(1960) 07 AP CK 0008

In the Andhra Pradesh High Court

Case No : Appeals No''s. 352 and 353 of 1955

Goli Ramaswami and Another — APPELLANT

Vs

Narla Jagannadha Rao and Others — RESPONDENT

Date of Decision : 21-07-1960

Acts Referred:
Evidence Act, 1872 — Section 145
Registration Act, 1908 — Section 21

Citation : AIR 1962 AP 94

Hon'ble Judges : P. Chandra Reddy, C.J;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : M.S. Ramachandra Rao, M. Krishnarao and T. Srikantam, for the Appellant; A. Rangacharyulu, for 1st Respondent, G. Venkatarama Sastry, for R. Rajeswararao, for 2nd Respondent and M. Bhujanga Rao, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy, C.J.—These appeals arise out of two suits, O. S. Nos. 129 of 1951 and 130 of 1951 respectively on the file of the court of the Subordinate Judge, Tenali. Both the suits were filed for possession and future mesne profits. Though the plaintiffs are different, the defendants are the same in both the suits, the main facts being common to both. The two suits were tried together with the consent of parries and the evidence was recorded in O. S. No. 129 of 1951 as per the joint memo dated 10-1-1955.

2. The plaintiffs are residents of Perala and Chirala, two adjoining villages, while the defendants belong to a place called Pallikona. The properties in dispute are situated in Konetipuram. According to the plaintiffs, the two sale deeds marked as Exs. A. 26 and A. 27, were executed in favour of the two plaintiffs, the extent of the land covered by each of the sale deeds being 1 acre, 92 cents and 676 square links, and the consideration recited in each being Rs. 7,000/-. The negotiations for these sales were initiated by one Perumallu, who is examined as P. W. 11, at the request of the two palintiffs.

3. The properties in dispute were originally acquired by the mother of the 1st defendant, whose son is the 2nd defendant. The 1st defendant lost his father while he was a lad of two years. At that time, the 1st defendant and his father seem to have constituted members of a Hindu Joint Family along with the father''s brothers. At a subsequent partition, an extent of Ac. 2-57 cents fell to the share of the 1st defendant''s family. The mother of the 1st defendant happened to be the only daughter of one Kaja Balaiah. This Balaiah left his properties by a will to his widow, Lakshmamma. Lakshmamma gifted all her properties to her maternal grandson, the 1st defendant in the year 1920. The mother of the 1st defendant assumed management of these properties as he was a minor and she purchased Ac. 3-80 cents, which is the subject-matter of these two suits, with the income realised therefrom on 14-1-1932. She also acquired another plot of land in her own name out of the income of those properties.

4. Immediately after the 1st defendant attained majority, he seems to have created some trouble to his mother in the enjoyment of these properties. This obliged her to file a suit O. S. No. 176 of 1941 in the Court of the District Munsif, Repalli, claiming these properties as hers. That plaint is marked as Ex. A. 18. The suit was resisted by the 1st defendant on the plea that all the properties, the sale deeds for which stood in the name of his mother, were purchased with the income of the proper ties conveyed to him by his maternal grandmother, the income of the ancestral properties being very small and a large family of theirs, consisting of himself, his mother and two sisters, having to be maintained therefrom.

5. Besides contesting that suit, the 1st defendant raised another action as a counter-blast for accounts against his mother. By a common judgment, which is marked as Ex. A. 21, dated 13-9-1943, the mother''s suit was decreed and that of the 1st defendant, dismissed. On appeal, this was reversed and judgment was entered for the 1st defendant in both the suits, with the result that the mother''s suit was dismissed and that of the 1st defendant decreed. The mother took a second appeal to the High Court of Madras in S. A. No. 674 of 1945 but before the mother could be heard, they entered into a compromise, with the term that the suit properties should be allotted to the son, the 1st defendant, and the other item (referred to above) to his mother. This was on 22-8-1946. Within a few days thereafter, the 1st defendant''s wife sent a notice to him on behalf of his minor son, obviously at his instance, impeaching the validity and the propriety of the compromise and asserting that all the properties constituted joint family properties of the father, the 1st defendant, and his son, the 2nd defendant, and that the compromise was entered into with a view to defeat the just rights of the son. The father did not send any reply to it. However, no further action was taken in regard thereto nor was any attempt made to deprive the mother of the property that was assigned to her under the compromise. The parties continued to enjoy the properties allotted to each of them under the compromise.

6. While so, in the latter half of 1950, the 1st defendant thought of disposing of

the properties in question. It is the plaintiff''s case that they were negotiating for the purchase of these lands through P. W. 11, a broker in that village. Before the sales could take a final shape, the 1st defendant conceived the idea of putting all the properties in the name of his son by executing a document (marked as Ex. B. 1) on 21-11-1950.

7. As this document plays an important role in the context of this enquiry, we may extract it here:

Deed of relinquishment of rights to immovable property executed on 21st of November of the year 1950 in favour of Narla Jagannadharao''s son Venkata Ramanayya, minor by guardian and mother Jonamma, Kamma, living by landed property, resident of Pallekona village, within the registration sub-district of Bhattiprolu, Guntur Dist., by Narla Venkata Ramanayya''s son Jaganadha Rao, Jiroyathi, Kamma, at present residing at Repalle, resident of Pallekona village. Bhattiprolu Registration Sub-District. Guntur Dist.,

You are my son. In the property we both had in the villages of Pallekona, Karumuru, Konetipuram villages I had a right to the half share. As I am afraid that if I myself continue to manage the said property much loss may be caused to the family property, in the joint family property we had till this day, I am relinquishing all the rights I had with an arrangement that you should give the property to my daughters required for their marriages, and I have this day itself passed to you the same.

Therefore from now onwards if you shall enjoy the entire property with absolute rights, I shall not raise at any time any disputes whatsoever against you or your heirs, etc., I did not pass the rights I had to the family property in anybody''s favour previously. No accounts whatsoever shall be demanded from your guardian mother Jonamma.

8. It was about a month thereafter, i.e., on the 27th of December 1950, that the two sales, covered by Exs. A. 26 and A. 27, were made in favour of the two plaintiffs. These documents recite that the bulk of the consideration was paid in cash to the vendor that morning at the time of the execution and that the balance of the consideration was to be utilised by the vendees in discharge of debts due by the 1st defendant''s family. After the execution of the sale deeds, the vendees, the attestors and identifying witnesses went to the Sub-Registrar''s Office at Bhatiprolu and waited till the evening but the 1st defendant did not turn up there at all. The 1st defendant put off the registration of the documents for two days under some pretext or other, and finally when the vendees, P. W. 11 and some others went to the house of the 1st defendant and asked him as to the cause for the non-registration of the documents, he explained that unless the decree debts were discharged, he was not prepared to register the documents. This led the purchasers to pay off the decree debts as also his sundry debts. Notwithstanding this, the 1st defendant did not go to the Sub-Registrar''s office to register the documents.

9. Having failed in their attempts to make the 1st defendant register the documents voluntarily, they presented them for registration on the 29th December. 1950. The Sub-Registrar of Bhattiprolu declined to register the documents, with the result that they had to file appeals to the District Registrar. The Appellate Tribunal, after holding an elaborate enquiry into the matter directed the registration of the documents and accordingly they were registered by the concerned Sub-Registrar. In spite of this, the 1st defendant did not put the plaintiffs in possession of the properties. So suits which have given rise to these appeals, were instituted by the two plaintiffs for the reliefs mentioned above.

10. The main answers of the defendants to these suits were that the 1st defendant had not executed the sale deeds; that the signatures therein purporting to be his were forged; that, they were, unsupported by consideration; that, at any rate, at the time of the execution of these documents the 1st defendant had no title to and interest in the properties, having divested himself of the same by relinquishing his interest therein under Ex. B-1; and lastly, that it was not open to the plaintiffs to plead that the suit properties were the self-acquisitions of the 1st defendant after having taken the sale deeds from both defendants 1 and 2.

11. Both the parties adduced evidence in support of their respective cases in regard to all the issues that were raised in the suits. The trial court, on a consideration of the evidence, both oral and documentary, found as follows: Both Exs. A.26 and A.27 were executed by the 1st defendant. They were fully supported by consideration. The properties in dispute were the separate properties of the 1st defendant but they became the joint family properties by his blending them with the joint family properties in which he relinquished his interest in favour of the 2nd defendant. Consequently, he could not validly convey the suit properties to the plaintiffs. As a result of these findings, both the suits were dismissed with costs.

12. Dissatisfied with the result of these actions, both the plaintiffs have preferred the present appeals.

13. The conclusion of the trial court as to the nature of the property at the time of the alienations is challenged by the appellants, while its opinion as to the execution of the two sale deeds and the payment of consideration is attacked by the learned Advocate-General appearing for the 1st defendant.

14. It is convenient to deal first with the execution of the documents as the defendants had denied their execution and the receipt of the consideration stated therein. We shall now proceed to consider whether the plaintiffs have placed material before the court from which it could be held that these sales were, in fact, made by the 1st defendant.

15. The evidence of execution is furnished by P. Ws. 1, 12, 6, 7 and 11. P. Ws. 1 and 12 being the plaintiffs, P. W. 6 is the karnam of a neighbouring village; P. W.

7 one of the creditors of the 1st defendant; and P. W. 11 the broker in these transactions. On the other side, D. W. 2, the 1st defendant, deposed that he never executed the documents, that they were got up by P. W. 11 with the help of P. Ws. 6 and 7 and that he did not know anything about them till he had notice of the petition for compulsory registration. In addition to these witnesses, both sides examined experts, P. W. 13 and D. W. 1, who gave conflicting opinions as to the genuineness of these two documents. (After discussion of evidence of some of the plaintiffs'' witnesses the judgment proceeds).

16-28. Next, a point was sought to be made from an alleged discrepancy between the evidence of P. W. 12 as given before the District Registrar and his deposition in the trial court, namely, that while he stated before the Registrar that the creditors were present at the time of the execution of these documents, he deposed in the trial court that they were not present. For one thing his attention was not drawn to this aspect of the matter while he was in the witness box in the trial court. In order to draw an adverse inference against a witness the alleged contradiction must be brought out by putting that statement to him. This is required by Sec. 145 of the Indian Evidence Act

29. That section reads as follows :

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

30. It is manifest that in order to establish discrepancies or contradictions, it is essential that the attention of the witness must be drawn to the earlier statements said to be inconsistent with the later ones.

31. This proposition is also contained in Bal Gangadhar Tilak v. Shrinivas Pandit, ILR 39 Bom 441: (AIR 1915 PC 7) in which their Lordships deprecated the practice of merely filing the previous writing without drawing pointed attention of the witness to a particular statement which is alleged to be inconsistent with the evidence given in Court. This is what their Lordships say at page 460 (of ILR Bom): (at p. 11 of AIR):

But there appears to have been no warrant whatsoever for using them for the purpose of either contradicting the evidence of the witnesses, given in this suit, unless the particular matter or point had been placed before the witness as one for explanation in view of its discrepancy with the evidence then being tendered.

32. Consequently, no reliance can be placed on the earlier statement alleged to have been made by the witness before the Registrar as to the presence of the creditors. Even otherwise, it is not of such a character as to render the evidence of P. W. 12 unworthy of credence. It is only a discrepancy of an immaterial

particular. This variation may be attributed to lapse of memory. (After discussing further evidence the judgment concludes:)

33-35. For all these reasons, we are in entire agreement with the trial court that Exs. A. 26 and A. 27 were genuine documents having been executed by the 1st defendant as spoken to by the plaintiffs'' witnesses.

36. This leads to the question as to whether the sale deeds were unsupported by consideration as alleged by the 1st defendant. It is useful at the outset to bear in mind the principle that when once execution is proved, recitals of payment of consideration are prima facie proof of it against the executant or persons claiming under him. There is abundant authority for this proposition. See Commr. of Income Tax Vs. Nagaria Oil Mills Nagayya Gowdu Vs. K. Chenganna Gowdu and Others , S.K. Raghavendra Rao Vs. Venkatasami Naickan and Others, and also AIR 1940 114 (Privy Council)

37. Now, we have to see whether any material was placed before us to prove that the recitals are not true. Except the bare denial of the 1st defendant, there is nothing to establish the want of consideration for these documents. (After discussing evidence regarding this matter the judgment proceeds :)

38-41) It was alternatively contended by the defendants that Ex. B-1 stood in the way of the plaintiffs. The argument pressed upon us is that the 1st defendant having executed a relinquishment deed in favour of the 2nd defendant and thus deprived himself of a share therein, there was no title which he could pass to the plaintiffs, under Exs. A. 26 and A. 27.

42. We do not think that Ex. B.1. would be an obstacle in the way of the recovery of the properties by the plaintiffs. These properties, as appears from the previous litigation, constituted the separate properties of the 1st defendant The above narrative conclusively proves that they were acquired with the income from the properties gifted to the 1st defendant by his maternal grand-mother. That apart, the joint family property, which consisted of only Ac. 2-57 cents, could not have formed the nucleus for the acquisition of the suit properties. It is also clear from the various documents filed on behalf of the defendants that the family properties were not reduced to possession till about the time of the purchase of the suit properties. It appears that a suit had to be filed for partition and separate possession of the share of the 1st defendant in the family properties in the year 1931 and it could have been only thereafter that he would have got possession of that property. Further, the income that might have been given to the 1st defendant''s family could have been barely sufficient for the maintenance of the 1st defendant, his mother and two sisters. Be that as it may, the finding of the Subordinate Judge, that they originally constituted the self-acquisitions of the 1st defendant, has not been impugned before us.

43. An attempt was made to sustain the judgment of the Subordinate Judge that they became joint family properties by the 1st defendant throwing them into the joint stock; in other words, that they were impressed with the character of joint

family property by being blended with the admitted joint family properties. At the outset, it may be remembered that this case was not put forward in the written statement of either the 1st defendant or the 2nd defendant. Nor has the 1st defendant examined as D. W. 2 said a word about it. The only basis for the theory of treatment by blending is Ex. B.18, a notice issued to the 1st defendant by his wife on behalf of their sons, questioning the legality and the binding nature of the compromise entered into by the 1st defendant and his mother, a few days after the compromise. This notice was issued evidently with the ulterior motive of getting something from the mother out of the properties allotted to her, the prime mover in this regard undoubtedly being the 1st defendant himself. Ultimately nothing was done in pursuance of this notice. That apart, there is no whisper of any blending in that notice. It proceeds on the assumption that the properties divided between the 1st defendant and his mother constituted joint family properties.

44. Nor Ex. B. 27. dated 10-6-1941, a mortgage created by the 1st defendant and the 2nd defendant, his son, with the former as the guardian of his son, over an item of the property gifted by the 1st defendant''s maternal grand-mother, comes to his assistance. It is specifically recited therein that this property belonged to the 1st defendant. The statement called in aid by the respondents in support of the theory of blending is "which was from that time under our possession and enjoyment" etc. It is to be noted that these properties could not been in the joint possession of defendants 1 and 2 from the time of the gift for the reason that while the gift was made in the year 1920, the 2nd defendant; was born only in or about the year 1939. Therefore, much significance cannot be attached to that recital. Even otherwise, the mere fact that a part of the income therefrom was used for the benefit of the 2nd defendant could not have the effect of converting self-acquisitions into joint family property. It is to be borne in mind that at the time of Ex. B-27, the 1st defendant was only a minor, aged 2 years, and there was no question of the property being enjoyed by him also.

45. Again, this document does not bear on the suit property. Therefore, Ex. B. 27 cannot have the effect of converting the separate properties of the 1st defendant into the joint family properties of the 1st and 2nd defendants, that is sought to be attributed to it.

46. Exs. B. 26 and B. 27 have no bearing on the present enquiry for the reason that they dealt with admittedly joint family property and do not throw any light on the question of the treatment of the self-acquisitions of the father as the joint property of both the parties. That apart, Ex- B. 27 is only a piece of evidence which has to be taken into account in considering the question. This has to be assessed along with other factors. There is no other evidence, oral or documentary which lends any support to this theory of blending. Even Ex. B. 1 which is said to disentitle the plaintiffs to get the property, does not speak of the self-acquired property of the 1st defendant being converted into joint family property. It definitely says that the properties in which the rights of the 1st

defendant were released in favour of the 2nd defendant constituted joint family properties. It is not a case of conversion of separate properties into joint family properties. Moreover, that is the document which was executed for the purpose of defrauding the creditors and the intending purchasers as we will show presently.

47. We cannot countenance the proposition of Shri Venkatarama Sastri for the respondents that if an item of the self-acquisition is converted into joint family property, all the ether self-acquisitions must be deemed to have been blended with the joint properties of the acquirer and the other members of the family. We do not think that D. Sadasiva Vittal v. Bolla Rattin, AIR 1958 Andh Pra 145, rendered by a Bench of this Court, consisting of Umamaheswaram and Krishna Rao, JJ. Lends any support to the contention advanced by the counsel for the respondents in this regard.

All that was laid down in that case was that a person might impress his self-acquired or separate properties in whole or in part with joint family character. It is not an authority for the proposition that when once a part of the separate property was converted into join; family property, the whole of the self-acquisition must be deemed to have been impressed with the same character. It should be remembered that when a person acquires some property, presumably he intends to retain domain over it and the intent to abandon his exclusive title must be manifest by acts which are inconsistent to keep it at his absolute disposal. Our attention is not drawn to any acts of the 1st defendant, at any rate, prior to Ex. B. 1, which can raise the reasonable inference of his intention to renounce his exclusive title to the property and to treat it as joint family property of the son and himself. Consequently, the suit property remained his self-acquisition till the disposal thereof under Exs. A-26 and A-27.

48. In this position, could the 1st defendant convey a valid title to the 2nd defendant under the relinquishment deed, Ex. B. 17? In our opinion, that document could not have the effect of conveying the properly in the self-acquisitions of the 1st defendant. A relinquishment deed would be effective in regard to joint family properties but so far as separate properties are concerned, that could be done only under a conveyance. This aspect of the matter was missed by the trial court.

49. Shri Venkatarama Sastri tried to buttress Ex. B. 1 on the theory that though it was styled a relinquishment deed, it was in effect a settlement deed. We not think we can give any weight to this argument. It is true that the character of a document is to be determined with reference to the contents and not with reference to the name given to it. Bearing that in mind, if we scan the recitals in Ex. B. 1 there can be little doubt that it was an out and out relinquishment deed. It is specifically stated therein that it was the joint family property in which the 1st defendant was releasing his interest. There is no scope for construing the document as a gift or settlement when there is no indication therein that he treated the properties as his self-acquisitions and intended to transfer them to

his son.

50. Further, in the written statement of the 1st and 2nd defendants it was asserted that this was a relinquishment deed and the 1st defendant''s share in the joint family property was properly relinquished. It was not suggested even in the witness-box by the 1st defendant that that document was meant to operate as a conveyance. It is also worthy of note that it was stamped as a relinquishment deed. In that position, it is futile to say that the deficiency in the stamp could not render a document invalid. This contention would have been valid if the document was a conveyance but it was insufficiently stamped. That is not the position here. It was styled a relinquishment deed and throughout the parties stuck to the theory that it was a release deed and it was meant to be so. That being the situation, we do not think that it would be of any avail to the defendants to argue that the defect could be cured by paying the deficit stamp etc.

51. Even if it could be regarded as a conveyance, it would not very much help the defendants having regard to the way in which it was registered. It is to be noted that no schedules of property were appended to Ex. B.1 nor even a description thereof was furnished in the document. Further, it was registered in Book No. 4, white documents affecting immovable property whose value is over Rs. 100/- are to be registered in Book No. 1.

52. We will do well here to reproduce some of the relevant sections of the Indian Registration Act:

Section 21 says :

1. No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

2. Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

3. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

4. No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Section 22 is in these terms:

1. Where it is, in the opinion of the Provincial Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Provincial Government may, by rule made under this Act require that such houses and lands as aforesaid shall, for the purposes of S. 21 be so described.

2. Save as otherwise provided by any rule made under sub-section (1), failure to comply with the provisions of Sec. 21, Sub-section (2) or Sub-section (3), shall not disentitle a document to be registered if the description of, the property to which it relates is sufficient to identify that properly.

53. It is plain that in spite of non-compliance-with the provisions of Sec. 21, a document will be registered provided the description of the property is sufficient to identify it only if it is not otherwise provided by the rules to be framed by the Provincial Government.

54. The Government of Madras in exercise of the powers conferred by Sub-section (1) of Sec. 22, had framed rules which are as follows:

In supersession of Notification No. 497, dated 8th December, 1902.....His Excellency the Governor in Council is pleased to enact, under S. 22(1) of the Indian Registration Act XVI pf 1908, that the following rule shall take effect from and after the 1st July, 1919, in the districts and portions of districts mentioned in the accompanying list:

a) Every non-testamentary document presented for registration and relating to land shall, if the land comprises one or more entire survey fields or sub-divisions, specify the number of each field or sub-division as given in the Government village map.

b) If the land has no separate number assigned to it in the Government village map, the document shall specify the number assigned in such village map to the survey field or subdivision in which the land is situated together with such description of land as is sufficient for its identification.........

55. We shall presently deal with the effect of failure to satisfy the condition as to the description of the properties to be attached.

56. We will now proceed to read Sec. 51 of the Act which requires certain registered books to be kept in the office of the Sub-Registrar. That section reads:

1. The following books shall be kept in the several offices hereinafter named, namely:

A) In all registration offices:

Book 1 Register of non-testamentary documents relating to immoveable property,

Book 2 Record of reasons for refusing to register;

Book 3 Register of wills and authorities to adopt, and

Book 4 Miscellaneous Register;

B) In the office of Registrars:

Book 5 Register of deposits of wills;

2. In book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immoveable property, and are not wills.

3. In book 4 shall be entered all documents registered under clauses (d) and (f) of Sec. 18 which do not relate to immoveable property.

4. Nothing in this Section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of Sub-Registrar.

57. At this juncture, we have also to look at the terms of Sec. 18, which runs as follows:

Any of the following documents may be registered under this Act, namely:

a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property;

b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

c) leases of immoveable property for any term not exceeding one year, and leases exempted under Sec. 17;

cc) instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property;

e) wills; and

f) all other documents not required by section 17 to be registered;

58. A reading of these two sections establishes that the registration of immoveable properties, whose value is over Rs. 100/- has to be made in Book No. 1. It is only documents contemplated by Sec. 18 that are normally registered

in Book No. 4. In this case, the registration of these documents was effected in Book No. 4.

59. What is the effect of this registration ? Does it result in the whole document being invalidated ? In other words, is it void or voidable at the instance of persons who are sought to be affected by the registration of these documents ?

60. it is submitted by Shri Ramachandra Rao that such registration does not exist in law as it contravenes the provisions of Secs. 18 and 51 and the rules framed by the Provincial Government pursuant to the powers conferred by them on Sec. 21. The learned counsel urges that the rules framed by the Government require schedules of properties to be annexed to documents and if that requirement is not satisfied, it will invalidate registration. He says that all the cases which laid down that the failure to furnish the description of the property or a schedule thereof being only a defect in procedure, cannot render them void as it is cured by Sec. 87 of the Indian Registration Act, were decided prior to the amendment of the rule adding sub-rule (c) which provides:-

Failure to provide with the contents of this rule will disentitle a document to be registered.

61. It is unnecessary for us to go into the larger question as to whether the non-observance of the requirements of the rules would have the consequence of making the registration nugatory having regard to rule (c) in the view we take of the effect of registration in Book No. 4. The stand taken by the respondents in this behalf is that so far as the applicability of Sec. 3 of the Transfer of Property Act is concerned, it does not make any difference whether the registration is made in Book No. 4 or in Book No. 1. The registration of the document is sufficient to attribute notice thereof within the meaning of S. 3 of the Transfer of Property Act

62. We do not think that this argument is substantial. According to Sec. 3 of the Transfer of Property Act, a person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from any inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation I reads as follows:-

Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under Sub-section (2) of S. 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share of interest is being acquired, is situated.

Provided that:-

1. the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder,

2. the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under Sec. 51 of that Act, and

3. the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Sec. 55 of that Act.

63. It is clear from proviso (3) that in order that notice of registration of document could be ascribed to a person, the condition envisaged therein should be fulfilled. We have already seen that the documents registered under Ss. 17, 18 and 89, which relate to immoveable property should be entered in Book No. 1, and the documents registered under Clauses (d) and (f) of Section 18, which do not relate to immovable property should be entered in Book No. 4. It is only an executant of the document or the person in whose favour it is executed that is entitled to obtain a copy of it, if it is registered in Book No. 4. No one else could get a copy or even an extract thereof. It is not accessible to third parties. That being the position it would unreasonable to impute constructive knowledge of the existence of such a document to third parties. An interpretation of a statute which leads to absurd results should be avoided if it is permissible on the language thereof.

64. The effect of registering documents relating to immoveable property of the value of more than Rs. 100/- in Book No. 4 instead of Book No. 1, has been considered by a Bench of the Madras High Court in Narasamma v. Subbarayudu, ILR 18 Mad 364. In that case a deed was executed in favour of a Hindu widow by her husband''s relation releasing all the rights he had in the properties of her deceased husband. On the basis of this document, the widow conveyed those properties to two individuals, defendants 1 and 2 in the suit. After executing the release deed, the releasor sold the same to another person, plaintiff in that case. As defendants 1 and 2 were not willing to recognise his title, he instituted the suit for recovering possession of the property. The release deed was entered in Book No. 4 and not in Book No. 1 as prescribed by Sec. 51 of the Registration Act. The question that called for determination was whether the plaintiff was entitled to recover the property from defendants 1 and 2. The answer was in the affirmative. Dealing with the question as to the effect of the document being registered in Book No. 4, instead of Book No. 1, this is what Best J. remarked:

The object of the Registration Act is to provide not only a guarantee of the genuineness of instruments, but also a record from which persons who may desire to enter into dealings with respect to property may be able to obtain information as to title - or to quote the words of the Privy Council in Mohammed Ewaz v. Birj Lal, 4 Ind App 166 at p. 175 (PC) - ''Registration is mainly required for the purpose of giving notoriety to the deed''; and such being the case, it is difficult to see how this object is attained, if a document relating to immoveable property is registered in a book expressly prescribed for documents ''which do not relate to immoveable property''. Section 60 of the Act requires that the document registered shall have endorsed on it a certificate of the fact of registration ''together with the number and page of the book in which the document has been copied'', and this is the certificate which is ''admissible for the purpose of proving that the document has been duly registered in manner provided by the Act.''" They held that such registration would not affect property which had passed into the bands of third parties, though, as against the executant of the document, it might be enforceable on the principle certum est quod certum reddi potest.

65. It is urged by Shri Venkatarama Sastri that this is no longer good law having regard to the decision of the Privy Council in Sah Mukhun Lal Panday v. Sah Koondum Lall, 2 Ind App 210 (PC) and also the decision of the Bombay High Court in Parasharampant v. Rama Yellappa, ILR 34 Bom 202 and two decisions of the Madras High Court in W. Subbalakshmi Ammal Vs. Narasimiah, and A.S. Varadaraja Ayyar Vs. Rama Pattar''s son Kailasam Ayyar and Others, We do not think this submission has any force. ILR 18 Mad 364 is not in any way inconsistent with the dictum of the Judicial Committee of the Privy Council in 2 Ind App 210 (PC). The passage which contains the principle which is said to be opposed to the doctrine of ILR IS Mad 364 is this:

In considering the effect to be given to Sec. 49, that section must be read in conjunction with Sec. 88, and with the words of the heading of Part 10, "Of the effects of Registration and non-Registration." Now, considering that the registration of all conveyances of immoveable property of the value of Rs. 100/- or upwards is by the Act rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non-compliance with the provisions of Sec. 19, 21 or 36, or other similar provisions. It is rather to be inferred that the legislature intended that such errors or defects should be classed under the general words ''"defect in procedure" in Sec. 88 of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertence of a public officer, on whom they would naturally place reliance. If the registering officer refuses to register, the mistake may be rectified upon appeal under Sec. 83, or upon petition under Sec. 84, as the case may be: but if he registers where he ought not to register, innocent persons may be misled, and may not discover until it is too late to rectify it, the error by which, if the registration is in consequence of it to be treated as a nullity, they may be deprived of their just rights.

66. We do not find anything in this which lends any countenance to the theory that the registration of documents in Book No. 4, which properly should be entered in Book No. 1. affects the rights of innocent third parties also. Far from

that, it gives some colour to the proposition that innocent persons should not in any way be injured by such registry.

67. Nor does 52 Mad LJ 482 : (AIR 1027 Mad 586) give expression to an opinion which is not in conformity with ILR 18 Mad 364. Waller and Madhavan Nair JJ. approved of the principle enunciated in ILR 18 Mad 364 (supra). But they distinguished it on the ground that in the case before them, the widow, who got no conveyance in her favour, could not in any way be said to be prejudiced by the wrong entry of Ex. C in Book No. 4. They said that that decision should be understood strictly with reference to the particular facts. Referring to ILR 18 Mad 364 (supra), this is what the Bench said:

The learned Judge thought that, a stranger like the plaintiff in that case should not be made to suffer for a mistake which the 4th defendant could have easily rectified and that she had herself to blame if she became a loser thereby and her transferees of course stood in her shoes. The subsequent observations in the judgment also show that one of the main considerations which influenced them in arriving at their conclusion was the fact that in that case the property had passed to a third party for consideration and that he should not be made to suffer because the parties to the document did not take sufficient care to get the document entered in the proper book in the Registration Office.

68. These remarks reveal that the Bench, far from demurring the proposition enunciated in ILR 18 Mad 364 (supra), accepted it but thought it was inapplicable to the case before them.

69. ILR 34 Bom 202 also does not render any assistance to the respondents. That was not a case where the rights of innocent third parties were affected by registering the document in Book No. 4. That bore only on the rights of the releasor and the releasee and therefore, we cannot derive any help from that decision in this enquiry.

70. In Mulla''s Transfer of Property Act. 1956 edition, page 34, Gordhandas Vithaldas Vs. Mohanlal Maneklal Doshi, is relied upon to establish the proposition that the purchaser was not affected with notice of a registered agreement restricting the use of the property purchased because it was not shown that the agreement was indexed in relation to the property sold. It is stated there :

However that may be, the second proviso shows that such misplaced entries will not operate as notice.

71. It is futile to contend that the registration of a document in a wrong book would still prejudice the rights of innocent third parties especially after the pronouncement of the Privy Council in AIR 1935 165 (Privy Council) Say their Lordships :

As held by the High Court, the document should have been entered in Book 1, and the mistake which was made by the registering officer in good faith, has not injured any innocent person.''''

72. It follows that whatever might be the effect of the registration of a document in a wrong book, like Book No. 4 instead of Book No, 1, it would not operate to defeat the rights of innocent third parties.

73. On this discussion it follows that there is really no conflict between ILR 18 Mad 364 and 2 Ind App 210 (PC). This principle finds acceptance in 52 Mad LJ 482 : W. Subbalakshmi Ammal Vs. Narasimiah, and AIR 1935 165 (Privy Council)

74. It is true that 1946 Mad LJ 355 A.S. Varadaraja Ayyar Vs. Rama Pattar''s son Kailasam Ayyar and Others, strikes a discordant note. Horwill, lays down that the mistake of a registering officer could not render the registration invalid and the transaction would be binding provided it did not injure innocent third parties, but that the subsequent mortgagee by his failure to apply for an encumbrance certificate must be deemed to have had notice of the charge and hence the charge was binding on the parties. We do not think that the law as expounded by the learned judge is correct. He overlooked that any amount of search of Book No. 4 would not enable parties other than the executant of the document or those claiming under him to have any information about the registration of the document. It is not disputed that third parties have no access to Book No. 4 and cannot obtain any extract therefrom. In such a situation the application for encumbrance certificate could not serve any useful purpose. The decision of the learned judge is in the teeth of the third proviso to the clause. "A person is said to have notice of a fact, etc.," occurring in Section 3 of the Transfer of Property Act. We do not think that we can subscribe to the principle adumbrated by the learned judge. Further, in this case the parties had made enquiries as to the existence of encumbrances affecting this property and they were informed that none existed.

75. There is another ground of attack against Ex. B-1. It is contended by the counsel for the appellants that even as a conveyance it is liable to be avoided u/s 53 (2) as it was intended to defraud not only the existing creditors but also the intending purchasers also. It is beyond doubt that this document was designed to achieve that purpose. Admittedly, on the date of the execution of this document, in addition to the debts mentioned in Exs. A-26 and A-27, the 1st defendant owed to the tune of Rs. 3,000/- or Rs. 4,000/- to third parties. He had no property other than those which are supposed to have been released under Ex, B-1. Quite apart from that, there are various circumstances which are a pointer to the conclusion that the intention in executing the document was to defraud the creditors and intending purchasers of the property. While all the previous documents were executed at Pallekona. Ex. B-1 was executed at Repalle. It was attested by persons belonging to Repalle unlike on the previous occasions when all the documents were attested by people of Pallekona or Koneti-puram. The registration was also effected at Repalle instead of Bhattiprolu.

We are not concerned with the validity of the registration because even if a small portion of a property is situated within the jurisdiction of a Sub-Registrar''s Office, registration of a document covering all the properties of the executant could be effected in that office. But this is one of the factors to be taken into consideration in judging the motive of the executant in getting it registered at Repalle. This transaction surely bears a badge of secrecy. There is also the fact that the schedule was not furnished and the registration was entered in Book No. 4 which would prevent third parties from getting any information about it. All these things are a clear indication that the motive for executing this document was to defeat the creditors and persons who might be induced to purchase property on the assurance that the vendor had a valid title to the property. It is also significant that on two occasions when these properties were attached in execution of decrees obtained against the 1st defendant, though the mother as the guardian of the 2nd defendant preferred claim petitions, untimately either the debts were paid off by the 1st defendant himself or the claim petitions were not pressed. This also shows the object of the executant of the document. On this ground also the document could be avoided as being in fraud of intending purchasers.

76. For all these reasons we hold that Ex. B-1 is out of the way of the plaintiffs and that it was quite competent for the 1st defendant to convey title to the suit properties under Exs. A-26 and A-27.

77. In the result we allow both the appeals, set aside the judgment and decrees of the trial court and decree the suits with costs throughout. A decree for mesne profits to be determined under order 20, Rule 12 Civil Procedure Code, will follow.

