
(2017) 11 KAR CK 0014
In the Karnataka High Court
Case No : 1435 of 2007

Sri Daulatarao Ramachandra Jadhav

APPELLANT

Vs

Smt. Janabai Anandarao Jadhav

RESPONDENT

Date of Decision : 10-11-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 96](#)
[Order 41 Rule 31](#) - Appeal from original
decree
[Hindu Succession Act, 1956](#), [Section 14\(1\)](#)
- Prop

Citation : (2017) 11 KAR CK 0014

Hon'ble Judges : K.N. Phaneendra

Bench : SINGLE BENCH

Advocate : D. P. Ambekar, A. Syed Habeeb

Judgement

1. This appeal is preferred against the judgment and decree passed by the Principal Civil Judge (Sr., Dn.,) Bijapur in O.S.No.315/2000 dated 23.03.2007.
2. The Trial Court has decreed the suit of the plaintiffs declaring that the Gift deed dated 22.04.1946 (in the Trial Court's judgment, Gift deed date is wrongly mentioned as 26.04.1946) made in favour of Smt. Laxmibai from her husband Ramachandra Jadhav. Another Gift deed dated 30.01.1969 (in the Trial Court's judgment, in several places, the date of gift deed is wrongly mentioned as 03.02.1969) executed by Smt.Laxmibai in favour of the defendant as null and void and not binding on the share of the plaintiffs and further decreeing the suit of the plaintiffs stating that the plaintiffs are entitled for equal half share in the suit schedule property.
3. For the purpose of easy understanding and convenience, the ranks of the parties as per their ranks before the Trial Court.
4. The plaintiffs (defendants herein) are the legal representatives of one Anandarao Jadhav. The said Anandarao Jadhav is none other than the elder

brother of the defendants. Both are sons of one Ramachandra Jadhav resident of Bijapur. The deceased-Ramachandra Jadhav had a wife by name Smt. Laxmibai and both of them were blessed with two children by name Anandarao and Doulatarao. As stated above, plaintiffs are the legal representatives of the deceased-Anandarao.

5. The plaintiffs claim that the property bearing CTS No.671/7 measuring 200 square yards of Ward No.V of Bijapur originally belonged to one Kalyani Sripad Mutalik and the same was purchased by Ramachandra Jadhav (father of defendants and Anandarao) under a valid sale deed dated 23.12.1933. After the death of said Ramachandra Jadhav in the year 1957 precisely on 19.11.1957, late Anandarao and defendant-Doulatarao got effected partition in respect of another property of the family bearing CTS 739/2A. The disputed property (suit schedule property) was not partitioned in view of Ramachandra Jadhav and Smt. Laxmibai were residing in the said house with Doulatarao at that particular point of time.

6. Till the death of Anandarao, he was looking after the affairs of the family and there was no occasion for the plaintiffs to look into the matter of the property of the family. During the lifetime of Anandarao, Anandarao was telling that the suit schedule property yet to be partitioned and that defendant was ready and willing to do so but there was no occasion for the plaintiffs to ransack the state of affairs and therefore, there was no partition in respect of the suit schedule property.

7. It is the further contention of the plaintiffs that after the death of Anandarao in the year 1996, the plaintiffs have asked for Anandarao's share, but the defendant did assert that he would part with the property later. But in spite of repeated requests, he did not part with the property. On the other hand, the plaintiffs suspecting the bonafide of the defendant and got the rumour of the defendant asserting to knock off the property, they were constrained to obtain certified copy of the property extract and they were shocked to know that during the lifetime of Ramachandra Jadhav, he allotted the suit schedule property in favour of late Smt. Laxmibai by way of oral gift deed dated 22.04.1946 without the knowledge of his first son - Anandarao. The defendant taking advantage of the same, got the mutation of the said property in the name of Smt. Laxmibai and thereafter, got another gift deed executed in his favour from Smt. Laxmibai on 30.01.1969 and thereby, made an attempt to knock off the said property. The alleged gift deed dated 30.01.1969 was not within the knowledge of Anandarao during his lifetime. Therefore, the plaintiffs have obtained the copy of the said gift deed dated 30.01.1969 as well as the varadi dated 24.06.1946 and then only came to know about the systematic conspiracy by the defendant to knock off the property particularly, the share of the deceased-Anandarao.

8. It is also specifically stated in the plaint that the suit property being the self acquired property of Ramachandra Jadhav, after his death, his wife Smt. Laxmibai, Anandarao's first son and defendant have succeeded to the said property according to their personal law. The property worth more than

Rs.10,000/- at the time of the alleged execution of the above said gift deeds. Therefore, said Smt. Laxmibai did not get any title to the property by virtue of the alleged oral gift deed dated 24.06.1946. Therefore, the gift made by Ramachandra Jadhav and further alleged gift made by said Smt. Laxmibai in favour of the defendant are not binding and remained totally unaffected so far as the share of Anandarao is concerned. It is further contended that the gift deed alleged to have been executed by Laxmibai would not create any full fledged absolute right over the defendant in respect of the entire suit schedule property.

9. The plaintiffs have filed this suit explaining that, the cause of action for the suit arose in the month of February 2000 when the plaintiffs came to know about the alleged oral gift in favour of Smt. Laxmibai and registered gift deed in favour of the defendant, by Smt. Laxmibai and therefore, they filed the suit within the period of limitation. The plaintiffs prayed for declaration that the alleged oral gift deed dated 22.04.1946 made in favour of Smt. Laxmibai by Ramachandra Jadhav as void, illegal and did not divest the property in her favour. Further, claimed that the registered gift deed executed by Smt. Laxmibai in favour of the defendant dated 30.01.1969 is not binding to the extent of the share of late Anandarao and for partition and separate possession of the share of deceased-Anandarao as per law and for such other relief's as the Court deems fit to grant under the facts and circumstances of the case.

10. In pursuance of the summons issued by the Trial Court, the defendant strenuously contested the suit. He has specifically taken up the contention that the averments made in the plaint are all false which are derogatory to the interest of the defendant and he has specifically denied the allegations made by the plaintiffs against him, except the relationship and the suit schedule property was the absolute property of his father.

11. It is the specific case of the defendant that his father deceased-Ramachandra Jadhav was the exclusive absolute owner of the suit property. During his lifetime he has given the said property to his wife i.e., Smt. Laxmibai by giving a Varadi and Jawab to the CTS authorities in the year 1946 (22.04.1946) to the effect that he has given the said property as THONDI11 BAKSHISH to his wife and the said act of the deceased- Ramachandra was voluntary and it was by way of a family arrangement in order to provide maintenance to his wife. The actual possession of the property was also given to the deceased-Smt. Laxmibai and she had been in possession and enjoyment till her death. The said Smt. Laxmibai has also executed a registered gift deed in favour of the defendant in the year 1969 (30.01.1969). She was in possession till her death and after her death, the defendant continued to be in possession and enjoyment of the same. At the time of giving Varadi, deceased-Ramachandra Jadhav due to ignorance has used the word "THONDI BAKSHISH" in his statement before CTS authorities. By virtue of this, said Smt. Laxmibai acted as exclusive owner of the suit property and she has gifted that property to the defendant and accordingly, the defendant acquired right, title and interest over the property. Therefore, Anandarao had no

share or interest in the suit property.

12. It is also pleaded by the defendant that the mother of the defendant by virtue of Section 14(1) of Hindu Succession Act, has acquired valid title and possession over the property and from 1946 to 1969 she had also perfected her right and title by adverse possession against the whole world. Therefore, the plaintiffs cannot claim that the said Smt. Laxmibai had no title to gift the property in favour of the defendant.

13. It is further contended by the defendant that though the deceased-Anandarao was having knowledge about the above said factual aspects, did not raise his little finger till his death and as such, the plaintiffs and deceased-Anandarao have lost all their rights, as they have not filed any suit within the statutory period. As such, even if there was any right, the same has been extinguished.

14. It is further contended that from the date of registered gift deed, the defendant has been in possession and enjoyment of the property as an absolute owner since 1969. Therefore, no suit is maintainable for declaratory relief as the same is barred by limitation. For all these reasons, the defendant has prayed for dismissal of the suit.

15. The Trial Court after considering the above said pleadings of the parties has framed several issues. Subsequently, the issues have been modified and ultimately, the recasted issues are as follows:- RECASTED ISSUES

1. Whether the defendant proves that he has become owner of suit property in view of the alleged gift deed dated 30.01.1969 said to have been executed by his deceased mother Laxmibai?

2. Whether the defendant proves that alleged gift deed dated 03.02.1969 executed by deceased Laxmibai is binding on the plaintiffs?

3. Whether the plaintiffs prove that the alleged gift dated 24.06.1946 and alleged gift dated 30.01.1969 are illegal and concocted?

4. Whether the plaintiffs are entitled for the share in the suit property?

5. Whether the defendant in the alternative proves that deceased Laxmibai had perfected the title over the suit property by adverse possession since 1946?

6. Whether the defendant proves that Laxmibai had become exclusive owner of suit property U/Sec.14(1) of Hindu Succession Act, in view of the alleged maintenance or family arrangement said to have been done by her husband deceased Ramachandra Jadhav?

7. Whether the suit is barred by limitation?

8. What order or award?

16. In order to prove their case, the plaintiffs have examined in all, three

witnesses as P.Ws.1 to 3. P.W.1 is none other than the son of deceased-Anandarao. They also got marked five documents as Exs.P-1 to P-5. The defendant also examined himself as D.W.1 and got marked six documents as Exs.D-1 to D-6.

17. The Trial Court, after analyzing the oral and documentary evidence on record, answered Issue Nos.1, 2, 5 to 7 in the Negative and Issue Nos.3 and 4 in the Affirmative and consequently, decreed the suit of the plaintiffs granting half share in the suit schedule property in favour of the plaintiffs disbelieving the oral gift dated 24.06.1946 and registered gift deed dated 30.01.1969.

18. Being aggrieved by the said judgment and decree, the defendant has preferred this appeal. The appellant has specifically taken the following grounds before this Court :- i) Learned Trial Judge has not properly appreciated the documents i.e. the Jawab and Varadi of Ramachandra Jadhav under which the property was given to Smt. Laxmibai in lieu of her maintenance right from 24.06.1946 which was prior to the amendment of the Hindu Succession Act, 1956. The said Smt. Laxmibai was in exclusive possession and enjoyment of the said property and enjoyed rental income and thereby, acquired right, title and interest over the property, blossomed into absolute right by virtue of Section 14(1) of the Hindu Succession Act, 1956.

ii) It is further alleged that the Trial Court has wrongly held that the defendant has not established the execution of the gift deed by his mother dated 30.01.1969, for which the deceased Anandarao was also an attesting witness and learned Trial Judge has also not properly drawn the presumption under Section 90 of Indian Evidence Act as the said document was proved to be thirty years old.

iii) The plaintiffs have not sought for cancellation of the gift deed as they have not specifically denied the execution of the gift deed by Smt. Laxmibai. Therefore, an evasive reply by the plaintiffs creates no responsibility to the defendant to prove the gift deed. Even otherwise, as the said document is of thirty years old, the production itself is a proof, but the Trial Judge has failed to appreciate the oral and documentary evidence produced before the Court which amply makes it clear that the parties have treated the allotment of the property in favour of Smt. Laxmibai by Ramachandra Jadhav for her maintenance, prior to 1956 by recognizing her pre-existing right. Therefore, she became the absolute owner, by virtue of amendment to Hindu Succession Act in the year 1956. For all these reasons, the appellant claims that the judgment and decree passed by the Trial Court is illegal and the same is liable to be set aside and consequently, prayed for dismissal of the suit of the plaintiffs.

19. I have carefully examined the oral and documentary evidence produced before the Trial Court by the respective parties with reference to their pleadings and also carefully examined the Trial Court's judgment, and legal and factual aspects involved in this particular case.

20. After analysis of the entire material on record, the points that would arise for

consideration of this Court are:- POINTS FOR CONSIDERATION

1) Whether the trial Court has committed any serious legal error in holding that the gift, Varadi and Jawab made in favour of Smt.Laxmibai by Ramachandra Jadhav is not valid and the same did not confer any right, title and interest in favour of said Smt. Laxmibai under Section 14 (1) of the Hindu Succession Act, 1956 and that she had no alienable right and title to the said property, as such, the defendant would not get any right over the property?

2) Whether the trial Court has committed any serious legal error in not properly drawing the presumption under Section 90 of Indian Evidence Act with reference to the registered gift deed executed by Smt. Laxmibai in favour of the defendant on 30.01.1969 and further erred in not considering the oral evidence with respect to this aspect of the parties?

3) Whether the Trial Court has committed any serious error in appreciating the oral and documentary evidence on record with reference to the intention of the parties in treating the suit property as exclusive property of the deceased Smt. Laxmibai and that the defendant has acquired any right, title and interest over the property?

4) What Order ?

21. My answer to the above said points are as follows: Point No.1 :- In the Affirmative.

Point No.2 :- In the Affirmative.

Point No.3 :- In the Affirmative.

Point No.4 :- As per final order for the

following :-

22. Before advertng to the points formulated by this Court, it is just and necessary to bear in mind the provisions of CPC particularly, Section 96 and Order XLI Rule 31 of CPC. Order XLI Rule 31 of CPC mandates that the judgments of the appellate Court shall be in writing and shall state (a) the point for determination; (b) the decision thereon; (c) the reasons for decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

23. Section 96 of CPC is a substantive provision which gives a right to the party to file an appeal. Therefore, the appellants have got every right to challenge the judgment and decree of the Trial Court on all counts particularly, on facts and also legal aspects involved in that particular case. Therefore, law imposes an imperative duty and obligation on the Court of appeal for giving an adequate and satisfactory judgment as is required by law. It is the duty of the Court to explain its reasons for doing so. More particularly, when the Court has gone through the facts and law, and gave reasons for the conclusion arrived at, the above

provisions are mandatory. The first appellate Court always has to step into the shoes of the Trial Court to ascertain whether the conclusion arrived at by the Trial Court on facts or law is proper and correct or not. The appellate Courts have to come to their individual and independent conclusion after appreciation of legal and factual aspects of the case and thereafter, it has to test whether reasons assigned by the Trial Court on both factual and legal aspects are proper and correct.

24. Bearing in mind the mandate of law under the above said provisions, now I will proceed to discuss the points formulated by this Court for discussion.

25. Point No.1 formulated by this Court is referable to issue Nos.3 and 6 as framed by the Trial Court. So far as point No.2 is concerned, it covers issue Nos.1, 2 and partially issue No.3. Point No.3 covers issue Nos.4 and 7 as framed by the Trial Court.

26. Now I will discuss the above points in detail. REASONS POINT No.1

27. The learned counsel for the appellants in support of the grounds urged before this Court strenuously contends that the Trial Court has committed serious legal error and also factual error in coming to the conclusion that the document executed by the father of defendant by name Ramachandra Jadhav is not valid one, as it specifically speaks about the Varadi and jawab given by the said person to the revenue authorities to change the katha of the suit schedule property in the name of his wife Smt. Laxmibai. The Trial Court has not properly appreciated the legal aspects and also factual aspects in this regard and failed to hold that the said property was actually given in favour of Smt. Laxmibai by Ramachandra Jadhav towards maintenance, though it is mentioned in the said letter as "THONDI BAKSHEESH" to his wife. The Trial Court has not legally appreciated the said factual aspects with reference to Section 14(1) of the Hindu Succession Act, 1956.

28. Per contra, learned counsel for the respondents submitted that the said document is referred to as "Thondi Baksheesh" which in fact amounts to a gift and the same has not been registered in accordance with law. Hence, the said document did not convey any right, title and interest in favour of Smt. Laxmibai. Therefore, the Trial Court has properly appreciated the said document and also held that Smt. Laxmibai did not get exclusive right over the entire property so as to execute a gift deed in favour of the defendant on 30.01.1969. Therefore, the Trial Court has properly appreciated the oral and documentary evidence with reference to Section 14(1) of the Hindu Succession Act, 1956 and it does not call for any interference.

29. There is no dispute that the parties are Hindus. Before advertng to the factual aspects of this case, it is just and necessary to bear in mind as to under what circumstances, the property given to a female Hindu becomes her absolute property under Section 14 of the Hindu Succession Act. The Hon'ble Apex Court in ample decisions explained, as to under what circumstances a female Hindu

would get an absolute right over a property as an absolute property under Section 14 of the Hindu Succession Act.

30. Section 14 of the Hindu Succession Act, gainfully extracted which reads as follows: "14. Property of a female Hindu to be her absolute property.-

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation:- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

31. On plain reading of the above said provision, it is clear that the said provision is retrospective in operation because Section 14(1) of the Hindu Succession Act itself says that, if the female Hindu possessed any property as on the date of the Act coming into force acquiring the said property before or after commencement of the Act, shall be held by her as full owner thereof and not as a limited owner even though the said property was given to her as a limited estate. The Explanation to Section 14(1) of the Hindu Succession Act further clears the doubt that if the property is acquired by a female Hindu whether movable or immovable by specific mode i.e., inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by way of gift from any person, whether prior to or commencement of the Act, such property will become her absolute property. In this background, let me go through some of the decisions of the Hon"ble Apex Court.

32. In a decision reported in 1979 (3) Supreme Court Cases 300 in the case of Bai Vajiya (dead) by LRs., Vs. Thakorbbhai Chelabhai and others, the Hon"ble Apex Court has observed that Section 14(1) of the Hindu Succession Act and its applicability depends upon the facts and circumstances of each case. Subsection (1) of Section 14 of the Hindu Succession Act gives right to a female Hindu to hold the property as full owner irrespective of whether she acquired it before or after the commencement of the Act, if she fulfils two conditions, which must co-exist for the applicability of sub-section i.e., (i) she must be in possession of the property; and (ii) such property must be possessed by her not as a limited owner.

(b). In another ruling reported in 1987 (2) Supreme Court Cases 572 in the case of Jagannathan Pillai Vs. Kunjithapadam Pillai and others, the Hon"ble Apex Court has observed that, "The purpose of Section 14(1) of the Act is to make a widow who has a limited interest, a full owner in respect of the property in question regardless of whether the acquisition was prior to or subsequent to the commencement of the Act. The intention of the legislature was to do away with the concept of limited ownership in respect of the property owned by a Hindu female altogether. Even if the widow has acquired interest in the property and possessed the property after the commencement of the Act, her limited right would ripen or mature into an absolute interest or full ownership. All that has to be shown by her is that, she had acquired the property and that she "possessed" the property at the point of time when her title was called into question, in view of Section 14(1) comes into operation at the point of time when the widow has an occasion to claim or assert a title to the property. The expression "possessed" pertains to the acquisition of a right or interest in the property or control over the property and not to actual physical possession or constructive possession of the property acquired by force without any legal right."

(c). In another ruling reported in 1987 (3) Supreme Court Cases 674 in the case of Gulwant Kaur and another Vs. Mohinder Singh and others, the Hon"ble Apex Court considering in detail Explanation to Section 14(1) has laid down that a Hindu female in possession of the property in lieu of maintenance as on the date of Hindu Succession Act, 1956, she would become the absolute owner of the property under Section 14(1) of the Hindu Succession Act, 1956. The Hon"ble Apex Court has held that,- "The question was not whether the husband intended to give away the land absolutely to his wife but whether the land was given to her in lieu of maintenance. The husband's letter clearly established that the land was given in lieu of maintenance. Thereafter, wife was not required to further establish her title to the land. The distinction made by the High Court between day-to-day expenses and maintenance was unwarranted."

In the above particular case, the facts are also relevant. The husband by a letter to the first appellant inter alia entrusted his land by stating that,- "Its produce, lease money, etc., will fetch you a minimum of Rs.1,200/- annually i.e., Rs.100/- per month for maintenance. He also promised to pay Rs.100/- every month for maintenance. But subsequently her husband sold the land to the respondent despite her protests. The purchaserrespondents thereupon instituted a suit for an injunction restraining the appellants from interfering with their possession. The High Court held that the first appellant was merely allowed to receive the proceeds of the land in order to meet her day-to-day expenses, that the land was not intended to be given away to the first appellant completely and as such she did not acquire any such right or interest in the property as could be termed "limited ownership" to permit her to take the benefit of Section 14(1) of the Hindu Succession Act." Disagreeing with the said conclusion of the High Court, the Hon"ble Supreme Court has observed in the above said manner extracting the letter of husband which is sufficient to hold that the said property was given

in lieu of her maintenance. Therefore, her right has been blossomed into an absolute right.

33. After perusal of the above said decisions as well as the provisions of Section 14(1) of the Hindu Succession Act, it is clear that Section 14(1) has a very wide and extensive application and has to be read in a comprehensive manner as the Act overrides old law governing the properties of the female. The Act confers full heritable capacity and absolute ownership on the female heir. This section dispenses with the traditional limitations of conferring limited estate on the female Hindu to hold and transmit the property. It should be borne in mind that under Hindu Law which in operation prior to the coming into force of this Act, a woman's ownership of property was hedged in by certain delimitations on her right of disposal and also on her testamentary power in respect of that property and also with reference to her absolute ownership. By virtue of interpretation of the provision under Section 14 of the Hindu Succession Act, in the enactment, the above said barricades have been completely removed and the Act presupposes if any property possessed by a female Hindu whether acquired before or after commencement of the Act becomes absolute property of the said lady, if the said property was given in recognition of her preexisting right.

34. The words "acquired" or "possessed" as used in the Section has to be understood by means of giving widest possible meaning. This is amply borne out by the very comprehensive language used in the Explanation to the said sub-section. The object of this section is to declare a Hindu widow, in cases falling under the section, to be as absolute owner of the property. The section puts her as an absolute owner of the property.

35. The expression "possessed" used in the early part of the section appears to have been deliberately used by the legislature. The radical change intended to be made in the limited connotation of woman's property and the distinct departure from the old law has the effect of converting any property acquired or possessed by a Hindu female prior to or after the Act as her absolute property. The word "possessed" is used in this section in a very broad sense in order to construe that the woman need not be in actual physical possession or personal occupation of the property but it may be possession in law, which may either be actual or constructive. What is the nature of the property that has been given and in which manner the property has been given to her by her husband or anybody and whether by means of recognizing her pre-existing right or there being any pre-existing right, or an independent right has been created is the only question to be determined by the courts. It all depends on the construction of the instrument relied upon by the woman or his successor and also ascertainment of intention of the party on the basis of the evidence led by the parties and also on analyzing the entire materials on record. The facts have to be examined by the Court meticulously in the light of the principles recognized under Section 14 of the Hindu Succession Act. Even if any instrument in favour of a female restricts her right in any manner but by operation of Section 14, it will blossom into an

absolute right after the Act coming into force.

36. Therefore, it clears the doubt that old Hindu law of all schools particularly, Hindu Women's Right to Property Act, 1937, has completely eradicated and amended so as to confer greater rights on women. It conferred right upon the widow or female, whether governed by Mitakshara or Dayabhaga law, rights of inheritance from her husband's property, even where the husband left male issue. If the object of present section is properly and meaningfully understood, it is of two folds; firstly to remove the disability of female to acquire and hold the property as an absolute owner; secondly, to covert any estate already possessed or acquired by a woman on the date of commencement of the Act as a limited owner, into an absolute estate. In the case of her death intestate, she becomes a fresh stock of descent and the property devolves on her heirs by succession and not by way of reversion. As I have said, the Act is retrospective in effect. Even the properties which are possessed and acquired by a female Hindu by way of any recognized mode under Section 14 of the Hindu Succession Act, it will become her absolute property. If a property is given to a lady orally in recognition of her maintenance right or for arrears of maintenance, then also it will become her absolute property. If a female is inducted into possession of the property without executing any deed of transfer as envisaged by the Transfer of Property Act, the circumstances and the factual aspects disclose that the said property was given to her and put her in possession in recognition of pre-existing rights like maintenance right, then also it will become her absolute property. The wordings used in Section 14 of the Hindu Succession Act, particularly, in the Explanation, the property acquired by a female by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift have to be read distinctly and disjunctly giving independent meaning to each and every word used in the section. Therefore, even the property given in lieu of maintenance or arrears of maintenance or by means of any mode of devise, the said property if it is possessed by a female Hindu as on the date of Act coming into force, then also the said property will become her absolute property.

37. Bearing in mind the above said principles, as well as proper and correct interpretation of Section 14 of the Hindu Succession Act, it becomes the responsibility of the Court to ascertain from the factual aspects and also documentary or oral evidence adduced by the parties whether in a particular case the property was given to a female Hindu in recognition of her preexisting rights or in lieu of maintenance.

38. In this background, now let me consider the documentary and oral evidence produced and adduced by the parties, particularly how the parties have treated the said transaction.

39. It is the plaintiffs' case that property in dispute was given by late Ramachandra Jadhav to his wife Smt. Laxmibai as per Ex.P2 recognizing her maintenance right on 22.04.1946 and on the basis of the same, she was put in possession and katha has been made out in the name of Smt. Laxmibai on

26.04.1946 as per Ex.P1. Ex.P1 is the property Register Extract which clearly discloses the said aspect that on the basis of the jawab of Sri Ramachandra Jadhav, name of Smt. Laxmibai was entered in the Property Register Extract as kathedar and in possession of the said property. Ex.P2 is the actual letter written by Sri Ramachandra Jadhav to his wife stating that he has given the suit schedule property to his wife Smt. Laxmibai and delivered possession to her by way of "Thondi Baksheesh". The said letter clearly discloses that the said property was acquired by him and it was in his possession and the same has been given to his wife Smt. Laxmibai by "Thondi Baksheesh".

40. The Trial Court has categorically come to the conclusion that the said property given in the nature of a gift, is not registered in accordance with law and therefore, no complete title has been passed on to the said Smt. Laxmibai and after the death of Ramachandra Jadhav, the said property fell to the family consisting of first plaintiff's husband-Anandarao and the deceased- Laxmibai and to the defendant-Doulatarao. Therefore, all of them have got equal share in the said property. As the said Smt. Laxmibai died intestate, the plaintiffs and defendant are equally entitled to half share each. Therefore, the Trial Court has decreed the suit of the plaintiffs to the extent of half share. The Trial Court has specifically considered that if any property should be acquired by the Hindu female, it should be by way of documents recognized under law. It has also observed that looking to Ex.P2 and Ex.D6, no reasons have been given as to why the deceased-Ramachandra Jadhav gifted the property to Smt. Laxmibai and the value of the property is not mentioned. So alleged gift deed dated 22.04.1946 which is thirty years old after the alleged oral gift, the property worth more than Rs.100/- therefore, it should have been given by means of registered gift deed and as such, Smt. Laxmibai did not get any right over the property.

41. The real intention of the parties shall be gathered from the surrounding circumstances. It is clear that, as on the date of Ex.P1, the said Ramachandra Jadhav had two sons. He knew that he has several properties and one property was given to his wife. The plaint discloses that even though it is mentioned as "Thondi Baksheesh" but actually for the purpose of maintenance the said property was given to the said Smt. Laxmibai and after acquiring possession, Smt. Laxmibai had leased the said property in favour of tenants and she had been using rents from the said property. In the evidence of PW.1 (who is plaintiff No.2), he has categorically stated that the said property absolutely belonged to Ramachandra Jadhav therefore, it is the absolute property of husband of Smt. Laxmibai undisputedly. It is further stated that Ramachandra Jadhav in his lifetime has allegedly allotted the suit property in favour of Smt. Laxmibai by an alleged oral gift dated 22.04.1946 without the knowledge of Anandarao, first son throughout his lifetime. The defendant taking advantage of the mutation in the name of his mother as the holder of the said property managed to get it gifted in his favour on 30.01.1969. Further, it is stated by PW.1 that, the property was worth more than Rs.10,000/- as on the date of gift given by Ramachandra Jadhav to Smt. Laxmibai on 22.04.1946. Therefore, Ramachandra Jadhav could

not have gifted out the said property orally or by means of Ex.P1. Therefore, Smt. Laxmibai did not get any right.

42. Though it is stated in the examination-in-chief in such a manner, but in the course of cross-examination, it is seen that, Exs.P1 and P2 were produced by the plaintiffs themselves i.e., Ex.P2 dated 22.04.1946. It is admitted in the cross-examination that in the suit schedule property one Sham Jadhav is residing as tenant and the defendant has filed a suit for recovery of the said property. It is also admitted in the course of cross-examination at paragraph-10 of his evidence that Ramachandra Jadhav after purchase of the property has given a jawab and varadi to CTS (municipal authorities) stating that he has given up his property in favour of Smt. Laxmibai and it is also admitted at paragraph-11 that on the basis of such document, name of Smt. Laxmibai has been entered in the city survey records. It is also admitted at paragraph-12 that in the year 1946 while giving "Thondi Baksheesh" to Laxmibai by Ramachandra Jadhav, the said property was given towards maintenance of Smt. Laxmibai. This is very much clear from the admission of PW.1 at paragraph-12 that the said property was given to Smt. Laxmibai in lieu of her maintenance. It is also admitted at paragraph-13 that father of PW.1, Anandarao died in the year 1996 and during his lifetime, his father has not taken any action with regard to the property given to Smt. Laxmibai or he has not taken any action with regard to the gift deed executed by Smt. Laxmibai in favour of defendant. It is also admitted by him that his father Anandarao in the year 1982 itself had knowledge of the gift deed executed by Smt. Laxmibai in favour of defendant and he has also told PW.1 that the said deed was concocted by the defendant. In spite of that, the deceased-Anandarao did not challenge the said gifts upto the death of Anandarao in the year 1996. Even the plaintiffs have also not challenged the same upto 2000 i.e., till filing of the suit.

43. Apart from that, at paragraph-14 it is clearly admitted that Ramachandra Jadhav had two properties one property was given to the plaintiffs and defendant jointly and another property was given to Smt. Laxmibai. It is also admitted that the said Smt. Laxmibai has been residing with the defendant.

44. The defendant-Doulatarao examined himself as DW.1. He has categorically stated that as per Ex.P1 produced by the plaintiffs the property was given to his mother by his father for the purpose of maintenance. In the course of cross-examination, he has admitted that he was 13-15 years old, when his father given the property to his mother. Though it is admitted by PW.1 in the plaint as well as in the evidence that the property belonged to Ramachandra Jadhav, and it is his absolute property. But in the course of cross-examination of DW.1, he has stated that the said property is also an ancestral property but there is no material placed before the Court to substantiate the same. DW.1 has further stated that he has not produced any material except relying upon Exs.D1 and D2 to show that his father has given the property to his mother towards maintenance but it is mentioned as "Thondi Baksheesh" in the said document. Except this nothing

has been elicited in the course of cross-examination of this witness.

45. PWs.1 to 3 have stated that in the year 1993 the deceased-Anandarao and defendant have partitioned among themselves. At that time, the suit scheduled property was not partitioned because, Ramachandra Jadhav and Smt. Laxmibai were residing in the said house. But this particular evidence is falsified by the plaint averments itself, wherein it has categorically stated that while explaining genealogical tree, the said Ramachandra Jdhav died on 19.11.1957 itself and Smt. Laxmibai died in the year 1978. Therefore, much prior to the partition, both of them died. Looking to the above said document and the evidence, it is crystal clear that the property was intended to be given by Ramachandra Jadhav towards maintenance to Smt. Laxmibai.

46. The learned counsel for the plaintiffs contends that the said document has not been registered. Therefore, the plaintiffs' mother has not acquired any right, title over the property. In this regard, it is worth to refer to a decision of the Hon"ble Apex Court reported in 1987 (3) SCC 674 in the case of Smt. Gulwant Kaur and another Vs. Mohinder Singh and others, wherein the Hon"ble Apex Court has held in the following manner: "Section 14 is aimed at removing restrictions or limitations on the right of a female Hindu to enjoy, as a full owner, property possessed by her so long as her possession is traceable to a lawful origin, that is to say, if she has a vestige of a title. It makes no difference whether the property is acquired by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift or by her own skill or exertion or by purchase or by prescription or in any other manner whatsoever. The Explanation expressly refers to property acquired in lieu of maintenance and the widow is not required to establish her further title before she could claim full ownership, under Section 14 (1) in respect of property given to her and possessed by her in lieu of maintenance.

The very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. Sub-section (2) of Section 14 is in the nature of an exception to Section 14(1) and provides for a situation where property is acquired by a female Hindu under a written instrument or a decree of Court and not where such acquisition is traceable to any antecedent right."

2. If a female Hindu is put in possession of property pursuant to or in recognition of a right to maintenance, it cannot be denied that she has acquired a limited right or interest over the property and once that position is accepted, it follows that the right gets enlarged to full ownership under Section 14(1) of the Act. That is clear from the language of Section 14(1) of the Act. In the instant case, the question was not whether the husband intended to give away the land in dispute absolutely but whether the land was given to her in lieu of maintenance. A perusal of the letters exchanged between the husband and the appellant-wife clearly establishes that the land in dispute was given by the husband in lieu of maintenance. The Division Bench of the High Court was wrong in making

distinction between day-to-day expenses and maintenance. It is rather late in the day to contend that the land which was given to the appellant in lieu of maintenance did not vest in her absolutely."

47. On plain reading of the above said decision, it is clear that the very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if she is in possession of the property in lieu of maintenance. It is further clarified that if a female is put in possession of property pursuant to or in recognition of a right to maintenance, it cannot be denied that she has acquired limited right or interest in the property. That is clear from the language of Section 14(1) of the Act. Therefore, it is clear that when a husband intended to give away the property in dispute absolutely in lieu of maintenance or recognizing right of maintenance of his wife, then the said property will become absolute property of the said lady.

48. On the basis of unregistered document, if it is given with an intention of recognizing maintenance to wife, whether the said document will enure to the benefit of the said lady to claim absolute right or not is to be considered. In this regard, it is worth to mention here a decision of the Hon"ble Apex Court in the case of Bishwanath Pandey Vs. Badami Kaur and others reported in (1980) 2 Supreme Court Cases 349. In this case, the Hon"ble Apex Court has observed in the following manner: "The undisputed facts of the case are that Smt. Badami Kaur was a widow of the last proprietor of the lands in dispute and she was recorded as such. The case was decided before the consolidation authorities mainly on the basis of a statement alleged to have been given by Smt. Badami Kaur some time in the year 1931 as a result of which she was mutated as a widow of her husband. It was pleaded by the reversioners that the mutation was only by way of consolation without any rights in the properties which were to go to her collaterals; namely the respondents. This statement was made at a time when neither the U.P. Zamindari Abolition and Land Reforms Act was passed nor the Hindu Succession Act came into force. At the time when the matter was decided by the Deputy Director of Consolidation both the Acts had been passed which conferred absolute proprietary rights on Smt. Badami Kaur who is still alive. Once Smt. Badami Kaur became an absolute owner of the property, the respondents' interest as collaterals ceased to exist and they had therefore no locus to challenge the status of Smt. Badami Kaur."

49. The facts involved in the ruling reported in AIR 1991 Madhya Pradesh 18 in the case of Dharamwati Bai (deceased by LRs.) and others Vs. Shiv Singh (deceased by LRs.) and others is almost similar to the factual aspects involved in this case. The Court after relying upon various decisions of the Hon"ble Supreme Court has held that,- "Where a widow was in possession of the suit property in exercise of her preexisting right to maintenance, widow in possession of the property in 1956 as on the date of commencement of the Act, in terms of Explanation to Section 14(1), her possession would be deemed as possession in exercise of her pre-existing rights to maintenance. In what manner, she came

into possession is not material. Hence, she would become absolute owner of the said property and she could make valid alienation thereof".

50. In Dharamwati Bai's case noted supra, the Madhya Pradesh High Court relying upon various decisions has also held that possession in exercise of pre-existing right to maintenance, widow in possession of the suit property in 1956 when the Act came into force, in terms of the Explanation to Section 14(1) of the Hindu Succession Act, her possession would be deemed possession as pre-existing right to maintenance. In what manner she came into possession is not material, hence, she would become absolute owner of the property and could make valid alienation.

51. From reading of the provision under Section 14(1) of the Hindu Succession Act and also on perusal of the above said decisions, it is clear that, it is not the law that the widow has to prove any specific mode of her acquisition of possession over any property, it rather appears to be that, to overcome the previous law and to bring a great change to the earlier laws, Section 14(1) of the Hindu Succession Act is engineered in such a manner that the lady may acquire the property in any manner even particularly, under any devise manifested in the family settlement or arrangements. Therefore, it can be safely said that the female need not prove any specific mode of her acquisition or possession. However, if it is a legal possession acquired by her in lieu of her maintenance, irrespective of the documentation or mode, she would get the absolute right over the property under the said enactment.

52. Therefore, it is clear from the above said decisions that if a devise or settlement in any manner either by means of letter or by means of Varadi to competent authorities to change the property into the name of a female, then it amounts to the said female lawfully in recognition of her pre-existing right, enter into the possession of the property. In order to attract the word "possessed" in the said section and if the said possession was given prior to the enactment and if she continues in possession on the date of the amendment Act coming into force, then the said property definitely would blossom into an absolute property of the said lady.

53. In this particular case, though it is not specifically worded in the documents Exs.P1 and P2 that the said property was specifically given to Smt. Laxmibai towards her maintenance but the fact goes without saying that the husband really intended to give the said property to her in lieu of maintenance. Because there was no other right to wife in existence except the maintenance right as on the date of said varadi or the letter written by the said Ramachandra Jadhav giving his property in favour of her.

54. After surfing through the internet and the dictionaries, it is clear that Baksheesh is a Persian word which means a gift. "Thondi Bhaksheesh" means an oral gift. In India the said word is interpreted as donation, gratuity, divine blessings. Therefore, one of the words, "gratuity" if taken into consideration, it

means a gift, present, donation, reward, handout, recompense, boon. Therefore, baksheesh is almost equivalent word to "gratuity" in the dictionary. The word "gratuity" or the "baksheesh" is equivalent to divine blessings or donation to a particular person. A donation is always given to a person who has got lot of love and affection so far as that person is concerned. Here, if the said word is understood in a proper perspective, Thondi Baksheesh i.e., an oral gift or a donation or boon given to the wife on demand. Therefore, from the surrounding circumstances and admission of PW.1, it is clear that the said property after the gift was used by Smt. Laxmibai by leasing out the said property and she was utilizing the rents out of the said property and it is specifically admitted in the cross-examination that the said property was given to the said lady for maintenance i.e., "upajeevana" in kannada language. It is also admitted that Ramachandra Jadhav has given the said property for her maintenance by using the said devise. Specifically, this admission is available at paragraph-12 of PW.1.

55. Further added to that, though Ramachandra Jadhav and Smt. Laxmibai were dead prior to 1993, this property was not subjected to partition between the brothers i.e., Anandarao and defendant-Doulatarao. This is also one of the circumstances which shows that, as the property was exclusively given to their mother, they did not want to partition the same. In this background, if the surrounding circumstances are seen, it clearly establishes the intention of the parties that the said property was given to the said lady in lieu or in recognition of her maintenance right. It is also evident that she was receiving maintenance during her lifetime by leasing the said property and was utilizing the said amount for her maintenance. Therefore, in all probabilities, the Court can definitely and conclusively say that the said property was given by Ramachandra Jadhav to Smt. Laxmibai in lieu of her maintenance. Exs.P1 and P2 disclose that the possession was delivered as on the date of that "Thondi Baksheesh" and from that date onwards, she continued to be in possession and in the year 1956 when the Act came into force, admittedly, she has been in possession because she died in the year 1978. Therefore, with full force the provision under Section 14(1) of the Hindu Succession Act is applicable.

56. On examining the facts and legal aspects, I am of the considered opinion that the Trial Court has not properly appreciated this legal aspect and wrongly held that the said devise made by the husband of Smt. Laxmibai did not confer any right, title and interest on Smt. Laxmibai. I am of the opinion that Smt. Laxmibai has become absolute owner in possession and enjoyment of the property as on the date of introduction of amendment to Sec.14 of Hindu Succession Act. Therefore, the findings of the Trial Court so far as these issues are not proper. Hence, I answer point No.1 formulated by me in the "Affirmative". Point No.2

57. So far as the second point is concerned, it is the claim of the defendant that the said Smt. Laxmibai throughout was living with him and his father was also living with him upto their death and due to love and affection, the said Smt. Laxmibai has executed a gift deed in favour of the defendant as per Ex.P3 which

is same as Ex.D1 which is a certified copy of the gift deed executed by Smt. Laxmibai in favour of the defendant. So far as this aspect is concerned, the defendant has pleaded categorically about the execution of this gift deed in his favour on 30.01.1969. Even after execution of the said deed, mother survived upto 1978 and she died in the year 1978 and thereafter, he continued in possession and enjoyment of the said property as absolute owner.

58. The plaintiffs' case is that the said gift deed has not been properly proved before the Court in accordance with law and the said gift deed is a concocted document which did not create any right, title and interest over the property in favour of the defendant. The Trial Court so far as this aspect is concerned has discussed at length, while dealing with issue Nos.1 and 2 framed by it, which corresponds to the points for consideration framed by this Court at point Nos.2 and 3. The Trial Court mainly concentrated that this document appears to be forged document, signature of the deceased-Anandarao is a forged signature. Further, the Trial Court held that the said document has been attested by the attestors, but none of the attestors have been examined before the Court. Therefore, the said document has not been proved legally in accordance with the Indian Evidence Act. Further, it is held that considering the surrounding circumstances also the said document cannot said to be in existence, executed by the said lady, Smt. Laxmibai. Therefore, considering the oral and the documentary evidence, the Trial Court has held that the defendant has not established this particular aspect. Further, holding that since Smt. Laxmibai died intestate, the Court has granted half share in the suit schedule property to the plaintiffs.

59. Now let me consider as to whether the above said observations and the findings given by the Trial Court is proper and correct.

60. In this regard, learned counsel for the appellants has strenuously contended before this Court that the plaintiffs themselves have produced the said gift deed dated 30.01.1969 before the Court, it is not the defendant alone who has produced the documents. The documents at Exs.D1 and P3 were marked without any objections by any party. Therefore, the plaintiffs and defendant have led secondary evidence with reference to the said original gift deed. It is also elicited that the said gift deed was lost. Though there is some discrepancy in explaining about the loss of the said document, but the fact remains that the said document viz., Exs.P3 and D1 was executed by Smt. Laxmibai long back and it is more than thirty years old document. Therefore, the Court ought to have raised an initial presumption under Section 90 of the Indian Evidence Act and done away with the proof to be given under Section 65 of the Indian Evidence Act. Further, the Trial Court has not properly appreciated the oral evidence with regard to the conduct of the parties and knowledge of this particular document at the earliest point of time. Hence, he prayed for setting aside the said finding given by the Trial Court. The learned counsel for the appellants further strenuously contends that there is no specific pleading in the plaint specifically denying the execution

of Ex.D1 by Smt. Laxmibai in favour of the defendant. Even after filing of the written statement, no reply or further pleading has been presented by the plaintiffs specifically denying the execution of the document. Throughout the plaint what has been pleaded by the plaintiffs is that the said document is not binding upon the share of father of PW.1. Therefore, he contends that, for all these reasons, the Trial Court has committed serious legal error in holding that the defendant has not established his right under Ex.D1- gift deed dated 30.01.1969.

61. Per contra, the learned counsel appearing for the respondents has contended before this Court that there is lot of confusion with the defendant himself. He has not led any foundation with regard to the leading of secondary evidence by producing only certified copy of Ex.D1. There is no law particularly, Section 90 of the Indian Evidence Act, prohibits that no presumption can be drawn in respect of certified copy of a document. No presumption can be drawn under Section 90 in favour of a person who has not produced the original of the document and proved that the said document is thirty years old when the said document is offered in evidence before the Court. Secondly, the learned counsel submitted that there is sufficient pleading in the plaint itself that the plaintiffs have denied the execution of the said gift deed in favour of the defendant. Further added to that, the defendant has not examined any of the attestors to the said document nor he has given any reason for non-examination of any attestors. Therefore, the said document cannot be said to have been proved in accordance with law and rightly, the Trial Court has not relied upon the said document and came to the conclusion that the said document is a fraudulent document. He further submits that it is an admitted fact by the plaintiffs that as on the date of the execution of the said gift deed, the first plaintiff's husband was working elsewhere, he had no opportunity to come to the Sub-Registrars Office and sign the document. Therefore, on that ground, the Trial Court has come to the conclusion that the said document is concocted and forged document. The Trial Court after considering all the relevant facts has come to the conclusion in that manner and it does no call for any interference at the hands of this Court.

62. Having heard the above said rival contentions of the parties, first let me consider the very pleadings whether there is any specific denial with regard to the execution of this document by Smt. Laxmibai in favour of the defendant. The provision under the Code of Civil Procedure which refers to the pleadings are under Order IV Rule 1 of CPC which says that, every suit shall be instituted by presenting the plaint before the Court which shall comply with the rules contained under Order VI and VII so far as they are applicable. Order VI Rule 1 of CPC specifically categorizes that the pleading shall mean plaint or written statement. Rule 2 of Order VI prescribes that every pleading shall contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, but it should not state in detail the evidence by which those pleadings are to be proved. Further, Order VI Rule 4 further mandates that in all the cases in which the party pleading relies on any

misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary, particulars shall be stated in the pleading. Therefore, this rule mandates that detail particulars of misrepresentation and other grounds as noted in the said Rule 4 has to be pleaded in order to prove the same during the course of evidence. Order VII Rule 7 prescribes that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for.

63. If the suit is contested, the written statement filed by the contesting defendants should be as per the provisions of the Order VIII Rule 1A of CPC which mandates, that where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented. Order VIII Rule 3 of CPC specifically prescribes that the defendant in his written statement shall not generally deny the grounds alleged by the plaintiff, but the defendant must deny specifically each allegation of fact of which he does not admit the truth, except damages. Order VIII Rule 4 of CPC prescribes evasive denial by the defendant on the plaint allegations as not sufficient to deny the said allegations, but he must deny specifically the material facts. Order VIII Rule 9 of CPC further throws responsibility on the plaintiff, whenever the defendant has denied the allegations in the plaint and specifically pleaded his specific case, the plaintiff can also be permitted to file additional pleadings for the purpose of denying or countering the defendant's case. 64. On reading of the above said provisions of the CPC, it is crystal clear that the parties have to put forward their specific case and then specifically deny whenever they have to contest the pleadings against each other. In this particular case, the execution of the gift deed by Smt. Laxmibai in favour of the defendant is the material fact and claim of the defendant and also the plaintiffs who challenged the said gift deed. Therefore, the Court has to analyze the pleadings of the parties in order to understand whether the plaintiffs have specifically denied the said execution of the gift deed in favour of the defendant in order to put the defendant to strictly prove the said document in accordance with all the provisions of law noted supra.

65. On careful re-looking into the plaint allegations, the plaintiffs have taken up the contention in paragraph-4 at page No.4 with reference to the gift deed alleged to have been executed by Laxmibai. It is specifically stated that - "The defendant taking undue advantage of the gift deed dated 22.04.1946 and mutation in the name of his mother as the holder of the suit property, managed to get the alleged gift deed executed in his favour on 03.02.1969 and thereby knocking down the property. Even the alleged gift deed dated 03.02.1969 was not within the knowledge of Anandarao during his lifetime".

66. In the same paragraph at page No.5 there is reference with regard to this

gift deed wherein the plaintiffs have stated that, "Wherefore, when Laxmibai had not got better right, title or interest vested in respect of the suit property, even by virtue of the alleged registered gift deed executed in favour of the defendant-Doulatarao dated 03.02.1969, Doulatarao did not get any full fledged and absolute rights in respect of the suit property and as such, rights of Anandarao remained unaffected". It is also stated that the alleged gift deed dated 30.01.1969 was beyond the knowledge of Anandarao till his death.

67. Except the above said few sentences, nothing is there in the plaint specifically denying the execution of the said gift deed in favour of the defendant by Smt. Laxmibai. On meaningful understanding of the pleadings of the plaintiffs, what the plaintiffs want to say is that the defendant has managed to get the execution of the gift deed and even if the said gift deed is alleged to have been executed by Smt. Laxmibai, the same is not binding on the share of Anandarao. Therefore, it gives a meaning that the plaintiffs have no serious dispute with regard to the execution of the said gift deed. Even in the prayer column, the plaintiffs have not specifically prayed for either declaration that the said gift deed is void, fraudulent or forged. But their prayer is that,- "So far as the gift deed dated 03.02.1969 is concerned, the plaintiffs have only prayed for declaration that the alleged gift deed got by the defendant from Laxmibai dated 03.02.1969 is not binding to the extent of the heritable share of said Late Anandarao."

68. Therefore, in the prayer column also the plaintiffs have not specifically prayed for any declaration with reference to the gift deed dated 30.01.1969 but they only say that it is not binding on the share of Anandarao.

69. Therefore, on plain understanding of the pleadings of the plaint, there is no specific denial with regard to the execution of the gift deed by Smt. Laxmibai in favour of the defendant nor there is any prayer for cancellation of the same. Apart from that, no fraud or no forgery or no misrepresentation or any other circumstances of similar nature has been pleaded by the plaintiffs in this regard.

70. In this background, the written statement of the defendant also play certain role. In the written statement so far as this gift is concerned, he has specifically pleaded at page No.2 in paragraph-2(a) that, "Smt. Laxmibai was the exclusive owner of the suit house property and as such she has given the same to her son, the defendant, by way of gift by executing a registered gift deed dated 30.01.1969 and since then the defendant is the exclusive owner of the suit property. Accordingly, defendant's name also appears in the CTS records as the owner of the suit property by virtue of the said gift deed and the same is continued till now. Thus, neither the present plaintiffs nor deceased-Anandarao have or had any share or interest in the suit schedule property".

71. It is also contended at paragraph-4 of the written statement that the plaintiffs prayer for declaratory relief is barred by time. This particular version of the written statement filed by the defendant has not been specifically countered by means of filing any additional pleadings or subsequent pleadings or reply to

the written statement by the plaintiffs.

72. Therefore, by looking in to the above said pleadings of the parties, as rightly contended by the learned counsel for the defendant, there is no specific denial with regard to the execution of the gift deed dated 30.01.1969 by Smt. Laxmibai but it is only pleaded that the said gift deed was not within the knowledge of Anandarao and that the said Doulatarao would not get any full fledged absolute right in respect of the property and the share of Anandarao is not affected and further, the said gift is not binding upon the plaintiffs.

73. As I have already noted, the plaintiffs have also not sought for declaration that the said gift deed is illegal or fraudulent or forged in any manner though the same has been attempted to be projected during the course of evidence that the said gift is forged by the defendant. It is a well recognized principle of civil jurisprudence that unless there is a pleading with reference to any forgery, fraud or conspiracy in detail, no evidence can be used even if it is led by the parties. Therefore, in this manner, even if there is any evidence by the plaintiffs in this regard, the same cannot be taken into consideration. Hence, I am of the opinion that there is no specific pleading with regard to the denial of specific execution of the gift deed by Smt. Laxmibai in favour of the defendant.

74. Be that as it may, the second ground taken up by the plaintiffs' counsel is that the defendant has not proved the said document before the Court. He has not produced original and there is divergent evidence led by them with regard to the loss of the said document and he has produced the certified copy of the gift deed as per Ex.D1 and no attesting witness has been examined and one of the attesting witnesses according to him is none other than his brother Anandarao but it is proved by means of evidence that Anandarao was not available as on the date of signing the said document and it is established that it is a forged document. Therefore, no reliance can be based on such document.

75. Per contra, learned counsel appearing for the defendant submitted that the plaintiffs themselves have produced the said document. The defendant has produced the said document as Ex.D1 in his evidence. No objections were raised at the time of marking of the document with regard to the admissibility of the document. Therefore, the plaintiffs cannot claim that the said document cannot be relied upon. The deceased-Anandarao is one of the attester to the said document. Admittedly, he is dead and it is elicited in the evidence of defendant that another attester is also not available. Be that as it may. When the execution of the said document is not denied and no proof is given by the plaintiffs in that regard particularly, with reference to forgery and conspiracy, the defendant need not prove the document as the same is admitted by way of pleadings by the plaintiffs. Even otherwise, Section 90 of the Indian Evidence Act will come to the help of the defendant as the document is thirty years old.

76. In this background, let me consider whether the said document is admissible in evidence or not, and if so, under what circumstances. Of-course, it is a

secondary evidence which is the certified copy of the gift deed produced before the Court both by the plaintiffs and the defendant. The plaintiffs have produced the said document in order to establish that the defendant and his mother conspired with each other and created that document. The specific plea regarding conspiracy is not explained as to how it has taken place. Therefore, once the document is marked by the plaintiffs themselves and there is no objection by the other side when the defendant got marked the same document as Ex.D1, in such an eventuality, the plaintiffs cannot raise any question with regard to the admissibility of the said document.

77. Of-course, Section 68 of the Indian Evidence Act stipulates that, if a document is required by law to be attested, it shall not be used as evidence until one of the attesting witnesses at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence; Provided that it shall not be necessary to call attesting witness in proof of execution of any document, not being a document which is compulsorily attestable. Section 69 of the Indian Evidence Act further postulates that if no such attesting witness can be found, or if the document is executed, it can be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. It is also to be borne in mind that Section 123 of the Transfer of Property Act, 1882 mandates that a gift deed pertaining to any immovable property must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Section 17 of the Registration Act, 1908 also requires that instruments of gift of immovable property "shall be registered". Further, Section 34 of the Registration Act requires the executants or their authorized representatives of the document executed for registration appear before the registering officer. However, the witness to a document need not also be the witness to its registration. Section 47 of the Registration Act further adumbrates that the registered document will take effect from the date of its execution. Section 48 of the Registration Act is indeed significant in that regard it clarifies that a registered document will probatively prevail over oral agreements or oral evidence. Further, Section 49 of the Registration Act declares that if any document despite requiring registration is not so done it shall not be received in evidence or attain any legal efficacy.

78. Applying the above statutory requirements to this particular case, the plaintiffs and the defendant both have produced certified copy of the gift deed as per Exs.P3 and D1. Of-course, on reading of the plaintiffs' evidence and the defendant's evidence, it is clear that no attesting witness to this document has been examined. The defendant has stated that no attesting witness was available but he has also not made any efforts before the Court to secure by means of getting summons to the witness or to the person who knew the signature of Smt. Laxmibai in order to prove the execution of the said document. However, if the attesting witness is not examined and if that particular document has not been

objected for its admissibility, whether admissibility itself can be questioned by the plaintiffs. In my opinion, the plaintiffs are debarred from taking up any contention before the appellate Court or subsequent to marking of that document. Once the document is marked without any objection, it is understood that the other party has no objection to take that document on record for the purpose of reading it as evidence.

79. In this context, it is worth to refer to a decision of the Hon''ble Apex Court reported in (2004) 7 Supreme Court Cases 107 in the case of Dayamathi Bai (Smt.) vs. K.M. Shaffi, wherein the Hon''ble Apex Court has observed while dealing with Sections 65, 90 and 104 of the Indian Evidence Act at paragraphs-13, 14 and 15 to the effect that, "The appellant not objecting to the certified copy of registered sale deed being marked Ex.P1 and admitted in evidence, but later on objecting and submitting that only after the document becomes incapable of being proved for want of primary evidence, the foundation of secondary evidence must be laid. That since in the instant case no steps were taken to produce the original deed nor to prove its loss nor to establish the source from which the certified copies were obtained, foundation for admissibility of secondary evidence was not laid and hence High Court erred in holding that the registered certified copy of the sale deed was admissible in evidence as the document was more than thirty years old. Repelling with the said argument, the Hon''ble Apex Court has observed that when the objection was not taken as to the admissibility of the certified copy but that the mode of proof was irregular and insufficient, objection as to mode of proof falls within procedural law and can be waived. Further held, such objections must be taken before the document is marked as an exhibit and admitted to the record. Therefore, subsequent objection is not sustainable".

80. In the above said decision, the Hon''ble Supreme Court affirmed the order of the High Court holding that the document is admissible when it is not objected by the other side when it is marked and even raising presumption under Section 90 of the Indian Evidence Act when the execution is not specifically denied on the basis of certified copy being produced without any objection. The above said principle is applicable to this case also. There is absolutely no objection raised at the time of marking of this document. Therefore, proof of the said document is something different from admissibility. Once the document is admitted, it comes within the realm of appreciation of the document with regard to its proof. Whether the procedure has been followed to prove that document is to be looked into. Of-course in that particular case, no such procedure has been adopted as contemplated under Sections 68 and 69 of the Indian Evidence Act by the defendant, as noted above. Therefore, procedurally the said document cannot be said to have been proved by means of examining one of the attesting witnesses to the gift deed nor it can be said that the defendant has made all his efforts to secure any of the witnesses for identification of signature of Smt. Laxmibai who executed the gift deed in favour of the defendant. However, from the legal dictum it is clear that the document has to be proved if it is specifically denied or

the execution of the document comes into dispute between the parties.

81. As I have already noted, the plaintiffs have not specifically denied the execution of the document. The evasive explanation with regard to the document as could be seen from the pleadings referred to above, in my opinion, cannot be said to be a specific denial by the plaintiffs. Therefore, in my opinion, in that regard the defendant is exempted from proving the execution of that document.

82. Next important point to be taken into consideration is, it appears that the registered gift deed was sought to be proved by the defendant himself by invoking the provision under Section 90 of the Indian Evidence Act. If the defendant's testimony stating that the said document was executed by Smt. Laxmibai prior to more than thirty years is considered, execution has to be presumed. In Dayamathi Bai's case (supra), the Court considering the certified copy of a document has observed that if it is more than thirty years old document, presumption can also be drawn. If once the document is admitted in evidence, the document produced by way of secondary evidence is also a document as per the definition of document in the Evidence Act. At Paragraph-7 of the said judgment while considering the factual aspects of the case, the Court has observed that "Ex.P1 was a certified copy of the sale deed produced and the said Ex.P1-certified copy was more than thirty years old and presumption under Section 90 of the Indian Evidence Act is applied to the said document".

83. It is also worth to note here another decision reported in 1996 (8) Supreme Court Cases 357 in the case of Lakhi Baruah and others vs. Padma Kanta Kalita and others wherein the Hon"ble Apex Court has observed that,- "The presumption of due execution of sale deed of thirty years old under Section 90 of the Indian Evidence Act; Certified copy of such sale deed is produced, the sale deed is alleged to be forged and fabricated and therefore, proved null and void. On facts, foundation having not been laid for admission of secondary evidence under Section 63 by proof of loss or destruction of the original and the copy having not been produced from proper custody, presumption would not be available. But the Hon"ble Apex Court has also observed that if a foundation is laid for the admission of secondary evidence under Section 63 of the Indian Evidence Act, 1872 by proof of loss or destruction of the original and the copy which is thirty years old is produced from proper custody, then only the signature authenticating the copy may under Section 90 of the Indian Evidence Act be presumed to be genuine. However, it is the discretion of the Court to refuse to give such presumption in favour of a particular party.

84. Applying the above said principles to this particular case, though the defendant has not examined any attestors to the document, but in view of the production of the said document by the plaintiffs themselves and there is no specific denial and also that the said document i.e., certified copy is produced from the custody of the defendant and the plaintiffs and the said document is thirty years old at the time when the document was produced before the Court, the defendant has established the said execution of the document by his mother

Smt. Laxmibai.

85. Further added to the above, as culled out from the pleadings, the plaintiffs in only one sentence have stated that the defendant conspiring with his mother has mutated the said entries in the revenue records and got executed a gift deed in his favour. When the said plea is taken up by the plaintiffs, it is the burden on the plaintiffs to establish the same before the Court. It is well-settled principle of law that the allegations like, fraud and forgery as well as conspiracy have to be pleaded in detail by explaining the details of fraud or conspiracy played by the parties. Furthermore, the said allegations must be proved by leading cogent and convincing evidence. The proof of such allegations are one and the same both in civil and criminal proceedings i.e., such allegations must be proved beyond reasonable doubt.

86. In this regard, it is worth to refer a decision of the Hon'ble Apex Court reported in (1976) 1 Supreme Court Cases 747 in the case of Union of India vs. M/s. Chaturbhai M. Patel and Co., has held that, "Fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. However, suspicious may be the circumstances, however, strange the coincidences, and however, grave the doubts, suspicion alone can never take the place of proof".

87. In this case, the plaintiffs have alleged that the signature of the first plaintiff's husband, Anandarao, has actually forged by the signature of the defendant. There is no such pleadings in the plaint but it is stated in the evidence. The Trial Court has believed the said evidence of the plaintiffs on the ground that the first plaintiff's husband was working in the Police Department in Jamkhandi and it is also stated by the defendant that on 30.01.1969 his brother was still working at Jamkhandi and he was on duty on that day. Basing on the alleged sole admission on the part of DW.1, the Court has come to the conclusion that the signature of the first plaintiff's husband, Anandarao is forged. On that basis it cannot be said that the Courts can draw inference of forgery of the document. As I have said, forgery has to be specifically pleaded and proved before the Court as a fact. Therefore, I am of the opinion that the plaintiffs have not placed sufficient material to draw an inference that the said document is not a genuine document and forged one.

88. It is also there in the evidence of PW.1 with reference to the knowledge of the said document to PW.1-Mr. Vasant S/o Anandarao Jadhav. It is elicited in the course of cross-examination of PW.1 at page No.10 in paragraph-13 that when his father was working at Jamkhandi as Police Hawaldar in the year 1982, he came to know about the alleged gift deed executed in favour of the defendant and this factum was told by Anandarao to PW.1 in the year 1982 itself. This clearly gives an indication that the execution or the alleged conspiracy or concoction of the gift deed by the defendant in the year 1969, came to the knowledge of the father of PW.1 in the year 1982 itself. Neither the said Anandarao nor PW.1 have called in question the said document in any Court of

law. Therefore, inaction on the part of the deceased-Anandarao and PW.1 also creates a serious doubt with regard to the conduct of said Anandarao and PW.1. Therefore, the Court has to consider the entire surrounding circumstances in order to come to the conclusion with respect to the execution of the said gift deed made in favour of the defendant by Smt. Laxmibai.

89. From the above said factual and legal aspects, and the materials on record it is clear that the deceased-Ramachandra Jadhav, Smt. Laxmibai and the defendant were residing together till the death of Ramachandra Jadhav and Laxmibai. It is also established in the course of evidence that Anandarao and his family members were residing separately and Anandarao, brother of defendant was working at different places. It is also established that when Ramachandra Jadhav and his wife and the defendant were residing together, has executed Varadi or jawab by way of "Thondi Baksheesh" in favour of his wife in the year 1946. i.e., on 26.04.1946 and on the basis of that, Smt. Laxmibai entered into possession and enjoyment of the property and leased out the said property for her maintenance. In fact, she leased the said property to the tenants and recovered the possession of the property from the tenant. The defendant has also filed the cases and recovered the possession from tenants after the death of Smt. Laxmibai. It is also an undisputed fact that as on the date of Hindu Succession Act came into force, the defendant's mother was in possession of the said property and she continued to be with the defendant throughout her lifetime and she died in the year 1978. She executed a gift deed in the year 1969 and from that date onwards, the defendant has been in possession and enjoyment of the property. Anandarao and defendant partitioned remaining properties of the family i.e., another house in the year 1993, but they have not incorporated this property on the ground that father and mother were residing in the said property. But the said allegation is found to be false as noted earlier. In the year 1982 itself, Anandarao and PW.1 came to know about the alleged gift deed as concocted one but they did not put any efforts to question the same or challenge the same. Even as on the date of the suit, the defendant has been in possession and enjoyment of the property. All these factual aspects have not been properly considered and appreciated by the Trial Court. The above said circumstances probalizes the case of the defendant rather than the plaintiffs. Under the above facts and circumstances, I am of the opinion that the Trial Court has committed serious factual and legal error in answering the above said issues in favour of the plaintiffs. Hence, I answer second point also in the "Affirmative" and particularly, in favour of the defendant.

90. For the above said discussions on the above said points, I am of the considered opinion that the Trial Court has committed serious error in decreeing the suit of the plaintiffs. Consequently, I proceed to pass the following: ORDER

The appeal is allowed. The judgment and decree passed by the Trial Court in O.S.No.315/2000 is hereby set aside. Consequently, the suit filed by the plaintiffs is hereby dismissed.

Considering the relationship between the parties and the peculiar circumstances of the case, there is no order as to costs.