

(2005) 04 AP CK 0056

In the Andhra Pradesh High Court

Case No : First Appeal No. 1490 of 1997 and Cross-Objections and Transfer A.S. No. 2042 of 2004

Kunche China Mangamma and Others

APPELLANT

Vs

Koolapu Mangamma (died) and Others

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 4, Order 22 Rule 4, Order 6 Rule 4, 35A
Contract Act, 1872 — Section 17, 19, 45, 47
Evidence Act, 1872 — Section 65, 67, 68
Specific Relief Act, 1963 — Section 31
Succession Act, 1925 — Section 59, 63
Transfer of Property Act, 1882 — Section 122, 123, 126

Citation : (2005) 4 ALT 547

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : N.V. Suryanarayana Murthy, for the Appellant; M.V. Suresh, for the Respondent

Judgement

P.S. Narayana, J.

FACTS IN BRIEF:

1. The daughters of Kollapu Veerayya -Kollapu China Mangamma, Pinipe Mallamma, Juthuka Ramudu, Kunche Saraswati, had entered into this legal battle in relation to the properties left by the deceased Kollapu Veerayya - Kunche China Mangamma claiming by virtue of settlement deeds and the others denying the same and claiming under a will. Yet another daughter Suryakantham, pre-deceased the said Kollapu Veerayya and it is stated that she is a divorcee and left no heirs and this aspect is not in serious controversy. O.S. No. 202/85 on the file of Additional Subordinate Judge, Rajahmundry was filed by Kunche Chinna Mangamma praying for passing of a preliminary decree for partition of property covered by plaint schedule into five equal shares and to allot one such share to

her and also for appointment of Commissioner to partition the property and also praying for a decree for future profits to be determined by the Commissioner and for such other suitable reliefs. Subsequent thereto, the wife of the deceased Veerayya, Kollapu Mangamma, who is also no more since she died during pendency of the litigation and no L.Rs, as such were brought on record, may be for the reason that all the L.Rs, already are on record, and Pinipe Mallamma, Juttiga Ramayamma and Kunche Saraswathi filed O.S. No. 108/86 on the file of Additional Subordinate Judge, Rajahmundry praying for cancellation of the settlement deeds dated 15-8-1984 and 16-8-1984 purported to have been executed by late Koilapu Veerayya in favour of Kunche China Mangamma and others, the defendants in the said suit, in relation to plaint schedule properties and also for partition of the plaint schedule as per the bequeaths made by late Koilapu Veerayya under his last will dated 4-3-1983 by making certain allotments and for delivery of the entire plaint schedule property to 1 st plaintiff after ejecting the defendants therefrom and to pass a final decree for partition after the life time of the 1st plaintiff and to award future profits to the 1 st plaintiff from the date of suit till the date of delivery of possession and for other reliefs.

2. The learned Additional Subordinate Judge, Rajahmundry by Judgment dated 17-9-1996 while answering Issue No. 9 in O.S. No. 108/96 and Issue No. 6 in O.S. No. 202/85 while granting the reliefs in the said suits held as hereunder:

" In the result, the settlement deeds dated 15-8-1984 and 16-8-1994 executed by late Koilapu Veerayya in favour of defendants in respect of plaint "A" schedule property are hereby cancelled and a preliminary decree is passed without costs declaring that the 2nd plaintiff O.S. No. 108/86 is entitled to take Ac. 1-87 1/2 cents of land in plaint "A" schedule property, the 3rd plaintiff is entitled to take possession of Ac.1-87 1/2 cents in plaint "A" schedule property and the 4th plaintiff is entitled to take Ac.1-37/2 cents of land and the 1st defendant in O.S. No. 108/86 is entitled to take possession of Ac.1-871/2 cents in plaint "A" schedule property. It is also hereby declared that item No. 1 of plaint "B" schedule tiled house be divided into 16 parts and the 2nd plaintiff is entitled to take 5 shares and the 4th plaintiff is entitled to take 5 shares and the 3rd plaintiff is entitled to take one share and the D-1 in O.S. No. 108/86 is entitled to take one share and D-5 in O.S. No. 108/96 is entitled to take 4 shares. It is also hereby declared that item No. 2 tiled house be divided into 2 shares and the 3rd plaintiff in O.S. No. 108/86 is entitled to take possession of one such share and the 1st defendant in O.S. No. 108/86 that is the plaintiff in O.S. No. 202/85 is entitled to take V2 share. The rest of the claims are dismissed without costs."

Aggrieved of the same, the unsuccessful plaintiff in O-S. No. 202/85 on the file of Additional Subordinate Judge, Rajahmundry had initially preferred A.S. No. 145/97 on the file of District Judge, East Godavari, Rajahmundry and in view of the fact that the said appeal is out of a Common Judgment delivered in O.S. No. 202/85 and O.S. No. 108/86 the same was transferred to this Court and numbered as Tr. A.S. No. 2042/2004. Likewise, the unsuccessful defendants in

O.S. No. 108/86 on the file of Additional Subordinate Judge, Rajahmundry had preferred A.S. No. 1490/97. It is needless to say that the 1st defendant in O.S. No. 108/86 is plaintiff in O.S. No. 202/85. Both the suits were clubbed and evidence was recorded in O.S. No. 202/85 and ultimately after recording findings, the reliefs as specified supra had been granted.

PLEADINGS OF THE PARTIES:

3. The plaintiff Kunche China Mangamma in O.S. No. 202/85 pleaded as hereunder:

The plaintiff and defendants 2 to 4 are the daughters of Koilapu Veerayya and 1st defendant. Koilapu Veerayya died intestate so far as the property covered by the Schedule. The 1st defendant is the widow of Koilapu Veerayya. Koilapu Veerayya had no male issues. His father and mother predeceased him. The plaintiff and defendants 2 to 4 are Class I heirs of Koilapu Veerayya to succeed to his properties. Kollapu Veerayya during his life time acquired landed property and during his life time he bequeathed the said properties as per his own wish by registered documents. The schedule properties are also the self acquired property of late Kollapu Veerayya and late Kollapu Veerayya did not make any arrangements and died intestate. After his death, the plaintiff and defendants have taken over possession of the property covered by the schedule and the plaintiff and defendants are tenants in common since they are the co-sharers of the said property. Disputes arose between the plaintiff and defendants and therefore the plaintiff intends to separate her share of the property from the shares of the defendants and requested the defendants to settle the properties amicably. The defendants did not co-operate with the plaintiff for partition. During the pendency of the suit, the 1st defendant died and her undivided 1/5th share devolved on plaintiff and defendants 2 to 4. Plaintiff prays that the suit may be decreed with costs.

4. The defendants filed a written statement resisting the same as hereunder:

The allegations made in the plaint are not true and correct and the suit is not maintainable either on facts or at law. The 2nd defendant's surname is wrongly mentioned as Kollapu, but her correct name is Pinipe. Similarly, the 3rd defendant's name is wrongly mentioned as "Ramudu". Her correct name is "Ramayamma." It is false to state that late Kollapu Veerayya died intestate on 28-9-1984. It is true that he had no male issues, but he had five daughters viz., the plaintiff, defendants 2 to 4 and another daughter by name Kunche Suryakantham who pre-deceased the said Veerayya. It is false to state that consequent to the death of Veerayya, all his properties have devolved upon Class heirs of late Kollapu Veeraiah by way of succession. Late Veerayya during his life time executed a registered will dated 14-12-1979 creating life interest in favour of the 1st defendant in respect of all his properties inclusive of the plaint scheduled properties and created a vested remainder right in favour of all his five daughters. The suit house was bequeathed to the three daughters. Subsequently,

he executed another registered will dated 4-3-1983 whereunder also he created a life interest in favour of his wife in respect of all his properties inclusive of the plaint schedule property and created a vested remainder right in favour of defendants 2 and 4 and one Kollapu Virraju who is the son of the plaintiff and the deceased daughter Kunche Suryakantham. As the said Suryakantham predeceased her father Veerayya, the life interest that was created by Veerayya in favour of the 1st defendant became absolute to the extent of the bequest made in favour of Suryakantham. So in the plaint schedule property, the 1st defendant has got life interest and defendants 2,4 and the said China Veeraju and also the 1st defendant have got vested remainder right also in the plaint schedule house. It is also learnt that subsequently the plaintiff and her husband and her children brought the said Veerayya on the pretext that he will have a medical check up and obtained a registered will dated 20-7-1984 secretly purporting to bequeath the plaint schedule property and also the other properties in their favour and in favour of the defendants. The said will dated 20-7-1984 were never consented to by late Veerayya and by that time he was suffering from diarrhea and became very weak in mind and also in body and the said will as not executed by late Veerayya in a sound and disposing state of mind and it is not valid under law. Therefore, the plaint schedule property is liable to be partitioned according to the bequests made under his last registered will dated 4-3-1983 executed by late Veerayya. The suit for partition of the plaint schedule property into five equal shares is not maintainable and it is liable to be partitioned according to the terms of the registered will dated 4-3-1983. It is false to state that Veerayya during his life time bequeathed the landed properties under registered documents. The plaintiff, her husband and persons obtained two registered settlement deeds dated 15-8-1984 and 16-8-1984 from late Veerayya fraudulently and these defendants are filing a separate suit for cancellation those documents and for other consequential reliefs. It is false to state that plaintiff and defendants have taken possession of the plaint schedule house property as tenants in common after the death of late Veerayya. Even during the life time of late Veerayya the 1st defendant who is his wife and Veerayya used to live in the plaint schedule house and after the death of the said Veerayya, the 1st defendant continued to live in that house. Thereafter she leased out a major portion of the plaint schedule house to one Chodavarapu Gandhi on 1 -11 -1985 on a monthly rental of Rs. 50/- and inducted him into possession on that day. Ever since then, the said tenant is in possession of the same and in the remaining portion, defendants 1 and 4 are living in that house. The plaintiff never had any possession of the plaint schedule house. The plaintiff never enjoyed the plaint schedule house jointly along with defendants 1 to 4 or with the 1st defendant. Late Veerayya died possessed of a thatched house situated in Harijanpeta in Diwancharuvu bearing Door N.3-148 and the plaintiff is living in that house as a licensee even during the life time of late Veerayya. The plaintiff suppressed the above fact and filed the suit for partition coolly in respect of the said plaint schedule house only. Therefore, the suit for partial partition is not maintainable and it is liable to be dismissed.

5. Likewise, the plaintiffs in O.S. No. 108/86 pleaded as hereunder:

The 1st plaintiff is the mother of plaintiffs 2 to 4 and the 1st defendant. The 1st plaintiff is the wife of late Kollapu Veeranna who died on 28-9-1984. Defendants 2 to 5 are sons of the 1st defendant. The 1st plaintiff and Veeranna had no male issues and they had another daughter by name Kunche Suryakantham who predeceased Kollapu Veeranna. The said Veeranna originally was a native of Dosakayalapalli and the 1st plaintiff's parents place is Diwancheruvu village and her parents have got properties at Diwancheruvu. They are Harijans by caste. Since Kollapu Veeranna had no property, he came down to Dewancheruvu after marrying the 1st plaintiff and used to reside in her parents house as an illatom son-in-law. Therefore, the plaint schedule property was transferred in the name of the said Veeranna by the 1st plaintiff and her mother Kunche Malamma. The 1st defendant and the deceased daughter Kunche Suryakantham were married to the residents of Diwancheruvu village and the other four daughters viz., plaintiffs 2 to 4 were given in marriage to persons belonging to different villages. The 1st defendant, her husband and their children were living in the thatched house belonging to Kollapu Veeranna and the 1st plaintiff and her husband were residing in the tiled house belonging to Kollapu Veeranna situated in Diwancheruvu village. Veeranna executed a registered will dated 14-12-1979 bequeathing the entire plaint schedule property in favour of his five daughters including the deceased daughter Kunche Suryakantham as detailed in the will and the tiled house was bequeathed to the three daughters and thatched house was bequeathed to two daughters. But in all the properties, life interest was created to the 1st plaintiff. Late Veeranna subsequently executed another will defendant 4-3-1983 where under he again created life interest in favour of his wife who is the 1st plaintiff herein over the plaint schedule properties and the house properties and the vested remainder in the plaint schedule property was given to plaintiffs 2 to 4 and defendants 1 to 5. The above two registered wills were executed by late Veeranna in a sound and disposing state of mind. While so, the defendants and the husband of the 1st defendant entertained an evil idea to grab the properties of Veeranna. Kollapu Veeranna was suffering from fever and diarrhea since June 1984 and he became very very weak both in mind and body. While he was in such a condition the 1st defendant and her husband and children on the pretext that he would be taken to the hospital for a medical check up brought the said Veeranna to Rajahmundry and obtained a will dated 20-7-1984 secretly purporting to bequeath the plaint schedule property and other house properties and in obtaining such bequests the cream of the property was obtained in favour of the defendants. Late Veeranna was not mentally sound by the date of execution of the will dated 20-7-1984 and he has no testamentary capacity by that time. The said Veeranna never consented for such bequests and it is not valid under law. Curiously, the defendants 1 and 3 and the 1st defendant's husband Venkanna filed a caveat petition in the District Munsif's Court, Rajahmundry against the plaintiffs 2 to 4 making certain false allegations. The plaintiffs 2 to 4 got issued a reply notice dated 20-8-1984 stating that the

said Veeranna was not in a conscious state of mind even from 10-7-1984 onwards till that day and he has been undergoing treatment under Dr. Kasturi Suryanarayana at Rajahmundry and the will set up by them is not true and valid. Subsequent to the execution of the will dated 20-7-1984 the defendants and the husband of the 1st defendant hatched a plan to somehow knock away the plaintiff's scheduled properties and in that plan they fraudulently obtained two settlement deeds dated 15-8-1984 and 16-8-1984. While the said Veeranna became serious he was admitted in the Nursing Home of Dr. K. Surayanarayana and all the plaintiffs and defendants used to attend of upon him. The 1st defendant and her husband with a fraudulent motive represented to the 1st plaintiff that she need not stay with Veeranna through out the day in the hospital and as there are a number of house hold articles in the house at Diwancheruvu and it will not be safe for these articles unless she stays there at the house. The 1st plaintiff was induced by them representing to her that she can stay at Diwancheruvu and she can come and see her husband now and then. The 1st plaintiff believed these representations of her daughter i.e., the 1st defendant and the 1st defendant's husband and used to stay mainly at Diwancheruvu and now and then used to visit her husband. Thus, with the fraudulent object in mind, the 1st defendant and her husband prevented the 1st plaintiff to stay in the hospital through out the day to serve her ailing husband. The other plaintiff used to attend upon late Veeranna in the hospital at their convenience. Taking advantage of this situation, in the absence of plaintiffs, defendants 1 to 5 and the husband of the 1st defendant obtained two documents dated 15-8-1984 and 16-8-1984 fraudulently from late Venkanna without disclosing the contents therein to him, by taking Veeranna in a car to the local Sub-Registrar's office and obtained his thumb impression without disclosing the nature and contents thereof to him and got the two documents registered purporting to be settlement deeds settling the plaintiff's scheduled properties in favour of defendants 1 to 5. Late Veeranna was not in a position to understand and give consent to execute such documents. His mental condition was not stable then and he was unable to understand things what he was doing and it is under those circumstances, his thumb impressions were obtained on those documents without disclosing the contents therein to him and got the said documents registered. Late Veeranna had no volition to execute such documents. The defendants 1 to 5 and the husband of the 1st defendant played fraud upon late Veeranna taking advantage of this situation and obtained the two settlement deeds dated 15-8-1984 and 16-8-1984 and they are liable to be cancelled. The defendants have fraudulently obtained the two documents. The cherished desire of Veeranna was always to confer his properties on his wife by creating a life interest on her and vested remainder to benefit all his children but certainly not to benefit one daughter i.e., the 1st defendant and her children to the exclusion of his wife and other children. The bequests made under the wills executed by late Veeranna referred to supra clearly go to show that he was always affectionate towards his wife and all the children alike. There are no special favours for late Veeranna to confer the cream of the properties on the 1st defendant and her children to the exclusion of his wife and other children. The

defendants and the husband of the 1 st defendant played fraud upon late Veeranna and got the two settlement deeds. The antecedent and attending circumstances in obtaining the two documents clearly go to show that they were fraudulently obtained by defendants 1 to 5 and the husband of the 1st defendant with a view to grab the plaint schedule property. It is quite improbable to think that late Veeranna would have given his entire interest in the plaint schedule property by favouring one daughter and discriminating the other daughters and his wife, it is beyond the comprehension of anybody to think of that late Veeranna would deprive his wife who was affectionate for him throughout his life without creating anything for her sustenance, could have executed the two settlement deeds. The settlement deeds are vitiated by fraud and they are liable to be set aside. The suit is filed for cancellation of the settlement deeds and for partition of the plaint schedule properties as per the registered will dated 4-3-1983. The extent of the bequest i.e., the vested remainder right created in favour of Suryakantham lapsed in View of her death during the life time of the testator and the 1 st plaintiff will have absolute interest in that Ac.1-50 cents also. During the pendency of the suit the 1st plaintiff died on 18-2-1989. During her life time she executed a registered will dated 16-1-1985 bequeathing her right in the plaint schedule properties in favour of plaintiffs 2 to 4 with absolute rights. Kollapu Veerayya executed a registered will dated 4-3-1983 bequeathing item 1 of the plaint "B" schedule tiled house to plaintiffs 2,5 and late Kunche Suryakantham and also the 5th defendant. Under the said will, he bequeathed item No. 2 thatched house of the plaint "B" schedule to the 1st defendant and the 3rd plaintiff.

6. The 1st defendant filed a written statement and the other defendants adopted the said written statement. It was pleaded in the written statement as hereunder:

Late Kollapu Veerayya purchased the property from his mother-in-law and the 1st plaintiff under a registered sale deed dated 30-10-1939 and out of sale consideration he discharged the debts contracted by Kunche Perigadu and his wife Mallamma out of which the mortgage debt dated 16-2-1936 contracted by them from Cherukuri Subbarayudu of Konthamuru village. To that knowledge of the 1st defendant, late Veeraiah never executed any will making arrangements about his properties. The averments that the 1st plaintiff was given life interest in all the properties of late Veeraiah is true. Late Veeraiah never executed any other will dated 4-3-1983 about his properties whereunder he created life interest to the 1st plaintiff and vested remainder to plaintiffs 2 to 4 and defendants 1 to 5. There is no necessity for late Veeraiah to execute any wills since he was quite hale and healthy by then. The plaintiffs are in a haste to build up some case without any foundation thereunder. The plaintiffs never cared for the welfare of late Veeraiah and they neglected him. The 1st plaintiff being the wife though bound under Law to look after her husband never cared to look after him at the ill-advice of plaintiffs 2 to 4. Veeraiah took shelter under the 1st defendant who got lasting love and affection towards her father Veeraiah. Late Veeraiah was very much attached to 1st defendant and defendants 2 to 5 who

are collectively looked after with all the care and protection as if he was one of their family members. Late Veeraiah was suffering from Diarrhea from July 1984 and was treated by the defendants at their own expenditure at Rajahmundry at the hospital of Kasturi Suryanarayana. He was also admitted as an in-patient thereat and none of the plaintiffs ever made at least a courtesy visit to the ailing husband of the 1st plaintiff and the father of plaintiffs 2 to 4 and the 1st defendant. Late Veeraiah out of love and affection executed a registered will dated 20-7-1984 in a sound and disposing state of mind bequeathing all the properties in favour of the defendants. On 15-8-1994 late Veeraiah in a sound and disposing state of mind executed a settlement cum gift deed bequeathing Acs.6-00 cents of S. No. 583/2 of a total extent of Acs.9-14 cents and the Southern side land of the said land of an extent of Acs.6-00 cents with present and absolute rights to defendants 2 to 4. The gift deed was implemented by the donees by accepting the gift and ever since they had been in absolute possession and enjoyment of the same in their own right openly and in public doing all acts of ownership over the same. The plaintiffs were in know of all these things and never demanded about the same till the date of filing the suit. Again on 16-8-1984 Veeraiah again in a sound and disposing state of mind and out of his free will executed another gift, deed hereby bequeathing his remaining Acs.2-29 cents in favour of defendants 1 and 5. The above said gifts were voluntary in nature and executed with the knowledge of all the plaintiffs who never dared to question the said deeds as they never created any love and affection in the mind of late Veeraiah. The gifts were accepted by the defendants 1 and 5 and the gift was put in operation by the donees by taking possession of the same and had been in absolute and undisturbed possession till this date doing all acts of ownership over the same openly and in public. The plaintiffs for their absence at the hospital of K. Suryanarayana, gave a lame excuse that the 1st plaintiff was directed to stay at the house of late Veeraiah lest his valuable movable properties will be exposed for theft etc. The defendants never misrepresented late Veeraiah about the registration of the documents. Late Veeraiah voluntarily executed the said documents aforesaid and the said documents came into existence voluntarily and out of the free will and consent of late Veeraiah. The mental condition of late Veeraiah is always stable and he never lost his mental equilibrium. Subsequent to the execution of the gift deeds the 3rd plaintiff whose real name is Jithuka Ramudu tried to interfere with the enjoyment of the properties. Late Veeraiah came to know of the said interference by the third plaintiff warned her by a registered notice dated 24-8-1984 whereunder he has clearly stated that the properties gifted by him are the self acquired properties and he can deal with the said properties according to his own wish and discretion. Late Veeraiah clearly stated in the said registered notice that he was very much in consciousness and clearly asserted that the gifts made by him are voluntary and out of his own discretion. The said notice clearly reveals that Veeraiah was taken to the Sub-Registrars officer for registration of the said documents in favour of the said defendants and further dwelt at length that he was interrogated by the Registrar of Sub-Registrar's office and after the said

Registrar was satisfied the said documents were registered by the Registering authority of the Sub-Registrar's office at Rajahmundry. The present suit is frivolous in nature and speculative in character. One Kunche Naramma filed a suit against late Veeraiah in the Court of I Additional District Munsif, Rajahmundry under O.S. No. 552/1978 alleging that the said Veeraiah is her lessee and defaulted in payment of list to her for certain years for which Veeraiah gave an answer by filing his written statement in the said suit denying the relationship of the lessor and lessee. The said suit was contested by late Veeraiah and during his last days viz. upto 26-9-1984 while he was alive he got a memo filed into the Court through his Advocate Putrevu Suryanarayana Murthy to the effect that the suit filed by Smt. Kunche Naramma be decreed and he got no objection for passing a decree in favour of Kunche Naramma and he gave instructions to his advocate to file a memo to that effect and accordingly that the said memo was filed by the Advocate into the Court obtaining the consent of late Veeraiah by getting affixed his thumb mark over the said memo. The said memo is still in the record of O.S. No. 552/78. The averments of para 12 of the plaint are improbable and unimaginable. There is no fraud as averred in paragraph 12 of the plaint by the defendants. In fact, the plaintiffs wanted to play fraud upon late Veeraiah and having come to know of the same late Veeraiah kept himself aloof of the plaintiffs and he was under the care and protection of the defendants who themselves have invested several thousands of rupees for the medical treatment of late Veeraiah, which fact is known to one and all including the plaintiffs. None of the plaintiffs ever invested a single pie towards the treatment of late Veeraiah. The legal proposition even supposing the arrangements made by late Veeraiah in the alleged wills is true even then the first plaintiff got no absolute right over the said property of late Suryakantham. The suit is bad since there is no cause of action for the suit. The suit is liable to be dismissed u/s 35-A of C.P.C. The claim of the plaintiff is totally frivolous and vexatious in nature.

7. An additional written statement also was filed by the 1st defendant wherein it was pleaded as hereunder:

The 1st plaintiff Kollapu Mangamma died intestate and did not execute any will as alleged and thereby bequeathed her rights in the plaint schedule properties in favour of plaintiffs 2 to 4 with absolute rights. The 1st defendant denied the execution of the will dated 16-11-1985 and the plaintiffs are hereby put to strict proof of the will in accordance with law. The deceased plaintiff was maintained by the 1st defendant for the last two years before her death and even prior to death and the deceased plaintiff got great gratitude towards the 1st defendant. During her life time the deceased plaintiff stated to the 1st defendant that she got no discrimination towards her with the other daughters and all her daughters are equal to her in spite of filing a suit by the 1st defendant against the deceased. The will set up by the plaintiffs is a fabricated document brought into existence by the plaintiffs and is a spurious document. The 1st plaintiff is not in a sound and disposing state of mind.

ISSUES SETTLED BY THE TRIAL COURT:

8. Issues in O.S. No. 202/85:

1. Whether late Kollapu Veerayya executed registered wills dated 14-12-1979 and 4-3-1993 ? If so, whether they are executed by him in a sound and disposing state of mind?
2. Whether the plaint schedule property is liable for partition? If so what are the shares of partition?
3. Whether late Kollapu Veerayya died possessed of the thatched house mentioned in para 7 of the written statement of defendants 1 to 4 ? If so whether that house is liable for partition?
4. Whether the suit for a partial partition is maintainable?
5. Whether the plaintiff is entitled to future profits ? If so to what extent?
6. To what relief?

Issues settled in O.S. No. 108/86:

1. Whether the will dated 4-3-1983 executed by late Kollapu Veeranna is true and valid?
2. Whether the will dated 29-7-1984 executed by late Kollapu Veeranna propounded by the defendants is true and valid?
3. Whether the defendants played fraud upon late K. Veeranna in obtaining the two settlement deeds dated 15-8-1984 and 16-8-1984 executed by Veeranna and whether late Veeranna was not in a disposing state of mind by then?
4. Whether the two settlement deeds dated 15-8-1984 and 16-8-1984 executed by late K. Veeranna are liable to be cancelled?
5. Whether the plaint schedule properties are liable to be partitioned as per the dispositions under the will dated 4-3-1983 executed by late Veeranna ? If so, what are the shares?
6. Whether the 1st plaintiff is entitled to recovery of possession of the plaint schedule properties as prayed for?
7. Whether the plaintiff's are entitled to future profits?
8. Whether the defendants are entitled to compensatory costs ?
9. To what relief?

Subsequent thereto, the following additional issues also were settled in O.S. No. 108/86:

1. Whether the will dated 16-11-1985 is true and valid?

2. Whether the plaintiffs 2 to 4 are entitled for the relief of partition and possession as prayed for?

EVIDENCE LET IN BY BOTH THE PARTIES BEFORE THE TRIAL COURT:

9. P.W.1, husband of Kunche Chinna Mangamma, Kunche Venkatarao, was examined. P.W.2, P.W.3 and P.W.4 also were examined. Exs.A-1 to A-6 were marked. Likewise, D.W.2 Kunche Saraswathi was examined and D.W.2 to D.W.4 were examined. Exs.B-1 to B-5 were marked. Exs. A-4 and A-5 are the registered settlement deeds dated 15-8-1984 and 16-8-1984 and Exs.B-1 and B-2 are the registration extracts of the said documents. Ex.A-1 is the office copy of the notice. Ex.A-2 is the office copy of reply notice. Ex.A-3 is the postal acknowledgement. Ex.A-6 is the certified Photostat copy of the report given by Bandi Asenu to the Bommuru Police Station. Likewise, Ex.B-3 is a certified copy of the first will said to have been executed by Kollapu Veerayya dated 14-2-1979. Ex.B-4 is a certified copy of the second will said to have been executed by Kollapu Veerayya dated 4-3-1983. Ex.B-5 is the registered will said to have been executed by Kollapu Mangamma dated 16-11-1985.

FINDINGS RECORDED BY THE TRIAL COURT IN NUTSHELL:

10. While answering Issue No. 4 in O.S. No. 202/85 in view of the fact that the thatched house also had been included by amending the schedule this issue relating to the suit being bad for partial partition need not be answered. Issue No. 3 in O.S. No. 202/85 was answered that the thatched house also is liable for partition since Kollapu Veerayya died leaving behind him even the thatched house. Issues 1 and in O.S. No. 108/86 and issue No. i in O.S. No. 202/85 had been answered discussing the same commencing from paras 7 to 26 and ultimately held that the will dated 14-12-1979 was not proved, but however, the will dated 14-3-1983 was held to be proved. Issue No. 6 and additional issue No. 1 in O.S. No. 108/86 was answered to the effect that during the pendency of the suit the 1st plaintiff in O.S. No. 108/86 died and hence the question of recovery of possession by a deceased person would not arise at all. Issue Nos.3 and 4 in O.S. No. 108/86 were answered commencing from paras 28 to 39 and ultimately came to the conclusion that the settlement deed dated 15-8-1984 and 16-8-1984 executed by late Veerayya are liable to be cancelled. Issue Nos.5 and additional Issue No. 2 in O.S. No. 108/86 and Issue No. 2 in O.S. No. 202/85 were answered to the effect that the parties are entitled to take the properties of late Veerayya in accordance with the bequests made under Ex.B-4 will dated 4-3-1983. Issue No. 7 in O.S. No. 108/86 and Issue No. 2 in O.S. No. 202/85 were answered to the effect that the parties are not entitled to future profits. Issue No. 8 in O.S. No. 108/86 had been answered that the defendants are not entitled to the compensatory costs since the settlement deeds have been cancelled. Issue No. 9 in O.S. No. 108/86 and Issue No. 6 in O.S. No. 202/85 had been answered at para-44 of the Judgment wherein the reliefs as specified supra had been granted.

11. For the purpose of convenience, the parties would be referred to as arrayed in the first suit i.e., O.S. No. 202/85. However, there are certain additional parties in O.S. No. 108/86 like, Kunche Abbayi, Kunche Surya Rao, Kunche Chandra Rao, Kunche Virraju apart from the 1st defendant Kunche China Mangamma in the said suit in view of the fact that the cancellation of settlement deeds had been prayed for.

SUBMISSIONS OF SRI N.V. SURYA-NARAYANA MURTHY:

12. Sri N.V. Suryanarayana Murthy, the learned Senior Counsel representing the unsuccessful parties/appellants made the following submissions. The learned Counsel would submit that the defendants though had putforth Exs.B-3 and B-4, they were not very serious relating to the proof of the same and the originals of these documents were not produced. Except the statement made by D. W. 1 that those documents had been taken away, there are no convincing reasons why such secondary evidence to be admitted. The learned Counsel while taking through the pleadings of the respective parties and the evidence available on record would contend that the relief of cancellation of the settlement deeds had been granted on the ground of fraud and except a vague pleading stating fraudulently and except making certain allegations which are hearsay in nature, pleading as required by law is lacking in this regard and in the absence of such particulars, the trial Court arriving at a conclusion that the documents are liable to be cancelled, definitely cannot be sustained. The learned Counsel made elaborate submissions in relation to Ex.A-2 and would contend that Veeranna himself had issued this notice which would amply establish and suggest that the stand taken by China Mangamma and other settles under settlement deed is the correct stand. The learned Counsel also would comment about the non-explanation relating to Ex.A-2. The learned Counsel also pointed out that even after the execution of the settlement deeds, Veeraiah lived for some time and Veeraiah had not chosen to question the same but however the other heirs are questioning the same that too by institution of a second suit after China Mangamma had thought of instituting the first suit. The learned Counsel had taken this Court through the evidence of P.W.I and also D.W.1 and also had pointed out to certain portions of the depositions of the evidence and would comment that in that context, it may be a mistake that it had been recorded that "my father-in-law alone paid hospital charges" which should have been "it is not true" and it may be a bona fide omission or a mistake. The learned Counsel also had taken this Court through the evidence of P.W.2, P.W.3 and P.W.4 and would explain that P.W.4 is an Advocate who had deposed about Veeraiah entering into some compromise or settlement. The learned Senior Counsel made elaborate submissions in relation to the provisions of the Indian Contract Act and also the provisions of the Transfer of Property Act in this regard. The learned Senior Counsel also placed strong reliance on Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others, ; Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, , Kalyanasundaram v. Karuppa AIR 1927 P.O. 42; Venkata Subba v. Subba Ram Hegde AIR 1928 P.C. 86 ; Pawan Kumar Gupta Vs. Rochiram

Nagdeo, ; Gopal Das and Another Vs. Sri Thakurji and Others, ; Surendra Kumar Vs. Nathulal and Another, ; Pindiganti Lakshminarayana (deceased) by his LRs. Vs. Pindiganti Venkata Subbarao and others, ; R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, ; Union of India and others Vs. Nandlal Raigar, and H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others, .

SUBMISSIONS OF SRI SURESH:

13. Sri Suresh, the learned Counsel representing the other contesting daughters of Veeraiah after taking through the respective pleadings of the parties would contend that it is not a case of fraud alone and in a matter of this nature, the substance of the pleading may have to be looked into and not just the form of the pleading. The learned Counsel referred to the pleadings of the parties in this regard and would contend that the facts and circumstances would clearly go to show that the settlement deeds were brought into existence under peculiar suspicious circumstances which are definitely vitiated in the light of the facts which had been clearly established. The learned Counsel also placed strong reliance on the evidence of D.W.3 and had taken this Court through the evidence of P. W.2 and P. W.3. The learned Counsel made elaborate submissions in relation to the fact that none of the beneficiaries of Exs.A-4 and A-5 entered into the witness box and the husband of China Mangamma alone had been examined as P.W.1 and the validity of the settlement deeds may have to be appreciated even in this backdrop. The Counsel also would contend that no doubt P.W.1 had deposed about yet another will apart from Exs.B-3 and B-4 but no material had been placed in this regard. The Counsel made it clear that Ex.B-3 is relied upon only to show that Veeraiah had lot of affection towards all the children and absolutely there was no necessity to exclude certain children and to prefer only one daughter on the children of one such daughters. The learned Counsel explained that Ex.A-4 is dated 15-8-1984. Ex.A-5 is dated 16-8-1984 and within short time on 28-9-1984 Veeraiah died and in the light of the same, the daughters of Veeraiah who are affected by the alleged settlement deeds had questioned the same. The learned Counsel had commented that the evidence of P.W.1 would clearly go to show that Veeraiah had not opened his mouth at all when Ex.A-4 was written. The learned Counsel also would comment that the deposition as it stands may have to be taken into consideration and what is not there cannot be read into it and "my father in law alone paid the hospital charges" cannot be read in the negative form. The non-examination of the Sub-Registrar also had been commented upon and the learned Counsel explained the scope and ambit of Section 126 of Transfer of Property Act and Section 31 of the Specific Relief Act in this regard. The learned Counsel would comment that the health condition of Veeraiah also may have to be taken into consideration. Veeraiah was aged about 80 years. The Counsel placed strong reliance on the evidence of D.W.4 who is also aged about 80 years and would submit that in the light of the evidence of P.W.4, the stand taken by the settlees cannot be believed.

The learned Counsel also placed reliance on several of the decisions in relation to the proof of Will and would submit that these principles may have to be applied even in the case of settlement deeds. The learned Counsel also would submit that the settlement deeds are definitely vitiated by undue influence and other factors which would vitiate the contract. Reliance also was placed on the decision referred (11) supra, Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, ; Ramchandra Rambux Vs. Champabai and Others, ; Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and Others, ; M. L. Abdul Jabbar Sahib Vs. M. V. Venkata Sastri and Sons and Others, ; Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others, ; Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another, ; Ram Piari Vs. Bhagwant and others, ; Vrindavanibai Sambhaji Mane Vs. Ramachandra Vithal Ganeshkar and others, ; Uma Devi Nambiar and Others Vs. T.C. Sidhan (Dead), ; Sridevi v. Jayaraja Shetty 2005(2) ALT 24 (SC); Mallipeddy Sessaiah (died) and Others Vs. Nadendla Tulasamma (died) and Others, ; Meenakshiammal (Dead) through LRs. and Others Vs. Chandrasekaran and Another, ; Girja Datt Singh Vs. Gangotri Datt Singh, ; Karri Nookaraju Vs. Putra Venkatarao and Others, ; S. Rathnam Naidu and Another Vs. Kanni Ammal and Others, ; Raghunath Prasad v. Sarju Prasad AIR 1924 P.C. 60; Inche Noriah Binte Mohamed Tahir v. Shaik Allie bin Omar bin Abdullah Bahashuan AIR 1929 P.C. 3; Kale and Others Vs. Deputy Director of Consolidation and Others, ; Muppudathi Pillai v. Krishnaswami Pillai and Ors. AIR 1960 Mad. 1; Bandarupalli Mastanamma being minor represented by the next friend and mother Bandarupalli Nagaratnamma and Others Vs. Ganguri Adinarayana and Others, and Afsar Sheikh and Another Vs. Soleman Bibi and Others, .

14. In the light of the rival contentions advanced by the Counsel representing the respective parties, though several Issues had been settled in both the suits by the trial Court, the following Points for consideration would arise in this Appeal:

- (1) Whether the settlement deeds executed by Kollapu Veeraiah are true, valid and binding?
- (2) Whether Kollapu Veeraiah died testate or intestate?
- (3) If so to what relief the parties are entitled to ?

Point No. 1:

15. The most crucial aspect which made the daughters, heirs of Kollapu Veerayya, to land in this litigation is the settlement deeds said to have been executed by Kollapu Veerayya. Submissions at length were made relating to the validity of these documents. The main contention of learned Senior Counsel is that the ground of fraud had been pleaded and the said ground is as vague as vagueness can be and the particulars or details relating to this aspect had not been pleaded nor the same had been proved and hence in the light of the evidence available on record, the settlements had been proved in accordance with law and hence the relief of partition cannot be sustained. As already

referred to supra, the wife of Kollapu Veerayya is no more, but however the wife along with the other three daughters filed O.S. No. 108/86 for cancellation of the settlement deeds. The specific stand taken by these parties, the defendants in O.S. No. 202/85 is that Kollapu Veerayya was not in a sound disposing state of mind during the last days and by playing fraud these documents dated 15-8-1984 and 16-8-1984, Exs.B-1 and B-2, the registered copies which were marked as Exs.A-4 and A-5 had been obtained. It is also their case that Kollapu Veerayya was admitted in the hospital of Dr. Kasturi Suryanarayana as an in-patient and he had no intention either to settle the entire property in favour of the second daughter and her sons alone. It is also their specific case that the defendants were not aware of the execution of the settlement deeds till the death of Veerayya. Veerayya was an illiterate and aged about 80 years. As per the material available on record, it appears Veerayya had been in the habit of executing certain documents like Exs.B-3 and B-4 and also yet another will said to have been executed subsequent to Ex.B-4 as spoken to by P.W.1. It may be appropriate to have a look at the relevant pleadings made in O.S. No. 108/86 in this regard which are as hereunder:

"Subsequent to the execution of the will dated 20-7-1984 the defendants and the husband of the 1st defendant hatched a plan to somehow knock away the plaint schedule properties and in that plan they fraudulently obtained two settlement deeds dated 15-8-1984 and 16-8-1984 in the following circumstances. While the said Veeranna became serious and he was admitted in the Nursing Home of Dr. K. Suryanarayana and all the plaintiffs and defendants used to attend upon him. The 1st defendant and her husband, with a fraudulent motive represented to the 1st plaintiff that she need not stay with Veeranna throughout the day in the Hospital and as there are a number of house-hold articles in the house at Diwancheruvu and it will not be safe for those articles unless she stays there at the house. 1st plaintiff was induced by them representing to her that she can stay at Diwancheruvu and she can come and see her husband now and then. The 1st plaintiff believed those representations of her daughter i.e., the 1st defendant and the 1st defendant's husband and used to stay mainly at Diwancheruvu and now and then used to visit her husband. Thus, with that fraudulent object in mind, the 1st defendant and her husband prevented the 1st plaintiff to stay in the Hospital through out the day to serve her ailing husband. The other plaintiffs used to attend upon late Veeranna in the hospital at their convenience. Taking advantage of this situation, in the absence of plaintiffs, defendants 1 to 5 and the husband of the 1st defendant obtained two documents dated 15-8-1984 and 16-8-1984 fraudulently from late Veeranna, without disclosing the contents therein to him, by taking Veeranna in a car to the local Sub-Registrar's office and obtained his thumb impressions without disclosing the nature and contents thereof to him and got the two documents registered purporting to be settlement deeds setting the plaint schedule properties in favour of defendants 1 to 5. The Said Veeranna was not in a position to understand and give consent to execute those documents.

The plaintiffs submit that late Veeranna never intended to execute such documents. His mental condition was not stable then and he was unable to understand things what he was doing and it is under those circumstances, his thumb impressions were obtained on those documents without disclosing the contents therein to him and got the said documents registered. Late Veeranna had no volition to execute such documents. Thus, the defendants 1 to 5 and the husband of the 1st defendant played fraud upon late Veeranna, taking advantage of this situation and obtained the two settlement deeds dated 15-8-1984 and 16-8-1984 and they are liable to be cancelled. The defendants have fraudulently obtained the two documents dated 15-8-1984 and 16-8-1984 purporting to settle the entire plaint schedule properties in favour of the defendants. The cherished desire of Veeranna was always to confer his properties on his wife by creating a life interest on her and vested remainder to benefit all his children but certainly not to benefit one daughter i.e., the 1st defendant and her children to the exclusion of his wife and other children. The bequests made under the wills executed by late Veeranna, referred to supra, clearly go to show that he was always affectionate towards his wife and all the children alike. There are no special favours for late Veeranna to confer the cream of his properties on the 1st defendant and her children to the exclusion of his wife and other children. Thus, the defendants and the husband of the 1st defendant played fraud upon late Veeranna and got the two settlement deeds executed by him when he was not in a sound and disposing state of mind without disclosing the contents mentioned person the two settlement deeds. The antecedent and attending circumstances in obtaining the two documents clearly goto show that they were fraudulently obtained by defendants 1 to 5 and the husband of the 1 st defendant with a view to grab the plaint schedule property."

The circumstances which had been narrated and the evidence available on record may have to be taken into consideration to appreciate the fact whether the settlement deeds referred to supra are in any way vitiated and liable to be set aside or the said documents are to be confirmed. Strong reliance was placed on Ex.A-2 in this regard apart from the other oral evidence available on record to substantiate the stand that the said settlement deeds are valid, genuine and executed by Kollapu Veerayya voluntarily. The said notice dated 24-8-1.984, Ex.A-2, reads as hereunder:

SMT. JUTHIKA RAMUDU

Wife of Mr. Subrahmanyam,

DIWANCHERUVU,

Korukonda Taiuk.

Madam,

Duly instructed by my client Mr. Kollapu Veerayya, Son of late Mr. Surayya, of Diwancheruvu, I hereby issue to you the following:

NOTICE

1. That you are the third daughter of my client. That my client got five daughters and the 4th daughter viz., Suryakantham passed away.
2. That my client got an extent of Ac. 10-29 cents which is his self acquired property over which no body got any share or interest muchless yourself.
3. That my client is empowered and entitled to disposed of his properties according to his own wish.
4. That my client though weak and nervous is still conscious and in a sound and disposing state of mind. Therefore whatever alienations he made in favour of Mr. Kunchey Surya Rao and Mr. Kunchery Veerraju are out of his own free will and consent and in a sound and disposing state of mind.
5. That it seems you have been harassing the said Mr. Surya Rao and Veerraju by issuing notice to them stating that they obtained certain properties from my client by playing fraud upon him and when my client was alleged to be in unconscious state. The said allegation is fabricated lie and my client is still very much in consciousness and my client, has gifted an extent of Acs.8-29 cents of landed property in favour of Mr. Kunchey Surya Rao, and others in total five members.
6. That may client all the way was taken to office of the Sub-Registrar, Rajahmundry and the documents were registered in favour of the said five persons. That the Sub-Registrar, Registration Department, Rajahmundry after interrogated by client, satisfied about his sound and disposing state of mind registered the said properties in favour of the persons five in number viz., Mr. Kunchey Surya Rao, Kunchey Veerraju, Kuncche Abbayi, Kunchey Chandra Rao and Kunchey China Mangamma.
7. All the persons above stated have been looking after my client affectionately and are providing him with the best medical treatment available at Rajahmundry under the guidance of Dr. K. Suryanarayana, M.D. Therefore, my client gifted away the property above stated of an extent of Acs.8-29 cents in the name of the said persons above stated.
8. Therefore, you got no recognition by my client though you are the daughter of my client, since you got no love last towards my client.
9. Therefore, do not harp upon any speculative litigation against the alienees of my client Mr. Kollapu Veerayya, lost my client shall assist the alienees to thwart your attempts to grab the said property which my client gifted away to the said persons above stated and that you shall be answerable for costs of all such actions to be initiated by them against you from time to time, which you please note.

Yours faithfully,

(P.M. Gandhi)

Advocate L.T.M. of Kollapu Veerayya 16. Order 6 Rule 4 C.P.C. reads as hereunder:

Particulars to be given where necessary: In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

There cannot be any doubt or controversy that the particulars of fraud are to be furnished. In *Maharaja Bir Bikram Kishore Vs. Munshi Tafazzal, Hussein and Others*, , it was held that the plea of fraud to be distinctly pleaded and made subject of distinct issue. In *Debi Prasad and Another Vs. Chhotey Lal and Another*, , it was held that where the plaintiff did not plead undue influence or misrepresentation but simply referred to fraud but the facts constitute misrepresentation and undue influence, which had not been controverted in defence, Court can give effect to misrepresentation and undue influence. It is no doubt true that fraud, coercion, misrepresentation are to be supported by particulars. See : *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others*, ; *Narayana Bhatta v. Narasimha Bhatta* AIR 1966 Ker. 189 ; *Raja Srinivas Prasad Singh Vs. S.D.O. and Another*, ; *Mashkurul Hasan Vs. Union of India (UOI) and Another*, ; and the decision referred (2) supra. In *Kollanchil Padinhakkara Abdulrahiman and Another Vs. Kunhimohamad and Others*, , when there is no issue of undue influence, the plea cannot be considered. In *Hukum Chand Vs. Smt. Hazra Begum and Others*, , it was held that where defendants pleaded fraud, the question of giving particulars of fraud by plaintiff would not arise. The aspect of particulars of fraud had been dealt with in *Syed Sultan Pai Vs. Syed Bikhu Saheb (Deceased by LRs) and Others*, . On the aspect of the nature of allegations in relation to the ground of fraud, the under noted decisions also may be usefully referred to:

Padma Bewa Vs. Krupasindhu Biswal and Others, ;

Padma Bewa Vs. Krupasindhu Biswal and Others, .

G.N. Godbole v. Mt. Nani Bai AIR 1938 Nag 546.

Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, .

Nagubai Ammal and Others Vs. B. Shama Rao and Others, .

Afsar Sheikh and Another Vs. Soleman Bibi and Others, .

In the decision referred (2) supra, it was held:

"Though plea of undue influence, coercion may overlap in part in some cases they are separable categories in law and must be separately pleaded. In cases of

fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice however strong the language in which they are couched may be and the same applies to undue influence and coercion."

In the decision referred (1) supra, at para-44 it was held:

"In AIR 1941 93 (Privy Council) , the Privy Council held that "fraud like any other charge of a criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture."

The provisions of Section 17 and 19 of the Indian Contract Act and also Sections 122, 123 and 126 of the Transfer of Property Act had been explained in this regard.

17. None of the beneficiaries or settlees under the settlement deed had been examined. China Mangamma for the reasons best known to her had not examined herself. It is no doubt true that the husband of China Mangamma was examined as P.W.1. P.W.1 deposed that the 1st defendant who is his mother-in-law died during the pendency of the suit and they had not taken any steps and except the daughters, the 1st defendant is not having any other Class I heirs, and his father-in-law died testate and it is his specific stand that his father-in-law executed yet another will in 1984 and the same is a registered one. This witness deposed that after the execution of the registered will his father-in-law executed settlement deed in favour of the settlees in a sound disposing state of mind and they had taken his father-in-law to the house of Mohiddin. He further deposed that Pudi Nageswararao and E. Solomonraju attested the settlement deed in the house of Mohiddin and they acted as identifying witnesses also before the Sub-Registrar and his father-in-law also witnessed the attestation of the attestors. The said Mohiddin died and his father-in-law executed the settlement deed with free will and there was no pressure and his father-in-law settled Acs.6-00 in favour of three sons and Ac. 1-00 in favour of his another son and Ac. 1-29 cents in favour of his wife. He had narrated about several other details. P. W. 1 also further deposed that when Jithuka Ramudu tried to interfere with the land, his father-in-law and his son had filed caveat in District Munsif's Court, Rajahmundry and Jithuka Ramudu had not issued any notice to them after filing the caveat. P.W.1 further deposed that J. Ramudu got issued a notice Ex.A-1 to his father-in-law and his father-in-law got issued Ex.A-2 reply and Ex.A-3 is the postal acknowledgement. This witness also deposed that Naramma filed a suit against Kollapu Veerayya for recovery of leased land and he got engaged Putrevu Suryanarayanamurthy as his Counsel and later he had withdrawn his contest by filing a document into the Court to that effect and Veerayya affixed his thumb impression in the said paper and in view of the withdrawal of the said suit, the suit filed by Naramma was decreed and delivery was ordered. It was suggested to P.W.1 that Saraswathi was residing with her father along with her husband and

children for the last 7 years prior to the death of Veeraiah which he had denied. This witness further deposed that Veerayya orally gifted a hut and there were disputes between him and his brothers and he left the family and he had denied the suggestion that his father-in-law permitted to reside in the house as a licensee only and he came out from his brother. After the death of Veerayya they shifted their residence to the tiled house and they were residing in both the houses. It was further deposed that 1 1/2 months back prior to the death of his father-in-law, he suffered with diarrhoea and was admitted in the hospital of Kasturi Suryanarayana and his father-in-law was in hospital for three days and after discharge his father-in-law had not been taking any treatment since he recouped from motions. This witness deposed that he does not know whether his father-in-law executed a registered will on 14-12-1979 and his father-in-law had not informed him about the execution of the 1979 will and he does not know whether his father-in-law had also executed another will dated 4-3-1983 and he cannot say how many days prior to the death of his father-in-law he had executed the will and it must be in 1984 and he was not present when his father-in-law executed the will in 1984 and he does not know that in 1984 the will was executed at the house of Putrevu Panthulu garu and he does not know whether his wife and sons had taken the plea that his father-in-law executed the will on 20-7-1984 and they are not in possession of the registered will. One week or 10 days after discharge from the hospital his father-in-law executed settlement deeds. This witness also deposed that his father-in-law came to Rajahmundry two times for execution of settlement deeds and they accompanied him. Solomon Raju accompanied his father-in-law and one Bandi Asenu also accompanied his father-in-law for one time. This witness deposed that it is not true to say that Solomon Raju was working as Pleader's clerk at the time of execution of settlement deeds. Solomon Raju had no avocation at the time of settlement deeds and Bandi Asneu was studying at Rajahmundry at that time. This witness also deposed that his father-in-law was the client of Putrevu Panthulu and his son who is an Advocate. He had not purchased the stamp papers for writing the originals of Ex.B-1 and Ex.B-2 and his father-in-law purchased the stamp for one document and his son Surya Rao purchased stamps for the second document. This witness P.W.1 also deposed as hereunder:

"...The recitals in the original of Ex.B-1 and B-2 that my father-in-law was in the hospital of Kasturi Suryanarayana as an in-patient are not correct. It is not true to say that my father-in-law was in the hospital of Kasturi Suryanarayana and that we having obtained a settlement deed by playing fraud on him and that I am deposing falsehood. My father-in-law alone paid the hospital charges. It is not true to say that my father-in-law was not in conscious and we did not know the contents of the settlement deed. It is not true to say that my father-in-law was not in sound disposing state of mind from June 1984 onwards till his death. It is not true to say that my mother-in-law lived with my father-in-law and she had also gone to hospital to see my father-in-law. It is not true to say that the other daughters of my father-in-law and my mother-in-law sent food to my

father-in-law to the hospital and they were visiting the hospital everyday...."

Several other suggestions also had been denied by this witness. This witness also deposed that his father-in-law informed him that he executed a will in 1984 and he had not seen 1984 will till that day. This is the evidence of P.W.1.

18. P.W.2, the first attester of Ex.A-4, deposed that he went to the house of Shaik Meerauddin and he had seen Kollapu Veerayya in the house of Mohiddin and Mohiddin drafted the settlement deed and Meerauddin requested him to attest the document and he had attested the same. Kollapu Veerayya affixed his thumb impression in the deed Ex.A-4 in his presence and he cannot say the name of the second attester. In cross-examination P.W.2 deposed that he had no acquaintance with Veerayya prior to Ex.A-4. The age of Veerayya was 70 to 75 years at the time of Ex.A-4 and he had not observed whether Veerayya was suffering from any disease at that time and Veerayya had not opened his mouth When Ex.A-4 was written. He had not seen any other person along with Veerayya at the house of Meerauddin and certain suggestions no doubt had been denied.

19. P.W.3 deposed that he worked as Pleader's Clerk upto 1983 and he also deposed that he acted as identifying witness in Ex.A-4 and A-5 and Asenu is the second identifying witness and the witness identified the signature. This witness also deposed that Veerayya was in a sound disposing state of mind. In cross-examination this witness deposed that he worked as Advocates Clerk of P.M. Gandhi from 1982 and 1983 and from 1983 onwards he worked as School's clerk at different schools at different places. He. deposed that Veerayya informed him that he will execute another settlement deed and requested him to come to the Registrar's officer straight away and he had denied certain suggestions. This witness also deposed that Veerayya informed that his wife and daughters were not looking after him properly and hence he was writing the settlement deed. This witness no doubt denied the suggestion that the documents were obtained by fraud. Certain other suggestions also had been denied. P.W.4 was examined for the limited purpose that he appeared in O.S. No. 552/79 on the file of Principal District Munsif, Rajahmundry on behalf of Koilapu Veerayya and one Kunche Namma filed the said suit and this witness was examined only just to substantiate that Veerayya understood the questions and gave answers and he had signed the memo and filed the memo into Court in O.S. No. 552/78. His cross examination would got show that he cannot definitely say about the memo filed and the other particulars.

20. D.W.1, the 4th defendant in O.S. No. 202/85 and 4th plaintiff in O.S. No. 108/86 had narrated all the details. This witness no doubt specifically deposed that her father was in a sound disposing state of mind when he executed the two wills and to her knowledge subsequent to Exs.B-3 and B-4 her father had not executed any other will and her father was bed ridden three months back to his death and her father suffered with fever and motions and they admitted him in the hospital of Suryanarayana at Rajahmundry and her father was not in sound mind and he was unable to identify the person and this witness, her mother,

P.W.1 and son followed her father to hospital and her father was in hospital for ten days and P.W.1 and his son looked after his father and herself (D.W.1) and her mother were bringing meals from the house. Even in the hospital her father was not of sound mind. She further deposed that the distance between Rajahmundry and Diwancheruvu would be about 6 miles and after ten days her father was discharged from the hospital and came to Diwancheruvu and died after one month and her father had not executed settlement deeds in favour of the sons of P.W.1 and P.W.1 and his son had obtained settlement deeds from her father playing fraud and her father was not in a sound mind and during the pendency of the suit her mother died and her mother executed a registered will dated 16-11-1985, Ex.B-5. This witness also deposed that the attestors on the original Ex.B-3 will are no more and the scribe of the original of Ex.B-3 also is no more and one of the attestors of the original of Ex.B-4 also is no more. D.W.I in cross-examination had deposed:-

"...My father suffered from fever and motions and unable to move. My father used to talk with us in the hospital. I do not know the execution of a will by my father when he was in the hospital. I know P. W.3. There is no enmity between me and P.W.3. I do not know Pudi Nageswararao, P.W. 2.3 or 4 days after the death of my father, we came to know about the execution of the settlement deed. We got issued a notice through an advocate. I do not know the name of the advocate as my elder sister and her husband looked after the same. Jittuka Ramayamma is my elder sister. 20 days after the death of my father, we got issued a notice disputing the settlement deed. My elder sister informed that we disputed the settlement deed in the notice. My father was alive one month after execution of the settlement deed. We have not asked our father about the execution of the settlement deed. It is not true to say that my father was alive about 3 months after the execution of the settlement deed. I have not been in possession of the death extract of my father. My elder sister and her husband gave a police report in respect of the settlement deed. P.W.1 and his sons looked after my father at hospital and we used to bring food to the hospital. My father was in the hospital at the time of bringing the meals carriage. At the instance of my father, he was taken from the hospital, even though the disease was not cured. My father represented that he may be taken to the house as the disease was not cured. My father was taken to the house in a taxi. It is not true to say that my mother stayed at Rayudupaka when my father was in the hospital, it is not true to say that my father was not an in-patient and he took treatment as out patient for motions. My mother gave money to P.W.1 and P.W.1 paid the hospital fee. We have not enquired P.W.I how much amount was paid towards hospital fees, as we believed P.W.1. P.W.1 has been living in the thatched house as licensee from my father. It is not true to say that we are also living as licensees in the tiled house. It is not true to say that we failed to look after my father and hence he joined in the hospital. It is not true to say that we are not aware of the admission of my father in the hospital and after the death of my father, we occupied the tiled house. The children of P.W.1 are not residing in the

tilled house. It is not true to say that my father executed settlement deed with free consent and in sound disposing state of mind and we are not are of the execution of settlement and now we are disputing the settlement deed after the death of my father. It is not true to say that P.W.1 looked after my parents till their death. My father executed 2 wills in our favour, without cancelling the 1 st will. It is not true to say that the children of P.W.1 and the wife are the owners of the property in view of the execution of settlement deed, and that we have no right in the property. We are paying taxes and the cists receipts are with me. The receipts in the names of three sisters. We are paying the cists since 12 years. The children of P.W.1 have been in possession of the property."

The evidence of D.W.3 is to the effect that he is the identifying witness of Ex.A-4 and attesor of Ex.A-5. He deposed about the details and the condition of Veerayya and deposed that Veeraiah was not in a position to identify the persons. Venkanna and others took Veerayya to Sub-Registrar's office in a taxi and they went by a scooter. D.W.3 further deposed that Venkanna and others represented that they were obtaining a lease deed in respect of the lands of Veerayya and requested D.W.3 to attest a document. Practically Kollapu Veerayya was lifted by three persons from the hospital into the taxi and from taxi into the Sub-Registrar's office. The contents of the document were not read over to Veerayya and was not in a position to understand the things. He further deposed that the contents of the documents were not also read over to him. Exs.A-4 and A-5 are already written by the time of registry. P.W.1 and his sons requested him to come on the next day also and again the 2nd document was registered. On the date of registration of Ex.A-5 Veerayya became weak. Exs.A-4 and A-5 were not executed by Veerayya with free will. This witness was cross-examined at length. He deposed that he affixed his thumb impression in the presence of Sub-Registrar and Veerayya had not witnessed D.W.3 affixing the thumb impression. No doubt certain suggestions were put relating to enmity. This witness specifically deposed that he was under the impression that Veerayya a executed a lease deed only and he was under that impression and under that impression only he had attested the document and originally he was not inclined to attest Ex.A-5 but at the request of P.W.1, he had attested the same. This witness also deposed that one week after the registration of the deeds Chandrarao represented to him that they obtained settlement deeds from Veerayya by playing fraud and he had not gone to the house of Meera Mohiddin. This witness also deposed that it is not true to say that Veerayya was conscious at the time of execution of Exs.A-4 and A-5 and he voluntarily got registered them. Some other suggestions also had been denied.

21. The evidence of yet another witness, D.W.4, also is crucial. This witness is aged about 80 years and he specifically deposed that D.W.1 and his family members resided in the thatched house of Veerayya and two or three months prior to the death of Veerayya he was not in a position to understand the things and Veerayya was also admitted in hospital and after discharge from hospital he was not talking with others also and Veerayya suffered from motions and his wife

attended him. D.W.4 had narrated several other details relating to family.

22. No doubt strong reliance was placed on the contents of Ex.A-2 to substantiate the stand that the settlement deeds aforesaid had been executed by the deceased Veerayya voluntarily. Several decisions referred(11) to(32) supra are to substantiate the stand that in general the principle relating to the Will also may have to be extended in the case of appreciation of evidence in relation to the execution of settlement deeds and at any rate the general principles vitiating the contracts also may have to be applied in the case of settlement deeds while deciding the validity thereof. Placing reliance on the decision referred (11) supra, submissions were made that the principles of suspicious circumstances and proof relating to will as such cannot be extended in the case of settlement deeds. It is no doubt true that the same standard of proof as required in the case of proof of a Will and also explaining the surrounding suspicious circumstances and the other relevant factors in proof thereof as such may not be extended while appreciating the standard in proof required in relation to the execution of the settlement deeds. In *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, it was held that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved and it is neither a case of suggestion falsi or suppressio veri. In the light of Ex.A-2 and also in the light of the fact that Veerayya lived for some time, submissions were made at length that the so called fraud if any even subsequent thereto having been detected the same was not rectified by the settlor and in such circumstances it may have to be taken that no such kind of fraud had been established. In *Pardhana Vs. Amin Chand and Others*, it was held that a revocation of a gift by donor's heir is legal and right to sue for such declaration is not personal but statutory and on donor's death the cause of action survives to his legal representatives. In the decision referred (3) supra, it was held that where the donor of immovable property has handed over to the donee an instrument of gift duly executed and attested and the gift has been accepted by the donee, the donor has no power to revoke the gift prior to the registration of the instrument. In the decision referred (4) supra it was held that once gift deed is executed and has been delivered to the donee, the donor cannot revoke the gift even before registration on the ground that gift is not completed until the deed is registered. In the decision referred (8) supra it was held that when the executant of the gift deed admitted execution by him it is not open to third party to deny its execution except on the ground of lack of power to convey the property. In the decision referred (7) supra it was held that where registered deed of gift was signed by donor and attested by witnesses it is valid and it can be said to be proved even if one of the attesting witness is not called for proving its execution. Reliance also was placed on *Sivakoti Dasaradharam v. Sivakoti Yoganandam* AIR 1966 A.P. 273 . In *S. Rathnam Naidu and Another Vs. Kanni Ammal and Others*, where a widow having absolute interest in the property transferred it without consideration and the donor got settlement deed executed within few days after she was taken by him to Madras from her village and when

the deed of settlement was challenged by the heirs after the death of the donor on the ground of undue influence exercised by the donee it was held that the donee must prove that the deed was voluntary and without any undue influence and where the evidence showed that the widow never had any independent advice in executing settlement deed, it was held that the settlement deed is vitiated by undue influence. In *Tagore v. Tagore* (1879) 9 Beng. LR. 377, it was observed that the law of wills among Hindus is analogous to the law of gifts and even if wills are not universally to be regarded in all respects as gifts to take effect upon death they are generally so to be regarded as to the property which they can transfer and the persons to whom it can be transferred, and the law of testamentary disposition was developed in all essential matters on the analogy of Hindu law of gifts. Strong reliance was placed on the decisions referred 27 to 32 supra also. Apart from these decisions, the decisions referred (12) to (25) supra relating to the suspicious circumstances and the standard of proof required in the case of proof of a will also had been relied upon.

23. In the light of evidence of P.W.1, P.W.2, P.W.3, P.W.4, D.W.1, D.W.3 and D.W.4, now it may have to be appreciated whether the findings recorded by the trial Court in this regard may have to be confirmed or liable to be disturbed. There is no controversy that the settlor Kollapu Veerayya was sufficiently old at the relevant point of time. The evidence of D.W.4 who is also a sufficiently old man, would go to show that there were no differences in the family and there is no compelling reason or explanation why Veerayya thought of excluding the other heirs in preference to only one branch of his heirs. It is no doubt true that Suryakantham pre-deceased Veerayya and it is the contention and the stand taken by the other daughters that all daughters were being treated alike by the deceased Veerayya. It is pertinent to note that the contesting defendants inclusive of the mother, no doubt who is no more and who died pending litigation, had taken the specific stand placing reliance on certain wills. It is clear from the evidence available on record that this old man Veerayya was habituated to the execution of certain documents as can be seen from the first will and the second will and also yet another will said to have been executed in 1984 which had not seen the light of the day. No doubt P. W. 1 had deposed about the third will but however D.W.1 had taken a specific stand that she had no such knowledge at all. It is no doubt true that when Ex.B-3 dated 14-12-1979 was not proved in accordance with law, the recitals specified therein to show that Veerayya had been treating all the daughters alike may not be taken serious note of. Lengthy submissions were made in this regard by the learned Counsel representing the defendants. Be that as it may, except P.W.4, the Advocate who no doubt made an attempt to show that at a particular point of time Veerayya was alright, and P.W.2 and P.W.3, none of the beneficiaries as such had been examined and the husband of China Mangamma was examined as P.W. 1. His evidence also would go to show that the family members of Veerayya had been looking after him and in fact the hospital charges were paid by Veerayya only. Apart from this aspect of the matter, the evidence of D.W.1 is clear that they

have been looking after Veerayya by visiting the hospital and taking meals etc. The evidence of D.W. 1 in this regard appears to be natural. The evidence of P.W.3 definitely would clearly throw doubt about the mental condition of Veerayya at the relevant point of time. P.W.4 also was not clear or categorical in his evidence about the mental state of Veerayya at the relevant point of time. It is no doubt true that the ground of fraud had been taken but the allegations in substance may have to be taken into consideration while appreciating whether the settlement deeds are to be confirmed or to be cancelled. In the light of the over all appreciation of evidence available on record, the trial Court recorded findings in detail while arriving at the conclusion why it cannot be held that the settlement deeds were voluntarily executed by the deceased Veerayya and if all the circumstances are carefully scrutinized, especially the evidence of D.W.1 and D.W.3 in this regard coupled with the evidence of D.W.4 and also on further careful scrutiny of the evidence of P.W.1, P.W.2, P.W.3 and PAA/.4, this Court is of the considered opinion that the reasons recorded by the trial Court are justifiable reasons and hence on the mere ground that several details relating to fraud or the other aspects had not been clearly established as per law, the relief cannot be negated to the other daughters who are entitled to their respective shares in the absence of such settlement deeds. Hence, this Court is of the considered opinion that in the light of the appreciation of evidence available on record, the findings recorded by the trial Court in this regard are just and proper and are hereby confirmed.

Point No. 2:

24. Having dealt with the validity of settlement deeds, the next question is whether the parties would be governed by the testamentary succession or intestate succession. Testamentary succession is a deviation of natural course of intestate succession. It is needless to say that in view of the same careful scrutiny of the validity of the will in question and the evidence relating thereto may be essential. Apart from Exs.A-4 and A-5 settlement deeds made by Veerayya it is said that he had also executed three wills viz., Ex.B-3 dated 14-12-1979, Ex.B-4 dated 4-3-1983 and yet another will dated 20-7-1984. In the plaint in O.S. No. 108/86 at paras 9,10 and 11 it was pleaded as hereunder:

"While so, the defendants and the husband of the 1st defendant entertained an evil idea to grab the properties of late Veeranna. The said Kollapu Veeranna was suffering from fever and diarrhea since June 1984 and he became very weak both in mind and body. While he was in such a condition the 1st defendant and her husband and children on the pretext that he would be taken to the hospital for a medical check up brought the said Veeranna to Rajahmundry and obtained a will dated 20-7-1984 secretly purporting to bequeath the plaint schedule property and other house properties and on obtaining such bequests, the cream of the property was obtained in favour of the defendants. The plaintiffs submit that late Veeranna was not mentally sound by the date of execution of the will dated 20-7-1984 and he has no testamentary capacity by that time. The said

Veeranna never consented for such bequests and it is not valid under law.

Later, curiously, the defendants 1 and 3 and the 1st defendant's husband Venkanna filed a caveat petition in the District Munsifs Court, Rajahmundry against plaintiffs 2 to 4 making certain false allegations. The plaintiffs 2 to 4, having received the notice in the said Caveat Petition, got issued a reply dt. 20-8-1984 stating that the said Veeranna was not in a conscious state of mind even from 10-7-1984 onwards till that day and he has been undergoing treatment under Sri Dr. Kasturi Suryanarayana at Rajahmundry and the will set up by them is not true and valid.

Subsequent to the execution of the will dated 20-7-1984 the defendants and the husband of the 1st defendant hatched a plan to somehow knock away the plaintiff schedule properties and in that plan they fraudulently obtained two settlement deeds dated 15-8-1984 and 16-8-1984 in the following circumstances. When Veeranna became serious and he was admitted in the Nursing Home of Dr.K. Suryanarayana and all the plaintiffs and defendants used to attend upon him. The 1st defendant and her husband, with a fraudulent motive represented to the 1st plaintiff that she need not stay with Veeranna throughout the day in the Hospital and there are a number of house-hold articles in the house at Diwancheruvu and it will not be safe for those articles unless she stays there at the house. 1st plaintiff was induced by them representing to her that she can stay at Diwancheruvu and she can come and see her husband now and then. The 1st plaintiff believed those representations of her daughter i.e., the 1st defendant and 1st defendant's husband and used to stay mainly at Diwancheruvu and now and then used to visit her husband. Thus, with that fraudulent object in mind, the 1st defendant and her husband prevented the 1st plaintiff to stay in the Hospital throughout the day to serve her ailing husband. The other plaintiffs used to attend upon late Veeranna in the hospital at their convenience. Taking advantage of this situation, in the absence of plaintiffs, defendants 1 to 5 and the husband of the 1st defendant obtained two documents dated 15-8-1984 and 16-8-1984 fraudulently from late Veeranna, without disclosing the contents therein to him, by taking Veeranna in a car to the local Sub-Registrar's Office and obtained his thumb impressions without disclosing the nature and contents thereof to him and got the two documents registered purporting to be settlement deeds settling the plaintiff schedule properties in favour of defendants 1 to 5. The said Veeranna was not in a position to understand and give consent to execute those documents.

The plaintiffs submit that late Veeranna never intended to execute such documents. His mental condition was not stable then and he was unable to understand things what he was doing and it is under those circumstances, his thumb impressions were obtained on those documents without disclosing the contents therein to him and got the said documents registered. Late Veeranna had no volition to execute such documents. Thus, the defendants 1 to 5 and the husband of the 1st defendant played fraud upon late Veeranna, taking advantage

of this situation and obtained the two settlement deeds dated 15-8-1984 and 16-8-1984 and they are liable to be cancelled. The defendants have fraudulently obtained the two documents dated 15-8-1984 and 16-8-1984 purporting to settle the entire plaint schedule properties in favour of the defendants. The cherished desire of Veeranna was always to confer his properties on his wife by creating a life interest on her and vested remainder to benefit all his children but certainly not to benefit one daughter i.e., the 1st defendant and her children to the exclusion of his wife and other children. The bequests made under the wills executed by late Veeranna, referred to supra, clearly go to show that he was always affectionate towards his wife and all the children alike. There are no special favours for late Veeranna to confer the cream of his properties on the 1st defendant and her children to the exclusion of his wife and other children. Thus, the defendants and the husband of the 1st defendant played fraud upon late Veeranna and got the two settlement deeds executed by him when he was not in a sound and disposing state of mind without disclosing the contents mentioned in the two settlement deeds. The antecedent and attending circumstances in obtaining the two documents clearly go to show that they were fraudulently obtained by the defendants 1 to 5 and the husband of the 1st defendant with a view to grab the plaint schedule property."

On the last will said to have been executed by the said Kollapu Veerayya P.W.1 deposed:

"...My father-in-law executed a will in 1984 and the said deed was registered one. The said will was executed in the house of Putrevu Panthulu. I do not remember the name of the attestors of the will. Putrevu Panthulu is the scribe of the will. My father-in-law bequeathed the property to six persons namely 1. Penipe Malamma, 2. Kunche China Mangayamma, 3. Jitthuka Ramudu, 4. Kunche Saraswathi, 5. Kunche Suryarao and 6. Kunche Veerraju. My father-in-law had not bequeathed any property to my mother-in-law. My father-in-law was in a sound mind at the time of the execution of the will. My father-in-law suffered with loose motions at the time of execution of the will. My father-in-law had not executed any other will subsequent to the registered will. After the execution of registered will, my father-in-law executed settlement deed in favour of Kunche Abbai, Kunche Suryarao, Kunche Chandrarao, Kunche Veeraaju and Kunche China Mangamma, in a sound state of mind...."

Further, P.W.1 deposed:

"...I do not know that my father in law had executed a registered will on 14-12-1979. My father-in-law had not informed about the execution of the 1979 will, to me. I do not know that my father-in-law had also executed another will on 4-3-1983. I cannot say how many days prior to the death of my father-in-law, he executed a will, it must be in 1984. I was not present when my father-in-law executed a will in 1984. I do not know, that 1984 will was executed at the house of Putrevu Panthulu gam. I do not know whether my wife and sons have taken a plea that my father-in-law had executed a will on 20th July, 1984. We have not

been in possession of the original will. I have been in possession of the settlement deeds. One week or 10 days after the discharge from the hospital, my father-in-law executed settlement deeds...."

No evidence was let in relating to Ex.B-3 but however certain submissions were made that in the light of the recitals in Ex.B-3, the deceased Veerayya had never any intention of discriminating one daughter from another daughter. It is needless to say that when a document is not proved in accordance with law, the recitals therein need not be considered. However, strong reliance was placed on Ex.B-4. The trial Court no doubt recorded a finding that Ex.B-4 was proved. The evidence of D.W.1 and D.W.2 may be relevant on this respect. D.W.1, the 4th defendant in O.S. No. 202/85 and 4th plaintiff in O.S. No. 108/86, no doubt deposed that her father was in a sound disposing state of mind at the time of execution of the two wills and P.W.1 and his sons had taken away the iron box which contains the original will and the other documents from the tiled house when her father was not doing well and hence the certified copy of the first will was marked as Ex.B-3 and the second will dated 4-3-1983 was marked as Ex.B-4. D.W.1 had taken a specific stand that to her knowledge her father had not executed any other will subsequently. The evidence of D.W.2 Addanki Venkata Ramana Sarma is the only evidence available on record in proof of the execution of Ex.B-4 apart from the evidence of D.W.1. The original of Ex.B-4 was not produced and submissions at length were made relating to the admissibility of secondary evidence and the conditions which may have to be satisfied in this regard. In the decision referred (6) supra it was held that unless the loss of the original deed is proved or it is proved that the original is in possession of or under the control of the opposite party, secondary evidence is inadmissible and the certified copy of such document is inadmissible in evidence. In T. Venkata Narayana and Others Vs. Smt. Venkata Subbamma (dead) and Others, , it was held that in a suit for perpetual injunction restraining 1st respondent from alienating the property based on compromise decree, on the death of 1st respondent during the pendency of the suit the successor respondent coming on record under Order 22 Rule 4 C.P.C. and claiming that her predecessor had executed a will in her favour but that having been lost, she shall be allowed to adduce secondary evidence u/s 65 of the Evidence Act, it was held that she is not entitled to adduce secondary evidence to prove the alleged will in suit for mere injunction. In the decision referred(9) supra, while dealing with the stage to raise the objection relating to the admissibility of the document the Apex Court observed at paras 19 and 20:

"Order 13, Rule 4 of the C.P.C. provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialed by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be

returned by the Court to the person from whose custody it was produced.

The learned Counsel for the defendant-respondent has relied on the *The Roman Catholic Mission Vs. State of Madras and Another*, in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: -(i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been identified as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the making of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court."

Except the statement made by D.W.1 in this regard that the iron box in which certain documents inclusive of Ex.B-4 had been taken away by the sons of P. W. 1, there is no evidence available on record relating to this aspect.

25. The principles relating to proof of wills are well settled and need no elaboration at the hands of this Court. In *Soorjeemoney Dossee v. Deenobunda Mullick* (1857) 6 MIA 523; their Lordships of the Privy Council observed that whatever may I have formerly been considered the state of law that as to the testamentary power of the Hindus over this property the power has long been recognized and must be considered as completely established. See also *Baboo Beer Pertab Sahee v. Maharaj Rajendra Pratap Sahee* (1867) 12 MIA 1. In *Ram Gopal v. Apina Kunwar*, 49 IA 413, their Lordships of the Privy Council observed that a will is one of the most solemn documents known to law and by it a dead man entrusts to the living the carrying out of his wishes as it is impossible that he can be called either to deny his signature or to explain the circumstances in which it was made and it is essential that trustworthy and effective evidence should be given to establish the will and in case of dispute or doubt the best evidence procurable should be furnished.

26. D.W.2 deposed that he has been writing the required forms at Sub-Registrar's office, Rajahmundry and he knows Veerayya of Diwancheruvu and he knows execution of will by Veerayya as he attested it in 1983 and the will was executed in the compound of Sub-Registrar's office, Rajahmundry. This witness further deposed that Putrevu Pantulugaru was the scribe of the will who is no more. Veerayya gave necessary instructions to the scribe for writing the will and Veerayya was in a sound disposing state of mind. This witness further deposed that Veerayya bequeathed life interest to his wife and bequeathed the vested remainder to his daughter. This witness further deposed that Meka Narasimharao also attested the will and he is no more. Veerayya affixed his thumb impression in the will in the presence of this witness, attestors and scribe. The scribe read over the contents before Veerayya before Veerayya affixed his thumb impression in the will and Veerayya witnessed the attestation and he had also scribed as identifying witness. In the cross-examination this witness deposed that he had not scribed the documents of Veerayya prior to the will and in 1979 he was at Srikrishnapatnam. Upto 1979 he was not acquainted with Veerayya and he is not a document writer and he had not prepared any document and he cannot say in how many documents he had attested and he attested the will only. This witness further deposed that he does not remember whether he attested any documents of Veerayya in 1983 and out of remembrance only he is deposing and the certified copy of the will shows that he attested the original of the will. This witness further deposed that Meka Narasimha Rao belongs to Diwancheruvu and he does not know whether Veerayya executed any other will subsequently and he attested the original of the said will at the request of Veerayya. This witness further deposed that after the completion of the writing of the will only Veerayya requested him to attest on it and he does not know whether Veerayya gave instructions to the scribe for preparation of the will and certain suggestions also had been denied. This witness further deposed that the will was executed in two papers and the scribe got affixed the thumb impression of Veerayya in the will and after writing "Kollapu Veerayya Nishani" Veerayya affixed his thumb

impression on the above word and he worked as Village Karanam for 20 years and he knows how to write a will and the litigation also and he does not remember whether the will was executed on two sheets completely and he had denied the suggestions that he had not attested the original will at all and that he does not know the execution of the will by Veerayya.

27. It is pertinent to note that it is not the last will and it is said that yet another will dated 20-7-1984 is said to have been executed followed by the settlement deeds. In the decision referred (11) supra, it was observed:

"What is the true legal position in the matter of proof of wills? It is well known that the proof of wills presents a recurring topic for decision in Courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68, Evidence Act are relevant for this purpose. u/s 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, and not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses are prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained ? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the

satisfaction of the prudent mind in such matters.

However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated."

In the decision referred(22), supra a Division Bench of this Court held:

"Similarly in a judgment of the Supreme Court reported in Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another, it was held that the onus to prove a will is on the propounder and the suspicious circumstances surrounding the will had to be explained by the propounder.

In another judgment of the Supreme Court reported in Vrindavanibai Sambhaji Mane Vs. Ramachandra Vithal Ganeshkar and others, , while referring to the long list of cases, dealing with suspicious circumstances surrounding the execution of will, the Supreme Court held that the propounder needs to explain the suspicious circumstances to the satisfaction of the court before the will can be accepted as genuine. The suspicious circumstances which the Court should take note of, according to the judgment of the Supreme Court, are

- (1) The propounder taking a prominent part in the execution of a will which confers substantial benefits on him;
- (2) Shaky signature;
- (3) A feeble mind which is likely to be influenced;
- (4) Unfair and unjust disposal of property;

Now the evidence has been discussed by the trial Court as well as by the learned single Judge and there is ample evidence that for execution of both wills Ex.A-1 and B-2 the propounder took prominent part and there are shaky signatures and the feeble mind could be presumed in view of the health condition of the testator

and in both the wills there is unfair and unjust disposal of the properties.

Other judgments on which reliance has been placed are the judgments reported in V. Venkateswara Rao v. Y. Nageswara Rao and Ors. (2000 (1) C.C.C. 142 (A.P.), Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, , Shri Kishan Chand and Anr. v. Smt. Basanti Devi (died) by L.Rs. (1996 (2) ICC 283) and Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and Others, ."

Strong reliance was placed on the decisions (20) and (23) too In this regard. A three Judge Bench of the Apex Court in the decision referred (24) supra held as hereunder:

"It still remains to consider whether the attestation of the signature of the deceased on the will, Ex.A-36 was in accordance with the requirements of Section 63, Indian Succession Act. Section 63 prescribes that:

"(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has been some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator...."

In order to prove the due attestation of the will Ex.A-36 Gangotri would have to prove that Uma Dutt Singh and Badri Singh saw the deceased sign the will and they themselves signed the same in the presence of the deceased, the evidence of Uma Dutt Singh and Badri Singh is not such as to carry conviction in the mind of the Court that they saw the deceased sign the will and each of them appended his signature to the will in the presence of the deceased. They have been demonstrated to be witnesses who had no regard for truth and were ready and willing to oblige Gur Charan Lal in transferring the venue of execution and attestation of the documents Ex.A-23 and Ex.A-36 from Gonda to Tarabganj for reasons best known to themselves.

If no reliance would thus be placed upon their oral testimony, where would be the assurance that they actually saw the deceased execute the will in their presence and each of them signed the will in the presence of the deceased. It may as well be that the signature of the deceased on the will was appended at one time, the deceased being there all alone by himself and the attestations were made by Uma Dutt Singh and Badri Singh at another time without having seen the deceased sign the will or when the deceased was not present when they appended their signatures thereto in token of attestation. We have no satisfactory evidence before us to enable us to come to the conclusion that the will was duly attested by Uma Dutt Singh and Badri Singh and we are therefore unable to hold that the will Ex.A-36 is proved to have been duly executed and attested.

When this position was realized the learned Counsel for Gangotri fell back on an alternative argument and it was that the deceased admitted execution and completion of the will Ex.A-36 and acknowledged his signature thereto before the Sub-Registrar at Tarabganj and this acknowledgment of his signature was in the presence of the two persons who identified him before the Sub-Registrar viz., Mahadeo Pershad and Nageshur who had in their turn appended their signatures at the foot of the endorsement by the Sub-Registrar. These signatures it was contended were enough to prove the due attestation of the will Ex.A-36. This argument would have availed Gangotri if Mahadeo Pershad and Nageshur had appended their signatures at the foot of the endorsement of registration "animo attestandi".

But even apart from this circumstance it is significant that neither Mahadeo Pershad nor Nageshur was called as a witness to depose to the fact that such attestation if any. One could not presume from the mere signatures of Mahadeo Pershad and Nageshur appearing at the foot of the endorsement of registration, that they had appended their signatures to the document as attesting witnesses as can be construed to have done so in their capacity as attesting witnesses. Section 68, Indian Evidence Act requires an attesting witness, to be called as a witness to prove the due execution and attestation of the will. This provision should have been complied with in order that Mahadeo Pershad and Nageshur be treated as attesting witnesses. This line of argument therefore cannot help Gangotri".

In the decision referred(25) supra, this Court at para-10 held:

"Now taking up the first objection that there is no proof of execution of the will by the testator it is rested on the absence of testator's thumb mark right under the body of the will. Ex. A-1 has three pages; the body of the will being on pages 1 and 3 and the registration endorsement being on page 2. There is no thumb mark of the executor either in page (1) or page (3). But, his nishani has been put on both the pages under the body of the will and that was done obviously by the scribe. It is clear even to the naked eye that the scribe himself wrote the "nishani" on both the pages. P.W.1, the attester, stated in his evidence that Karri Somulu executed a will dated 16th May, 1947 and he did it in sound disposing state of mind. In cross-examination he also stated that "Somulu put his Nishani on Ex.A-1 in my presence". Later, there is another statement that "before Registrar Somulu put his "nishani" in my presence". The question is whether this is sufficient proof of the execution of the will by the testator. Clauses (a) and (b) of Section 763 of the Indian Succession Act make the position clear. The testator may sign or affix his thumb mark to the will or it may be signed by some other person in his presence and by his direction. That signature or mark has to be so placed that it shall appear that it was intended thereby to give effect to the writing as a will. So, it is not necessary that the testator himself shall put his signature or affix his own mark to the will. Some other person can as well do it in his presence and by his direction. The scribe put his "nishani" under the body of

the will on both pages 1 and 3 immediately below the written matter. P.W.1 the attester stated that the executor put his nishani on the will in his presence. Further the testator obviously admitted his execution of the will before the Sub Registrar and affixed his thumb impression thereto on the registration endorsement. P.W.1 speaks about this also. In my opinion this is sufficient to prove the execution of Ex.A-1 by Somulu as required by Section 63 of the Indian Succession Act. I find full support of this view from a Bench Decision of this Court in Chilamakuri Chinna Pullappa Vs. Guruka Chinna Bayanna and Others, Satyanarayana Raju., J as he then was construing the provisions of Section 63 observed that:

"On a true construction of the words, it shall be signed by some other person in his presence and by his direction in Section 63, the proper form of such signature is, and always has been recognized to be, for the other person to sign the name of the testator and not his own. Therefore, when some other person signs for the testator by writing out the testator's name in his presence and by his direction, it would amount to due execution within the purview of Section 63 of the Act.

Further where an illiterate testator admits the execution of a will before a Sub-Registrar and affixes his thumb impression thereto, there is proper execution of the will."

Strong reliance was placed on several other decisions also in relation to the proof of will and the standard of proof required and the burden of proof in relation thereto. D.W.1 no doubt explained about the non-production of the original of Ex.B-4. The witness who had been examined, D.W.2, no doubt deposed about the attestation in relation to the original of Ex.B-4 but he does not belong to the village and it is not his case that he is at least a well-wisher of the family and he appears to be a stranger. It is no doubt the stand taken that the scribe and the other attester are no more. The translated version of Ex.B-4 may be looked into in this regard for better appreciation which is as hereunder:

"I, Kollapu Veeraiah s/o Kollapu Suraiah, Agriculturist R/o. DiwanCheruvu village (Palacharla Shivar), Rajahmundry Taluka, East Godavari District, execute this Will Deed with my full conscious and with my free will and consent on this 4-3-1983 (Fourth Day of March, Nineteen hundred Eighty three) that:-

Now I am aged about 70 years, hence became physically weak and I am fearing about my position in the future and to avoid disputes regarding my properties after my demise, I arranged my properties as follows:

Earlier on 14-12-1979 I have executed a Will

The lands situate in Diwancheruvu village out admeasuring Ac. 18-28 cents in Sy. No. 583/1 an extent of Ac.9-14 and out of Ac.2-30 cents in Sy. No. 583/2 an extent of Ac.1-15 = Total Ac. 10-29 cents i.e., out of Ac. 10-29 cents an extent of Ac. 1-50 cents has been bequeathed in favour of my eldest daughter Malamma, Ac. 1 -50 cents to my 2nd daughter Smt. Kunche China Mangamma,

an extent of Ac. 1-50 cents to my 3rd daughter Smt. Juttuga Ramudu, Ac. 1 -50 cents to my 4th daughter Kunche Sure Kantham, Ac. 1-00 cents to my 5th daughter Kunche Saraswathi, and an extent of Ac. 1-29 cents to my grandson namely Kunche Veerraju, the son of my 2nd daughter Kunche China Mangamma, thus total extent of Ac.8-29 cents shall be allotted by dividing the same as stated supra after my demise. Thereafter they can enjoy the said pt of their respective shares with all rights of sale, gift etc., by themselves and their legal heirs forever. Further may property i.e., tiled house and open site bearing grampanchayat D. No. 4-6 situated at Diwancheruvu village shall be allotted to my three daughters i.e, my eldest daughter Pinise Malamma, 4th daughter Kunche Sure Kantham and also to 5th daughter Kunche Saraswathi and also to my grandson namely Kunche Veerraju the son of my 2nd daughter Kunche China Mangamma shall be divided into four shares and they can enjoy the said property of their respective shares with all rights of sale, gift etc., by themselves and their legal heirs for ever. I am also having a house (covered with Toddy leaves) at Harijanapet of Diwancheruvu village, the same shall be equally allotted to my both 2nd daughter Kunche China Mangamma and 3rd daughter Juttuga Ramudu only and they can enjoy the said property of their respective shares with all rights of sale, gift etc., by themselves and their legal heirs for ever. This will shall be enforceable after my demise only. I have full right and liberty to cancel this will or change the contents of it and to execute another will afresh during my life time.

I have executed this will with sound mind and with my free will and consent.

L.T.I, of Kollapu Veeraiah

Witnesses:

1. Sd/- Meka Narasimhulu
2. Sd/- Addanki Venkata Ramana

28. On a careful scrutiny of the whole evidence available on record, it is clear that Suryakantham, one of the daughters of Veerayya is no more and the wife of Veerayya also died during the pendency of the litigation and it is said that she also executed a will but no proof is forthcoming relating thereto. It is no doubt true that the testator's intention to be given effect to provided the voluntary testamentary disposition and the capacity of the testator had been clearly established by legally acceptable proof. It is also clear that Veerayya had daughters only and there appears to be an attempt to get at the property or at least a lion's share of it by one or the other and in these attempts a series of documents had flown in relation to the property. As can be seen from the recitals of Ex.B-4 and the stand taken by P.W.1 relating to yet another will said to have been executed by Veerayya followed by the settlement deeds, it is clear that China Mangamma's branch had been making series of attempts to get at the total property or at least the lion's share depriving the other daughters. Also, oft change of mental state of Veerayya can be well culled out from the series of

documents executed by him. These documents appear to have been brought into existence due to pressure, may be from different quarters and from different daughters. Mangamma who was said to have been given only the life interest under Ex.B-4 is no more. Thus on a careful scrutiny of all the facts and circumstances and also the evidence of D.W.1 and D.W.2 coupled with the evidence of P.W.1, this Court is of the considered opinion that the voluntary testamentary disposition of Veerayya at the relevant point of time i.e., Ex.B-4, is highly doubtful and hence the findings recorded by the Court below relating to the validity of Ex.B-4 in the light of the standard of proof expected in relation thereto cannot definitely be upheld. At the same time, it is made clear that total exclusion of all other daughters from inheriting any portion of the property would be totally unjust and inequitable and the same cannot be permitted in the peculiar facts and circumstances of this case. Hence, this Court is of the considered opinion that even Ex.B-4 would /not stand to the legal scrutiny relating to voluntary testamentary disposition of Veerayya at the relevant point of time in the light of the peculiar facts and circumstances and hence the said findings of the Court below are liable to be set aside and it is needless to say that in view of the fact that yet another will subsequent to Ex.B-4 had not been proved at all, may be in the light of subsequent settlement deeds on which strong reliance was placed by P.W.1, Kollapu Veerayya who died intestate leaving behind him his wife and daughters and since one of the daughters Suryakantham predeceased him and the wife also died during pendency of the litigation, the rest of the four daughters would be entitled to equal share in all the properties left by him by intestate succession.

Point No. 3:

29. In view of the fact that Ex.B-5 had not been proved and also in the light of the fact that no other heirs are there representing the branch of Suryakantham, the other four daughters would be entitled to equal shares of 1/4th each in all the properties which had been left by the deceased Kollapu Veerayya by operation of intestate succession. Hence, a preliminary decree is granted for partition to divide all the properties left by Kollapu Veerayya amongst all the four daughters equally taking good and bad qualities into consideration. Thus, the decrees made in O.S. No. 108/86 and O.S. No. 205/85 are accordingly modified to the extent indicated above and the Appeals and the Cross-Objections are partly allowed to the said extent. In view of the close relationship between the parties, this Court makes no order as to costs.