

**(2010) 03 AP CK 0009**

**In the Andhra Pradesh High Court**

**Case No : Second Appeal No. 560 of 1984**

Chintalapati Purushottama Sastry (died), Prof. C.V.  
Seshachalapathy, C.L.N. Sastry and Ch. Srinivasa Murthy

**APPELLANT**

**Vs**

Yarlagadda Nagaraja Rao and Others <BR> Yarlagadda  
Sooramma alias Anasuyamma (Died) and Others Vs  
Chintalapati Purushottama Sastry (died) and Others

**RESPONDENT**

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**Date of Decision : 31-03-2010**

**Acts Referred:**

Registration Act, 1908 — Section 48, 49  
Specific Relief Act, 1877 — Section 27, 27(2)  
Specific Relief Act, 1963 — Section 19  
Transfer of Property Act, 1882 — Section 53A, 58  
Trusts Act, 1882 — Section 91

**Citation : (2010) 03 AP CK 0009**

**Hon'ble Judges : Vilas V. Afzulpurkar, J**

**Bench : Single Bench**

**Advocate : Y. Vivekananda, for the Appellant; A. Ramakrishna, for Respondent  
Nos. 1, 5 to 9, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Vilas V. Afzulpurkar, J.—This appeal is by the Plaintiff. Plaintiff questions the decree of the lower appellate Court, which has granted relief of declaration to the Appellant/Plaintiff, but has denied the relief of recovery of possession on the ground that the said relief falls within the jurisdiction of the authority of A.P. Tenancy Act and that the Civil Court has no jurisdiction to grant the said relief of recovery. Aggrieved by the said appellate decree the Plaintiff has preferred this Second Appeal.

2. The Respondent No. 4 herein, who has also Defendant No. 4 in the trial Court and Respondent No. 4 before the lower appellate Court has preferred cross-objections to the extent of adverse finding against the said cross Appellant in the impugned judgment of the lower appellate Court.

3. For the sake of convenience the parties are referred to as they are arrayed in the suit and the reference to Plaintiff hereafter will be reference to the Appellant and similarly reference to 4th Defendant would be reference to the cross objector.

4. Facts in brief are as follows:

The Plaintiff herein claimed that the suit property belongs to one Smt. K. Sampurnasarada who is residing in West Indies along with her husband. She had acquired the said suit schedule property by way of a gift deed dated 27-03-1958 in her favour from her father late Sri. K.V.S. Sastry. She had also appointed Sri K.V.S. Sastry as her power of attorney under registered GPA Ex.A-1.

5. It is claimed that the suit land was under cultivation by Defendant No. 1 as lessee right from 1968 onwards and as the Defendant No. 1 committed default in payment of lease amount and did not pay the same in spite of demand under Ex.A-4, Defendant No. 1 vacated the suit land in the year 1969. The Plaintiff claims that she purchased the suit land under agreement of sale dated 20-11-1969 and on coming to know of it Defendant Nos. 1 and 4 gave a notice to Sri K.V.S. Sastry as well as the Plaintiff under Ex.A-6. After that Plaintiff purchased the suit property under registered sale deed dated 21-09-1974 through Sri K.V.S. Sastry, GPA of Smt. K. Sampurnasarada. Meanwhile, having vacated the land in 1969 it is alleged that Plaintiff reentered the land in 1970 whereupon the vendor of the Plaintiff filed ATP No. 194 of 1979 fasli 1379 fasli against Defendant No. 1 for declaration that he is not a cultivating tenant. Ex.A-8 is the tenancy petition and Ex.A-9 is the counter filed by Defendant No. 1. After purchase of the property by Plaintiff the Plaintiffs vendor as well as the Plaintiff issued notices under Exs.A-10 and A-12 to Defendant No. 1 respectively but there was no reply.

6. While Defendant No. 1 is the husband of Defendant No. 4, Defendant Nos. 2 and 3 are brothers of Defendant No. 1 who are cultivating the land along with Defendant No. 1. Plaintiffs notice Ex.A-12 was thereafter replied to by Defendant No. 4 under reply notice Ex.A-17. Plaintiff also filed a petition for impleading himself in the said tenancy case but later withdrew the ATC itself as per memo Ex.A-18 and filed the present Civil Suit. Since Defendant No. 4 had claimed that they have come into possession under an agreement as per the recitals in their notice Ex.A-6 Plaintiff called upon the Defendants to produce the said agreement.

7. The Plaintiff states that he had filed the present civil suit as Defendant No. 1 disowned tenancy and claimed to be in possession through Defendant No. 4 on the ground that Defendant No. 4 had purchased the property and as Defendant No. 4 is claiming rights with respect to Ac.2-38 cents situated to the south of Ac.3-74 cents in Sy. No. 185/6 and 7 Plaintiff filed the present suit for declaration of her absolute rights and for possession and profits.

8. As the Defendants was not paying profits either to their vendor or to the Plaintiff the present suit accordingly was filed on 06-11-1975 for declaration that the Plaintiff is the absolute owner of the suit schedule property and for

declaration, possession, past profits and future profits.

9. Defendant No. 1 filed written statement denying the plaint allegations and claimed that his vendor and Sri K.V.S. Sastry were on very amicable terms for a very long time and they were cordial with each other. It is alleged that Sri K.V.S. Sastry offered to sell the suit schedule property to Defendant No. 4 @ Rs. 2,000/- per acre and gave possession to Defendant No. 4 and received part consideration of Rs. 3,000/- on 09-02-1959. On such payment Defendant No. 4 came in possession and enjoyment of the land since 1957. It was also claimed that as Sri K.V.S. Sastry was getting old he was facing severe pressure from his wife and daughter for disposal of the suit schedule property and had practically become a tool in the hands of wife and daughter. The Plaintiff should not have come to purchase the property being aware of the subsisting right of Defendant No. 4 and possession of Defendant No. 1 through her. The Plaintiff is neither bonafide nor he entitled to declaration and possession as prayed for and sale deed obtained by him is void and un-enforceable. Defendant No. 1 also raised a plea of jurisdiction by claiming that tenancy Court alone can take cognizance of the matter. Defendant also claimed that in view of the cordial terms between his family and Sri K.V.S. Sastry they did not insist upon the execution of sale deed though they have paid the entire sale consideration to Sri K.V.S. Sastry.

10. Defendant Nos. 2 and 3 filed a separate written statement stating that they never cultivated the suit land either personally or along with Defendant No. 1 at any time and the said suit land is in possession and enjoyment of Defendant No. 4. They, therefore, prayed for dismissal of suit so far as they are concerned.

11. Defendant No. 4 filed a separate written statement contending that after the death of first Defendant's father who was cultivating the land, first Defendant was cultivating the suit land till 1957. It is alleged that in 1957 Sri K.V.S. Sastry sold the entire Ac.3-74 cents of land including the suit schedule property to Defendant No. 4 at Rs. 2,000/- per acre and delivered the possession. She claims to be in possession ever since 1957 and claims that she has paid the consideration from time to time in instalments to Sri K.V.S. Sastry. It is his claim that Sri K.V.S. Sastry gave letters acknowledging the payments of the amount and that she is in possession un-interruptedly, openly and continuously since 1957 and claims to have acquired title through adverse possession. Though formal title deed is not executed by the seller she also claimed that the Plaintiffs title is unenforceable and not valid and the said transaction is collusive, nominal and fraudulent and with a view to defeat the rights of Defendant No. 4. She also disowned the notice under Ex.A-6 on the ground that she never went to Advocate and did not give instructions to him to issue such notice. It was therefore, claimed that the Plaintiff was not a bonafide purchaser and had clear notice of the claim and possession of Defendant No. 4 and as such, Plaintiff is not entitled to any relief.

12. Based on the above evidence the trial Court framed the following issues:

1. Whether Kuchibhotla Sampurnasarada has valid title to the suit ?
2. Whether the Plaintiff is a bonafide purchaser of the suit property for value without notice of the rights of the 4th Defendant ?
3. Whether the suit property was sold by Sri Kuppu Subrahmanyastry to the fourth Defendant in the year 1957 ?
4. Whether the title of the 4th Defendant to the suit land has been perfected by adverse possession ?
5. Whether the 1st Defendant cultivated the suit land till 1969 ?
6. Whether the Plaintiff is entitled to the declaration and possession of the suit property ?
7. Whether the Defendants 1 to 3 are in possession of suit property ?
8. Whether the Plaintiff is entitled to the mesne profits either past or future, if so, from whom and at what rate ?
9. Whether the Court has jurisdiction to try the suit ?
10. To what relief?

Additional issue Whether the Defendants 1 and 4 are estopped from claiming the rights in the suit property in view of the registered notice dated 24-11-1969 ?

13. After considering the evidence on record both oral and documentary, trial Court held that the Plaintiff's vendor had valid title to the suit land. On issue No. 1 Trial Court also held that the Plaintiff is not a bonafide purchaser without notice of rights of fourth Defendant. However, on their issue regarding the sale of property in favor of Defendant No. 4 in the year 1957 as claimed by her was found against Defendant No. 4. With regard to 4th issue it was found that Defendant No. 4 has perfected title by adverse possession. On 5th issue it was found that first Defendant cultivated the suit land till 1969 and on the 6th issue it was found that the Plaintiff is not entitled to the relief of declaration and possession and on 7th issue it was found that the Defendant Nos. 1 to 3 are in possession. Then consequent finding on issue No. 6 and issue No. 8 also was held against the Plaintiff that he is not entitled to past or future profit. On issue No. 9 the trial Court held that it has jurisdiction to try the suit. On additional issue No. 1 the trial Court found that Defendant Nos. 1 to 4 trial Court having negated the Plaintiffs claim Defendants 1 to 4 are estopped from claiming the rights.

14. The appellate Court framed the following points for consideration:

1. Whether the Plaintiff has got title to the suit property and whether he is a bonafide purchaser of the same for value without notice of the rights of 4th Respondent ?

2. Whether the Defendants 1 and 4 are estopped from claiming any rights in the suit property in view of Ex.A-6 notice dated 24-11-1969 ?

3. Whether the 4th Respondent perfected her title to the suit land by adverse possession ?

4. Whether the Appellant is entitled for the declaration and possession prayed for ?

5. To what relief ?

15. In impugned judgment of the lower appellate Court on point No. 1 appellate Court found that Plaintiff is entitled to declaration of title and he is bonafide purchaser without notice of rights claimed by Defendant No. 4. On point No. 2 it is found that Defendants 1 to 4 are estopped for claiming rights in the property in view of their notice Ex.A-6 dated 24-11-1969. On point No. 3 it negated the claim of Defendant No. 4 of having perfected title by adverse possession and on point No. 4 it is found that the Plaintiff is entitled for recovery of possession by approaching tenancy Court and not through the Civil Court. In other words, therefore, the appellate Court found that Civil Court had no jurisdiction, especially as vendor of the Plaintiff had already approached the tenancy Tribunal for recovery of possession of the Defendants as mentioned above. The aforesaid decree of the lower appellate Court is the subject matter of this second appeal and cross-objections.

16. The docket of the Second Appeal is partly in torn condition but it shows that by an order dated 06-07-1984 (perhaps) the second appeal was admitted on substantial question of law raised in ground No. 1 of memorandum of second appeal. The cross objections were admitted by this Court by order, dated 31-10-1986 on the substantial questions of law as stated in ground numbers 4, 5 and 6. For the sake of convenience ground No. 1 in the second appeal and ground Nos. 4, 5 and 6 of the cross-objections are extracted hereunder:

1. Whether in the circumstances of the case the Civil Court has no jurisdiction to grant the relief of possession, having granted the relief of declaration of title ? The Lower Appellate Court ought to have granted the relief of possession also having granted the relief of declaration of title.

4. The lower appellate court erred in upholding the title of the Plaintiff to the land on the erroneous legal assumption that the claim of the cross objector for enforcement of contract of sale is barred by time, ignoring that the limitation for the suit for specific performance starts on 08-10-1975 the date of receipt of the notice, A.12 when for the 1st time she had knowledge of refusal of the specific performance of contract of sale in her favour. That apart, the above is not material for determining whether the Plaintiff who is not a bonafide purchaser for value without notice of prior sale in favour of the cross objector acquired title to the suit property.

5. The lower appellate court erred in holding that this cross objector was not

given possession of property pursuant to the agreement of sale in her favour and she did not perfect her title by adverse possession ignoring the clinching material on record such as handing over of the title deeds to her; land revenue receipts for all the years in her favour starting from 1961 coupled with the admitted case that the Plaintiff and his predecessors in title are not in possession of the land at any time much less they produced any cist receipts in their favour.

6. The lower appellate court erred in holding that the cross objector is not having continuous possession for the statutory period of 12 years on the basis of Ex.A-8, Adangal extract and ignoring Ex.B.37 and as such she did not perfect her title by adverse possession ignoring the well established principle of law unless the person in possession is dispossessed and the other person took possession, the adverse possession does not cease to run.

17. Heard Sri Y. Vivekananda, learned Counsel appearing for the Appellant/Plaintiff and Sri A. Ramakrishna, learned Counsel appearing for cross-objectors/4th Defendant.

18. The learned Counsel for the Plaintiff/Appellant contends that the Defendant No. 4 is claiming title only under an oral agreement and claims that she was put in possession of the property. The said claim of the Defendant No. 4 clearly disentitled her from setting up any claim which requires adjudication by the tenancy Court and as such, the lower appellate Court was not justified in denying the relief of possession to the Appellant merely on the ground that vendor of the Plaintiff/Appellant had earlier approached the tenancy Court by filing Ex.A-8 A.T.C. Case.

19. He submits that in written statement submitted by Defendant Nos. 1 and 4 they have categorically disowned any relationship as landlord and tenant with the Plaintiff and on the contrary they have claimed that Defendant No. 4 is the owner of the property and Defendant No. 1 is cultivating on behalf of Defendant No. 4. He therefore, contends that the appellate Court rightly found on point No. 1 that Plaintiff has established his right to the property but having given the said principle relief had denied the consequential relief and it warrants interference by this Court. He also submits that Defendant No. 4 along with her husband Defendant No. 1 had given Ex.A-6 notice as early as in the year November, 1969 wherein she did not make any such claim as is made in the written statement subsequently. He therefore, submits that the conduct of Defendants 1 to 4 is not bonafide and they are attempting to defeat the right of the Plaintiff under registered sale deed which is not tenable. The learned Counsel contents that by virtue of the appellate decree alleged oral agreement which remained unproved is allowed to have precedence over registered sale deed and the same being impermissible, the relief of recovery of possession ought to have been granted by the lower appellate Court.

20. Mr. Ramakrishna, learned Counsel appearing for the Respondent, contends that if Exs.A-7, A-6 and A-45 viz., the sale deed of Plaintiff, notice of Defendant

No. 1 and the agreement between Sri K.V.S. Sastry and Defendant Nos. 1 and 4 read together would show that Defendant No. 4 has a subsisting claim of possession over the property right from 1957 onwards and admittedly, physical possession of the suit schedule land was not delivered to the Plaintiff. The continuous un-interrupted possession of Defendant No. 4 over the suit land either through herself or through Defendant No. 1, therefore, cannot be disputed and the fact that the vendor of the Plaintiff and Respondent approached the Tenancy Court under Ex.A-8 shows that they cannot withdraw those proceedings and approach the Civil Court. He therefore stated that the Civil Court has in any case no jurisdiction as rightly found by the lower appellate Court.

21. To the extent of the further findings learned Counsel states that the claim of Defendant No. 4 was rejected by the lower appellate Court on the ground that she has not filed any suit for specific performance though she claims right under the agreement of 1957. Learned Counsel states that the limitation for filing suit would arise only upon the refusal thereof by the vendor and such refusal would only commence from the date of receipt of notice of Plaintiff under Ex.A-12 for the first time and as such, the title of the Plaintiff cannot be decided in his favour on that ground. It was also contended that Defendant No. 4 had perfected the title over the statutory period as is evident from the Adangal extract from Ex.A-8.

22. The learned Counsel also placed reliance upon Section 48 of the Registration Act in support of his contention that in a certain situation even an oral agreement accompanied by delivery of possession can take precedence over a registered document. He supported his contentions by citing Mummidi Reddi Papannagari Yella Reddy v. Salla Subbi Reddy and Ors. AIR 1954 AP 20 for the proposition that Section 48 of the Registration Act does not over ride Section 27(b) of the Specific Relief Act and both operate on different fields. He also placed reliance upon Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, to contend that a transferee, who is in possession in part performance of an agreement of sale, can defend his possession in a suit for recovery of possession either by transferor or by subsequent transferee.

23. Reliance is also placed upon v. Suryanarayana v. P. Dalenna 1983 (1) ALT 63 NRC for the proposition that possession of the Defendant for over 50 years under an oral sale shows that Defendant has perfected his title by adverse possession and lastly on State of West Bengal Vs. The Dalhousie Institute Society, for the proposition that though Defendant came into possession under invalid grant they acquired title by adverse possession.

24. In the light of the above, the questions as framed by this Court while admitting the second appeal and cross objection are required to be considered in the light of the material on record.

25. It is evident from the record that the defence of Defendant No. 4 is based upon the said oral agreement between her and Sri K.V.S. Sastry in 1957. Based

on the said agreement Defendant No. 4 seeks to deny that the registered gift deed executed by Sri K.V.S. Sastry in favour of the vendor of the Plaintiff dated 27-03-1958, registered general power of attorney by Smt. Sampurnasarada in favour of Sri K.V.S. Sastry under Ex.A-1 dated 28-08-1969 and the sale deed executed by Sri K.V.S. Sastry under Ex.A-7 are all subsequent to the rights created in favour of Defendant No. 4. She, therefore, submits that she is not bound by any of the subsequent transfers when the vendor as well as the vendee under the said documents had express notice of possession of Defendant No. 4 over the suit schedule property. She supports the aforesaid contentions by action on the part of the vendor in filing ATP No. 194 of 1979 under Ex.A-18 dated 04-11-1975 which also expressly admits possession of Defendant No. 1 over the said property. Based on the above it is contended that all the transfers are not bona fide and without notice and as such, cannot take precedence over the claim of Defendant No. 4 over the property.

26. Reliance placed by the learned Counsel u/s 48 of the Registration Act is also to be appreciated in that context. For the sake of convenience, Section 48 of the Registration Act and as well as Section 19 of the Specific Relief Act are extracted hereunder:

Section 48. Registered documents relating to property when to take effect against oral agreements: All non-testamentary documents duly registered under this Act, and relating to any property, whether movable, or immovable, shall take effect against any oral agreement or declaration relating to such property unless where the agreement or declaration has been accompanied or followed by delivery of possession, and the same constitutes a valid transfer under any law for the time being in force. Provided that a mortgage by deposit of title-deeds as defined in Section 58 of the Transfer of property Act, 1882, shall take effect against any mortgage deed subsequently executed and registered which relates to the same property.

Section 19: Relief against parties and persons claiming under them by subsequent title: Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the Plaintiff, might have been displaced by the Defendant;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the

terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

Section 19 of the Specific Relief Act, 1963 is extracted, as it is similar to Section 27 of the Specific Relief Act, 1877.

27. It is also a matter of record that Defendant No. 4 has not enforced alleged agreement assuming that she has able to establish the said agreement. Whatever claims she had under the said agreement are barred by time on account of the fact that she has not filed any proceedings seeking its enforcement. The claim for possession based on the said agreement as an agreement holder in part performance cannot be equated and be treated on par with Section 53A of Transfer of Property Act as admittedly there is no written agreement. Similarly, the claim for adverse possession as contended by her also cannot be accepted in view of the fact that even according to her under the agreement of 1957 she was put in possession. Her possession, therefore, is referable to the said agreement and therefore, is a permissive possession authorized by her vendor as alleged. Such possession, therefore, can never become adverse even if it persists for a considerable long time. The contentions of Defendant No. 4 in the cross-objections based upon her plea of adverse possession or part performance are both liable to be rejected as they are without any substance.

28. So far as the contentions of the learned Counsel for Respondents upon Section 48 of the Registration Act are concerned it would be noticed that legal effect of registered documents as against oral agreements is governed by the said provision and the said provision declares that all non-testamentary registered documents relating to any property shall take effect against any oral agreement or declaration coupled with or followed by delivery of possession if such transfer under an agreement with delivery of possession constitutes a valid transfer under any law of time being in force.

29. The learned Counsel for the Respondents has placed strong reliance upon the words "oral agreement accompanied or followed by delivery of possession" mentioned in the said provision and submits that since the Respondent satisfies the said requirement the registered document of the Plaintiff Ex.A-7 cannot have precedence and cannot affect the rights of the Respondents who are in possession under oral agreement. The above contention though attractive, omits from consideration the later part of the provisions of Section 48 of the Registration Act which stipulate that for the purpose of the aforesaid provision not only there should be an oral agreement accompanied or followed by delivery of possession but such form of transfer must be valid under any law for the time being in force. The oral agreement admittedly is of 1957 and according to Defendant No. 4 the possession was delivered to her in pursuance of the said agreement. In order to take benefit of Section 48 of the Registration Act,

therefore, the Defendant No. 4 as a matter of fact must satisfactorily establish and prove such transfer by an oral agreement as well as the delivery of possession in pursuance thereof must also satisfy that under the law then prevailing, such transfer is a valid transfer. Section 49 of the Registration Act, which is immediately following Section of Section 48 of the Registration Act, reads as follows:

49. Effect of non-registration of documents required to be registered: No document required by Section 17 or by any provisions of the Transfer of Property Act, 1882, to be registered shall -(a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless, it has been registered:

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.

30. It would be evident that as per Section 49 of the Registration Act that such transfer in any case is not recognized, as a valid transfer effecting any immovable property comprised therein, when the value of the property is above Rs. 100/- and it is a compulsorily registrable document. In circumstances, an agreement of sale coupled with delivery of possession being treated, as transfer is a concept under the Income Tax Act where transfer is defined u/s 2 Sub-clause (47)(v). The said expansive definition is inserted under Income Tax Act under the Finance Act, 1987 with effect from 01-04-1988 onwards and even for a transaction to fall within the definition of transfer envisaged under the definition of transfer, the agreement of sale and the possession in part performance thereafter must be in accordance with Section 53-A of the Transfer of Property Act. Section 2 Sub-clause (47)(v) of Income Tax Act reads as follows:

(47) "transfer", in relation to a capital asset, includes,-(i) the sale, exchange or relinquishment of the asset; or (ii) the extinguishment of any rights therein ; or (iii) the compulsory acquisition thereof under any law ; or (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or (iva) the maturity or redemption of a zero coupon bond; or (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or 31. In other words, therefore, even under the Income Tax Act such agreement with possession is treated as transfer for the purpose of Income Tax provided Section 53-A of the Transfer of Property Act is be satisfied. When one looks at Section 53-A of the Transfer of Property Act it provides as follows:

53A. Part performance - Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

32. It would be evident that for applying the said provision the agreement must be in writing. Since the present case is admittedly based on oral agreement neither Section 48 of the Registration Act nor Section 53-A of the Transfer of Property Act comes to the rescue of 4th Respondent. The learned Counsel for the 4th Respondent has cited decision of the Supreme Court in *Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others*, to contend that Respondent - Defendant No. 4 can protect her possession. However, in view of the discussion as above, since 53-A of the Transfer of Property is also not available to the 4th Defendant. The said citation is of no assistance to her.

33. Further competing the rights of an agreement holder with possession of an immovable property and a purchaser under a registered agreement of the very same immovable property is very elaborately dealt with by Hon'ble Justice Subba Rao (as his Lordship then was) sitting in the *Marina Appa Rao and Others Vs. Marina Veeranna*, The legal position in respect of such competing claims is very precisely put by his Lordships as follows:

An agreement to sell immovable property does not create any interest in the said property unless a sale deed is executed conveying the said property. The vendor, who has not transferred his interest in the property, though he entered into an agreement with another to sell the same, can certainly confer title on a third party by executing a sale deed in his favour. As between the vendor and the subsequent purchaser, there can be little doubt that there is a transfer of ownership and, therefore, the title to the property vests in the latter. But the title of the subsequent purchaser with notice of the prior agreement in favour of another is subject to the obligation under Sections 91, Trusts Act. He holds the property for the benefit of the latter to the extent necessary to give effect to the contract. The person in whose favour there was a prior agreement can

specifically enforce his agreement under Sections 27(2) (Section 27(b)?), Specific Relief Act, and compel him to execute a sale deed in his favour. But till such a sale deed is executed by the subsequent purchaser, the person in whose favour there was a prior agreement cannot acquire any, title to the same. If the contract for the purchase of immovable property with the original owner does not create any interest in him, the subsequent sale by the owner to a third person cannot confer a better title on him. He can only acquire title to the property by getting a, conveyance from the subsequent purchaser. That is the reason why though at one time Courts were directing only the original owner to execute a conveyance in favour of the Plaintiff, they are now adopting the procedure, consistent with principle and the legal title of the parties, directing the subsequent purchaser also to execute the sale deed in favour of the Plaintiff. I must, therefore, hold that the execution of a sale deed by the original owner without the subsequent purchaser joining the same will not confer any title on the person in whose favour there was a prior agreement to sell.

34. In view of the aforesaid legal position, therefore, the cross-objections filed by the 4th Defendant are devoid of any merits and liable to be rejected as the substantial questions of law as raised by the cross-objector, are answered against the cross-objector.

35. So far as the substantial question of law arising in the Second Appeal is concerned I am of the view that the same should be answered in favour of the Appellant reasons, therefore, are as follows:

The factual and legal aspects are already discussed in paras above.

The Appellant's title under Ex.A-7 registered sale deed and the title deed of his vendor Smt. Sampurnasarada was upheld by both the Courts. Even the lower appellate Court granted relief of declaration in favour of Appellant. The only difference between the trial Court and the appellate Court was that the trial Court was of the view that the Appellant/Plaintiff is not a bonafide purchaser as he has notice of the claim of Defendant No. 4. The appellate Court has accepted the title of the Appellant/Plaintiff by rejecting the claim of Defendant No. 4.

The appellate Court however, did not grant relief of recovery of possession to the Appellant only on the ground that such a relief could be claimed only from the tenancy Court. The appellate Court while considering the said aspect on point No. 4 in paragraph No. 16 of its judgment got swayed the Plaintiffs vendor filing tenancy application A.T.P. No. 194 of 1379 F. under Ex.A-18 against the first Respondent. It is the matter of record and as has been noticed above, the Plaintiff herein impleaded himself in the said application and later withdrew the said application, as the Defendants 1 to 3 disowned any possession as tenants.

38. In the written statements filed in this suit by first Defendant he has categorically stated that he is not the tenant of the Plaintiff and claimed tenancy under Defendant No. 4. Defendants 2 and 3 claimed that they are not in possession at all and it is only Defendant No. 4 who is in possession. Defendant

No. 4 in her written statement has set up an independent claim as an agreement holder in possession. Thus, none of the Defendants claimed any rights in the suit schedule property as tenants. Thus, there is no subsisting relationship of landlord and tenant between the Plaintiff and Defendants. The jurisdiction of the tenancy Court was clearly not available and Civil Court alone has jurisdiction. The decree of possession sought for by the Plaintiff in the present suit was, therefore, clearly sustainable and the appellate Court committed error in disallowing the said relief especially while granting the relief of declaration of ownership in favour of the Appellant/Plaintiff. The Second Appeal, therefore, deserves to be allowed.

39. Accordingly, the Second Appeal is allowed and as stated above and cross-objections are dismissed. However, both the parties shall bear their own costs.