
(2009) 06 AP CK 0046
In the Andhra Pradesh High Court
Case No : L.P.A. No. 290 of 2001

Regati Ramraju

APPELLANT

Vs

Neelamsetti Kataji Rao and Others

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 4, Order 6 Rule 4, 11
Evidence Act, 1872 — Section 33
Income Tax Act, 1961 — Section 230
Limitation Act, 1963 — Article 59
Specific Relief Act, 1963 — Section 31
Succession Act, 1925 — Section 152

Citation : (2010) 3 ALT 608

Hon'ble Judges : B. Chandra Kumar, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : N.V. Suryanarayana Murthy for P. Suresh, for the Appellant; E. Manohar for G. Rama Gopal, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—This intra-court appeal under Clause 15 of the Letters Patent is directed against the judgment and decree of the learned single Judge of this Court in A.S. No. 1735 of 1991 dated 23-3-2001 whereby the appeal preferred by the defendants was allowed setting aside the judgment and decree made in O.S. No. 8 of 1983, dated 4-7-1991 of the I Additional Subordinate Judge, Visakhapatnam decreeing the suit of the plaintiff cancelling the registered sale deed dated 30-3-1978 registered on 18-7-1981 and ordering recovery of possession of the suit schedule property covered by the said sale deed.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the trial Court.

3. Facts in nutshell that gave rise to this appeal are that the father of plaintiff Govinda Rao was the undivided brother of Regati Venkata Lakshmi Narayana Rao

("RVLN Rao", for brevity) and after partition RVLN Rao acquired the plaint schedule property along with other properties. He purchased the properties from the income of the properties that he got in partition and bequeathed all the properties to his divided brother's wife and children. The suit schedule property was bequeathed to the plaintiff with absolute rights under a will dated 27-10-1974 Ex. A-22 in a sound and disposing state of mind. Prior to the death, RVLN Rao was continued to be in possession of the suit schedule property and leased it out to tenants and collecting the rents from them and paying the property taxes in respect of the said property. He was unmarried, issueless and died on 7-9-1982 at Visakhapatnam. Since Ex. A-22 is the last will, the suit schedule property was devolved upon the plaintiff as his legatee after the death of RVLN Rao. Later, the plaintiff demanded the tenants of the suit schedule property to pay the rents, who informed him that the defendants are claiming rents from them on the ground that they purchased the suit schedule property from RVLN Rao under a registered sale deed dated 30-3-1978 under Ex.B-4. Thereafter, the plaintiff got issued a notice dated 25-10-1982 under Ex.A-2 to the defendants intimating that he got the suit schedule property under the will for which, the defendants sent a reply alleging that they purchased the suit schedule property from RVLN Rao through the registered sale deed-Ex.B-4. Therefore, the plaintiff filed the present suit seeking cancellation of sale deed under Ex. B-4 alleging that RVLN Rao was not mentally stable from December, 1977, and was not in a position to look after his affairs, and was a puppet in the hands of one M. Kameswara Rao, the sale deed dated 30-3-1978 in respect of the suit schedule property being relied on by the defendants, must have been obtained by the defendants by playing fraud or misrepresentation and the same is also not supported by consideration. The plaintiff's sister, Nallapu Rajasundari on coming to know about the attempts made by selfish elements to grab the properties of RVLN Rao taking advantage of his mental instability, made a publication about the mental state of RVLN Rao in Eenadu newspaper on 4-1-1978 whereby she warned the public not to obtain any document in respect of his properties. It is also alleged that late RVLN Rao on suspecting fraudulent attempts being made by selfish elements to grab his properties, filed an application before the Urban Land Ceiling Special Officer, dated 29-4-1978 intimating him not to act upon any application filed in his name or said to have been signed by him. According to plaintiff, late RVLN Rao gave evidence in O.S. No. 390 of 1974 on the file of District Munsif Court, Visakhapatnam on 5-4-1978 to the effect that he never sold the suit schedule property to any person. It is alleged that though Ex. B-4 was brought into existence; it was registered on 18-7-1981 and that the sale consideration shown therein is less than the market value and therefore, it is highly improbable for RVLN Rao to execute the sale deed under Ex. B-4 at a throwaway price. Hence, the above suit.

4. Defendants filed a common written statement denying the plaint allegations including the execution of the will by RVLN Rao in favour of the plaintiff. It was contended that there are as many as four suits in which RVLN Rao was

figured as a party and he contested and won all the suits, against which, four appeals are pending before the II Additional Judge, Visakhapatnam. It is their case that RVLN Rao wanted to sell the suit schedule property and negotiated with the defendants for the sale of the same and he ultimately sold the said property to them for Rs. 1,85,000/- by executing the sale deed dated 30-3-1978 under Ex. B-4 having received Rs. 68,500/- prior to the execution of the sale deed at various points of time, Rs. 80,000/- by way of demand draft dated 30-3-1978 and cash of Rs. 36,500/- at the time of execution of sale deed; and that delivered the possession of the suit schedule property and that presented the sale deed himself for registration on the same day in the presence of one K. Laxmanamurthy and Maruvada Kameswararao, who also attested the document scribed by late A.S. Chainulu. It was their case that late RVLN Rao applied for permission to the Urban Land Ceiling authority, Visakhapatnam and having unsuccessful to get the sale permission moved this Court by filing W.P. No. 4981 of 1980 seeking directions to the Joint Sub-Registrar, Visakhapatnam to complete the registration of the sale deed dated 30-3-1978 executed by him in favour of the defendants, which was kept pending by the Joint Sub-Registrar. As this Court allowed the said writ petition, the said document was registered. It was their case that Ex. B-4 sale deed is supported by consideration and is not vitiated by fraud or misrepresentation. It was specifically stated that having received the sale consideration under Ex. B-4 sale deed RVLN Rao purchased a house at Dhaba Gardens, Visakhapatnam, where he lived till he breathed his last. The sale consideration for purchase of the said property was paid from out of the sale consideration paid by the defendants and therefore, Ex. B-4 sale deed is supported by consideration and is not vitiated by fraud or misrepresentation and was not brought into existence by M. Kameswararao as alleged and therefore, the suit is liable to be dismissed.

5. On the above pleadings, the trial Court framed the following issues and additional issue for trial:

1. Whether the suit is barred by time?
2. Whether the suit is bad for nonjoinder of necessary parties?
3. Whether the plaintiff is entitled for the cancellation of the sale deed dated 30-3-1978 as prayed for?
4. To what relief?

Additional Issue:

Whether the plaintiff is entitled for recovery of possession from the defendants?

6. In order to substantiate the respective pleas, plaintiff himself examined as P.W. 1 and 5 other witnesses as P.Ws. 2 to 6 were examined and got marked Exs. A-1 to A-29. On behalf of the defendants, 1st defendant himself examined as D.W. 1 apart from examining 6 more witnesses as D.Ws. 2 to 7 and marked Exs. B-1 to B-8. Exs. X-1 to X-3 were marked through P.W. 2.

7. While the suit was pending, the tenants of RVLN Rao filed two interpleader suits being O.S. Nos. 444 of 1987 and 544 of 1987 for payment of rents to the lawful owners. The said suits were transferred and tried along with the present suit, but no evidence was adduced by the tenants in the above suits.

8. The trial Court upon appreciation of oral and documentary evidence answered all the issues in favour of the plaintiff and accordingly decreed the suit. Aggrieved thereby, the defendants successfully carried the matter in appeal to this Court in A.S. No. 1735 of 1991. A learned single Judge of this Court framed one point for consideration in the appeal namely, whether the plaintiff is entitled to seek cancellation of Ex. B-4 sale deed on the ground of fraud or misrepresentation and is not supported by consideration. After elaborate consideration of the entire evidence, the findings of trial Court and the various decisions cited by both the parties, the learned single Judge held that the plaintiff, claiming to be the legatee under the will dated 27-10-1974 said to have been executed by late RVLN Rao cannot seek cancellation of Ex. B-4 sale deed on the ground that it was obtained by playing fraud or misrepresentation on RVLN Rao. Further, it was observed that RVLN Rao as 1st defendant in O.S. No. 143 of 1977 can be imputed with knowledge that the defendants herein who were impleaded and arrayed as defendants 6 to 8 therein, took a plea that he sold the property in that suit along with other property to them under Ex. B-4 sale deed but he did not counter that claim by filing a rejoinder; and that the plaintiff herein as a party to A.S. No. 43 of 1981, arising out of O.S. No. 143 of 1977, as can be seen from Ex. B-5, should also be imputed with knowledge that late RVLN Rao did not move his little finger when the defendants alleged in that suit that he sold the property covered by that suit (which is a part of the suit property) to them under Ex. B-4 and therefore, the deceased, had he been alive and filed the present suit on the date on which it was filed, could not have succeeded in getting Ex. B-4 sale deed set aside for the reason that by the date of death of RVLN Rao on 7-9-1982, his right, if any, to seek cancellation of Ex. B-4 sale deed stood barred by time under Article 59 of the Limitation Act. He himself presented Ex. B-4 for registration on 30-3-1978, the date which can be taken as he had knowledge of Ex. B-4 and therefore, the limitation to file the suit was on or before 30-3-1981 i.e. three years from the date of Ex. B-4. It was observed that after registration of Ex. B-4, title of the suit schedule property stood transferred to the defendants and therefore, RVLN Rao cannot be said to have died possessed of the suit schedule property and so, the bequest of the suit schedule property made by RVLN Rao to the plaintiff under Ex. A-22 will deed should be deemed to have been revoked by RVLN Rao in view of illustration (i) of Section 152 of the Succession Act. Therefore, the plaintiff cannot be said to have inherited any right or interest over the suit schedule property by virtue of the will executed by the deceased so as to seek cancellation of Ex. B-4 sale deed and accordingly allowed the appeal by setting aside the judgment and decree of the trial Court. Aggrieved by the same, the present appeal has been preferred by the plaintiff.

9. Sri N.V. Suryanarayana Murthy, learned senior counsel appearing for the appellant-plaintiff submitted that he is adopting the findings recorded by the trial Court on all the issues as his arguments and contended that once the trial Court found that payment of consideration under Ex. B-4 is not proved and that the Registrar who was examined as D.W. 7 admitted that no cash of Rs. 36,500/- was paid in his presence as recited in Ex.B-4 sale deed; and that Ex. X-1 pay order for Rs. 80,000/- was endorsed in favour of Mr. Kameshwar Rao and signed by Tataji Rao, it can be inferred that Ex. B-4 sale deed was not supported by any consideration. If really RVLN Rao purchased the properties under Exs. A-6 and A-7, both dated 30-3-1978 from out of the sale proceeds of Ex. B-4 sale deed executed by him, endorsement should have been in favour of vendors under Exs. A-6 and A-7 but not in favour of Mr. Kameshwar Rao, which itself falsifies the plea of the defendants that to meet the sale consideration under Exs. A-6 and A-7, the suit schedule property was sold to them. It is argued that there are material alterations in Ex. B-4 sale deed and it can be presumed that it is that person who benefits from such material alterations, has altered the sale deed for his benefit. Upon the death of RVLN Rao on 7-9-1982, the cause of action has arisen for filing the suit by the plaintiff which was actually filed on 17-12-1982 as represented on 25-1-1983 and therefore, the suit is within time, but the learned single Judge was in error in coming to the conclusion that the suit is barred by limitation. On 30-3-1978, the date on which Ex. B-4 sale deed was alleged to have been executed, RVLN Rao went to the office of the Registrar to obtain sale deed with regard to other property and taking advantage of the same, with the connivance of M. Kameshwar Rao, Ex. B-4 sale deed was brought into existence. Though the possession of suit schedule property was delivered to the defendants as recited in Ex. B-4, the very fact that the tenants have paid the rents to RVLN Rao till his death clinchingly shows that Ex. B-4 sale deed was never acted upon. He further contends that the fact of tenants filing two interpleader suits establishes that Ex. B-4 sale deed was not acted upon and the findings recorded for payment of sale consideration remains unchallenged. In view of the same, the present appeal should not have been proceeded further and ought to have been dismissed in limine. For the said proposition he learned Counsel relied upon the decisions of the Apex Court reported in Sheodan Singh Vs. Smt. Daryao Kunwar, , Sri Chand and Ors. v. Jagdish Pershad Kishan Chand AIR 1966 SC 1427 and drew the attention of this Court to the findings of trial Court in paras 6, 23 and 24 of its judgment. Further, he contended that when the appellate Court reverses the findings of the trial Court, it should address all the issues in controversy, but the learned single Judge of this Court failed to address all the issues and therefore, the impugned judgment is liable to be set aside. For the said proposition, reliance is placed on Thangachi Nachial and Another Vs. Ahmed Hussain Malumiar and Others, ; R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, ; and Sree Jain Swetambar Terapanthi Vid.(S) Vs. Phundan Singh and Others, .

10. On the other hand, Sri E. Manohar, learned senior counsel appearing for

respondents-defendants would contend that when the pleadings and findings of the trial Court are not made as part of the L.P.A. record nor supplied to the Court or to the counsel appearing for the other party, the L.P.A. cannot be heard on merits and the same is liable to be dismissed in limine. When Ex. B-4 sale deed was executed on 30-3-1978, in the absence of any allegations in the plaint that the sale deed was obtained by fraud or collusion and further the allegation that it might have been obtained by fraud or collusion cannot be taken into consideration without there being any specific plea. When Ex.B-4 sale deed was presented for registration, the same was refused for want of permission of Urban land Ceiling authorities and the vendor himself filed W.P. No. 4981 of 1980 under Ex.B-3 in which he admitted to have executed Ex. B-4 and therefore, it is quite improbable to say that Ex.B-4 was obtained by the defendants by playing fraud. With regard to the allegation that Ex. B-4 was not acted upon in view of filing of interpleader suits, it is contended that Ex. B-4 was registered on 18-7-1981 and its vendor (RVLN Rao) died on 7-9-1982 and in view of dispute raised by the plaintiff, the tenants filed the above interpleader suits. It is argued that when RVLN Rao was in the knowledge of execution of Ex. B-4 sale deed, if at all, he should have filed the suit within the period of limitation, which stood expired on 29-3-1981 and as the suit is filed on 25-1-1983, it is hopelessly barred by limitation as rightly held by the learned single Judge. The learned Counsel relied on the findings and reasoning of the learned single Judge in paras 7, 8, 9 and 10 of the impugned judgment. He further contends that Ex. B-4 sale deed discloses filing of income tax clearance certificate, which was in fact, obtained and enclosed along with the sale deed which itself proves that RVLN Rao was in the knowledge of execution of the sale deed and from the above evidence, no presumption can be drawn of fraud, forgery or misrepresentation. Ex. A-10, sale deed executed by RVLN Rao goes to show that he was attending the Sub-Registrar office and his obtaining two registered sale deeds under Exs.A-6 and A-7 on 30-3-1978 goes to falsify the claim of the plaintiff that RVLN Rao was not mentally stable for execution of Ex. B-4 sale deed. Therefore, it is contended that there are no grounds to interfere with the well-considered findings recorded by the learned single Judge.

11. In view of the above submissions, the points that arise for consideration in this appeal are:

(1) Whether the suit for the relief claimed is barred by limitation?

(2) Whether the appellant-plaintiff is entitled to seek cancellation of the sale deed dated 30-3-1978 on the ground that the sale deed is obtained by fraud or misrepresentation and consideration, consequently can recover possession of the suit schedule property?

12. Point No. 1: It is the contention of the learned Senior counsel appearing for the appellant that the plaintiff being legatee under the will Ex. A-8/A-22, dated 27-10-1974, upon the death of RVLN Rao, demanded the tenants for payment of rents and thereby came to know the rival claim set up by the defendants and

hence, the suit is not barred by limitation. Indisputably, the suit is filed on 17-12-1982, which was returned and re-presented on 30-12-1982 and again it was re-submitted on 19-1-1983 and ultimately, it was filed on 21-5-1983. As per Ex. B-1 copy of common judgment passed in O.S. Nos. 924 of 1983, 974 of 1983 (wrongly typed instead of 924 and 974 of 1973), 390 of 1974 and 143 of 1977 were disposed of on 26-9-1982. RVLN Rao, who was arrayed as 1st defendant in those suits filed his written statement and the defendants herein and another were added as parties to those suits, which is evident from Ex.B-5 copy of judgment in O.S. No. 43 of 1981 about their impleadment as parties to suit in O.S. No. 143 of 1977 as per orders dated 23-10-1978 in I.A. No. 1934 of 1978. As per the cause title in the common judgment under Ex. B-1, the defendants in the present suit were arrayed as defendants 6 to 8 therein, who filed their written statement contending that they purchased the property covered by that suit under a registered sale deed dated 30-3-1978 under Ex. B-4 from RVLN Rao, who was arrayed as 1st defendant in those suits. In those suits, additional issues 1 to 3 were framed with regard to the purchase of the suit schedule property therein (in which part of the suit schedule property was included) by the defendants under Ex. B-4 sale deed. No-doubt, no finding was recorded against additional issues 1 to 3, but on additional issue No. 4 under Ex. B-1 suits, with regard to the question whether defendants 6 to 8 therein (who are defendants herein) are necessary parties to that suit, it was held that admittedly, defendants 6 to 8 and another purchased the suit schedule site with building existing therein (part of the property covered by Ex. B-4) during the pendency of the suit and therefore, they are necessary parties to the suit. Therefore, RVLN Rao as the 1st defendant in O.S. No. 143 of 1977 can be imputed with the knowledge that defendants herein as defendants 6 to 8 in the said suit asserted that RVLN Rao sold the property along with other properties under Ex. B-4 sale deed. But, it can be noticed that RVLN Rao did not counter the claim by filing any rejoinder to the suit nor any pleading to the effect that Ex. B-4 was got executed by playing fraud on him. The said finding has been confirmed on dismissal of A.S. No. 43 of 1981 under Ex. B-5, to which, the plaintiff herein was added as a party to the appeal as the legal representative of RVLN Rao. In view of the same, the plaintiff cannot plead that upon the death of RVLN Rao when he demanded the tenants to pay the rents, he came to know about the execution of sale deed under Ex. B-4. Further, it is within the knowledge of plaintiff that in spite of the plea taken by defendants 6 to 8 and another in the above suit that they purchased the property from RVLN Rao, the said claim was not denied by RVLN Rao. Since RVLN Rao himself did not dispute the claim of the defendants that he sold the suit schedule property to them under Ex. B-4, the learned single Judge of this Court rightly held that had RVLN Rao alive and filed the present suit for the reliefs claimed, on the date on which it was filed, he would not have succeeded in the suit since the same is barred by limitation as the period of limitation is three years from the date of knowledge of the person seeking cancellation of the instruments under Article 59 of the Limitation Act. Once RVLN Rao's right, if any, to question the sale deed Ex. B-4 on the ground of fraud or misrepresentation or not supported

by consideration has been extinguished, the plaintiff claiming to be the legatee under the will said to have been executed by RVLN Rao cannot seek cancellation of Ex. B-4 on the ground that it was obtained by playing fraud, misrepresentation and not supported by consideration. The point No. 1 is answered accordingly.

13. Point No. 2: In view of the finding recorded under point No. 1, though it is not necessary for us to advert to the contention of the appellant-plaintiff that the defendants obtained the sale deed by playing fraud, misrepresentation etc., how far the plaintiff succeeded in establishing the same has to be considered.

14. The plaintiff being the legatee under the will executed by RVLN Rao is seeking cancellation of Ex. B-4 sale deed executed by RVLN Rao on the ground that the said sale deed was obtained by fraud, misrepresentation and not supported by consideration. Order VI Rule 4 CPC mandates that in case where fraud and misrepresentation are pleaded, details thereof should be specifically pleaded and proved. Section 31 of the Specific Relief Act provides when a cancellation may be ordered against whom a written instrument is void or voidable. For seeking such declaration, plaintiff has to establish three conditions viz., (i) that the plaintiff is such a person against whom the instrument is void or voidable; (ii) that the plaintiff can entertain a reasonable apprehension that if such an instrument is left out, it may cause serious injury; and (iii) that the Court must adjudge the instrument void or voidable (See Muppudathi Pillai Vs. Krishnaswami Pillai and Others,).

15. The learned single Judge referred to the pleadings and the specific averment in Sub-para (i) of para III of the plaint, which reads:

The said M. Kameswara Rao must have played the entire drama for his selfish ends to benefit the defendants, at the cost of late Lakshmi Narayana Rao.

Except the above plea, there was no plea about the particulars of alleged fraud, misrepresentation attributed to the defendants in obtaining Ex. B-4 sale deed nor there was any plea that the sale deed is not supported by consideration. In para III(j) of the plaint, it was pleaded that "the sale deed said to have been obtained by the defendants on 30-3-1978 is not, therefore, true, valid and supported by consideration. It is vitiated by fraud and misrepresentation. The reasons for such plea has been mentioned in para 111(g) of plaint that the sale consideration referred to in the sale deed makes it clear that consideration of Rs. 1,85,000/- is very paltry and is far below than prevailing market rate of the said property and that no part of the said consideration was paid before the sub-Registrar at the time when the document was filed for registration and late RVLN Rao could not be said to have received any consideration either in cash or by means of bank draft. Further, in para III(i) it was stated that late RVLN Rao was a puppet in the hands of one Maruvada Kameswara Rao and he must have brought into existence the sale deed dated 30-3-1978 by fraud or misrepresentation and that M. Kameswara Rao must have played the entire drama for his selfish ends to benefit the defendants, at the cost of RVLN Rao. It is well settled that inadequate

consideration, if any, alone is not sufficient to come to the conclusion that the sale deed is not supported by consideration. Plaintiff himself examined as P.W. 1 and stated that on the death of RVLN Rao, when he claimed rents in respect of the suit schedule property from the tenants thereof, he was informed that 1st defendant was claiming rents from them on the ground that he purchased the suit schedule property from RVLN Rao and therefore, he (plaintiff) issued Ex. A-2 notice to 1st defendant for which, he gave a reply under Ex. A-13 and on enquiry, the scribe of Ex. B-4- sale deed informed him that RVLN Rao executed Ex. B-4 sale deed without knowing its contents and RVLN Rao, on the date of execution of Ex. B-4 sale deed, went to the Registrar's office to get the sale deed in respect of the house purchased by him at that time and M. Kameshwar Rao brought Ex. B-4 sale deed into existence without consideration taking advantage that RVLN Rao was acting to his dictates. The above evidence is contrary to the pleadings in the plaint as referred to above. The evidence of P.W. 1 in chief-examination itself clearly establishes that RVLN Rao himself personally went to the Registrar's office on the said date (the date of Ex. B-4) to get Exs. A-6 and A-7 sale deeds under which he purchased the house of D.W. 6. Further, D.W. 6 who is the vendor under Exs. A-6 and A-7 sale deeds executed in favour of RVLN Rao on the same day of Ex. B-4, also figured as an attester to Ex. B-4 sale deed but he did not support the case of the plaintiff on any aspect and on the other hand, fully supported the case of the defendants about passing of consideration under Ex. B-4. The plaintiff as P.W. 1 deposed that the scribe of Ex. B-4, who is no more, informed him that RVLN Rao executed Ex. B-4 sale deed without knowing its contents. To substantiate the above plea, plaintiff relied upon Ex. A-15 deposition of the scribe of Ex. B-4 given in O.S. No. 140 of 1977. Learned single Judge, in view of Section 33 of the Evidence Act, rightly relied upon the deposition under Ex. A-15, in which the scribe of Ex. B-4 clearly stated that he scribed Ex. B-4 at the instance of, and on the information furnished by RVLN Rao, which itself belies the plea of the plaintiff that scribe of Ex. B-4 informed him that RVLN Rao executed Ex. B-4 without knowing its contents. The learned single Judge by placing reliance on the judgments of the Privy Council rendered in AIR 1937 146 (Privy Council); AIR 1941 93 (Privy Council) ; and Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, rightly rejected the plea of the plaintiff that Ex. B-4 sale deed is vitiated by fraud. Therefore, the contention of the learned Counsel for the appellant-plaintiff by placing reliance in the decision of Thangachi Nachial (3 supra) that the very nature of things, fraud is secret in its origin and inception and the means adopted for its success and fraudulent motive or design cannot be proved to the very hilt and it should be inferred from the circumstances placed before the Court, cannot be accepted. The said decision of Madras High Court is misplaced to the facts of the case of hand.

16. Much reliance has been placed by the learned Counsel for the appellant-plaintiff on Ex. A-11 publication allegedly made by the sister of the plaintiff informing the public in general that the deceased was unable to look after his

own affairs and was mentally unstable. Considering Ex. A-11 the learned single Judge rightly held that Ex. A-11 cannot be said to have been proved because the sister of the plaintiff, who allegedly made the publication was not examined to swear to the fact that she got the publication made and she was not offered for cross-examination by the defendants. The plaintiff did not adduce any medical evidence to show that RVLN Rao had some mental deficiency prior to 1978 or during 1978 and was not mentally stable as on the date of execution of Ex. B-4 sale deed. On the other hand, on the very date of execution of Ex. B-4, RVLN Rao purchased property under Exs. A-6 and A-7 sale deeds from D.W. 6 and had also executed Ex. A-10 sale deed in respect of the property purchased by him under Ex. A-3 sale deed which clearly goes to show that RVLN Rao was mentally fit, sound and was aware of the contents of sale deeds under the above documents. In the absence of any plea or evidence adduced by the plaintiff that Exs. A-6 and A-7 were not obtained by RVLN Rao himself and Ex. A-10 was not executed by him, the circumstance of RVLN Rao purchasing properties under Exs. A-6 and A-7 ex facie belies the contention of the plaintiff that RVLN Rao was mentally unstable and he was not aware of what he was doing.

17. The learned Counsel for appellant-plaintiff nextly relied on Ex. A-28 certificate copy of the representation dated 29-4-1978 said to have been sent by RVLN Rao to the Special Officer, Urban Land Ceiling, Visakhapatnam. The learned Single Judge at paras 13, 14 and 15 of the impugned judgment after elaborately considering the contentions rightly has not accepted the said plea. We do not see any force in the submission made by the learned Counsel for the appellant-plaintiff that since the endorsement on the pay order Ex. X-1 obtained was not made in favour of vendor of Exs. A-6 and A-7, the plea of the defendants that RVLN Rao received the sale consideration under Ex. B-4 cannot be accepted. Admittedly, Exs. A-6 and A-7 sale deeds and also A-10 sale deed were executed on the same day of Ex. B-4 sale deed. Once it is established that RVLN Rao obtained two sale deeds under Exs. A-6 and A-7 by executing two sale deeds under Exs. A-10 and B-4, it is for RVLN Rao to explain the source from which he has paid the sale consideration in obtaining the sale deeds under Exs. A-6 and A-7. As already observed, in spite of the plea taken by the defendants of their purchase of the property under Ex. B-4 in the suits covered by Ex. B-1, RVLN Rao did not choose to deny the said fact during his lifetime. RVLN Rao neither chose to explain nor denied the endorsement under Ex. X-1 which also probablises that RVLN Rao might have borrowed the said amount from the person in whose favour amounts were paid to obtain the sale deeds under Exs. A-6 and A-7 and made an endorsement on Ex. X-1 in his favour.

18. Learned Counsel for the appellant-plaintiff contended that in the absence of any appeals filed against the common judgment passed in the interpleader suits filed by the tenants viz., O.S. No. 444 and 544 of 1987, the findings recorded therein have become final and therefore, the appeal is to be dismissed in limini and that apart, the pleadings therein also shows that the sale deed was not acted upon. In our considered opinion, the said submission made by the learned

Counsel for the appellant-plaintiff does not hold water. Indisputably, Ex. B-4 sale deed was presented for registration on 30-3-1978 and was kept pending along with other sale deeds. Late RVLN Rao also filed a certificate obtained from the Income Tax officer u/s 230(a)(i) of the Income Tax Act, marked as Ex. B-8. Obtaining of the said certificate is not within the knowledge of the defendants and it was RVLN Rao who applied for the said certificate, wherein, he categorically mentioned that it is an outright sale in favour of N. Kataji Rao (1st defendant) for a consideration of Rs. 1,85,000/-. The said sale deed was registered on 18-7-1981 and its vendor-RVLN Rao died on 7-9-1982. Upon his death, dispute arose between the plaintiff and the defendants with regard to receipt of rents from the tenants of suit schedule property.

19. Admittedly, the defendants filed O.S. No. 1 of 1985 against the tenant, who is plaintiff in O.S. No. 544 of 1987 and also another for eviction and arrears of rent and they also filed another suit in O.S. No. 1185 of 1981 against the said plaintiff and another in the Court of Principal District Munsif, Visakhapatnam for permanent injunction. In the interpleader suits in O.S. Nos. 444 and 544 of 1987, there was no issue with regard to the payment of rents. The issues in O.S. No. 444 of 1987 are whether the plaintiff paid Rs. 5,000/- to RVLN Rao and took the site on lease for Rs. 100/- per month; and that who is entitled to receive rents from the plaintiff. Whereas, the issues in O.S. No. 544 of 1987 are whether the plaintiff is entitled for the claim in respect of rents as prayed for; and whether he is entitled for injunction or not. In the above suits, there was no finding with regard to the payment of rents to RVLN Rao till his death nor about the genuineness of execution of the sale deed under Ex. B-4. In view of findings on issue No. 3 and additional issue in O.S. No. 8 of 1983 that the plaintiff therein is entitled for cancellation of sale deed dated 30-3-1978 and also for recovery of possession of the suit schedule property, a direction was issued to the tenants to pay the rents to the plaintiff in O.S. No. 8 of 1983.

20. In the case of Sheodan Singh (1 supra) appellant's father filed a suit O.S. No. 37 of 1950 against the respondent for a declaration that he was the owner of the properties and for possession in the alternative, to which, the appellant was also a proforma defendants. On the death of his father, the appellant was substituted in his place. When the above suit was pending, the appellant's father also filed another suit O.S. No. 42 of 1950 against the respondent and another person claiming price of the crops. While both the suits were pending, the respondent instituted two suits against the appellant and his father for recovery of price of her share of the crop grown on certain sir and khudkasht plots in two villages, which was allegedly misrepresented by the appellant and his father. All the four suits were consolidated, transferred to one court, tried together and disposed of by a common judgment with separate decrees. In all the suits, five issues were common. Against the common judgment, appellant's father filed two first appeals in the High Court, against the dismissal of the suits filed by him. He also filed two appeals before the District Judge against the judgments and decrees in the suits filed by the respondent. Those two appeals filed before the

District Judge were transferred to the High Court. Thereafter, one appeal arising out of O.S. No. 91 of 1950 (filed by respondent) was dismissed by the High Court as being time-barred while another appeal arising out of suit No. 77 of 1950 (filed by respondent) was dismissed on the ground of failure of the appellant's father to apply for translation and printing of the record. After dismissal of the above appeals, the respondent who filed the suits in O.S. Nos. 91 and 77 of 1950 filed an application to dismiss the remaining two appeals preferred by the father of the appellant as the main question of title of respondent involved therein had become final on account of the dismissal of the appeals arising out of suit Nos. 77 and 91 of 1950. The matter was referred to the Full Bench of the High Court and the Full Bench answered the reference holding that the terms of Section 11 of the CPC were fully applicable and therefore, the two appeals preferred by the father of the appellant were barred by res judicata to the extent of the decision of the five issues which were common in four connected appeals. On that, the remaining appeals were dismissed. The Apex Court confirmed the decision of the High Court holding that the result of decision of High Court in dismissing the appeals arising from suit Nos. 77 and 91 filed by respondent is to confirm the judgment of the trial court on all issues, which were common and thus, must be held that the High Court's decision does amount to the appeals being held and finally decided.

21. The Apex Court in the decision rendered in Sri Chand's case (2 supra) at para 4 held that once the appeal has been abated against one of the appellants as legal representatives were not brought on record, which is common to all the appellants, the appellate Court has no power to proceed with the appeal and to reverse and vary the decree in favour of the all the plaintiffs or defendants under Order 41 Rule 4 C.P.C. when the decree proceeds on a ground common to all the plaintiffs or defendants, if all the plaintiffs or the defendants appeal from the decree and any of them dies and appeal abates so far as he is concerned. The principles laid down in the above two decisions (8 and 9 supra) have no bearing to the facts of the case on hand since the issues in the interpleader suits viz., O.S. Nos. 444 and 544 of 1987 were not common with regard to the entitlement of the plaintiff's right of cancellation of the sale deed. The relief claimed by the tenants in those suits is as to whom they had to pay the rents in the light of the litigation pending between the parties in O.S. No. 8 of 1983. On granting the relief to the plaintiff herein, the suits filed by the tenants were disposed of directing them to pay the rents to the plaintiff. In view of the same, we do not see any merit in the contention of the learned Counsel for the appellant that the appeal cannot be proceeded and liable to be dismissed in limini and the same is accordingly rejected.

22. For the conspectus discussions as referred above and the conclusions reached by us, the appeal fails and is accordingly dismissed. There shall be no order as to costs.