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**(2002) 01 AP CK 0113**  
**In the Andhra Pradesh High Court**  
**Case No : A.S. No. 2778 of 1996**

Podugu Jayalakshmi

APPELLANT

Vs

Shahjedi Begum

RESPONDENT

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**Date of Decision :** 21-01-2002

**Acts Referred:**

Evidence Act, 1872 — Section 44, 77  
Limitation Act, 1963 — Article 58

**Citation :** (2002) 3 ALD 506 : (2002) 2 ALD 506 : (2002) 2 AnWR 222

**Hon'ble Judges :** C.Y. Somayajulu, J

**Bench :** Single Bench

**Advocate :** D. Ramalingaswamy, U.M.K. Lakshmi and G.V.S. Prasad, for the Appellant; V. Venkata Ramana, for the Respondent

**Final Decision :** Dismissed

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## Judgement

C.Y. Somayajulu, J.—Appellant filed the suit initially for cancellation of the sale deed dated 29-1-1975 executed by her in favour of the respondent in respect of the plaint schedule property. Subsequently she got the plaint amended to declare her date of birth as 11-3-1959 and consequently to declare the sale deed dated 29-1-1975, executed by her in respect of the plaint schedule property in favour of the respondent is null and void.

2. The case, in brief, of the appellant is that after the death of Narayanamma, the first wife of her husband Podugu Ramulu, she was given in marriage to him on 5-5-1974 and since her husband died intestate, shortly after their marriage, on 4-6-1974, she inherited all his properties, including the plaint schedule property, and that the husband of the respondent and others, by playing fraud on her, got the sale deed dated 29-1-1975, in respect of the plaint schedule property executed by her with false recitals for a meager consideration of Rs.30,000/-, though in fact no consideration was paid to her. The case of the respondent is that the sale deed dated 29-1-1975 was obtained after payment of adequate consideration of Rs.30,000/- as mentioned in the sale deed, and that

no fraud was played on the appellant and that the date of birth of the appellant is not 11-3-1959 and that she was aged more than 22 years by the date of the sale deed dated 29-1-1975. On the above pleadings as many as 8 issues and 5 additional issues were framed for trial by the trial Court. In support of her case the appellant besides examining herself as P.W.1, examined four other witnesses as P.Ws.2 to 5 and marked Exs.A1 to A50. In support of her case, the respondent besides examining herself as DW.1, examined four other witnesses as D.Ws.2 to 5 and marked Exs.B1 to B36. Exs.X1 to X5 were marked through witnesses. The trial Court, found against the appellant on all the issues and dismissed the suit by the decree and Judgment under appeal. Hence this appeal by the plaintiff.

3. The point for consideration is whether the appellant is entitled to the declaration sought.

4. The main contention of the learned counsel for the appellant is that the Court below was in error in brushing aside the evidence of P.W.3 and Ex.X1, which was produced from proper custody, merely on the ground that the original Register containing Ex.X1 entry pertaining to the year 1959 of Korasavada village does not bear the signatures of the Village Munsif, Revenue Inspector, Tahsildar and Jamabandi Officer, and in view of the evidence of P.Ws.1,2 and 5 i.e., mother and younger brother of the appellant, appellant is entitled to the declaration sought.

5. The contention of the learned counsel for the respondent is that since there is no evidence on record to show that the sale deed dated 29-1-1975 was vitiated by fraud or coercion and is not supported by consideration, and since the pleading in the plaint is not in consonance with the evidence of P.Ws.2 and 5, their evidence cannot be taken into consideration. It is his contention that in cases of declaration relating to date of birth, Government is a necessary party and since the State Government is not made a party, there are no grounds to interfere with the decree under appeal.

6. In the event of it is being held that the appellant is entitled to the declaration that her date of birth is 11-3-1959, Ex.B3 dated 29-1-1975 would automatically become void, because the appellant would be a minor by then, and since sale deed executed by a minor, purporting to be a major, would be nullity. (see SADIQ ALI KHAN vs. JAI KISHORI1).

7. Though the relief of declaration that she was born on 11-3-1959, sought by the plaintiff by way of an amendment to the plaint, relates back to the date of plaint, by virtue of the doctrine of relation back, for the reasons best known to her, appellant did not think it fit to incorporate the relevant pleas relating to the number of issues her parents have had, and the respective dates of birth of those issues. The plaint does not disclose the number, or the names of the children born to the parents of the appellant prior to the appellant, and as to which issue the appellant is to her parents. When those relevant details are pleaded only can the other side meet the case of the appellant. Other side would be taken by surprise if evidence is adduced on pleas not taken in the pleadings.

It is also well known that no amount of evidence can be looked into or taken into consideration on a plea not taken in the plaint, and plaintiff is not entitled to seek relief on the basis of evidence adduced, without relevant pleas. Therefore, the evidence of P.Ws.1,2 and 4 relating to the number of issues the parents of the appellant had, is of no use to decide this case.

8. There appears to be force in the contention of the learned counsel for the respondent that in cases relating to declaration of date of birth, the State is a proper if not a necessary party to the suit, because declaration relating to age has several civil consequence. In this case the main purpose for the appellant is seeking declaration in respect of her date of birth, obviously, is to nullify Ex.B3, but not for any other purpose. So in this case, in my opinion, State is neither a necessary nor property party, because appellant is not claiming nor would be entitled to any relief against the State by seeking declaration about her date of birth.

9. P.W.1 is the appellant. She spoke to her case. The evidence of P.W.2, the mother of the appellant, is that she begot five sons and three daughters and that the appellant was given in marriage to Podugu Ramulu when she was 15 years old. She did not state anything about Ex.B3 sale deed. P.W.3 is the Junior Assistant in Mandal Revenue Office, Pathapatnam, under whose jurisdiction Korasavada village, where the appellant was born, is situate. His evidence is that Mandal Revenue Officer, in obedience to the summons issued to him, directed him to produce the Birth Register relating to 1959 into Court and that Ex.X1 entry therein shows that A. Appaiah and A. Appala Narasamma (parents of the appellant) begot a female child as their sixth issue in that year. During cross-examination he stated that Birth Registers pertaining to the year would be submitted to the Mandal Revenue Officer, under acknowledgement, after Jamabandi and at the time of receiving the Birth Register pertaining to the year, the concerned Village Munsif, Revenue Officer, Tahsildar and Jamabandi Officer would sign the extract of births in that year in that village in the last page of the Register, and that the Register relating to 1959, for Korasavada village, does not bear such signatures, and that the Mandal Revenue Officer, Pathapatnam was in custody of the Birth Registers of all the villages in Pathapatnam Mandal. As rightly contended by the learned counsel for the appellant the fact that the last page in the Register containing Ex.X1 entry was torn and as such extract relating to total number of births in that village during that year with signature of all the officers is not available therein by itself, cannot be a ground to ignore Ex.X1, because Ex.X1 is a certified copy of an extract from the birth register, which is a "public document" within the meaning of Section 74 of Evidence Act. As per Section 77 of Evidence Act certified copy can be produced in proof of the contents of a public document. PW.3 brought the original Birth Register from proper custody in pursuance of the summons issued by the Court. Merely because the last page in the Birth Register, produced from proper custody, was torn and so the extract of births is not found therein, per se, cannot be a ground to reject Ex.X1, in the absence of any material to show that Ex.X1 entry was

interpolated in the register at a later point of time. Since PW.3 was examined only to speak about Ex.X1, and since he did not speak anything about Ex.X3 sale deed executed by appellant in favour of respondent in respect of the plaint schedule property, his evidence is of no help to decide if Ex.B3 is vitiated by fraud etc. The question whether Ex.X1 relates to appellant would be considered later. PW.4 is an Engineer who estimated the value of the plaint schedule property. Value of the plaint schedule property is not relevant to decide the validity of Ex.B3, because inadequacy of consideration, by itself, is not a ground to set aside a sale. Since he did not speak anything about Ex.B3, the evidence of PW.4 is of no help to establish fraud. The evidence of P.W.5, the younger brother of the appellant, is that he has five brothers and three sisters and that he is the 8th and the last issue of his parents and that Ex.A47 is the Birth extract of his immediate elder brother. During cross-examination he admitted that he did not apply for copies of extracts from the birth registers in respect of the dates of birth of all the issues of his parents. This witness also did not speak anything about execution of Ex.B3 or the fraud etc., alleged played by the husband of respondent in getting Ex.B3 sale deed from the appellant.

10. Thus, except the interested evidence of P.W.1, there is no other evidence on record to show that Ex.B3 is vitiated by fraud or coercion etc. as alleged in the plaint. As per Article 58 of the Limitation Act, limitation for obtaining a declaration, other than a declaration relating to adoption being invalidate etc., is three years from the date when the right to sue first accrues. Appellant presented the plaint on 29-1-1981, as a petition to declare her as an indigent person. So it is clear that the plaint in this case was presented on 29-1-1981. Even assuming that the case of appellant that her date of birth is 11-3-1959 is true, she must have become a major on 11-3-1977, on attaining the age of 18 years, as per the Majority Act. As per Section 6 of Limitation Act, a person to whom a cause of action accrued during his minority can institute the suit, within the period prescribed, after attaining majority. Therefore, if cause of action to sue for setting aside Ex.B3 accrued to the appellant during her minority, she can, within three years from the date of her attaining majority, institute the suit for setting aside Ex.B3. Beyond three years from the date of her attaining majority, the suit would be barred by time, if the cause of action accrued to her during her minority. Since Ex.B3 was executed, and presented for registration on 29-1-1975 by the appellant herself in person, she can be imputed with knowledge of Ex.B3 from 29-1-1975 itself. During cross-examination appellant, as PW.1, admitted that she filed O.S.No.55 of 1974 on 7-9-1974 against S. Balamani and Atchuta Rao to declare her ownership over the properties of her late husband describing herself as a major, and later entered into a compromise and filed a petition for recording the compromise in that suit and appeared in person for recording the compromise. She also admitted that one Rokkam Madhusudhan filed O.S.No.30 of 1976 in the Court of the Subordinate Judge, Srikakulam, against her (Ex.B5) and got the plaint schedule property attached before judgment in that suit and that respondent filed a petition claiming ownership over the plaint schedule

property and that the said petition was allowed. Exs.B22 and B23 the order and decretal order in I.A.No.218 of 1976 in O.S.No.30 of 1976 show that the claim petition filed by respondent in respect of the plaint schedule property was allowed on 10-2-1977. Therefore, in any event appellant can be imputed with knowledge of Ex.B3 when respondent filed I.A.No.218 of 1976 in O.S.No.30 of 1976 for raising the attachment over the plaint schedule property on the ground that she purchased the same from the appellant by virtue of Ex.B3. So, the cause of action for filing the suit to set aside Ex.B3 accrued to the appellant on 10-2-1977, when I.A.No.218 of 1976 was allowed, if not on 29-1-1975 itself. Assuming that the appellant born on 11-3-1959 as contended by her and as such she was under a disability till 11-3-1977, because of her minority, since her disability, as minor ceased on 11-3-1977, she ought to have filed the suit, as per Article 58 read with Section 6 of the Limitation Act, within three years from 11-3-1977 i.e., on or before 11-3-1980. If the suit is filed for declaration of the title of the appellant to the plaint schedule property, the period of limitation would be 12 years, but since the appellant did not seek a declaration of her title to the suit property and filed the suit only to cancel the sale deed, Article 58 only but not Article 65 of the Limitation Act that would apply to the suit and so it cannot but be said that the suit filed on 29-1-1981 is hopelessly barred by time.

11. Even assuming that the suit is not barred by time, as stated earlier, since there is no plea relating to the number of issues the parents of the appellant have had, and the number of brothers and sisters the appellant has, or had, and their respective dates of birth, Ex.X1 cannot be taken as the entry relating to the birth of the appellant. In order to establish that Ex.X1 relates to her, appellant has to produce the extracts of births of all her brothers and sisters, after making a specific allegation in the plaint as to which number of issue she is to her parents. Only in such case can the other side make enquiries and know the truth of those averments. Since it is a well accepted rule that no amount of evidence can be looked into on a plea not taken in the pleadings, merely on the basis of Ex.X1, coupled with her own interested testimony and the evidence of her mother and brother and none else from the village, appellant is not entitled to a declaration that her date of birth is 11-3-1959, more so when she claiming herself to be a major, filed a suit in 1974, and defended the suits filed against her as a major long prior to her filing the present suit, as admitted by her in the cross-examination. In the suit filed by Chellayamma against her husband she was impleaded as the legal representative of her husband, as a major, as seen from Ex.A31. As stated above in Ex.B5, plaint in O.S.No.30 of 1976 it is alleged that the appellant had executed a promissory note dated 20-1-1975 in favour of the plaintiff therein and made certain payments. Ex.B6 is a certified copy of the written statement filed by the appellant in the said suit O.S.No.30 of 1976. If really the appellant was a minor by January, 1975 as contended by her in this suit, as an ordinary prudent person she would not have failed to take a plea in O.S.No.30 of 1976 that the promissory note in that suit is void on the ground of her minority by the date of its execution on 20-1-1975. A perusal of Ex.B6 shows

that there is not even a whisper about her being a minor by January, 1975. On the other hand she admitted execution of the promissory note, but contended that it was not fully supported by consideration. It is no doubt true that rule of estoppel does apply, but in the facts and circumstances of the case the above circumstances also are relevant to decide the genuineness of the claim of the appellant regarding her date of birth.

12. The contention of the appellant that the consideration of Rs.30,000/- mentioned in Ex.B3 is far less than the market value has no legs to stand because she herself valued the plaint schedule property at Rs.30,000/-. If the value of the suit property was Rs.30,000/- by January 1981, the date of suit, it should be something less than Rs.30,000/- by 29-1-1975 i.e., the date of Ex.B3 i.e., about five years prior to the filing of the suit. Since the consideration fixed under Ex.B3 is Rs.30,000/-, it cannot be said that the suit property was under valued. Appellant did not adduce any evidence in support of her contention that Ex.B3 sale deed is not supported by consideration. It is also well known that inadequacy of consideration by itself is not a ground to set aside a sale deed.

13. The averment in the plaint is that there are absolutely no debts to be discharged by the appellant, and that she did not execute Ex.B3 sale deed dated 29-1-1975. The evidence adduced by the respondent, and recitals in Ex.B3 also, show that a part of the consideration fixed under Ex.B3 went in discharge of Ex.B9 mortgage bond executed by the appellant in favour of one Baseerunnisa Begum, and the remaining amount was paid in cash to the appellant. The evidence of DW.2, the husband of the mortgagee under Ex.B3, establishes the execution of Ex.B9 mortgage bond by the appellant. Nothing useful was elicited during the cross-examination of DW.2 to disbelieve his evidence. Therefore, it is clear that Ex.B9 was in fact executed by the appellant and so the contention of the appellant that no debts were due and payable by her by the date of Ex.B3 cannot be accepted to be true. This apart even assuming that the consideration fixed under Ex.B3 is not paid, Ex.B3 sale deed does not become a void document, because the title to the property passes to the purchaser immediately after registration of the sale deed. If the consideration fixed under the sale deed is not paid, the remedy of the vendor is to sue for recovery of the consideration fixed under the sale deed.

14. Since the evidence adduced by the respondent establishes that the consideration fixed under Ex.B3 was in fact paid to the appellant and since the contention of the appellant, that she was minor at the time of execution of Ex.B3 cannot be true, and since there are no other circumstances to show that Ex.B3 is vitiated by fraud, I find that the appellant is not entitled to the declaration sought and so I find no grounds to interfere with the Judgment of the trial Court dismissing the suit of the appellant. The point is answered accordingly. Therefore the appeal is dismissed with costs.