

(2014) 03 AP CK 0019
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 854 of 1998

Dakarapu Lakshmana Swamy	Vs	APPELLANT
Maddula Narasimha Rao and Others		RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 22 Rule 10, Order 41 Rule 22, Order 41 Rule 24, Order 41 Rule 33
Evidence Act, 1872 — Section 17 3
Limitation Act, 1963 — Section 27
Transfer of Property Act, 1882 — Section 53-A 58

Citation : (2014) 5 ALD 577

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : A. Ramalingeshwara Rao, for the Appellant; Y.V. Ravi Prasad, for the Respondent

Final Decision : Allowed

Judgement

B. Siva Sankara Rao, J.—This appeal is filed by the 1st defendant in O.S. No. 138 of 1988 on the file of the Principal Senior Civil Judge, Eluru, having been aggrieved by the judgment and decree dated 02.03.1998 in said suit filed by the respondent Nos. 1 to 3 herein as plaintiff Nos. 1 to 3 against him and their father Maddula Gangaraju-2nd defendant to the suit who is no other than 4th respondent to the appeal since died pending appeal and his other legal heirs (besides R. 1 to R. 3 (plaintiffs) on record not claimed so) brought on record as R. 5 to R. 9 of the appeal by order dated 23.07.2012 in A.S.M.P. No. 2400 of 2006.

1(a). In fact, as per the decision in Kotha Seshamma (died) and Others Vs. Pittala Venkayya and Others after born sons also got right by birth in the joint family property, even to challenge the alienation made by father or other manager as improper to seek for setting aside. Here, the claim of plaintiffs (the benefit of which the respondents 5 to 8 also entitled) is in the joint family

property to question the alienation made by their father-2nd defendant under Ex. B. 2 to 1st defendant after Ex. A. 1 relinquishment deed and as such there is a conflict of interest between them and 2nd defendant, to say they cannot be legal representatives of 2nd defendant, but for necessary parties to the appeal along with plaintiffs (respondents 1 to 3) to have benefit of suit and it is only the 1st defendant, that is assignee under Order 22 Rule 10 of CPC of the rights 2nd defendant under Ex. B. 2 sale agreement. The suit filed by the three plaintiffs dated 11.01.1987 was for possession of plaint A-schedule property of the Ac. 5-35 cents with past and future profits against the two defendants by claiming they got only plaint B-schedule movables exempt from consideration of means as indigent persons pursuant to the permission accorded by order of the trial Court in pauper O.P. No. 66 of 1987.

Before coming to the grounds of appeal attacking legality and correctness of said decree and judgment allowing the suit claim by the trial Court and what are the points that required for determination on being formulated from rival contentions in this first appeal and its scope, for better appreciation, the factual matrix of the case before trial Court is the following:-

1(b). The case of the plaintiffs is that 2nd defendant is the father of plaintiff Nos. 1 to 3 and the plaint-A schedule property, an extent of Ac. 5-25 cents (Item No. I to the extent of Ac. 2.50 cents and Item No. II to the extent of Ac. 2.75 cents in R.S. No. 243) of I.S. Raghavapuram village, Dwarakatirumala Mandal, West Godavari District was the joint family property of the plaintiffs and their father i.e. the 2nd defendant, that 2nd defendant executed a relinquishment deed on 12.10.1969 (Ex. A. 1) in respect of his undivided share in said joint family property in favour of the plaintiffs during their minority showing their mother (wife of 2nd defendant) as guardian of them, that thereafter, the 2nd defendant without any right contracted to transfer the plaint-A schedule property to the 1st defendant on 28.02.1975 (Ex. B. 2), that as they were not having sufficient funds to cultivate the plaint-A schedule property, they left I.S. Raghavapuram for Janagareddigudem in the year, 1975 and in their absence 1st defendant encroached the plaint-A schedule property and in spite of legal notice failed to deliver the same and hence the suit claim.

1(c). The 2nd defendant having been served, remained ex parte without any contest the suit claim.

1(d). The case of 1st defendant-appellant is that the relinquishment deed-Ex. A. 1 is a sham and nominal document and never acted upon, that 2nd defendant, for the benefit of his joint family, agreed to sell the plaint-A schedule property to him and in pursuance of the contract for sale executed by the 2nd defendant, he came into possession, that the plaintiffs are not entitled to evict him as he is protected by Section 53-A of the Transfer of Property Act, 1882, that otherwise he perfected his title over the plaint-A schedule property by adverse possession against the plaintiffs and hence to dismiss the suit claim.(Needless to say said contest of 1st defendant is in one way saying his possession is pursuant to the

agreement executed and delivered possession by 2nd defendant-father of plaintiffs for the benefit of the joint family and entitled to protection of Sec. 53-A of the T.P. Act and otherwise perfected title by adverse possession, to say both are not consistent for one alternate to other).

1(e). From the pleadings, the trial Court framed the following issues:-

- 1) Whether the plaintiffs are entitled to the relief of possession of plaint-A schedule property?
- 2) Whether the 1st defendant is in possession and enjoyment of the plaint-A schedule property as an lawful owner there of since 28.02.1975?
- 3) Whether the suit is barred by time?
- 4) Whether the plaintiffs are entitled to profits and if so at what rate?
- 5) To what relief are the plaintiffs entitled?

1(f). On above pleadings in deciding the issues, on behalf of the plaintiffs, P.Ws. 1 to 6 were examined and also placed reliance upon Exs. A. 1 to A. 4 viz., Ex. A. 1 registered relinquishment deed, dated 12.10.1969 executed by 1st defendant-Maddula Gangaraju in favour of his three sons who are the plaintiffs (minors by then showing his wife as their mother guardian); Ex. A. 2 registration extract of partition deed, dated 29.07.1955 in between Maddula Narasimham and his sons i.e. the 2nd defendant, his brother and father; Ex. A. 3 Office copy of notice, dated 07.01.1987 issued by plaintiffs to 1st defendant and Ex. A. 4 Postal acknowledgment, dated 19.01.1987 of 1st defendant. On behalf of 1st defendant, D.Ws. 1 to 7 were examined and relied upon Exs. B. 1 to B. 49 viz., Ex. B. 1 registered extract of simple mortgage deed, dated 31.05.1971 executed by 2nd defendant and plaintiffs in favour of Eluru Cooperative Land Mortgage Bank; Ex. B. 2 Stamped sale agreement, dated 28.02.1975 executed by 2nd defendant as his own property in favour of 1st defendant-Dakarapu Lakshmanaswamy for the plaint A-schedule property, Exs. B. 3 to B. 8 endorsements on the Ex. B. 2 sale agreement; Exs. B. 9 to B. 27 are receipts issued by Land Mortgage Bank, Exs. B. 28 to B. 32 land revenue receipts, Ex. B. 33 proforma for pattadar passbook, Ex. B. 34 registration extract of the mortgage deed, dated 19.11.1968 executed by 2nd defendant and the plaintiffs, Ex. B. 35 registration extract of sale deed, dated 10.10.1969 executed by 2nd defendant and the plaintiffs, Ex. B. 36 registration extract of mortgage deed, dated 31.01.1971 executed by 2nd defendant and plaintiffs, Ex. B. 37 registration extract of sale deed executed by 2nd defendant and plaintiffs dated 26.05.1982, Ex. B. 38 registration extract of sale deed, dated 26.05.1982 executed by Smt. Maddula Savithramma, Ex. B. 39 receipt, dated 08.12.1980 issued by APSEB for S.C. No. 26 of I.S. Raghavapuram, Ex. B. 40 reconnection order issued by AAO (Electricity Revenue) Eluru for S.C. No. 26 of I.S. Raghavapuram, Ex. B. 41 is certified copy of 10(1) Account, Ex. B. 42 certified copy of adangal issued by Mandal Revenue Officer, D. Thirumal, Ex. B. 43

certified copy of No. 2 Adangal for R.S. No. 252/3 for patta No. 437, Ex. B. 44 Pattadar passbook, Ex. B. 45 land revenue receipt and Ex. B. 46 to B. 49 are certified copies of 10(1) account.

1(g). From said pleadings and evidence placed on record by both sides and after hearing in deciding suit claim, the trial Court held that execution of Ex. A. 1 is not disputed by 1st defendant in his pleadings, P.W. 1 also denied the suggestion of Ex. A. 1 brought into existence to avoid debts, what P.W. 2(mother of plaintiffs) deposed of her father insisted 2nd defendant as he was wasting the income to execute relinquishment deed by payment of Rs. 500/- is not safe to rely and even P.W. 3 and P.W. 5 attestors of Ex. A. 1 deposed of no need to execute the Ex. A. 1 document for 2nd defendant in favour of plaintiffs but for 2nd defendant wanted to transfer in name of plaintiffs to get good income over the lands and P.W. 5 deposed that he cannot say even nature of the document and 2nd defendant is not a spendthrift but intelligent, that from 1st defendant failed to attack the genuineness of Ex. A. 1 relinquishment deed in his evidence though mentioned in pleadings, that contention of 1st defendant that the Ex. A. 1 is sham and nominal document is not accepted, and no decided case is placed by either side on the question on sham and nominal nature of the Ex. A. 1. It is also observed that plaintiffs contend that 1st defendant cannot question Ex. A. 1 as sham and nominal being not a creditor of 2nd defendant. The decision in Thanubuddi Venkatappa Reddi and Another Vs. Gopavarapu Brahmayya and Others, and Rangabati Vs. United Bank of India Ltd. and Another, relied by 1st defendant is not on facts of agreement holder to contend the relinquishment executed by vendor is a sham and nominal document to consider and even the other decision relied upon of Nagubai Ammal and Others Vs. B. Shama Rao and Others, is on facts of husband executed gift to wife without intention to pass title to act upon in holding as sham transaction and that has no application to the facts. It is observed that it cannot be said that 2nd defendant contracted to transfer the plaint-A schedule property to 1st defendant for the benefit of joint family, that plaintiffs are the owners of plaint-A schedule property and they are entitled to evict the 1st defendant, that 1st defendant is in wrongful possession over the property and is liable to pay past and future mesne profits.

2. It is said findings of the trial Court impugned in the appeal filed by 1st defendant on as many as 15 grounds with the sum and substance that, the trial Court's judgment and decree are contrary to law and weight of evidence, that 1st defendant is in possession of the property under an agreement of sale and entitled to protection u/s 53-A of Transfer of Property Act, that trial Court ought to have seen that plaintiffs have no title to claim recovery of possession from 1st defendant, that and the suit is a collusive one at the instance of the father, between father and sons (2nd defendant and plaintiffs), that trial Court failed to appreciate the evidence on Ex. A. 1 is a sham and nominal document and also failed to see that 2nd defendant dealt with the property as that of his own even after execution of Ex. A. 1 document, that the trial Court should have gone into genuineness of Ex. A. 1 and failed to appreciate the proposition laid down in

Thanubuddi Venkatappareddi and Rangabadi (supra), and thereby sought for setting aside the decree and judgment of trial Court dismissing the plaintiffs' suit claim. In the Course of hearing the learned counsel for the appellants reiterated said contentions raised in the grounds of appeal attacking the correctness of trial Court's decree and judgment in seeking to set aside the same.

2(a). On the other hand the learned counsel for the plaintiffs-respondent Nos. 1 to 3 of the appeal contended that the decree and judgment of the trial Court is a well considered and reasoned outcome on merits and for this Court while sitting in appeal there is nothing to interfere against any of said findings of the trial Court in decreeing the suit claim and hence to dismiss the appeal with costs.

2(b). The 2nd defendant to the suit as 4th respondent to the appeal in his lifetime (having remained ex parte in the suit also) did not choose to contest the appeal, so also after him by the respondent Nos. 5 to 9 of the appeal being his wife and other children by any separate contest. They are not legal representatives to represent 2nd defendant against the plaintiffs being mother, brothers and sisters of plaintiffs; from conflict of interest in their sailing with plaintiffs to their entitlement to the benefit of the suit, but for 1st defendant being the assignee from 2nd defendant under Ex. B. 2 sale agreement with possession, as discussed in 1st para of this appeal.

3. From the rival contentions, the points that arise for consideration to decide the lis are formulated as follows:-

1. Whether Ex. A. 1 relinquishment deed, dt. 12.10.1969 for the joint family property covered by plaint A-schedule executed by 2nd defendant in favour of the plaintiffs was a sham or a nominal one and the 2nd defendant not lost any of his undivided joint rights and possession as father manager thereon and if so the plaintiffs when not parties to the Ex. B. 2 contract for sale dated 28.02.1975 executed by 2nd defendant in favour of 1st defendant and delivered possession, how far bound by the same?

2. If Ex. A. 1 dated 12.10.1969 is true and valid, with no right or possession over the plaint schedule property thereafter for 2nd defendant much less as father manager of plaintiffs with effect therefrom; what right 2nd defendant got to execute the Ex. B. 2 contract for sale dated 28.02.1975 and deliver possession in favour of the 1st defendant as of his own and how far the Ex. B. 2 contract for sale bind the plaintiffs who were not parties to the same?

3. The 1st defendant who is in possession of the plaint-A schedule property as its vendee in claiming through 2nd defendant, whether can claim protection u/s 53-A of Transfer of Property Act and if so, with what consequences in view of suit for specific performance is admittedly pending for adjudication on the subject lis?

4. If not and otherwise whether 1st defendant got adverse possession, else what right the 1st defendant got to oppose the suit claim by virtue of the Ex. B. 2 non-possessory sale agreement dated 28.02.1975 executed and delivered possession

thereunder by 2nd defendant over the plaint A-schedule property as of his own even after Ex. A. 1 relinquishment deed dated 12.10.1969 by 2nd defendant in favour of the plaintiffs?

5. Whether the judgment and decree of trial Court is liable to be set aside and if so to what extent and with what findings?

6. To what result?

4. As the points 1 to 5 are inter-related and mainly revolving around Ex. A. 1 and B. 2 and from the conflict of interest pleaded by plaintiffs against the 2nd defendant for the 1st defendant sailing under 2nd defendant, for sake of convenience and to avoid repetition of facts, the same are taken up together to decide the lis.

Points-1 to 5:

5. Before coming to the factual matrix, the settled proposition of law including from decisions cited by both sides are that:

5(a). Judging is not merely a job, but a way of life based a spiritual wealth that includes by obligation of an impartial search for truth;

5(b). Trial is a voyage in which trust is the quest. Truth alone triumphs, not falsehood. Through truth, the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of truth resides.

5(c). Even in case of conflict between stability and truth, truth also preferable as truth also preferable as truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation and justice. The entire judicial system has been created only to discover and found out the real truth. Thus, it is the bounden duty of Judges in the journey of trial/enquiry to discover truth. Vide the Full Bench decision in Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., .

5(d). It is also important to recollect as part of application of evidence with reference to the pleadings as part of discovering truth, the well laid down expression of the Full Bench of the apex Court in Mst. Rukhmabai Vs. Lala Laxminarayan and Others, at para-19 by relying upon the Privy council's expression AIR 1936 264 (Privy Council) that, it sometimes happens that persons make statements which serve their purpose or proceed upon ignorance of the true position; and there it is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue.

5(e). Even the decision relied upon by plaintiffs of Provident Investment Co. Ltd. Vs. Commissioner of Income Tax, Bombay City, at para-3 speaks that Court is not confined merely to looking to the form of the transaction between the parties (in giving that to the legal rights and obligations thereunder), but the true legal position that arises out of the document (by ignoring the form to ascertain real

nature) in which the transaction was embodied and for that the Court may even look at the surrounding circumstances in construing the document. At para-8 it was also held that, a relinquishment means the extinction of a right, thereby there is nothing left to transfer or sell. It is not in dispute, that relinquishment is only giving up the joint right and not by creating any right by transfer to stranger. In fact, the Ex. A. 1 relinquishment deed execution is not in dispute, but for it is genuine or fraudulent and for that purpose being a sham and nominal one not intended to act upon, as contended by 1st defendant in claiming rights through the executant 2nd defendant.

5(f). It is also the well settled principle of law that to be kept in mind that, a plaintiff can at best take alternative pleas, but not any inconsistent pleas and even any pleas taken inconsistent to one another, he got the doctrine of election of one of the pleas thereby the other inconsistent plea being taken waived, for not entitled to approbate and reprobate. However, so far as defendant concerned, he can take any number of pleas to non-suit the plaintiff any in that course one plea may be inconsistent to the other, however, where he makes a counter claim, he is at par with plaintiff so far as the counter claim concerned, vide decision Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., .

5(g). Coming to the doctrine of election, it is well laid down in Karam Kapahi and Others Vs. Lal Chand Public Charitable Trust and Another, in dealing with relevancy and importance of pleadings and binding nature on facts admitted need not be proved u/s 58 read with Sec. 17 of the Indian Evidence Act and order XII Rule 6 CPC and inconsistent and alternative pleas and doctrine of election.

5(h). He, who accepts a benefit under a deed or will or other instrument, must adopt the whole contents of the instrument, must confirm to all its provisions and renounce all rights that are inconsistent with it. Election is obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternate rights or claims in cases where there is a clear intention of the person from whom he derives the one, that he should not enjoy both. Every case of election therefore, presupposes plurality of rights, with an intention of the party who has a right to control one or both, that one is substitute for others. The party who is to take has a choice, but he cannot enjoy the benefit of both as laid down in Streatfield Vs. Streat field and explained by the three judge Bench in Nagubai Ammal and Others Vs. B. Shama Rao and Others, that the doctrine of election is not however confined to instruments. A person cannot say at a time that a transaction is valid and thereby obtained some advantage, to which he could only be entitled on the footing that it is valid and then turned round and say it is void for the purpose of securing some other advantage, to approbate and reprobate the transaction.

5(i). In Halsbury's laws of England Vol. 13, page: 454 para 572, the principle has been described as species of estoppels. The said principle is also been accepted in C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others, .

6. Thus, if the plaintiffs from their specific case against the defendants say by relying upon Ex. A. 1 relinquishment deed, for possession saying 2nd defendant as per Ex. A. 1 lost right and possession with no right to alienate under Ex. B. 2 sale agreement in favour of 1st defendant and putting him in possession in seeking as trespassers liable for ejectment and for past and future profits on the property against 1st defendant who claims through 2nd defendant (their father), that possession after date of Ex. B. 2 sale agreement is thus adverse to the plaintiffs represented by their mother as guardian in Ex. A. 1 deed.

7. The 1st defendant-vendee from 2nd defendant under the Ex. B. 2 agreement as part of resisting plaintiffs suit claim set up adverse possession also and to that effect placed reliance upon two decisions viz., 1) Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, therein it was held that before a right could be said to be acquired or lost by adverse possession, it must have been the subject of possession by a man without title as against the person with right and title. True, there can be an adverse possession of a limited right like that of a mortgagee or a lessee or even a permanent tenant, but still a right must have been enjoyed by the possessor adversely to the claim of the true owner. (2) In Abdul Kareem and Another Vs. Zuleika Bi and Others, (referring to AIR 1918 Cal. 786) that where a gift is made by a father to his infant son, no change of possession is necessary, the principle is that the declaration of gift is deemed to change the possession by the father on his own account into possession as a guardian on his son's account) at para-21 held that or a Mohammedan executed gift in favour of minor granddaughter by constituted as guardian of minor and delivered possession representing by him even from then neither he nor his heirs got any right to the property gifted as that possession constitutes adverse to donor.

8. Thus, it cannot be said that 1st defendant pursuant to the Ex. B. 2 agreement cannot set up adverse possession (besides protection of part performance available or not u/s 53-A of the T.P. Act) by relying upon the decision in Mohan Lal (Deceased) through his Lrs. Kachru and Others Vs. Mirza Abdul Gaffar and Another, as what 1st defendant contests is contract for sale executed by 2nd defendant as his own property and not even on behalf of plaintiffs, but for 2nd defendant being father of the plaintiffs, thereby the alienation binds the joint family and thus they cannot invoke the principle in the decisions, for a defendant is entitled to alternative prayers even one is inconsistent to the other in resisting the plaintiffs' suit claim.

9. There is no doubt no dispute on the principle laid down in the decision and also referring to the other decision relied by the plaintiffs of Karnataka Board of Wakfs Vs. Government of India (2004) 10 SCC 639 that adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the 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. Physical act of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors, which 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 possession, c) whether the factum of possession was known to the other party, d) how long his possession is 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 the true owner, thus it is for him to clearly plead and establish all facts necessary for adverse possession. It was also held that a plaintiff filing title suit, should be very clear about the origin of title over the property for that plaintiffs relied upon S.M. Karim Vs. Mst. Bibi Sakina, Parsinni (Dead) by Lrs. and Others Vs. Sukhi and Others, D.N. Venkatarayappa and another Vs. State of Karnataka and others, Dr. Mahesh Chand Sharma Vs. Smt. Raj Kumar Sharma and others, P. Periasami (Dead) by Lrs. Vs. P. Periathambi and Others, .

10. The other decision plaintiffs relied upon is Tricon Partners and Another Vs. Smt. Mandala Neeraja @ Fatima Nishat and Others, holding that to set up ouster among coparceners as purchaser from one of coparceners as own, their possession should be for 12 years continuous and they cannot count the possession of vendor as their possession. This decision has no application unless the plaintiffs say, irrespective of it is proved or not by the defendants of the relinquishment is sham and nominal and 2nd defendant and plaintiffs continued as coparceners even after Ex. A. 1, that is not at all their case. So also the decision of Modadugu Venkata Subbamma and Another Vs. Kanamarlapudi Rattaiah and Others, that the alienation of joint benefit of estate to bind other coparceners; so also the decisions of Vadla Krishnaiah and Another Vs. Nalli Narasimhareddy, and Manikyala Rao AIR 1956 SC 470 holding (by referring to Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh and Others, and also K. Peramanayakam Pillai Vs. S.T. Sivaraman and Another, and Yenugu Achayya and Another Vs. Ernaki Venkata Subba Rao and Others that the purchaser of undivided share of coparceners cannot acquire any interest in specific item of properties and claim to be put in possession that any definite piece of the family property, but for acquires on equity to step into the aileron's shoes and work out his rights by partition as the tenant in common, he cannot even in joint possession with other coparceners and thereby cannot even claim protection u/s 53-A of the T.P. Act. This decision also as stated supra for not the case of plaintiffs has no application for them to rely.

11. Coming to the appreciation of evidence oral and documentary and the powers and limitations of the appellate court:

11(a). As per Banarsi and Others Vs. Ram Phal, and Pannalal Vs. State Bombay and Others, (5 judges bench), the 1st appellate Court must re-appreciate

(appreciate afresh) the entire evidence in giving its findings supported by reasons as to decide the lis and therefrom to find how far the decision of the trial court on any of its findings and conclusions are correct or incorrect, including for confirmation or reversal of said findings of the trial Court and the appellate Court for that is conferred with powers of width amplitude under Order XLI Rule 22, 24 and 33 so as to do complete justice between the parties and such power is unfettered to make whatever order it thinks fit, even between co-respondents, for ordinarily cross-objections between co-respondents they do not prefer. It is also as per Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., and Madanlal (Dead) by Lrs. and Others Vs. Yoga Bai (Dead) by Lrs., and Harihar Prasad Singh and Others Vs. Balmiki Prasad Singh and Others, , that in Civil appeals, particularly in first appeal, the appreciation of evidence is at large like appreciation of evidence in a suit, more particularly from Order XLI, Rule 33 and 24 C.P.C. No doubt, the burden of showing that the judgment or even a finding therein under a challenge in appeal is wrong or incorrect either wholly or in part lies on the appellant and same is also the proposition in the course of the cross-objections as the cross-objectors are at par with appellants so far as their contentions in the cross-objections concerned, in the course of the cross-objections in shifting the burden on them, from hearing the main appeal. Coming to the powers of the 1st appellate Court in this regard concerned, more particularly from Order XLI, Rule 33 and 24 C.P.C. and from several expressions of the Apex Court including Koksingh Vs. Smt. Deokabai, ; Giasi Ram and Others Vs. Ramjilal and Others, and Madan Lal (supra), that the 1st appellate court is competent to grant relief if finds appropriate on any facts though that was not granted by the trial Court in rendering complete justice and prevent to the extent possible scope for further litigation and to give finality to the lis. It is in spite of non-filing of appeal or cross-objections with any specific plea, for granting such relief it is within the power of the appellate Court, subject to the rider that it cannot grant more relief than what was granted by the trial Court for want of cross-objections Ranjana Prakash and Others Vs. Divisional Manager and Another, and Banarsi (supra). It is needless to say the 1st appellate Court desires to reverse the judgment and decree of lower Court; it should discuss the findings and set aside those which are unsustainable either on fact or on law.

11(b). It is also the well-settled proposition of law from S.B. Noronal V. Prem Kundi AIR 1989 SC 193 that, pleadings are not statutes and legalism is not verbatim. Common sense should not be kept in cold storage, when pleadings are construed. In Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, referring to the constitution Bench expression in Bhagwati Prasad Vs. Shri Chandramaul, and Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, that the pleadings should receive a liberal and not pedantic approach as meant to ascertain the substance and not form, it only requires the opposite party to know. Though generally no plea, no evidence can be looked into and for no issue no finding can be given; it is not always the static principle from the fact that even a plea not

made specifically from deficiency in pleadings, but if covered by implication and evidence let in and parties know the case, it can be looked into and even to give finding no issue framed is of no bar to formulate a point and decide. Burden of proof in such matters, pales significance as what is necessary is party shall aware of the plea and let in evidence for the Court to give finding from the hearing covering the lis but not outside the scope. It was also held therein that even alternative remedy not pleaded if entitled, Court can grant it where it is appropriate to do so.

11(c). In *Bala Shankar Maha Shankar Bhattjee and others Vs. Charity Commissioner, Gujarat State*, it was held that, burden of proof pales significance when both parties adduced evidence and it is the duty of the court to appreciate the entire evidence adduced by both sides in deciding the lis. Further the party proved in possession of best evidence is bound to produce the same to throw light on the lis and to unfold any truth and thereby cannot take shelter on the abstract doctrine of burden of proof saying burden not on him to prove by filing the same, as laid down in *National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others*, and in *Lakhan Sao (Deceased) through Legal Heirs Vs. Dharamu Chaudhary*, .

11(d). It was also laid down regarding appreciation of evidence in some of the expressions vividly that, appreciation of evidence is no doubt from experience and knowledge of human affairs depending upon facts and circumstances of each case and regard had to the credibility of the witness, probative value of the documents, lapse of time if any in proof of the events and occurrence for drawing inferences, from consistency to the material on record to draw wherever required necessary inferences and conclusions from the broad probabilities and preponderance and from the over all view of entire case to judge as to any fact is proved or not proved or disproved. Coming to the proof of facts out of the facts in issue to the extent of relevant facts concerned, in some of the above expressions it also discussed what is meant by proved, not proved or disproved with reference to Section 3 of the Evidence Act. In *Naval Kishore Somani Vs. Poonam Somani*, , also the scope as to what is the difference between proved, not proved and disproved was discussed.

11(e). In *RVEE Gounder Vs., RVS Temple* 2003 (8) ST 194 at 196 case at paras 25 and 26, the Apex Court discussed that, in civil cases the proof is by preponderance of probabilities for including in suits relating to ejectment or declaration of title or for possession; and the onus shifts from initial burden on the plaintiffs if able to establish from preponderance of probabilities for entitlement, on the defendant to rebut the same including with specific claim on their part if any. It is in explaining the earlier propositions of law that, in a suit for ejectment, plaintiff shall win or lose his case only on his own strength principle, since it does not mean the onus of proof is static and always on the plaintiff or it shall never shifts on the defendant even if the plaintiff is able to establish his case from preponderance of the probability as to what is meant by

proved, not proved or disproved required for the above expressions with reference to Section 3 of Evidence Act without going into the other components of "may presume, shall presume and conclusive proof", from the very definition, proved and disproved to say not proved is when it is neither proved nor disproved. It requires considering the matters before the Court on any fact for either believes it to exist or does not exist (which is by direct evidence), or considers its existence so probable that a prudent man ought, under the circumstance of a particular case to act upon supposition that it exists or it does not exist (which is by circumstantial evidence). At para-25 of the judgment, the Apex Court clearly held that in a suit for ejectment once plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant, it is for the defendant to discharge his onus and in the absence thereof, the burden of proof lies on the plaintiff shall be held to have been discharged so as to prove the plaintiff's title.

11(f). Coming to the law on interpretation of deeds and documents in (i). Narendra Gopal Vidyarthi Vs. Rajat Vidyarthi, it was held that, in appreciating the documents of unilateral dispositions and testamentary dispositions (wills), the true intention of the testator (executant) has to be gathered, not by attaching importance to isolated expressions but by reading the document as a whole. The intention of the testator must be ascertained not only from the words used but also from surrounding circumstances. The court will put itself in the armchair of the executant/testator. (ii). In V.S. Talwar Vs. Prem Chandra Sharma, it was held that in construing instruments court must have regard not only to the presumed intention of the parties but also to the meaning of the words which they have used. (iii). In Hind Plastics and Another Vs. Collector of Customs, Bombay and Another, it was held that, every instrument has to be so interpreted as to accord with the intention of its maker having regard to the language used. Though one cannot ignore actual words used and go after the supposed intention of maker, since that would amount to entering the arena of speculation, but all the same said principle is unexceptionable.

12. From the above principles of law laid down in the expressions, coming to the decision on the facts in dispute covered by the points 1 to 5 for consideration, the fact that 2nd defendant Maddula Gangaraju is son of Narasimham garu @ Narasimha Rao through second wife after death of first wife and the other children of said Narasimham through his third wife are Sitharamakrishna, Sathyanarayana Murthy and Padmavathy and they constitute joint family not in dispute and that is also borne by contents of the Ex. A. 2 registration extract of the partition deed, dated 29.07.1955 filed and placed reliance by the plaintiffs. As per the partition deed, dated 29.07.1955, M. Gangaraju-2nd defendant was given B-schedule property viz., northern half of the thatched house with 300 sq. yards of vacant site towards north-east of it described as Item-I of I.S. Raghavapuram; In Item-II, vacant site, 1/3 joint right known as hayrick site of I.S. Raghavapuram; Item-III in Sy. No. 43/1, 43/2 and 43/3 out of common extent "z", wet land of I.S. Raghavapuram in an extent of Ac. 0.70 cents; Item

No. 4 I.S. Raghavapuram "z", dry, Sy. No. 202, northern Ac. 1-13 cents; Item No. 5 I.S. Raghavapuram "z", wet, Sy. No. 44/1 south-western side Ac. 0.26 cents; Item No. 6 I.S. Raghavapuram "z", dry, Sy. No. 243, Ac. 3-5-cents: Item No. 7 I.S. Raghavapuram, to the north of above item No. 6 in a same survey number land of Ac. 2-75 cents; Item No. 8, I.S. Raghavapuram "z", dry, Ac. 0-60 cents, Sy. No. 137: Item No. 9, I.S. Raghavapuram, Ac. 1-00 out of Ac. 3-00 cents known as Ranganayakulucheruvu, "z", dry; item No. 10 Lakkavaram village, dry, the house and site of Ac. 1-65 sq. yards 1/3rd joint rights subject to life estate rights of Maddula Veeramma in the thatched house and site of Ac. 1-701/2 sq. yards therein of undivided half joint rights. Thus, the plaint A-schedule property of Sy. No. 243, Items 1 and 2 are part of Ex. A. 2 registered partition deed B-schedule property Items 6 and 7 which are in I.S. Raghavapuram "z" dry, Sy. No. 243 to say the plaint-A schedule property is part of joint family and coparcenary property of 2nd defendant and his undivided sons-the plaintiffs 1 to 3 including those among respondents 5 to 8 and 2nd defendant was the family-manager. In the plaint filed by the plaintiffs 1 to 3 as indigent persons is dated 11.01.1987 the age of the 1st plaintiff shown as 28 years major, 2nd plaintiff shown as 26 years major and 3rd plaintiff was shown only 17 years by referring his mother Savithramma as next friend and it was subsequently as per the orders in I.A. No. 522 of 1992 dated 05.02.1996, 3rd plaintiff is declared as major since attained majority within one year after said pauper suit filed on 11.01.1987.

13. Before the pauper suit filed on 11.01.1987, the plaintiffs issued legal notice covered by Ex. A. 3 dated 07.01.1987 to the 1st defendant D. Lakshmana Swamy through advocate and that was served on him only on 19.01.1987 as per Ex. A. 4 acknowledgment. It is to say that by the date of service of legal notice, already the pauper suit was filed on 11.01.1987. It is even otherwise to say within no time and opportunity to give reply the suit was filed. The non-giving for no opportunity to give reply cannot be to the advantage of plaintiffs against the 1st defendant from the above. The Ex. A. 3 legal notice of the plaintiffs to the 1st defendant reads that the plaint schedule property is the joint family property of the plaintiffs and their father Gangaraju (2nd defendant), that said Gangaraju was a man of wayward habits and addicted to vices, saying managing joint family properties of his volition, that he executed registered relinquishment deed, dated 12.10.1969 in favour of his sons-plaintiffs 1 to 3 relinquishing his undivided interest in the joint family property and thereby the plaintiffs are absolute owners of all the joint family properties therefrom with no right to deal with the properties by their father M. Gangaraju after said relinquishment deed. It speaks very closely their mind that, from dated 12.10.1969, their father has no right over the property covered by said relinquishment deed. The notice further reads that the plaintiffs were neglected by their father M. Gangaraju and they shifted in 1975 to Jangareddigudem village for earning livelihood that there the plaintiffs 1 and 2 were carrying on business by running small killy shops for no necessary capital to do cultivation by left the lands fallow that taking

advantage of their absence in the village, the 1st defendant D. Lakshmana Swamy trespassed into the schedule property some time later and when the plaintiffs intended to sell away the land for their business at Jangareddigudem, visited I.S. Raghavapuram on 03.01.1987 date corrected from typed date of "8" with pen as "3" and they came to know that the 1st defendant D. Lakshmana Swamy is squandering on the lands and realizing income therefrom, thus he is a trespasser with no right to be in possession of their absolute property and realizing paddy at the rate of 20 bags per acre on the 4 1/2 acres and the other Ac. 1-00 cents by raising chillies, hence to vacate and deliver vacant possession and to pay past profits, else to file suit. They did not mention in the Ex. A. 3 notice what are the circumstances under which their father relinquished his undivided rights in the joint family properties, they did not mention even if they got any strained relation with their father, they did not even mention their father cause entered said D. Lakshmana Swamy into the property, they did not mention that they cultivated the lands after Ex. A. 1 dated 12.10.1969 and or came into possession or their father not continued in possession, they did not even mention what made them to leave the lands fallow for all the years after Ex. A. 1 relinquishment dated 12.10.1969 or for all the three to leave the village to Jangareddigudem for so called running of pan shops there instead of cultivation with their hard labour if at all as whatever the investment to run pan shop can be invested in cultivating the lands; even according to them as part of the joint family properties those were cultivated by their father prior to Ex. A. 1 relinquishment deed, dated 12.10.1969 and it is not even their case that those lands lying fallow and for the first time, 1st defendant brought it for cultivation. It is the specific case of 1st defendant that pursuant to Ex. A. 2 agreement, defendant No. 2 put him in possession while he was in possession and after he received the Ex. A. 3 notice, he raised dispute through elders and 2nd defendant assured that the notice can be ignored and he was going to execute sale deed as per the agreement. These are the attending circumstances that are required to be appreciated regarding the suit claim set out in the notice for the first time as supra by the plaintiffs.

14. Coming to the Ex. A. 1 relinquishment deed, dt. 12.10.1969 it was on stamp purchased in the name of their father - 2nd defendant on 10.10.1969 from stamp vendor which are worth of Rs. 9-00 paise one stamp and of Rs. 2.50 paise the other stamp.

15. The contents of this Ex. A. 1 relinquishment deed read that by receiving Rs. 500/- as consideration, the undivided interest of 2nd defendant-Gangaraju was relinquished by him in their favour in the joint family properties by referring the three plaintiffs being his sons as all minors represented by his wife as their mother-guardian by name Savithramma, that they got the ancestral property in their joint possession and enjoyment, as he has no interest to take any share by partition and fragmentation or to manage being father-manager, thereby as on date whatever the rights he got in their joint family immovable and movable properties and also cash, he relinquished his right by receiving Rs. 500/- from

them so that they are conferred with rights over entire property under the document. The attestors to the document are Dallapudi Kondal Rao and Ithakota Nageshwara Rao who are P.Ws. 3 and 5 respectively of the suit and the scribe was one Balanaga Subbarao not examined as witness to the suit. A perusal of said relinquishment deed, no way whispers there are any debts or what are the circumstances which made him all of a sudden to relinquish having been managing as father-manager after partition of the properties with his father in 1955 covered by Ex. A. 2 registration extract of the partition deed, that too, in favour of the minor children represented by his wife as their guardian, and it is unknown how in those days by consideration of Rs. 500/- passed to him by them and by their what means to believe. The only reason assigned is he is not interested in managing as father-manager of the joint family properties or to receive any share by fragmentation on partition with the three sons and thereby relinquishes.

16. It is practically an unilateral document and said reasons assigned no way inspire confidence to believe as no ordinary prudent man with these reasons relinquishes his right for alleged cause of division results fragmentation, that too, when he is the father-manager already managing and cultivating the lands to further managing and cultivating even on behalf of his minor sons by keeping jointly. There is no mention for any disputes or he was wasting the properties or how plaintiffs got Rs. 500/- to pay. It was not mentioned of his wife paid the amount or his father-in-law paid the amount and what is the necessity for him to receive Rs. 500/- even to relinquish, if relinquishes for said cause to make believe. The evidence of witnesses not even consistent regarding said consideration and the evidence of witnesses speak he simply wanted to change to his son's name the property for continuing in his name felt not auspicious. From the above it clearly speaks there was no intention to act upon, the Ex. A. 1 was nominally or as a sham document executed. It further reinforces from the facts of not even acted upon by any mutation in plaintiffs name and their payment of land taxes. Already the land was mortgaged to LMB and there is no recital regarding the secured loan and other loans how to discharge. It clearly speaks from all the important surrounding circumstances, for outcome of the document with the recitals that it is a sham and nominal document. Even his father-in-law i.e. maternal grandfather of the plaintiffs not present and attested to say he was allegedly present and paid Rs. 500/- as set up in P.W. 2's evidence. Further, if it was really cause executed by their maternal grandfather to save from squandering away by 2nd defendant for its execution dated 12.10.1969 it is believable of its execution on the stamps purchased on 10.10.1969 by 2nd defendant only and it was registered on the next day dated 13.10.1969 and before the Sub Registrar one of the attestors to the document D. Kondala Rao-P.W. 3 was one of the identifying witnesses besides one B. Sathyanarayana of Seethampeta and nowhere the father in law of 2nd defendant shown present. In Ex. A. 3 notice is also it was kept in dark the contents of said Ex. A. 1 relinquishment deed.

17. There is not even specific mention in Ex. A. 3 notice that pursuant to Ex. A. 1 relinquishment deed dt. 12.10.1969 they have taken possession of the property much less through their so called mother-guardian from their father by virtue of the same. It is not even mentioned that after Ex. A. 2 relinquishment deed dt. 12.10.1969 they ever came into possession and cultivated but for saying in the notice Ex. A. 3 that unable to do cultivation for want of capital they left the village and shifted to Jangareddigudem only in 1975. If that is the case, after 12.10.1969 till 1975 they were in the village and even no whisper about they came into possession and cultivated the land; as had it been, the question of their inability to invest for continuation of cultivation of the lands does not arise for the first time in 1975 to leave the village to set up a killy shop for livelihood in different village of different mandal by investing for it, leaving the lands fallow.

18. Coming to further contents of plaint para-4, all the lands are valuable and income yielding lands besides the dwelling house of I.S. Raghavapuram, that however, the 2nd defendant-father of the plaintiffs was not properly managing the properties and squandering the income and not even carrying cultivation by neglected the interests of plaintiffs in the joint family properties and in those circumstances disputes arose between them and at the interference of their maternal grandfather, 2nd defendant agreed to renounce his share in the family properties and executed Ex. A. 1 relinquishment deed dt. 12.10.1969 in their favour which facts are silent in Ex. A. 1 deed and Ex. A. 3 notice. Ex. A. 1 relinquishment deed no way speaks there were any disputes or differences much less through his father-in-law by his wife or by the minor children. Further, if really high yielding lands and in cultivation by Ex. A. 1 relinquishment deed dated 12.10.1969, the plaintiffs can continue cultivation and realize income with no need to leave village much less to run pan shop for livelihood at other village even 6 years after the Ex. A. 1 document. From the above, there is some motive behind execution of the Ex. A. 1 so called relinquishment deed by not intended to act and thus not acted upon.

19. Coming to para-5 of the plaint averments it is averred that even by the date of relinquishment deed dated 12.10.1969 (Ex. A. 1) their father-2nd defendant absolutely without any legal necessity, sold away Ac. 4-00 cents of wet land allotted to him under Ranganayakulucheruvu and raised loan from Land Mortgaging Bank (for short "LMB"), Eluru by mortgaging some items of property and the renunciation deed (Ex. A. 1) executed by their father-2nd defendant with the object of safeguarding their interest so as to take then existing property and subject to the liabilities and thereby he relinquished all his rights in the joint family properties and therefore no longer he has any right to deal with the existing properties since they are the absolute owners. They did not challenge the said alienations of Ac. 4-00 of land sold by their father of Ranganayakulu cheruvu area and they did not challenge the loan obtained by their father from LMB, Eluru by mortgaging all properties, if it was for his wayward life as alleged in the Ex. A. 3 legal notice with no such whisper in Ex. A. 1 relinquishment deed much less in plaint para-4 but for saying he was squandering incomes. Nothing

attributed of 2nd defendant got any vices in the Ex. A. 1 document. It is not even a partition by allotting already sold Ac. 4-00 to the share of their father for the remaining existing lands to their share subject to LMB debt. If at all there is interference by their maternal grandfather to protect their shares in the properties from their father squandering away being the family-manager, which is not the proper recourse of executing a relinquishment deed. The plaint further averments from para-6 reads that they are unable to carry the cultivation for want of capital and thereby shifted to Jangareddigudem to eke out livelihood and opened a killy shop there by raising loans from bank and private individuals and surviving on the meager income of the killy shops. This averment is strange to note that if at all high yielding, no need to raise loans to livelihood by putting killy shop at other village but for to do cultivation by raising loans from banks or private individuals, there by raising loans from banks and individuals for surviving could not be believed. It is either because a plea set up by them for the suit purpose to get over any admission as to how the 1st defendant entered the property pursuant to the agreement executed in his favour by their father the 2nd defendant to their knowledge if any, if they say they are in the village and otherwise the lands are fallow and unyielding sold to 1st defendant and put him in possession and they with their father all shifted to Jangareddigudem for other means of all their better living. That conclusion is in fact substantiating from recitals in their documents being discussed supra. It is not even their case that after the relinquishment deed dated 12.10.1969 they are separated in the mess from their father and not living in the joint house of their father or their father left even the family house with or without their mother to another place from I.S. Raghavapuram. These are also the important circumstances of their knowledge about contract for sale between the 1st defendant vendee and their father vendor which they kept totally in silence for reasons better known and even got other properties other than the plaint schedule even from the relinquishment deed Ex. A. 1 read with Ex. A. 2 partition deed and suppressed all the means and filed the suit as indigent persons.

20. Coming to other averments in the plaint that as the income from killy shops are insufficient for their maintenance, they alienated the remaining items allotted to their share by their father except the plaint schedule properties which are covered by items 6 and 7 of the Ex. A. 2 partition deed. It is further averred that even though the alienations made by them, their father was also figured as co-executant at the request of purchasers. It clearly speaks that having not able to realize any income from the properties, they and their father even after so called relinquishment deed jointly alienated the properties covered by the relinquishment deed, which fact is suppressed by the plaintiffs in laying the suit claim with some ingenious advice. It is to say suffice from their own plaint averments at para-7 of so called relinquishment deed Ex. A. 1 saying intended to act upon was not acted upon. As otherwise to satisfy the purchasers from the alienations made by them of rest of properties, there is no need of their joining their father at the request of their vendees as co-executants, but for referring

the registered relinquishment deed and a right of them pursuant to it over the property and to ask their father at best to stand as attestor besides their mother if any and it was not their case and the relinquishment admittedly not even referred for said subsequent alienations to say it was a sham and nominal document and not acted upon. When they themselves say their father and themselves alienated the properties and executed the sale deeds as joint vendors referring joint rights, even after Ex. A. 1 so called relinquishment deed, dated 12.10.1969 without referring it to such alienations, it is also one of the circumstances strongly showing their father in possession and management of the properties alienated along with them being the father-manager subsequent to the Ex. A. 1 relinquishment deed, to say that was never acted upon as not intended to act upon being a sham and nominal document. From para-9 of the plaint, the plea they set up was of came to know through Kondala Rao-P.W. 3 and their uncle Setharamaiah that their father-2nd defendant executed agreement of sale in favour of 1st defendant agreeing to sell the plaint schedule property for Rs. 3400/- per acre and also delivered possession to him.

21. This is important to note from their very say that, even Ex. A. 1 relinquishment deed is true and acted upon, their father without right was in possession as of his and pursuant to it executed Ex. B. 2 agreement and put in possession, the 1st defendant, as of his own to say his possession is adverse to the plaintiffs after Ex. A. 1 deed and the animus is confirmed by his possession and enjoyment as of his own and with that recital alienated under Ex. B. 2 agreement dated 28.02.1975 to 1st defendant and put him in possession and if that is the case, the defendants possession is adverse to the plaintiffs since subsequent to Ex. A. 1 to say for more than 12 years by date of suit on 11.01.1987 with animus possidendi and plaintiffs since represented by mother as guardian in Ex. A. 1 dated 12.10.1969, the limitation runs from beginning and by suit date, their rights were extinguished u/s 27 of the Limitation Act and as pleaded by 1st defendant he got right by adverse possession in claiming through 2nd defendant as agreement holder and plaintiffs have no right to claim possession. It is also necessary to mention that, despite the knowledge of them as mentioned in para-9 of the plaint supra of the 1st defendant is agreement holder and his possession of the property is pursuant to the agreement for the plaint schedule property; in the Ex. A. 3 notice they did not whisper at all for describing as if he is an outright trespasser for first time only in 1975.

22. Coming to the para-10 of the plaint averments, after Ex. A. 1 relinquishment deed executed by their father-2nd defendant in their favour, he has no authority to deal with the property of them having voluntarily walked out from the coparcenary and thereby, the contract for sale in favour of the 1st defendant executed by the 2nd defendant is not binding on them, even in the agreement dated 28.02.1975 it was alleged that it is for discharge of the liability due to the co-operative LMB, Eluru, and as they are not parties to the contract for sale, they have not authorized their father so to enter, the possession of the property therein of the 1st defendant is without right and in wrongful possession as

trespasser in the eye of law and thereby they are entitled to possession of the "A" schedule property with profits and for that the cause of action is relinquishment deed dated 12.10.1969 and agreement executed by their father-2nd defendant in favour of the 1st defendant dated 28.02.1975 and possession delivered therein on that day and alter on 31.01.1987 when they allegedly came to know of the trespass and wrongful possession of the 1st defendant in cause issued notice before filing the suit. Even from that, to say 2nd defendant while enjoying with possession the property as if his own and with such recital as his own executed Ex. B. 2 sale agreement dated 28.02.1975 and delivered possession on that day itself to the 1st defendant, from that to say since they left the village prior to that even leaving the land unattended and 2nd defendant's possession not even on their behalf, as he was said to be in possession from their own say by date of suit for more than statutory period with animus possidendi of 2nd and 1st defendants openly, peacefully and uninterruptedly by setting upon right by 2nd defendant even knowing that of plaintiffs, the defendants thus perfected right over the property by adverse possession against the plaintiffs. It is being conscious of their delay in filing of the suit, they by setting up of rights under Ex. A. 1 so called relinquishment deed, filed suit after Ex. A. 3 notice dt. 07.01.1987 without even waiting for acknowledgment of proof of service of notice that was served on 1st defendant only on 19.01.1987. On their own from the above, the suit claim is barred unless to say Ex. B. 2 agreement is on their behalf also, otherwise they cannot say 1st defendant cannot claim adverse possession through 2nd defendant, against them. This is the factual background of the case which is the outcome of the suit claim by plaintiffs and it shows the 2nd defendant-their father is behind in bringing to light from existence of the never acted and unintended to operate so called relinquishment/release deed Ex. A. 1 dated 12.10.1969 in case filing the suit. In fact, had 2nd defendant contested or even 2nd defendant filed the suit against the 1st defendant or plaintiffs and 2nd defendant together filed the suit against the 1st defendant, 1st defendant got no defence to the rescission of contract but for the way in which present suit filed gives scope and life to the defence claim.

23. From this background now coming to the other facts that their father-2nd defendant even made party remained ex parte having been served and did not even choose to contest, however, the evidence on record speaks he was attending Court for adjournments including during evidence of witnesses of plaintiffs. It speaks as one of the attendant circumstances as pointed out by the 1st defendant of the suit is outcome of collusion between the plaintiffs and 2nd defendant by make use of the sham and nominal document-Ex. A. 1.

24. The contest of the 1st defendant therefrom to be seen at the cost of repetition that, the 2nd defendant is educated, worldly wise and pakka businessman and the allegations contra against him in the plaint as if he was squandering income of properties of joint family and in carrying of cultivation, badly neglecting to safeguard the rights of plaintiffs in the properties are

concocted for the case purpose; so also by setting up the alleged dispute by which their father allegedly executed the Ex. A. 1 renouncement deed (dated 12.10.1969) at the instance of their maternal grandfather in their favour and it is with no truth or substance; that there was no necessity to execute so called Ex. A. 1 renunciation deed dated 12.10.1969 by 2nd defendant in favour of plaintiffs, that the allegation of 2nd defendant sold Ac. 4-00 cents of land of Ranganayakulu cheruvu and raised loan from LMB, Eluru by mortgaging all the properties of the family without necessity is also an allegation set up for the case purpose. It is contended therefrom that, by so called relinquishment deed, 2nd defendant relinquished all his lands over the joint family property and he has no right to deal with the properties existing or plaintiffs alone the exclusive owners is a false version; so also alleged mismanagement of the joint family properties by 2nd defendant. It is also contended that, the recitals in the so called relinquishment deed are false, fictitious and make believe, that it is a sham, nominal and bogus document brought into existence by the 2nd defendant with ulterior and wrongful motive. It is also contended that it is false and untenable to state he relinquished his undivided 1/4th share by receiving a paltry amount of Rs. 500/-; though the fact remains of they continued as members of joint family even thereafter and the so called relinquishment deed was never intended to operate and never acted upon and never given effect by the parties and it is patently a sham and nominal document brought into existence by 2nd defendant for his own reasons, that even thereafter, the plaintiffs and 2nd defendant together obtained loan by mortgaging joint family properties which include plaint schedule property and also sold some of their properties jointly to third parties admittedly by execution of registered documents together describing as members of joint family, which exposes the utter falsity of the suit claim and nominal nature of so called relinquishment deed and the false attempt to explain for joint execution of sale deeds for the subsequent alienations as if at the instance of vendees they joined their father also. It is contended as set up conveniently by intended to explain if possible the clear documentary admissions of they all members of the joint family for the joint family properties which they cannot get over by operation of estoppel. It is further contended in the written statement from para-4 that, the 2nd defendant for the necessity of joint family contacted debts from the cooperative LMB Eluru, on security of the properties and also indebted to others and he offered to sell the plaint schedule property to the 1st defendant and after negotiations, bargain and settlement; he agreed to sell and accordingly 2nd defendant executed for the plaint schedule property the Ex. B. 2 sale agreement dated 22.08.1975 for the total Ac. 5-50 cents in two items in Sy. No. 243 in I.S. Raghavapuram belong to them at Rs. 3400/- per acre and said sale agreement was duly executed by 2nd defendant for discharge of joint family debts and for the benefit and necessity of their joint family and possession was also delivered pursuant to the agreement to the 1st defendant by 2nd defendant, by represented that they were selling the property to discharge loan to LMB Eluru, and other debts, which the 1st defendant as vendee bona fide believed and entered the agreement and in all under the agreement he paid Rs.

5,000/- on the date of agreement 28.02.1975; Rs. 800/- in March, 1975, Rs. 100/- on 24.03.1975; Rs. 3,650/- for discharge of debt due to Lunani Tobacco Company, Eluru on 06.04.1975, Rs. 1000/- on 03.05.1975, Rs. 500/- on 06.06.1975, Rs. 1000/- on 01.07.1975 and all the payments were duly endorsed on the back of the agreement and signed by 2nd defendant and 1st defendant on behalf of the 2nd defendant made number of payments in discharge of the bank debts total 19 payments from 15.03.1975 to 07.04.1983 to the bank and they are borne by vouchers; viz., Exs. B. 2 agreement, Exs. B. 3 to B. 8 payment endorsements and Exs. B. 9 to B. 27 receipts and in addition 1st defendant also paid Rs. 350/- + Rs. 301-45ps towards arrears of electricity charges due by 2nd defendant in respect of service connection No. 26 and Rs. 506/- towards discharge of 2nd defendant's debt to cooperative Society of G. Kothapalli in all total Rs. 23,639.45 paise paid by 1st defendant towards sale consideration which all received as detailed supra by 2nd defendant and thus he paid entire sale consideration thereby under the contract for sale dated 22.08.1975 which payment is even more to the payable, that he has been in uninterrupted possession and enjoyment pursuant to the sale agreement and also by paying land revenue and other taxes for all these years and he is ready and willing to perform his part of the contract to obtain sale deed and he is entitled to the benefit of Section 53-A of the Transfer of Property Act and the plaintiffs and their father are clearly barred from disputing or in any other manner questioning the right and possession of property by 1st defendant under the contract for sale, that 1st defendant has been in possession and enjoyment of the properties pursuant to the contract for sale and as absolute owner and revenue authorities also in recognition of his right, title and possession, granted patta in his favour to the knowledge of plaintiffs and 2nd defendant, and from admissions and declarations made by 2nd defendant before revenue authorities, separate patta No. 437 was granted in favour of 1st defendant being bona fide purchaser for consideration. It is also contended that he also perfected right and title over the property by adverse possession for more than statutory period and invested on the lands and improved the lands by deepened borewell and installed motor and pumpset by spending Rs. 50,000/- and it is to blackmail him, the suit is filed by the plaintiffs and 2nd defendant illegally for wrongful gain and to have unfair advantage, and the contra allegations in the plaint are utterly false and untenable and sought for dismissal of the suit saying the plaintiffs besides got full knowledge of the agreement of sale and possession pursuant to it of the 1st defendant of the suit property have no cause of action.

25. From this background, coming to the evidence on record on behalf of the plaintiffs, the evidence of P.W. 1-1st plaintiff in the chief-examination is that, the plaint schedule property was not yielding any income and thereby they kept the land in fallow and left for Jangareddigudem. It is to say the land was not yielding even prior to their leaving for Jangareddigudem in 1975 and also prior to the alleged execution of Ex. A. 1 relinquishment deed dated 12.10.1969 and when such is the case the plaint averments of high yielding properties and their

father-2nd defendant was spendthrift or squandering away the huge incomes therefrom and there was a dispute in this regard or therefrom 2nd defendant was made to execute the so called Ex. A. 1 relinquishment deed dated 12.10.1969 at the intervention of their maternal grandfather are proving false, through this sentence itself. Apart from said evidence contra to the contents of Ex. A. 1 cannot be permitted, the Ex. A. 1 contents clearly speak no reason or cause for any prudent person to execute but for some mala fide intention behind it as a sham and nominal document or as a fraudulent and bogus document at all means with no any little intention to act upon, brought into existence with some ingenious brain, as stated supra. There is a clear contention in disputing the document by the 1st defendant. Thus the trial Court was wrong in still saying as if the genuineness of Ex. A. 1 document was not disputed by the 1st defendant. The P.W. 1's evidence in Chief to say 1st defendant did not give reply to their Ex. A. 3 notice even served by Ex. A. 4 and not delivered possession to them, they filed the suit is not correct for the reasons mentioned supra as there is no time to the date of suit from date of notice to give reply which facts are suppressed without giving any dates in so saying in P.W. 1's chief-examination. The 1st defendant's clear version is he raised dispute and he was promised by 2nd defendant to execute sale deed and the alleged sale of land of Ac. 4-00 at Ranganayakulucheruvu of joint family by 2nd defendant not even filed to know what was the purpose of said sale whether it is for family necessity or for personal expenses of 2nd defendant or for any tainted avyavaharika purpose, apart from said sale transaction not disputed and questioned by plaintiffs even admittedly. Therefore, at one breath saying the lands are not yielding and fallow and unable to survive they left the village, at the other breath they again say that the lands are high yielding and 2nd defendant-their father was squandering away the incomes or that 1st defendant-vendee is entered into possession by 2nd defendant as trespasser without right or that he got 10 to 15 bags of paddy per acre from the plaint A-schedule property and from one acre raising tobacco and chilli crops and getting profits of Rs. 7,000/- per acre, are not only inconsistent but also untrue per se from proper appreciation of said evidence.

26. In the cross-examination of P.W. 1, he deposed that they all 5 brothers to say only three plaintiffs filed and their younger brother Lakshminarayana and Sathi Babu were not made parties to the suit even they were born by then and they are also members of the co-parcenary and not even the case of the suit filed for their benefit also. Their non-joinder also being necessary parties is a bar to the suit, but for to say in the appeal after death of 2nd defendant they were brought on record. P.W. 1 did not even disclose his date of birth. He deposed that 2nd plaintiff is two years younger to him whose date of birth also he is not able to say. He deposed that he cannot say when their father-2nd defendant mortgaged the plaint schedule properties to LMB, Eluru which was after the Ex. A. 1 relinquishment deed and he did not read even the contents of Ex. A. 1 and they did not pay any amount to their father under Ex. A. 1. Thus, the so called payment of Rs. 500/- under Ex. A. 1 is not true. He denied the suggestion that

Ex. A. 1 relinquishment deed was brought into existence with a view to avoid payment of debts by his father to others and it is a fraudulent or sham and nominal document. P.W. 1 deposed that he does not know the name of the scribe of the document or the other attestor but for D. Kondal Rao to say that his father was gambler and alcoholic, for no such averments in Ex. A. 3 notice or Ex. A. 1 relinquishment deed or in the plaint or in the chief-examination, it is baseless to believe and even they admittedly issued no notice to their father much less through their mother of wasting any properties or income by addicting to vices. For saying, the plaint schedule property market value is Rs. 1,00,000/- per acre, no document is filed. At other breath, he was saying as on the date of Ex. A. 1 relinquishment deed, he cannot speak its value. The value mentioned in the plaint also no way supports his version. He deposed that, after Ex. A. 1 relinquishment deed, their parents begot four more children viz., two sons and two daughters besides the three plaintiffs. It shows there are cordial relations between the 2nd defendant and his wife and with no any disputes all by their living together. P.W. 1 deposed that his father obtained loan from LMB, Eluru; though he cannot say the year when obtained and they never issued any notice to their father in this regard about allegation of wasting of money. In the year 1969 he took his maternal grandfather Immadi Pullaiah to raise dispute with his father. It was not his version in Ex. A. 3 notice or the plaint, to believe. He deposed that there were no elders present at the time of alleged dispute. Earlier he deposed that his mother never issued any legal notice and again says his mother issued legal notice to his father but he cannot say the date. He did not even deny the sale agreement but for saying he does not know about sale agreement entered by his father with 1st defendant. He admitted all the signatures on the document as that of his father and again attempted to wriggle out saying he cannot say when in the plaint they admitted 1st defendant's sale agreement as executed by 2nd defendant and also put 1st defendant in possession on the agreement dated 28.02.1975 as per cause of action para of plaint and 2nd defendant also not disputed the sale. Thus, no more proof of Ex. A. 2 agreement required. P.W. 1 deposed that he does not know said Gollapudi Brahmanandam-document writer and scribe to the sale agreement and he cannot say whether the agreement is true or not and as to whether his father received consideration mentioned in the agreement or not and of all the payment endorsements Exs. B. 3 to B. 8 and as to 1st defendant in all paid Rs. 23,639.45 paise under the agreement including those covered by Exs. B. 9 to B. 27. He deposed that only in the year 1987 he came to know of 1st defendant's possession of plaint schedule property. From the year 1975 itself when he is in possession and the plaint averments described in earlier paragraphs show of the agreement and delivery of possession on 28.02.1975. Thus, it is strange to believe that he came to know about 1st defendant's possession only 12 years later for the first time in the year 1987, it is quite unbelievable as really Ex. A. 1 relinquishment acted upon from 1969, they could not leave the property unattended even after their alleged leaving of the village in 1975 till 1987 that too in their say then only came to know and not when visited the property found

in possession. It speaks they never exercised any right in property under Ex. A. 1 relinquishment thereafter but for by 2nd defendant-their father and who pursuant to it executed the Ex. B. 2 sale agreement dated 28.02.1975 and the recitals speak that the 2nd defendant-father of the plaintiffs is owner of the property and there is loan to LMB, Eluru over the property and for its discharge and discharge of other debts he offered to sell and entered the contract for sale at Rs. 3400/- per acre and on the date of agreement on behalf of the vendor, vendee paid and acknowledged by receipts Rs. 5,000/- to the LMB, Eluru, for the loan and remaining consideration was agreed to be payable by 30.05.1975 to obtain sale deed and mentioned that possession will be delivered at the time of the registration of the sale deed and if he fails to pay the balance consideration within the time and obtain sale deed, the agreement being cancelled and the total extent mentioned is item-I to the extent of Ac. 2-75 cents and item-II to the extent of Ac. 2.75cens in Sy. No. 243. No doubt, as per Ex. B. 2 sale agreement the same is not possessory agreement much less any endorsement of delivery of possession to claim protection u/s 53-A of the Transfer of Property Act, but for to say even by plaintiffs from plaintiff cause of action para and P.W. 1 cross-examination discussed supra of 2nd defendant put the 1st defendant in possession on the sale agreement dated 28.02.1975 and he continues therefrom. The payment endorsements therein covered by Exs. B. 3 to B. 8 are from 11.03.1975 to 16.07.1975 acknowledged by the executant-the 2nd defendant with dates of receipts of the amounts but for out of the consideration at Rs. 3,400/- per acre, only Rs. 5,000/- towards discharge of the LMB paid thereunder referred, besides other cash payments under Exs. B. 3 to B. 8 to 2nd defendant and also among Exs. B. 9 to B. 27 payment receipts all the amounts paid on behalf of the 2nd defendant by 1st defendant (vendee) to the LMB covered by Exs. B. 10 to B. 27. (Ex. B. 39 electricity demand receipt also was paid on behalf of the 2nd defendant by 1st defendant dated 08.02.1980). Ex. B. 9 is the loan discharge payment receipt to the Fisheries Extension Officer of the IMS loan recovery incurred by 2nd defendant paid on 15.03.1975. All the above show that 1st defendant paid to 2nd defendant is full consideration; though not within agreement originally stipulated time, the endorsement for subsequent payments show waiver of any claim of time is essence. Further once 2nd defendant put 1st defendant in possession pursuant to agreement, he is not trespasser against 2nd defendant for liability to pay damages or profits and once 2nd defendant in possession without right and also put 1st defendant in possession, their possession is adverse to plaintiffs and plaintiffs lost right over the property for more than 12 years with animus possidendi after Ex. A. 1. Otherwise, 1st defendant's possession is not as true possession as the sale for not any avyavaharika purpose but for discharge of loans pre-existing from legal necessity to bind plaintiffs from Ex. A. 1 not acted upon. Even taken the recitals in Ex. B. 2 as of 2nd defendant's property and not referred for plaintiffs and other sons also vide decision S.M. Jakati and Another Vs. S.M. Borkar and Others, holding that the liability of a Hindu son to discharge debts of his father which are not tainted by immorality or illegality (burden is on the son to so prove) is founded in the

pious obligation of the son which continues to exist in the lifetime and even after death of the father and which does not come to an end as a result of partition of joint family property.

27. The decision of Kalwa Devadattam and Others Vs. The Union of India (UOI) and Others, (from KALWA DEVADATHAM AND OTHERS Vs. UNION OF INDIA AND OTHERS,) Full Bench of apex Court at para 14 held that registered partition deed between father and sons, even contended as real to protect the interest of minor sons, showing mother as guardian of said minors with averments father not living with family, there was nothing to show father ill-disposed towards the sons or actuated by desire to harm their interest, it is nothing but a nominal document with a real purpose to save the property by showing in sons shares and for no provision for debts existing by them to discharge, the suit as per evidence shows Nagappa (father) and his wife (mother) behind the litigation, that too, when evidence show all living together, the story of he was living away proved false and shows he was in possession of all properties even later and his showing interest in the lis by attending Court, the partition deed held never intended to act upon and not to be validated. This decision squarely applies to the present facts to conclude from what is discussed supra on the facts of Ex. A. 1 so called relinquishment is unreal and never intended to act upon and not acted upon and 2nd defendant never parted with possession and plaintiffs suppressed all the facts in laying the suit claim in collusion with their parents falsely against the 1st defendant by using the document as a device in stead of fairly filing any suit for rescission of contract for sale and recovery of possession of the property. Further, in this case the Exs. B. 28 to B. 32 are the land revenue payment receipts by the 1st defendant during the years 1981, 1982, 1986, 1987 and 1990 for the land in patta No. 437 of I.S. Raghavapuram claimed as per plaint schedule which is in Sy. No. 243. Ex. B. 33 is proforma for pattadar passbook in the name of 1st defendant for I.S. Raghavapuram land, the survey number mentioned is 252/3 tallied for plaint schedule Sy. No. 243, as S. No. 243 was re-numbered as S. No. 252. Ex. B. 44 is the pattadar passbook issued in favour of 1st defendant dated 10.10.1994 for said Sy. Nos. 252/3 and 13 for fasili 1406 of I.S. Raghavapuram. Ex. B. 49 is also for said Sy. No. 252/2 of I.S. Raghavapuram. Now coming to the alienations made by plaintiffs and their father-2nd defendant together subsequent to the alleged relinquishment deed dated 12.10.1969 concerned, Ex. B. 1 is the registration extract of mortgage deed dt. 31.05.1971 executed by 2nd defendant-M. Gangaraju as guardian on behalf of his minor sons Narasimha Rao, Padmanabham and Venkateshwara Rao - plaintiffs 1 to 3 in favour of LMB Eluru for loan of Rs. 5,000/- availed on mortgage of the lands in Sy. No. 252 for Ac. 12-75 cents in item-I, for Ac. 2-50 cents in item No. 2. So it all correlates to say old Sy. No. 243 mentioned in Ex. A. 2 partition deed is changed as Sy. No. 252 from the extents referred correlates to plaint schedule. Apart from other extents of Ac. 1-65 cents, Ac. 1.66 cents in Sy. Nos. 226/1 and 225/2 etc., there is no whisper of Ex. A. 1 relinquishment deed therein. It is a registered mortgage deed and even the plaintiffs having knowledge of the same, they did not issue any

notice to their father or the LMB. They did not challenge the mortgage of 1971 at any point of time including after issuing Ex. A. 3 legal notice to the 1st defendant in the suit to question mortgage if at all the so called relinquishment deed acted upon and this registered document itself is foolproof in saying within one and half year after alleged execution of relinquishment deed, this registered mortgage deed is executed by 2nd defendant as father-guardian including for the minor sons of him in favour of the LMB, Eluru by saying the properties are the joint family properties of them on security of loan of Rs. 5,000/- referred therein. It also substantiates the fact that the alleged Ex. A. 2 relinquishment deed dated 12.10.1969 was not intended to act upon and not even acted upon from the subsequent conduct of plaintiffs and their father-2nd defendant including from this Ex. B. 1 document, apart from that Ex. B. 34 is Registered mortgaged deed for Rs. 5,000/- dated 19.11.1969 incurred by 2nd defendant who executed mortgage deed for and on behalf of his minor sons and also as family-manager by mortgaging all the properties of I.S. Raghavapuram village including the land of Ac. 2-75 cents and Ac. 3-55 cents which correlates to the plaint schedule for the benefit of the family, the loan availed and it is to discharge the loan, the Ex. B. 2 sale agreement was executed as referred of Rs. 5,000/- loan paid of and voucher received as part of consideration referred therein. Further, under Ex. B. 35 registered sale deed dated 10.10.1969 the 2nd defendant for himself and on behalf of his undivided minors sons as guardian executed sale deed for land in Sy. No. 172-4/2 of Ac. 5-00 out of the extent of Ac. 5-24 cents of I.S. Raghavapuram village by referring the same as one of the joint family properties fallen to his share in the partition from his father, that himself and his sons are members of the joint family and for the family necessities. Said alienation also not challenged by plaintiffs at any time later. The vendee Gollapalli Kondalrao s/o. Veeranna is no other than P.W. 3 one of the attestors to Ex. A. 2 relinquishment deed dt. 12.10.1969. This document is dated 10.10.1969 and registration of this document was also on 13.10.1969, which is the registration date of Ex. A. 1 relinquishment deed. Both were registered on even date and registration number of Ex. A. 1 was 29 of 1969 dt. 13.10.1969 having executed sale deed on 10.10.1969 on purchased the stamp for relinquishment deed on that date and executed relinquishment deed on 12.10.1969 and registered both the documents on 13.10.1969 and in the sale deed referred as for family necessities sold the properties to said G. Kondalrao (P.W. 3) who is no other than one of the attestors of the Ex. A. 1 relinquishment deed. It shows the scheme behind execution of Ex. A. 1 relinquishment deed is not intended to act upon but to defraud any creditors and save the property from creditors by showing the names of his sons if possible as a sham and nominal, if not even fraudulent document as laid down in Nagappa's case (supra). Even without given effect to Ex. A. 1, subsequent alienations made is crystal clear, not only from Ex. A. 1 and other facts referred supra, but also from Ex. B. 36 another registered land mortgage deed dated 03.11.1971 in favour of the LMB Eluru as father-manager of the properties as still joint family for himself and on behalf of the minor sons for the loan of Rs. 3,400/- availed by mortgage of the land in Sy. Nos. 243,

226/1, 226/2, and other extents. Apart from it, Ex. B. 37 is another registered sale deed dated 26.05.1982 executed by the 2nd defendant in favour of Mokkavalli Apparao, for himself and as father manager for and for his sons, saying the land is part of the ancestral property and not in convenient enjoyment and for discharge of debts. It is when long subsequent to Ex. A. 1 dated 12.10.1969, suffice to say Ex. A. 1 never acted upon being a sham and nominal document. The extent shown in said Ex. A. 37 is of Sy. No. 226/1, 226/2 and 225/4 and 225/5 of I.S. Raghavapuram. Ex. B. 38 is another registered sale deed on the even date for Rs. 5,440/- with continuous registration number executed in favour of the same vendee Mokkaavalli Apparao by M. Savithramma-wife of 2nd defendant for Sy. No. 225/2, an extent of Ac. 1-28 cents of I.S. Raghavapuram by describing for family benefit the sale is effected. It is also important to note that, 2nd defendant is one of the attestors of the sale deed. It is clear that the plaintiffs are minors representing by their mother for Ex. A. 1 relinquishment deed dated 12.10.1969 and on 10.10.1969, the 2nd defendant-their father on behalf of the plaintiffs also sold the property to one of the attestors of the Ex. A. 1 relinquishment deed i.e. D. Kondalrao (P.W. 3) for family necessity of the joint family and in 1971 besides other alienations and mortgages to the LMB, at the same time in favour of same vendee M. Apparao not only 2nd defendant for himself and minor children showing as guardian sold some of the properties wherein the wife of the 2nd defendant who is mother of plaintiffs also by the self-same date to self-same vendee for another consideration sold another extent of land of the village for family benefit to which 2nd defendant is one of the attestors. That itself speaks the family relations between them is cordial and what is deposed by the P.W. 1 in chief-examination of there were strained relations between his father and mother or his mother even issued notice etc., are proved false. The sale transactions of 1982 and the Ex. A. 1 notice dated 07.01.1987 and the present suit filed on 11.01.1987, about 5 or 6 years thereafter in all to say the plaintiffs guardian-cum-mother represented them for Ex. A. 1 relinquishment of 1969 also got knowledge of the sale transactions including in the year 1982 and they are in cordial terms and what the plaintiffs speak of they left the village in 1975 to Jangareddigudem for livelihood even taken true, as in Ex. B. 38 transaction, her address was referred as resident of Jangareddigudem and 2nd defendant's address also referred as resident of Jangareddigudem in 1982 to say all they shifted to Jangareddigudem and not plaintiffs alone.

28. From this background, coming to P.W. 1 further cross-examination, he cannot pretend no knowledge of all the transactions and the suit sale agreement transaction and the several payments made by 1st defendant for discharge of debts also and he also deposed that from the plaint schedule property patta number is 437 that is for which the 1st defendant paid tax receipts referred supra and he also deposed that patta was granted by revenue authorities for the suit land in favour of the 1st defendant pursuant to the suit sale agreement. He denied the suggestion that suit is filed falsely to extract money from 1st

defendant by them if possible. He deposed that, he does not know whether 1st defendant spend more than Rs. 50,000/- to improve the plaint schedule property and also does not know whether 1st defendant raised dispute through elders after receipt of Ex. A. 3 notice against them and their father P.W. 1 also admitted the Ex. B. 35 sale transaction executed by their father for him and on behalf of them in favour of P.W. 3 D. Kondalrao and again by saying he does not know said sale transaction, which shows he attempted to wriggle out if possible and he deposed that they sold land of Ac. 3-80 cents under registered sale deed dated 26.05.1982 to M. Apparao and his father and they all 5 brothers are parties to said the suit sale transaction (Ex. B. 37); though he deposed that he does not know why his mother sold Ac. 1-37 cents on that day to said M. Apparao (Ex. B. 38 sale transaction) and denied the suggestion of not entitled to claim possession of plaint schedule property. He categorically deposed that, all the joint family properties that fallen to the share of his father (covered by Ex. A. 2 partition deed, dated 29.07.1955) were sold away by them, however, by saying except the plaint schedule property. It all speaks as even they left the village to Jangareddigudem including his father and mother having sold the properties and the suit laid having sold the property under agreement for sale to 1st defendant by 2nd defendant for himself and on behalf of plaintiffs also for reasons better known. It shows the collusive outcome between plaintiffs and 2nd defendant as suggested in the attempt to extract money if possible by them. P.W. 2 mother of plaintiffs deposed that the partition between 2nd defendant (her husband) and her father-in-law was prior to her marriage and about 10 acres of land fallen to the share of her husband (B-schedule property of Ex. A. 2 partition deed). She deposed that her husband was not properly cultivating the lands and her father used to come to village and cultivate the land of I.S. Raghavapuram from Chakicherla 7 kms away and got dug borewell and her father was raising wet crops of paddy by investing money in the lands and realizing the amounts and after deducting the expenditure paying to her husband who was wasting the amounts of income from the lands and thereby her father insisted her husband for relinquishment of rights over the property in favour of his sons, for which he agreed and received Rs. 500/- from her father at the time of execution and executed Ex. A. 1. Said evidence of her is a different story and proved false from what all discussed supra. In fact, as detailed the contents of Ex. A. 1 supra, there is no such recital of consideration paid Rs. 500/- was by her or her father. It shows neither P.W. 1 nor P.W. 2 have no regard for changing their stands time to time including in the evidence discussed supra. Her father was not even a witness much less attestor or identifying witness before Sub Registrar to the Ex. A. 1 even to make believe at the time of execution he paid Rs. 500/- or he asked to relinquish the rights or cause executed the document if not voluntary by 2nd defendant and if to act upon, as discussed supra. She further deposed that, her husband availed loan of Rs. 5,000/- from LMB, Eluru on the properties covered by Ex. A. 1 relinquishment deed prior to Ex. A. 1. In fact that is covered by Ex. B. 34 registration extract of mortgage deed referred supra and continuation to it is Ex. B. 1. She deposed that plaintiffs are not liable to discharge said debt.

Admittedly, plaintiffs did not challenge said alienation. She deposed that, her father died 20 years back may be to say he could not be examined in proof of alleged passing of consideration of Rs. 500/- but to believe there is no such mention in Ex. A. 1 or in Ex. A. 3 notice. She deposed that herself and their children shifted to Jangareddigudem from I.S. Raghavapuram 20 years back and her husband used to visit Jangareddigudem now and then. It is, in fact, not correct as discussed supra, from the recitals of Ex. B. 37 and 38 sale deeds executed by her, her husband and sons in favour of M. Apparao, dt. 26.05.1982 by referring their address as all residents of Jangareddigudem. Thus, what she deposed of her husband had not taken responsibility of family affairs is untrue and he was staying away is also untrue. The plaintiffs alone claimed performed the marriages of two daughters and she also disposed of her sthreedhana property spent for the marriage of her daughters. It is not inspiring as true, from what is discussed supra. In her cross-examination, she deposed that her husband is behind the litigation and he also came on that day. It is surprising to note that even her husband-2nd defendant to the suit did not choose to file written statement and did not contest and having remained ex parte, when attending the Court for adjournments and attended including on that day when she was giving evidence and the sale deed recitals also speaks that they are all residing in Jangareddigudem having shifted from I.S. Raghavapuram; it clearly speaks to substantiate the contentions of 1st defendant that, her husband-2nd defendant is behind the litigation as rightly suggested and as laid down in Nagappa's case (supra). Though P.W. 2 denied the same, this fact is proved from the record which they cannot get over by such denial against the documentary evidence. She deposed that, she does not know for what purpose the suit is filed. In fact, she represented as guardian of 3rd plaintiff at the time of filing the pauper O.P. and gave chief-examination affidavit and in the cross-examination when says she does not know purpose of the suit. It is as laid down in Nagappa's case (supra) her husband is behind the litigation as she also deposed that she does not remember whether her husband gave instructions in filing the suit by drafting the plaint. It is not her case by any specific denial but for her husband is standing behind the litigation without even contest by remaining ex parte. On the other breath, no doubt in the attempt to wriggle out, she stated that she and her children gave instructions for drafting the plaint as indigent persons. For her showing her husband is addicted to vices like gambling and consuming alcohol even there is no any basis as plaint is silent and Ex. A. 3 notice is also silent. Even there is no any legal notice to her husband by her being guardian for the children of her, questioning any alienation on that ground if at all. She deposed that, she does not know whether any notice cause issued to her husband about his wasting any properties and her father never got issued any such notice and she does not even know nature of the documents executed by her husband in favour of sons-plaintiffs (Ex. A. 1) and her husband did not make any provision for her maintenance therein. She deposed that, even after Ex. A. 1, her husband was coming to their house and two daughters born to her after execution of Ex. A. 1. This also speaks that, the evidence of P.Ws. 1 and 2

is false regarding he is addicted to vices and staying away. She deposed that she does not know whether after Ex. A. 1, her husband acted as guardian for plaintiffs and contacted the loans by giving security of plaint schedule property, though denied the suggestion of he had no vices and she is giving false evidence. She deposed that, she does not know the details of family members as on the date of Ex. A. 1 and the details of debts and what debts her husband subsequently contacted over the plaint schedule property and as to when he sold other properties out of the total extent of Ac. 10-00 in the partition and she cannot give survey numbers and extents of plaint schedule even. She deposed that she does not know whether her husband sold the plaint schedule property to 1st defendant under sale agreement and received sale consideration covered by proof of payments made by the vendee-cum-1st defendant and acknowledged all the payments by her husband on the reverse of the sale agreement. She deposed that she did not enquire her husband about contention of 1st defendant in the suit regarding the sale agreement and payments and she does not know whether the patta for plaint schedule property granted in favour of 1st defendant. She deposed that from 1969 onwards they never paid any land revenue or loans, her explanation is unbelievable in saying as if karanam of the village asked not to pay.

29. Even coming to so called evidence of attestors of Ex. A. 1 relinquishment deed P.W. 3 G. Kondalrao, who was one of the vendees of part of the family properties of 2nd defendant and plaintiffs covered by Ex. B. 35 dated 10.10.1969 which is registered on 13.10.1969 on the same day of registration of Ex. A. 1 relinquishment deed shown executed on 12.10.1969 on the stamp purchased on 10.10.1969 as detailed supra. He deposed that family of plaintiffs are not residing in I.S. Raghavapuram, but at Jangareddigudem and they are his relatives and his daughter was given in marriage to the son of brother of 2nd defendant and he knows Ex. A. 1 relinquishment deed being attestor to it and consideration passed referred therein to 2nd defendant and father-in-law of 2nd defendant by name I. Pullaiah was present at the time of execution of Ex. A. 1 and it is not sham and nominal document but for intended to act upon. The so called father of P.W. 2 present is false as discussed supra, as had it been he could be an attestor or Rs. 500/- as paid by him so could be referred in the Ex. A. 1. He deposed that, he purchased the land from 2nd defendant and his sons prior to the date of relinquishment deed which is under original of Ex. B. 35 (dated 10.10.1969 (wrongly typed as Ex. B. 10) and deposed that he paid Rs. 3300/- consideration to them and obtained the sale deed and plaintiffs by then minors and 2nd defendant was acted as father-guardian in execution of the sale deed as there was no income fetching by the land. Having so deposed having purchased the property from 2nd defendant and his sons minors represented by 2nd defendant as father-guardian, how it can be believed that at the same time, 2nd defendant relinquished his right over the joint family properties with intent to act upon to which he stood as attestor. In the cross-examination he deposed that, there is no need for any person to relinquish his share in favour of the minor

sons on the ground of not getting income from the land. He deposed that 2nd defendant thought to execute the document only for name change for him in favour of his sons to get good income for name change and otherwise there is no need for him to execute the relinquishment deed Ex. A. 1 in favour of plaintiffs. If that is true, that itself is sufficient to say executed Ex. A. 1 relinquishment deed was not at all intended to act upon but for nominal to execute for changing name instead from his name in the name of his sons. In fact that can be done even from change in the revenue records by mutation or by partition by showing allotment of these properties in favour of the sons by saying what the property sold to this witness towards his share if at all. This evidence of P.W. 3 is also crystal clear of Ex. A. 1 was not intended to act upon as relinquishment deed but for to name change of the joint family properties under the management of 2nd defendant as father - manager for him and his sons as continued by living together with no any strained relationship. P.W. 3 deposed that, he does not know the name of other attestors but scribed by B. Subbarao and he got remembrance of the date of Ex. A. 1 since he obtained registered sale deed prior to it from 2nd defendant and his sons (Ex. B. 35 supra). He deposed that 2nd defendant, his wife and children are residing jointly as on the date of Ex. A. 1 and now they are all residing at Jangareddigudem village along with their youngest son Sathyanarayana out of 5 sons and two daughters of them and they are now and then only coming to I.S. Raghavapuram village and 2nd defendant was cultivating all the joint family properties including the plaint schedule till they left for Jangareddigudem. It also speaks the Ex. B. 2 sale agreement dated 28.02.1975 and plaintiffs case of they left I.S. Raghavapuram to Jangareddygudem in 1975 is along with 2nd defendant and P.W. 2. As this witness (P.W. 3) speaks prior to that 2nd defendant was cultivating the plaint schedule property till what all they left was in 1975. Even coming to the evidence of the other attestor to Ex. A. 1 i.e. P.W. 5 E. Ngeshwara Rao of Beemadolu village, who deposed that he attested Ex. A. 1 executed by 2nd defendant in favour of his children-the plaintiffs, he knows the 2nd defendant from 1962 as he was having a tea stall at Bheemadolu and 2nd defendant was coming to take tea there since it was near the Sub Registrar office, Bheemadolu and at the tea stall the scribe scribed the Ex. A. 1 and said scribe is alive and it was at the instance of 2nd defendant, particulars of the properties were described about his conveying properties to his sons he attested when asked by 2nd defendant, that 2nd defendant-M. Gangaraju took Rs. 500/- from his father-in-law and informed that he was unable to manage the properties and as such he was executing the document in favour of his sons and there was no other reason for executing the document. Said version of P.W. 5, from what all discussed supra, is proving false. P.W. 5's evidence regarding execution of Ex. A. 1 described is contra to the evidence of P.W. 3 attestor. From what is described by the P.W. 5, P.W. 3 and what is described by P.W. 2 wife of 2nd defendant and P.W. 1 - 1st plaintiff, the eldest son of 2nd defendant and P.W. 2. This is the inconsistent version in this regard. When 2nd defendant he was not able to manage the properties, the question of relinquishing in favour of his minor sons the properties does not arise

to believe said version of P.W. 5, but for to believe if at all to lease out the family properties to get income, as executing a relinquishment serves no purpose that too, when plaintiffs are minors being his sons while all living together. In the cross-examination of P.W. 5, he deposed that as the brother-in-law of M. Gangaraju has asked him to give evidence, he is giving the evidence and he does not know the deed when was registered and he cannot say what document was executed by M. Gangaraju and he does not know how much extent owned by the M. Gangaraju and as to what debts he was having. He deposed that M. Gangaraju informed him about executing of deed in favour of his sons that the wife of M. Gangaraju acted as guardian of his sons and whether they were residing jointly or not, he does not know. He deposed that, M. Gangaraju is not spendthrift and he is an intelligent person. From this word also, what P.W. 1-the elder son of M. Gangaraju deposed about M. Gangaraju is addicted to vices, so also by his wife-P.W. 2 are proved false. P.W. 5 deposed further that, he does not know what properties conveyed by M. Gangaraju to his sons was mentioned in the deed and what properties he owned and when he partitioned with his brothers and how many brothers he got, but for he attested at the request of M. Gangaraju saying only one person came for attestation and he has to attest as other person. It shows he practically does not know but for if at all, he is simply accommodating M. Gangaraju to put his signature as attesor without knowing anything and having known M. Gangaraju as intelligent person with no vices. Thereby the other evidence particularly of P.Ws. 1 and 2 regarding the reasons for execution of Ex. A. 1 proved false from this evidence also. Even coming to the evidence of P.Ws. 4 and 6, the P.W. 6 I. Venkatarao s/o. Pullaiah is no other than the brother of P.W. 2 and uncle of P.W. 1 and brother-in-law of 2nd defendant, what he deposed of his father, P.W. 4 and his sister P.W. 2 raised dispute with 2nd defendant about his wasting properties and asked him to execute relinquishment deed in favour of plaintiffs and thereby after receiving Rs. 500/- 2nd defendant put his signature on Ex. A. 1 and he was also present is proving false for not the case by P.W. 2 and P.W. 1 about his presence or his knowing anything to believe. Had it been true, the stamp of Ex. A. 1 relinquishment could not be purchased by 2nd defendant in his name. Even from his evidence it simply speaks that, P.W. 2 his sister and their father Pullaiah cause prepared the document and obtained signature of 2nd defendant by paying Rs. 500/- and not voluntarily executed the document by 2nd defendant by relinquishing his rights. He deposed that by the date of Ex. A. 1 relinquishment deed, the 2nd defendant's family was having 5 acres of land though at the time of marriage of P.W. 2 and 2nd defendant, family was having 10 acres. He deposed that 2nd defendant got borewell dug in the plaint schedule property with the income from the lands. This is what P.Ws. 1 and 2 deposed of borewell was cause dug by father of P.W. 2 at his expenses is proved false. He deposed that, he was under circumstances forcing 2nd defendant to sell any of his properties prior to Ex. A. 1 document and by the date of it, 2nd defendant was not having any debts that it is not correct to say he does not know anything regarding the debts of the family as the Ex. B. 34 registered mortgage deed executed by 2nd defendant for himself and on behalf

of his minor sons as father-manager in favour of LMB, Eluru was of the year prior to the Ex. A. 1 i.e. dated 19.11.1968 by availing mortgage loan on mortgaging properties to the bank. In the cross-examination, P.W. 6 deposed that he did not attest Ex. A. 1 and there is no proof to say his presence at that time and as if it was executed and registered on the same day which is false as discussed supra of Ex. A. 1 executed on 12.10.1969 and registered on 13.10.1969 along with Ex. B. 35 registered sale deed executed by the 2nd defendant and his sons in favour of P.W. 3. He deposed that he does not know when the stamps for Ex. A. 1 purchased of what value and in whose name. He deposed that 2nd defendant conveyed all his rights to his children. He deposed that 2nd defendant got bad vices and became drunkard and never looked after his wife and children and deserted them, which is not true from what is discussed supra including from the evidence of P.Ws. 2 and 3 and Exs. B. 37 and 38 recitals all are residents at Jangareddigudem, so also deposed by the P.W. 4 and he deposed that he does not know any notice was issued to the 2nd defendant about his wasting properties and addicted to bad vices and stated as if in 1968 and 69 they raised a dispute before elders. It is also proved false from what P.W. 2 deposed of there was no elderly dispute but for his father came and disputed at his house and no elders even present. He deposed that 2nd defendant sold Ac. 4 or 5 acres for discharge of debts and he does not know for what purpose the debts were contacted. What he deposed of 2nd defendant did not take any loan from LMB Eluru after Ex. A. 1 even false from Ex. B. 1 registered mortgage deed in favour of LMB executed by him for and on behalf of his minor children was dated 31.05.1971 which is subsequent to earlier mortgage in favour of the bank dated 19.11.1968 under Ex. B. 34. He deposed that 2nd defendant has not sold any property subsequent to Ex. A. 1 which is false as P.W. 2 and P.W. 1 also admitted about sales including Ex. B. 37 and B. 38 sale transactions one by P.W. 2 and the other by 2nd defendant for himself and on behalf of his sons, including P.W. 1 in favour of one M. Apparao by referring them as all are residing at Jangareddigudem. He also deposed that after Ex. A. 1 date, 2nd defendant blessed with two more sons and two more daughters to say they were amicably leading life as husband and wife and begot four children to say their relationship is cordial and he did not neglect them and not a spendthrift and they are residing at Jangareddigudem having shifted from the village I.S. Raghavapuram in 1975 as can be seen from the factual matrix of the case discussed supra, and this piece of evidence is also lending support to it. He admitted the signatures on the Ex. B. 1 sale agreement in favour of 1st defendant as executed by 2nd defendant for and on behalf of minor children dated 28.02.1975. Even coming to the evidence of P.W. 4, who is no other than father's brother of P.Ws. 2 and P.W. 6, he was also one of the introduced witnesses like P.W. 6 from what is discussed supra and from no whisper in the evidence of P.Ws. 2 and 3 much less any reference in Ex. A. 3 notice and plaint averments of their names and particulars for any elderly dispute for execution of Ex. A. 1 for his saying he was also present as if for execution of Ex. A. 1 relinquishment deed by 2nd defendant to speak alleged payment of Rs. 500/- to 2nd defendant by his father-in-law for

relinquishing rights over the property to his sons-plaintiffs. From his cross-examination, P.W. 2's evidence as if her father was coming and cultivating the lands by investing the amounts is proved false, from what P.W. 4 deposed was his brother never went to I.S. Raghavapuram to cultivate the lands of 2nd defendant family as 2nd defendant himself was getting lands cultivated. What he deposed of Ex. A. 1 mentioned Rs. 500/- paid by father-in-law of 2nd defendant to him to execute the document is not correct; from no such recital of he received amount from his father-in-law though P.W. 4 denied the suggestion of he is an introduced witness (planted) and he is giving false evidence, though does not know anything.

30. Thus, from what the evidence adduced by the plaintiffs also the Ex. A. 1 so called relinquishment deed is not intended to act upon and never acted upon; to say in the absence of said document, the properties are joint family properties and Ex. B. 2 sale agreement executed by 2nd defendant by himself as of his own even and the plaintiffs stated as no right to alienate and 1st defendant thereunder gets no right for so claiming, as discussed supra from that stand the right of recovery of possession relying on Ex. A. 1 that was besides sham and nominal and not genuine not entitled otherwise lost right to recover possession, but for to say the sale agreement was for him and on behalf of his minor children of the joint family property, to maintain suit for rescission of the contract for sale and recovery of possession and till then they are not even entitled to profits or damages against 1st defendant. No doubt on perusal of the recitals in Ex. B. 2 sale agreement it no where speaks it was executed for and on behalf of his minor children also but for by him referring as his property and there was no recital of delivery of possession as it is a non possessory sale agreement. In this regard regarding the proof of Ex. B. 2 sale agreement and delivery of possession thereunder, even later passing of consideration thereunder in addition to what is discussed supra, undisputedly there is a suit for specific performance to obtain sale deed filed by the 1st defendant herein which is pending against the plaintiffs and 2nd defendant if any (no plaint copy is filed for further knowing): Subject to that, coming to the evidence of 1st defendant-D.W. 1, besides the documentary evidence, placed reliance by him covered by Exs. B. 1 to B. 49 discussed supra (which proves and possession of 1st defendant after obtaining the Ex. B. 2 agreement dt. 22.02.1975 even date by mutation of his name in the revenue records and obtained pattadar passbook also and he paid consideration agreed under Ex. B. 1 at Rs. 3,400/- per acre comes to $51\frac{1}{2} \times \text{Rs. } 3,400/- = \text{Rs. } 18,700/-$ and evidence of him and other witness on his side prove what he paid was more as stated supra. As per the D.W. 1-1st defendant's evidence in chief, in addition to what he paid of Rs. 5,000/- referred in the Ex. B. 2 sale agreement dated 22.02.1975 for purchase at Rs. 3,400/- per acre for the plaint schedule referred thereunder total extent of $51\frac{1}{2}$ acres other payments made including discharge of the loan in LMB Eluru and other loans of the 2nd defendant and his family in all about Rs. 23,000/- and add, he also spent huge amount nearly Rs. 55,000/- for the land including installation of motor pumpset and he deposed

that he was not intimated about any execution of Ex. A. 1 in favour of his sons dt. 12.10.1969 when 2nd defendant executed the Ex. B. 2 sale agreement or later and thereby he does not know about said Ex. A. 1 relinquishment deed. He also deposed that after receiving legal notice (Ex. A. 3) of plaintiffs prior to the suit the matter was placed before elders and 2nd defendant was asked by the mediators about the notice he got issued by his sons, for which he replied that he would execute registered sale deed in favour of 1st defendant and he need not worry to the notice, however he got filed the suit through his sons without even any right to claim possession of the plaint schedule property, that even the plaintiffs never questioned his right, possession and enjoyment of the schedule property prior to the notice and suit filed and he is not a trespasser as alleged by them.

31. In the cross-examination, D.W. 1 deposed that the negotiation for purchase of plaint schedule property at I.S. Raghavapuram village taken place prior to the agreement and the agreement was executed at Eluru and he knows 2nd defendant's family since his childhood, including the plaintiffs and the sale agreement was executed by 2nd defendant alone which is Ex. B. 2 (wrongly referred as Ex. B. 3). He deposed that, there was a partition of the properties between 2nd defendant and his father Narasimha Rao and the plaint schedule property is part of the property fallen to the share of 2nd defendant in the said partition (Ex. A. 2) though he represented that he is selling the same as of him. He deposed that the plaint schedule property was under mortgage with LMB Eluru, even by the date of sale agreement and 2nd defendant agreed to sell the property to discharge the loan to LMB Eluru, that though it is not specifically recited with regard to mortgage deed to LMB Eluru; it was discharged by him on the date of sale agreement and paid Rs. 5,000/- cash. He deposed that he does not know whether said cash payment was written in the sale agreement or not, that receipt for payment of Rs. 5,000/- passed by LMB Eluru on the date of agreement to 2nd defendant and it was recited in the agreement and other than that, he has no evidence about said Rs. 5,000/- paid on the date of agreement to 2nd defendant. He deposed that, he requested the LMB to inform him about the liability of 2nd defendant, and he was not informed anything by postponing and he did not get any legal notice issued to the bank, for no liabilities of 2nd defendant to the bank. He deposed that as per the agreement, he has to pay remaining balance of sale consideration to 2nd defendant and obtain sale deed before 30.05.1975 and he does not know, whether it is recited in said Ex. B. 2 to the effect that, he has to forgo the earnest money of Rs. 5,000/- in case he failed to pay balance consideration on or before 30.05.1975 and that 2nd defendant has to refund the earnest money in case he fails to receive balance consideration and register sale deed. He deposed that he does not know recitals regarding the delivery of possession of the property in the agreement. He deposed that the agreement was written in the verandah of Court premises Eluru that one B. Raju and a person attested the same and the scribe read over the contents to the attestors also, that 2nd defendant and his sons were since living

jointly, he obtained the sale agreement from 2nd defendant and made payments to him even after 30.05.1975 which he received, that he did not seek extension of time as 2nd defendant informed that his signature acknowledging part payments keep the agreement in force and thereby he did not issue any notice for extension of time. Last payment made by him was on 16.07.1975 as per Ex. B. 8 endorsement under the agreement and 2nd defendant did not issue any notice asking him to pay money to the bank on his behalf and the voucher for Ex. B. 4 endorsement was taken by 2nd defendant and he did not issue any notice in reply and he did not mention the same in his pleadings, that he did not issue any notice for execution of sale deed. He deposed that, the mortgage debt to LMB Eluru was fully discharged by him, though he cannot say how much amount was paid to the LMB Eluru for the debt of 2nd defendant and there is no clearance certificate issued by the LMB for said debt. He deposed that he was put in possession of the plaint schedule property pursuant to the agreement and denied the suggestion of the sale agreement is not a genuine one and brought into existence in collusion with 2nd defendant. He deposed that the payments under Exs. B. 10 to B. 13 are prior to 30.05.1975 for payments to LMB Eluru as to there is no mention in the sale agreement he does not know. Further, 2nd defendant has given and written his consent to the surveyor for issuing patta in his favour and he raised sugarcane crop in 4 acres and is getting income of Rs. 15,000/- per acre out of which Rs. 10,000/- per acre is the expenditure to say net income at Rs. 5,000/- per acre and in the one acre paddy yield is 10 bags and so far from 1975 he realized Rs. 40,000/- net income from the property.

32. D.W. 1 denied the suggestion that the 2nd defendant has no title to sell the property and he has no right over the property. In the entire cross-examination of him by plaintiffs, there is no dispute regarding-payments made under the sale agreement. It is not even the case of plaintiffs that the sale agreement enforceability is barred by law and there was no delivery of possession pursuant to the agreement. Even 2nd defendant who executed the agreement as if his own and not even as father manager for and on behalf of his children, did not dispute the agreement either by filing written statement or by coming to witness box for giving evidence. The plaintiffs did not even summon him as court witness with right of cross-examination if at all they dispute the agreement but for to say the Ex. B. 2 agreement dated 28.02.1975 executed by 2nd defendant was after he relinquished of his rights under Ex. A. 1 dt. 12.10.1969, with no right to execute as of his own. It is in fact as discussed supra, Ex. A. 1 deed is proved as sham and nominal and not acted upon and later all properties treated as joint family properties and alienated the same. It is not even a suit for rescission of contract by cancellation of the sale agreement and not even to say but for the share of 2nd defendant out of the joint family properties, it will not bind the plaintiffs share, for not executed the sale agreement for and on behalf of them also and thereby only for proportionate land out of agreement schedule and on the payment of consideration he is entitled to specific performance to deliver back the remaining land or the like. As discussed supra, the suit for specific

performance is pending. It shows the possession delivered to 1st defendant as vendee by 2nd defendant as vendor of the plaint schedule property by sale pursuant to the agreement Ex. B. 2 dated 28.02.1975 though it is recited as non-possessory and to deliver possession at the time of registration, the plaint cause of action and about referred evidence speak that possession delivered was on the agreement date. Though Section 53-A of T.P. Act, protection won't apply even as per the decision in Mohanlal (supra) relied upon by plaintiffs, 1st defendant is in possession as vendee under contract for sale under 2nd defendant and not in an unauthorized manner, for the contract of sale by 2nd defendant was being manager of joint family of plaintiffs and 2nd defendant proved continuing from Ex. A. 1 held sham and nominal, 1st defendant is not liable for any damages. The suit for specific performance since pending and without rescission of contract for sale by repudiating it, the present suit of plaintiffs for ejectment against the father as 2nd defendant and the vendee-1st defendant under the agreement won't lie as Ex. A. 1 proved sham and nominal and Ex. B. 2 executed by 2nd defendant was while acting as family manager-father of plaintiffs though referred as if his own and the consideration passed was for discharge of debts and other needs and the transaction is thus not hit by immorality or avyavaharika purposes. Thus, subject to result of pending suit for specific performance, the remedy of plaintiffs as respondents 1 to 3 and 5 to 8 being all legal representatives of late 2nd defendant-appeal 4th respondent (since died pending appeal) is to file a suit for rescission of the contract for sale and possession if not any defence raised in the specific performance suit and within the purview of the lis to consider thereunder. As in the present lis, in view of the suit for specific performance pending and nothing material regarding it placed on record when no expression for any finding thereunder can be given, no relief in favour of the plaintiffs for treating the claim as possession by rescission of the contract for sale does not arise. The present suit covered by appeal lis is not for seeking possession by cancellation of contract for sale by rescinding the contract or by showing the contract for sale time barred for ejectment along with their father (2nd defendant) who entered the contract being father manager to bind the plaintiffs, they cannot maintain the suit for ejectment saying the 2nd defendant their father got no right by virtue of Ex. A. 1 relinquishment deed, to alienate in favour of 1st defendant under Ex. B. 2 agreement and as trespasser for Ex. A. 1 proved sham and nominal. Accordingly, Points 1 to 5 are answered.

Point No. 6:

In the result, the appeal is allowed by setting aside the trial Court's decree and judgment in favour of the plaintiffs for possession with past and future profits and costs by dismissing the plaintiffs' suit claim. There is no order as to costs, including in the appeal. Needless to say the remedy of the plaintiffs is as legal representatives of the 2nd defendant for rescission of the contract for sale and possession subject to result of suit for specific performance stated pending filed by 1st defendant/appellant herein, unless any defence taken therein of unenforceability of the agreement, for recovery of possession to consider within

its own merits. It is further made clear that for filing such suit by plaintiffs, their mother, brothers and sisters, the lis covered by the appeal suit throughout no way come in their way also from the fact that 1st defendant by acknowledging contract for sale entered by 2nd defendant cannot when plead any adverse possession against 2nd defendant, equally against the legal representatives of the 2nd defendant.