

(2010) 10 AP CK 0082

In the Andhra Pradesh High Court

Case No : Appeal Suit No's. 367 and 368 of 1994

Manne Mallikarjuna Rao and Another

APPELLANT

Vs

Koneru Padmanabha Prasad and Others
 Manne
Basava Sankaram (died) per L.Rs. Vs Koneru Subba Rao and
Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Contract Act, 1872 — Section 11, 12
General Clauses Act, 1897 — Section 3(56)

Citation : (2010) 10 AP CK 0082

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

**Advocate : V.L.N.G.K. Murthy, for the Appellant; N.V. Suryanarayana and P.
Prabhakar Rao, for the Respondent**

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar, J.—A.S. No. 367 of 1994 is the Plaintiffs' appeal arising out of O.S. No. 207 of 1981 seeking relief of declaration of title of Plaintiffs and for possession of the schedule properties after ejecting the first Defendant. A.S. No. 368 of 1994 is the appeal by the Defendant against the cross-suit O.S. No. 93 of 1982 filed by the Defendants in O.S. No. 207 of 1981 against the father of the Plaintiffs in O.S. No. 207 of 1981 for permanent injunction restraining the said Defendant from interfering with the plaintiff schedule lands. Under the impugned judgment and decree, O.S. No. 207 of 1981 was dismissed and O.S. No. 93 of 1982 was decreed. Hence, these appeals.

2. As the case of the parties in both the suits is common, for the sake of convenience, the parties are referred to as Plaintiffs and Defendants as they are arrayed in O.S. No. 207 of 1981.

3. One Manne Basavaiah had two sons i.e. Venkatarama Basavaiah, who later died on 26.01.1981 and his wife -- Pushpavathi--predeceased him in May 1980.

Their daughter viz. Koneru Nagaratanamma and her husband, Koneru Subba Rao, are Defendants 2 and 3 in O.S. No. 207 of 1981. The said Koneru Nagaratanamma and Subba Rao had a son-Padmanabha Prasad and daughter-Leela Kumari. The said Padmanabha Prasad is Defendant No. 1 in O.S. No. 207 of 1981. Manne Basavaiah had another son viz. Ramakrishnaiah, whose son and wife are Basava Sankaram and Durga Bhavani. The aforesaid Basava Sankaram is the sole Defendant in O.S. No. 93 of 1982 filed by Koneru Nagaratanamma, Subba Rao, and Padmanabha Prasad. Basava Sankaram had two sons viz. Mallikarjuna Rao, who is Plaintiff No. 1 and Siva Kumar-Plaintiff No. 2 in O.S. No. 207 of 1981. The Plaintiffs in O.S. No. 207 of 1981 allege as follows:

(a) Sri Venkata Rama Basavaiah was the absolute owner of the plaint schedule properties. During May-June 1980 he had the suit schedule lands ploughed, repaired and transplanted with the assistance of his farm service but in December 1980 he fell sick and was unable to physically manage the properties and he was also advised by the doctors not to move about. He, therefore, executed a General Power of Attorney on 16.12.1980 wherein the father of the Plaintiffs viz. Basava Sankaram was appointed as his power of attorney. It is alleged that on 24.12.1980 Venkata Rama Basavaiah settled the plaint schedule properties on the Plaintiffs by a registered settlement deed reserving life interest in himself. Further, the said Venkata Rama Basavaiah died on 26.01.1981. There was, however, interference by the Defendants 1 to 3 in December 1980 whereupon the father of the Plaintiffs and GPA holder of Venkata Rama Basavaiah filed O.S. No. 522 of 1980 on the file of the Principal Subordinate Judge, Vijayawada against Defendants 1 to 3 for permanent injunction restraining them from interfering with the possession of the said property. However, as Venkata Rama Basavaiah died on 26.01.1981, the said power of attorney in favour of the father of the Plaintiffs became inoperative and the said suit was dismissed at the threshold.

(b) Meanwhile, the first Defendant filed O.S. No. 65 of 1981 before the Principal District Munsif Court, Vijayawada claiming to be the tenant of the plaint schedule lands under Venkata Rama Basavaiah and alleging that the father of the Plaintiffs was interfering; had sought injunction. The Plaintiffs' father opposed the said proceedings by denying the tenancy, as claimed by the first Defendant, but initially the trial Court granted temporary injunction in favour of the first Defendant and in appeal, the same was confirmed with modification. The first Defendant had also filed ATC. No. 165 of 1980 claiming statutory tenancy and also filed application for temporary injunction therein by making similar allegations as are found in O.S. No. 65 of 1981 and the injunction application, however, was dismissed. These Plaintiffs, thereafter, filed the present suit claiming the suit schedule properties on the basis of the registered settlement deed executed by Venkata Rama Basavaiah dated 24.12.1980 in favour of the Plaintiffs and alleging that they were dispossessed by the Defendants also sought relief of possession as well as mesne profits.

(c) The Defendants resisted the suit by filing a written statement stating that Venkata Rama Basavaiah was residing with the parents of the first Defendant viz. Koneru Nagaratnamma and Koneru Subba Rao. It is alleged that Subba Rao was illatom son-in-law of Venkata Rama Basavaiah. It is stated that Venkata Rama Basavaiah was missing from the house from 23.11.1980. It is also alleged that all the properties aforesaid of Venkata Rama Basavaiah were looked after by his illatom son-in-law-Subba Rao viz. father of first Defendant. It is further alleged that first Defendant discontinued studies after intermediate and therefore, Venkata Rama Basavaiah felt that the first Defendant had bad company and wanted to induct him in agricultural operations and inducted him as tenant of the lands on a nominal rent of Rs. 250/- per acre. The first Defendant claimed that he had developed the lands by digging bore-well and has been cultivating the lands by paying the aggregate rent to the grandfather. It is, however, alleged that the Plaintiffs managed to remove Venkata Rama Basavaiah with the help of some rowdies and his whereabouts could not be known after 23.11.1980. Venkata Rama Basavaiah is alleged to have been taken away in a car belonging to the Plaintiffs, which was plying as a taxi. The first Defendant alleges that subsequently he came to know that a gift deed was obtained from Venkata Rama Basavaiah relating to Ac.2.30 cents of demarcation No. 28/1, in favour of the mother of the Plaintiffs. The reference has also been made to the injunction suit as well as the ATC filed by the first Defendant, which is already referred to while narrating the Plaintiffs' allegations. Similarly, it is also alleged that power of attorney is brought into existence on 16.12.1980 purporting to be executed by Venkata Rama Basavaiah and a further settlement deed dated 24.12.1980 in favour of Plaintiffs is also brought into existence to make wrongful gain taking advantage of senility of Venkata Rama Basavaiah. The allegation of possession of the Plaintiffs or their father was denied and it is alleged that during his lifetime Venkata Rama Basavaiah had already executed a Will dated 19.10.1979 bequeathing all the properties to the first Defendant-grandson of Venkata Rama Basavaiah, through his daughter. The first Defendant, therefore, challenges the genuineness of the documents relied upon by the Plaintiffs on the ground that they have been procured and fabricated by making false recitals and taking advantage of incapacity and inability of Venkata Rama Basavaiah in understanding the documents and he was made to execute the documents, without realizing the nature of the documents obtained from him. The said common pleadings of Defendants 1 to 3 were taken note of and the Court below framed the following issues for consideration:

1. Whether the settlement deed dt 24-12-80 is true, valid and binding on the Defendants?
2. Whether the Will dt. 19-10-1970 stood revoked and cancelled by M. Venkatarama Basavaiah executing the settlement deed dt. 26-11-1980?
3. Whether the 1st Defendant is cultivating tenant in respect of the plaint sch. Lands? If so whether he is entitled to the protections of the provisions of the

Andhra Tenancy Act?

4. Whether the Plaintiffs are entitled to the declaration title and consequential relief of possession of the suit lands?
5. Whether the Plaintiffs are entitled to claim a sum of Rs. 5,000/- towards the value of the crop for the year 1980-1981? If not to what amount?
6. Whether the 2nd Defendant is an illatam son-in-law of M.V.R. Basavaiah, if so whether he is having any rights in the plaint sch. Lands?
7. Whether the General Power of Attorney executed by M. Venkatarama Basavayya is true and valid?
8. To what relief?

The crucial issue revolves round the settlement deed dated 24.12.1980 covered under issue No. 1, under which the Plaintiffs claimed title to the property.

4. Mr. V.L.N.G.K. Murthy, learned Counsel for the Appellants and Mr. N.V. Suryanarayana Murthy, learned senior counsel for the Respondents, have made elaborate submissions in support of the respective case.

5. The learned Counsel for the Appellants contended that the theory of lease on a nominal rent, as set up by the first Defendant with regard to all lands of his maternal grandfather, Venkata Rama Basavaiah, is on the face of it improbable and unbelievable. He submits that it is impossible to accept the said theory of lease at a nominal rent of Rs. 250/- per acre for about six acres of lands of Venkata Rama Basavaiah. He also points out that the further allegation that the grandfather of the first Defendant became senile due to old-age is also unsubstantiated. The allegation of abduction of Venkata Rama Basavaiah by the Plaintiffs or their father is also strongly denied and it is pointed out that Venkata Rama Basavaiah himself executed Ex.A1-settlement deed dated 24.12.1980, which was duly registered through a special power of attorney-P.W.5 through the deed of power of attorney in favour of P.W.5. He submits that the thumb impressions of Venkata Rama Basavaiah on Ex.A1 having been admitted, the burden shifts on the Defendants to impeach the said deed. Learned Counsel explains that though the said Venkata Rama Basavaiah used to sign, on account of old age and shivering of his hands, he was unable to sign and as such, thumb impressions were found on Ex.A1. Even those thumb impressions are admitted by the Defendants as that of Venkata Rama Basavaiah. He points out that there is no suggestion also to P.W.1 that Venkata Rama Basavaiah was mad or insane and relies upon the strong circumstance that the first Defendant has not been examined at all. Further, to repel any suspicion as sought to be shown by the Defendants on the physical or mental health of Venkata Rama Basavaiah, the learned relies upon Ex.A11-a duly notarized and sworn affidavit of Venkata Rama Basavaiah-dated 20.01.1981 and seeks to rely upon the contents of the said affidavit apart from contending that all the documents are scribed by the village Karnam, who was examined as P.W.3, which also establishes the genuineness of

the documents relied upon by the Plaintiffs.

6. Learned Counsel has also raised a strong contention that the documents of similar nature were executed by Venkata Rama Basavaiah in favour of Durga Bhavani-mother of Plaintiffs herein and wife of second Defendant, under Ex.A2 dated 26.11.1980, which was also registered a day or two thereafter. Learned Counsel states that the Defendants had filed separate suits questioning the validity of Ex.A2 and another conveyance on the self-same grounds as raised in the written statement herein but have not challenged Ex.A1, which is a later document executed by Venkata Rama Basavaiah in favour of Plaintiffs. Learned Counsel, therefore, submits that even as per the defence raised in the suit and keeping in view the execution including thumb marks of Venkata Rama Basavaiah on Ex.A1 being admitted and the said document having not challenged by the Defendants in an appropriate proceeding; the said documents can be said to be void. In the absence of any proof of senility or unsoundness of mind of Venkata Rama Basavaiah as alleged by the Defendants, Ex.A1 cannot be said to be void and at best the Defendants can contend that it is voidable. The Court below has not kept the aforesaid aspect in mind while deciding the suit and as such, warrants interference in these appeals. Learned Counsel has placed reliance upon a decision of this Madras High Court in Appanna Vs. Jami Venkatappadu and Others, and particularly, para 3 thereof to point out the distinction between void and voidable documents. He, therefore, submits that in the absence of any issue on mental condition of Venkata Rama Basavaiah his inability to sign as is evident from the first page of Ex.A1 coupled with the other evidence; the said Ex.A1 could not have been rejected by the Court below. He also places reliance upon a decision of the Supreme Court in Subhas Chandra Das Mushib Vs. Ganga Prosad Das Mushib and Others, for the proposition that the issue of undue influence and unsoundness of mind are entirely different concepts and allegations relating thereto must be specific and an issue has to be framed for consideration thereof.

7. Mr. N.V. Suryanarayana Murthy, learned senior counsel, on the other hand, submits that the Plaintiffs in a suit of this nature has to succeed entirely on the case established by them rather than on the weakness of the Defendants and must establish that the documents executed by Venkata Rama Basavaiah were voluntarily executed. He points out that several relevant circumstances such as the age of Venkata Rama Basavaiah of 80 years and his taking residence with the Plaintiffs' father for two days and executing Ex.A2 in favour of the mother of the Plaintiffs and subsequent hospitalization of Venkata Rama Basavaiah on three occasions between 17.12.1980 to 24.12.1980 covered by Ex.A4 certificate; from 25.12.1980 to 31.12.1980 covered by Ex.A5 certificate and from 05.01.1981 to 23.01.1981 covered by Ex.A6 certificate and finally his death certificate dated 31.01.1981-Ex.A8. It is in the interval between the periods of hospitalization that Venkata Rama Basavaiah purportedly executed Ex.A1 as well as the special power of attorney in favour of P.W.5. He also criticized Ex.A11 dated 20.01.1981 notarized affidavit of Venkata Rama Basavaiah, which is also during the

hospitalization period referred to above and points out that as per Ex.A4 and Ex.A11 his discharge was to attend the Court proceedings but there is no evidence of any such requirement and it appears that only for executing the disputed documents he was got discharged and readmitted on the next day.

8. Learned senior counsel, therefore, submits that Venkata Rama Basavaiah was missing from the house of Defendants i.e. his daughter and son-in-law from 23.11.1980 and was taken to the house of Plaintiffs in the same village from where he was taken to Vijayawada by the father of the Plaintiffs and within two days he is said to have executed Ex.A2 gift deed dated 26.11.1980, which on the face of it is suspicious and in a separate suit it is stated that Ex.A2 is already set aside. He also points out that though Venkata Rama Basavaiah was with the Plaintiffs on 23.11.1980, the daughter and son-in-law of Venkata Rama Basavaiah were searching for him, they were never informed of Venkata Rama Basavaiah residing with the Plaintiffs and later with their father at Vijayawada, from where he was taken to Hyderabad for hospitalization and ultimately his death on 26.01.1981. At no point of time the Defendants were informed about Venkata Rama Basavaiah's whereabouts or his illness or the surgery or the death and even his body was also not brought to the village, which shows strong suspicion against the conduct of the Plaintiffs and their parents.

9. Learned senior counsel relied upon Section 3(56) of the General Clauses Act, 1897 as well as the decision of the Division Bench Calcutta High Court in *Sadananda Pal v. Empero* ILR 32 CAL 550 to contend that even a shaky signature is also valid in law and an executant, who is able to sign, cannot put his thumb impression unless the same is a requirement of law. Learned senior counsel, therefore, submits that the very document Ex.A1, which is registered through P.W.5 as a power of attorney of Venkata Rama Basavaiah, is shrouded in mystery and apparently taking advantage of Venkata Rama Basavaiah's physical and mental condition and fully realizing that he is incapable of understanding what he was doing, showing his mental imbalance, which is loosely described as senility, the disputed documents are obtained by the Plaintiffs and it is obvious that Venkata Rama Basavaiah did not know the nature of documents he was made to execute during that period. Learned senior counsel submits that late Venkata Rama Basavaiah had already executed a Will dated 19.10.1979 bequeathing all his properties to the first Defendant, who is the grandson, and only to knock away and nullify the same, P.W.1, son of his brother, has managed to obtained Ex.A2 in favour of his wife and Ex.A1 in favour of his sons. Learned senior counsel, therefore, submits that when the validity and genuineness of Ex.A1 is a subject matter of the present suit filed at the instance of the Plaintiffs, it was not necessary for the Defendants to institute a separate suit challenging the very same Ex.A1. He has placed reliance upon a decision of the Supreme Court in *Lakshmi Amma and Another Vs. Talengalanarayana Bhatta and Another*, where a deed of settlement executed under grave suspicious circumstances was held invalid and submits that the facts of the present case are also similar as in the aforesaid decision.

10. The points that fall for consideration, in the light of these rival contentions, are as follows:

1. Whether the Appellants/Plaintiffs have established their title to the property covered by Ex.A1 by removing the suspicious circumstances surrounding execution of Ex.A1?
2. Whether Ex.A1 is validly executed, particularly, in view of Defendants' allegation that the executant thereof was an old man suffering from senility?
3. Whether the Plaintiffs are entitled to relief of declaration of title in the absence of an independent challenge by the Defendants to Ex.A1 questioning its validity?

Points 1 and 2:

11. The pleadings of the parties with regard to circumstances under which Ex.A1 was executed by late Venkata Rama Basavaiah may first be noticed. The suit O.S. No. 207 of 1981 was filed by the minor Plaintiffs through their father as next friend on 21.04.1981. While para 3 thereof states that Venkata Rama Basavaiah appointed the father of the Plaintiffs as General Power of Attorney as he fell sick in December 1980 to look after the properties, para 4 states that Venkata Rama Basavaiah settled the plaint schedule properties on the Plaintiffs by registered settlement deed dated 24.12.1980-Ex.A1. Thereafter, the plaint states that the Defendants 1 to 3 tried to trespass into the plaint schedule properties in the last week of December 1980 whereupon the father of the Plaintiffs as GPA holder filed O.S. No. 522 of 1980 before the Principal Subordinate Judge, Vijayawada for permanent injunction and that after Venkata Rama Basavaiah's death the Plaintiffs being entitled to the property under Ex.A1, they had raised paddy crops etc. The rest of the plaint allegations refer to Defendants having no title; the tenancy case ATC. No. 165 of 1980 filed by the first Defendant and O.S. No. 65 of 1981 filed by the first Defendant for injunction. In para 7 the Plaintiffs state that they lost possession of the suit properties on 09.03.1981 in view of the interim orders obtained by the first Defendant by virtue of orders passed in ATC. No. 165 of 1980. Hence, this Plaintiffs' suit for declaration of title and recovery of possession. It would be noticed that the plaint does not refer to any of the circumstances concerning the background facts preceding execution of Ex.A1. We, however, get the said facts from the written statement of the Defendant. The averments whereof are, briefly, as follows:

that Venkata Rama Basavaiah was missing from 23.11.1980 from the house of his parents i.e. daughter and son-in-law of Venkata Rama Basavaiah. The first Defendant alleged that he was given lease of agricultural land by Venkata Rama Basavaiah to cultivate his lands and as he had become very old, he could not go out of the house and could not go to his fields. He even claims that he made developments in the lands. It is, further, alleged that Venkata Rama Basavaiah became senile due to old age and taking advantage of his mental condition, father of the Plaintiffs (who is also nephew of Venkata Rama Basavaiah)

abducted him on 23.11.1980 in his car and after taking him to Vijayawada to his house obtained a gift deed from Venkata Rama Basavaiah for Ac.2.30 cents in demarcation No. 28/1, which is marked as Ex.A2 dated 26.11.1980. The Defendant states that the said deed is void as Venkata Rama Basavaiah was mad and could not understand the recitals in the document executed by him and could not even know the contents of the alleged gift deed in view of his mental condition. He even says that having come to of this mischief, he has filed ATC. No. 165 of 1980 as he was apprehending dispossession. Meanwhile, the father of the Plaintiffs filed O.S. No. 522 of 1980 and sought injunction against the Defendants in I.A. No. 145 of 1981 wherein these Defendants challenged the father of the Plaintiffs to produce Venkata Rama Basavaiah into Court to establish the true condition of Venkata Rama Basavaiah. It was only thereafter that the death of Venkata Rama Basavaiah was reported by the father of the Plaintiffs. Thereupon, the Defendant has filed O.S. No. 65 of 1981 for injunction before the District Munsif Court, Vijayawada for injunction against the Plaintiffs. The Defendant, thereafter, pleads that it is in these circumstances that the fictitious deed of settlement came to be executed behind the back of the Defendants. The Defendants state that they have already filed a suit challenging Ex.A2 and another document of sale, as O.S. No. 262 of 1981 on the file of the Subordinate Judge, Vijayawada. It is, therefore, stated that Venkata Rama Basavaiah did not know the contents of the documents manufactured in this regard specially in view of his mental condition. The alleged signatures as well as general power of attorney in favour of the father of the Plaintiffs was denied as a fraudulent document. Similarly, Ex.A1 is alleged to be a colorable transaction forcefully brought into existence without the knowledge of Venkata Rama Basavaiah with a view to make wrongful gain. Specifically it is alleged in para 14 that Venkata Rama Basavaiah had earlier executed a will dated 19.10.1979 bequeathing all the properties to the first Defendant. Venkata Rama Basavaiah was illegally abducted by the Plaintiffs' father on 23.11.1980 and several fictitious and nominal documents have been obtained from him without his knowledge including Ex.A1 and false recitals were made in these documents to support false version set up by the Plaintiffs and their father. Thus, except the first Defendant Venkata Rama Basavaiah had nobody to depend upon and therefore, Ex.A1 is questioned on the ground that it is fraudulent, manipulated and void in law.

12. The Defendant No. 2 filed an additional written statement by alleging that Ex.A1 settlement bears thumb impression of Venkata Rama Basavaiah, which was never accepted by anybody on behalf of the Plaintiffs during the lifetime of Venkata Rama Basavaiah and as such, it is deemed to have never come into effect and cannot be enforced in law. The Defendants 1 and 3 adopted the written statement filed by Defendant No. 2. On the basis of these contentions on either side, the Court below framed the issues, which are already referred to above.

13. The circumstances under which Ex.A1 was executed by Venkata Rama Basavaiah, therefore, are very relevant to be considered. Learned Counsel for the

Appellants was, however, right in contending that the execution of Ex.A1, which bears thumb impressions of Venkata Rama Basavaiah is not disputed and as such, the learned Counsel states that so far as the alleged madness or senility of Venkata Rama Basavaiah as pleaded by the Defendants was not crystallized into any issue nor there is any attempt on the part of the Defendants to produce any medical evidence to establish the same. As can be seen from the substance of the written statement, extracted above, the Defendants have at more than one place challenged Ex.A1 on the ground that Venkata Rama Basavaiah was incapable of understanding the documents, which he was executing and the effect of the said documents. It is the Defendants' case, therefore, that Venkata Rama Basavaiah was forcefully removed from his daughter's house and within a short span of three days Ex.A2 is obtained in the name of the mother of the Plaintiffs followed by Ex.A1, which is within a month of the alleged abduction. A reading of the relevant documents to which reference is made above would, therefore, lead to an inference that Venkata Rama Basavaiah was in the exclusive custody of the Plaintiffs' father and he was made to execute documents alienating and distributing his properties in the name of the Plaintiffs' mother and the Plaintiffs themselves. The obtaining of said documents is said to be fraudulent and is only to defeat the Will already executed by Venkata Rama Basavaiah in favour of first Defendant long back.

14. In order to appreciate these contentions it would be useful to notice the evidence of P.W.2, who is the grandfather of the Plaintiffs. He states in his deposition that after the death of the wife of Venkata Rama Basavaiah, the daughter and son-in-law of Venkata Rama Basavaiah ill-treated him and were not looking after him. They failed to give any treatment for eye ailment of Venkata Rama Basavaiah, therefore, Venkata Rama Basavaiah went to the house of Plaintiffs at Vanukuru. At that time, P.W.2 was residing with his son P.W.1 at Vijayawada and after he was informed that Venkata Rama Basavaiah has come to the house of his son, P.W.1 went there and brought Venkata Rama Basavaiah to Vijayawada on the next day. Thus, the dates of these events can, therefore, be ascertained from the record as 23.11.1980 and 24.11.1980. P.W.2 states that Venkata Rama Basavaiah stayed with P.W.1 and his wife, and that his daughter-in-law looked after Venkata Rama Basavaiah for about 20 days where he decided to settle Ac.2.30 cents of land on the wife of P.W.1 and executed Ex.A2 dated 26.11.1980. The recitals in Ex.A2, which is relevant at this stage may also be noticed, which are the following effect:

I was not being looked after by my daughter-Koneru Nagaratnamma, as she was not giving food also and I was necked out of the house. As you are my daughter-in-law, I came to your house and requested you to take care of me and you have been taking good care, for which I am reciprocating by settling Ac.2.30 cents of land after my lifetime by revoking the Will dated 19.10.1979 executed by me earlier in favour of my daughter's son Padmanabha Prasad.

15. It would be noticed that Ex.A2 was executed just three days after Venkata

Rama Basavaiah left his house. Thereafter, Venkata Rama Basavaiah appears to have been taken to Hyderabad and admitted in Sarojini Devi Eye Hospital on 17.12.1980 and the hospitalization period is in three different spells under Exs.A4 to A6 referred to above and in between the said hospitalization period, he executed Ex.A1 on 24.12.1980 when he was discharged for one day and before his readmission on 25.12.1980. The Plaintiffs have filed Ex.A11-notarized affidavit of Venkata Rama Basavaiah, which is dated 20.01.1981. The said affidavit itself shows that on that day he was an inpatient in Sarojini Devi Eye Hospital and that after the death of his wife; his daughter, son-in-law and grandson began to ill-treat him. He also lost eye sight, as the son-in-law refused to give medical treatment by ill-treating him and though Venkata Rama Basavaiah complained of his condition to everyone, his daughter, son-in-law and grandson locked him in a room and was not allowed to meet anyone and was not even given food regularly but after three days he managed to climb and jump over the wall and went to Vijayawada to his brother-Ramakrishna's house. He claimed that he was looked after by the mother of the Plaintiffs and moved by her treatment, without compulsion and without force, voluntarily has revoked his earlier registered Will and executed a settlement of Ac.2.30 cents in her favour [Ex.A2]. After that on his request, he was admitted to Sarojini Devi Eye Hospital on 17.12.1980 for treatment to the eye and he was discharged on 24.12.1980 to enable him to execute and register power of attorney in favour of P.W.5, authorizing him to register the sale deed and settlement deed in favour of Plaintiffs. He states that he was readmitted in the hospital on 25.12.1980 and operated on 26.12.1980. He also confirms to have executed GPA in favour of Plaintiffs' father-P.W.1 and declares that he is making this affidavit voluntarily without any compulsion or pressure and understanding clearly what he was doing so that there should not be any misunderstanding about disposals after his lifetime. This document is attached with a certificate of the notary, who states that the executant is somewhat deaf and has no eyesight and his eyes are covered with bandage. Previously, he used to sign but now he wanted to put his mark-thumb impression as he lost his eyesight. Notary, thereafter, says that he read out the contents and explained the details in Telugu loudly and the executant admitted the correctness of the same and appears to have understood the contents. The notary, however, states that the executant appeared to be physically weak but he is mentally in good condition and after taking oath he put his left thumb mark. The Plaintiffs have pressed the aforesaid document to establish that the mental condition of Venkata Rama Basavaiah was good and he was not suffering from any mental disability and was able to understand his dealings in the property. The notary, however, has not been examined by the Plaintiffs.

16. Learned senior counsel for the Defendants contends that grave suspicious circumstances exist surrounding Ex.A1 and seeks to rely upon the decision of the Supreme Court in LAKSHMI AMMA's referred to above, where a Will and settlement was impeached on similar grounds. Paragraph 12 is relied upon,

which is as follows:

12. We are satisfied that Narasimha Bhatta who was of advanced age and was in a state of senility and who was suffering from diabetes and other ailments was taken by Respondent No. 1 who had gone to reside in the house of Sodhankur village a little earlier in a taxi along with Lakshmiamma to the Nursing Home in Mangalore where he was got admitted as a patient. No draft was prepared with the approval or under the directions of Narasimha Bhatta nor were any instructions given by him to the Scribe in the matter of drawing up of the document Ext.B-3. An application was also made to the Joint Sub-Registrar, Mangalore for registering the document at the Nursing Home by someone whose name has not been disclosed nor has the application been produced to enable the Court to find out the reasons for which a prayer was made that the registration be done at the Nursing Home. Lakshmiamma the wife of Narasimha Bhatta stated in categorical terms that the document was got executed by using pressure on Narasimha Bhatta while he was of an infirm mind and was not in a fit condition to realize what he was doing. The hospital record was not produced nor did the doctor who attended on Narasimha Bhatta at the Nursing Home produce any authentic date or record to support their testimony. Even the will was not produced by Respondent No. 1 presumably because it must have contained recitals about the weak state of health of Narasimha Bhatta. The dispositions which were made by Ext. B-3, as already point out before, were altogether unnatural and no valid reason or explanation has been given by Narasimha Bhatta should have given everything to Respondent 1 and even deprived himself of the right to deal with the property as an owner during his lifetime. All these facts and circumstances raised a grave suspicion as to the genuineness of the execution of the document Ext. B-3 and it was for Respondent No. 1 to dispel the same. In our opinion he has entirely failed to do so with the result that the appeal must succeed and it is allowed with costs in this Court. The decree of the High Court is set aside and that of the trial Court restored.

17. The other notable circumstances are that before executing Ex.A2 dated 26.11.1980, the executant has stayed with P.W.1 and his wife only for two day i.e. 24.11.1980 and 25.11.1980, the next day he executed the document appreciating the care and treatment by P.W.1's wife. The circumstance that he was necked out, as stated in Ex.A11, is not supported by any evidence and from the evidence on record, it is apparent that he was missing from his daughter's house only on 23.11.1980 and went to Plaintiffs' house and on the next day to the house of P.W.2 at Vijayawada. His treatment thereafter at Hyderabad including hospitalization from 17.12.1980 till his death and funeral was all without intimation or information to the Defendants, which appears very unnatural as his own daughter is not informed by the Plaintiffs' father (P.W.1) of either medical treatment or ailment suffered by Venkata Rama Basavaiah as well as his death ultimately and even his body, admittedly, was not brought to the village. The Defendants claimed that they came to know of it only during the suit O.S. No. 522 of 1980 filed by P.W.1 for injunction wherein the Defendants

challenged P.W.1 for production of Venkata Rama Basavaiah into Court.

18. Learned senior counsel states that the attempt behind obtaining Exs.A2 and A1 appears only to be that the Will in favour of the first Defendant dated 19.10.1979 is revoked by knocking away the property of Venkata Rama Basavaiah, partly in the name of P.W.1's wife and partly in favour of P.W.1's sons i.e. Plaintiffs. Learned Counsel also states that Venkata Rama Basavaiah was blind even as per Ex.A11 and he did not know where he is putting his thumb mark and except the notary's certificate there is no material to establish that Venkata Rama Basavaiah was aware of the documents, which he was executing. The notary having not been examined, the said certificate is of little value. Further, the said affidavit is executed while he was inpatient, which presupposes that he was under medication during hospitalization. Learned Counsel also points out the inconsistency in the statement of P. Ws.1 and 2 regarding their presence at the time of execution of Ex.A1. He also places strong reliance upon the circumstance that the village karnam-P.W.3, who is resident of the village and who is the scribe of all the disputed documents and that the documents are said to have been brought to Hyderabad for execution by Venkata Rama Basavaiah and taken back and registered elsewhere on the basis of special power of attorney executed by Venkata Rama Basavaiah in favour of P.W.5.

19. The substance of the contentions on the part of the Defendants so far as senility of Venkata Rama Basavaiah is concerned, the learned Counsel states that the averments in the written statement have to be construed keeping in mind that these are pleadings, which are similar to the pleadings in mufosil area and strict rules of appreciation of the pleadings, as would apply to pleadings in metropolitan cities cannot be applied. Learned senior counsel, therefore, states that at more than one place the written statement the Defendants speaks of mental infirmity and inability of Venkata Rama Basavaiah to understand what he was doing on account of his old age and ailments. The fact situation as arising in the present case is well taken care of under Sections 11 and 12 of the Indian Contract Act (for short "the Act"). Though the said provisions were not relied upon by the Defendants, in substance their contentions are based upon Section 12 of the Act. The aforesaid Sections are extracted for the sake of convenience.

11. Who are competent to contract.- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

12. What is a sound mind for the purpose of contracting.- A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when is of unsound mind.

(a) A patient in a lunatic asylum, who is, at intervals, of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Section 12 of the Act provides that if the executant is incapable of understanding and forming a rational judgment, he can be said to be of unsound mind. In other words, the same is akin to consent by an incompetent person as contemplated u/s 11 of the Act.

20. The nature of unsoundness of mind contemplated u/s 12 of the Act was considered in the following decisions, which is useful for appreciating the present controversy:

1. Indar Singh and Others Vs. Parmeshwardhari Singh and Another, the relevant paras 5, 6, 7 and 11 are extracted hereunder:

5. Mr. Ganesh Sharma, appearing for the Appellants, has strongly challenged the decision of the trial Court that Defendant No. 1 was mentally defective (incapable of understanding transactions). He has submitted that, u/s 12 of the Contract Act, it was necessary for the Defendants to establish that at the time the contract was entered into, Defendant No. 1 was incapable of understanding the transaction in question forming a rational judgment as to its effect upon his interests.

He has relied on *U Aung Ya v. Ma E Mai*, AIR 1932 Rang 24 (A), AIR 1944 232 (Nagpur) and *Mohammad Yakub and Others Vs. Abdul Quddus and Others*, The principle of law enunciated in all these cases is the same. *Mahomed Yakub's case* (C) is a Division Bench case of this Court. It lays down: -

...the test of soundness of mind is that he is capable of understanding the business and of forming a rational judgment as to its effect upon his interest. There being a presumption in favour of sanity, the person who relies on the unsoundness of mind must prove it sufficiently to satisfy this test... Mere weakness of mind is not sufficient...

Another relevant case-law on the point cited at the Bar is *Musammat Amina Bibi and Another Vs. Saiyid Yusuf and Others*, and the relevant passage is at p. 453:

Not being in a position to understand or to determine rationally whether it was likely to operate to his benefit by reason of his mental condition, the lease must be held to be void and unenforceable.

Therefore, in this case, Defendant No. 2 must establish that Defendant No. 1 was incapable of understanding business and forming a rational judgment as to its

effect upon his interest.

(6) There is overwhelming evidence on the record to show that Defendant No. 1 was incapable of understanding business and forming a rational judgment as to its effect upon his interest. On this point, the mother of the Defendant No. 1 was examined on commission and her statement was fully corroborated by Prasad Sinha and Kuar Kedar Narain Sinha, D.W.1, a brother of Defendant No. 2, has also stated that Defendant No. 1 is an idiot, "incapable of understanding matters from his birth. This unsoundness of his mind is congenital." Similar is the evidence of D.W.3. The trial Court has believed the witnesses of the Defendants.

(7) The Court below rightly put the onus on the Defendants and I have also examined this case from that standpoint, and I have come to conclusion that Defendant No. 1 was incapable of understanding business and forming a rational judgment as to its effect upon his interest at the relevant times and, therefore, the sale-deed executed by him in favour of the Plaintiffs did not confer any title on them. It was a void document, as held in *Musammat Amina Bibi and Another Vs. Saiyid Yusuf and Others*,

(8) ...

(9) ...

(10) ...

SINHA, J.:

(11) I agree. Section 11 of the Contract Act speaks of incompetency to make a contract. It says that "Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject." For the present purpose, we have to find out, what is the meaning of "sound mind". Section 12 of the Act attempts to define what is the meaning of "sound mind" and it reads thus:

"A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest"...

The words important, in my opinion, have been underlined (herein " ") by me. According to this section, therefore, the person entering into the contract must be a person who understands what he is doing and is able to form a rational judgment as to whether what he is about to do is to his interest or not. The crucial point, therefore, is to find out whether he is entering into the contract after he has understood it and has decided to enter into that contract after forming a rational judgment in regard to his interest; that is to say, whether the contract he is about to enter into is to his benefit and advantage.

The general theory of the law in regard to act done, contracts made by parties affecting their rights and interests is that in all cases there must be a free and

full consent to bind the parties. Consent is an act of reason accompanied by deliberation, and it is upon the ground that there is a want of rational and deliberate consent that the conveyances and contracts of persons of unsound mind are generally deemed to be invalid; or in other words, (subject to the exceptions mentioned below), there cannot be a contract by a person of unsound mind, (vide para. 484, Halsbury's Laws of England, Second Edn., Vol.21, pp. 279-80).

In my opinion, therefore, the party contracting must have the capacity to arrive at a reasoned judgment as to the consequences of the contract he is entering as into. It does not necessarily mean that a man must be suffering from lunacy to disable him from entering into a contract. A person may to all appearances, behave in a normal fashion, but, at the same time, he may be incapable of forming a judgment of his own, as to whether the act he is about to do is to his interest or not, and to the contracts of such a person the law gives protection.

To such a person the considerations which weigh with the Court in dealing with a contract by a pardanashin lady, in my opinion, equally apply; in other words, the Court must consider whether such a person has entered into the contract after fully understanding what he is about to do and was in a position to exercise his judgment as to his interest after considering the effect of the transaction on the scales of reason. A man incapable of looking after his affairs and incapable of judging the consequences of his acts ought not to be held bound by and responsible for his contracts. In my opinion, Defendant No. 1 in the present case was a person who was incapable of exercising his own judgment, as has been held by my learned brother, with reference to the evidence on record.

2. The Honourable Supreme Court also had an occasion to consider similar case in *Sona Bala Bora and Others Vs. Jyotirindra Bhattacharjee*, and the relevant paras 20 to 25 are extracted hereunder:

(20) It cannot be disputed that a contract of sale like any other contract would be vitiated if the consent of either party is given by a person of unsound mind as provided in Section 11 of the Contract Act, 1872. u/s 12 of that Act, a person is said to be of sound mind for the purpose of making the contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person of unsound mind is thus not necessarily a lunatic. It is sufficient if the person is incapable of judging the consequences of his acts. Black's Law Dictionary says:

as aground for voiding or annulling a contract or conveyance, insanity does not mean a total deprivation of reason, but an inability, from defect of perception, memory, and judgment, to do the act in question or to understand its nature and consequences (Black's law Dictionary (Sixth Edition) Page 795).

(21) It must be remembered that in a civil matter the issues have to be decided on a balance of probabilities. The question of the capacity of Bhogirath to execute the conveyance did not have to be established only by medical evidence.

The unsoundness of the mind may be established by proving such conduct as was not only not in keeping with the concerned person's character but such that it could not be explained on any reasonable basis.

(22) The Appellants' evidence to the effect that whenever Bhogirath suffered from a fit of depression, he would become violent and angry, seek to sell the property and dispossess his entire family had not been rebutted by the Respondent by cross-examination. It is said *insanus est qui, abjecta rationis, omnia cum impetu et furore facit* he is insane who, reason being thrown away, does everything with violence and rage. Neither the action of surreptitiously selling the residential house and depriving his entire family nor the initiation of criminal proceedings against his wife and children without cause is in accord with natural and normal affection. This should have been seen by the Division Bench as an irrational action or the outcome of mental disorder. Had it been alleged and proved either that the relationship between bhogirath and every member of his family was strained or that he required money necessitating an immediate sale of his and family's only residence, his action would perhaps have been in keeping with sanity. In the absence of any such reason, the act of dispossessing his family from property and putting his family on the streets must be seen as intrinsically that of an unsound mind. Interestingly the Respondent, a stranger to the family, said in evidence that if he could not get the possession of the land he was willing to take back the money that he had paid and that he did not desire the Appellants "to go to the street after vacating the house". The reaction of the Respondent when compared with the conduct of Bhogirath would highlight the extent of the irrationality and abnormality of bhogirath's conduct. The general reputation of Bhogirath as suffering from mental disorder was acknowledged by the Respondent himself and the Appellate Court erred in not giving appropriate weight to this admission of the Respondent.

(23) The assessment of evidence is inevitably subjective because "we see the evidence with nobody's eyes but our own". If the assessment of the lower courts is such that it cannot be reasonably sustained, the decision can and should be set aside on appeal. But where this is not so, the Appellate Court should be slow to interfere with a concurrent factual inference merely because the eyes of the Appellate Court are different (See: *Alapati Kasi viswanatham v. A. Sivarama krishnayya*; Unreported judgment in CA No. 232/1961 dated 11. 1. 63 referred to in *asha Devi v. Dukhi Sao*; *Sunitibala Debi v. Dhara Sundari Debi*).

(24) The learned single Judge had opined that a "normal" man would not initiate criminal proceedings against his family, particularly when there was no evidence of any ill-feeling or discord between the two. He was also of the view that it was not normal for a man to leave his house and withdraw from his near and dear ones for no discernible reason. If in these circumstances, a court comes to the conclusion that the irrational conduct was indicative of a mental imbalance and that the degree of irrationality was such that without proof to the contrary it would mean that Bhogirath was incapable of rational and controlled thought, the

conclusion cannot be faulted (25) No doubt the burden to prove or establish at least on a balance of probability that bhogirath's action in executing the sale deed in favour of the Respondent was the outcome of an unsound mind was on the Appellants. But un rebutted evidence of an unnatural and inexplicable animosity to his wife and children as well as of an unnatural and inexplicable fixation on selling of all his properties probalilises that the sale was effected by when Bhogirath was incapable of rational behaviour. This was sufficient to discharge the Appellants' burden. The onus then shifted to the Respondent to adduce evidence either to show that the ostensibly irrational conduct of Bhogirath had a rational explanation or that the conveyance was executed by Bhogirath in a lucid interval. The Respondent had, if his statement is to be accepted, a certificate of a Doctor who had medically examined bhogirath just before the conveyance was executed. The Respondent did not seek to call the Doctor or prove the certificate.

21. As is evident from Ex.A11 and the certification by the notary therein, Venkata Rama Basavaiah was blind when he executed Ex.A11. It is not in dispute that he was an inpatient in the hospital from 17.12.1980 onwards and was scheduled to undergo surgery, which was performed on 18.01.1981. His hospitalization is covered by certificates - Exs.A4 to A6, already discussed above. It, therefore, presupposes that he was under medication and it cannot be said with certainty that he was capable of understanding or forming rational judgment as to the documents, which he was executing in favour of Plaintiff. It is also unnatural that leaving out his own daughter, son-in-law and grandson, he would settle the properties on his cousin brother's daughter-in-law and his grandsons by revoking registered Will already executed by him in favour of the first Defendant. Keeping in view, the evidence on record, legal position, as above and the probability of the case, I am of the opinion that Venkata Rama Basavaiah was incapable of understanding the documents executed by him on account of his mental incapacity and physical ailments. Points 1 and 2 deserve to be answered against the Appellants.

POINT No. 3:

22. Learned Counsel for the Appellants relied upon the circumstance that Defendants have never questioned Ex.A1 by filing a suit like they did with respect to Ex.A2 and therefore, Ex.A1 having not been challenged as void, learned Counsel states that it cannot be declared as voidable without any execution thereafter by Venkata Rama Basavaiah is admitted. I am unable to appreciate this contention also in view of the fact that Defendants, admittedly, are in possession of the property and the Plaintiffs seek relief of declaration of title as well as possession. Since the Defendants are in possession, admittedly, it would not be necessary for the Defendants to file any suit and in any case, the Plaintiffs have already filed the present suit wherein self-same issues arise for consideration. The validity of the document -- Ex.A1 being in issue in the present suit as well, I am of the view that it is not necessary for the Defendants to file

any separate suit. Point No. 3 is accordingly answered against the Appellants.

23. Learned senior counsel for the Defendants also urged another point based upon Section 3(56) of the General Clauses Act and places reliance upon a decision of the Division Bench of the Calcutta High Court in SADANANDA PAL's case (3 supra), referred to above. The learned senior counsel says that thumb marks cannot be placed when the executant is capable of signing unless it is authorized by law and on that ground seeks to impeach Ex.A1. However, in view of the discussion and findings on points 1 and 2, referred to above, it is not necessary to go into this question in the present case.

The appeals are accordingly dismissed with costs.