
(2000) 09 AP CK 0040
In the Andhra Pradesh High Court
Case No : Appeal No. 2457 of 1986

Badugu Venkata Durga Rao and another	APPELLANT
Vs	
Surneni Lakshmi	RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 14
Specific Relief Act, 1963 — Section 34
Transfer of Property Act, 1882 — Section 54

Citation : (2001) 1 ALD 86 : (2001) 1 ALT 115 : (2001) 1 CivCC 404

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : Mr. K. Harinath, for the Appellant; Mr. K. Ranga Rao, for the Respondent

Judgement

1. Aggrieved by the judgment and decree dated 10-7-1986 in OS No.191 of 1986 on the file of the Court of the Subordinate Judge, Nuzvid, (OS No.452 of 1979 on the file of the Court of Subordinate Judge, Vijayawada), the defendants in the suit have preferred this appeal.

2. During the pendency of the appeal, the second appellant i.e., 2nd defendant died. Since first appellant, i.e., first defendant who is the son and legal representative of the deceased second appellant, is already on record he continued the proceeding. Appellants hereinafter would be referred to as defendants.

3. Sole respondent herein, who is the 2nd plaintiff in the suit is the widow of S. Rama Rao and was brought on record, in the trial Court after the death of the sole plaintiff-S Rama Rao, who hereinafter, would be referred as the deceased, respondent would hereinafter be referred to as the 2nd plaintiff. The deceased filed the suit for declaration his title to the properties described in plaint "A" and "B" schedules (hereinafter called the suit properties) and for a consequential injunction restraining the defendants from interfering with his possession and

enjoyment thereof, alleging that he purchased the suit properties under various sale deeds and was leasing them out to others including the second defendant, and taking advantage of his weak intellect and gullible nature, second defendant, on the pretext that he would pay the arrears of rent payable to him there, took him to Vijayawada on 15-4-1975 and kept him in wrongful confinement in the house of D. Bhadraiah, and coerced him to sign some documents and promissory notes and other papers by beating him with sticks all over his body, and obtained his signatures thereon and took him to Machilipatnam on the next day and managed to get a document registered, and took him back to Vijayawada and again kept him in wrongful confinement, and obtained his signatures under coercion on 29-5-1978 and was again taken to Machilipatnam on 30-5-1978, when another document was got registered under coercion, and in between the two dates of his being taken to the Registrar's Office at Machilipatnam, his signature on the reverse of promissory note executed by the second defendant in his favour, which he kept in the custody of Shaik Ameena Bee of Chandragudem, was obtained, and was later taken to Eluru, and was kept in wrongful confinement there, and from Eluru he was taken to Mailavaram Police Station on 30-6-1978, where his signatures were obtained on some other papers, and from there he was taken to Vijayawada in a car, and was kept in wrongful confinement for about four months, from where he could manage to escape some how and return to Borragudem on 31-10-1978, and informed Chalikari Rama Rao, his paternal aunt's son, as to what had happened, and subsequently obtained copies of the documents got registered and came to know that they are sale deeds in respect of the suit properties in favour of the first defendant, who is the minor 4th son of the second defendant. Since, he had no necessity to sell the suit properties, and since the alleged sale deeds dated 6-4-1978 and 29-5-1978 were obtained under coercion, and are devoid of consideration, sale deeds dated 6-4-1978 and 29-5-1978 were cancelled under separate cancellation deeds, dated 3-11-1978, and the same was informed the deceased by sending the cancellation deeds. Hence, the suit.

4. On behalf of defendants a common written statement was filed denying the averments in the plaint and contending that the averment therein that the sale deeds were obtained by exercising coercion, after wrongful confinement is false. The persons mentioned as lessees of the plaint schedule properties in the plaint, are the supporters of the deceased and are instrumental in filing the suit. First defendant after purchase is in possession of the suit properties as Owner. Second defendant was never a tenant of any part of the suit land. Both the sale deeds in favour of the 1st defendant were executed by the deceased voluntarily, for discharging pronote debts due from the deceased to the second defendant, and hence deceased has no right to cancel the sale deeds and the suit therefore is not maintainable.

5. Basing on the above pleadings, four issues and one additional issue were settled for trial by the trial Court. In support of her case second plaintiff besides examining herself as PW1 examined 7 other witnesses as PWs. 2 to 8 and marked

Exs.A1 to A17. Ex.X1 was marked through PW4. In support of the case of the defendants, second defendant examined himself as DW1 and examined three other witnesses as DWs.2 to 4 and marked Exs. B.1 to B.36. The trial Court, on issue No.1 which relates to the question whether the sale deeds dated 6-4-1978 and 29-5-1978 (Exs. B.1 and B.2 respectively) are vitiated by coercion and are not supported by consideration, held in favour of the plaintiffs. On issue No.2 which relates to the question whether the defendants are not in possession of the suit properties, held against the defendants. On additional issue, which relates to the question whether second plaintiff is the legal heir of the deceased first plaintiff, held on favour of second plaintiff. On issue No.3, which relates to the question whether the plaintiffs are entitled to the declaration and injunction sought, held in favour of the 2nd plaintiff. On the basis of the findings given on issues 1 to 3 and the additional issue, on issue No.4, which relates to the relief, the trial Court decreed the suit with costs directing the second plaintiff to pay the deficit Court fee of Rs.420/-. Aggrieved thereby the defendants have preferred this appeal.

6. The point for consideration is whether Exs.B1 and B2, sale deeds were obtained by exercising coercion on the deceased and are liable to be set aside.

7. Before taking up the point for consideration, it has to be stated that the strong contention of the learned Counsel for the appellants is that the suit, as framed, is not maintainable since there is no prayer for cancellation of sale deeds, Ex.B1 and B2. It is his contention that since the suit is for declaration of title simplicitor, and since so long as Exs.B1 and B2 are in existence, and are not set aside by a competent Court, title to the suit properties stands vested in the first defendant, who is the vendee thereunder, question of declaration of title of the deceased to the suit properties cannot arise. I am unable to agree with his contention, because the relief claimed in the suit is to declare the deceased as the owner of the suit property. Therefore, as rightly held by the Court below, in effect the relief claimed in the suit is to set aside. Ex.B1 and B2 Sale Deeds. It is well known, and a well settled principle of law, that the plaint must be read as a whole and the actual relief sought, i.e., prayer is in the plaint, should be culled out from the averments in the plaint, and can be granted, if there is evidence and circumstances justifying grant of such relief, though not directly or specifically claimed or asked as a relief in the relief portion of the plaint. The plaint averments read as if the deceased became the owner of the suit properties as he (the deceased) executed of the originals of Exs.A1 and A3 (by which Exs.B1 and B2 sale deeds in favour of the first defendant were cancelled). On that basis, deceased sought a declaration of his title to the suit properties. Ignoring the such assumptions the Court below rightly held that the suit, in fact, is one for cancellation of Exs.B1 and B2, and after re-fixing the valuation of the suit rightly directed the plaintiff to pay the deficit Court fee. The same is in accordance with the ratio in *Bulakram and Another Vs. Ganga Bishun Chaudhuri*, , when it was held that though there is no prayer for cancellation of a document, depending on the circumstances of the case, Court has power to

order cancellation of a document. Hence, the fact that there is no prayer for cancellation of Exs.B1 and B2 in the plaint, per se, is not a ground to dismiss the suit, as is contended by the learned Counsel for the defendants.

8. The fact that the deceased thought it fit to execute the originals of Exs.A1 and A2 cancellation deeds, unilaterally, per se, does not and cannot have the effect of cancelling Exs.B.1 and B.2, because the title in the suit property stood transferred to the first defendant by virtue of Exs.B1 and B2. That there must be two persons to a contract is rudimentary. Therefore, after execution of Ex.B1 and B.2, to reconvey the tile in the suit property to the deceased, first defendant who is the vendee thereunder, has to join as an executant, or should execute the cancellation of deeds. A vendor of a property who executes and registers a sale deed in favour of the vendee cannot unilaterally cancel the sale deed executed by him. Since the originals of Exs.A1 and A2 are not executed by the 1st defendant, they per se do not have the effect of cancelling of Ex.B1 and B2, sale deeds. Since the case of the deceased is that after getting the originals of Exs.A1 and A2 registered he intimated the defendants about the same, it is clear that originals of Exs.A1 and A2 were executed even without the knowledge of the defendant. Therefore, they do not have the effect of cancelling Exs.B1 and B2, sale deeds. In the circumstances, Exs.A1 and A2 are of little relevance for deciding this case.

9. Since, the case of the deceased is that Exs.B1 and B2 were obtained under coercion, for cancelling Exs.B1 and B2 first it should be established that the deceased was subject to coercion for his executing those documents. In *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, , it is held that in cases of coercion, it is necessary to give particulars as to the nature of the threat, the circumstances, the date, time and place in which it was administered and the name of the person threatening, as in the absence of such particulars it would be impossible to reach a proper conclusion. Keeping the said observation of the Supreme Court in view, the averments made in the plaint and the evidence adduced by the second plaintiff have to be scrutinised to find out if deceased was subjected to coercion, as alleged by him.

10. The specific case of the deceased in the plaint is that he was of a weak intellect and was a gullible person, and taking advantage of that fact the second defendant and his major son took him to Vijayawada on the pretext that they would pay arrears of rent due to him, from the second defendant and kept him in wrongful confinement and obtained his signatures on some documents and took him to the Registrar's Office, Machilipatnam twice and got registered two documents, and that subsequently on Deepavali day i.e., 31-10-1978, he could manage to escape and went to his paternal aunt's son Chalikari Ramarao and informed him as to what had happened, and that after obtaining copies of the documents that were registered at Machilipatnam, he came to know that they are sale deeds, and therefore he executed the originals of Exs.A1 and A2. It is relevant to mention here that Ex.B1 is dated 29-5-1978 and Ex.B2 is dated

6-4-1978, which shows that there is a clear time gap of more than one month between Ex.B2 and Ex.B1. PW1, wife of the deceased and the 2nd Plaintiff during cross-examination, stated that the deceased was taken away by the second defendant at about 6.30 p.m. and that he did not take the promissory note executed by the second appellant with him, and that when the deceased did not return on the next day she sent a word to the second defendant through her father and the Sarpanch and that the second defendant told them that the deceased went to his relatives house and would return in four or five days and that she did not ask her father or the Sarpanch to enquire from the second defendant as to whether he (2nd defendant) paid the amount he owed to the deceased, and that about 22 or 23 days after the deceased left the house, and did not return she gave a report to the police at Mailavaram, after getting the report drafted by P. Venkateswara Rao, and that police did not take any action thereon, and that no publication was made in the newspapers about the missing of her husband, and that her husband returned only on the next day after Deepavali.

11. PWs.2 and 5 are the attestors to the originals of Exs.A1 and A2 and PW6 is the scribe of the originals of Exs.A.1 and A3. As stated above Ex.A1 and A2 are not relevant for deciding this case. So the evidence of PWs, 2, 5 and 6 is of no help in deciding whether Exs.B1 and B2 came into existence as a result of coercion being exercised on the deceased by the 2nd defendant. In fact PWs. 2, 5 and 6 did not speak any thing about the deceased not being found in the village for several months from April to Deepavali of 1978 or about execution or anything about Exs.B1 and B2. PWs.3, 4, 7 and 8 are examined to state that they are tenants in respect of the plaint schedule properties. They did not speak about the deceased missing from the village for over six months from April, 1978 to October, 1978 or anything about Exs.B1 and B2. Thus, except the interested testimony of PW1, there is nothing on record to show that the deceased was missing, or was not seen in the village for more than six months or some days prior to or subsequent to Exs.B1 and B2 (the originals of Exs.A10 and A11). The evidence of PWS discloses that the second defendant was very much available in the village from the next day after he allegedly took the deceased from his house. If really the second defendant had taken away the deceased from his house forcibly, as averred in Exs. A1 and A2 and if the deceased did not really come back for more than six months, and when the second defendant was very much available in the village, PW1, in normal circumstances, as an ordinary prudent person, would have raised a dispute with the village elders about her husband being taken away by the 2nd defendant, or would have given a police report. Apart from PW1 several others in the village must have known about the deceased missing from the village for several months, if he was not in the village for several months as alleged in the plaint. Neither a copy of the F.I.R. nor office copy the police report allegedly got prepared by P. Venkateswara Rao is produced by the 2nd plaintiff. P. Venkateswara Rao who allegedly drafted the police report also is not examined. Chalikari Rama Rao, paternal aunt's son of the deceased,

to whom the deceased allegedly went after his return to the village, as mentioned in the plaint, also is not examined as witnesses. The father of PW1 and the Sarpanch who, as per PW1, went to enquire from the 2nd defendant about the deceased, are not examined. Thus except the ipsi dixit of the second plaintiff as PW.1, there is no other evidence on record to show that the deceased was missing from the village or to show that the 2nd defendant took him away the deceased by force or otherwise from his house.

12. Significantly, second plaintiff did not produce even a single original document into Court. All Exs. A.1 to A.17 are registration extracts, and are not the originals. From Ex.A1 and A2 it is seen that the originals thereof were executed on 3-11-1978. The recitals in Exs.A1 and A2 show that the deceased went to the Sub-Registrar's Office and obtained copies of the documents said to have been registered by him, and came to know that he executed the disputed sale deeds, i.e., Exs.B1 and B2. The stamps for Exs.A1 and A2 are dated 9-8-1979, and are seen to have been purchased by one Suraneni Venkata Subba Rao. How and in what connection the said Suraneni Venkata Subba Rao obtained stamps, and Exs.A1 and A2 is not explained by PW1. Similarly, what happened to the originals of Exs.A1 and A2 is also not explained by PW1.

13. Ex.A.6 shows that the deceased purchased item-3 of plaint "B" schedule for Rs.1,600/- under a registered sale deed dated 11-1-1974. Ex.A7 shows that the deceased purchased items 1 and 2 of plaint "B" schedule for Rs.2,600/- under a registered sale deed dated 11-1-1974. Ex.A3 shows that the deceased purchased item-4 of plaint "B" schedule for Rs.300/- on 12-5-1969. Ex.A.4 shows that the deceased purchased item-5 of plaint "B" schedule for Rs.200/- under a registered sale deed dated 12-5-1969. Ex.A8, which is the same as Ex.B36, shows that the deceased purchased item-6 of plaint "B" schedule for Rs.700/- under a registered sale deed on 19-1-1977. Ex.A9 which is the same as Ex.B35 shows that the deceased purchased item-7 of plaint "B" schedule for Rs.1,280/- by a registered sale deed on 20-1-1977. Ex.A5 shows that the deceased purchased item-8 of plaint "B" schedule under a registered sale deed dated 12-6-1969 for Rs.2,500/-. It is clear from Exs.A3 to A9 that from 1969 till 1977, the deceased was purchasing lands from others. So, the averment in the plaint, and the evidence of PW1, that the deceased was a "gullible" and "innocent" person, sans corroboration, cannot be believed or accepted.

14. The version in the plaint that items 6 to 8 of the plaint "B" schedule were let out to the second defendant in May, 1976 for Rs.750/- per annum, ex facie, cannot be believed or accepted, because items 6 and 7 of plaint "B" schedule were in fact purchased by the deceased on 19-1-1977 and 20-1-1977 respectively, as seen from Exs.B36 and B35. When, the deceased had purchased Items 6 and 7 of plaint "B" schedule on 19-1-1977 and 20-7-1997, there can be no scope for his letting out those items to the second defendant in May, 1976.

15. The evidence of PW1 is that item 1 of plaint "A" schedule was let out to PW4 at Rs.250/- per annum, item 2 of plaint "A" schedule and items 1 to 3 of plaint

"B" schedule were let out to PW3 at Rs.400/-per acre per year, items 4 and 5 of plaint B schedule were let out to PW8 and that the second defendant took items 6 to 8 of plaint "B" schedule, on lease for two years at the rate of Rs.750/- per acre per year, and surrendered possession of those lands in 1978, and thereafter they were let out PW7. The defendants denied all the leases. None of PWs.3, 4, 7 and 8, the alleged tenants of the deceased in respect of the plaint schedule properties, produced any documentary evidence to show that they were in possession of the plaint schedule lands, as stated by them, as tenants. Without production of tax receipts or copies of Adangals, or any other document to show that they were ever in possession of the land said to have been cultivated by them, it is difficult to believe their evidence that they cultivated the plaint schedule lands as tenants.

16. The averment in the plaint and the evidence of PW1 that 2nd defendant cultivated items 6 to 8 of plaint "B" schedule for two years as tenant and thereafter surrendered the lease is also denied by the defendants. As per Section 14 of the Andhra Tenancy Act, a cultivating tenant, before surrendering the land, has to give atleast three months notice to the landlord and also to the Special Officer, prior to the expiry of the agricultural year. Thereafter, the Special Officer should make an enquiry for coming to a conclusion that the surrender by the tenant is voluntary and genuine. The 2nd plaintiff adduces no such evidence. Therefore the contention of the deceased and the 2nd plaintiff, that 2nd defendant cultivated items 6 to 8 of plaint "B" schedule for two years as tenant and surrendered the tenancy, and that thereafter the said land was let out to PW7, cannot be believed or accepted. The evidence of PW1 relating to lease given to PW7 is not consistent. First she stated that the deceased let out the land to PW7 in "Tolakari" of 1978 (June, 1978), she later stated that the land was let out to PW7 in December, 1978. Again she stated that one month after the deceased returned to the village he let out the land to PW7. From the averments in the plaint it is seen that Deepavali of 1978 fell on 31-10-1978, by which date Exs.B.1 and B.2 were in existence. Therefore, a third party could not have been permitted to come into possession of those lands by the defendants in view of Ex.B.1 and B.2. None of the neighbours of item 6 to 8 of plaint "B" schedule also are examined to show that second defendant cultivated the said land for two years and surrendered it in February, 1978, and that thereafter PW7 was inducted into possession thereof for the agricultural year 1978-79. Therefore, the lease in favour of PW7 in respect of items 6 to 8 of plaint "B" schedule cannot be believed or accepted.

17. The Court below, on the basis that the second defendant filed a petition under Ex.A16 in OS No.431 of 1977, seeking an instalment decree, came to a conclusion that he had no capacity to purchase the properties covered by Exs.B1 and B2, without keeping in view the fact that 2nd defendant is not the vendee thereunder. Moreover it is well known that judgment debtors adopt several methods to delay payment of the decretal debt. Things have not improved even after several decades of the famous observation of the Privy Council that in India

the troubles of the decree holder start after obtaining the decree. All these apart, boundaries of items 6 to 8 of plaint "B" schedule show that the northern boundary of item-6 of plaint "B" schedule and Southern and Northern boundaries of item-8 of plaint "B" schedule are lands belonging to the second defendant. So, it is clear that the second defendant has some landed property adjacent to items 6 to 8 of plaint "B" schedule. Judicial notice can be taken of the fact that agriculturists have a penchant for purchase of lands adjacent to their land, when offered for sale, even by borrowing amounts from others. So, the mere fact that the second defendant sought an instalments, in a decree obtained by a Bank against him, cannot be a ground for holding that he has no capacity to purchase property under Exs.B1 and B2. The question of the defendants establishing their capacity to purchase the property arises only when plaintiffs discharged the onus that lay on them to show that Exs.B.1 and B.2 came into existence as a result of coercion. Coercion cannot be inferred on the basis of the averments in the plaint alone without any evidence. In this case, there practically is no evidence on record to show that Exs.B1 and B2 were obtained under coercion.

18. The mere fact that the second defendant did not produce the voucher promissory notes, and failed to satisfactorily establish that consideration mentioned in Exs.B1 and B2 was paid before the Sub-Registrar, by itself cannot be a ground for disbelieving Exs.B1 and B2, when there is no prima facie evidence to show that Exs.B1 and B2 came into existence as a result of coercion. Admittedly, PW1 had no personal knowledge about execution of Exs.B1 and B2 by the deceased. It is her evidence that the deceased left the house informing her that he was going to Vijayawada, as the second defendant promised to pay the money due to him under a promissory note. What happened at Vijayawada is not personally known to her. PWs.2 to 7 did not state anything about execution of Exs.B1 and B2 or about the alleged disappearance of the deceased from the village for about six months. From the sole evidence of PW1 it is difficult to hold that Exs.B1 and B2 came into existence as a result of coercion exercised on the deceased by the 2nd defendant.

19. Therefore, Exs.B1 and B2 have to be taken as valid documents. Therefore, even if the consideration mentioned therein is not paid, title to the property covered by Exs.B1 and B2, would still be transferred to the vendee thereunder. In *Tata v. Babaji* ILR 22 Bom. 176, Farran, CJ., observed :

"I am not, however, prepared to assent to the train of thought which puts conveyance of lands in the *mofussil*, perfected by possession or registration, where the consideration expressed on the conveyance to have been paid has not in fact been paid, in the same category as contracts void for want of consideration." In *Dip Narain Singh v. Nageswar Prasad* ILR 52 All. 338 (FB), a Full Bench of the Allahabad High Court held that once a document transferring immovable property has been registered, the transaction passes out of the domain of mere contract into one of conveyance, and the completed transaction would be governed by the Provisions of the Transfer of Property Act. The above

extracted observations in the above two decisions were approved by the Supreme Court in *State of Kerala Vs. Cochin Chemical Refineries Ltd.*, . In *Shaik Osman v. Union of India* 1980 (1) AWR 105, after considering the decisions of various High Courts and the Supreme Court, Punnayya, J., (as he then was) held that merely because sale price was not paid as per the terms of contract, the vendor cannot say that title has not passed to the purchaser, and that ownership still subsists with him, and that the purchaser is entitled to claim ownership of the property from the date when sale was completed, and is entitled to seek possession also, and that the vendor is not entitled to contend that the purchaser is not entitled to sue for possession on the ground that the sale consideration was not paid to him. In view of the said position of law, it is not necessary to go into the question whether consideration, as mentioned in Exs.B1 and B2 was in fact paid or not to the deceased, since payment of consideration mentioned in Exs.B1 and B2 to the deceased can have no bearing on the transfer of title to the vendee after Exs.B1 and B2 are registered. If consideration as mentioned in Exs.B1 and B2, was not in fact paid, the remedy of the deceased was to sue for recovery of the unpaid, sale consideration, by claiming a change over the property sold, because after registration, the title in the property covered by the sale deed would stand transferred to the purchaser, even if the consideration mentioned therein is not paid to the vendor.

20. Exs.B1 and B2 contain details of the boundaries of all the items of property sold thereunder. Exs.B35 and B36, which are given as vouchers to Ex.B1, relate to items 7 and 6 of plaint "B" schedule. It is not the case of the plaintiffs that the deceased took the title deeds of the suit properties with him when he allegedly went with, or was forcibly taken away by the 2nd defendant, to Vijayawada. Without looking into the sale deeds in favour of the deceased it would be difficult to mention the boundaries of all the items of the property sold under Exs.B1 and B2 therein. If the deceased was made to sign Exs.B1 and B2 under coercion, after being taken away only under the pretext of payment of arrears of rent, the sale deeds relating to items 1 to 5 and 8 of plaint "B" schedule and items 1 and 2 of plaint "A" scheduled which were executed in favour of the deceased should be available either with the deceased or the 2nd plaintiff. Original title deeds thereof are not produced, and only registration extracts of those sale deeds are produced. To explain away the absence of originals, PW1, stated that the original documents were kept in the house of one Ameena Bee, as there was no protection in her house, and that the second defendant took those documents from the house of Ameena Bee subsequent to the deceased being taken away. Ameena Bee, in whose house the original documents were allegedly kept is not examined by the plaintiff. Non-examination of Ameena Bee entitles an adverse inference being drawn against the plaintiffs. So the theory of the original sale deeds in favour of the deceased being kept with Ameena Bee, and the 2nd defendant taking them away from her cannot be believed or accepted.

21. The theory of the deceased saving money and lending it to others cannot be accepted or believed, because, as per the evidence on record, the deceased used

to receive Rs.250/- per year from item 1 of plaint "A" schedule Rs. 400/- per acre per annum from items 1 to 3 of plaint "B" schedule which is ac. 1-93 cts i.e., less than Rs.800/- per year; Rs.500/- per year from items 4 and 5 of plaint "B" schedule, and Rs.750/- per year from items 6 to 8 of plaint "B" schedule, the total of which comes to Rs.2,300/- per year. According to the plaint 2nd defendant fell in arrears of rent for two years at Rs.750/- per year. If it is true the annual income of the deceased for two years prior to 1978 was only Rs.1,550/- which comes to around Rs.130/- per month. With that income, it is difficult to believe that the deceased could save money and lend it to others. The plaint averments show that the deceased sold away his house to one T. Rama Rao and received an advance of Rs.1,500/-, and that in 1977 the said Rama Rao paid the balance amount due of Rs.5,000/- and interest thereon and that the second defendant borrowed Rs.1,500/- from him and executed a promissory note. The names of the scribe and attestors also mentioned but none of them were examined. T. Rama Rao, to whom the deceased allegedly sold his house was also not examined. The sale deed is not produced. In these circumstances, it is difficult to believe that the deceased had no necessity to sell the suit properties.

22. The trial Court seems to have proceeded on an incorrect assumption that the burden of proof is on the defendants to establish that Exs.B.1 and B.2 are valid and are supported by consideration. Since the case of the deceased is that he executed Exs.B1 and B3 as a result of the coercion exercised on him, burden of proof is squarely on the second plaintiff to establish that Exs.B1 and B.2 were executed under coercion. As stated above, there is no evidence to show that any coercion was exercised on the deceased either by the 2nd defendant or anybody else execution of Exs-B1 and B2. The fact that Exs.B1 and B2 are registered in Machilipatnam, though there is a Sub-Registrar's Office at Mailavaram, cannot, by itself, be a ground for disbelieving Exs.B1 and B2, because as per the provisions of the Registration Act, a document can be registered in the Office of the District Registrar in whose jurisdiction the land covered by the document is situate. The fact that the attestors to both Exs.B1 and B2 are the same persons cannot by itself be a ground for doubting the genuineness of Exs.B1 and B2, because sale deed is not a compulsorily attestable document.

23. The learned Counsel for the 2nd plaintiff contended that subsequent to the filing of the suit, the deceased, who could have sworn to the facts stated in the plaint, was murdered and so there was no possibility for establishing the facts mentioned in the plaint. It is also this contention that there was a suspicion that 2nd defendant was responsible for the murder of the deceased. May be deceased was murdered. The FIR registered in connection with the death of the deceased was not brought on record. The evidence of PW1 that the second defendant was responsible for the death of the deceased, and that the deceased was done to death only to see that he should not give evidence in the suit, cannot be believed, or accepted because, no case is registered against the second defendant in connection with the death of the deceased.

24. Non-production of voucher documents mentioned in Exs.B.1 and B.2, and the discrepancies in the evidence of DWs, may give raise to a suspicion about the recitals regarding payment of consideration mentioned in Exs.B1 and B2. It is very well settled principle of law that suspicion, however strong, is not and cannot be a substitute for proof. Courts are not to set aside documents on the basis of mere, or very strong, suspicion without anything more. As stated earlier even if the consideration as mentioned in Exs.B1 and B2 is not paid. Ex.B1 and B2 do not become invalid and on that basis only they cannot be set aside or declared invalid or void.

25. Since, there is no evidence on record to show the deceased was either illegally detained, or was put under threat of death and (or) was subjected to coercion for executing Exs.B1 and B2, I hold that the evidence on record does not establish that Exs.B1 and B2 came into existence as a result of coercion exercised on the deceased by the second defendant. Therefore there are no grounds to set aside Exs.B1 and B2. The point is answered accordingly.

26. In view of my finding the point for consideration, the judgment and decree of the trial Court are not sustainable and are liable to be set aside and are set aside.

27. In the result, the appeal is allowed. The decree, and judgment of the trial Court are set aside and OS No.191 of 1984 on the file of the Court of Subordinate Judge. Nuzvid, is dismissed, but in the circumstances without costs.