

(2011) 07 AP CK 0025
In the Andhra Pradesh High Court
Case No : A.S. No. 477 of 1996

Kothalanka Durga Vara Prasada Rao	APPELLANT
Vs	
Datla Chanraiah and Others	RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 7 Rule 7, Order 7 Rule 8, 100, 96
Constitution of India, 1950 — Article 136, 226
Evidence Act, 1872 — Section 115
Transfer of Property Act, 1882 — Section 43, 6

Citation : (2011) 07 AP CK 0025

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : T.S. Anand, for the Appellant; T. Venkata Ramana Rao and Ors., for the Respondent

Final Decision : Dismissed

Judgement

K.G. Shankar, J.—The Plaintiff in O.S. No. 552 of 1982 on the file of the Sub-Judge, Bhimavaram laid this appeal seeking for the partition of plaint A & B schedule property, for declaration and for title. The suit was laid under the provisions of Order 33 CPC (informa pauperis) by the sole Plaintiff as an indigent person. The suit was numbered by the learned Sub-Judge, Bhimavaram. Through the judgment, the trial Court declared that the Plaintiff, the 6th Defendant and the 14th Defendant were entitled to half share in the plaint A schedule property on the death of their mother Kothalanka Kameswaramma and that they should be entitled to the remaining half after the demise of the 7th Defendant. A preliminary decree accordingly was passed for partition of the plaint A schedule property by means and bounds and for future mesne profits. So far as the B schedule is concerned, the entire suit was dismissed. The trial Court further directed that the Plaintiff shall pay the court fee so far as B schedule property is concerned, while the Plaintiff, the 6th and the 14th Defendants in one set and

the other Defendants in other set should bear the court fee in respect of plaint A schedule property in equal halves.

2. The Plaintiff laid the present appeal in respect of plaint B schedule property only. He in fact won the suit in respect of plaint A schedule property. The other side contested the decree granted by the trial Court in respect of plaint A schedule property in A.S. No. 174 of 1990. The High Court allowed A.S. No. 174 of 1990 and remanded the case for reconsideration. The Plaintiff filed SLP before the Supreme Court. The same is pending. I confine myself to plaint B schedule property only and would refer to the plaint A schedule property when it is necessary to examine the comprehensive picture only to understand the rival claims and the questions involved.

3. The suit was initially laid against Defendants 1 to 7. On the demise of the 2nd Defendant, Defendants 8 to 13 were added. Still later, Defendant No. 14 was brought on record in the suit. Subsequently, the 8th Defendant also died. Defendants 9 to 13, who already came on record, are the Legal Representatives of the 8th Defendant.

1. The case of the Plaintiff briefly is

a) Smt. Kothalanka Subbamma was the adoptive mother of the 7th Defendant. The Plaintiff and Defendants 6 and 14 are the sons of the 7th Defendant and Kothalanka Kameswaramma.

b) Plaint A schedule property consists of 2 items in R.S. No. 467/3. Item No. 1 is admeasuring Ac.1.00 cents and item No. 2 admeasures Ac.0.86 cents. Items 1 and 2 of plaint A schedule property are contiguous plots and the total extent of the A schedule property is Ac.1.86 cents. The B schedule again consists of 2 items. Item No. 1 of the B schedule is house site with a tiled house therein in Ac.0.20 cents of land. Item No. 2 admeasures Ac.0.05 cents. A thatched house stands in item No. 2 of plaint B schedule property. The structures of items 1 and 2 bear the municipal assessment No. 899 and are contiguous plots in a total extent of Ac.0.25 cents.

c) The adoptive mother of the 7th Defendant (Smt. Kothalanka Subbamma) purchased A & B schedule properties from Yerragopu Satyanarayana and Ors. under Ex.A.1. On 14.04.1958, Kothalanka Subbamma executed a settlement deed in respect of plaint A & B schedule properties (Ex.A.24). Through the settlement deed, Smt. Kothalanka Subbamma reserved life interest in herself in A & B schedule properties in respect of item No. 2. She bequeathed life interest on the 7th Defendant, who is her adoptive son as well as on the wife of 7th Defendant by name Kothalanka Kameswaramma after the demise of the donor. She settled the remainder with absolute rights in the male children of the 7th Defendant and Kothalanka Kameswaramma. Thus, in respect of item No. 1 of the plaint A & B schedule property, Kothalanka Subbamma straightaway conveyed life interest in her adoptive son (7th Defendant) and the wife of the 7th Defendant (Kothalanka Kameswaramma) and settled the vested remainder in the

male children of the 7th Defendant. (She thus did not retain life interest in respect of item No. 1 of plaint A as well as plaint B schedule properties).

d) Kothalanka Subbamma died on 30.11.1967 (vide Ex.A.16 death extract). Kothalanka Kameswaramma, wife of the 7th Defendant died on 01.02.1971 (vide Ex.A.17 death extract). On the demise of his wife, the 7th Defendant became the sole life estate holder in respect of half of plaint A & B schedule properties. The remaining half of these properties fell to the share of the Plaintiff, 6th Defendant and 14th Defendant.

e) It would appear that Kothalanka Subbamma and the 7th Defendant sold plaint A schedule property to the 1st Defendant. The Plaintiff came to know that Defendants 2 to 5 purchased parts of plaint B schedule property and have been in possession and enjoyment of the same. Neither Kothalanka Subbamma nor the 7th Defendant is entitled to alienate plaint A & B schedule properties subsequent to 14.04.1958 on which date Kothalanka Subbamma lost title to the property by virtue of the settlement deed. The subsequent sales are ineffective beyond the lifetime of Subbamma.

f) Germane for the purpose of the present appeal is the allegation that part of R.S. No. 446/3 was sold in 1946 by Kothalanka Subbamma and 7th Defendant to DNR College, Bhimavaram and that plaint B schedule property was included in the sale deed by mistake. Kothalanka Subbamma and the 7th Defendant never sold the property covered by plaint B schedule to DNR College, Bhimavaram and DNR College, Bhimavaram never purchased plaint B schedule property. DNR College, Bhimavaram realized the mistaken recitals in the sale deed under which it purchased property from Kothalanka Subbamma and the 7th Defendant. DNR College consequently executed a sale deed in 1965 in favour of Kothalanka Subbamma and the 7th Defendant at their request (registration extract of which is Ex.A.3). Kothalanka Subbamma and the 7th Defendant never purchased plaint B schedule property from DNR College in 1965. Their title was recognized through the sale deed by DNR College, Bhimavaram, which was a case of rectification of the mistake in the earlier sale deed.

g) Smt. Kothalanka Subbamma exercised rights of possession over plaint B schedule property even after the settlement deed by making constructions in 1962. The Plaintiff consequently seeks for declaration of his rights in the A & B schedule properties, for partition by meats and bounds and for past mesne profits for a period of 3 years and for future mesne profits.

5. As already noticed, Defendant No. 2 died during the pendency of the suit. Although neither the record of the trial Court nor the record of the appellate Court shows so, the 8th Defendant is also No. more, Defendants 7 and 11 remained ex parte. Defendants 1, 3 to 6, 8 to 10 and 12 to 14 were defended before the trial Court (Now even the 7th Defendant is No. more).

6. Defendants 1 and 9 filed joint written statement, which was adopted by Defendants 8 and 10 to 13. Defendants 3 and 4 filed a separate written

statement. The 5th Defendant filed her own written statement. Defendants 6 and 14 filed yet another written statement.

1. Defendants 1 and 8 to 13 contend:

a) Kalidindi Venkata Subbamma, wife of Venkateshwara Raju purchased plaint A schedule property from Kothalanka Subbamma in 1963 under Ex.B.1 sale deed for valuable consideration. The vendee (Kalidindi Venkata Subbamma) settled the property purchased by her from Kothalanka Subbamma in favour of the 1st Defendant, who is her mother, through a settlement deed two days after she purchased the property from Kothalanka Subbamma (vide Ex.B.4). Consequently, the 1st Defendant has been in possession and enjoyment of the plaint A schedule property since 17.03.1963.

b) The 2nd Defendant, who is now No. more, purchased Ac.0.14 cents of house site together with a tiled house bearing Municipal Assessment No. 425/1 in R.S. No. 446/3 from Kothalanka Subbamma and her adoptive son (7th Defendant). He purchased the same bona fide and without notice in 1967 (the registration extract of which is Ex.B.42). The 2nd Defendant constructed terraced premises in part of the site so purchased. Defendants 8 to 12 succeeded to the estate of the 2nd Defendant when the 2nd Defendant died intestate. Defendants 8 to 12 thus became entitled to part of the plaint B schedule property. The 2nd Defendant and her legal heirs also perfected their title by adverse possession. The suit is bad for non-joinder of Kalidindi Venkata Subbamma. The suit is also bad for mis-joinder of Defendants 3 and 4.

7. Defendants 3 and 4 averred in their written statement:

a) Plaint B schedule property admeasuring Ac.0.25 cents in R.S. No. 446/3 was sold by Kothalanka Subbamma in favour of DNR College (the DNR College was then known as WGB College) on 30.09.1946 (the registration extract of which is Ex.B.26. Consequently, Ex.B.26 was in the name of WGB College as the vendee).

b) The then Secretary of the College promised to re-convey the Ac.0.25 cents of land covered by B schedule back to the vendor in the event the College found it not useful for them. Considering that the property was not useful for the college, the Secretary of the College re-conveyed the plaint B schedule property to Kothalanka Subbamma and the 7th Defendant through a registered sale deed dated 15.03.1965 (the registration extract of which is Ex.B.27).

c) The third Defendant purchased Ac.0.02 cents in the eastern part of the plaint B schedule property from Kothalanka Subbamma and her adoptive son (7th Defendant) and the sons of the 7th Defendant in 1967 (the registration extract of which is Ex.B.28). The 3rd Defendant in his turn sold away the Ac.0.02 cents of land purchased by him to third parties.

d) Out of the remainder in plaint B schedule property, the 4th Defendant purchased Ac.0.06 cents and Ac.0.031/2 cents together with a thatched house in July, 1967 and September 1967 (the registration extracts of which are Exs.B.33

and B.34) situate to the west of the property purchased by the 3rd Defendant. The 4th Defendant sold away the same later to Kalidindi Rama Raju and later repurchased the same from Kalindi Rama Raju together with another half cent in 1972 (the registration extract of which is ExB.36). The 4th Defendant thus became entitled to Ac.0.10 cents in the plaint B schedule property. The 4th Defendant later sold away the same to third parties. Neither the 3rd Defendant nor the 4th Defendant is in possession of plaint B schedule property as on the date of the suit. Defendants 3 and 4 were not necessary parties to the suit.

8. The 5th Defendant filed a separate written statement. The 5th Defendant claimed:

An extent of Ac.0.07 cents of the plaint B schedule property was sold by the 7th Defendant and his adoptive mother to the 4th Defendant in 1967 through two sale deeds (the registration extracts of which are Exs.B.53 and B.54). The 4th Defendant sold away the same in 1972 to one Kalidindi Rama Raju (the registration extract of which is Ex.B.55). Kalidindi Rama Raju resold the property back to the 4th Defendant in May 1972 (the registration extract of which is Ex.B.56). The 4th Defendant sold the same in May 1974 in favour of the 5th Defendant (the registration extract of which is Ex.B.57). As the sale by the Defendant No. 7 and his adoptive mother in favour of the 4th Defendant was bona fide and was to discharge antecedent debts and the marriage expenses of the daughter of the 7th Defendant, the sale by the 7th Defendant and his adoptive mother are valid.

9. Defendants 6 and 14 laid written statement supporting the claim of the Plaintiff and seeking for partition of the properties by meats and bounds.

10. As already pointed out, the suit was decreed so far as plaint A schedule property is concerned and the suit was dismissed insofar as plaint B schedule property. The present appeal is concerning plaint B schedule property only. The Appellant obviously is the Plaintiff. Albeit Defendants 6 and 14 support the Plaintiff for a decree, they did not join the Plaintiff in laying the present appeal. However, any finding in favour of the Plaintiff would automatically work out in favour of the Defendants 6 and 14 as well. It is the reason why the learned trial Judge directed the Plaintiff as well as Defendants 6 and 14 to share the obligation of the payment of court fee.

11. The point for consideration in the present appeal is whether the Plaintiff and the Defendants 6 and 14 are entitled to partition and separate possession in respect of the plaint B schedule property and if so on what grounds.

12. The suit is a comprehensive suit. Ac.1.86 cents constituting plaint A schedule and Ac.0.25 cents constituting plaint B schedule were involved in the suit. It would appear that both sides waged a forensic battle before the trial Court. As many as 7 witnesses were examined on each side. While the Plaintiff marked 24 exhibits, all the Defendants put together exhibited 57 documents.

13. Curiously, plaint described B schedule property as Municipal Assessment No. 899 in respect of item No. 1 and 898 in respect of item No. 2. The B schedule did not show the survey number in which plaint B schedule property is situate. However, from the written statement of Defendants 1 and 9, it can be culled out that plaint B schedule property is situate in RS No. 446/3 and item No. 1 of plaint B schedule property consists of tiled house bearing municipal assessment No. 425/1 by 1997. From the evidence, it could be culled out that RS No. 446/3 consisted of Ac.1.20 cents in all. The plaint B schedule, however, is in an extent of Ac.0.25 cents as an extent of Ac.0.20 cents in respect of item No. 1 and Ac.0.05 cents in respect of item No. 2. The details of plaint B schedule and the survey number of plaint B schedule have been referred to in view of this appeal being related to plaint B schedule property only.

14. In a nutshell, the case of the Plaintiff in respect of plaint B schedule property is:

a) Late Smt. Kothalanka Subbamma purchased the property from Yerragopu Satyanarayana under Ex.A.1 in 1935. She sold property under Ex.B.26 to WGB College, Bhimavaram as DNR College, Bhimavaram was known then. Kothalanka Subbamma subsequently executed a settlement deed in 1958 under Ex.A.24 settling item No. 1 of plaint B schedule property in favour of the adoptive son (7th Defendant) and the wife of the 7th Defendant (Kothalanka Kameswaramma) for life with the remainder vesting in the male children of the 7th Defendant and Kameswaramma. The Plaintiff, Defendants 6 and 14 are the male children of the 7th Defendant and Kameswaramma. In respect of item No. 2 of plaint B schedule property, Kothalanka Subbamma reserved life interest in herself, created life interest in favour of her adoptive son and daughter-in-law after her own demise and settled the remainder, again, in the male children of her adoptive son and daughter-in-law.

b) While Kothalanka Subbamma passed away in 1967, Kameswaramma died in 1971. After filing of the appeal, the 7th Defendant died. However, the appeal was dismissed for default on 22.10.2008 in respect of Defendants 1, 4 and 7.

c) When Kothalanka Subbamma sold properties to WGB College, Bhimavaram, she did not sell plaint B schedule property. However, by oversight, Ex.B.26 sale deed included the plaint B schedule property in the sale deed. Having realized the mistake, DNR College, Bhimavaram reconveyed the plaint B schedule property in favour of the 7th Defendant under Ex.A.3 in 1965. Thus, the title of plaint B schedule property was reconveyed to Kothalanka Subbamma and the 7th Defendant. So much so, the entire property covered by Ex.A.24 came into the possession of Kothalanka Subbamma. The title of Kothalanka Subbamma was also reconfirmed by Ex.A.3.

d) As Kothalanka Subbamma executed a settlement deed in 1958 under Ex.A.24, she lost absolute rights over plaint B schedule property; she had right to enjoy the same only during her lifetime in view of her own settlement deed.

e) Some of the Defendants and primarily Defendants 1 and 2 set up title in parts of the A & B schedule property claiming that they purchased the same from Kothalanka Subbamma. When Subbamma executed the settlement deed, by her own voluntary act, she lost title to the plaint A & B schedule property. Even if Subbamma alienated the property the allegations hold good during the lifetime of Subbamma only and not beyond. Consequently, the settlement deed comes into force. The Plaintiff and Defendants 6 and 14 are therefore, entitled to the entire plaint schedule property now in view of the demise of Subbamma, Kameswaramma and later the 7th Defendant.

f) The typical intervening factor is that Kothalanka Subbamma sold the entire property in Survey No. 446/3 admeasuring Ac.1.22 cents including the plaint schedule property to WGB College (DNR College), Bhimavaram in 1946. In 1958, the sale deed under Ex.B.26 was holding sway. Kothalanka Subbamma executed Ex.A.24 in 1958 wherein she included plaint B schedule property in the settlement deed. In 1965, DNR College reconveyed plaint B schedule property in favour of Kothalanka Subbamma and 7th Defendant through Ex.A.3. The fundamental and basic question over which the case revolves round is as to the effect of Ex.24 settlement deed when the donor (Kothalanka Subbamma) did not have title to the same by the date of the settlement deed but apparently acquired title subsequently.

15. It is the case of Sri Subramanya Narsu representing Defendants 8 to 13 that by the time Smt. Kothalanka Subbamma executed Ex.A.24 settlement deed, she did not have title to the plaint B schedule property and that she, therefore, could not have conferred any title through Ex.A.24 upon 7th Defendant and the wife of 7th Defendant or the offspring of 7th Defendant. His contention is that in 1946, Kothalanka Subbamma sold away the entire Ac.1.22 cents in favour of WGB College (as DNR College was known then) under Ex.A.26 and that by the time Ex.A.24 settlement deed was executed by her, she did not have title in any part of Survey No. 446/3 admeasuring Ac.1.22 cents including the plaint B scheduled property. He further contended that subsequent sale of the plaint B schedule property by DNR College in favour of Kothalanka Subbamma and the 7th Defendant under Ex.A.3/Ex.B.27 cannot cure the defect in Ex.A.24 insofar as it relates to plaint B schedule property.

16. In the maxim *nemo dat quid non habet* (no one gives what he has not got) and the maxim *nemo plus juris tribuit quam ipse habet* (no one can bestow or grant a greater right and better title than he has himself) are based on the doctrine of a *non habente potestatem* (from one not having power) and from the philosophy of a *non domino* (from one who is not the proprietor). It is settled law that a title can be transferred by one who has authority to do so. It is the case of the learned Counsel for the contesting Defendants that after the execution of the Ex.B.26 in 1946, Kothalanka Subbamma lost title to plaint B schedule property and that the settlement deed executed by her under Ex.A.24 in 1958 is *non est* so far as plaint B schedule property is concerned.

17. To support his stand, Sri Y. Srinivasa Murthy, learned Counsel for the Plaintiff placed reliance upon the doctrine of "feeding the estoppel". Section 43 of the Transfer of Property Act, 1872 (for short "T.P. Act") recognized the principle of feeding the estoppel. In *Tilak Dhari Lal v. Khedan Lal* AIR 1921 PC 112 Lord Buckmaster held that if a man who had No. title whatsoever to the property in question granted it by a conveyance which in form would carry the legal estate, if such a transferor subsequently acquired an interest sufficient to satisfy the grant the estate in question instantly passed on to the transferee.

18. This Common Law Principle has indeed been recognized u/s 43 of T.P. Act. I may quote Section 43 of T.P. Act for convenience:

Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists. Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

19. It is the case of the learned Counsel for the Plaintiff that the present case is the typical example of the Section 43 of T.P. Act. The illustration to Section of T.P. Act is

Illustration: A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying. A as heir, obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

On the basis of the illustration of T.P. Act and Section 43 of T.P. Act, the learned Counsel for the Plaintiff contended that even if the donor did not have title to the plaint B schedule property by the date of the settlement deed, since the donor acquired title subsequently, the settlement deed under Ex.A.24 automatically operated in respect of plaint B schedule property as well. He, in fact, in his critical appreciation of the judgment of the learned trial Judge submitted that the learned trial Judge missed the implication of Section 43 of T.P. Act.

20. Section 43 of T.P. Act provides, as evident from the very section, that it is applicable when the property was transferred for consideration. The non obstante clause also refers to transfer for consideration. The illustration also speaks about selling the properties. Either the reading of Section 43 or the illustration thereof would show that Section 43 of T.P. Act would apply and operate as an estoppel when the earlier transaction was not gratuitous. In the present case, Ex.A.24 is a settlement deed, which was a gratuitous affair. There is No. real consideration for the same. The Plaintiff, therefore, cannot invoke Section 43 of T.P. Act assuming that Kothalanka Subbamma acquired title over the plaint B schedule property again after Ex.A.24, through Ex.B.27. However, the Plaintiff indeed contends that

Kothalanka Subbamma never sold the plaint B schedule property to WGB College and the recitals in Ex.B.26 were a sheer clerical mistake. The Plaintiff also contended that Kothalanka Subbamma always held possession over plaint B schedule property even after Ex.B.26. I shall consider these aspects a little later. I may confine myself for the present to the claim of the Plaintiff that he is covered by Section 43 of T.P. Act.

21. In *Veeraswami v. D.V. Subba Rao* AIR 1957 AP 288 relied upon by the learned Counsel for the Plaintiff, the question of the application of Section 43 of T.P. Act came up. Viswanatha Sastri, J., observed that to entitle a transferee to the benefit of Section 43 of T.P. Act, there must be a fraudulent or erroneous representation by the transferor that he is authorised to transfer the property and the transfer must be for consideration. He pointed out that under the doctrine of title or interest feeding the estoppel, knowledge of the truth appears to be material when the transfer is void and invalid in law only and not otherwise. One of the fundamental principles referred to in that case is that the earlier transfer must be for consideration for the application of the principle envisaged by Section 43 of T.P. Act. In the present case, the earlier transfer under Ex.A.24 was not for consideration but was a gratuitous settlement.

22. In *The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah*, referring to Section 43 of T.P. Act, the Supreme Court observed that it was a rule of estoppel. The Supreme Court considered that whether the action of the transferor was bona fide or fraudulent in making the representation and that what was material was whether the transferee was misled. The Supreme Court further elaborated that when the transferee knew as a fact that the transferor did not possess title but has represented that he had title to the property, then transferee could not be said to have acted on such representation and that Section 43 of T.P. Act would not apply in such a situation in view of Section 6(a) of T.P. Act. I agree with the contention of the learned Counsel for the Plaintiff that there is No. evidence on record that the Plaintiff or the life estate holder and the 7th Defendant and the wife of 7th Defendant were aware that Kothalanka Subbamma had No. title to the plaint B schedule property by the time of Ex.A.24 settlement deed. I am afraid that the ruling of the Supreme Court, however, has No. relevance, whereas the question before the Supreme Court was about the non-gratuitous transaction as against Ex.A.24 in the present case.

23. In *Gomathy Ammal Gomathy Ammal Vs. Rukmini Amma Padmavathi Amma and Others*, it was observed that when the other ingredients prescribed by Section 43 of T.P. Act exist, when the transferor acquires any interest in the property transferred by him, an option automatically arises in favour of the transferee to have the transfer operate on such newly acquired interest. Again it was held that the transferee can claim title to the property subject to fulfilment of the ingredients of Section 43 of T.P. Act. This decision is an authority for the principle that the transferee has an option to elect whether the transaction between him and the transferor should be treated as valid or void. The Division

Bench did not deal with the fundamental application of Section 43 of T.P. Act. It is Veeraswami's case (supra) of Andhra Pradesh High Court which pointed out that the earlier transfer must be for consideration for the application of Section 43 of T.P. Act.

24. The learned Counsel for the Plaintiff also placed reliance upon Renu Devi Vs. Mahendra Singh and Others, where the Supreme Court once again referred to Section 43 of T.P. Act and pointed out that the rule governed by Section 43 of T.P. Act was that if a man, who had No. title whatsoever to the property, grants it by a conveyance which in form carried the legal estate, and such a transferor subsequently acquired an interest sufficient to satisfy the grant, the estate passed on instantly. I may point out that these decisions relied upon by the learned Counsel for the Plaintiff do not show that they are applicable to the gratuitous alienations. Section 43 of T.P. Act, the proviso of Section 43 and the illustration thereof are more than clear that Section 43 of T.P. Act would come into operation only when the former transaction was a transaction for consideration.

25. While so, admittedly the Plaintiff is claiming title through Ex.A.24 which is a settlement deed. The transfer by Kothalanka Subbamma to the Plaintiff, 6th Defendant and 14th Defendant through 7th Defendant and the wife of 7th Defendant was not a transaction supported for consideration. Section 43 of T.P. Act, therefore, has No. application. I am afraid that I cannot agree with the contention of the learned Counsel for the Plaintiff that in view of the principle in Section 43 of T.P. Act, the Plaintiff is entitled to partition of plaintiff B schedule property after DNR College conferred title on Kothalanka Subbamma and 7th Defendant.

26. Section 115 of the Indian Evidence Act, 1872 deals with estoppel. The principle of estoppel is an elaboration of Section 43 of the Transfer of Property Act. Section 115 of the Evidence Act reads:

S.115: When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

I may also quote the illustration to Section 115 of the Evidence Act. The illustration of Section 115 of the Evidence Act is:

Illustration: A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had No. title. He must not be allowed to prove his want of title.

27. u/s 115 of the Evidence Act, if the transferor made a declaration making the

transferee believe that the property belonged to the transferor, if the transferor sufficiently acquired title to the same, he cannot go back on his earlier fraudulent representation to the transferee. However, one of the conditions of Section 115 of the Evidence Act is that the transferee must have acted upon such fraudulent representation. With reference to Section 115 of the Evidence Act, it was observed in Veeraswami's case that it would not be legitimate to impart the considerations governing the principles of estoppel u/s 115 of the Evidence Act into Section 43 of T.P. Act. Evidently, Section 115 of the Evidence Act has No. application to the present case, since the Plaintiff has not even alleged that he acted upon the representation of Kothalanka Subbamma. I, therefore, hold that the case of the Plaintiff is neither covered by Section 43 of T.P. Act nor by Section 115 of the Evidence Act.

28. The settlement deed is saved by Section 43 of T.P. Act is one of the defences of the Plaintiff only. The Plaintiff further contended that Kothalanka Subbamma did not sell plaint B schedule property to WGB College at all and that the recitals in Ex.B.26 that Ac.1.22 cents including plaint B schedule property was sold was a mistaken recital in the sale deed. He further contended that the plaint B schedule property was consequently reconveyed by the DNR College in favour of Kothalanka Subbamma and that Kothalanka Subbamma had never lost title to the plaint B schedule property at any time after 1946 when Ex.B.26 was executed. When Kothalanka Subbamma had title to the plaint B schedule property, the settlement deed operates in favour of the donees according to the learned Counsel for the Plaintiff.

29. It may be recalled that the stand of the Plaintiff is that Kothalanka Subbamma never sold plaint B schedule property to WGB College. He further asserted that having realized that Kothalanka Subbamma did not sell plaint B schedule property to it, DNR College, which is the successor of WGB College, executed Ex.B.27 reconveying the property to Kothalanka Subbamma. This contention of the learned Counsel for the Plaintiff suffers from an internal and inherent fallacy. The case of the Plaintiff is that Kothalanka Subbamma purchased properties covered by plaint A & B schedule as well as other properties from one Yerragopu Satyanarayana and others. If so, Kothalanka Subbamma must be exclusive owner of the properties including the property covered by Ex.B.26 under which she sold Ac.1.22 cents in Survey No. 446/3 to WGB College. If WGB College or its successor DNR College realized that the sale deed under Ex.B.26 incorrectly included plaint B schedule property and wanted to rectify the defect, the natural course would be to execute a rectification deed. The alternatives would be a gift deed or a relinquishment deed by DNR College in favour of Kothalanka Subbamma. Instead, the College executed a registered sale deed. I am afraid that on the face of registered document, the Plaintiff is proscribed from contending that the sale deed under Ex.B.26 was nominal and that the College, in fact, was reconveying the property to Kothalanka Subbamma. It was observed in Murarka Properties (P) Ltd. Vs. Beharilal Murarka and Others, that where there was documentary evidence, oral evidence was not

entitled to any weight. When the Plaintiff produced Ex.B.27, he cannot turn round and claim that the recitals in Ex.B.27 are not true and that DNR College was merely reconveying the plaint B schedule property through Ex.B.27. This is the first fallacy in the contention of the learned Counsel for the Plaintiff.

30. Assuming that DNR College was reconveying the property wrongly recited in Ex.B.26 as the properties sold by Kothalanka Subbamma, the reconveyance deed ought to be in the name of Kothalanka Subbamma. Ex.B.27 on the other hand was a registered sale deed by DNR College in the name of Kothalanka Subbamma and 7th Defendant. The DNR College could not have had occasion to execute sale deed in the name of 7th Defendant when the incorrect and unwillingly wrong recital in Ex.B.26 was by Kothalanka Subbamma and Kothalanka Subbamma was alive by the date of Ex.B.27. No. cogent explanation is forthcoming why DNR College executed a registered sale deed in favour of not only Kothalanka Subbamma but in favour of 7th Defendant as well. In fact, proper explanation is not offered why a sale deed was executed instead of a gift deed, a reconveyance deed or a rectification deed by DNR College, in favour of Kothalanka Subbamma. This is the second fallacy in the argument of the learned Counsel for the Plaintiff. Viewed in either angle, the claim of the Plaintiff becomes unacceptable. Kothalanka Subbamma sold the property covered by Ex.B.26 including plaint B schedule property to WGB College and that DNR College sufficiently reconveyed plaint B schedule property in favour of Kothalanka Subbamma as its predecessor WGB College never purchased plaint B schedule property from Kothalanka Subbamma. The claim of the Plaintiff thus crumbles regarding the title of Kothalanka Subbamma over plaint B schedule property after 1946 when Kothalanka Subbamma executed Ex.B.26 till she purchased the property in 1965 under Ex.B.27.

31. Another line of attack of the learned Counsel for the Plaintiff to support his stand is that Kothalanka Subbamma never lost possession of plaint B schedule property, as she never sold the same to the WGB College. He tried to show that Kothalanka Subbamma exercised titular and possessory rights over plaint B schedule property even after 1947. Assuming that Kothalanka Subbamma exercised such rights after 1946, Kothalanka Subbamma would be an encroacher and a trespasser over the property of WGB College/DNR College and not the owner of the same. Ex.B.26 sale deed by Kothalanka Subbamma in favour of WGB College was on 30.09.1946. The settlement deed executed by Kothalanka Subbamma under Ex.A.24 in favour of 7th Defendant and his wife for life and in favour of the male children of 7th Defendant later was on 14.04.1958. 12 years have not elapsed from the date of Ex.B.26 till the date of Ex.A.24. Kothalanka Subbamma, therefore, could not have perfected her title by adverse possession in respect of plaint B schedule property by the date of Ex.A.24. Consequently, by the time Kothalanka Subbamma executed the settlement deed under Ex.A.24, she did not have title to the plaint B schedule property. In view of the maxims already referred to, Kothalanka Subbamma could not have executed the settlement deed in respect of plaint B schedule property. The settlement deed

under Ex.B.24, therefore, is non est insofar as it relates to plaint B schedule property.

32. The Plaintiff tried to show that Kothalanka Subbamma exercised titular rights over plaint B schedule property even after 1946.

33. Although the Plaintiff marked as many as 24 exhibits, he has not produced any document to show that Kothalanka Subbamma exercised her titular and possessory rights over plaint B schedule property. It is the case of the Plaintiff that Kothalanka Subbamma constructed a tiled house in plaint B schedule property in 1962, that she could not have constructed such a house unless plaint B schedule property was never conveyed to WGB College through Ex.B.26 and that the possession of plaint B schedule property remained with Kothalanka Subbamma herself throughout. It may be recalled that Kothalanka Subbamma executed a settlement deed in 1958 reserving life interest in item No. 1 of plaint B schedule property. If so, it is for the Plaintiff to explain how Kothalanka Subbamma could make constructions in plaint B schedule property after 1958 while her right over the same was only to enjoy the property.

34. The learned Counsel for the Plaintiff contended that Exs.A.1 to A.6 established the exclusive title and possession of Kothalanka Subbamma and the 7th Defendant over plaint B schedule property. Ex.A.2 was of the year 1935. It is a relinquishment deed by Tadipatri Veeraraghavulu in favour of Kothalanka Subbamma. Nobody disputes the title of Kothalanka Subbamma over plaint B schedule property till 1946. In fact, the rival claims are built up on the admitted title of Kothalanka Subbamma over plaint A & B schedule property. The title of the Kothalanka Subbamma in 1935 through Ex.A.2, therefore, is irrelevant. Ex.A.4 is a municipal tax receipt for the years 1968-69 till 1971-72. Ex.A.5 is the endorsement by the Municipal Revenue Officer, Bhimavaram in favour of the Plaintiff. Both of them relate to period beyond 1965 when Kothalanka Subbamma and the 7th Defendant became entitle to plaint B schedule property by virtue of the sale deed in Ex.B.25. They are not relevant to determine whether Kothalanka Subbamma exercised right over plaint B schedule property as an owner and as a possessor.

35. Ex.A.6 is an application of Kothalanka Subbamma in 1960. This is the only document, which can show that Kothalanka Subbamma was in possession of plaint B schedule property after 1946 out of various documents produced by the Plaintiff. Assuming that the Plaintiff is able to establish clinchingly that Kothalanka Subbamma continued to be in possession of the plaint schedule property after Ex.B.26 till the execution of Ex.A.3/Ex.B.27, title would not vest in Kothalanka Subbamma after she sold Ac.1.22 cents including plaint B schedule property to WGB College. Therefore her possession would be nothing short of the possession of a trespasser. At any rate, the Plaintiff failed to establish that Kothalanka Subbamma constructed a house in plaint B schedule property in or around 1960. I, therefore, do not agree with the contention of the learned Counsel for the Plaintiff that Kothalanka Subbamma was in possession of plaint B

schedule property even after 1946 and that she never executed plaint B schedule property.

36. Thus, the Plaintiff failed to establish the title of Kothalanka Subbamma over plaint B schedule property from 1946 till 1965. When the settlement deed was executed in 1958, it could not confer any title in respect of plaint B schedule property, as the donor did not own plaint B schedule property by then. The Plaintiff, consequently, cannot claim title to the plaint B schedule property by virtue of Ex.A.24 settlement deed.

37. It is the contention of the learned Counsel for the contesting Defendants that only when Kothalanka Subbamma and the 7th Defendant purchased plaint schedule property from DNR College under Ex.A.3/Ex.B.27 in 1965, Kothalanka Subbamma and the 7th Defendant became absolute owners of plaint B schedule property and became entitled to dispose of the same as owners.

38. The learned Counsel for the contesting Defendants pointed out that the alienations in respect of plaint B schedule property commenced subsequent to 1965 only. Ex.B.39 is an agreement of sale executed in favour of the second Defendant in 1967. It was indeed executed by Kothalanka Subbamma and Defendants 6, 7 and 14. It relates to Ac.0.14 cents out of plaint B schedule property. Ex.B.28 is a sale deed executed similarly in favour of the third Defendant. Various alienations questioned by the Plaintiff in respect of plaint B schedule property were subsequent to Ex.A.3/Ex.B.27 sale deed by DNR College in favour of Kothalanka Subbamma and the 7th Defendant. As rightly submitted by the learned Counsel for the contesting Defendants, evidently, Kothalanka Subbamma and the 7th Defendant derived the title to the plaint B schedule property through Ex.A.3/Ex.B.27 and that Ex.A.24 inasmuch as it relates to plaint B schedule property is non est. I agree with this contention of the learned Counsel for the Defendants since the Plaintiff failed to show that Kothalanka Subbamma continued to hold title to plaint B schedule property even after she sold the property under Ex.B.26 to WGB College.

39. The learned Counsel for the contesting Defendants placed reliance upon Union of India Vs. E.I.D. Parry (India) Ltd., contending that going beyond the pleadings is impermissible. Referring to Section 96 and 100 C.P.C, the Supreme Court observed that when the interpretation of a particular Rule made by the trial Court is not assailed and where No. error is pointed out, the Supreme Court would not interfere in the observation of the trial Court. This decision is an authority with reference to the interpretation of the Article 136 of the Constitution of India and not with reference to the Rules of pleading in a simple civil suit. In Union of India v. Jai Prakash Singh 2007 712 SCC 29 referring to Order 6 Rule 1 and Order 7 Rules 7 and 8 Code of Civil Procedure, it was observed that the High Court could not travel beyond the pleadings and grant relief even in proceeding under Article 226 of the Constitution of India. The question in this case is not the question of pleading. The primary consideration is the question of proof regarding the title of Kothalanka Subbamma over plaint B

schedule property from 1946 when she executed Ex.B.26 sale deed till 1965 when she along with her adopted son (7th Defendant) purchased plaint B schedule property in 1965 under Ex.A.3/Ex.B.27. In this regard, the Plaintiff failed to prove his case. Where the Plaintiff failed to establish his case, the trial Court was perfectly justified in dismissing the suit so far as plaint B schedule property is concerned. The Plaintiff is not entitled to either declaration or partition by meates and bounds much less mesne profits in respect of plaint B schedule property. The appeal, consequently, fails.

40. The Defendants contended before the trial Court that the suit is bad for misjoinder of the Defendants 3 and 4. It is the case of the Defendants that Defendants 3 and 4 do not own any part of the plaint schedule property, that they have already alienated the same although they held title to parts of the plaint schedule property at one time and that the suit, therefore, suffers from misjoinder of necessary parties. As rightly submitted by the learned Counsel for the Plaintiff, the Plaintiff was justified in including those persons who had title or to continue to hold title over the plaint schedule property so as to work out equities in the event the Plaintiff succeeds in obtaining a decree for partition. I, therefore, reject the contention of the learned Counsel for the Defendants that the suit deserves to be dismissed for misjoinder of necessary parties.

41. Assuming that some of the Defendants are not necessary parties and were unnecessarily impleaded as parties to the case, I am afraid that the suit would not be liable to be dismissed on the ground of misjoinder. At best, such unnecessarily impleaded Defendants would be entitled to costs or exemplary costs. However, the suit would not be liable to be dismissed on the ground that the suit suffers from misjoinder of parties. I also agree for the reasons stated above that there was No. misjoinder of the Defendants in this case. I, therefore, reject the contention of the learned Counsel for the Defendants that the suit and the appeal are liable to be dismissed on the ground of misjoinder of the parties.

42. I, therefore, see No. merits in this appeal. The appeal is, accordingly, dismissed. There shall, however, be no order as to costs.