
(1996) 04 AP CK 0083
In the Andhra Pradesh High Court
Case No : Second Appeal No. 391 of 1989

Reddi Demudu

APPELLANT

Vs

Kannuru Demudamma

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 103, 106
Evidence Act, 1872 — Section 93, 94, 95
Registration Act, 1908 — Section 17, 49
Specific Relief Act, 1963 — Section 2
Stamp Act, 1899 — Section 2(24)
Succession Act, 1925 — Section 2
Transfer of Property Act, 1882 — Section 5, 53A, 54

Citation : (1996) 3 ALT 384 : (1996) 2 CivCC 358

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Sundari Prasad, for V.L.N.G.K. Murthy, for the Appellant; K. Purushotham, for T. Bheemsen, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—This appeal assails the Judgment of the learned II Additional District Judge, Visakhapatnam in A.S.No. 39 of 1982 dated 17-4-1989 allowing the appeal which was preferred against the Judgment and decree passed by the learned Additional District Munsif, Anakapalli in O.S.No. 305 of 1979 dated 19-12-1981.

2. The appellant was the plaintiff in the suit who got a decree. The respondent herein was the 1st defendant in the suit whereas the second defendant in the suit who filed written statement and did not pursue the case was not impleaded as a party in the appeal in A.S.No.39/82 and also in this appeal. The parties will be referred to as the plaintiff and the 1st defendant regarding the status they occupied in the suit and that serves the convenience.

3. The plaintiff filed the suit for declaration that he is the owner of the suit lands

and for permanent injunction restraining the defendants from interfering with his possession of the same, for costs and such other reliefs as the Court may deem fit in the nature of the case.

4. The suit lands as described in the plaint schedule are S.Nos. 121/21 with an extent of 0-80 cents and 70/20 with an extent of 0-50 cents with patta No. 30 situated in Thanam village. The second defendant was the owner of the suit property. The plaintiff claimed that he entered into an agreement with second defendant to purchase the suit lands under the agreement Ex. A-1 dated 5-12-1977 on part payment of consideration, remaining amount of Rs. 500/- was paid under an endorsement as per Ex. A-2 on 30-1-1979 and it followed a registered sale deed in his favour as per Ex. A-3 dated 14-2-1979. The plaintiff alleged that having found interference to his possession of the suit lands by the defendant No. 1 he issued notice as per Ex. A-4 which was replied as per Ex. A-5, acknowledged under Ex. A-6. It appears a reply was issued by the second defendant as per Ex. B-3. The 2nd defendant filed his written statement and supported the case of the plaintiff. The 1st defendant resisted the suit denying the plaintiff's agreement with the second defendant, the alleged sale deed in his favour, delivery of possession of him etc., and his right to be in possession of the suit lands and also the alleged interference by her in regard to the same. On the other hand, she set up Ex. B-1, registered settlement deed dated 21-1-1978 in her favour executed by the 2nd defendant to ensure to her benefit after his death. The parties inter alia made certain pleas and counter pleas which became the subject of the following issues on which the parties went for trial:-

1. Whether the sale deed dt. 14-2-1979 executed by the 2nd defendant in favour of the plaintiff is true, valid and binding on the 1st defendant?
2. Whether the puroni dt. 5-12-1977 executed by the 2nd defendant in favour of the plaintiff and Bolem Venkunaiah and the endorsement thereon dt. 30-1-1979 are true and valid?
3. Whether the settlement deed dt. 21-1-1978 executed by the 2nd defendant in favour of the 1st defendant is true and valid?
4. Whether the 1st defendant was in possession of the suit land as tenant of the 2nd defendant and continue in possession of the same after the settlement deed?
5. Whether the valuation of the suit and Court fee paid are not correct?
6. Whether the plaintiff is entitled to the declaration and injunction prayed for?
7. To what relief?

The ocular evidence comprised in the testimony of the plaintiff as per P.W.1 and of the witnesses as per P.Ws.2 to 5 respectively. For the contesting 1st defendant her testimony came to be recorded as per D.W.1 and her witnesses as per D.Ws.2 to 4. The documentary evidence comprised in Exs.A-1 to A-6 in favour of the plaintiff and Exs.B-1 to B-3 in favour of the contesting 1st defendant

respectively. The rhetoric submission by way of arguments were presented by both the sides and with the materials placed before him, the learned District Munsif held Issue Nos. 1 to 6 in favour of the plaintiff and consequently decreed the suit. In the appeal, the learned Additional District Judge confirmed the findings of the learned District Munsif on Issue Nos. 1, 2 and 4 whereas dissented from him regarding Issues Nos. 3 and 6 and consequently he allowed the appeal and dismissed the suit.

5. Mrs. Sundari Prasad, the learned Advocate for the appellant-plaintiff in tune with the grounds of appeal raised has contended that the learned Addl. District Judge was wrong in the legal result by improper dealing of the matter about the interpretation of Ex. B-1, settlement deed and in disagreeing with the learned District Munsif without assigning any reasons and thereby seriously erred in law in allowing the appeal and dismissing the suit. She has further contended that the learned Additional District Judge has not at all dealt with the matter relating to Ex. B-1 in the true sense of the term as against the learned District Munsif dealing with the matter in all meticulous details and in proper perspective both on facts and in law. She contends that in such a situation it projects a substantial question of law whether the construction and interpretation of Ex. B-1 by the learned District Munsif is proper and in accordance with law and secondly whether the dissent of the learned Additional District Judge from the findings of the learned District Munsif on Issue Nos. 3 and 6 without giving specific reasons leading to wrong result is proper. As a whole she has contended that the findings of the learned District Judge on Issue Nos. 3 and 6 and the final result cannot be supported. In fact she has made an appeal to this Court that having due regard to the manner in which the learned Additional District Judge has dealt with the appeal before him, this Court will be justified in examining the relevant facts also based on evidence in considering the submissions as above to render true and full justice. Mr. K. Purushotham, learned counsel for the respondent with equal sincerity and competence has tried to repel all the above contentions in addition to contending that insofar as the interpretation of Ex. B-1 is concerned that being a finding of fact, this Court, in Second Appeal, will not interfere, that the facts and circumstances of this case clearly brought out the true intention of the second defendant under Ex. B-1 to settle the suit lands in favour of 1st defendant, that although the learned Additional District Judge did not give specific reasons as to why he disagreed with the learned District Munsif, his inferences are drawn on the basis of evidence on record and correctly too, and that there is no reason to interfere with the findings of the learned Additional District Judge. He, in the alternative, submits that in case it is felt that the learned Additional District Judge has not given adequate reasons by considering the materials before him in regard to the interpretation of Ex. B-1, that may raise a pure question of fact, although might have been wrongly decided for argument sake, and the matter should go back to him to reconsider the whole thing in the light of the materials placed before him and if possible by permitting the parties to adduce additional evidence if necessary. At any rate, he strongly

contends that this appeal should fail.

6. The following points arise for consideration:

1. The question whether Ex. B-1 is true or not has been properly appreciated by the learned Additional District Judge raises a substantial question of law?

2. (a) Whether the learned Addl. District Judge was right in interfering with the findings of the learned Addl. District Munsif on Issues 3 and 6 based on materials with or without reasons?

(b) If not, whether such a finding can be justified in law?

3. Whether Ex. B-1 is a settlement or a will?

4. (a) Whether the Judgment of the learned Dist. Judge warrants interference?

(b) If so, to what extent?

(5) What order?

Added to the above points, these questions may also arise:

1. Whether wrong inferences by a Judge on evidence raises a substantial question of law?

2. Whether lack of adequate reasons to disagree with the findings of the trial Court raises a substantial question of law?

3. Whether the interpretation and construction of a document like Ex. B-1 would raise a substantial question of law?

4. Whether this is a fit case to examine the facts also to judge whether the finding on Issue No. 3 by the learned District Judge is correct or not?

Uncontrovertedly the 2nd defendant was the owner of the suit lands till Exs. A-1, A-2, A-3 and Ex. B-1 were executed. It is through him both plaintiff and 1st defendant are claiming their right or title to the same. The plaintiff is claiming the same through an agreement of sale Ex. A-1 and 5-12-1977 with endorsement Ex. A-2 followed by registered sale deed Ex. A-3 dated 14-2-1979 whereas the 1st defendant is claiming through a registered settlement deed, Ex. B-1, dated 21-1-1978. The learned Additional Dist. Munsif found Exs. A-1 to A-3 to have been proved. When the matter was taken up in appeal once, it was disagreed and it resulted in S.A.No. 303 of 1984 which was allowed by this Court wherein the Court accepted the contention that Exs. A-1 to A-3 had been proved and therefore the learned Dist. Judge thought that no more evidence was required for proof of the same and acted upon the documents. Apart from that, the finding of fact by the learned Addl. District Munsif on issue No. 3 (sic. No. 1) relating to Ex. A-3 which followed the agreement Ex. A-1 which is also covered by Issue No. 2, is supported by evidence, both oral and documentary and for adequate reasons such findings were recorded and the same has been confirmed

by the learned District Judge. Even after going through the evidence in the case, this Court is not able to take any view than the one taken by the Courts below in this regard. Therefore, it must be conclusively recorded that Exs. A-1 to A-3 in favour of the plaintiff should be taken as established. Similarly, the proof of Ex. B-1 settlement deed setup by the 1st defendant, which was although doubted by the learned District Munsif, as rightly held by the District Judge should be taken as proved for the purpose of technical proof viz., that the 2nd defendant has executed Ex. B-1 in favour of the 1st defendant, because D.Ws. 2 and 3 the attestors of the document have corroborated the testimony of 1st defendant regarding execution of the document by 2nd defendant. But the only question which is still to be considered is whether Ex. B-1 which is said to have been executed by the 2nd defendant is genuine, true and whether the contents therein are established in view of the clear evidence on record produced by both sides. The question whether such formal proof of execution of the document for the purpose of making it admissible in evidence would be sufficient in law to accept the execution as such in law is a matter still to be considered. The learned District Munsif has doubted about the same which is disagreed by the learned Additional District Judge. Subject to these reservations, Exs. A-1 to A-3 and Ex. B-1 should be taken as proved for the purpose of considering them. That also being the question of fact, this Court finds no other alternative reason to disagree with the same.

7. In so far as the plaintiff is concerned, the 2nd defendant supported him in regard to Exs. A-1 to A-3. There are no circumstances appearing from the evidence in the case either to doubt the genuineness of these documents or to doubt about the intention of the 2nd defendant to sell the suit lands to the plaintiff under the said documents resulting in the registered sale deed, Ex. A-3. Therefore, both on facts and in law and in particular, Section 54 of the Transfer of property Act, Ex. A-3 is capable of transferring the title of the 2nd defendant to plaintiff regarding the suit lands. Although there was some contention at some stage regarding Ex. A-1, agreement of sale, preceding Ex. A-3 with the endorsement Ex. A-2 having bearing on the legal flow and the right to be conveyed under Ex. A-3 relating back to the date of Ex. A-1 dated 5-12-1977, during the course of arguments Smt. Sundari Prasad, learned counsel for the appellant did not pursue it with the same tenor and timber having regard to the true implications of Section 54 of the Transfer of property Act and also the case law settled on that question. However, she has submitted that it may not be taken as a concession but as a submission. Section 54 of the Transfer of property Act while dealing with the sale of Immovable property deals with contract for sale also. They are disjunctive and not conjunctive. Both are separately defined and dealt with. Sale is a transfer of ownership in exchange for a price paid or promise or part paid and part promise with a registered instrument in regard to the Immovable property whose value exceeds Rs. 100/-. A contract for sale of Immovable property is a contract that sale of such property shall take place on the terms settled between the parties. Therefore the provision concludes with the

categoric declaration that "it does not itself create any right in or charge on such property." In order that a sale may be complete, all the ingredients of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act subject to Section 49 of the Registration Act are to be complied with. Unless that is done, no sale of immovable property is complete. Neither Section 54 of the Transfer of Property Act nor the concluding part of it dealing with the contract for sale nor Sections 17 and 49 of the Registration Act has any reservation in regard to the relate back theory of the fructification of the conveyance by way of sale to the date of agreement of sale or contract for sale. A true interpretation of these provisions with the correct implications following (sic. flowing) therefrom would make anything contrary, absurd-ending with no purpose. An agreement of sale preceding a sale is always an independent transaction creating a right of equity only for the purpose of Section 53-A of the Transfer of property Act which is independent in its consequences of law when compared to Section 54 of the Transfer of property Act. This question is also set at rest by the Apex Court in Rambaran Prasad Vs. Ram Mohit Hazra and Others, resorting to Section 54 of the Transfer of Property Act to conclude that a contract for sale of Immovable property does not itself create any interest in or charge on such property. Reference is also made to Section 40 of the Transfer of Property Act in this regard to conclude the question. Therefore when the rights of the plaintiff under Exs. A-1 and A-2 merge in Ex. A-3, it is Ex. A-3 which should be looked into for all purposes to examine the legal consequences and not the former documents. In other words, the rights of the plaintiff which existed as on 14-2-1979 would become the basis to examine the controversial stand of 1st defendant under Ex. B-1, said to be a settlement deed. Mr. Purushotham, learned counsel for the respondent submits, as has been not seriously disputed by Smt. Sundari Prasad, learned Counsel for the appellant, that if Ex.B-1 is accepted as a settlement deed conveying right to title to the 1st defendant by second defendant, the sale under Ex. A-3 will have to be obviously affected by the legal consequences. Here we can only mention that the right which the plaintiff acquired under Ex. A-3 as on 14-2-1979 will be subject to the right if any flowing from Ex. B-1 in favour of 1st defendant if ultimately accepted that being dated 21-1-1978. Still the legal question in this regard is kept open for consideration at the appropriate stage.

8. Now we land in the appropriate stage to deal with Ex.B-1 which has been the sheet-anchor of the case of the 1st defendant. As already pointed out it is formally proved for the purpose of accepting it as a piece of evidence and to consider it. It is styled as a settlement deed. But it is challenged as such but said to be a will by the plaintiff. Both the sides chose to interpret Ex. B-1 in their own way. The learned Additional District Munsif did not interpret it but disbelieved it. The learned Additional District Judge accepted it to be the settlement deed. Now in view of the controversies as above regarding the construction and interpretation of Ex. B-1, it has become a task for this Court to do it. The settled law in relation to the question of interpretation or construction of a document may require the record for guidance for proper dealing of the matter, in R. v.

Nathlal AIR 1939 Bom 434 it was held that the interpretation of a document is the duty of the Court and not what the parties say. Interpretation means ascertaining the meaning of the language of a document or the manner in which it is related to existing facts. (page 1293 Sarkar on evidence, Vol.I). When that is going to be done, the Court will have to ascertain the facts first and then draw the inferences. That is how the effect of the words in a document becomes me question of law (per Lindlay LJ in *Chatenay v. Brazilian S.T. Co.* 1891 1 QB 79 :LT 739 which is relied upon with approval in *Badri Prasad Vs. Raj Kunwar*, (Quoted at page 1294 Sarkar on Evidence, Vol. I, 14th Edition 1993 Reprint). Therefore, as already contended by the learned Counsel for the Appellant while the construction or interpretation of a document is subjected to the consideration of the Court and when such an occasion arises, while examining the facts the inference becoming the question of law, should naturally raise a question of law for consideration. That has happened in this case also. This Court is thus entitled to interpret and construct Ex. B-1 to know the truth and the real intention of the 2nd defendant thereunder.

9. Then comes the question as to the parameters of such a construction or interpretation of a document to say that there is no adequate interpretation of a document, statute or a Judgment of the Court, (*CIT v. Sun Engineering Works Private Limited* (1992 4 SCC 383) followed in *Rajindranagar Municipality v. B.V. Perraju*) 1995 (2) ALT 328). The fundamental rule of interpretation of a document has to be adopted with the guidance of Sections 93 - 98 of the Evidence Act. Interpretation means ascertaining the meaning of the language of a document or the manner in which it is related to existing facts. Therefore, the construction of a document must be answered after a consideration of all the surrounding circumstances, the position of the parties, its subject matter and the apparent purpose and the object thereof and in particular all the provisions to be construed, as the law has been declared by the Privy Council in *Laffer v. Gillen* AIR 1927 PC 275. Therefore, the primitive rule of interpretation of a document has yielded to a liberal and modern approach of the matter to achieve the true purpose in arriving at the truth and to render justice. Wigram's Rule of the latter school of thought has superseded the primitive rule (Wigs 2470 Pr Treatise on Ev 445 page 1293 of Sarkar on evidence). Thus, inescapably extrinsic evidence and the surrounding circumstances from the totality of the case are to be adopted and applied in such a situation.

10. The contention of Mr. K. Purushotham, learned Counsel for the respondent that the document having been called as a settlement deed and having been incorporated with the words "creation of rights by 2nd defendant in 1st defendant" cannot be accepted in view of the settled law that it is not the description at the head of the document or its form but the substance that has to be looked into in *Bhupathi v. Basantha* 40 CWN 22. Even there it is the evidence and the circumstances in the case which should aid in knowing the true meaning of the words in Ex. B-1. Ex.B-1 is in Telugu language and rightly too. It reads as follows:-

(Telugu version - Omitted.)

A translation of this in English language is provided by the learned Counsel for the appellant, whose correctness is not doubted by the learned Counsel for the respondent. It reads thus:

"Settlement deed in respect of immovable property of the value of Rs. 2,156/-.

I. Settlement deed executed on 21st January, 1978 in favour of Devudamma w/o. Kannuru Musalayya, resident of Tanam Village and Bollam Venkayya by Bolam Polipalli.

II. You are my brother's daughter. On account of my love and affection for you and to enable you to live comfortably, I have settled the immovable properties described in para 3 below, which are in my possession and enjoyment, which have not been alienated and which are of the value of Rs. 2,156/- as per the present market value; and I have created rights in you in respect of the said properties. Therefore during my lifetime, I shall enjoy the usufruct therefrom without powers of alienation over the said properties; and after my life time you shall enjoy the said properties with absolute powers of alienation, in accordance with your wishes from generation to generation and you shall get the property mutated in your name in the revenue accounts."

11. The components of Ex. B-1 may be classified into the segments. (1) It was on account of love and affection for 1st defendant and to enable her to live comfortably the 2nd defendant executed the document. (2) The second defendant settled the Immovable properties described in para 3 of the document in favour of 1st defendant. (3) The properties were in possession and enjoyment of the 2nd defendant at the relevant time and they had not been alienated till that date. (4) The 2nd defendant created rights in favour of 1st defendant in respect of the suit lands. (5) The second defendant proposed to enjoy the usufruct from the suit lands during his life time without powers of alienation over the same. (6) The 1st defendant was to enjoy the suit lands after the lifetime of 2nd defendant with absolute powers of a lienation in accordance with her wishes from generation to generation and shall get the properties mutated in her name in the revenue records.

12. In substance the 2nd defendant proposed to transfer the rights in the suit lands in favour of 1st defendant, he reserved his right to continue in possession of the suit lands with restriction on himself not to alienate the same but to enjoy the usufruct from the suit lands and the 1st defendant was to get and enjoy the suit lands with absolute powers of alienation in accordance with her wishes from generation to generation only after the death of the second defendant.

13. On reading the very words of the document, applying the primitive rule, as rightly contended by the learned Counsel for the Respondent, the contents of the document should necessarily mean that the 2nd defendant under the document proposed to transfer his rights to the 1st defendant but wanted her to get it after

his lifetime reserving his right to continue in possession and enjoy the usufruct. But Smt. Sundari Prasad, learned counsel for the appellant has a different implication saying that except making such expressions which had no true effect at all, the 1st defendant was never to get the lands to any extent during the life time of 2nd defendant, to make it a will and never a settlement deed. Therefore, we are confronted to a situation first of all to know about the structure, character and the purpose of Ex. B-1 with its legal results ultimately. We are also called upon to know what is "settlement" and "will".

14. Patently, Ex. B-1 purports to transfer the suit lands which are Immovable properties by the second defendant in favour of first defendant. It is sought to be adopted as a mode of transfer of Immovable property. Settlement is not one of the modes of transfer incorporated in the Transfer of Property Act like sale u/s 54 of the Transfer of Property Act, Mortgage u/s 58, charge u/s 100, Lease u/s 105, Exchange u/s 118, Gift u/s 122 and Actionable claim u/s 130 of the Transfer of Property Act. So a question has come up whether at all "settlement" can be recognised as one of the modes of (transfer of) Immovable property. Mr. Purushotham, learned counsel for the respondent is right in pointing out that although such a mode of transfer is not categorically defined or drafted within the enactment, it can be brought within the meaning of "transfer of property" u/s 5 of the Transfer of Property Act since it is one mode of conveyance which is covered by the said provision, because "transfer of property" as defined in the provision u/s 5 of the Transfer of Property Act to mean an act by which a living person conveys property in present or in future to one or more living persons or to himself or to any one or more other living persons and to "transfer property" is to perform such act. Learned Counsel is also right in postulating that the word "convey" or "conveyance" used in Section 5 of the Act is exhaustive and comprehensive of any type of transfer of Immovable property inter-vivos not with standing failure of specification of a particular document. The postulation is fortified by the object and the preamble of the Transfer of Property Act which reads thus -

"Whereas it is expedient to define and amend certain parts of the law relating to the transfer of Property Act. It is hereby enacted as follows....."

Patently the law under this Act is intended to amend the law relating to Transfer of Property Act inter-vivos and it has chosen to define and amend certain parts of law relating to Transfer of Property, meaning thereby that it had no intention to deal with all modes of transfers of property inter-vivos. The law in this regard also appears to be settled in *Collector of Gorakhpur v. Palakdhani* (1890) 12 All. 1 and also in *Jatindra Chandra Chowdhury Vs. The Rangpur Tobacco Coy., Ltd.*, . The reason appears to be that there is a similar preamble in the Indian Contract Act 1872 as in the case of Transfer of Property Act conspicuously omitting the expression "consolidation" which has been conspicuously omitted in the preamble of the Indian Contract Act 1872. Therefore, it must be concluded that in the first place a settlement as a mode of transfer of Immovable property should be read

as part of Transfer of Property Act by virtue of Section 5 of the Act and even assuming that it does not form part of the same, the Act being not exhaustive, there can be any number of modes of transfer of Immovable property like settlement which being the one which cannot be rejected in such a law. At least in the concept of law of real property such a mode of transfer should be taken as recognised.

15. When "settlement" is not defined in the Transfer of Property Act and as it can be brought within Section 5 of the Act, it can be termed as a conveyance inter-vivos in regard to Immovable property. In the absence of such a definition in the Transfer of Property Act, any other definition in any other statute in regard to that can be legally adopted. Patently, "settlement" is defined in Section 2(b) of the Specific Relief Act and Section 2(24) of the Indian Stamp Act. Since we are dealing with settlement operating as the transfer of property inter vivos, the Registration and Stamp duty and also the purpose of such a contract are to be taken as consequences operating such laws. Among them the Specific Relief Act, 1963 being the substantive law, the definition therein of "settlement" would have a more legal bearing than the definition in the enactments like Stamp Act etc., which are intended for a particular purpose. Section 2(b) of the Specific Relief Act reads thus -

"Settlement, means an instrument, (other than a will or codicil) as defined by the Indian Succession Act, 1925 whereby the destination or devolution of successive interests in the moveable or Immovable property is disposed of or is agreed to be disposed of ."

Section 2(24) of the Indian Stamp Act reads as follows:-

" "Settlement" means any non-testamentary disposition in writing, of moveable or Immovable property whether by way of declaration of trust or otherwise made-

(a) in consideration of marriage;

(b) for the purposes of distributing the property of the settlor among his family or those for whom he desires to provide or for the purpose of providing for some persons depending on him; or

(c) for any religious or charitable purpose and includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition."

It is true that Section 2(24) of the Indian Stamp Act is more elaborate in its expression than Section 2(b) of the Specific Relief Act. The reason appears to be that whenever an instrument intending to transfer Immovable property has to be examined for the purpose of charging Stamp that may require more elaboration than the document purporting to create a right in the enactments like Specific Relief Act. However, to understand and enforce such instruments, both the definitions would become relevant and useful. One thing is certain mat

settlement would never be a will that being a non-testamentary disposition of property. That is how there is a specific category of an instrument called "will" under the Indian Succession Act, as has been defined u/s 2(h), which reads thus -

"2(h): "will" means the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death."

Therefore, on the face of it, a settlement can never be a will and the contrary cannot be always true, because under a will there will be settlement of property by a declaration of the intention of the testator that his property which he desires to be carried into effect after his death whereas under the settlement the intention of such a person takes effect immediately. It is said that the distinction between the two documents is a nicety in law and has a thin veil. At this stage to conclude on the definition and meaning of "settlement" as different from "will", it would be an instrument (meaning that it should be in writing) whereby the destiny of devolution of successive interest in moveable or Immovable property is agreed to be disposed of. It is here the meaning of "conveyance" has to be borrowed from Section 5 of the Transfer of Property Act. A doubt may arise whether a settlement could be inter-vivos as in the case of a gift A settlement can be unilateral as in the case of a will and the beneficiary need not agree for the same. The word "agree" used in Section 2(b) of the Specific Relief Act will only mean that the person conveying such a property by settlement would voluntarily do it and agree to do it.

16. The concept of "settlement" has generated plethora of precedents of which some of them are direct and useful. Both the sides have depended upon some of the precedents in support of their respective contentions. However, they are not nor they could be in disagreement with any of such precedents. The only question is which of them would be applicable to the facts and circumstances of this case. The latest in regard to the subject and the topic appears to be of our High Court in G. Narasimhulu Chetti and others Vs. S. Pandurangaiah Chetti and others, . Mrs. Sundari Prasad, the learned counsel for the appellant has strongly relied upon this precedent to support her contention that Ex. B-1 is a will whereas Mr. K. Purushotham, the learned Counsel for the respondent has tried to distinguish this on facts. Paras 12 to 19 of the ruling refers to various pronouncements on the question dealing with the meaning and mode of construction of a document like "settlement" and has laid down the principle of interpretation in substance as hereunder:

".....the construction of a document depends upon the language of recitals, but not upon its form or nomenclature. The intention of the executant is to be gathered from the words used in the document. To find out whether a document is a settlement or gift or a will, the nature of the document has to be examined whether it transferred any interest in property in praesenti or after the death of the executant. Mere delivery of possession cannot amount to transfer of interest in the property....."

This is in tune with what is already expressed above in regard to the interpretation of a document with the aid of several precedents. This precedent also supports the view of this Court. It is true that an instrument purporting to be a settlement deed (Ex. A-4) depended upon in that case, on construction of the terms has been held to be a "will" by applying certain tests and also within the implications of Section 74 of the Succession Act, 1924. The contents of the document therein was to convey a property to the grandson as the grand parents had abundance of love towards him, expected him to perform their obsequies, he was attending to their work connected with the protection of their properties etc., he was to maintain them till their lifetime and it was with good intention to support him possession of the properties delivered to him. In those circumstances, the word "conveyance" used therein was interpreted to be the delivery of possession and not the actual conveyance to mean "transfer of property". In para 10 of the case it has been emphatically stated that from the language of the recitals, the interpretation as given totally supports the contention of the learned Counsel Mr. Purushotham for the respondent. However, the implications still remains that when the intention of the person conveying the property was not to confer any right during his lifetime and only after his death, the instrument cannot be a gift deed, but a will and also in the contrary in the contrary situations. Therefore, this decision which was on facts cannot totally support the contention of the learned counsel for the appellant, however leaving clear and broad guidelines to interpret such documents in a given situation. In *Mallappa v. Venkatappa* 1958 ALT 570 our High Court was dealing with a document to decipher whether it was a will or settlement. It was the case of conveyance purporting to be by a relative in favour of Dayadis. The contents of the document reads thus:

".....I have given schedule properties of the estimated value of Rs. 4,000/-as a settlement kept the said property in my possession alone. From now onwards I will be enjoying the schedule mentioned properties with limited rights and without rights of sale, gift and mortgage till the end of my life. After me, you are to take possession of the schedule mentioned properties and from then onwards enjoy the same having full rights of sale, gift, mortgage."

In a way, as Mr. Purushotham, learned counsel points out, there is lot of similarity between the contents of Ex. B-1 and the document covered by the above decision because except with regard to delivery of possession after the death, which in effect means something, as possession was not handed over to defendant 1 under Ex. B-1. In such a situation, it was held that the document therein was a settlement. Patently the extrinsic evidence in the case and the circumstances was not taken aid of in this precedent. The case has proceeded merely on the construction of the very words in the document. Perhaps, it may be due to absence of any controversy regarding the other circumstances leading to the document. Therefore, this decision can be taken as laying down the rule in general to interpret a document by merely reading the contents of the document without the aid of extrinsic evidence or the surrounding circumstances.

Mattegunta Dhanalakshmi Vs. Kantam Raju Saradamba and Others, is yet another precedent of this Court dealing with the subject. Section 2(24)(b) of the Stamp Act was being considered therein to know whether a document executed by a husband in favour of the wife was a will or a gift deed. It was held to be a settlement under the circumstances. The facts therein and the present case are patently distinguishable. There can be a settlement in favour of relatives or the members of the Hindu family having due regard to the fact that there will be already existing right including the right of maintenance which will only be settled or confirmed as can be read from the definition u/s 2(24)(b) of the Stamp Act whereby the distribution of property of the settlor would be among the family members or for whom he desires to provide for the purpose of providing some person depending upon him. Then it deals with the question whether a settlement in a given situation would be for such persons including the dependants. In the present case, it is emphatic that the 1st defendant was not a dependant on 2nd defendant and secondly it is nobody's case that she was a member of the joint family of the second defendant and his step brother, the father of the 1st defendant to provide the property to her for a specific benefit like maintenance or, otherwise. Therefore, the facts of this precedent are also distinguishable from the facts of the present case. *T. Ramakrishna Rao v. P. Penchamma* 1980 (2) APLJ 375, is yet another precedent of this court dealing with the settlement for the purpose of Section 2(24) of the Indian Stamp Act. A broad principle has been laid down therein saying that among the tests to distinguish a "settlement" from a "will" the primary test should be whether the document is intended to have immediate operation and whether the instrument is revocable. On a careful reading of this decision, it is clear that the meaning of the settlement under the provision has been explained with reference to several precedents as to the construction of a document in such a situation and the facts therein are totally different from the present one. The evidence therein showed, in addition to the contents of the document, that the person conferring benefit had intended the right in the property to be conveyed at a particular point of time and not clearly before or after his death. From that it was held that the disposition as to the enjoyment of the land under the document by the brother of the executant came into immediate operation amounting to settlement. This Court is not able to bring in the parity in the facts between the present case and the precedent. *Md. Abdul Ghani v. Fakar Jahan Begam* ILR (1923) All. 301 is of Privy Council dealing with the question whether the document was a gift or will. In view of the fact that the party conveying the property intended to confer the right in favour of the beneficiary to come into effect immediately and transfer being inter-vivos and having due regard to the facts and circumstances of the case, it was held to be a gift and not a will. This decision depended upon by the learned counsel for the Appellant may not help her except to borrow the rule of interpretation of a document to distinguish the nature and consequences. *Veerabhadrayya v. Seethamma*, 1940 Madras 236 is referred to in (4) supra and it can only be useful to adopt the method of construction of the document depending upon the facts and circumstances of a particular case.

17. Therefore, none of the precedents depended upon by either side can conclusively bring upon its rule to logically call Ex. B-1, a "settlement" or a "will" except to guide as how to interpret the document to know whether it is so. Then, in such a situation, the task has become stronger for this Court to test Ex.B-1 with the aid of the extrinsic evidence and the totality of the circumstances in this case, to know the implications of the document and the intention of 2nd defendant in executing Ex. B-1 in favour of the first defendant.

18. The ingredients of Ex. B-1, item-wise, have already been noted as above. They may be decided with reference to the evidence and the conduct, of the parties in this case. At this stage the contention of the Mr. K. Purshomam, learned counsel for the respondent in regard to the powers of the Court of Second Appeal in dealing with the questions of facts requires to be considered. According to him, if we go into the evidence of the case regarding which the Courts below have already dealt with and in particular the learned District Judge has recorded a clear finding of fact, that would be repugnant to the true implications of Section 100 of Code of Civil Procedure. Smt. Sundari Prasad, learned counsel for the appellant has argued to the contrary that the precedents have settled that in a given situation where extrinsic evidence and the totality of the circumstances have become necessary to be considered, the rule u/s 106 of C.P.C. will not become absolute and the provisions of Section 103 of C.P.C., would empower the Court of Second Appeal to go into the facts and evidence also. What is propounded by the learned Counsel for the respondent is a general rule which has been accepted throughout. What has been postulated by Smt. Sundari Prasad is an exception which requires to be adopted in a given situation. Therefore, the question is whether this would come within the case of exception. The precedents have also provided such a postulation to adopt The precedents depended upon by both sides in this regard are: Bhusawal Borough Municipality Vs. Amalgamated Electricity Co. Ltd. and Another, , M.K. Ranganathan and Another Vs. Government of Madras and Others, , Balai Chandra Hazra Vs. Shewdhari Jadav, , Surain Singh v. Mehenga 1996 (2) Supreme 283, Hira Lal and Ors. v. Gajjan and Ors. AIR 1990 SC 725, Dilbagrai Punjabi Vs. Sharad Chandra, . These precedents project the same rules as above placed before this Court by both sides. In this case, having due regard to the nature of the contest and the contents of Ex. B-1 and the relationship between defendants 1 and 2, it has become inevitable to go into the facts also without really going into the appreciation of evidence as it has already been done by both the Courts in their own way. Moreover, although such facts, either proved or controverted appear to be questions of facts and the evidence, in effect they have produced legal results raising substantial question of law, whether Ex. B-1 has been properly interpreted either by the learned District Munsif or the District Judge. If the construction so put by them is either wrong, improper or illegal, it should necessarily raise a question of law, as already pointed out, which has to be resolved in this appeal. There is one more reason for adopting such a procedure. The learned District Munsif afforded ample reasons as to why he disbelieved Ex.

B-1 as a settlement to reject the case of the respondent/1st defendant. But the learned Dist. Judge has adopted a very easy course in disagreeing with the learned District Munsif without giving any reasons except repeating the evidence of the witnesses in brief. Mr. K. Purushotham, learned counsellor for the respondent, in such a situation, contends that if the learned District Judge has not done the job as is required, the course open is to remand the matter and not to resort to assessment of evidence and circumstances. This Court is not persuaded to accept such contention. As already pointed out, this Court is not assessing the evidence but making use of the evidence on record which is already appreciated by the learned District Munsif and not re-appreciated by giving reasons by the learned District Judge in appeal. To enable this Court to understand the evidence properly to know whether the learned District Munsif has correctly noted them or not, Mr. Purushotham has taken the pains of reading the entire evidence in the case has much as the same pains not spared by Smt. Sundari Prasad, learned Counsel for the appellant. Having gone through the evidence in full, this Court is in total control of the whole situation on facts to draw inferences and to apply correct law in regard to the same. In that view of the matter, this Court is totally of the considered opinion that the method adopted by us in constructing Ex. B-1 with the aid of the evidence and the circumstances in the case has been done properly and legally to meet the ends of justice.

19. The reason for the disposition is said to be love and affection of second defendant to first defendant. The evidence is not projected in this regard. The testimony of 1st defendant does not bring out any reason for the love and affection between them. Admittedly, she is the daughter of the step brother of the second defendant. Filiality has a degree of which should remain between them. The dependence between them was never there. The 1st defendant, a conductress in a school having regular source of income and married, had no reason to depend upon 2nd defendant and neither 2nd defendant depended upon her for any purpose. His wife has deserted him. He had no children. It is nobody's case that he had to fall back upon the filial love of 1st defendant for his protection and care. The 2nd defendant had his own lands. He had his own income. Nobody looked after him after his wife deserted him. It is in evidence that 2nd defendant was sleeping in Panchavali (public resort or public place) and it is said that he even sold away his house and with little contradiction it is brought out that he purchased another house, but yet he resided in a public place. The 1st defendant has not even whispered that 2nd defendant was doing all this in spite of her persuasions to come to her. She has never stated that it was her desire to get 2nd defendant to her house for residence, care and protection. On the other hand, consistently it is spelt out by 1st defendant and her witnesses that while 2nd defendant was living in Panchavali and preparing his own food and eating anywhere he wanted, it was only the Karnam and others who prevailed upon him and the 1st defendant to take him there and arranged for his residence with 1st defendant. Although the 1st defendant has stated that she looked after the 2nd defendant, there is no positive evidence in this regard.

What care and protection she gave is not clear except her version. Admittedly the 2nd defendant was suffering from TB for atleast seven or 8 years prior to his death. Whether it was chronic, acute or incurable finds no place in the evidence, A deserted husband, having none to care for him without children, having his own source of income, for getting treatment for his ailment, cannot be expected to depend upon 1st defendant for such treatment, but for some intermediary process through others proposed to remain with 1st defendant for residence, food, care and protection. It is this sort of love and affection between them which is said to be the basis for Ex. B-1. It is also in evidence and admission of 1st defendant that she did not provide food to 2nd defendant subsequently atleast at the time of filing of the suit. With such a strange relationship between them, it is difficult to think that the 2nd defendant has nourished or cherished the love and affection to part with his property in her favour during his life time. This test is not satisfied to construct it as a "settlement".

20. The reason for providing the suit lands to the 1st defendant to make her comfortable is also without any sense or manner. As already pointed out, the 1st defendant was better comforted than making her comfortable. What more better comfort to make her living more comfortable is not possible to be made out from Ex. B-1 or the extrinsic evidence. Her husband was cultivating lands. In what way 2nd defendant enabled her to live comfortably is not clear from the evidence. This test also fails to make the document a "settlement". From the very recital in the document the possession and enjoyment of the lands continued with second defendant and he had never alienated the same at the relevant time. But the 1st defendant tried to project that she had come into possession of the suit lands by virtue of Ex. B-1 which is inconsistent with the recital therein. It is true that she has produced Ex. B-2, Adangal, to show that she had come into possession of the same. In what manner she was able to get possession cannot be understood. D.W.2, Karnam, goes to the extent of saying that since two years prior to Ex. B-1, the 1st defendant had been cultivating the suit lands on share system. The theory of lease set up by 1st defendant is consistently held to be against her. There is no such recital in Ex. B-1 also. The basis of making entry Ex.B-2 appears to be only Ex.B-1 and no other reason. He has ventured to say that after execution of Ex. B-1 he mentioned the cultivation account in the name of 1st defendant for fasli 1388. The reason is obvious of his bestowing special interest on 1st defendant and in such a situation it is surprising that he makes entry in Ex.B-2 merely thinking that he did it on the basis of Ex.B-1. That creates serious suspicion regarding the entries in Ex. B-2. Thus, in addition to the contradiction about the recital in Ex. B-1 and the theory of 1st defendant in her evidence, by reading the very document and the circumstances in the case, there is nothing to doubt that the properties were with the possession and enjoyment of the 2nd defendant. This fails to fulfil the test of parting with the property by the executant of the document in favour of settlee or beneficiary.

21. It is true that the second defendant put an embargo on himself regarding his

right of alienating the suit lands during his life time. In other words, he prevented himself from obstructing the beneficiary to get the suit lands after his death by virtue of the document. Consistently the law is settled in almost all the precedents stated above. That this is not one of the tests which is consistent with the ingredients of a "settlement". Whether there was restriction in alienation or not of the properties under the document cannot become the decisive basis. It may remain to be the part of both the settlement and the will.

22. The second defendant, perhaps cautiously also, retained his right to enjoy the usufruct from the property during his lifetime. He did not concede any right to 1st defendant of any extent during his life time.

23. The most important segment of Ex. B-1 is the expression that "second defendant created rights in 1st defendant" with specific words. Further more it was adjuctivised that the 1st defendant will enjoy the suit lands with absolute powers of alienation in accordance with her wishes from generation to generation by getting the property mutated in her name in revenue records after the lifetime of 2nd defendant. This Mr. Purushotham, learned counsel for respondent, reads as categorically creating rights in favour of the 1st defendant by 2nd defendant in praesenti and not future being the real test of determining the nature of the document as a "settlement" and not a "will". If that is only the expression to be accepted, then the learned counsel is totally right in postulating the rule. But when we are making use of all the segments of the document, it should be read together in addition to extrinsic evidence in the case, the real meaning to be attached to the expressions are to be gathered from the totality of the circumstances and not with grammatical, literary or verbal records. The real question comes as to what is the nature of the right or what right the 2nd defendant conferred to 1st defendant under the document. He never allowed her to take possession of the land, he never allowed her to take usufructs from the land, he never allowed to get the lands mutated in her name and he retained all of them for himself except using the words that "rights were created in her which should become absolute after his death." In the light of their relationship, the conduct of the parties and predicament and the plight of D.2 and conduct of D.1 the intention of 2nd defendant in creating or not of the rights under the document should be decided. Normally speaking the inference should be in the negative. A person who was deserted, and having resources and was to be entrusted to 1st defendant as if he was an orphan by strangers both for residence, food, care and protection, cannot be expected to create a right once and for all during his life time to the detriment of his own interest. That should be the normal human conduct. Therefore, creation of right not only on fact but also in law has to be understood in its true sense of the term.

24. Mere use of the words "rights" and "creation" may not bring out the correct meaning. That takes us to the region of jurisprudence. Science of law and the array of legal systems are the real source of all legal results. Right cannot be defined, but can be understood. The user of the expression depends upon the particular

situation. The science of law understands it for a legal purpose and the concept of the term "right" like the term "duty" can be used in a wider sense. To say that a man has a right to something is roughly to say that it is right for him to obtain it. This may entail that others ought to provide him with it or that they ought not to prevent him getting it merely that it would not be wrong for him to get it. What exactly is being claimed by the assertion that he has a right is not always clear. (page 40 of Salmond on Jurisprudence 12th Edition). Now we can substitute the facts and circumstances of this case into such a concept. To say that 1st defendant got the right to the suit lands, it would be roughly to say that it is right for her to obtain it. In other words, this may entail the 2nd defendant to provide the 1st defendant with such a right or that 2nd defendant or anybody claiming through him ought not to prevent the 1st defendant from getting such rights or merely that it would not be wrong for 1st defendant to get it (with the qualified statement during the life time of 2nd defendant). If anything of the kind occurs during the life time of 2nd defendant to confer a right on 1st defendant in the sense stated above, there cannot be any conferment of right. Patently it was a contingent right to create on the happening of the event i.e., the death of 2nd defendant. Any amount of use of expression as conferring right shall not ensure to the benefit of 1st defendant as long as the 2nd defendant was alive. In such a situation, the use of the words "creation of right" in Ex. B-1 is inconsistent with the concept of right in jurisprudence. Therefore, both in law and on facts, the expression in Ex.B-1 that the 2nd defendant created rights in the 1st defendant, in respect of the suit lands, cannot be accepted as conferment of right in her favour during the life time of 2nd defendant. If at all with all problems and the circumstances stated above, if the 2nd defendant allowed the properties for the benefit of 1st defendant to ensure to her benefit after his death, the document should necessarily become a will as the latter should get a bequest in her favour. Therefore, now with all four corners of law and the facts of this case, except that Ex. B-1 is called as a settlement deed it is not in fact a settlement deed and was in the nature of a will. That is how, the 2nd defendant perhaps when he did not get what he wanted from 1st defendant, possibly might have sold the suit lands in favour of the plaintiff by creating an agreement as per Ex. A-1 resulting in Ex. A-3, sale deed. That may amount to revocation of Ex. B-1 even assuming that he desired to dispose of the property in her favour by way of a will. Thereby no right was created in favour of 1st defendant during the life time of 2nd defendant and if any right was created, being conditional, became revoked due to the conduct of the 2nd defendant in alienating the property in favour of the plaintiff which is totally inconsistent with the recital in Ex.B-1 in regard to the embargo against alienation in a situation which he redeems himself from such an embargo. This being one of the very important tests to construct the document Ex.B-1 as settlement is totally lost.

25. Thus, the learned District Munsif was right in doubting Ex.B-1 regarding creation of any right in favour of 1st defendant by the 2nd defendant during his life time which he rightly for adequate, justifiable reasons adopted and which

without any justifiable reasons or the legal exercise, the learned Additional District Judge, dissented. This Court, disapproves the methodology adopted by the learned District Judge in setting aside the finding of the learned District Munsif on Issue No. 3. Obviously mat requires to be set at naught.

26. The learned Addl. District Judge erred both in law and on facts in dealing with the matter and his judgment is vitiated and deserves to be set aside to restore the Judgment and decree of the learned District Munsif in decreeing the suit.

27. For the reasons afforded above, this Appeal succeeds. The Judgment and decree of the learned Addl. District Judge in appeal are set aside. The Judgment and decree of the learned Addl. District Munsif , decreeing the suit, are confirmed. In the peculiar circumstances of this case, the parties shall bear their respective costs throughout.