
(2003) 01 AP CK 0099
In the Andhra Pradesh High Court
Case No : SA No. 589 of 1993

Kanigolla Lakshmana Rao

APPELLANT

Vs

Gudimetla Ratna Manikyamba and Another

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1

Citation : AIR 2003 AP 241 : (2003) 2 ALD 196 : (2003) 4 ALT 117

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : M.V.R. Narasimha Charya, for the Appellant; N. Ashok Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ananda Reddy, J.—This second appeal by the 1st Defendant is directed against the judgment and decree of the Additional District Judge, West Godavari in A.S.No. 141 of 1985 dated 14th September 1993 under which the decree granted by the Subordinate Judge, Kowur in O.S.No. 7 of 1980 dated 10th October 1985, was confirmed.

2. The first Respondent herein is the plaintiff, who filed the suit with the following pleadings:

The 1st Defendant is the son-in-law of the Plaintiff. On 21-2-1972, the plaintiffs husband and her sons executed a Registered Settlement Deed in respect of 2 acres of land situated at Lakkavaram, in favour of the 1st defendant and his wife, Sita Naga Lakshmi Kumari, who is the daughter of the plaintiff. The said Sita Naga Lakshmi Kumari died on 31-7-1979 at Eluru. The plaintiff, her husband and sons went to Eluru and after cremation was over, the plaintiff asked the 1st defendant about certain monies given by her to the 1st defendant for the purpose of business, amounting to Rs. 12,000/-. The 1st Defendant told the plaintiff that since his wife died, he has no interest at Lakkavaram and offered to

sell the plaint schedule property to the plaintiff for the amount due to her. Accordingly, he executed Ex.A-1 agreement of sale on 01-08-1979 agreeing to execute a regular sale deed within 15 days, for a consideration of Rs. 12,000/-, which was already received. The possession of the suit land was delivered to the plaintiff, as per the recitals in the agreement. The said agreement was executed in the presence of the plaintiff, her husband, 1st Defendant's brother Krishna Rao and his sister's husband Mullapudi Bala Krishna and a neighbour of the 1st Defendant, P. Chandra Rao. The said agreement was scribed by Bala Krishna and attested by other two persons present at that time. On the very same night, the plaintiff and his people returned to Lakkavaram. To their surprise they received a telegram from an Advocate Sri A. Suryanarayana, Eluru and also a registered notice on 6-8-1979, stating that the agreement was obtained under threat, coercion and undue influence and the said agreement is devoid of consideration. According to the plaintiff, the contents in the telegram and notice are false. The plaintiff's husband got issued a reply, through his Advocate on 11-8-1979. The 1st Defendant gave another notice dated 20-8-1979. The contents therein are all false. The agreement was executed voluntarily, towards the discharge of the debt due by him to the plaintiff. The 1st defendant has got business and maintaining accounts and was taking sums off and on from the plaintiff and was telling her that the amounts were being credited in his accounts. The plaintiff was also noting the amounts paid in a book maintained by her.

After the agreement and after the plaintiff and his people left Eluru, they learnt that the death of Sita Naga Lakshmi Kumari was not natural. The plaintiff's relation Gangaraju, a resident of Kamavarapukota, who come to know about the death, appears to have gone to Eluru on 3.8.1979 and made enquiries. The 1st Defendant and his brother came to know about the enquiries made by Ganga Raju and bore grudge and so to see that the plaintiff's husband does not proceed any further got issued telegram on 4.8.1979 and notice on 6.8.1979. There was no doubt that Sita Naga Lakshmi Kumari was hale and healthy and it is learnt that her dead body was taken out from a well. In order to wreck vengeance against the plaintiff's family, now the suit agreement is being denied.

It is further stated that the 2nd defendant was a tenant of the suit land from 1st defendant and his wife. He was attorned to the plaintiff. The plaintiff caused notice to the tenant also, as he was not co-operating with the plaintiff, hence, he is also added as a party to the suit. Hence, the suit for a direction to the 1st Defendant to execute a regular sale deed in terms of the suit agreement and for a further direction to the 2nd defendant to attorn to the plaintiff and to pay the profits for the year 1979-80 and future profits with 6% interest till actual delivery of possession of the property.

3. The first defendant filed his written statement with the following averments: -

The relationship and the execution of the settlement deed dated 21.2.1972 and the death of Sita Naga Lakshmi Kumari on 31.7.1979 are admitted. After the death of his wife, the 1st Defendant became entitled to the properties of his wife,

as per law. The said Sita Naga Lakshmi Kumari gave birth to two sons and one daughter and they lived for sometime and passed away prior to her fourth conception, which also proved abortive. Because of these happenings, she developed a psychological fear and complexity that her children will not live and this haunted her. During her fifth conception, her health deteriorated and in her 8th month of pregnancy, her health completely broke down and she developed "eclampsia" (Gurrapuvatham) and she collapsed on account of the said disease. Her death was intimated immediately to the plaintiff and her husband. They came to Eluru and the cremation took place on 31.7.1979. The first defendant was in shock and he was completely depressed by the death of his wife. In these circumstances the plaintiff and her husband and members of their family threatened that Sita Naga Lakshmi Kumari did not die normally and the 1st Defendant was responsible for her death and if the 1st Defendant agrees to convey the plaint schedule property to the plaintiff, they would not report the matter to the police. The 1st Defendant, in his depressed mood, agreed to execute a deed to avoid police report and consequential police harassment and he is not aware of the contents of the said document. He simply signed it and he came to know about the contents, at a later stage. Therefore, the suit document, styled as agreement, is devoid of consideration. There is no truth in the allegation that previously plaintiff advanced Rs. 12,000/- and it is made to show that some sort of consideration is there for the agreement. On the very same day, the plaintiff and her husband executed a letter in favour of the 1st Defendant and it was attested by sons of the plaintiff. The possession of the suit land was never delivered to the plaintiff. He never told the plaintiff that he was crediting the amounts taken from the plaintiff in his accounts. The so-called book maintained by the plaintiff must be a fabricated one. Hence, sought for dismissal of the suit.

4. Basing on the above pleadings, the trial Court framed the following issues:

- (i) Whether the suit agreement is not supported by consideration?
- (ii) Whether the suit agreement was executed under coercion and threat in the circumstances mentioned in the written statement of first defendant?
- (iii) Whether the Plaintiff is entitled to specific performance and possession of the suit land?
- (iv) Whether Plaintiff is entitled to any profits and if so to what amount?
- (v) To what relief?

5. On behalf of the Plaintiff PWs. 1 to 3 were examined and Exhibits A-1 to A-12 were marked. On behalf of the Defendants, DWs.1 to 4 were examined and Exhibits B-1 was marked.

6. The trial Court, after consideration of both oral and documentary evidence, held on Issue No. 2 that there was no coercion or threat, as alleged by the defendant, while executing Ex.A-1, agreement of sale. With reference to the sale

consideration of Rs. 12,000/- mentioned in the agreement of sale was also negated, disbelieving the version of the Plaintiff that she had given such amount to the defendant for his business. Further, the trial Court, relying upon the decision of the Supreme Court in the case of Ram Charan Das Vs. Girjanandini Devi and Others, , held that the settlement pleaded under Ex.B-1 itself is a sufficient consideration for the agreement of sale and therefore, the Plaintiff is entitled for the relief sought for execution of a sale deed in her favour by the 1st defendant. Accordingly, the trial Court decreed the suit.

Aggrieved by the said judgment and decree, the 1st Defendant carried the matter in appeal before the District Court. The District Court also, after considering the contentions that are advanced, especially with reference to threat and coercion exercised by the plaintiff and her husband and family members for obtaining Ex.A-1 agreement, and disbelieving the said version, after elaborately considering the evidence adduced by both sides, confirmed the judgment and decree of the trial Court, holding that the recital in Ex.B-1 shows that once for all, the disputes between the parties are settled and in token thereof, Ex.B-1 was executed. The version of the 1st defendant that there was a threat was disbelieved by the first appellate Court also. On such finding, the appellate Court confirmed the judgment and decree of the trial Court. Aggrieved by that, the 1st defendant has come up in the present second appeal.

7. The learned Counsel Sri MVR Narsimha Charya contended that both the Courts have gravely erred in decreeing the suit as well as confirming the same. According to the learned Counsel, the plaintiff has filed the suit for specific performance of an agreement of sale alleging that she had purchased the suit schedule property for a specific sale consideration of Rs. 12,000/- which has alleged to have already paid, but failed to prove such consideration. When once the plaintiff failed to prove her version as to the consideration, the suit ought to have been dismissed. Alternatively, the learned Counsel contended that the plaintiff neither pleaded nor any evidence was adduced as to the family settlement. In the absence of any pleadings and an issue and findings to that effect, the Courts below were not justified in granting the relief, totally on a different issue, which was not put to the parties, giving a fair opportunity to answer such plea. The learned Counsel also contended that the trial Court granted the decree totally on a finding, which was not at all pleaded and proved by the plaintiff.

In support of his contention, the learned Counsel relied upon the decisions in *Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another*, , *K. Obul Reddy v. B. Venkata Narayana Reddy* AIR 1984 SC 1171, *Lourdu Mari David and others Vs. Louis Chinnaya Arogiaswamy and others*, , *Bishambhar Nath Agarwal Vs. Kishan Chand and others*, , *Sri P. Purushotham Reddy and Another Vs. Pratap Steels Limited*, .

8. The learned Counsel for the Respondent/Plaintiff, on the other hand, supported the judgment and decree of the Courts below. According to the

learned Counsel, though it was not specifically pleaded in the plaint, but the parties know as to the existence of Ex.B-1, executed between the parties. If Ex.A-1 and Ex.B-1 are read together, it is clear that Ex.A-1 was executed in terms of Ex.B-1, The learned Counsel also contended that though a specific plea was not taken in the pleadings and even an issue was not framed and specific evidence was not let in, still the parties are conscious of the issue in dispute and in fact, evidence was adduced by the parties. In fact, according to the learned Counsel, the evidence of the defendants itself is clear that there was a mediation and settlement between the parties as to the dispute and ultimately the documents were executed by the defendant. It is also contended by the learned Counsel that both the documents were scribed by none other than the brother-in-law of the 1st Defendant and attested by brother of the 1st Defendant as well as a neighbour to the 1st Defendant. All these facts clearly go to show that there was a settlement after mediation, in pursuance of which these documents, viz., Ex.A-1 and Ex.B-1, were executed by the respective parties. Therefore, the learned Counsel contended that the Courts below were not in error in decreeing the suit, basing on the material on record in the form of evidence both documentary and oral. The learned Counsel also contended that even in the absence of pleadings and specific issue, the Courts have got the power, as an exception, to grant a decree based on the material available, especially when the parties are aware of those facts.

The learned Counsel relied upon the following decisions, in support of his contentions:

Srinivas Ram Kumar Vs. Mahabir Prasad and Others, , Nagubai Ammal and Others Vs. B. Shama Rao and Others, , Vishram Arjun v. I. Shankariah AIR 1957 AP 784, Mir Niyamath Ali Khan Vs. Commercial and Industrial Bank Ltd. and Others, , Shikharchand and Others Vs. Mst. Bari Bai and Others, , Banamali Mohapatra and Others Vs. Gopinath Jew and Another, , Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, .

9. The learned Counsel for the appellant in reply contended that when the 1st Defendant was not specifically drawn to his notices, as to the settlement by referring to execution of Ex.B-1, as a consideration for execution of Ex. A-1 agreement of sale, the Courts below are not justified in granting the decree in favour of the plaintiff. The learned Counsel also contended that the decisions relied upon by the Respondent/ Plaintiff are distinguishable on facts and therefore, not applicable and hence sought for setting aside the Judgment and decree under appeal.

10. Before appreciating the contentions, it would be proper to refer to the relevant questions of law, as framed by the appellant, which are as under;

(i) Whether the said document Ex.B-1 can be relied on as family settlement, and thus there is consideration for Ex.A-1 agreement of sale, when both the Courts found held that there was no payment of cash consideration of Rs. 12,000/- as

pleaded and sought to be proved by the plaintiff?

(ii) Whether the decision of Court below relying upon a new case not pleaded in the plaint and no issue is framed, for passing of consideration under Ex.A-1 agreement of sale of immovable property in a suit for specific performance of said agreement, which is discretionary relief, is vitiated by error of law?

11. The first question, as framed, is whether the settlement deed Ex.B-1 could be considered as a consideration for the execution of Ex.A-1 agreement of sale. This issue is directly covered by the decision of the Supreme Court in the case of Ram Charan Das Vs. Girjanandini Devi and Others, , and therefore, there is no merit on that issue. Therefore, the issue to be considered is only the second issue. There is no dispute as to the facts that were pleaded in the plaint and written statement. No doubt the plaintiff did not plead that Ex.B-1 settlement is the consideration for execution of Ex.A-1 agreement of sale. The pleadings in the plaint show that the plaintiff alleged that Ex.A-1 was executed agreeing to sell the suit schedule property for a cash consideration of Rs. 12,000/-, which she has already paid from time to time and also claimed that the defendants have made entries in his books of account and she also made entries in the note book maintained by her. On the other hand, the defendant pleaded that Ex.A-1 was obtained by exercising threat, coercion etc. The trial Court framed issues on both the aspects and held against the respective parties on the above two issues i.e., as far as the sale consideration is concerned, it was held against the plaintiff, that plaintiff failed to prove that there was any cash consideration, as alleged. Similarly, it was held against the Defendant that Ex.A-1 was executed under threat and coercion. The Court below, however, though held that there was no cash consideration for Ex.A-1 agreement of sale, but the settlement, proved by Ex.B-1 filed by the Defendant himself, was treated as sufficient consideration and accordingly decreed the suit, which was even confirmed by the first appellate Court. Now the contention of the Defendant is that the Defendant was not put on notice that Ex.B-1 is being treated as sufficient consideration for execution of Ex.A-1 and the decree passed by the Court below is without such notice and opportunity to the Defendants. Hence, sought for setting aside the judgment and decree of the Courts below on that ground.

12. In order to appreciate the rival contentions, it would be proper to refer to the decisions cited, before proceeding further:

In the case of Goppulal v. Dwarkadheeshji (supra), the Apex Court was considering an eviction proceedings under the Rajasthan Premises (Control of Rent & Eviction) Act and the issue was as to the sub-letting. One of the grounds of eviction was the sub-letting by the tenant without the consent and knowledge of the landlord. The issue raised before the Apex Court was in the absence of any pleading or any issue on the question of sub-letting, the first two Courts were in error in holding that the two shops were sub-let with the permission of the landlord. The permission of the landlord for the sub-letting cannot be established from the mere fact that the landlord realised rent after the sub-letting, in the

absence of proof that the landlord had then clear knowledge of the sub-lease. The Apex Court therefore, reversed the judgment of the High Court holding that it was in error in recording a finding that the shops were sub-let with the permission of the landlord.

In the case of *K. Obul Reddy v. B. Venkata Narayana Reddy* (supra), the Apex Court was considering the issue as to whether the properties in dispute were the Joint family properties or not. In that case, the suit schedule properties were gifted by one Thimma Reddy to his senior wife Naramma under a Gift Deed dated 8-11-1930. The said Thimma Reddy had a son Yella Reddy and a daughter Nagamma through Naramma, his senior wife. Subsequently, Yella Reddy got married the daughter of Nagamma, who is the granddaughter of Thimma Reddy and Naramma. Naramma executed a Gift Deed on 10-10-1960 in respect of the properties, which she got under a gift, in favour of her granddaughter Venkata Lakshamma, who was also his daughter-in-law, having got married to Yella Reddy. In the year 1961, there was an exchange of a part of the properties, which Venkata Lakshamma got under the Gift with her husband and in exchange, she got a house. Subsequently, the said Venkata Lakshamma sold the left over properties to the plaintiff while a sale deed was executed by her husband Yella Reddy in favour of the Defendant in respect of the said properties. Then the plaintiff filed the suit for declaration as well as for recovery. Though the trial Court decreed the suit, on appeal the appeal was allowed, where it was held that the properties are the Joint family properties of Thimma Reddy and he cannot execute a valid gift deed in favour of his wife and the said gift deed should be treated only as a conveyance in favour of his son Yella Reddy. Therefore, Naramma could not transfer a valid title under the gift deed executed by her in favour of her grand-daughter Venkata Lakshamma. The said order of the first appellate Court was confirmed by this Court. On further appeal, the Apex Court held that there may be a presumption as to the existence of a joint family, but there cannot be any issue as to the existence of any Joint family property. The Apex Court held that the approach of the first appellate Court as well as the High Court were held to be wrong and erroneous. The Apex Court also held that no case is made out in the pleadings with regard to the properties gifted by Thimma Reddy to his wife Naramma, being the joint family properties. No issue with regard to the properties being the Joint family properties was raised and no such issue could possibly even raised, in the absence of any pleadings. The evidence of Yella Reddy in the suit does not mention that the properties gifted by his father to his mother under the Gift Deed belongs to the joint family. In the absence of any pleadings, any issue and further in the absence of any proper evidence, the view expressed by the High Court that the properties are joint family properties, clearly unwarranted and accordingly reversed the said finding.

In the case of *Lourdu Mari David v. Louis Chinnaya Arogiaswamy* (supra), the Apex Court was considering the provisions of Section 20 of the Specific Relief Act. It was held that the relief u/s 20 of the Specific Relief Act is the discretion of

the Court, but the discretion should not be refused arbitrarily. The discretion should be exercised on sound principles of law capable of correction by an appellate Court. It was also held that person claiming specific performance not coming to the Court with clean hands is not entitled for the equitable relief and a decree for specific performance could not be granted.

In the case of *Bishambhar Nath Agarwal v. Kishan Chand* (supra), a Division Bench of Allahabad High Court was considering the provisions of the Specific Relief Act. In that case, the agreement for re-conveyance was on payment of the agreed amount by way of demand draft in favour of the Defendant and it was admitted by the plaintiff that he did not get any draft prepared in favour of the defendant, the manner of payment as enjoined in the compromise was not at all complied and the plaintiff could not be deemed to be ready to get the deed executed. Accordingly, the relief of specific performance of agreement was denied.

In the case of *Sri P.Purushotham Reddy v. Pratap Steels Limited* (supra), the Apex Court was considering the issue, under the provisions of the Specific Relief Act. It was held that the Court can refuse specific performance when the plaintiffs conduct is blame worthy. In that case an agreement of sale was entered into between the parties where under it was agreed to sell and purchase the house property together with the land for a total consideration of Rs. 40.25 lakhs, A sum of Rs. 6 lakhs has been paid by the plaintiff by way of earnest money. It was further agreed to pay a sum of Rs. 2 lakhs on 15-12-1987. The balance is payable at the time of registration. One of the terms relates to the obtaining of permissions required for execution of the registered deed and if it is necessary time has to be extended by mutual agreement of the parties for obtaining such permission. But, however, contrary to the terms of the agreement, the Court found that the plaintiff unilaterally extended the time. Further, a letter, Ex.A-5 alleged to have been sent by the plaintiff was doubted of its genuineness in view of the failure of the plaintiff to explain as to the absence of the dispatch number etc. In view of the conduct of the party, the Court held that the plaintiff is not entitled for the discretionary and equitable relief of specific performance of the agreement of sale.

13. Coming to the decisions relied upon by the Respondents, in the case of *Firm Srinivas Ram v. Mahabir Prasad* (supra), the Apex Court was considering as to the grant of alternative relief. The Apex Court held that ordinarily the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff, could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of

adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant and it may not be proper to drive the plaintiff to a separate suit.

In the case of *Nagubai v. B. Shama Rao* (supra), it was held that evidence let in on issues on which the parties actually went to trial should not made the foundation for decision of another and different issue, which was not present in the minds of the parties and on which they had no opportunity of adducing evidence. But that Rule has no application to a case where the parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon, and adduce evidence relating thereto. Although no specific plea that the sale in favour of the Defendants was affected by the doctrine of *lis pendens* was raised in pleading of the plaintiff and no specific issue was directed to that question, the Defendants went to trial with full knowledge that the question of *lis pendens* was in issue, had ample opportunity to adduce their evidence thereon, and fully availed themselves of the same. In the circumstances, it was held that the absence of specific pleading on the question was a mere regularity, which resulted no prejudice to them.

In the case of *Vishram Arjun v. I. Shankariah* (supra), a Division Bench of this Court had an occasion to consider a similar issue where it was held that:

"No doubt as a general rule, no plaintiff is entitled to a relief for which there is no foundation in the plaint. But when on the pleadings and the issues and the evidence adduced, the relief is clear, this general rule does not apply because it is the duty of the Court to grant relief as the circumstances of the case would warrant even though it may not be asked for.

The Primary duty of the Courts after all is to do justice. Rules of procedure are intended only to advance the cause of justice rather than to impede the same. AH that the Court is to guard against is that no prejudice has been done to or no surprise has been sprung upon the other party. When the suit was fought by the parties deliberately and substantially upon the issues as framed by the trial Judge, there is nothing against law in determining their rights on that footing,

The plaintiff filed a suit against the defendant claiming a certain sum of money on the basis of an agreement without mentioning a subsequent agreement which varied the terms of the agreement. The defendant in his written statement himself set up that agreement which reduced his monetary obligation. The parties joined issues and fought on the merits only on that basis.

Held that in the circumstances of the case, the plaintiff could be granted the lesser sum on the basis of subsequent agreement notwithstanding the alleged flaw in the frame of suit; such a relief could be granted though the relief claimed was for a larger amount and no amendment has been effected in the plaint by introducing the facts which curtail this amount."

In the case of MNA Khan v. Commercial and Industrial Bank (supra), this Court was considering as to the variance between pleadings and proof. A Division Bench of this Court reiterated the same view, as was held in the case of Vishram Arjun v. I.Shankariah (supra) by following the decision of the Apex Court in the case of Firm Srinivas Ram v. Mahabir Prasad (supra).

In the case of Shikharchand v. Ban Bai (supra), a Division Bench of Madhya Pradesh High Court had an occasion to consider similar issue with reference to the provisions of Order 12, Rule 6 of the Code of Civil Procedure. In that case, where in a suit for eviction after the expiry of a lease on the defence being taken that under compromise the term of the lease was extended by 10 years, the plaintiff made an application (without admitting the agreement) that even if such an agreement took place they were entitled to a decree for possession under Order 12, Rule 6, since the extended term had also expired. It was open to the Court to base a judgment under Order 12, Rule 6, against the defendant on the basis of his own admissions because it is clear from the case as set up by him that he was not entitled to continue in possession in any case, after the expiry of the fresh term of 10 years. The word "otherwise" in Order 12, Rule 6 clearly indicates that it is open to the Court to base the Judgment on statements made by a party not only in the pleadings but also de hors the pleadings. Such admissions may be made either expressly or constructively. It is no doubt true that ordinarily the plaintiff is entitled to a relief only on the basis of the cause of action stated in the plaint but it is open to the Court in suitable cases to afford a relief on the basis of the case as set up by the Defendant. In such a case, there is no prejudice to the defendant because the relief legitimately springs from the case as set up by him.

In the case of Banamali v. Gopinath (supra), the Orissa High Court while considering the similar issue held that when a Court finds that a plaintiff is entitled to the relief which he claims, although on the ground other than those put forward in his claim, the Court should grant that relief, if the defendants are not thereby taken by surprise. Normally, the Court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had opportunity to meet. But when the case, which the plaintiff could have made in the plaint, was not only admitted by the defendants in their written statement but expressly put forward as an answer to the claim, which the plaintiff made in the suit, there is nothing improper in giving the plaintiffs a decree upon the case which the defendants themselves pleaded in the written statement. The plaintiffs claim based on the defendant's own plea cannot possibly be regarded with surprise by the defendants and no question of adducing evidence on such facts would arise when they were expressly admitted by the defendants in their pleading.

In the case of Ram Sarup Gupta v. Bishun Narain Inter College (supra), the Apex Court had an occasion to consider the issue of lack of pleadings in terms of Order 6, Rule 1 of the CPC and held that it is well settled that in the absence of

pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet, In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words, which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of pleadings, instead the Court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.

14. If we examine the facts of the present case, in the light of the case-law referred to above, though the plaintiff did not plead the family settlement in terms of Ex.B-1, but approached the Court relying upon Ex.A-1 agreement of sale, but in written statement, the 1st Defendant clearly referred to the family settlement under Ex.B-1, under which the first Defendant had agreed to give up his rights in respect of the suit schedule property which originally belongs to the plaintiffs family, which was given to their daughter at the time of the marriage, who was married to the 1st Defendant. Therefore, the contention of the learned Counsel that there is no pleading and issue and evidence, therefore, the Courts below are not justified in granting a decree for specific performance, basing on Ex.B-1, which was filed by the defendant, though that was not the case put forward by the plaintiff, in the light of the above referred decisions, is clearly devoid of merit. The 1st defendant himself has come up before the Court with the case that there was a settlement of disputes between the parties, in pursuance of which, Ex.B-1 was executed by him, scribed by the same author, who scribed Ex.A-1 agreement, and let in evidence through his witnesses stating that there was a settlement of the disputes between the parties. Accordingly, 1st Defendant executed Ex.A-1 agreement and the plaintiff and her husband and sons executed, Ex.B-1, in favour of the 1st defendant. If both the documents are read together, it is clear that there was a settlement between the parties under which the 1st defendant had agreed to give back the suit schedule property to the plaintiffs family. Under the above circumstances, there is absolutely no merit in the contention of the 1st defendant, as to the want of pleadings or issues. The Defendant himself pleaded the settlement, which was based to decree the suit.

Therefore, there is no prejudice to the Defendant.

15. In the above circumstances, the judgment and decree does not suffer any illegality or irregularity, warranting interference by this Court in this second appeal.

16. In the result, the second appeal is dismissed, accordingly, but in the circumstances no costs.