

(2007) 04 AP CK 0055

In the Andhra Pradesh High Court

Case No : Appeal Suit No. 1809 of 2002

T. Bhoopal Reddy and Another

APPELLANT

Vs

Smt. K.R. Laxmi Bai (Died) and Others

RESPONDENT

Date of Decision : 23-04-2007

Acts Referred:

Limitation Act, 1963 — Article 113

Citation : (2007) 5 ALD 622 : (2007) 3 ALT 760

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : M.S. Ramachandra Rao and M. Krishna Mohan Rao, for the Appellant; N. Subba Reddy for C. Damodar Reddy and B. Vijayasen Reddy for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—The unsuccessful plaintiffs preferred this appeal challenging the judgment and decree dated 14-5-2002 passed in O.S. No. 51 of 1994 by the Court of the Senior Civil Judge, Nizamabad, dismissing the suit filed seeking the relief of partition and separate possession of the suit properties mentioned in the plaint.

2. As stated above, the appellants are plaintiffs and the respondent Nos. 1 and 2 are the defendants in the original suit. Respondent Nos. 1 and 2 are the wife and daughter of one K.R. Rajareddy. During the pendency of appeal, respondent No. 1 (first defendant) died on 30-3-2004 and, therefore, respondent Nos. 3 and 4 were brought on record by orders of this Court dated 17-11-2004 in C.M.P. No. 14478 of 2004, by virtue of the Will Deed document No. 75 of 2004 Book-III, dt.20-5-2004.

3. For the purpose of convenience, the parties shall be referred to as arrayed the trial Court.

4. The plaintiffs 1 and 2 are husband and wife. The averments made by the

plaintiffs in the plaint, in brief, are that late K.R. Rajareddy originally was native of Manala village and that in the year 1945, K.R. Rajareddy along with his wife i.e., first defendant (since deceased) shifted to Kamareddy town and there, he commenced his business taking contracts of "beedi" leaves. It was further stated in the plaint that the second plaintiff and the second defendant are daughters of late K.R. Rajareddy and first defendant and that K.R. Rajareddy has no male issues. That late K.R. Rajareddy was the Chairman of Zilla Parishad, Nizamabad from 1964 to 1976. The first plaintiff was taken as illatom son-in-law in the year 1967 and the marriage of first plaintiff with second plaintiff was performed on 19-2-1968. It was further stated in the plaint that at the time of taking illatom adoption of first plaintiff, late K.R. Rajareddy executed an agreement on 11-11-1967 agreeing to give one-third share in his properties. Since the date of marriage, first plaintiff is living with K.R. Rajareddy at his house and looking after all his business and agriculture. In the year 1979 marriage of the second defendant was performed with Mr. C. Rama Krishan Reddy of Jakranpally village. An amount of Rs. 2,50,000/-, (50) tolas gold, and 1000 tolas silver ornaments apart from household articles were given as dowry. Since the date of marriage of the second defendant with Ramakrishna Reddy, she is living with her husband at Jakranpally and later they shifted to Hyderabad. It was further stated that late K.R. Rajareddy, purchased lands mentioned below situated at Kamareddy:

Sy. No. Extent Sy. Nos. Extent Ac.Gts. Ac. Gts 18 0-23(wet) 17 0-04 Dry 19 0-12(,,) 24 1-03(,,) 20 0-19 23 11-31(,,) 21 0-33 28 7-34(,,) 22 0-06 80 0-07(,,) 23 0-08 81 0-14(,,) 908 1-25 82 0-14(,,) 909 1-23 878 2-12(,,) 910 3-00 880 5-24(,,) 907 1-09 898 5-12(,,)

5. Out of the above said lands, an extent of Ac.2-32 gts. and Ac.2-12 gts. in Sy. Nos. 28 and 878 respectively were surrendered in the land ceiling and that the remaining land except the land in Sy.Nos. 28, 898 and 880 were converted into plots and were sold away to clear off the debts incurred by the family, and plot Nos. 64 to 74 of 36 x 58 sq.ft each in L.P. No. 223/81 and plot Nos. 49 and 50 of (60 x 50) sq. fts. and plot Nos. 104 and 105 of "B" section of L.P. No. 331/81 and plot Nos. 1 to 5, 8 to 26, 38, 39, 40, 58 to 62 in "A" section of L.P. No. 331/81 and 34 plots in Sy. No. 908 and 909.

6. The plaintiffs further stated in their plaint that late Sri K.R. Rajareddy purchased house bearing No. 3-1-10 situated at Sarojini Devi Road, Kamareddy consisting of (15) rooms over a plot of 684 sq. yards with open space and later, he constructed double storied building consisting of 12 rooms with five halls over the open space with (7) bath rooms and latrines. A portion of it was let out to APSWC for Rs. 3507- p.m. for library for Rs. 1,500/- and (9) rooms for Rs. 1,3507-.. Late K.R. Rajareddy constructed the following houses, theatres and godowns at Kamareddy and they are:

1. Mangalore tiled house bearing No. 1-3-78 (New 1-5-94) in Sy. No. 898 consisting of (10) rooms situated at Kamareddy road, Kamareddy and (10)labourquarters in the same survey number.

2. House No. 1-8-170 old (New 1-11-91) partly with R.C.C. and partly with tin roof consisting of one hall and kitchen admeasuring 46 x 45 sq.ft. situated at Station Road, Kamareddy.

3. Four mulgies with R.C.C. bearing Nos. 1-8-164, 166, 167 and 168 adm. 250 sq. yards situated at Station Road, Kamareddy.

4. Kamal talkies bearing H. No. 1-8-169 old (New No. 1-11-92) over plot No. 2201.27 sq.mtrs situated at Station Road, Kamareddy. (it was let out for Rs. 19,000/- per annum).

5. Godowns in Sy. No. 23 and 907 with total plinth area of 30.960 sq.ft. constructed over a plot of 77.520 sq.ft. bearing H. No. 1-3-78/6, Old (1-5-91 new) situated at Ramareddy road, Ramareddy.

6. Murali Khandasari Sugar Mill (the same was closed after the death of Mr. K.R. Rangareddy).

7. Late K.R. Rajareddy also purchased lands mentioned below situated at Adloor shiver and they were given in gift to Smt. K.R. Swaroopa, the second defendant:

Sy.Nos.	Extent	Sy.Nos.	Extent	Ac.gts.	Ac.gts.	435	17-00	465	18-29	459	3-20
466	16-25	462	5-20	Total	Ac.	60-14	gts.				

8. It was stated that all the above mentioned properties are self acquired properties of late K.R. Rajareddy and he was the absolute owner irrespective of the fact in whose name the properties stand. In February, 1981, K.R. Rajareddy was bed ridden and he settled all properties and at his instance, first defendant gave the following properties to plaintiffs by executing document dt. 14-2-1981 in the presence of elders. K.R. Rajareddy died on 19-2-1981. After the death of K.R. Rajareddy, plaintiffs and defendant No. 1 continued to be in joint possession of the properties left by K.R. Rajareddy, as shown under:

1. Agricultural lands to the extent of (5) acres in Sy. No. 898 and house thereon bearing No. 1-3-78 corresponding to new No. 1-5-94 and (10) rooms meant for labour over the same land situated at Ramareddy Road, Kamareddy.

2. 3/5th share in Kamal Talkies bearing No. 1-8-169 corresponding to New No. 1-11-92.

3. 3/5th share in Godowns constructed over Sy. No. 23, 907 let out to F.C.I bearing H. No. 1-3-78/6, corresponding to new No. 1-5-91.

4. 3/5th share in the plots in Sy. No. 17, 23, 80, 81, 82, 908 and 909 situated at Kamareddy.

5. 1/3rd share in House bearing No. 3-1 -10 and lands to the extent of Ac.5-20, Ac.5-00 gts. in Sy. Nos. 880 and 28 situated at Kamareddy.

6. House No. 1-8-70 corresponding to new No. 1-11-91.

9. In pursuance of the above said agreement dated 14-2-1981, plaintiffs are living with first defendant since 1981 and are looking after the family properties. The debts raised for construction of godowns and used by FCI remain undischarged by the date of death of K.R. Rajareddy and as such, plaintiffs did not insist for effecting the transfer and mutation of properties given to them. All loans are cleared out of the income of the properties including the properties given to the plaintiffs. The loan raised for construction of M/s. Murali Khandasari Sugar Mills still remains undischarged. That plaintiffs requested the first defendant to submit necessary applications before the authorities concerned for getting the properties transferred in the names of plaintiffs as per the agreement of the year 1981 but, the first defendant refused to do so. That on 1-8-1994, plaintiffs approached the first defendant with the said request for mutation of properties in their names, as per the agreement of the year 1981. Since first defendant did not concede to the request of plaintiffs, they are made to file the suit for partition and separate possession of their properties. That second defendant being the legal heir and representative of late K.R. Rajareddy is also necessary and proper party in suit.

10. The defendant No. 1 Smt. K.R. Laxmi Bai filed her written statement with the following averments:

11. It is denied that the K.R. Rajareddy hailed from Manala village and that he and the defendant No. 1 shifted to Kamareddy in the year 1940 and were engaged in beedi leaves business. It was stated that the plaintiff No. 2 is not the real daughter of K.R. Rajareddy and defendant No. 1 and the plaintiffs suppressed this fact with mala fides. The real parents of plaintiff No. 2 hailed from Adloor Yellareddy village belonging to Besta community. The mother of plaintiff No. 2 died after giving birth to her. Plaintiff No. 2 was brought to Kamareddy by her near relative when she was just three weeks old, in the year 1953. The said relative of plaintiff No. 2 brought her to K.R. Rajareddy and requested him and defendant No. 1 to bring her (plaintiff No. 2) up as foster child in the year 1953. The plaintiff No. 2 was brought up by late K.R. Rajareddy and the defendant No. 1. Thereafter, defendant No. 1 gave birth to defendant No. 2 and she (defendant No. 2) is the only real and own daughter of late K.R. Rajareddy and defendant No. 1. The plaintiff No. 2 was brought up by defendant No. 1 and her husband Rajareddy by giving her proper education. The plaintiff No. 2 was married to plaintiff No. 1 in the year 1968 and she was given cash and gold. That the contention of the plaintiffs that the plaintiff No. 1 was taken in illatom adoption by Sri K.R. Rajareddy and defendant No. 1 is incorrect. Defendant No. 1 is not aware of any agreement between the plaintiff No. 1 and late K.R. Rajareddy about giving 1/3rd share in all his properties to plaintiffs and even if there is such agreement, it has no bearing so far as the rights of defendant No. 1 are concerned. The defendant No. 1 neither agreed nor consented to any such agreement and it is not valid under the law.

12. That marriage of defendant No. 2 was performed with Ram Krishna Reddy in

the year 1979. No cash or gold was given in the marriage of defendant No. 2. It is denied that the plaintiff No. 1 was looking after family business and agriculture of defendant No. 1 and her husband.

13. That late K.R. Rajareddy did not purchase all lands shown in para No. 2 of the plaint. Late K.R. Rajareddy purchased only lands in Sy. No. 28 measuring 5 acres, Sy. No. 878/a measuring 2 acres 12 gts., Sy. No. 880 measuring 5 acres 24 gts. Out of the above lands, K.R. Rajareddy surrendered Ac.2-32 gts. in Sy. No. 28 and Ac.2-12 gts. in Sy. No. 878 under land ceiling Act. At the time of death of K.R. Rajareddy, the lands that were available are Ac.5-24 gts. in Sy. No. 880 and Ac.2-08 gts. in Sy. No. 28.

14. That defendant No. 1 is the absolute owner and possessor of the following lands purchased with her own money:

(i) Land bearing Sy. No. 18, 20, 21, 22, 23, 24 and 898 purchased in the year 1958 under registered sale deed. These lands have been mutated in the name of defendant No. 1 as owner and pattedar.

(ii) Lands bearing Sy. No. 907 purchased from its previous owner and in this regard, proceeding u/s 50B of Tenancy Act were issued validating the sale vide Proc. No. A3/1385/1965 dt. 17-4-1965.

(iii) Land bearing Sy. No. 908 and 909 purchased from its previous owners vide proceedings u/s 50 B of Tenancy Act No. A3/1386/1965 dt. 29-7-1965.

(iv) Sy. No. 17 measuring 4 guntas and Sy. No. 19 measuring 12 gts.

15. The lands bearing Sy. No. 80 and 81, measuring 7 guntas and 14 guntas respectively of Kamareddy village were purchased by defendant No. 2 in the year 1978 from its previous owner under registered sale deed. Subsequently, defendant No. 2 sold the above said lands to Sri Srinivas Reddy, brother of defendant No. 1. The said Srinivas Reddy, brother of defendant No. 1 in turn gifted the said lands in Sy. No. 80 and 81 to defendant No. 1 through registered gift deeds dt. 29-11-1984. Plot Nos. 63 and 74 in the said survey numbers have already been sold to others before filing of this suit. The sanction of layout plan is awaited in respect of lands in Sy. Nos. 908 and 909. The lands bearing Sy. No. 82 and 910 are not belonging to either defendant No. 1 or her husband and they are wrongly included in the suit properties.

16. That defendant No. 1 converted her lands into plots and sold them after the death of her husband in order to discharge huge debts left by her husband. That the Mangalore tiled farm house with labour quarters were not constructed by late K.R. Rajareddy. The said quarters were constructed by defendant No. 1 with her own money and in her own land in Sy. No. 898. The properties referred in sub para (ii) of the plaint was gifted by K.R. Rajareddy to plaintiff No. 2. The properties referred in sub para (iii) of the plaint were gifted by K.R. Rajareddy to defendant No. 2. The property gifted to plaintiff No. 2 is worth more than Rs. Thirty lakhs.

17. That K.R. Rajareddy sold Kamal Talkies to defendant No. 1 for a consideration of Rs. 15,000/- under registered sale deed dated 2-1-1971. The said Kamal Talkies has been mutated in the name of first defendant and it has been leased out on a monthly rent of Rs. 1200/-. That defendant No. 1 constructed godowns in her own lands in Sy. No. 23 and 907 by raising loan of 6 Lakhs Rupees from State Bank of Hyderabad, in the year 1977-78, and lent the same to Food Corporation of India, Defendant No. 1 authorized the Manager of the Bank to receive rents from F.C.I, and adjust the same towards loan account. Thus the entire loan was discharged by October, 1985 and since then, the defendant No. 1 has been receiving rents from F.C.I.

18. That Late K.R. Rajareddy constructed Khandsari Sugar Mill by spending huge amounts and in order to help the plaintiff No. 2, her husband (Plaintiff No.), their children and also defendant No. 2, Rajareddy included them as partners of Khandasari Mill. Plaintiff No. 1 was Managing partner of said Sugar Mill. Plaintiff No. 1 raised huge loans from S.F.C and also banks and failed to discharge the loans. The State Finance Corporation sold the said Sugar Mill for realisation of loan amount. These facts have been suppressed by the plaintiffs.

19. The plaintiffs suppressed the fact of K.R. Rajareddy purchasing land of Ac.52-19 gt. in Sy. No. 434, 436, 438, and 441 at Adloor village in the name of plaintiff No. 2 for her thorough sale deeds dated 6-10-1970. It is denied that the plaintiff No. 1 purchased the above said lands in the name of his wife, Plaintiff No. 2. That the properties standing in the name of defendant No. 1 are her own properties and late K.R. Rajareddy has no concern with the same.

20. It is denied that late K.R. Rajareddy settled all properties and gave the properties to plaintiffs by executing agreement dated 14-2-1981. Plaintiff No. 1 malafidely fabricated this document in connivance with his friends. It is stated that Sri K.R. Rajareddy was in the hospital at Hyderabad for treatment and as his condition worsened, he was asked to be taken back to home and thus he was brought to Kamareddy. Defendant No. 2, her husband, close relatives of defendant No. 1, relatives of K.R. Rajareddy viz., Srinivas Reddy of Perkit, brothers of defendant No. 1 namely Narsimha Reddy and Ramchandra Reddy of Kotaarmoor village, nephews of defendant No. 1 M. Hanmanth Reddy and other close relatives were present till the death of K.R. Rajareddy. Dr. Anjal Reddy of Kamareddy has been visiting once or twice and remaining there for couple of hours at the house and the condition of Rajareddy was causing anxiety. In such a tense and gloomy situation, it is incomprehensible that this defendant would execute the said deed dated 14-2-1981 in favour of plaintiffs. The plaintiffs managed to bring into existence a false document for the purpose of this suit. If at all K.R. Rajareddy wished of such settlement and that too in respect of his own properties, he would have himself executed a Will or any other document. In fact there was no love lost between the same and so the question of Rajareddy desiring or wishing of settling the properties to the plaintiff does not arise.

21. The following properties are also stated to be the own properties of

defendant No. 1:

(a) Agricultural land bearing Sy. No. 898 of Kamareddy and house over it bearing H. No. 1-5-94 and rooms for labours.

(b) Kamal Talkies premises bearing No. 1-8-169 (old) new No. 1-11-92 situated at Kamareddy.

(c) Lands bearing Sy. No. 17, 18, 19, 20, 24, 23, 80,81 in which plots were made by sanctioned layout and most of the plots have been sold. In Sy. Nos. 908 and 908 also plots are made but sanction of layout is awaited.

(d) Godowns bearing Mpl. No. 1-3-78/6 (old), 1-5-91 (New) constructed on the lands of defendant No. 1 in Sy. Nos. 23 and 907 situated at Kamareddy.

22. The following properties of K.R. Rajareddy are stated to be inherited by defendant No. 1, after his death:

(a) House bearing No. 3-1-10 situated at Kamareddy;

(b) Lands bearing Sy. No. 28 measuring 2 acres 8 gts. and Sy. No. 880 measuring 5 acres 24 gts. situated at Kamareddy.

23. The defendant No. 1 is in exclusive possession of all the above said properties and enjoying the same. The defendant No. 1 permitted the plaintiffs to stay in her own house bearing No. 1-5-94. Since the plaintiffs are raising false claim over the said house; they cease to have any right to stay in it and the defendant No. 1 reserves her right to get them evicted and take back possession.

24. The plaintiff No. 1 and his two sons were having share of 60 paise and defendant No. 2 was having share of 40 paise in the Khandasri Sugar Mill. The plaintiff No. 1 was the Managing Partner of the said Khandasri Sugar Mill and because of him, the mill went in huge loss and it was sold by S.F.C for realisation of the loan amount. That when the plaintiffs have no right over the properties, the question of its mutation does not arise. That the suit for partition is not maintainable and the plaintiffs were never in joint possession and enjoyment of the properties. The suit valuation made and court fee paid is incorrect.

25. In the additional paras of written statement it is stated that the alleged agreement dated 14-2-1981 is not only a fabricated document it is also inadmissible in evidence being unstamped and unregistered. The suit is barred by limitation. The plaintiffs without claiming and establishing their rights are not entitled to file suit for partition.

26. The defendant No. 2 filed memo adopting written statement of defendant No. 1.

27. The plaintiffs filed rejoinder to the written statement of defendants with the following averments:

28. It is incorrect to allege that the plaintiff No. 2 is not the own daughter of first

defendant and her late husband K.R. Rajareddy. It is also denied that the parents of second plaintiff belong to Besta caste of Adloor Yellareddy and she was brought up by the defendant No. 1 and her husband as foster daughter. The plaintiff No. 2 is the own daughter of the defendant No. 1 and her husband. In all educational records and certificates, the plaintiff No. 2 is shown as daughter of K.R. Rajareddy. In the marriage invitation card, agreement dated 11-11-1967 and in the Gift Deed No. 3/1973 executed by late K.R. Rajareddy, the second plaintiff is described and mentioned as the daughter of K.R. Rajareddy.

29. It is denied that K.R. Rajareddy was owner and possessor of only three survey numbers and that he has no right in respect of other lands. First defendant is not the owner of lands mentioned in paras (b) (i) (ii) (iii) and (iv). Late K.R. Rajareddy was having extensive business as Beedi leaves Contractor and manufacturer and he was getting huge income and so he purchased lands, building etc. Late K.R. Rajareddy purchased some properties in his name and some properties were purchased by him out of his own income in the names of his wife and daughter, in order to avoid income tax and wealth tax problems. First defendant has no source of income and she did not purchase any property. The lands in Sy. No. 80 and 81 were also purchased by late K.R. Rajareddy in the name of second defendant and in order to avoid payment of tax, these lands were conveniently transferred to the first defendant. Similarly, Sy.Nos. 907, 908 and 909 were purchased by late K.R. Rajareddy and they were validated in the name of first defendant.

30. It is denied that the Farm house in Sy. No. 898 was constructed by first defendant with her own income. The farm house was constructed by late K.R. Rajareddy in 1964 and later on transferred in the name of first defendant in the Gram Panchayath records to avoid income tax and wealth tax problems. The plaintiffs have been residing in the house looking after agricultural since 1968, onwards. After filing of the suit, the roof of the house collapsed and the plaintiff No. 1 laid slab over it and renovated the same and constructed water tank and compound wall etc. and spent Rs. 4,00,000/- on such reconstruction. That the premises of Kamal Talkies was actually belonged to late K.R. Rajareddy and it was nominally transferred by him in the name of first defendant in order to avoid income tax and wealth tax problem. The defendant No. 1 did not pay Rs. 15,000/- to her husband. The first defendant is not the real owner of this property and she has no right over it. The rent of Kamal Talkies was Rs. 19,000/- per annum and not Rs. 1,200/- p.m.

31. The godowns constructed on Sy. Nos. 23 and 907 also belong to K.R. Rajareddy. Originally, K.R. Rajareddy made application to the F.C.I, in the name of plaintiff No. 2 and defendant No. 2, but as the land was standing in the name of defendant No. 1, F.C.I, entered into agreement of lease in the name of defendant No. 1 without any formal application. The work of fabrication of godown was done under the supervision of first plaintiff. The first defendant has no money of her own and she did not invest any amount in the property.

32. That the Khandsari Sugar Mill was constructed and started with the financial assistance of A.P.S.F.C and Bank. It is false to allege that the first plaintiff swallowed huge amounts and failed to discharge the loan. In fact, the first plaintiff with his efforts made favourable settlement of loans with A.P.S.F.C and bank. An amount of Rs. 48,00,000-00 was due to A.P.S.F.C. Out of which an amount of Rs. 3,90,000-00 was realized by the sale of properties and Rs. One lakh was paid by the first plaintiff and defendant No. 2 in the ratio of 60% and 40% and the A.P.S.F.C. had written off balance of Rs. 43,10,000-00. Similarly, an amount of Rs. 18,00,000/- was due to the bank out of which Rs. 6,70,000/- was paid after the decree of the court in the ratio of 60% and 40% and the balance was written off and this was all done due to subsistent persuasion of the first plaintiff.

33. It is denied that the first plaintiff malafidely fabricated the document dated 14-2-1981 in connivance of his friends. Late K.R. Rajareddy, during his life time, never allowed relatives of defendant No. 1 to come to him. After the death of K.R. Rajareddy only, all kith and kins of defendant No. 1 gathered for the last rites and ceremonies. Dr. Anjal Reddy, Dr. Eashwaraiah, Dr. Chandrakanth treated late K.R. Rajareddy. Late Rajareddy had no predetermination to prepare the said document but he had the inclination to give some properties to the plaintiffs and hence on the suggestion of Mr. Raghava Reddy, he asked first defendant to make such an agreement. All properties standing in the name of first defendant and those which first defendant got through her late husband are all the properties of late K.R. Rajareddy only. The properties shown in para 7 (a) to 7 (d) are not the properties of the first defendant and she has no absolute right in respect of the same properties.

34. The plaintiffs are staying in the house on their own right and not on any one's mercy and charity and they are not liable to be dispossessed therefrom. The liabilities of late K.R. Rajareddy were cleared by the plaintiffs also with their priorities and they have the right to share the properties of late K. Rajareddy. That the suit filed for partition is maintainable and the court fee paid by the plaintiffs is correct since they are in joint possession of the properties.

35. Basing on the respective pleadings, the trial Court framed the following issues:

1. Whether the plaintiff No. 2 is the own daughter of late K. R. Rajareddy and defendant No. 1?
2. Whether the alleged illatom adoption of plaintiff No. 1 by late Sri K.R. Rajareddy is correct, valid and binding on defendants and their properties?
3. Whether K.R. Rajareddy executed agreement on 11-11-1967 agreeing to give 1/3rd share in all the properties to the 1st plaintiff?
4. Whether all the properties shown in paras 2, 4 and 5 of plaint belong to late K.R. Rajareddy?

5. Whether the first defendant executed agreement dated 4-2-1981 giving suit properties to the plaintiff as per the last Will and wish of late K.R. Rajareddy?
6. Whether the agreement dated 14-2-1981 is true and valid and whether it is admissible in evidence?
7. Whether the plaintiffs are in joint possession and enjoyment of the properties after the death of K.R. Rajareddy?
8. Whether late K.R. Rajareddy has purchased the land referred to in para 5 of the plaint and gifted to defendant No. 2 as alleged by plaintiffs?
9. Whether Sri K.R. Rajareddy purchased 52 acres 19 guntas of land in Sy. Nos. 434/436, 438 and 441 at Adloor village in the name of plaintiff No. 2 and got the sale deed registered as alleged by the defendant in para 5 of written statement?
10. Whether the alleged agreement assigning the properties is true and valid and whether it is admissible without stamps and registration?
11. To what relief?

36. The trial Court framed an additional issue which is to the following effect:

12. Whether the suit is barred by limitation?

37. Both the parties adduced oral and documentary evidence in support of their respective cases. On behalf of the plaintiffs, the first plaintiff himself was examined as P.W.1 besides examining P.Ws. 2 to 9 and got marked Exs.A-1 to A-66. On behalf of the defendants, the first defendant was examined as D.W.1; second defendant examined as D.W.8, besides examining D.Ws.2 to 7 and 9 got marked Exs. B-1 to B-188.

38. The trial Court on consideration of the evidence, both oral and documentary, dismissed the suit by its judgment and decree dated 14-5-2002. Aggrieved by the same, the plaintiffs preferred the present appeal.

39. Heard Sri M.S. Ramachandra Rao, learned Counsel for the appellants and Sri N. Subba Reddy, learned Senior Counsel appearing on behalf of the counsel for the respondents at length and perused the entire material available on record including the written submissions filed by both the counsel.

40. Sri M.S. Ramachandra Rao, learned Counsel appearing on behalf of the plaintiffs-appellants vehemently contended that the plaintiff No. 1 is the illatomson-in-law of the defendant No. 1 and K.R. Rajareddy and that Ex. A-48 dated 11-11-1967 was executed at the time of engagement ceremony by K.R. Rajareddy promising to give 1/3rd share in his properties to the plaintiff No. 1 and that in view Ex. A-49 dated 14-2-1981 executed by the defendant No. 1 agreeing to give certain properties to the plaintiffs, at the behest of late K.R. Rajareddy, who wanted to keep his promise to the plaintiffs made under Ex. A-48, the plaintiffs are entitled for the relief sought for in the suit. Learned Counsel relying on documentary evidence Ex. A-1, A-2, A-3, A-4 and A-5, A-6

and A-30 would contend that the plaintiff No. 2 is the natural daughter of defendant No. 1 and K.R. Rajareddy and therefore the entire approach of the trial Court in disbelieving them is not correct. It was further contended that no account books, bank pass books are filed to show that defendant No. 1 had any independent income of her own and that all the plaint schedule properties are the properties of K.R. Rajareddy and in the absence of any lawful income on the part of defendant No. 1, she cannot contend that she purchased the properties with her streedhana money. Learned Counsel also contended that plaintiffs are in joint possession of the plaint schedule properties along with defendants and therefore the findings of the trial Court that the plaintiffs are not in joint possession and that the suit is barred by limitation are not correct. Sri M.S. Ramachandra Rao, learned Counsel further submitted that the 1st plaintiff after discharging his responsibility as son-in-law, and after the death of K.R. Rajareddy, asked for share in the property and that the 1st plaintiff had written the letter Ex. B-2 in a shocked mental condition and therefore the same cannot be taken into consideration.

41. Sri N. Subba Reddy, learned Senior Counsel appearing on behalf of the counsel for the respondents contended that the plaintiffs miserably failed to establish their case for grant of relief of partition and separate possession of the suit properties on the footing that they are entitled to a share in the properties being illatom son-in-law and natural daughter of defendant No. 1 and K.R. Rajareddy. It is the contention of the learned Senior Counsel that any mother would not deny the legitimacy of her own daughter, and that the 2nd plaintiff has not gone into the witness box to assert that she is the natural daughter of the 1st defendant and K.R. Rajareddy. The learned Senior Counsel by reading the entire evidence of defendant No. 1 Laxmi Bai would contend that the 2nd plaintiff was brought up as a foster daughter and her evidence, being mother, is of utmost importance as no woman would disown her daughter and state that she was not born to her. Added to that, learned Senior Counsel submitted that recitals in Ex. B-2 letter dated 26-2-1980 written by the 1st plaintiff to K.R. Rajareddy would clinchingly prove that the 2nd plaintiff is the foster daughter of K.R. Rajareddy and first defendant. The trial Court on consideration of the entire evidence on record came to the conclusion that the 2nd plaintiff is only a foster daughter and in view of the same, the alleged plea of illatom son-in-law has no substance. Learned Senior Counsel also submitted that the trial Court on proper appreciation of the entire evidence on record came to the conclusion that Ex.A-49 is only an unregistered agreement and as admitted by P.W.1 in his deposition itself, that mere agreement does not convey title to the property, the remedy for them is to file a suit for specific performance and to obtain appropriate relief. It is the further contention of the learned senior counsel that the suit itself is misconceived and that Exs. A-48 and A-49 are forged documents and that the suit is hopelessly barred by time and therefore the appeal is liable to be dismissed.

42. On the basis of the rival contentions, the following issues would emerge of

consideration in this appeal:

- (1) Whether the second plaintiff is the own daughter of K.R. Rajareddy?
- (2) Whether plaintiff No. 1 is the illatom son-in-law of defendant No. 1 and K.R. Rajareddy?
- (3) Whether Ex A-48 and Ex A-49 are true and valid? and
- (4) Whether the suit is barred by limitation?

Re. Issue No. 1:

43. The first question that falls for consideration is as to whether the second plaintiff is own daughter of K.R. Rajareddy and the first defendant or not? Both the parties in support of their contentions have adduced oral and documentary evidence on this aspect. The plaintiffs produced Ex. A-1-wedding invitation card, Ex. A-2 statement of K.R. Rajareddy, Ex. A-3 copy of the order of the Land Reforms Tribunal, Ex. A-4 and A-5, date of birth certificates issued by the Z.P.P. Schools (Girls), Kamareddy and Z.P.P. School (Hanuman Mandir Road), Kamareddy wherein the plaintiff No. 2 studied in classes 8 to 12 and class 5th respectively, in which the plaintiff No. 2 was described as the daughter of K.R. Rajareddy. P.W.7 Teacher, working in Z.P. High School, Hanuman Mandir Road, Kamareddy, was also examined to prove Ex.A-5, date of birth certificate of second plaintiff. P.W.7 produced original admission register of school, wherein it was mentioned that the second plaintiff is the daughter of K.R. Rajareddy and also her date of birth as 26-5-1953. But P.W.7 in his cross examination categorically deposed that the details as to whether a father is natural father, adoptive father, or foster father would not be noted in admission register and the application form only contains such details as to whether a father is adoptive father or natural father. It is also noteworthy that no clinching evidence or at least birth extract of second plaintiff has been filed by the plaintiffs, except relying upon documents marked as Exs. A-1 to A-7 and A-30. The school certificates, gift deed, and the documents of land reforms tribunal, exhibited in the case, mentions the second plaintiff as the daughter of K.R. Rajareddy. As rightly contended by the learned Senior Counsel for the respondents, this is only one piece of evidence but the same cannot be treated as conclusive proof of evidence to come to a conclusion as to the legitimacy of the second plaintiff failed to get the information about the birth particulars of second plaintiff, and that he failed to prove that the second plaintiff is the natural daughter of K.R. Rajareddy and his wife.

44. Be that as it may, the first defendant, apart from oral evidence, adduced documentary evidence Ex. B-1 to B-188. From the above exhibits, Ex.B-9 is stated to be horoscope of second plaintiff. Ex. B-9 is stated to be prepared by late Vittal Sastry r/o Kaligote - wherein, the second plaintiff was described as the brought up adopted daughter. Ex. X-1 is the horoscope of Hanmandlu, son of Maddula Kishtabai, D.W.2, (Ex.X-1) and Ex. X-2 horoscope of son of Katipally

Chandra Bai, D.W.3. All the above three horoscopes are prepared by Vittal Sastry. His grandson, D.W.4, Sudarshan Rao was examined and he identified the handwriting of Vittal Sastry.

45. With regard to Ex. B-24, verification and inspection report of land reforms officer, the parties have filed declarations separately, as independent family Units, under the Land Reforms Act, in the year 1975. The declaration filed by the second plaintiff was scrutinized by the Verification Officer and he submitted a report, (Ex B-24 dated 29-3-1976), wherein it was stated that the second plaintiff was the adopted daughter of K. R. Rajareddy, as in the declaration filed by the second plaintiff, it was mentioned "the declarant is the adopted daughter of Sri K.R. Rajareddy declarant in C.C. No. 1240/ 75". The verifying officer states in the report that he had personally verified and enquired into the declaration and certified that the information reported in the statement and enclosures and in this questionnaire are true. Under those circumstances, non-disputing of the same, in the objections of statement, submitted in reply to the verification report, by the second plaintiff, Ex. B-44, dated 21-4-1976 is fatal to the case of the plaintiffs as in the statement on oath given before the Land Reforms Officer, (Ex. B-40 dated 23-7-1976), the second plaintiff did not claim to be the natural daughter of late K.R. Rajareddy. P.W.1 in his statement denied the statement on oath, by second plaintiff, before Land Reforms Tribunal and stated that the verification report and that his wife did not depose before the Land Reforms Tribunal. But Ex. B-24, is the verification and inspection report. It appears enquiry was made as to striking of the word "adopted" on Ex. B-24 and that during the course of hearing of the suit, the counsel for the plaintiffs before the trial Court had admitted that he received a Xerox copy of Ex. B-24 (marked as Ex. B-43) wherein the word "adopted" was not struck off. P.W.1 in his cross-examination states "it is true that in the copy of declaration with verification report, submitted by the Second plaintiff to the concerned authorities and filed by the defendant in this suit, the word "adopted" appears to be struck off and in the copy of it, supplied to my counsel and filed into the court that word, "adopted" does not appear to be struck off".

46. From the above document Ex. B-24, it follows that the Verification Officer stated that second plaintiff was the adopted daughter and not the natural daughter of K.R. Rajareddy and this description was not questioned by plaintiffs.

47. Ex. B-2 is another document which is a personal letter written by the first plaintiff to K.R. Rajareddy, from New Delhi. In the said letter, it is said that, second defendant is his natural daughter and that there is no need for him to do any service hereafter. The translated recitals of the said letter reads thus:

But as per aunty's thinking now your own son-in-law has come".... "But in case of Swaroopa (second defendant) if same happens she is adjusting herself because she is her daughter"....

As per aunty's desire your son-in-law has come. So I think my duty is not

required any more".... "Even after not getting love and affection from aunty from 1970 to 1980, we have performed our duty properly. But in future her son-in-law and daughter should perform....

48. In another letter Ex. B-3, dated 29-2-1980 written by first plaintiff to K.R. Rajareddy wherein the first plaintiff stated that so far he wrote three letters and sent one telegram to K.R. Rajareddy and that K.R. Rajareddy might have received them. He had also stated in that letter that after seeing the previous letter Ex. B-2, it might be painful to him (K.R. Rajareddy). In his evidence P.W.1 admits that Exs. B-1 to B-4 were letters written by him to K.R. Rajareddy.

49. The defendants also produced the documents relating to the suit filed by SBH, Kamareddy, in O.S. No. 133 of 1983, before the learned Subordinate Judge, Nizamabad, for recovery of the amount against Murali Khandasari Sugar Mills. In the plaint filed in the said suit, which is marked as Ex. B-41, dated 31-10-1983, it was stated explicitly that the second plaintiff is the foster daughter of first defendant and K.R. Rajareddy and after K.R. Rajareddy's death, the properties were devolved on his legal heirs, the defendants. It is apt to refer to para-2 of the plaint, Ex. B-41, which reads thus:

That one Sri K.R. Rajareddy.... Kamareddy. Defendant No. 3 is his own daughter, Defendant No. 8 is his wife. The defendant No. 7 is the husband of defendant No. 3. The defendant No. 6 has been the foster daughter of defendant No. 8 and K.R. Rajareddy.... K.R. Rajareddy died on 19-2-1981 and defendants 3 and 8 are his only heirs and legal representatives being his daughter and wife respectively.

50. In the written statement filed by the first defendant, (as legal representative of K.R. Rajareddy in that suit) it was admitted "That the contents of para-2 of the plaint are correct, it was asserted that the second plaintiff is not her natural daughter. The 1st defendant categorically stated in that written statement that herself and the second defendant are the only heirs and legal representatives of late K.R. Rajareddy. The bank manager examined by the counsel for plaintiffs of the suit, also stated that "K.R. Rajareddy informed him that D6 (2nd plaintiff herein) is his foster daughter. The evidence of D.W.1 who is mother of second defendant and wife of K.R. Rajareddy is thus:

"Plaintiff No. 2 is not born to me but she was brought up by me and my husband. I became pregnant at the age of 23 years, but it was aborted at 3 months pregnancy. After two years I become pregnant, but the pregnancy of four months and also aborted. I was given medicines and treated, but there was no use. I could not become pregnant for seven or eight years. One bestha Sailoo was cook with us, who informed us that one Pentamma of Kamareddy had brought girl child of about twenty one days old, as her mother died, when the child was about seven days age, who was resident of Adloor Yellareddy and she brought the child. I asked my cool to bring Pentamma with the child. I sent for my mother and sister and they came along with Narsa Reddy son of my sister, my mother-in-law as already there with me. All of them thought that I should

bring up the child. Hence I retained the child and bought her up. She was brought up by giving tinned milk. She was brought up as our daughter. My cook sent to the village Adloor yellareddy to ascertain the date and time of the birth of the child, which he brought and on that basis I got prepared Jamna partika by one Vittal Sastry of kaligote village. Myself and my husband gave love and affection and parntage to the child. She was got educated by Joining school She situated up to 12th class. The said cook, Pentamma and Vittal Sastry are no more. Cradle ceremony was performed in the third month by name her as Sunanda."

...

..."D-2 born tome after second plaintiff was brought into our family. Hence the second plaintiff was called elder daughter and defendant No. 2 was as younger daughter."

51. From a reading of the above evidence of the defendant No. 1, even assuming that there are disputes among the plaintiffs and defendants, no mother would deny the legitimacy of her daughter. The evidence of D.W.1 clearly shoes, that the second plaintiff was brought up as a foster daughter and she explains the circumstances under which she was brought into the family. Her evidence, being the mother, is of utmost importance. That apart, the second plaintiff has not come into the witness box to assert that she is the natural daughter of defendant No. 1 and K.R. Rajareddy. In the natural circumstances, the evidence of second plaintiff would clinch the entire affairs of the family, but the second plaintiff was not examined to depose her status in the family. The Jamnapatrika i.e., Horoscope (Ex.B-9) shows that she is not the natural daughter of the K.R. Rajareddy.

52. A plain reading of the above evidence goes to show that the second plaintiff is the foster daughter of the K.R. Rajareddy and not the natural daughter as claimed by the plaintiffs. The trial Court considering this evidence on record on this point held that the plaintiffs failed to get the details about the birth of second plaintiff. The relevant portion of the trial Court's judgment reads thus:

...the entire pleadings of the plaint are only describing the properties of Rajareddy and giving stress as to the fact of first plaintiff taken as illatom son-in-law and about the execution of Ex. A-49 by the first defendant giving of some properties to P.W.1 and his wife, second plaintiff. The very fact that since 1970 the relations between P.W.1, second plaintiff and D.W.1 are strained is very clearly seen from the admitted document i.e., the Inland letter written by P.W.1 to Rajareddy on 26-2-1980 from Delhi wherein he had clearly mentioned that since 1970 to 1980 he failed to get love and affection from D.W.1. In this case, when the mother D.W.1 takes the plea that so and so (second Plaintiff) is not her daughter, then in the light of the documents produced by the defendants, which are all about 18 years and 11 years prior to the filing of the suit and as well as from the contents of the letter by P.W.1 himself, it leaves no doubt for the court

to reach a conclusion that the plaintiffs failed to show that the second plaintiff was born to D.W.1 and late Rajareddy and she is their natural daughter.

53. I am of the considered view that the trial Court on an examination of the evidence adduced, has rightly come to the conclusion that the second plaintiff is a foster daughter of K.R. Rajareddy and the first defendant and not their own daughter, as claimed by the plaintiffs. In the circumstances, the first issue is answered accordingly and against the plaintiffs.

Re. Issues 2 and 3:

54. The plaintiffs contend that before the marriage of the first plaintiff on 19-2-1968, there was an agreement to take him as an illegitimate son-in-law and late K.R. Rajareddy executed a document which was marked, in the case as Ex. A-48. By virtue of this, the first plaintiff tries to establish that the second plaintiff is the natural daughter and that she was given in marriage to the first plaintiff and an agreement was entered into before the marriage agreeing to give a share in the properties.

55. The defendants have attacked this document stating that it is a fabricated one brought into existence by the plaintiffs; Pertinently, this document was brought into light only at the time of filing the suit. Even in the proceeding before the Land Reforms Tribunal, this fact was not stated either by the first plaintiff to the second plaintiff. According to P.W.1 i.e. the first plaintiff this document was written by one Venkateshwara Rao Pantulu and he has also attested the same. A perusal of the document clearly shows that Venkateshwara Rao Pantulu's name, as a scribe is not mentioned and also his attestation was not found on the document Ex.A-48. In these circumstances, it is apt to refer to certain portions of depositions made by P.W.1, in this Examination in chief, which reads as follows:

...on 11-11-1967 there was a function held at Kamareddy in the house bearing number 3-1-10. I was presented a golden ring, clothes and fruits. Besides K.R. Rajareddy on behalf of my wife and Narayanreddy on my behalf, there were Yerra Rajareddy, Dammannagari Narayanreddy of Bikhnoor, Keshavreddy of China Mallareddy, one Veeraiah political advisor, K.P. Rajareddy president of panchayat samithi Kamareddy, G. Vittalreddy advocate and M. Mallareddy sarpanch of Baswapur Gram Panchayath, Venkateshwar Rao, resident of Demi (v) Kamareddy Tq were present in that function".... "One Venkateshwar Rao panthulu had scribed that agreement. He also attested the document. The aforesaid elders had signed on the said document as attestors. The date of marriage was fixed as 19-2-1968, but the date of marriage was not entered in the document

56. The other two attestors were examined and they are P.Ws.2 & 3. P.W.2, in his evidence stated that one Yerra Raja Reddy was the scribe of Ex. A-48 and not Venkateshwara Rao Pantulu. P.W.3 another attestor to this document in his evidence also stated that Ex. A-48 was scribed by Yerra Raj Reddy. P.W.3 further stated that he does not know whether Yerra Raja Reddy scribed the document as he was sitting inside the house. The entire evidence of P.Ws.2 and 3 is

inconsistent. A perusal of the evidence of P.Ws.1 to 3, as regards Ex.A-48, does not inspire the confidence, apart from the fact that neither it was published nor mentioned in the land reforms proceedings. Since the agreement itself fails, no reliance can be placed on Ex.A-48, to have a share in the property of late K.R. Rajareddy.

57. Though an observation was made by the trial Court basing on the statement made by the first plaintiff that there is no need to go for discussion on the validity of Ex.A-48, as plaintiffs did not press into service the said document and they are only relying upon Ex.A-49 document said to have been executed by the first defendant, but, the findings on Ex. A-48 has a material bearing on the issues in the appeal. Ex A-49 agreement dated 14-2-1981 was proceeded on the basis that the second plaintiff is the elder daughter of K.R. Rajareddy. The second plaintiff claims a share in the properties by relying upon Ex. A-49. If once, Ex. A-48 is found to be false document, the veracity of Ex. A-49 falls to ground and therefore the question of the first defendant giving a share in the properties under Ex.A-49 is doubtful.

58. On the question as to the truth and validity of the agreement Ex.A-49, said to have been executed by the first defendant in favour of the plaintiffs, the case of the first plaintiff is that he is the Illatom son-in-law of the family and K. R. Rajareddy agreed to give 1/3rd share in this properties and executed an agreement to that effect on 11-11-1967 (Ex A-48) and he insisted K.R. Rajareddy to give the share in the properties in terms of promise made by him under Ex.A-48. In this connection, it is worthwhile to refer to the evidence of P. W. 1 (first plaintiff) which reads thus:

...I asked K.R. Raja Reddy to give specific property to me in accordance with the agreement Ex A-48, as there was change in the circumstances such as transferring Kamal Talkies, godown transferring in the name of first defendant and because of sale of my agricultural lands for discharging the loans. I was demanding Raja Reddy to divide and give me my separate share of property and liabilities. He was promising me that he would divide the properties after discharge of the debts.

59. It is the case of the plaintiffs, that K.R. Rajareddy, husband of the first defendant asked the first defendant to execute the document to give certain properties to plaintiffs 1 and 2 thereupon Ex. A-49 was executed by the first defendant, both with reference to her properties and also that of K.R. Rajareddy. The actual execution of Ex. A-49 depends upon the evidence of P.Ws.1, 4, 5 and D.Ws.1 & 8 who are stated to be with K.R. Rajareddy in his last days prior to his death.

60. It is an admitted fact that K.R. Rajareddy was seriously sick in February 1981. As per the evidence of D.W.6- Doctor, K.R. Rajareddy was a diabetic patient and lost both kidneys. In the first instance, K.R. Rajreddy was taken from Kamareddy (his permanent place of residence) to Hyderabad Nursing home at

Hyderabad for treatment and he was admitted in the said Nursing Home, but the Doctors opined that his conditions was serious and there is no hope of recovery, whereupon on 11-2-1981 K.R. Raja Reddy was brought back to Kamareddy by the 1st plaintiff and he died on 19-2-1981 and the document Ex.A-49 was said to have been executed on 14-2-1981 i.e. five days prior to the death of K.R. Rajareddy.

61. The case of the plaintiffs, as aforesaid, is that Raja Reddy asked the first defendant to give properties as promised by him under Ex.A-48. The condition of K.R. Rajareddy at the time when Ex. A-49 was stated to be executed, about his health, was spoken to by the first defendant, his wife (D.W.1), and second defendant, his daughter (D.W.8), supported by the evidence of Dr. Anjal Reddy, (D.W.6), who was attending on him. D.W.1 who is wife of K.R. Rajareddy deposed regarding the health condition of her husband as follows:

My husband was suffering from diabetes and kidney trouble so he was weak as such we took him to Hyderabad for treatment, while, in the hospital his condition was deteriorated and doctors asked us to take him back to Kamareddy, and we brought him back to Kamareddy. After 9 days coming from Hyderabad he passed away. On the same day of his bringing from Hyderabad, we informed our relatives about his conditions...

"My husband was not in a position to talk and identify"...."Dr. Anjalreddy was attending to my husband daily 3 to 4 times. The atmosphere in the house was very bad due to ailment of my husband"...

It is not true to suggest that he was being treated by Dr. Chandrakanthrao and Dr. Gopalreddy also.

62. D.W.8, the second defendant, in her evidence deposed that her father was brought to Kamareddy when his condition was serious and at that time her father was not in conscious state, for about one week prior to his death. She also deposed that her father was not in a position to talk and all the time lying in the bed and he was not responding their calls and was in critical condition since 10-2-1981. She further categorically deposed that her father was given liquid diet for 2 days after he was brought to Kamareddy and thereafter he was given intravenous fluids. Dr. Anjal Reddy, D.W.6, who treated K.R. Rajareddy stated in his evidence that he know K.R. Rajareddy and that he died in the month of February, 1981. It is also useful to quote the relevant portion of the evidence of D.W.6, Dr. Anjal Reddy, who treated K.R. Rajareddy, which read thus:

...Hewas having Diabetes leading to end stage renal failure I was attending on K.R. Rajareddy and I treated him for about 8 or 10 days in the month of January, 1981 for renal failure. As we found that the ailment was leading to total renalfailure I contacted nephrologist at Hyderabad and on his advice we shifted to Hyderabad.... The condition of K.R. Rajareddy was deteriorating and he was not responding to treatment. The nephrologist advised us to take K.R. Rajareddy back to Kamareddy, as there was no hope of survival and he was not in favour of

putting K.R. Rajareddy on dialysis or to further treatment. Accordingly K.R. Rajareddy was brought back to Kamareddy. After K.R. Rajareddy was brought back to Kamareddy I was informed. I called on him. I found his condition very bad. He was semi conscious and drowsy. We administered the same drugs as prescribed by Hyderabad nursing home. Initially K.R. Rajareddy was given spoon feeding after return to kamareddy. He was on spoon feeding for about 2 to 3 days. Thereafter K.R. Rajareddy was put on I.V. fluids. (Intravenous.... K.R. Rajareddy was not able to sit or to talk and he was not recognizing the persons visiting him.

63. According to the evidence of P.W.5, one of the attestors of Ex.A-49 is to the effect that K.R. Rajareddy was conscious and he was in a position to attest the document. P.W.5 further stated that K.R. Rajareddy did not put his signature on that document though he was capable of signing at that time. He also further stated that P.W.1 (first plaintiff) and his wife also did not put their signature on Ex. A-49 document. But if really K.R. Rajareddy was conscious and he was in a position to execute the document, it is natural that he himself should have executed the document, instead of directing the first defendant to execute the document in favour of both the plaintiffs. The case of the plaintiffs was that no relatives were present including the husband of the second defendant, at the time of execution of Ex. A-49.

64. It has come in evidence that there were large number of relatives present with K.R. Rajareddy, during his last days, but none of them were examined to prove Ex.A-49. In circumstances, the trial Court on close scrutiny of the evidence of P.Ws.4 & 5 who are scribe and attestor of Ex. A-49, observed as follows:

P.W.4, Raghava Reddy deposed that he knows K.R. Raja Reddy and P.W.1 and he also know first defendant and further he deposed that Raja Reddy and first defendant treated him as a close associate (Apthuniga) and that on 14-2-1981 he (P.W.4) went to kamareddy for purchase of fertilizers and he came to know through P.W.1 that Rajareddy was brought back to Kamareddy and on that P.W.4 and 5 both went to the house of Rajareddy and there, they found Rajareddy very weak. P.W.4 further deposed that first defendant (D.W.1) asked him to write document relating to their properties and that he scribed the document as per the directions of the first defendant and later the contents were read over to first defendant and thereafter first defendant put her signature on the document and he (P.W.4) also put his signature on it. P.W.4 further deposed that Swaroopa (Defendant No. 2) and P.W.4 and one Narsimulu also signed on the document. In the cross examination of P.W.4 he deposed that when Rajareddy was ill he went to Hyderabad to see him by the hospital authorities did not allow him to go nearer to Raja reddy and as he was in the emergency ward and that he could see Rajareddy from out side the room of the hospital and returned home. He further deposed in his cross examination that he does not know for what ailment Rajareddy was being treated at Hyderabad and he further deposed that before the document Ex. A-49 was executed Rajareddy and first defendant talked

together but he does not know what was discussed by them. He further deposed that he can not identify the relatives of K.R. Rajareddy and in his cross examination, he was shown D.W.5 husband of second defendant and asked to identify him and he said that he does not know him. The learned Counsel for the defendant taking me although these points elicited in the cross examination about P.W.4 not knowing as to what was the ailment of Rajareddy and that he was not in a position to identify even the son-in-law of Rajareddy and in such a case, he (P.W.4) cannot be taken as a close associate of Rajareddy and first defendant and what all he deposed with regard to the execution of Ex. A-49 can not be believed. The learned Counsel for the defendant further submitted that P.Ws.4 and 5 were not invited by K.R. Rajareddy and the first defendant for execution of the document Ex. A-49 but these two persons just happened to visit Rajareddy as a formal visit and it is said that they were asked to scribe the document and also to attest the document as a witness. According to P.W.4 it is first defendant who asked him to scribe Ex. A-49, but according to P.W.5 it was Rajareddy who asked P.W.4 to scribe the document. According to P.W.4, he came to Kamareddy for purchase of fertilizers even though his village Baswapur is very near to the Ramayampet where there are fertilizer shops available (as per the evidence of the P.W.5). Rajareddy was seriously ill when he was brought back to Kamareddy on 11-2-1981. He was brought back since the Doctors lost hope of his survival and according to D.W.6 Dr. K. Anjal Reddy the condition of Rajareddy was critical after he was brought back to Kamareddy and just he survived for eight days i.e. from 11-2-1981 to 19-2-1981. It is not the case where late Rajareddy wanted to execute a will as he has no hope of his life and it is not the case where the relations between the plaintiffs and defendants and Rajareddy were very cordial and just for settlement of properties, document was thought of being executed by first defendant and above all when D.W.1 is executing a document in favour of P.W.1 whereby some of the properties in which second defendant and her husband can also have a claim, were given to P. W. 1, then in such a case, it is necessary that the elders and relatives from the side of Rajareddy were to be made present when such a document was executed and at the same time, it is but natural to take signatures of the second defendant as well as her husband Rama Krishan Reddy (D.W.5) on Ex. A-49 so as to avoid future complications. But this was not done so. The document Ex. A-49 was said to be scribed by a person who had no knowledge even about the family members of Rajareddy and was attested by a person who just happened to see Rajareddy on courtesy visit. Both these witnesses P.W.4 and 5 were not summoned by Rajareddy and first defendant for the purpose of executing Ex. A-49 but only after their arrival, at the house of Rajareddy it is said that the development took place and accordingly first defendant executed Ex. A-49 as a last wish and will of Rajareddy in giving some properties to P. W. 1 and second plaintiff. The plaintiffs in order to show that Rajareddy was doing will and was in a position to give instructions to others in dealing with properties and also ingoing for settlement of his properties in the persons in whom he was interested, got examined by one Dr. Gopalreddy (P.W.6). According to P.W.6,

Rajareddy after being shifted to Kamareddy was being treated by him, along with Dr. Eshwerdas, Dr. Anjalreddy and Dr. Chandrakanth Rao and according to him, Rajareddy was coherent and conscious and was in a position to identify others. Here the learned Counsel for the defendant submits that the introduction of Dr. Gopalreddy as a person who treated Rajareddy during his last days is not being mentioned in the plaint or in the rejoinder but it was only introduced in the evidence of P.Ws.4 and 5. Even according to these two persons, Rajareddy himself said that he was taking treatment from Dr. Gopalreddy. The very way in which P.W.4 explained and introduces Dr. Gopalreddy as the person who treated Rajareddy seems to be absurd as it is not his personal knowledge that Dr. Gopalreddy treated Rajareddy but it was Rajareddy himself informed P.W.4 that he was being treated by Dr. Gopalreddy.

65. In the evidence of first defendant (D.W.1), she categorically denied the execution of Ex. A-49 and deposed that she never executed any document. She stated in her evidence that Ex. A-49 is a fabricated document. She categorically denied the suggestion that Ex. A-49 records the wish of her husband regarding giving share in the properties mentioned therein and that it is a true document and that she is denying the document malafidely in order to avoid giving a share to the plaintiffs as mentioned therein. At the time of giving evidence, D. W. 1 was 80 years old, and because of her old age she deposed that she cannot identify her signature, in view of defect in sight. The commissioner cum advocate also made an observation that the witness expressed her inability to sign on the statement, because, of her eye problem and weakness in fingers, therefore she put her right hand thumb impression on her statement in my presence,

66. The evidence of the second defendant (D.W.8) is that she did not attest any document at all. D.W.8 in her evidence stated thus:

it is not true to suggest that my father distributed the properties among the parties to the suit under Ex. A-49 and for that myself and my mother put our signatures on that document....

There is no truth in the allegation that P.W.4 & 5 came to my father and talk to him and on my father instructions my mother asked P.W.4 to scribe a document (Ex. A-49) and that my mother and myself put our signatures as witnesses.

67. D.W.8 denied her signature on Ex. A-49. No attempt has been made to send the document to any handwriting Expert. No steps were taken to get Ex. A-49 registered immediately or soon thereafter execution of the document on 14-2-1981. No explanation has been offered in this regard. Even after the death of K.R. Rajareddy on 19-2-1981; no attempt has been made to get the document presented for registration. The said document has not seen the light of the day, except on the date of filing of the suit. The trial Court, on evidence, found that the first defendant is in exclusive possession of all the suit schedule properties and enjoying the same and that the plaintiffs were never associated with the said properties. The first defendant is receiving the rents, paying revenue and other

taxes and submitting income tax returns and paying income tax. Admittedly, the plaintiffs in their Rejoinder mentioned that the first defendant is enjoying the rents since 1986.

68. From the above evidence, it follows that K.R. Rajareddy was semi-conscious at that time, therefore the question of his directing the first defendant to give properties, not only pertaining to him, but also the properties of first defendant seems to be unbelievable.

69. P.W.1 admits that he wrote Ex. B-2, when he was mentally upset, because of some disputes between his wife and his mother-in-law." Ex. B-2 was written by first plaintiff from Delhi on 26-2-1980, wherein he said "Even after not getting love and affection from aunty from 1970-1980, they performed their duty properly. But in future her son-in-law and daughter should perform. There is also clinching documentary evidence showing inter alia that there are disputes between the parties. Further, in the suit filed by the Bank (O.S. No. 133 of 1983) Ex. B-41 dated 31-10-1983, it was mentioned that "during the last days of K.R. Rajareddy and after his death, disputes have arisen between defendant Nos. 3, 8 and 7 on one side and defendants 2, 6, on the other side due to which, the Khandasari Factory is not being run efficiently." In the written statement Ex. A-32, dated 19-1-1985, filed by the present plaintiffs, in the said suit, it was admitted with regard to the disputes. It clearly shows that there are strained relations between the parties and as such the first defendant agreeing to give lion share of her properties appear to be improbable and incredible.

70. The second plaintiff who claims to be the elder daughter of the first defendant and K.R. Rajareddy, she had not come into the witness box to depose that properties were given to her by her mother, D.W.1, out of love and affection. She was major at the time of the alleged execution of Ex. A-49. The scribe of Ex. A-49, examined as P.W.4, in his evidence stated that the first defendant handed over Ex. A-49 to her elder daughter, the second plaintiff, by name Sunanda and in view of this statement, it was imperative that the second plaintiff should have been examined, herself, to speak about the facts about the alleged execution of Ex. A-49 and also due execution by the first defendant. In this view of the matter the decisions relied on by the learned Counsel for the appellants Basireddy v. State of A.P. 1987 (1)APLJ 276, K. Thirupal Reddy v. State 1978 (1) ALT 5 (NRC)., Dr. J.N. Banavalikar Vs. Municipal Corporation of Delhi and another, and other similar decisions to show that for the validity of illatom adoption, it is not necessary that agreement to give any property should be evidenced by a written document much less by a registered document, as illatom adoption is a creature of custom and the agreement it give a share need not be in writing, are not applicable to the facts of the present case, as curiously in this case, the contention of the plaintiffs that second plaintiff is the natural daughter of K.R. Rajareddy. and first defendant itself is not proved.

71. For all the reasons stated above. I do not see any ground to dislodge the findings arrived at by the trial Court that Ex. A-49 is not true and valid and the

plaintiff are not in joint possession of the property and as such the suit cannot be maintained for partition and separate possession of the suit schedule property. In the circumstances, the second and third issues are answered accordingly and against the plaintiffs.

Re. Issue No. 4:

72. This issue was framed on the plea of the defendants that the suit is barred by limitation. The suit was filed by the plaintiffs basing on the documents Ex. A-48 dated 11-11-1967 and Ex. A-49 dated 14-2-1981. Subsequently the plaintiffs did not press the Ex. A-48. The entire claim is on the basis of Ex. A-49. Even according to the plaintiffs, the first defendant was not inclined to give any share in the properties and enjoying the rents in respect of the properties since 1986. As rightly observed by the trial Court, denial to give share in the properties in question was made known to the plaintiffs in the year 1986 itself and therefore the suit filed by the plaintiffs in the year 1994 is barred by limitation under Article 113 of the Limitation Act, 1963 and, therefore, this issue is also answered accordingly and against the plaintiffs.

73. For the foregoing discussion, I do not see any merit in this appeal and the appeal is accordingly dismissed. No order as to costs.