v. Kanhaya Lal,1920 AIR(Lah) 474; Panchanon v. Sib Chandra, 1887 14 ILR(Cal) 835; Balaram v. Ram Chandra,1898 22 ILR(Bom) 922; Abdul v. Badruddin,1905 28 ILR(Mad) 216; Padmani v. Jagadamba,1871 6 BLR 134; Rammohan v. Mulchand,1906 28 ILR(All) 39; Lachmana v. Terimul, 4 Mad. Jur. 241; Subba v. Rama, (1866-67) 3 Mad. H.C.R. 376; Jayaram v. Atmaram,1879 4 ILR(Bom) 482;"

[15] A Full Bench of Allahabad High Court in Kubra Jan Vs. Ram Bali and Others, 1908 30 ILR(All) 560 had occasion to consider suit, which was filed at Bareilly with regard to Bareilly property as well as Bara Banki property situated in two different districts. The jurisdiction at Bareilly Court was upheld in Paragraph Nos. 1 and 8, in which it was laid down as follows:-

"1. This appeal has been laid before a Full Bench by reason of a conflict in the authorities upon a question raised in the appeal. The suit is one by the daughter of one Bande Ali to recover from her brother Akbar Husain and a number of other defendants, transferees from him, her share in the property of her deceased father. This property is situate in the district of Bareilly and also in the district of Bara Banki in Oudh. It appears that Akbar Husain transferred the Bareilly property to the defendants Nos. 2 to 8 and the Bara Banki property to persons from whom the defendant respondent Ram Bali acquired it by virtue of a decree for pre-emption. The suit in regard to the Bareilly property was compromised, with the result that the claim in respect of that property was abandoned, and the suit proceeded as regards the Bara Banki property only.

8. Again, it is said that after the compromise in respect of the Bareilly property the Court

ceased to have any jurisdiction to deal with the plaintiff's claim, that is, that though the Bareilly Court bad jurisdiction, when the plaint was filed, to deal with the suit, it ceased to have jurisdiction when portion of the property claimed was withdrawn from the litigation. 'It seems to me that once jurisdiction is vested in a Court, in the absence of a provision of law to the contrary, that jurisdiction will not be taken away by any act of the parties. There is no allegation here that the plaint was filed in the Bareilly Court with any intention to defeat the provisions of the Code of Civil Procedure as regards the venue of suits for recovery of immovable property. If any fraud of that kind had been alleged and proved, other considerations would arise. But in this case, as I have said, no such suggestion has been made."

[16] Similar view was taken in Ramdhin and Others Vs. Thakuran Dulaiya and Others, 1952 AIR(Nag) 303 (Full Bench); Basanta Priya Dei and Another Vs. Ramkrishna Das and Others, 1960 AIR(Ori) 159; Laxmibai Vs. Madhankar Vinayak Kulkarni and Others, 1968 AIR(Kar) 82; Prem Kumar and Others Vs. Dharam Pal Sehgal and Others, 1972 AIR(Del) 90 and Janki Devi Vs. Mannilal and Others, 1975 AIR(All) 91.

[17] The views of the different High Courts as well as of the Privy Council, as noticed above, clearly indicate that Section 17 has been held to be applicable when there are more than one property situated in different districts.

[18] The point to be noticed is that the permissibility of instituting suit in one Court, where properties, which are subject matter of the suit are situated in jurisdiction of different courts have been permitted with one rider, i.e., cause of action for filing the suit regarding property situated in different jurisdiction is one and the same. In a suit when the cause of action for filing the suit is different, the Courts have not upheld the jurisdiction of one Court to entertain suits pertaining to property situated in different courts. In this context, we need to refer to some judgments of High Courts as well as of the Privy Council, which has considered the issue. In Sardar Nisar Ali Khan Vs. Mohammad Ali Khan, 1932 AIR(PC) 172, Privy Council had occasion to consider the case where subject matter of the suit were several properties situated in jurisdiction of different courts. Suit was instituted in Oudh (which later became part of Uttar Pradesh). The Privy Council held that since there was different cause of actions, the same cannot be clubbed together. One of the properties, which was situated in Punjab was referred to in the suit as Khalikabad property. Although, suit with regard to the other three properties had similar cause of action but cause of action with regard to Khalikabad property being found to be different, the Court held that Section 17 Civil Procedure Code was not applicable. Following was laid down in the case by the Privy Council:-

"There remains the question of the Khalikabad estate. Here the respondent cannot succeed unless he shows that under the terms of the deed creating the wakf

he is the trustee. That question depends upon the construction of the deed. It is a separate and different cause of action from these which found the proceedings in respect of the other three properties. Their Lordships are unable to find any jurisdiction for bringing the suit in respect of this property elsewhere than in the Court of the district where the property is situate. Such justification cannot in their Lordships' judgment be found in Section 17, Civil P.C. upon which the respondent relied."

[19] A Two-Judge Bench judgment of Allahabad High Court has been heavily relied upon by the learned counsel for the respondent reported in, Karan Singh and Others Vs. Kunwar Sen and Others,1942 AIR(All) 387. In the above case, suit properties were situated in Haridwar and Amritsar. Suit was filed in the Court of Civil Judge, Saharanpur. An application under Section 22, Civil P.C. was filed to determine as to whether a suit which is pending in the Court of the Civil Judge of Saharanpur should proceed in the corresponding Court having jurisdiction at Amritsar in the Punjab. The Court after noticing Section 17 held that plaintiffs were claiming two properties against two set of defendants, whom they alleged to be trespassers. The Court held that unless suit is filed on one cause of action, two properties situate in different jurisdiction cannot be clubbed. Following was laid down:-

"Having made these observations I must now return to the question whether in the suit with which we are dealing it can be said that the relief claimed against the Defendants in possession of the property at Hardwar and the Defendants in possession of the property at Amritsar arises out of the same series of acts or transactions and whether the two properties claimed can, for the purposes of Section 17, be described as a single entity. It must be admitted that there is no apparent connection between the transfer of the Amritsar property to Amar Nath under the will executed by Jwala Devi and the subsequent transfers made by him and his successors-in-interest on the one hand and the transfer made by Prem Devi of the Hardwar property on the other hand. It must be admitted also that the Plaintiffs are not claiming the estates of Badri Das as a whole against any rival claimant to the estate. They are claiming two properties against two sets of Defendants whom they allege to be trespassers and who, if they are trespassers, have absolutely no connection with each other. The only connecting link is that the Plaintiff's claim in both the properties arose at the time of the death of Prem Devi and that the claim is based on the assumption that the Defendants are in possession as the results of transfers made by limited owners who were entitled, during their lives, to the enjoyment of the whole estate and the properties comprised within it. It was held many years ago in the case of Mst. Jehan Bebee v. Saivuk Ram,1867 1 HCR 109, that unconnected transfers by a Hindu widow of properties comprised within the husband's estate did not give rise to one cause of action against the various transferees. The same rule was laid down in the case of

Bindo Bibi v. Ram Chandra,1919 17 AllLJ 658. In that case a reference was made to the decision in Murti v. Bhola Ram,1893 16 ILR(All) 165 and it was pointed out that that was a case where a claim was made against one Defendant who had taken possession of different properties in execution of one decree. There is no doubt that that case is clearly distinguishable from the case with which we are dealing....."

[20] The above judgment was subsequently relied and explained by Allahabad High Court in Smt. Janki Devi Vs. Manni Lal and Others, 1975 AIR(All) 91. In Paragraph No.11, following was laid down:-

"11. Similar view was expressed in Smt. Kubra Jan v. Ram Bali, 1908 30 ILR(All) 560 . This Full Bench decision does not appear to have been brought to the notice of the Division Bench hearing the case of Karam Singh v. Kunwar Sen,1942 AIR(All) 387. However, many observations made therein are not contrary to the law laid down in the above mentioned Full Bench case. The sum and substance of this Division Bench case also is that where in the facts and circumstances of the case all the properties can be treated as one entity a joint trial shall be permissible but not where they are more or less different properties with different causes of action. The material observations are as below:—

".....and this implies, in my judgment, that the acts or transactions, where, they are different, should be so connected as to constitute a single series which could fairly be described as one entity or fact which would constitute a cause of action against all the defendants jointly. Whether this necessary condition exists in any particular case would, of course, depend upon the nature of the case but I am satisfied that this at least is necessary that the case should be such that it could be said that the Court in which the suit was instituted had local jurisdiction in the first instance to deal with the controversies arising between the plaintiffs and each of the defendants.....

The property must, in the particular circumstances of the suit, be capable of being described as a single entity. Whether it can or cannot be so described will depend again upon the nature of the dispute between the parties. If there is a dispute, for instance about a single estate which both parties are claiming as a whole that estate is obviously for the purposes of that particular suit a single entity. If, on the other hand, the owner of an estate has a claim against unconnected trespassers who have trespassed upon different parts of the estate or different properties situated within it, those parts or those properties would not for the purposes of the dispute between him and the trespassers be one entity but several entities and the provisions of Section 17, would not apply"."

[21] Thus, for a suit filed in a Court pertaining to properties situated in jurisdiction of more than two courts, the suit is maintainable only when suit is filed on one cause of action.

[22] Justice Verma of Allahabad High Court in his concurring opinion in Karan Singh v. Kunwar Sen (supra) while considering Section 17 of C.P.C. has explained his views by giving illustration. Following was observed by Justice Verma:

"I agree, Suppose a scattered Hindu dies possessed of immovable property scattered all over India at Karachi, Peshwar, Lahore, Allahabad, Patna, Dacca, Shillong, Calcutta, Madras and Bombay and is succeeded by his widow who, in the course of 40 or 50 years, transfers on different dates portions of the property situated at each of the places mentioned above, to different persons each of whom resides at the place where the property transferred to him is situated, and the transfers are wholly unconnected with, and independent of one another. Upon the widow's death the reversioner wants to challenge these various transfers. Learned counsel for the plaintiffs has argued that in such a case the reversioner is entitled to bring one suit challenging all the transfers at any one of the places mentioned above, impleading all the transferees, I find it very difficult to hold that such a result is contemplated by the provisions of the Code of Civil Procedure upon which reliance has been placed and which are mentioned in the judgment of my learned brother. I do not consider it necessary to pursue the matter any further. It is clear to my mind that, if the plaintiffs; argument mentioned above is accepted, startling results will follow."

[23] Now, we come to submission of learned counsel for the appellant based on Section 39 sub-section (1) (c)of C.P.C. It is submitted that Section 39(1)(c) of C.P.C. is also a pointer to what is intended in Section 17. The scheme as delineated by Section 39 indicates that when a decree is passed by a Court with regard to sale or delivery of immovable property situated outside the local limits of the jurisdiction of that Court it may transfer the decree for execution to another Court. The provision clearly indicates that a decree of Court may include immovable property situate in local limits of that Court as well as property situated outside the local limits of the jurisdiction of the Court passing the decree. Section 39(1)(C) re-enforces our conclusion that as per Section 17 suit may be filed with regard to immovable property situated outside the local limit of the jurisdiction of the Court. We may, however, add that passing a decree by a Court with regard to immovable property situate outside the local jurisdiction of the Court passing the decree may not only confine to Section 17 but there may be other circumstances where such decree is passed. Section 20 of C.P.C. may be one of the circumstances where decree can be passed against the defendant whose property may situate in local jurisdiction of local limits of more than one Court.

[24] We may further notice that Section 17 uses the words 'the suit may be instituted in any Court'. The use of word in Section 17 makes it permissive leaving discretion in some cases not to file one suit with regard to immovable property situated in local jurisdiction of more than

one court. One of the exceptions to the rule is cases of partial partition where parties agree to keep some property joint and get partition of some of the properties.

[25] The partial partition of property is well accepted principle with regard to a joint family. In Mayne's Hindu Law & Usage, 16th Edition in paragraph 485 following has been stated:

"485. Partition partial or total.- Partition may be either total or partial. A partition may be partial either as regards the persons making it or the property divided.

Partial as to properties.- It is open to the members of a joint family to severe in interest in respect to a part of the joint estate while retaining their status of a joint family and holding the rest as the properties of an undivided family. Until some positive action is taken to have partition of joint family property, it would remain joint family property."

[26] Mulla on Hindu Law, 22nd Edition also refers to partial partition both in respect of the property and or in respect of the persons making it. In paragraph 327 following has been stated:

""327. Partial partition.-(1) A partition between coparceners may be partial either in respect of the property or in respect of the persons making it.

After a partition is affected, if some of the properties are treated as common properties, it cannot be held that such properties continued to be joint properties, since there was a division of title, but such properties were not actually divided.

(2) Partial as to property.- It is open to the members of a joint family to make a division and severance of interest in respect of a part of the joint estate, while retaining their status as a joint family and holding the rest as the properties of a joint and undivided family."

The issues arising in the present case being not related to subject of partial partition the issue need not to be dealt with any further.

[27] Learned counsel for the appellant has also submitted that permitting filing of a separate suit with regard to property situate in different jurisdiction shall give rise to conflicting decision and decision in one suit may also be res judicata in another suit. We in the present case being not directly concerned with a situation where there are more than one suit or a case having conflicting opinion we need not dwell the issue any further.

[28] Sections 16 and 17 of the C.P.C. are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16. From the foregoing discussions, we arrive at following conclusions with regard to ambit and scope of Section 17 of C.P.C.

(i) The word 'property' occurring in Section

17 although has been used in 'singular' but by virtue of Section 13 of the General Clauses Act it may also be read as 'plural', i.e., "properties".

(ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

(iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

(iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.

[29] Now, we revert to the facts of the present case and pleadings on record. The suit filed by the appellant contained three different sets of defendants with different causes of action for each set of defendants. Defendant Nos. four to six are defendants in whose favour Will dated 15.02.2000 was executed by late Smt. Vimal Vaidya. In the plaint, relief as claimed in paragraph 25(H)is the will executed by late Smt. Vimal Vaidya was sought to be declared as null and void. The second cause of action in the suit pertains to sale deed executed by late Smt. Vimal Vaidya dated 15.10.2007 executed in favour of defendant Nos.7 and 8 with regard to Bombay property. The third set of cause of action relates to transfer documents relating to Indore property which was in favour of defendant Nos.9 and 10. The transfer documents dated 21.10.1986, 21.11.1988 and 20.08.1993 are relating to Indore property. The plaint encompasses different causes of action with different set of defendants. The cause of action relating to Indore property and Bombay property were entirely different with different set of defendants. The suit filed by the plaintiff for Indore property as well as Bombay property was based on different causes of action and could not have been clubbed together. The suit as framed with regard to Bombay property was clearly not maintainable in the Indore Courts. The trial court did not commit any error in striking out the pleadings and relief pertaining to Bombay property by its order dated 17.08.2011.

[30] Learned counsel for the appellant has also referred to and relied on order II Rule 2 and Order II Rule 3 C.P.C. Learned counsel submits that order II Rule 2 sub-clause (1) provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. The cause of action according to Order II Rule 2 sub-clause (1) is one cause of action. What is required by Order II Rule 2 sub-clause (1) is that every suit

shall include the whole of the claim on the basis of a cause of action. Order II Rule 2 cannot be read in a manner as to permit clubbing of different causes of action in a suit. Relying on Order II Rule 3 learned counsel for the appellant submits that joinder of causes of action is permissible. A perusal of sub-clause (1) of Order II Rule 3 provides that plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly. What is permissible is to unite in the same suit several causes of action against the same defendant, or the same defendants jointly. In the present case suit is not against the same defendant or the same defendants jointly. As noticed above there are different set of defendants who have different causes of actions.

[31] Learned counsel has lastly submitted that defendant Nos. 7 and 8 in their application having not questioned the cause of action for which suit was filed, the submission raised on behalf of the counsel for the respondent that suit was bad for misjoinder of the causes of action cannot be allowed to be raised.

[32] It is relevant to notice in the application filed by defendant Nos. 7 and 8, the heading of the application itself referred to "mis-joinder of parties and causes of action". In Para (1) of the application, it was categorically mentioned that there was mis-joinder of parties and causes of action. The trial court in its order dated 17.08.2011 has also clearly held that plaintiff has clubbed different causes of action which is to be deleted from the present suit. The trial court further held that the plaintiff is not justified in including different properties and separate cause of actions combining in single suit.

[33] We, thus, are of the view that the trial court has rightly allowed the application filed by the defendant Nos.7 and 8. The High court did not commit any error in dismissing the writ petition filed by the appellant challenging the order of the trial court.

[34] We do not find any merit in this appeal, the appeal is dismissed accordingly

--X--

COMPLAINTS REGARDING MISSING

PARTS SHOULD BE MADE WITHIN

15-DAYS FROM DUE DATE.

THEREAFTER SUBSCRIBER HAS TO

PAY THE COST OF

MISSING PARTS,

COST OF EACH PART RS.150/-

LAW SUMMARY

BACK	VOLUMES	AVAILABLE
2010	(In Three Volumes)	Rs.2,275/-
2011	(In Three Volumes)	Rs.2,500/-
2012	(In Three Volumes)	Rs.2,500/-
2013	(In Three Volumes)	Rs.2,800/-
2014	(In Three Volumes)	Rs.2,800/-
2015	(In Three Volumes)	Rs.2,800/-
2016	(In Three Volumes)	Rs.3,000/-
2017	(In Three Volumes)	Rs.3,000/-
2018	(In Three Volumes)	Rs.3,500/-

2019 YEARLY SUBSCRIPTION Rs.3200/- (In 24 parts)

Printed, Published and owned by **Smt.Alapati Sunitha,**

Printed at: Law Summary Off-Set Printers,Santhapeta Ext., Ongole - 523001, Prakasam District. (AP)

Editor: **A.R.K. Murthy,** Advocate.