

(2005) 07 AP CK 0014
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 102 of 1995

Smt. Nekkanti Surya Kantamma

APPELLANT

Vs

Smt. Sankuratri Annapurnamma and Another

RESPONDENT

Date of Decision : 22-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4, 11
Evidence Act, 1872 — Section 91, 92
Registration Act, 1908 — Section 60, 60(2), 91, 92
Transfer of Property Act, 1882 — Section 54, 55

Citation : (2005) 07 AP CK 0014

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : C. Ramachandra Raju, for the Appellant; A. Veeraswamy, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Smt. Nekkanti Suryakanthamma, 3rd plaintiff, who was added as per orders in I.A. No. 761/88 dated 17-7-1988 in O.S. No. 24/89, renumbered as O.S. No. 51/92 on the file of Subordinate Judge, Tanuku, preferred the present Appeal aggrieved by the Judgment and decree made therein dated 26-8-1999. The 1st respondent herein is the defendant in the said suit and the 2nd plaintiff in the said suit is shown as 2nd respondent in the present Appeal. The suit was originally instituted by Chilukuri Subbarayudu who died and yet another Chitturi Chinna Abbulu who is shown as 2nd respondent in the present Appeal. The said plaintiffs filed the suit praying for a decree against the defendant confirming possession of the 1st plaintiff given by the defendant in pursuance of the sale deed dated 17-6-1976 or in the alternative to grant decree against the defendant for delivery of possession of the plaint schedule property after ejecting defendant and her men therefrom to the 1st plaintiff, to grant future profits till the date of delivery of possession, to grant costs of the suit and also to grant such other suitable reliefs. The defendant in the suit as plaintiff filed

O.S.No. 288/79 on the file of District Munsif, Tanuku praying for permanent injunction restraining the defendants, their men from interfering with the possession and enjoyment of the plaint schedule property which was renumbered as O.S.No. 52/92. The 1st plaintiff in the aforesaid suit is shown as 2nd defendant in this suit. The learned Subordinate Judge, Tanuku had tried both the suits together, recorded evidence of PW-1 and PW-2, DW-1 to DW-3, marked Exs.A-1 to A-8, Exs.B-1 to B-5 and Exs.X-1 to X-3 and ultimately came to the conclusion that the 1st respondent herein, the defendant in O.S. No. 51/92 who is the plaintiff in O.S. No. 552/92, is entitled to the decree for permanent injunction and decreed the suit O.S. No. 52/92 and dismissed O.S. No. 51/92 and aggrieved by the same the 3rd plaintiff who was brought on record as aforesaid had filed the present Appeal.

2. Heard Sri C.Ramachandra Raju, the learned Counsel representing the appellant/3rd plaintiff and Sri Veeraswamy, the learned Counsel representing the 1st respondent/sole defendant in the suit.

3. Submissions made by Sri C. Ramachandra Raju : Sri Ramachandra Raju, the learned Counsel representing the 3rd plaintiff in the suit made the following submissions. The learned Counsel had explained the relationship between the parties and would maintain that the earliest suit was a suit for injunction simpliciter and no Appeal was preferred as against the said Judgment and decree since the rights of the present appellant/3rd plaintiff are in no way affected. The learned Counsel also pointed out that Ex.A-1 sale deed is not at all vitiated and in the facts and circumstances of the case, the learned Judge had erred in not declaring the title of the 1st plaintiff in the suit. The learned Counsel also explained why the 2nd plaintiff also was impleaded as a party in the said suit. While making elaborate submissions, the learned Counsel pointed out to the findings recorded by the trial Court on the aspect of coercion, undue influence and fraud and would contend that several of the findings would go to show that the stand relating to the ground of coercion virtually had been given up. The learned Counsel also would maintain that execution of Ex.A-1 is not specifically denied. However that being so, the framing of Issue No. 1 is not proper and on a careful reading of Issues 1 and 2 these Issues are inconsistent with each other and by framing Issue No. 1, the burden was placed on the plaintiffs instead of placing the same on defendant. The learned Counsel also had explained in detail the evidence available on record and would contend that in the light of Section 60(2) of the Indian Registration Act when there is an admission made before the Sub-Registrar by the defendant relating to the execution of the document, in the absence of clear particulars relating to undue influence, coercion or fraud, as the case may be, and in the absence of clear evidence in this regard, the plaintiffs in the suit are bound to succeed. The Counsel also would maintain that the finding recorded that there is no endorsement to the effect that the contents had been read over or explained to the defendant at the time of registration of Ex.A-1 would not alter the situation in any way inasmuch as the endorsement made by the Sub-Registrar would go to show that the defendant admitted the execution of

Ex.A-1. The learned Counsel also pointed out to Order 6 Rule 4 of the CPC in this regard. While further elaborating his submissions the learned Counsel had taken this Court thoroughly through the evidence of DW-1 and also PW-1 and had pointed out that DW-1 had not stated anything about these grounds and hence the findings recorded that Ex.A-1 is an invalid document cannot be sustained. The learned Counsel also had taken this Court through the recitals of Ex.A-1 and would contend that in the light of the recitals the oral evidence need not be given consideration in the light of Sections 91 and 92 of the Indian Registration Act 1872. The learned Counsel also pointed out to the evidence of PW-2 and Exs.X-1, X-2 and X-3 and would contend that in the light of this evidence it is clear that Ex.A-1 in fact was acted upon. That is the reason why the defendant had mortgaged only rest of the property for obtaining the loan. The learned Counsel also would further maintain that in the injunction suit no Issue relating to title as such had been framed and merely because both the suits were tried together and evidence was recorded and Common Judgment was delivered the mere fact that an Appeal was not preferred in the suit for injunction would not attract the operation of the doctrine of res judicata since the finding if any relating to title in an injunction suit cannot operate as res judicata in a suit for declaration of title and recovery of possession. The learned Counsel also explained that the stand that Ex.A-1 came into existence under certain circumstances and the same was not acted upon cannot be believed even in the light of the documents relied upon by the defendant herself. The learned Counsel also placed reliance in certain decisions.

4. Submissions of Sri A. Veeraswamy : Sri Veeraswamy, the learned Counsel representing the 1st respondent/defendant in the suit would maintain that the fact that the Judgment and decree made in the injunction suit had attained finality is not in controversy since no Appeal had been preferred. The learned Counsel would maintain that it is no doubt true that the question of title may have to be incidentally gone into in a suit for injunction. But the crucial aspect is one relating to possession and the question of possession being the common Issue in both the suits, the findings recorded in the said suit having attained finality would definitely operate as res judicata. The learned Counsel while further elaborating his submissions would maintain that this is an Appeal as against a suit which was tried along with yet another suit by way of joint trial and Common Judgment was delivered and when the findings in the said suit had not been questioned and the said findings attained finality, automatically they operate as res judicata and on that ground itself the Appeal is bound to fail. The learned Counsel in all fairness would submit that no specific Issue relating to title had been framed in the suit for injunction and despite the same the learned Counsel would maintain that the doctrine of res judicata is applicable and the decisions relied upon by the other side are distinguishable on facts. The learned Counsel also relied upon certain decisions. The learned Counsel while further elaborating his submissions had taken this Court through the evidence of DW-1, DW-2 and DW-3 and had explained the circumstances under which Ex.A-1 came

into existence and though the grounds of coercion, undue influence and fraud are not so clear or categorical the over all facts and circumstances may have to be appreciated while arriving at a conclusion whether Ex.A-1 is a valid document in the facts and circumstances of the case. The learned Counsel also explained the relationship between the parties and who would be the ultimate beneficiary and the problems which arose in the family and under what circumstances Ex.A-1 was registered. The learned Counsel placed strong reliance on the evidence of DW-2 in this regard apart from the evidence of DW-1 and DW-2. The learned Counsel also commented that except PW-1, one of the attestors of Ex.A-1 and a person who is interested in defeating the rights of the defendant, none else had been examined. The evidence of PW-2 is of no help in this regard. The learned Counsel also pointed out that the 2nd plaintiff also was not examined. Relating to place of execution also there is some discrepancy. The learned Counsel pointed out the findings recorded by the trial Court in relation to Ex.B-4. The conduct of the parties had been explained in detail. The learned Counsel would maintain that the suit for declaration of title and recovery of possession was dismissed disbelieving Ex.A-1 not only on the ground that the contents were not read over to the defendant but also taking into consideration several other circumstances. The learned Counsel also pointed out that the defendant is an illiterate lady and there is evidence that she was straight away taken from the hospital to the Sub-Registrar's office and not knowing the contents of the document her thumb impression had been obtained. The Counsel pointed out to certain adverse findings which had been recorded and would comment that the said adverse findings had not been questioned by way of Appeal.

5. On the strength of the respective pleadings of the parties, the evidence available on record, the findings recorded by the trial Court and the submissions made at length by both the Counsel on record, the following Points arise for consideration in the present Appeal :

1. Whether the findings recorded by the trial Court in relation to Ex.A-1 are to be confirmed in the facts and circumstances of the case or the said findings are liable to be disturbed by this appellate Court ?

2. Whether the appellant in this Appeal/3rd plaintiff in the suit, can prosecute the present Appeal only without questioning the Judgment and decree made in O.S. No. 52/92, a suit for perpetual injunction filed by the defendant ? 3. Whether the Judgment and decree made in O.S. No. 52/92 operates as res judicata in view of the fact that Common Judgment had been delivered in both the suits and an Appeal had been preferred as against the Judgment and decree made in one suit only ?

4. If so to what relief the parties are entitled to ?

6. Point No. 1 : The respective pleadings of the parties are as hereunder :

It was pleaded that the plaint schedule property was purchased by the 1st plaintiff for a consideration of Rs. 35,000/- on 17-6-1976 from the defendant.

The possession of the property was delivered to the 1st plaintiff. Though it was provided under the terms of the sale deed a bode was to be dug across the plaint schedule property it was not done due to pressure of transplantation. The 1st plaintiff's daughter's husband who is the husband's brother of the defendant had been assisting the 1st plaintiff in getting the land cultivated. The 1st plaintiff has been paying taxes and enjoying the crops. It was further pleaded that there were some disputes between the defendant's husband and 1st plaintiff's grand daughter's husband and in and about 1977 the defendant's husband filed I.P. No. 11/77. In May 1978 the defendant filed O.S.No. 288/79 (renumbered as O.S. No. 52/92) on the file of District Munsif, Tanuku and obtained temporary injunction in I.A. No. 889/79 without disclosing at all the sale deed in favour of the 1st plaintiff and it was pleaded that this was done to cause injury to the husband's brother of the defendant as the 1st plaintiff was reputed to be inclined to give the schedule property to her grand daughter in future. The 1st plaintiff filed I.A. No. 1142/79 to get the injunction order vacated. The 1st Additional District Munsif granted temporary injunction holding that the defendant was in possession of the schedule property on the date of the suit. The 1st plaintiff preferred C.M.A. No. 13/79 and the injunction was vacated and hence there was no impediment for her enjoyment of the property. It was further pleaded that the 1st plaintiff gave on lease the plaint schedule property to the 2nd plaintiff for cultivating the dalwa crop during 1980-81 some time near about 10-11-1980. Prior to that she realized the first crop in the month of November 1980. The defendant's son and son-in-law with the help of their henchmen began to harass the 2nd plaintiff while he was cultivating the land. The 2nd plaintiff raised 1235 variety of paddy crop in the suit land in the irrigable portion of Acs.1-25 cents and raised chillies seed bed on the high level portion in which there are coconut, jack fruit and mango trees. As such the 2nd plaintiff filed O.S. No. 122/81 on the file of District Munsif, Tanuku and obtained temporary injunction in I.A. No. 168/81 restraining the defendant and her henchmen from interfering with the possession and enjoyment of the 2nd plaintiff pending disposal of the suit. The defendant came forward with a petition I.A. No. 200/81 and also with an I.A. No. 203/81 in O.S. No. 288/89. All the petitions were heard together and the petitions were dismissed on 23-3-1981. The contention of the defendant was that though the injunction was vacated in C.M.A. No. 13/79 the Court found that she was in possession of the property on the date of the suit O.S. No. 288/79 and therefore the 1st plaintiff has to file a suit for recovery of possession. At the time of arguments the stand taken by the defendant was that though the sale deed was executed possession was not parted with and therefore the possession though unlawful has to be protected. It was further pleaded that the 1st plaintiff was let into possession in pursuance of the terms of the sale deed and this fact is also stated in the sale deed. However the defendant at the instance of her husband filed the suit O.S. No. 288/79 and tried to trespass into the property and taking advantage of the 2nd plaintiff's incapacity the defendant with the help of her henchmen and police got the paddy standing crop cut and stored on the high level mound admittedly belonging to her nearby on 25-3-1981. The

defendant and her henchmen are also likely to take possession of the hayrick and the chilly seed bed and appropriate the produce of the fruit bearing trees high-handedly and the defendant had been doing all this by asserting that she had been in possession. The 1st plaintiff is entitled to sue for the confirmation of possession or in the alternative for the recovery of possession of the suit property. The finding in C.M.A. No. 13/79 had been taken undue advantage by the defendant to trespass into the property. It was further pleaded that the sporadic and forcible acts of entry on 25-3-1981 for cutting the crop cannot be termed as dispossession of the plaintiffs. It was felt that it is better to file a suit for recovery of possession in the alternative without admitting but assuming that the defendant did not deliver possession to the 1st plaintiff on the date of sale. The 1st plaintiff is entitled to recovery of possession also based on the title conveyed by the sale deed executed by the defendant.

7. The 1st respondent herein, defendant in the suit, filed written statement denying the allegations. It was pleaded in the written statement as hereunder :

It was pleaded that the 1st plaintiff did not purchase the schedule property from the defendant on 17-6-1976. The 1st plaintiff did not pay Rs. 35,000/- either as part or full sale consideration to the defendant. The 1st plaintiff did not take possession of the land either through the subject sale deed or under any other document. The claim made by the 1st plaintiff is totally false. The arrangement made in the document is not true. The recitals in the document are not true and the said document is not enforceable. It was admitted that the husband of the grand daughter of the 1st plaintiff is the brother of the defendant but the contention that he is cultivating the land through the 1st plaintiff is not correct. The 1st plaintiff for the schedule land and the defendant for the land in TDMC O.S. No. 288/79 did not pay the land revenue. In order to support her contention the 1st plaintiff is paying the land revenue. Either the 1st plaintiff himself, or through Sankuratri Laxminarayana, husband of her grand daughter did not cultivate the land. The defendant through her lessees and her son and son-in-law is cultivating the land and is in possession of the same. It was further pleaded that Sri Laxminarayana is the husband of the daughter of the 1st plaintiff. The husband of the defendant and his brother Laxminarayana sustained heavy losses in their turmeric business till 1975. The business and house management is looked after by Laxminarayana. Laxminarayana used to look after the necessities of the family members. Due to the pressure of creditors in the business and in order to support the family property, Laxminarayana requested the husband of the defendant to have the properties on the names of the relatives. The defendant and her mother used to obtain signatures of the family members for business purpose. The defendant underwent major operation in June 1976. Laxminarayana attended the treatment of the defendant. When the defendant is not in good state of mind Laxminarayana took her to Sub-Registrar's Office, Penugonda and got her signatures. Laxminarayana threatened his mother stating that if she did not obey his words, the entire family would collapse. The contents of the document were not disclosed to the executant. Thus Laxminarayana got

the document dated 17-6-1976 into existence. It was specifically pleaded that the contents of the document are not known to the defendant. The defendant is only an impressionist and she was not lettered. She does not have an independent thinking. She did not receive Rs. 35,000/- or any part thereof. The contents of the document are not true and as such the document is not implemented. The 1st plaintiff does not have the capacity to pay such a huge amount. The document dated 17-6-1976 said to have been executed in favour of the 1st plaintiff is obtained with undue influence and coercion and as such it is a void document. It was admitted that the husband of the defendant filed I.P. No. 11/77. Laxminarayana having admitted that he had the document with fraud had executed a document before the elders. As the defendant is holding panchayats pressing Laxminarayana to discharge the debts by selling the properties standing in the name of his wife, mother-in-law and mother of mother-in-law she filed the suit O.S. No. 288/79 in order to enter into the lands and obtained injunction with mala fide intention. It was also further pleaded that though the injunction order granted in I.A. No. 889/79 in O.S. No. 288/79 is vacated by the Subordinate Judge, Tanuku in C.M.A. No. 13/79 the defendant did not lose possession of the schedule land at any time and the plaintiffs are never in enjoyment of the same. It was further pleaded that the contention that the schedule land was given on lease for Dalwa on 10-11-1980 had been denied. The contention that the plaintiff raised the first crop is also not correct. The son and the son-in-law of the defendant had raised the first and the second crops and enjoyed them. Raising of mirchi seedlings by the 2nd plaintiff also is not correct. Though the injunction had been vacated in C.M.A. No. 13/79 the defendant did not lose her possession and O.S. No. 288/79 is still pending. As the son and the son-in-law of the defendant are in possession of the land the contention that the land is taken over by the 2nd plaintiff is not correct. It is also denied that the son and the son-in-law of the defendant harassed the 2nd plaintiff for taking possession of the land. It was also further pleaded that the 2nd plaintiff never entered into the schedule land. The crops raised by the son and son-in-law of the defendant were enjoyed by themselves and none are enjoying it. The mirchi crop had been raised by the defendant only. As the persons of the defendant are in possession of the same there is no necessity for their trespassing into the land. The defendant is paying land revenue etc. The plaintiffs are not in possession of the land even during the period of pendency of O.S. No. 288/79 and O.S. No. 122/81 and as such their alleged possession cannot be confirmed. As the document obtained by Laxminarayana is not valid, the plaintiffs have no claim to get the schedule property and they are not entitled to any profits. As the son and the son-in-law of the defendant are cultivating the schedule land as lessees even prior to 17-6-1976 they are proper and necessary parties to the suit. The 2nd plaintiff is the farm servant of Laxminarayana. As the suit O.S. No. 288/79 established the rights of the defendant Laxminarayana got concocted the averments in O.S. No. 122/81 with an intention to defraud all the creditors and got the document executed in favour of the daughter of the 1st plaintiff who has no capacity to purchase.

8. On the strength of these pleadings, the following Issues were settled by the trial Court in the said suit :

1. Whether the alleged sale deed dated 17-6-1976 is true and valid ?
2. Whether the said sale deed is obtained by fraud, coercion and undue influence?
3. Whether the plaintiff is entitled for possession ?
4. Whether the suit is bad for non-joinder of parties ?
5. Whether the plaintiffs are entitled to future profits ?
6. To what relief ?

The other suit O.S. No. 52/92 which had attained finality is for injunction simpliciter filed by the defendant and it may be appropriate to have a look at the Issues settled in that suit also which are as hereunder :

1. Whether the plaintiff is entitled to permanent injunction ?
2. Whether the suit is not maintainable without asking for declaration of the cancellation of the document ?
3. To what relief ?

Both the suits were clubbed and evidence was recorded in O.S. No. 51/92. PW-1, PW-2 and DW-1 to DW-3 were examined. Exs.A-1 to A-8, Exs.B-1 to B-5 and Exs.X-1 to X-3 were marked. The learned Judge recorded findings in detail while answering Issues 1 and 2 in O.S. No. 51/92 and also answered Issue Nos.3, 4 and 5 and further answered Issues 1 and 2 in O.S. No. 52/92 at paras 71 and 72 and answered Issue No. 6 in O.S. No. 51/92 and Issue No. 3 in O.S. No. 52/92 at para-73.

9. It is no doubt true that the suit O.S. No. 52/93 is only a suit for permanent injunction and the findings recorded in relation thereto had attained finality. The question relating to the maintainability of a simple suit for permanent injunction without praying for the relief of cancellation also had been canvassed which had been specifically negated. The crucial question is the validity of Ex.A-1. It may be appropriate to have a look at the contents of Ex.A-1 which reads as hereunder :

Apart from the contents of Ex.A-1, the relevant endorsements made on the reverse of page-1 also may be relevant which are as hereunder :

It is shown in Ex.A-1 that the Government rate is Rs. 43,000/- while commencing the document itself. But however the sale consideration was shown to be Rs. 35,000/-. On a glance of Ex.A-1 it is clear that the defendant i.e., DW-1 is a marks woman and her left thumb impression had been affixed. It was also recited that on the same day delivery of possession was effected. It was further recited that the sale consideration was paid at the time of writing of the

document and the said amount was received by the defendant. The endorsement made by the Sub-Registrar is ".

Section 60 of the Indian Registration Act 1908 deals with Certificate of Registration and Sub-section (2) of Section 60 specifies :

"Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by the Act, and that the facts mentioned in the endorsements referred to in Section 59 have occurred as therein mentioned."

In *Sri Kripa Ram and Ors. v. Smt. Maina* 2003(1) C.C.C. 144 (H.P.) it was held that it is now well settled that the presumption of due execution of a document arises from the endorsement of the Sub-Registrar u/s 60 of the Act and where there was such an endorsement to the effect that the contents were read over and explained to the vendor, the presumption was held to be that the contents of the sale deed were read over and explained to her and hence the first appellate Court was not right in reversing the findings of the trial Court on the ground that the contents of the sale deed were not read over and explained to the plaintiff. In *Akula Madhava Rao and Another Vs. P. Rukmini Bai*, a Division Bench of this Court while dealing with Section 60(2) of the Act aforesaid held that the proof of registration of a document is no proof about its due execution. In *Sennimalai v. Sellappa* AIR 1929 P.C. 81 it was held that where a person admits execution before the Registrar after the document has been explained to him, it cannot subsequently be accepted that he was ignorant of the nature of transaction. Submissions at length were made by both the Counsel on this aspect in relation to the validity of Ex.A-1 that the absence of endorsement relating to reading over and explaining the contents would not vitiate Ex.A-1 as per the Counsel for the appellant and the same may have to be appreciated in the back ground of the factual situation as per the contentions advanced by the Counsel for the 1st respondent. Much comment was made on the absence of details of the respective pleadings relating to the grounds of coercion, undue influence and fraud and the evidence of DW-1 in this regard. It is true that the trial Court recorded certain findings to the effect that certain of these grounds had not been clearly established. Much comment had been made relating to the same on the ground that these are adverse findings. PW-1, the son-in-law of the 3rd plaintiff, deposed that the 3rd plaintiff is the natural daughter of the 1st plaintiff and the defendant is his brother's wife and the plaint schedule property was purchased by the 1st plaintiff from the defendant under Ex.A-1 sale deed and he is one of the attestors of the sale deed and the land is at Vadali and the 1st plaintiff belonged to Chinamallam, six miles away from Vadali. Ex.A-1 was executed at Vadali where this witness and his brother were living together. Ex.A-1 was scribed by Village Karanam of Achanta, Veeranjanya Sarma. PW-1 also deposed that out of Acs.3-87 cents, only Acs.2-00 had been purchased by the 1st plaintiff. It was agreed between the parties that a bode may be dug from the remaining land of the defendant to the land sold and a right to draw water from the feeder

point was given to the purchaser. The defendant affixed her thumb impression on Ex.A-1 with full knowledge of the contents of it. She wanted to purchase the land at Thungabadra. The consideration was paid at the time of execution and within six days of execution Ex.A-1 was registered. One Uppalapati Suryanarayanamurthy, then working as Clerk with their family was one of the identifying witness. Satyavathi, the other identifying witness is his mother. Nekkanti Pallayya, the other attestor is his sister's husband. PW-1 further deposed that after the land was delivered the 1st plaintiff had taken up cultivation and he used to assist the 1st plaintiff. PW-1 further deposed that they are six brothers and defendant's husband acted as manager of joint family doing turmeric business. In that connection there were disputes between PW-1 and his brother. The defendant filed a suit for permanent injunction O.S. No. 288/79 and obtained interim injunction. The 1st plaintiff sought for vacation of the same. The 1st plaintiff preferred C.M.A. No. 13/79 which was allowed. Ex.A-2 is a certified copy of the order. PW-1 also deposed that in the year 1980, the land was leased to the 2nd plaintiff who raised dalwa paddy crop in an extent of less than one acre and in the rest of the land he raised chilli seedbed. The 2nd plaintiff filed a suit O.S. No. 1 22/81 against the defendant and also filed a separate application for grant of injunction and the application was dismissed. The 2nd plaintiff stacked the paddy heap on high level mound of suit schedule land. The defendant forcibly had taken away the same and they also removed the chilli seedlings. Hence both the plaintiffs filed the suit for confirmation of their possession, injunction or in the alternative recovery of possession with profits. Subsequent thereto the 1st plaintiff died and her only daughter was added as 3rd plaintiff in the suit who is his mother-in-law. Ex.A-3 is Encumbrance Certificate for the schedule land which shows that the defendant obtained loan only for the remaining extent of land besides the property already alienated. Ex.A-4 is the certificate issued by the Co-operative Bank showing the loans granted to the defendant earlier and later. Ex.A-5 is the land revenue receipt in the name of the 1st plaintiff. This witness was cross-examined at length relating to several details of the family. This witness deposed that he got five brothers and since 1974 they are living separately and till 1974 the business was joint, but they used to live separately. They had not partitioned the properties and even now the brothers are joint and the suits are pending and he filed a suit for partition in the year 1978 and it is pending. No doubt PW-1 denied the suggestion that he had not filed any suit for partition. This witness also deposed that all the brothers did turmeric business on partnership basis but it is not a joint family venture. He used to purchase turmeric and his brother Suryanarayana used to look after the business. PW-1 used to go to Calcutta for sale of turmeric. Because of loss the business was wound up in the year 1976 for want of funds. In 1978 he came to know that his brother cheated them in business and appropriated amounts. Till 1978 he had not asked his brother about the same. His brother filed I.P. No. 11/77 and he received summons. Then he came to know about the cheating committed by his brother. This witness PW-1 also deposed that he does not remember whether he received summons in the I.P. in the year 1977 or 1978.

The 1st plaintiff is the mother of his mother-in-law and he (PW-1) is looking after the suit. While the 1st plaintiff was alive she used to attend the Court. After the death of the 1st plaintiff PW-1 is looking after the suit. The 1st plaintiff has no husband and she was a marks woman. The 1st plaintiff brought him to Tanuku for filing the suit. This witness denied the suggestion that he worked as agent on behalf of the 1st plaintiff and that he brought her to the Advocate and gave instructions. This witness PW-1 further deposed that the 3rd plaintiff asked him to give evidence in the case. PW-1 also further deposed that he does not know whether any suits are pending against the 1st plaintiff and the defendant prior to this suit. After the death of the 1st plaintiff the 3rd plaintiff informed about those suits! which had been transferred to this Court. He does not know about the contention of the defendant in the said suit. Prior to 1974 the 1st plaintiff sold about Acs.5-00 of land belonging to her husband and also a house. The said property was joint property of 1st plaintiff and her husband. He cannot say how they secured the property and he does not know the survey number or boundaries or the extent of the land and he never saw the land. By the time of his marriage, the 1st plaintiff's husband died. The 1st plaintiff sold that land and house property in the year 1962. The 1st plaintiff and the husband of the 3rd plaintiff sold the land and house in the year 1962 and 1963. He further deposed that he does not know whether the 3rd plaintiff joined with them in selling the properties and he was not present at the time of sale. He does not know for how much consideration she sold the property. Cash was with the husband of the 3rd plaintiff. As the 1st plaintiff used to live with the 3rd plaintiff she kept the money with the husband of the 3rd plaintiff. PW-1 deposed that his father-in-law was alive and his father-in-law has got Acs.30-00 of land. The 1st plaintiff gave money to the husband of the 3rd plaintiff. PW-1 further deposed that one Nekkanti Balayya is his sister's husband and PW-1 and Balayya are in good terms. One of the brothers of PW-1 by name Gopalakrishna is doing turmeric and saggubhiyyam business in Calcutta. His brother Gopalakrishna executed a Power of Attorney in favour of his brother-in-law. Balayya is a resident of Achanta. The other four brothers executed General Power of Attorney deed in his favour. This witness also further deposed that his marriage took place in the year 1961 and this witness deposed about the promissory note executed by Venkanna in the year 1970 in favour of the 1st plaintiff. Several other details relating to the family also were put to this witness. This witness also deposed that on 8-10-1970 as Power of Attorney holder of his brothers, himself and his s! ister's husband sold Acs.3-26 cents. The registration extract of the sale deed is Ex.B-1 in favour of the 1st plaintiff. On the same day they sold land in favour of his wife to an extent of Acs.4-44 cents. On 11-10-1976 they sold Ac.1-00 of land in favour of the 3rd plaintiff. The registration extract of the sale deed is Ex.B-2. The 3rd plaintiff had Acs.4-00 of land at that time. He does not know the survey numbers of that land and boundaries and his wife had Acs.4-00 and odd and they sold that land and purchased Acs.4-44 at Vadali. He does not know the survey numbers of the land sold by his wife, but he knows the boundaries. This witness PW-1 further deposed that the husband of the defendant filed I.P. No. 11/77 and the printed

copy is Ex.B-3 and he was adjudged insolvent and the matter is pending before the O.R. The scribe of Exs.B-1 and B-2 and other documents i.e., Power of Attorney deeds and other sale deeds in favour of the 1st and the 3rd plaintiffs and his wife belongs to Eluru but he came down to Vadali and scribed the documents. Several questions were put in relation to these documents and several suggestions in this regard also had been denied. This witness specifically deposed that it is not true to suggest that his mother used to manage the family affairs and it is not true to suggest that he is in possession of all the accounts relating to turmeric business. This witness deposed that Ex.A-1 was scribed at Vadali at his house. The distance between Vadali and Achanta is six miles and there is a Village Karanam in his village who is a document writer. The scribe of Ex.A-1, Achanta Karanam, was brought by the 1st plaintiff. The distance between Achanta and Chinamallam is two miles. Four or five days prior to Ex.A-1 the bargain was settled under Ex.A-1 and the bargain was settled at Vadali at his house. By then Achanta Karanam was not present. PW-1 specifically deposed that his sister's husband Pallayya was present then. It was decided to execute the document on 17-6-1976. The 1st plaintiff informed him that Pallayya got purchased stamps for Ex.A-1 and he does not know whether Achanta Karanam scribed any other document relating to the 1st plaintiff. The defendant is a marks woman. The defendant's husband furnished survey numbers etc. for scribing the document Ex.A-1. The defendant's husband and his brother-in-law Pallayya furnished the information for scribing Ex.A-1. Pallayya knows about the survey numbers of all the lands relating to his family. He also knows about the boundaries and extents. He was present at the time of furnishing information for scribing Ex.A-1. The 1st plaintiff is a marks woman and she was not able to read Ex.A-1 or other documents. She was also present then. The defendant Annapurnamma was also present. The 1st plaintiff and the defendant did not read the contents of Ex.A-1. He had not read over the contents of Ex.A-1 to 3rd plaintiff and the defendant and he represented the 1st plaintiff at the time of Ex.A-1 and he also represented the 1st plaintiff at the time of bargain and settlement of transaction under Ex.A-1. PW-1 was cross-examined in relation to Exs.B-1 and B-2 also and several other details relating to Ex.A-1 were elicited in cross-examination. PW-1 further deposed that there is dimma in an extent of Acs.1-25 cents out of Acs.3-95 cents. He also deposed that in the plaint it is mentioned that bode is to be dug in the suit schedule property and it is not done due to transplantation. On the Eastern side the bode was laid but on the Southern side it was not laid and it was due to level of the lands and he cannot say the reasons why it was not mentioned in the plaint and the bode was in existence by the date of the suit and he does not know whether any objections were filed on the report of the Commissioner. This witness also deposed that they were indebted some amount to Anney Babuji and executed a pronote and Anney Babuji filed a suit against them and he filed E.P. against all the brothers and in the E.P. he engaged an Advocate and he does not know whether the said Babuji got the crop attached in the plaint schedule property and the defendant filed a claim petition in the execution court and that claim petition was allowed. PW-1

further deposed that it is not true to suggest that he received notice in the claim petition and that he was aware of all the proceedings. The 1st plaintiff brought the amount and paid under Ex.A-1. The 1st plaintiff gave cash to Pallayya and Pallayya in turn gave it to the defendant. Cash in all Rs. 100/- denominations had been paid. This witness deposed that it is not true to suggest that the defendant does not know how to count the currency notes and it is not true to suggest that no consideration was paid to the defendant under Ex.A-1. Ex.B-4 is a certified copy of E.A. No. 209/77 in E.P. No. 37/77. It is not true to suggest that in the absence of the defendant PW-1 requested Pallayya to get the documents scribed at Achanta and that the same was not scribed at Vadali. Sever! al suggestions put in relation to bode, Ex.A-1 and Exs.B-1 and! B-2 had been specifically denied. PW-1 also deposed that by the date of filing of the suit one Chinnabbulu was cultivating the plaint schedule lands as tenant and Chinnabbulu cultivated the land from 1977 June to March 1980 and he is not a farm servant. No doubt he denied the suggestion that Chinnabbulu is his farm servant. The schedule in I.P. No. 11/77 is Ex.B-5. This witness denied that Ex.A-1 is a created document. This witness also deposed that his brother-in-law Pallayya is a graduate. This witness also deposed that the sale consideration of Rs. 35,000/- was received by the defendant and he does not know how she utilized that amount. The disputes in between the defendant and himself arose three years after Ex.A-1. In the year 1977 the defendant went to Thungabhadra. After the death of the 1st plaintiff the 3rd plaintiff is in possession of the properties of the 1st plaintiff and PW-1 is attending to the cultivation. Suryanarayana and the mother of PW-1 went to Sub-Registrar's office. The mother of PW-1 might have asked him to come to the Sub- Registrar's office. The 1st plaintiff went to Sub-Registrar's office and she had borne all the registration expenses. PW-1 and Pallayya signed in Ex.A-1 at one point of time and he does not remember whether himself and Pallayya and the scribe signed with the same pen. PW-1 also denied other suggestions. This witness deposed that Nekkanti Suryanarayana raised a dispute with him with regard to the execution of Ex.A-1 and he admitted before him that he obtained Ex.A-1 by fraud and accordingly he executed a letter and that he also admitted the same before Pallayya. This witness deposed that Nekkanti Suryanarayana died in the year 1974 and when he was cross-examined with permission. PW-1 denied the suggestion that Nekkanti Suryanayana died after the execution of Ex.A-1.

10. Apart from the evidence of PW-1, the evidence of PW-2 is available on record who deposed that he is the Secretary of Sri Agastheswaraswamy Primary Agricultural Society, Vadali since the last three years and he brought Ex.X-1 declaration on summons. DW-1 borrowed loan from the Bank under Ex.X-1 and discharged the debt. This witness also deposed that he was not working at the time of Ex.X-1 and he does not know who filed Ex.X-1 and he cannot say whether the thumb mark in Ex.X-1 is that of DW-1. Unless he looks into record he cannot say who discharged the debt. He deposed that Ex.X-1 will not be returned even after discharge of the debt but the documents would be returned.

Ex.X-2 is the application submitted by DW-1 for return of her title deeds. PW-2 further deposed that he was present at the time of writing of Ex.X-2 and he does not know the attesor of Ex.X-2. The name of the scribe is not mentioned in Ex.X-2. He was not summoned to produce Ex.X-2 but PW-2 brought the entire file. PW-1 served summons on him for production of Ex.X-1 and other records. As Ex.X-2 is received from DW-1 they did not affix their stamp but it was entered in the declaration register. Ex.X-2 was not noted in the declaration register, but it was affixed in the said register just like other applications. This witness denied the suggestion that Ex.X-2 was fabricated at the instance of one Lakshminarayana (PW-1). This witness also deposed that they obtained thumb impression of DW-1 at the time of original document in the declaration register. The photostat copy of the same is Ex.X-3. He deposed that he can identify PW-1 and denied the suggestion that the thumb mark on the original of Ex.X-3 is not that of PW-1. PW-3 deposed that knows D. Venkateswara Rao, their Clerk, who got affixed the thumb mark of PW-1 in his presence.

11. DW-1, the defendant in the suit was examined on 11-8-1993. DW-2 was examined on 18-4-1994. Apart from DW-1 and DW-2, DW-3 also was examined. DW-1 deposed about the running of turmeric business and due to mismanagement of PW-1 they sustained loss in the family business and her husband filed I.P. No. 7/77. At that time PW-1 obtained Exs.B-1 and B-2 in the name of the 1st plaintiff and the mother of PW-1 and his mother-in-law used to live with PW-1 and she cannot sign. PW-1 filed a suit for partition of the family properties. The 1st plaintiff has no properties. PW-1 is in possession and enjoyment of all the family properties. DW-1 specifically deposed that PW-1 used to obtain his signatures on papers in connection with family business. The 1st plaintiff did not pay Rs. 35000/- to her. She does not know the contents of Ex.A-1 and she was in Raju's Nursing Home in Penugonda due to major operation and there were no negotiations in respect of Ex.A-1 property. She doesnot know the scribe and attestors and they have not signed on Ex.A-1 in her presence. This witness also deposed that she was not in a position to understand the matters by the time of Ex.A-1. PW-1 came to the hospital and she had no occasion or opportunity to obtain the opinion/advice of other people. Her husband was not present at the hospital at that time and PW-1 did not read over the contents of Ex.A-1 to her. At the instance of PW-1 she signed on Ex.A- 1 and she had no necessity or intention to sell the land. PW-1 Satyanarayana and Gopalakrishna used to manage the family. DW-1 further deposed that to defraud the creditors they executed several documents but they had not received any consideration under those documents. Ex.A-1 land is being cultivated by her son and they filed O.S. No. 52/92 for injunction. DW-1 further deposed that they are in possession of the said land by the date of filing of O.S. No. 52/92. The 1st plaintiff was never in possession and enjoyment! of the suit land. The 2nd plaintiff is not a tenant. This w! itness also deposed that she had not purchased any land in Thungabhadra. This witness also deposed that her brother Suryanarayana questioned PW-1 about Ex.A-1 but he did not give any reply. Her

daughter was given in marriage to the son of Suryanarayana and she also deposed about the death of Suryanarayana. This witness also deposed that PW-1 has been looking after the properties of the 1st plaintiff and Ex.A-1 is not supported by any consideration and they are entitled for injunction as prayed for in O.S. No. 52/92. This witness DW-1 was cross-examined. She deposed that her husband is the elder brother of the member of the family and two years after her marriage her father-in-law died and her mother-in-law used to look after the domestic affairs. During the lifetime of her father-in-law he managed the properties and after his death the husband of DW-1 managed the properties. She also deposed that after the death of her father-in-law her husband and his brothers started business in turmeric. PW-1 and Satyanarayana used to stay at Calcutta for the purpose of business. Her husband and his other brothers used to look after the family business at Vadali. One K. Musalayya is in possession and enjoyment of Ac.7-00 of their family land. DW-1 deposed that she does not know as to how he came into possession of the said land and prior to Musalayya her husband was in possession of the said land. She also deposed that ten days prior to Ex.A-1 she joined in Raju's Nursing Home and her mother-in-law Satyavathi was with her in the hospital. DW-1 deposed that she had not affixed any thumb marks on Ex.A-1 and she affixed her thumb marks on white papers. N. Pallayya is the husband of Krishnaveni who is the sister of her husband. She (DW-1) does not know Uppalapati Suryanarayanamurthy. DW-1 denied the suggestion that she went to the Sub-Registrar's office on the date of registration of Ex.A-1 and put her thumb impression on Ex.A-1 in the presence of the Registrar. This witness further deposed that her family is dependent on Acs.3-87 cents. She borrowed loan from Co-operative Society, Vadali on Acs.3-87 cents and she never went to her land. Her husband and children used to cultivate the lands. She had discharged the loan amount borrowed from the Co-operative society, Vadali. After Ex.A-1 she borrowed loan for Acs.1-87 cents from the same Co-operative society. The 3rd plaintiff is the only daughter to the 1st plaintiff. The 3rd plaintiff got all the properties of her mother after the death of the 1st plaintiff. They filed O.S. No. 52/92 for Acs.2-00 of land after she came to know about Ex.A-1. Though the properties are not partitioned her husband and his brothers are having separate means and there is no dispute with her mother-in-law and she is having confidence on her. Due to loss in turmeric business her husband and his brother Ramachandrarao filed I.P. No. 11/77 and she does not know the debts of her husband and his brothers. She also deposed that she executed settlement deed in favour of her daughter for the remaining Acs.1-87 cents and she denied certain suggestions.

12. DW-2, Nekkanti Pallayya, is the crucial witness who is related to both DW-1 and PW-1. This witness deposed that DW-1 is the wife of his brother-in-law and PW-1 has got five brothers and he attested Ex.A-1. Four or five days prior to Ex.A-1, PW-1 came to him and requested him to get a sale deed executed by DW-1 in favour of the plaintiff and he got drafted the sale deed with the help of the details given by PW-1. The 1st plaintiff and DW-1 never approached him for

execution of Ex.A-1 sale deed. By the time the scribe put his signature on Ex.A-1, the attestors and the executants had not signed therein. Four days after writing Ex.A-1 it was brought to him by PW-1. Then DW-2 and PW-1 signed on Ex.A-1. He had not seen DW-1 affixing her thumb mark on Ex.A-1. The amount of Rs. 35,000/- was not paid in his presence and he does not know whether DW-1 was living at that time. All the brothers except Venkatanarayana and Ramachandrarao did turmeric business and sustained loss. The youngest brother of PW-1 executed Power of Attorney in his favour. In pursuance of the Power of Attorney he executed Exs.B-1 and B-2. The other brothers gave Power of Attorney to PW-1 and this witness (DW-2) and PW-1 executed Exs.B-1 and B-2 and he did not receive consideration under Exs.B-1 and B-2. Ex.B-2 is executed in favour of PW-1's mother-in-law. Ex.B-1 was executed in favour of PW-1's wife. They were executed to discharge the family debts and to run the business with the remaining sale proceeds. This witness also deposed that after the execution of Exs.B-1 and B-2 the debts were not discharged and no amount was paid to Gopalakrishna. The property under Ex.A-1 was not delivered and it is still in possession of Annapurnamma/DW-1 and he does not know anything about the registration of Ex.A-1. This witness was cross-examined at length in relation to I.P. No. 7/77. This witness admitted that he gave affidavit in I.A. No. 336/81 in favour of and in support of the defendant. But however he also denied the suggestion that in view of the enmity developed between the defendant's husband and the 1st plaintiff he is supporting the defendant and gave the said affidavit. Several questions were put to this witness in relation to Exs.B-1 and B-2 and also in relation to Ex.A-1. This witness also was cross-examined at length in relation to the Power of Attorney. This witness also deposed that Ex.A-7 is the agreement executed by PW-1 and his two brothers. Nekkanti Rama Rao is the father-in-law of PW-1 and the parties of Ex.A-7 agreed for the conditions mentioned therein. This witness also deposed about DW-1 undergoing operation.

13. The third witness on behalf of the defendant, the scribe of Ex.A-1, Village Karanam of Achanta, was examined. This witness deposed that Ex.A-1 was scribed by him and both parties of Ex.A-1 had not approached him to write Ex.A-1 and the consideration was not paid before him and he does not know the schedule lands personally. At the instance of DW-2 he scribed Ex.A-1 and all the particulars were given by DW-2 and Ex.A-1 was written at Achanta. It is needless to say that the evidence of PW-1 on the place of execution is something different from the place mentioned by this witness, DW-3. In cross-examination this witness deposed that the signature on the affidavit filed in I.A. No. 336/81 is his signature and it is Ex.A-6. His father was the Village Karanam of the village. This witness specifically denied that Annapurnamma/DW-1 put her thumb mark on Ex.A-1 in his presence at the time of its execution and that Rs. 35,000/- was paid by the deceased 1st plaintiff to DW-1 in his presence at Vadali and the land was delivered to the deceased 1st plaintiff in his presence. This witness also denied the other suggestions.

14. It is no doubt true that when the plea of coercion, undue influence or fraud

are raised, the party to give particulars in view of Order 6 Rule 4 of the Code of Civil Procedure. See *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd. and Others*, . Reliance also was placed on *Tulsiram Khirchand v. Chunnilal Panchamsao* 5, AIR 1938 Nagpur 391. There cannot be any quarrel relating to these propositions.

15. It is also no doubt true that Issue No. 1 is not happily worded by the trial Court. But however, both the parties were conscious of the questions in controversy and had let in evidence. In the light of the same, the mere fact that Issue No. 1 had been framed in a particular fashion can not be said to have caused any prejudice to the appellant/3rd plaintiff. It is also true that where a registered sale deed is there with an endorsement made by the Sub-Registrar, there cannot be any doubt about the registration of such a document. However, the registration of a document is something different from the proof of execution of the document as such. Section 54 of the Transfer of Property Act defining Sale reads as hereunder :

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made: Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale: A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled, between the parties. It does not, of itself, create any interest in or charge on such property.

Section 55 of the Transfer of Property Act 1882 deals with Rights and liabilities of buyer and seller. Section 55(1)(f) specifies that the seller is bound to give on being so required the buyer or such person as he directs such possession of the property as its nature admits. In *Som Distilleries and Breweries Ltd. Vs. Govt. of A.P. and Others*, it was held that where the sale deed was executed the mere fact that the vendee was not in possession of the property does not invalidate the sale. In *Siddireddy Satyanarayana and Others Vs. Kadim Papa Rao*, it was held that the question as to whether the title from the vendor to the vendee has passed on the execution and registration of the sale deed or not on account of non-payment of consideration depends upon the intention of the parties which may have to be looked into to decide whether the sale deed operated as transfer of interest from the vendor to the vendee on the date of its execution.

16. It may be pertinent to note that the beginning portion of Section 54 of the Transfer of Property Act 1882 itself specifies that the sale is a transfer of ownership in exchange for a price paid or promised or part paid and part

promised. Though the pleading of the defendant is not happily worded, in substance the stand taken by the defendant is that in the light of the facts and circumstances Ex.A-1 never intended to be in fact a sale, which is not supported by any consideration whatsoever and never possession was delivered and at the best it is just a nominal transaction which was not intended to be acted upon and hence never the title passed in favour of the 1st plaintiff. In substance that appears to be the stand. DW-1 is just a marks woman and her evidence also shows that her family members alone have been cultivating the lands. While dealing with the execution of a document by a pardanashin lady the Apex Court in Mst. Kharbujia Kuer Vs. Jangbahadur Rai, held that in such a case the burden to establish that she executed it after understanding it is on him who relies on such document. Reliance also was placed on Bibi Jaibunnisa Vs. Abdul Ghafoor and Others, . While dealing with the execution of document by an illiterate lady and proof of execution a learned Judge of Orissa High Court in Kuma Dei Vs. Md. Abdul Latif, relying on the decision of the Apex Court referred (8) supra held at para-9 as hereunder : "Testing the facts of the present case as revealed in the evidence on record in the light of the principles enunciated in the aforementioned decided cases, it is manifest that the only evidence relating to execution of the document Ext.5 is the testimony of PW-4. The said witness has stated that Exts.4 and 5 were scribed on the instructions of defendants 1 and 2; that both the documents were scribed by him simultaneously; that the defendant No. 1 knows only how to sign, she can neither read nor write. Significantly enough, the scribe has not made any statement that he had read over and explained the contents of the document Ext.5 to defendant No. 1 and that she had put her signature on it after understanding its contents. Concededly, no other person present at the time of execution of the document has been examined as witness in the case. Even the defendant No. 2, father of the defendant No. 1 has not been examined as witness in the case. The courts below had laid stress on! the facts that defendant No. 1 though an illiterate lady was aware of the transfer as she had taken a certain document from the plaintiff previously and further her father was present all along by her side when the document in question was executed. Even accepting these facts, the legal requirements as enunciated by the Supreme Court and this Court in the decisions noted earlier, are not satisfied, particularly in view of the absence of any evidence to show that the contents of the documents were read over and explained to the defendant No. 1 and that she had understood the same. As observed by the Supreme Court, this factual position could be established by direct evidence or circumstantial evidence. As noted earlier no such evidence has been noted in the judgments of the courts below and no such evidence was also placed before me to show her mental condition and her awareness of the nature and contents of the agreement Ext.5. Further, in the facts and circumstances of the case, particularly in the backdrop of the mortgage deed previously executed by him in favour of defendant No. 1 and the arrangement in question arrived at by the parties when the plaintiff was unable to repay the mortgage loan, there is nothing incongruous or unnatural in execution of the agreement for reconveyance of the property on full payment of

the loan amount."

17. It is true that the trial Court recorded certain findings that the evidence of DW-1 also is neither clear nor in consonance with the pleading. But the evidence of DW-1 may have to be appreciated in the light of the facts and circumstances of the present case and also in the back ground of the family circumstances and the other evidence available on record. It is true that PW-2 deposed about Exs.X-1 to X-3 and it is but natural that in the light of the existence of some document the loan would have been advanced for the remaining extent only and that cannot be taken as a serious adverse circumstance to be attacked as against the 1st respondent/defendant. On the aspect of demarcation by bode and also on the aspect of place of execution of Ex.A-1, there are certain discrepancies. Apart from this aspect of the matter, findings in detail had been recorded relating to Ex.B-4 and though PW-1 and Ors. were parties, at no point of time this contention had been raised. This is a very crucial aspect for the reason that the whole of the evidence of PW-1, if carefully scrutinized, would go to show that he has been looking after all these affairs and hence he is definitely interested in the validity or invalidity of Ex.A-1. In such circumstances, the trial Court taking into consideration the evidence of PW-1 and also DW-1 had recorded findings in detail and had arrived at the conclusion that Ex.A-1 is not a valid document. In substance the contention of the learned Counsel for the appellant is that in the light of the vague pleading and the vague evidence of DW-1 on the grounds of coercion, fraud and undue influence on which the defendant placed reliance, to negative the relief, the same not having been substantiated, automatically Ex.A-1 to be held as a valid document and the plaintiffs are entitled to a decree. This contention though appears to be attractive, cannot be accepted for several reasons referred to infra. The family circumstances of PW-1 and the relationship between the parties also may have to be taken into consideration. Apart from this aspect of the matter, in view of the differences long after the filing of the suit for injunction the present suit for declaration and possession had been thought of. Yet another important aspect is that PW-1 also deposed about the presence of DW-2 in relation to the transaction at all times. Hence the crucial witness will be DW-2 who is equally related to both PW-1 and DW-1. No doubt certain suggestions were put to DW-2 in this regard which had been denied. The evidence of the 1st plaintiff is not available for the reason that she was no more and the 3rd plaintiff was not examined. The 2nd plaintiff, the alleged tenant, also was not examined and none others concerned with the transaction Ex.A-1 also had been examined except PW-1 and PW-1 alone. As against this evidence of PW-1, the defendant/DW-1 deposed that she is an illiterate lady and when she was in the hospital she was taken to the Sub-Registrar's office and she also explained the family circumstances under which the family was placed at the relevant point of time. She specifically deposed about the non-passing of the consideration. She also deposed about the non-delivery of possession which is also an important aspect. It may be that depending upon the circumstances this by itself may not invalidate the sale transaction but if all the facts and

circumstances are taken into consideration this aspect relating to delivery of possession also would be crucial in the light of the evidence of non-passing of consideration under Ex.A-1. As already referred to supra, in Ex.A-1 the Government rate is shown as something different from the sale consideration. Delivery of possession had been recited. Payment of consideration also had been recited. Certain submissions were made in the light of Sections 91 and 92 of the Indian Evidence Act that the oral evidence cannot be looked into. This is a matter concerned with the execution of Ex.A-1 and the proof thereof and hence definitely the attestors and the scribe and the parties to the document definitely can explain the facts and circumstances. DW-2 in clear and categorical terms explained the non-passing of consideration. Apart from this aspect of the matter, DW-3 also deposed clearly on all the aspects. Even on the place of execution there is some controversy, PW-1 taking a different stand. On an over all appreciation of the facts and circumstances, the stand taken by PW-1 had been disbelieved. Hence in the peculiar facts and circumstances of the case, it can be said that merely because an endorsement by the Registrar had been made the same cannot be taken advantage of and Section 60(2) of Indian Registration Act cannot be brought in aid so as to validate an otherwise invalid transaction. Though certain of the findings by the trial Court are not happily worded, the trial Court in substance had appreciated the whole evidence available on record and came to the correct conclusion relating to the validity of Ex.A-1 and hence the findings in detail had been recorded by this Court appreciating the evidence available on record in toto as already referred to supra.

18. Point Nos. 2 and 3 : Submissions in elaboration had been made relating to the aspect whether this Appeal can be heard on merits in the light of the non-filing of Appeal as against other Judgment and decree in the suit for permanent injunction filed by the defendant i.e., O.S. No. 52/92. It is true that in the suit for permanent injunction no specific issue relating to title had been framed. But it is pertinent to note that the aspect of possession is the crucial aspect, whether under Ex.A-1 in fact possession was delivered and whether any consideration had been paid under Ex.A-1 or not and whether it is a valid document. The Apex Court in Gram Panchayat of Village Naulakha Vs. Ujagar Singh and Others, in the back ground of a collusive decree and operation of res judicata, Section 44 of the Indian Evidence Act and Section 11 of the Code of Civil Procedure, held that the decision in a suit for injunction is not binding on the question of title even though the issue of title was framed in other suit and incidental finding on question of title was given. A Division Bench of this Court in R.V.S. Vara Prasad and Others Vs. Dr. V. Ramdas, also held that a decision of a Civil Court in the earlier suit for injunction cannot operate as res judicata in a latter suit between the same parties for declaration of title and recovery of possession. Reliance also was placed on Sajjadanashin Sayed Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai Ummer and Others, to explain the test to determine whether an issue is directly and substantially in issue or whether collaterally or incidentally in issue.

19. It is true in a suit for mere injunction which had been filed by the defendant

no issue relating to title had been framed. There is no controversy that both the suits were clubbed and a Common Judgment was delivered. The question of possession is undoubtedly a common question in both the suits. No doubt in view of the doubt, in alternative, recovery of possession also had been prayed for while praying for declaration of title in the present suit against which the present Appeal had been preferred. In *Ramprakash v. Charan Kaur* 1997(2) Supreme 409 where petitioner and respondents filed suits against each other claiming damages and the cause of action in both the suits being the same and the suit of respondents had been decreed and the suit of the petitioner had been dismissed, in Appeal against dismissal the decree in favour of the respondents cannot be questioned since it became final and since the subject matter is the same the dismissal of the petitioner's suit would operate as *res judicata* and the High Court came to the correct conclusion in holding so and accordingly the SLP was dismissed. Strong reliance was placed on the decision of the three Judge Bench of the Apex Court in *Premier Tyres Limited Vs. Kerala State Road Transport Corporation*, wherein the Apex Court held :

"The validity of this finding has been assailed by Shri Raja Ram Agarwal, the learned Senior Advocate appearing on behalf of the appellant. It is urged that Section 11 of the CPC does not apply as such. According to him since both the suits were connected and decided by a common order the issue in neither suit can be said to have been decided in a former suit. Therefore, the basic ingredient of Section 11 of the C.P.C. was not satisfied. The submission derives some support from observations in *Narhari and Others Vs. Shankar and Others*, , that, "even when there are two suits it has been held that decision given simultaneously cannot be a decision in the former suit". But this decision was distinguished in *Sheodan Singh Vs. Smt. Daryao Kunwar*, , as it related to only one suit, therefore, the observations extracted above were not relevant in a case where more than one suit were decided by a common order. The Court further held that where more than one suit were filed together and main issues were common and appeals were filed against the Judgment and decree in all the suits and one appeal was dismissed either as barred by time or abated then the order operated as *res judicata* in other appeals. In the present case there were different suits from which different appeals had to be filed. The High Court's decision in the two appeals arising from suits Nos.77 and 91 was undoubtedly earlier and therefore the condition that there should have been a decision in a former suit to give rise to *res judicata* in a subsequent suit was satisfied in the present case. The contention that there was no former suit in the present case must therefore fail. In *Ramagya Prasad Gupta and Others Vs. Murli Prasad and Others*, , an effort was made to get the decision in *Sheodan Singh Vs. Smt. Daryao Kunwar*, reconsidered. But the Court did not consider it necessary to examine the matter as a subject matter of two suits being different one of the necessary ingredients for applicability of Section 11 of the C.P.C. were found missing.

Although none of these decisions were concerned with a situation where no

appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non-filing of appeal against a judgment or decree is that it become final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from.

Mention may be made of a constitution bench decision in *Badri Narayan Singh Vs. Kamdeo Prasad Singh and Another*, . In an election petition filed by the respondent a declaration was sought to declare the election of appellant as invalid and to declare the respondent as the elected candidate. The Tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The appellant's appeal was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection of the respondent was upheld. The Court observed, "We are therefore of opinion that so long as the order in the appellant's appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that that finding is incorrect.

Thus the finality of finding recorded in the connected suit, due to non-filing appeal, precluded the Court from proceeding with appeal in other suit. In an view of the matter the order of the High Court is not liable to interference."

It is no doubt true that the short question which had fallen for consideration before the Apex Court in the above decision is the effect of non-filing of Appeal in the connected suit tried together with common Issues. An attempt was made to distinguish this decision. A Division Bench of this Court in *K. Krishnan and Others Vs. Tirumala Tirupati Devasthanams and Another*, held at paras 25 to 29 as hereunder :

"By reason of the Judgment and decree in O.S. No. 4/87 becoming final, can it be said that this appeal is barred by *res judicata* ? We think, the answer is in the affirmative. In *Sheodan Singh Vs. Smt. Daryao Kunwar*, four suits were consolidated and tried together with the consent of the parties. By a common judgment, the civil Court disposed of the four suits but separate decrees were drawn up in each suit. Five issues were common in all the suits, and there were other issues in each case separately. One of the common issues related to the respective rights of the parties to the suit property. Against the decrees in the four suits, two appeals were preferred to the High Court and two appeals to the District Court and later the appeals were transferred from the District Court to the High Court to be heard along with the other two connected appeals. Two of the four appeals were dismissed by the High Court - one on the ground of limitation and the other on account of failure to apply for translation and printing

of the record as required by the rules of the High Court. The question was whether the dismissal of the two appeals would constitute res judicata in so far as the other two surviving appeals were concerned. A Full Bench of the Allahabad High Court took the view that the surviving two appeals must fail on the ground of res judicata. Affirming that view, the Supreme Court held :

"It is well settled that where a decree on the merits is appealed from, the decision of the trial Court loses its character of finality and what was once res judicata again becomes res sub judice and it is the decree of the appeal Court which will then be res judicata. But if the contention of the appellant were to be accepted and it is held that if the appeal Court dismisses the appeal on a preliminary ground, like limitation or default in printing thus confirming in toto the trial Court's decision given on merits, the appeal Court's decree cannot be res judicata the result would be that even though the decision of the trial Court given on the merits is confirmed by the dismissal of the appeal on a preliminary ground, there can never be res judicata." On that reasoning, the Supreme Court concluded :

"We are therefore of opinion that where a decision is given on the merits by the trial Court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial Court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal."

The common question in controversy in both the suits in question was whether the suit was an inam land or private land belonging to appellant No. 1's ancestor, from whom it was taken on lease by the second appellant's father. Although the first appellant was not a party to O.S. No. 4 of 1987, the rest of the appellants were fighting the battle of the first appellant's rights as a landlord. They had no independent rights and they were fully incharge of the entire litigation. It is not the specific language in which the issues were framed but the substance of the same must be taken into consideration in deciding the question of res judicata. As observed by the Supreme Court in *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, the provisions of Section 11 of the CPC are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principles of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit.

What was the "matter in controversy" in both the suits in question ? Undoubtedly, the controversy pertained to the nature of the suit land. The finding given is that it is an inam land granted for devadayam purpose to Kurathalwar temple and that appellants 2 to 5 herein are encroachers. Appellant No. 1 had no title and no evidence, whatever, was brought on record by him to establish the

title of his ancestors. Issue No. 3 in O.S. No. 146 of 1987 - whether the plaintiff-Tirumala Tirupati Devasthanams is entitled to injunction as prayed for - and issue Nos.1 and 2 in O.S. No. 4 of 1987- (i) whether the plaintiffs are entitled to perpetual injunction, and (ii) whether the plaintiffs are entitled to a mandatory injunction as prayed for - practically cover the same ground. If this appeal is to be heard and decided on merits, there is a likelihood of inconsistent decrees coming into existence since the very source of the title in both the suits as put forward by the appellants herein is identical and such a situation is precluded by the principle of res judicata. As observed by the Supreme Court, "one of the tests for deciding whether the doctrine of res judicata applies to a particular case or not is to determine whether two inconsistent decrees will come into existence if it is not applied (See : Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead) by L. Rs., .

The result of the decree in O.S. No. 4 of 1987 is that the appellants 2 to 6 herein who were claiming their rights from appellant No. 1 are trespassers, they have no title and that they are liable to be evicted. That decree which attained finality cannot be disturbed indirectly by adjudicating the very same questions in the present appeal. The decisions relied upon by Sri M.L. Narasimham, learned Counsel for the appellants, in Nannu Prasad Vs. Nazim Husain , Man Mohan Das Vs. Shib Chandra Saha and Another, and Ram Sarup v. Sarnu Mal (AIR 1938 Lah 114) are not in point. Nannu Prasad Vs. Nazim Husain relates to a second appeal which arose out of one suit from which two appeals were filed. Both the appeals were decided by a common judgment and two decrees were prepared. One party had not preferred an appeal but the other party had preferred a second appeal. The Allahabad High Court held that the second appeal was not barred by res judicata following an earlier Full Bench decision in Ghansham Singh Vs. Bhola Singh, . The Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, distinguished Ghansham Singh Vs. Bhola Singh, on the ground that it was a case of one suit from which two appeals had arisen but not two suits.

In Man Mohan Das Vs. Shib Chandra Saha and Another, , there were two suits instituted by the same parties against each other. Both were tried together and one of the parties preferred an appeal from the decision in which he was the defendant and not from the other suit instituted by him. It was held that the latter would not operate as res judicata. The Calcutta High Court in coming to that conclusion followed the Madras High Court's view in Panchannan v. Vaidyanatha (1906) 29 Mad. 333) and the Allahabad High Court's view in Ghansham Singh Vs. Bhola Singh, which as already noticed was distinguished by the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, . It, therefore, follows that the Calcutta High Court's view is no longer a good law. Ram Sarup's case (AIR 1938 Lahore 114) was decided on the basis of a Full Bench judgment of the Lahore High Court reported in Mt. Lachhmi v. Mt. Bhull (1927) 14 AIR Lah 289) and this decision was held to be "incorrect" by the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, . We, therefore hold that A.S. No. 462/91 filed against O.S. No. 146/87 is liable to be dismissed on the ground of

general principles of res judicata."

In Arumugha Nainar Vs. Lakshmana Perumal (died) and others, where one suit was for declaration of title and recovery of possession by appellant/plaintiff and another suit by defendant for declaration of his title and injunction and both suits were tried together, it was held that where decree in one of the suits became final the Issues decided therein cannot be reopened in Second Appeal against the decree passed in Appeal arising out of another suit. The same view was expressed in M. Subramanian v. C. Chottabhai and Co., (1990) 1 L.W. 182

20. Since several ingredients are to be satisfied as a foundation to satisfy the Court relating to the validity of Ex.A-1, one such being want of factum of possession, the said question had been agitated between the same parties in yet another litigation which had attained finality and to the said limited extent the same would operate as res judicata. In the light of the other aspects, inasmuch as ample evidence is available on record the other questions which had been argued in elaboration on this aspect need not be discussed further. It is suffice to state that on appreciation of evidence, this Court is satisfied that Ex.A-1 is not a valid document since the same is styled as a sale transaction which is not supported by consideration nor possession had been delivered and nor DW-1, the alleged executant, had knowledge about the contents of the same and it came into existence in the peculiar circumstances.

21. Point No. 4 : In the light of the findings recorded above, this Court is of the considered opinion that the Appeal is bound to fail and accordingly the same shall stand dismissed. In view of the close relationship between the parties, this Court makes no order as to costs.