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**(2006) 09 AP CK 0019**

**In the Andhra Pradesh High Court**

**Case No : SA No's. 434 and 435 of 2006**

Peethani Satyanarayana @ Somadula Satyanarayana

APPELLANT

Vs

Peethani Venkata Rao and Another

RESPONDENT

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**Date of Decision : 21-09-2006**

**Acts Referred:**

**Citation : (2007) 1 ALD 113**

**Hon'ble Judges : L. Narasimha Reddy, J**

**Bench : Single Bench**

**Advocate : G. Krishna Murthy, for the Appellant; S.R. Sanku, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

L. Narasimha Reddy, J.—Plaintiff in O.S. No. 217 of 1995 on the file of the learned Junior Civil Judge, Palakol and the first defendant in O.S. No. 272 of 1995 on the file of the same Court filed these two second appeals. The relevant facts, which gave rise to the filing of these appeals, are as under:

2. One Peethani Lachanna and Satyavathi are the original owners of the properties in question. The respondent, by name Venkatrao, is the brother of Lachanna. According to the appellant, he was adopted by Lachanna and Satyavathi, through a registered deed, dated 13-8-1984, marked as Ex. B1 and that the properties held by the couple, particularly Satyavathi, have vested in him absolutely through the said document. It is also his case that Satyavathi executed a Will, dated 31-5-1991 (Ex. B.4), bequeathing the suit schedule properties to him. Alleging that the respondent is attempting to interfere with the possession of the suit schedule properties, the appellant filed O.S. No. 217 of 1995 for the relief of perpetual injunction.

3. The respondent, on the other hand, filed O.S. No. 272 of 1995 seeking declaration that Ex. B.4 is not genuine and that it is unenforceable in law. On the other hand, he pleaded that Satyavathi executed a registered Will, dated 29-12-1989 (Ex. A.1), bequeathing the suit schedule properties in his favour. He

sought for the relief of declaration and recovery of possession of the property.

4. Both the suits were clubbed and the evidence was recorded in O.S. No. 272 of 1995. On behalf of the respondent, P.Ws. 1 to 4 were examined and Exs. A. 1 to A. 6 were marked. On behalf of the appellant, D.Ws.I to 9 were examined and Exs.B.I to B.7 were marked. Through a common judgment, dated 1-4-2002, the trial Court decreed O.S. No. 272 of 1995 and dismissed O.S. No. 217 of 1995.

5. The appellant filed A.S. Nos. 32 and 33 of 2002 in the Court of VI Additional District and Sessions Judge, (Fast Track Court), Narsapur, against the judgments and decrees in the suits; and they were dismissed through a common judgment, dated 23-12-2005. Hence, these two second appeals.

6. Sri G. Krishna Murthy, the learned Counsel for the appellant submits that the Courts below have skipped the important issue as to whether the suit schedule properties stood vested in the appellant, in view of the recitals in Ex. B.1 and thereby, a serious legal infirmity had crept in. He contends that Ex. B.1 was not taken into account, on the ground that the original was not filed, though a certified copy was placed before the Court. He further contends that the Courts below have glossed over the issue, on the ground that no specific declaration was sought, in respect of the same.

7. Sri S.R. Sanku, the learned Counsel for the respondent, on the other hand, submits that the alleged adoption of the appellant by late Lachanna and Satyavathi stood in mystery and for the reasons best known to him, the appellant did not file the original of the adoption deed. He further contends that if he was placing so much reliance upon Ex.B.I, the appellant ought to have sought for declaration and in the absence of the same, no relief can be expected in his favour.

8. The trial Court framed independent issues in both the suits. Important and common among them are those relating to the validity of two Will deeds and the adoption deed.

9. From a perusal of the judgments rendered by the Courts below, it is evident that a semblance of primacy was given to Ex. A. 1, on the ground that it was registered. It hardly needs any emphasis that the registration, in the context of Will, does not make any difference, from the point of view of proof, acceptability or enforceability. Irrespective of the fact whether a Will is registered or not, it must be proved by examining the attestors and by explaining suspicious circumstances.

10. Independent of proof of a Will, the parties relying upon it, must also establish that, the property covered by it, was available to be dealt with by the testator. From this point of view, genuinity of Ex. B.1, the deed of adoption, and the consequences flowing from the recitals therein assume significance. The reason is that there is a clear recital in Ex. B. I to the effect that the adoptive parents have declared that all their properties shall vest in the appellant. If the deed, and

the clause therein had operated and given rise to the consequences in law, the property held by the adoptive parents would not be available to be dealt with, by the adoptive parents, at subsequent stages. It is not in dispute that the appellant is in possession of the suit schedule properties and the very fact that the respondent sought for recovery of the same, buttresses this. The respondent can recover possession of the same, only by proving a right in him, superior to the one of the appellant. The Courts below were under obligation to examine whether the suit schedule properties stood vested in the appellant under Ex. B.1 or were available to be dealt with by Satyavathi under Ex. A.1 or Ex.B.4.

11. The trial Court took the view that the validity or otherwise of Ex. B. 1 cannot be dealt with, since none of the parties have sought for specific relief, in relation thereto. Such an approach does not appear to be correct. The reason is that in the context of examining the relief of declaration prayed for by the respondent, this question becomes significant, and for that purpose, no independent declaration need to be sought. It can be treated as one of the facets of the relief of declaration prayed for, by the respondent. The matters need to be dealt with by the trial Court, afresh.

12. Therefore, the second appeals are allowed and the judgments and decrees rendered by the trial Court and the lower appellate Court in the consequential appeals are set aside. The suits are remanded to the trial Court for fresh consideration and disposal. It is directed that the trial Court shall specifically deal with the question of proof of Ex. B. 1, and the consequences flowing from the recitals therein. The parties shall be entitled to adduce such evidence, as they intend to, in support of their respective pleas. Since the suits are of the year 1995, the trial Court shall endeavour to dispose of the same by the end of April 2007. There shall be no order as to costs.

13. Office to dispatch the order and record forthwith.