
(2008) 04 AP CK 0017
In the Andhra Pradesh High Court
Case No : S.A. No. 161 of 1998

Vavilapalli Sarojanamma and Others	APPELLANT
Vs	
Pappala Rajeswaramma	RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Evidence Act, 1872 — Section 102, 114, 65, 69, 73

Citation : (2009) 1 ALD 2 : (2008) 4 ALT 369

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : K.S. Gopala Krishnan, for the Appellant; Purushotham and M.V.S. Suresh Kumar, for the Respondent

Final Decision : Allowed

Judgement

G. Bhavani Prasad, J.—The unsuccessful plaintiffs in O.S. No. 14 of 1999 on the file of the Senior Civil Judge's Court, Rajam filed the appeal in A.S. No. 1870 of 2001 against the judgment and decree dated 18-4-2001 dismissing the suit for declaration of the title of plaintiffs 2 to 4 to the suit properties and for a permanent injunction restraining the defendant and her men from interfering with their possession, without costs.

2. The plaintiffs filed the suit claiming that the 1st plaintiff is the wife and plaintiffs 2 to 4 are the sons of Vavilapalli Satyamnaidu, son of Kurminaidu and Chinnamminayuralu. Chinnamminayuralu had three daughters - Jaggamma, Varahamma and Narayanamma, and Narayanamma is the mother-in-law of the defendant. The defendant's husband Pappula China Appalanaidu is the brother of the 1st plaintiff. The plaint schedule and other properties were the absolute properties of Chinnamminayuralu through her father Pappula Pentannaidu of Tunivada. Chinnamminayuralu gave sufficient cash, gold and other articles to her three daughters while performing their marriages and they had nothing to do with the properties of Chinnamminayuralu who was looked after in her old age with great care and affection by her only son Satyamnaidu. Chinnamminayuralu

executed a registered Will dated 2-3-1954 in a sound and disposing state of mind in favour of Satyamnaidu bequeathing all her properties. After the death of Chinnamminayuralu, Satyamnaidu succeeded to all her properties and after him, plaintiffs 1 to 4, since 7 years prior to the suit, were in possession and enjoyment of the properties. Satyamnaidu sold items 9 to 11 of Lot I of plaintiff schedule to the 5th plaintiff receiving Rs. 3,000/- as advance under an agreement of sale dated 1-2-1989 and the balance of Rs. 2,800/- on 20-2-1989. The 5th plaintiff is in possession of the said items since then. When the defendant, Pappula Venkatinaidu and Pappula Venkunaidu threatened to interfere with the possession and enjoyment of some lands covered by the Will, Satyamnaidu filed O.S. No. 73 of 1989. On his death, plaintiffs 2 to 4 and P. Chinnammadu, another daughter, came on record as legal representatives and the suit was decreed after full trial. The defendant filed O.S. No. 66 of 1989 for a permanent injunction against Satyamnaidu in respect of some properties, in which also his legal representatives were impleaded and the suit was dismissed on 7-12-1995. The appeal by the defendant in A.S. No. 2 of 1996 was also dismissed on 30-7-1997. In both the suits, the registered Will dated 2-3-1954 was upheld and the said findings operate as res judicata and estoppel against the defendant. Plaintiffs 2 to 4 executed an agreement of sale dated 13-12-1995 in favour of the 6th plaintiff for items 1 to 6 of Lot II of the plaintiff schedule receiving an advance of Rs. 1,000/- and executed another agreement of sale dated 7-1-1996 in favour of plaintiffs 7 and 8 for items 7 to 10 of Lot II of the plaintiff schedule. The defendant filed O.S. No. 199 of 1989 for a permanent injunction in respect of Lot I of the plaintiff schedule against the 5th plaintiff, Pappula Apparaonaidu, Pappula Venkataswamynaidu, Potnuru Simmayya and Gedela Somayya claiming the same to have devolved on her through her mother-in-law and her mother. That suit was dismissed by the District Munsif on 3-9-1996. But in A.S. No. 1 of 1997, the Sub-Judge allowed the appeal on 6-3-1998 concluding that the registered Will dated 2-3-1954 was not proved. Plaintiffs 2 to 4 or Satyamnaidu were not parties to the suit or the appeal and the suit is only for a permanent injunction, not operating as res judicata. As the defendant gave a report to the police taking advantage of A.S. No. 1 of 1997, the suit was filed to clear the cloud.

3. The defendant resisted the suit contending that Satyamnaidu ill-treated Chinnamminayuralu in her old age without giving proper food, etc., and hence, she stayed at the houses of her daughters. She was bedridden for a considerable period before her death and was not in a position to understand her own acts, words and utterances. She did not execute the Will dated 2-3-1954 or get it registered and it was forged and fabricated by Satyamnaidu to defeat the rights of the daughters. The daughters would not have been disinherited by the mother in spite of their immense service during her old age and Satyamnaidu was never in possession of the properties covered by the alleged Will. His name was not incorporated in the revenue records in respect of the said properties. In his declaration under the Land Ceiling Act, Satyamnaidu did not mention the plaintiff

schedule lands. The agreement of sale in favour of the 5th plaintiff and the payment of consideration under it are equally false and the 5th plaintiff was never in possession of items 9 to 11 of Lot I. Chinnamminayuralu died in 1954 leaving the plaint schedule Sthridhana properties inherited by the daughters only under Hindu Law and the plaint schedule properties fell to the share of Narayanamma, the mother-in-law of the defendant, in partition with her sisters. Narayanamma and after her death, her only son China Appalanaidu and after his death, his wife, the defendant, and their children alone are in possession and enjoyment of the plaint schedule properties. Satyamnaidu or plaintiffs 1 to 4 have no right, title or possession and the alleged agreements by plaintiffs 1 to 4 have no right, title or possession and the alleged agreements by plaintiffs 1 to 4 to sell the properties to plaintiffs 6 to 8 are equally false and unsupported by consideration. In A.S. No. 2 of 1996, etc., against O.S. No. 66 of 1989 and O.S. No. 78 of 1989 (73 of 1989, the finding of the trial Court about the Will was reversed. The judgment in A.S. No. 1 of 1997 operates as res judicata against plaintiffs 1 to 4 and the children of the defendant having title and possession are also necessary parties to the suit for declaration of title. The plaintiffs, who approached the Court with unclean hands, are not entitled to the equitable relief of permanent injunction and the valuation of the suit and the Court fee paid are incorrect. Hence, the defendant sought for dismissal of the false, frivolous and vexatious suit with costs.

4. On such pleadings, the trial Court framed the following issues for trial.

1. Whether the Will dated 2-3-1954 alleged to have been executed by Chinnamminayuralu is true, valid and binding on the defendant?

2. Whether the alleged agreement dated 1-2-1989 and the agreements dated 7-1-1996 and 10-12-1995 (13-12-1995) are true, valid and binding on the defendant?

3. Whether plaintiffs are in possession of the plaint schedule lands on the date of the suit or earlier at any time?

4. Whether the contentions of both the parties are barred by res judicata on account of decisions in O.S. Nos. 66 of 1989, 78 of 1989 (73 of 1989) and 99 of 1989 (199 of 1989) on the file of District Munsif's Court, Rajam and the appeals against the decrees on those suits?

5. Whether the plaintiffs are entitled to declaration and injunction, if so, to what extent and in respect of which lands?

6. To what relief?

5. The trial Court examined P.Ws. 1 to 6 and D.Ws. 1 to 3 and marked Exs. A-1 to A-15 and B-1 to B-3 during trial.

6. The trial Court rendered the impugned judgment, firstly considering whether the decisions in O.S. Nos. 66 of 1989, 73 of 1989 and 199 of 1989 operate as res

judicata. The trial Court concluded that O.S. No. 199 of 1989 to which plaintiffs 2 to 4 were not parties, cannot bind them, while the pendency of S.A. No. 161 of 1998 against O.S. No. 73 of 1989 makes it premature to adopt res judicata. As the plaint, written statement and judgment in O.S. No. 66 of 1989 were not made available by the parties, the plea of res judicata was not upheld. The trial Court also held that Exs. A-1, A-2 and A-6 agreements in favour of plaintiffs 7 and 8, 6th plaintiff and 5th plaintiff respectively, even if true, will not bind the defendant, as she was not a party to the agreements and the validity of the agreements depends upon the proof of Ex. A-5 Will. After referring to various precedents cited before him on proof of Wills, the learned trial Judge noted that the scribe and the attestors of Ex. A-5 were not alive and was not inspired by the evidence of P.Ws. 2, 3 and 5. However, he believed P.Ws. 4 and 6 about Ex. A-8 promissory note and Ex. A-9 sale deed also being scribed by the scribe of Ex. A-5 and on comparison of Exs. A-5, A-8 and A-9, the trial Court opined that the scribe was the same for all the three documents. The trial Court also noted that the defendant withheld the Will said to have been executed by Chinnamminayuralu in favour of her daughters though available and referring to the admission of D.Ws. 1 and 2 in O.S No. 199 of 1989, concluded D.Ws. 1 and 2 to be deposing falsely about Chinnamminayuralu dying intestate. The trial Court also drew a presumption u/s 90 of the Evidence Act in favour of the plaintiffs regarding execution of Ex. A-5 Will, while noting it to be a rebuttable presumption, which can be so rebutted on suspicious circumstances. Then the trial Court noted that while P.W. 1 claimed that Chinnamminayuralu was taken by her husband to the Sub-Registrar's office, Ex. A-5 was, in fact, endorsed to have been registered between 5.00 p.m. and 6.00 p.m. on 2-3-1954 at her residence. The trial Court drew an inference from the registration of the Will at the house that the testatrix was unable to move from her residence and doubted about the health of the testatrix. The beneficiary/Satyamnaidu taking an active part in getting Ex. A-5 Will executed, also was considered as a strong suspicious circumstance and though the trial Court noted that the Hindu Succession Act conferring absolute rights on women in properties, came into force only in 1956, still considered that it cannot be said that the sons and daughters of a person are not heirs of an equal degree. Giving some presents at the time of marriages, is not a valid reason to exclude the daughters from inheriting the property and the trial Court concluded that the plaintiffs miserably failed in removing these suspicious circumstances and hence, Ex. A-5 Will was not proved as per law. The trial Court further noted that Exs. A-1 and A-2 agreements were silent about delivery of possession, while the recital about delivery of possession was struck off in Ex. A-6. No land revenue receipts or extracts of revenue records were filed to show the possession of the purchasers or plaintiffs 1 to 4 or Satyamnaidu or the defendant. Hence, the trial Court concluded both the parties to have failed to prove their possession and with reference to Section 102 of the Evidence Act, considered the plaintiffs to have failed and dismissed the suit without costs.

7. The plaintiffs contended in the appeal that Ex. A-5 Will remained unchallenged

for 45 years and even the pleadings of the defendant did not refer to any suspicious circumstances surrounding the Will. When the trial Court upheld the execution of the Will and drew the presumption u/s 90 of the Evidence Act, the alleged suspicious circumstances could not have outweighed the same. There was no independent evidence of any suspicious circumstances and mere exclusion of the daughters cannot be treated as suspicious circumstances. O.S. No. 74 of 1989 (73 of 1989) and O.S. No. 66 of 1989 operate as res judicata against the defendant in respect of upholding the Will. Hence, the plaintiffs sought for decree of the suit as prayed for.

8. S.A. No. 161 of 1998 was filed by the plaintiffs in O.S. No. 73 of 1989 on the file of the District Munsifs Court, Rajam against the judgment in A.S. No. 5 of 1996 dated 30-7-1997 by the Subordinate Judge, Rajam reversing the judgment and decree of the trial Court dated 19-12-1995 decreeing the suit without costs.

9. O.S. No. 73 of 1989 was originally filed by Satyamnaidu himself with his wife, three sons and a daughter coming on record as his legal representatives on his death, against the defendant in O.S. No. 14 of 1999 and two others for a permanent injunction not to interfere with his possession of the plaint schedule land therein. He claimed ownership, possession and enjoyment of the said land through Chinnamminayuralu under the registered Will dated 2-3-1954. He claimed the defendants, who are closely related to each other, to be proclaiming that they would trespass into the suit land, due to which he filed the suit.

10. The defendants resisted the suit admitting that the suit property fell to the share of Chinnamminayuralu in partition with her sisters and the daughters of Chinnamminayuralu were claimed to have been put in possession of all her properties about 15 (50) years back and since then they were paying land revenue and were issued pattadar passbooks etc. Satyamnaidu in his land ceiling declaration did not claim any lands at Tunivada. The defendants also claimed that by the date of the Will on 2-3-1954, Chinnamminayuralu was not alive. They further claimed that Satyamnaidu inherited about Ac.34.36 cents or dry and wet land at Talavaram, Bejji and Panukuvalasa villages from his father and no land at Tunivada. Satyamnaidu surrendered 0.4273 standard holdings as excess land at Bejji and Penukuvalasa and he obviously excluded Tunivada lands, as they are the Sthridhana properties of the mother inherited by his three sisters, who did not give any declarations, as they hold lands below the prescribed limits. When Satyamnaidu threatened to dispossess the defendant from their land due to differences, they filed O.S. Nos. 64, 65 and 66 of 1989 in which they obtained orders of temporary injunction, which fact was suppressed by Satyamnaidu. The plaint schedule is incorrect and the defendants also perfected their title by long adverse possession disentitling Satyamnaidu to any permanent injunction, who has no prima facie case and balance of convenience in his favour. Hence, the defendants sought for dismissal of the suit with costs.

11. On such pleadings, the trial Court framed the following issues for trial:

1. Whether the plaintiff is entitled for permanent injunction as prayed for?

2. To what relief?

12. The trial Court examined P.Ws. 1 to 4 and D.Ws. 1 to 3 and marked Exs. A-1 to A-5 and B-1 and B-2 during trial. It rendered the judgment noting the admitted relationship between the parties and the admitted ownership of the suit properties originally with Chinnamminayuralu. The trial Court noted that P.W. 2 therein was the Viyyanka of P.W. 1, the 2nd plaintiff therein, and hence, gave no credit to his evidence. However, P.W. 3, who is the son of the brother of the 3rd defendant's father-in-law and who was admitted to be a close relative by D.Ws. 1 to 3 and who had no motives against the defendants, was relied on as probablising the possession and enjoyment of the plaintiffs. While disbelieving P.W. 4 who claimed tenancy without any document and who was not referred to by P.W. 1, the trial Court noted that if really Chinnamminayuralu gave her lands to her three daughters and they or the defendants were in possession, the revenue records could have been filed to show the same. The trial Court also observed that except the oral testimony of D.Ws. 1 to 3, they did not show any document to probablise their possession and the trial Court went on to accept Ex. A-1 Will but not Ex. A-2 pattadar passbook in favour of Satyamnaidu, another pattadar passbook Ex. A-3 in favour of his son, Ex. A-4 adangal and Ex. A-5 10 (1) account. The trial Court also noted that during the cross-examination of P.W. 1, there was no attack on Ex. A-1 Will and D.Ws. 1 to 3 also did not speak against Ex. A-1 Will, due to which the non-examination of the scribe and attestors also was held not material. Though the trial that the plaintiffs failed to produce any evidence of their possession by the date of the suit, the defendants were equally deficient, due to which the presumption that possession follows title, was relied on. Referring to Exs. B-1 and B-2 declaration and order of Satyamnaidu in the land ceiling case, which did not cover any land at Tunivada, that trial Court did not lend much credence to such omission and holding that strict proof of title need not be insisted upon, granted permanent injunction in favour of the plaintiffs.

13. In appeal, the Subordinate Judge, Rajam in her judgment noted the non-examination of at least one attesor, the absence of reference to Tunivada lands in the land ceiling declaration, the defendants becoming co-sharers and co-heirs in the absence of proof of the Will, the trial Court itself disbelieving Exs. A-2 to A-5, the residence of the plaintiffs at Talavaram and not Tunivada, the absence of any tax receipts for the plaintiffs, the suspicious peculiar features of the Will, absence of proper issues and the inconsistency in the findings of the trial Court to hold the judgment be erroneous, unsupported by any proof. Consequently, the appeal was allowed with costs throughout.

14. The second appeal is filed contending that it raises substantial questions of law about the requirement of formal proof of an ancient registered Will more than 30 years old in spite of Section 90 of the Evidence Act, the justification for reversing the Will considered and accepted in the balanced judgment of the trial

court and the maintainability of the suit for mere injunction on the basis of possession. The plaintiff pleaded that possession and in the absence of proof of possession, title matters in a suit for injunction and when there was no evidence on the exact date of the death of Chinnamminayuralu, the question of non-inclusion of Tunivada lands in Satyamnaidu's declaration cannot be conclusive. Hence, they desired their suit to be decreed as prayed for.

15. Sri K.S. Gopala Krishnan, learned Counsel for the appellants in both the appeals and Sri K. Purushotham, learned Counsel for the respondents in both the appeals strenuously reiterated their respective contentions with reference to the oral and documentary evidence on record and the precedents cited by them, and without replication, the same will be dealt with during the course of discussion into various facts in issue.

16. With the above background, the following points arise for consideration in these appeals:

1. Whether the registered Will dated 2-3-1954 by Chinnamminayuralu is true, valid and binding?
2. Whether the plaintiffs in O.S. No. 14 of 1999 and O.S. No. 73 of 1989 are in possession of the suit lands by the dates of the suits?
3. Whether the plaintiffs in O.S. No. 14 of 1999 and O.S. No. 73 of 1989 are entitled to the respective suit reliefs?
4. To what relief?

Point No. 1:

17. The admitted facts are that Pappula Pentannaidu had a daughter-Vavilapalli Chinnamminayuralu and his properties devolved on her. Chinnamminayuralu had three daughters-Narayanamma, Jaggamma and Varahamma, and only one son Satyamnaidu. Satyamnaidu was married to Sarojanamma, daughter of Narayanamma, the eldest daughter of Chinnamminayuralu. Chinnamminayuralu is claimed by the plaintiffs to have executed a registered Will dated 2-3-1954 bequeathing all her properties to her only son Satyamnaidu.

18. Sarojanamma as P.W. 1 in O.S. No. 14 of 1999 claimed the Will to have been executed by Chinnamminayuralu in a sound and disposing state of mind. She claimed to be aged 11 or 12 years when that Will was executed by the testatrix who was hale and healthy and who died 2 or 3 years thereafter. Sarojanamma claimed to have been married by that time and she stated that Abothula Pentannaidu, PappulaAnnamnaidu, Pappula Sreeramulanaidu and Bora Kurminaidu signed on the Will, while Chinnamminayuralu affixed her thumb impression. She stated that none of the attestors to the Will are alive. But the attestors were present when Chinnamminayuralu affixed her thumb impression on the Will and the testatrix was present when the attestors signed. She further stated that her husband Satyamnaidu took the testatrix to the Sub-Registrar's

office and also secured the attestors and took them to the Sub-Registrar's Office. She further stated that her husband gave instructions to the scribe for writing Ex. A-5 Will, which was written at their house at Talavaram in respect of all the properties of Chinnamminayuralu. Though she does not know the name of the scribe of Ex. A-5, she claimed to be present at that time. She is a marks woman and stated that she does not know the contents of Ex. A-5 being illiterate and cannot say who were present at the time of Ex. A-5. She also stated again that she cannot say as to who read over the contents of Ex. A-5 or who attested Ex. A-5. But she denied the suggestions that the testatrix was aged 85 years and not 65 years at the time of Ex. A-5 or that the testatrix was sick and not in a position to understand the things at the time of Ex. A-5. She denied that Satyamnaidu did not render any service to his mother and that the testatrix lived with her daughters by the time of her death. She again stated that the scribe of Ex. A-5 belonged to Talavaram. But she could not give the time when Ex. A-5 was written. She also could not say the date or month or year of the death of the attestors of Ex. A-5. But she cannot be expected to maintain a record of such dates of death of the attestors. In appreciating the evidence of P.W. 1, it has to be remembered that she was deposing about a document of a transaction more than 46 years earlier and that she is an illiterate rustic marks woman. When she stated her age to be 55 years by the time of her deposition, her claim that she was aged about 11 or 12 years by the time of Ex. A-5 also, cannot be in dispute and P.W. 1 was, thus, either a child or an adolescent by the time of Ex. A-5 and child marriages being not uncommon in those days, her claim of having been married to Satyamnaidu even by that time is not improbable.

19. P.W. 3, Botsa Thavitinaidu was examined to identify the signature of Bora Kurminaidu as an attestor and identifying witness in Ex. A-5 and P.W. 3 claimed to be acquainted with the signature of such person who was an elder in the village. The witness claimed to have been born 3 or 4 years prior to independence and stated his age to be about 60 years by the time of his deposition. If so, he must be aged about 11 to 14 years by the time of Ex. A-5. P.W. 3 did not see the signature of Kurminaidu on any registered documents and did not possess any documents containing the signatures of Kurminaidu and also did not know whether any documents with the signature of Kurminaidu were available with any other persons. He could not say when Kurminaidu died and he did not see any document with the signature of Kurminaidu after his death. He also saw Ex. A-5 for the first time during his evidence and his claim earlier that he and Kurminaidu attested some promissory notes about 40 years earlier and that he had seen the signature of Kurminaidu on other documents, is, thus, uncorroborated by any such documents. P.W. 3 could not give the details of the documents signed by him and Kurminaidu both. P.W. 3 is distantly related to P.W. 1 and his evidence of identifying signature of Kurminaidu at two places on Ex. A-5 is, thus, not supported by any details or circumstances which probablise the claims of P.W. 3 above any suspicion.

20. P.W. 4, Vanjarapu Thamminaidu, deposed about lending Rs. 500/- to

Thammana Suryarao and Thammana Sreeramamurthy under Ex. A-8 promissory note written by Regulavalasa Suryanarayana and the promissory note being left with him even after discharge by the borrower so migrated to Vizag. P.W. 4 stated that the scribe and attestors of Ex. A-8 are no more and though he was unaware of the contents of Ex. A-8, his knowing as to who had written Ex. A-8 is not unnatural.

21. P.W. 5, Pappula Venkataswaminaidu was examined to identify the signatures of Pappula Annamnaidu in Ex. A-5 at two places and also the signature of Regulavalasa Suryanarayana, the scribe in Ex. A-5. P.W. 5 claims that Pappula Annamnaidu and his paternal grandfather are cousins and he also identified that Ex. A-8 document was also written by Regulavalasa Suryanarayana and signed by Pappula Annamnaidu who is the junior paternal uncle of his father. Though he did not see any other documents written by Regulavalasa Suryanarayana except Exs. A-5 and A-8, he asserted that he can identify the writing of Suryanarayana. P.W. 5 was also claimed to be aged about 60 years, more or less of the age of P.W. 3. While admitting that P.W. 1 is his senior paternal uncle's daughter, P.W. 5's version about the identification of the signatures of Annamnaidu and Suryanarayana is a shade better than the version of P.W. 3.

22. P.W. 6, the 6th plaintiff, also deposed about the identification of the handwriting of Regulavalasa Suryanarayana in Ex. A-9 sale deed and Ex. A-5 Will. He claimed Ex. A-5 to be bearing the signature of Suryanarayana as the scribe and though he could not say when Suryanarayana died, he denied any inability to identify the signature of Suryanarayana.

23. The defendant as D.W. 1 claimed that Chinnamminayuralu died intestate about 45 years earlier while living with Narayanamma, her mother-in-law, and she claimed to have been informed by her mother-in-law that Chinnamminayuralu was not in a sound state of mind and became totally blind. She did not even see Chinnamminayuralu and could not say when she died and if so, her claims about the state of health of Chinnamminayuralu prior to her death as allegedly told by her mother-in-law are only hear say. D.W. 1 admitted that even by the time she was born, Chinnamminayuralu died and she had no personal knowledge about the division of the properties of Chinnamminayuralu between her daughters. Her claims about Narayanamma looking after the welfare of Chinnamminayuralu for about ten years were also on the alleged information of Narayanamma and admittedly the obsequies of Chinnamminayuralu were performed by the son and three daughters together in Tunivada village according to the information to D.W. 1 by her mother-in-law. While denying on one hand about Ex. A-5 Will, D.W. 1 admitted that she did not know the contents of the Will till her evidence.

24. While the evidence of D.W. 1 is, thus, not based on any personal knowledge about the events prior to her birth, she cannot discredit Ex. A-5 on her alleged hear say information. D.W. 2, who tried to claim that Satyamnaidu or the plaintiff's never enjoyed the suit properties but only the daughters of

Chinnamminayuralu enjoyed them, stated that Chinnamminayuralu died in the house of Narayanamma about 40 years earlier and he and other elders divided her properties among the daughters. However, admittedly, there is no document showing such division and though he claimed that to his knowledge Chinnamminayuralu did not execute any documents, it is not known as to how he can assertively deny Ex. A-5.

25. D.W. 3, Pappula Venkataiddu, who claimed that Chinnamminayuralu was living at Tunivada in Narayanamma's house till her death, stated that the health and sight of Chinnamminayuralu were not proper at that time. He claimed the lady to be unstable in her mental condition and that he was also present along with his father Seethannaidu at the time of division of the properties between the daughters. D.W. 3 is, in fact, son of another sister of Narayanamma and was the plaintiff in O.S. No. 64 of 1989 against Satyamnidu. He is, by no means, an independent witness and there is no way by which D.Ws. 1 to 3 can claim any personal knowledge about Chinnamminayuralu not executing Ex. A-5 Will. D.W. 3, who claimed to be about 60 years by the time of his evidence, also could not have been more than 12 or 13 years by the time of Ex. A-5. The claims of D.Ws. 1 to 3 about the absence of Ex. A-5, thus, appears to be unnatural and artificial.

26. Ex. A-5 Will mentions that Chinnamminayuralu aged about 60 years by then was very weak due to fever, which prompted her to execute the Will. The will stated about the properties that fell to her under the Will executed by her father Pappula Pentannaidu, which are in her possession and enjoyment. She also stated about performing the marriages of her three daughters and one son and further about the income from the properties being given to her three daughters till then. She, therefore, bequeathed all her properties to her only son Satyamnidu with absolute rights while mandating that he shall maintain her till her end and perform her obsequies after her death. Ex. A-5 Will appeared to have been attested by four witnesses with the scribe also subscribing his signature at the end. Chinnamminayuralu appeared to have affixed her thumb impressions as an executant and also at the time of the registration. The endorsement of registration, of course, shows that the registration was done at the house of Vavilapalli Kurminaidu, husband of Chinnamminayuralu and not at the Sub-Registrar's office. Chinnamminayuralu appeared to have admitted the execution before the Sub-Registrar also in the presence of two witnesses. Ex. A-5 is the Will aged more than 30 years.

27. The trial Court noted in the impugned judgment that it can be said that the scribe and attestors of Ex. A-5 were not alive and it was not inspired by the evidence of P.W. 2, P.W. 3 and P.W. 5 about the identification of the signatures or handwriting, but accepted the probable truth of Exs. A-8 and A-9 as spoken to by P.W. 4. Exercising the power conferred on the Court u/s 73 of the Evidence Act to compare the handwriting of a disputed document with the admitted documents, the trial Court opined that Ex. A-5 was also written by Regulavalasa Suryanarayana, who was also the scribe of Exs. A-8 and A-9. A close and careful

perusal of the documents does not disclose any reason or circumstance to differ from the trial Court in this regard.

28. In Ex. A-10 portion of her deposition as P.W. 1 in O.S. No. 199 of 1989, D.W. 1 herein claimed that Chinnamminayuralu executed a Will bequeathing her properties in favour of her three daughters which Will is with her, though she conveniently denied the same in her evidence herein. P.W. 1 herein being the sister of her husband, is admitted therein though attempted to be denied herein and D.W. 1 herein admitted as P.W. 1 therein her ignorance about Ex. A-5. She also denied stating about the agreement, etc. as in Ex. A-11 in O.S. No. 199 of 1989. Similarly, D.W.2 who admitted that he gave evidence in O.S. No. 199 of 1989 conveniently denied stating as P.W. 2 therein that Chinnamminayuralu executed a Will. These two portions of the earlier depositions of D.Ws. 1 and 2 were rightly considered by the trial Court as being contrary to the present claim of the defendants about Chinnamminayuralu dying intestate. While the defendants did not explain as to why the alleged Will in favour of the three daughters of Chinnamminayuralu did not see the light of the day, the trial Court drew presumption u/s 90 of the Evidence Act in favour of the plaintiffs in respect of Ex. A-5, the registration extract of a document more than 30 years old and rightly so.

29. The trial Court doubted Ex. A-5 due to the discrepancy between Ex. A-5 being registered at the house of Chinnamminayuralu and the claim of P.W. 1 that her husband took the testatrix and the attestors to the Sub-Registrar's office. However, it should be remembered that the testatrix, Satyamnaidu, the beneficiary who too active part in the execution of Ex. A-5 Will, the attestors and the scribe are no more, while P.W. 1, who claimed to be present, was aged only 11 or 12 years at that time. Lapse of human memory at that distance of time is but natural and more so, in recollecting events that happened when P.W. 1 was a child and not even an adolescent. Assuming that the registration of Ex. A-5 at the house of the testatrix leads to an inference that the testatrix was unable to move from her residence as inferred by the trial Court, the same cannot automatically create a doubt regarding the sound and disposing state of mind of the testatrix. Ex. A-5 itself states that due to fever, the testatrix was very weak at the time of Ex. A-5 motivating her to execute the Will at the age of 60 years in favour of her only son. Assuming that P.W. 1's claim about her husband taking the testatrix and the attestors to the Sub-Registrar's office cannot be accepted in the light of the registration of Ex. A-5 at the residence, the same cannot throw any strong doubts about execution of Ex. A-5 which P.W. 1 claimed to have witnessed or the registration of Ex. A-5 Will by the Sub-Registrar only on being satisfied about Chinnamminayuralu voluntarily admitting the execution of such a Will before him and before the identifying witnesses and only on the Sub-Registrar satisfying himself about such voluntary admission of execution before him and the identifying witnesses being made in a sound and disposing state of mind by the testatrix voluntarily on her own. These circumstances cannot be doubted at this distance of time.

30. It is no doubt true that P.W. 1 also stated that her husband gave instructions to the scribe for writing Ex. A-5 under which all the properties of Chinnamminayuralu were bequeathed to him and that Satyamnaidu himself secured the attestors. If Chinnamminayuralu was very weak with fever at the age of 60 years requiring the Sub-Registrar to come to her residence for registration of the Will, who else can secure the attestors and the scribe and who else can assist the scribe for drafting the Will as per the volition and wishes of Chinnamminayuralu, except her only son. It is no doubt true that the propounder taking active part in the execution of the Will to his benefit was frowned upon as a suspicious circumstance but it cannot be an inflexible and universal rule to throw away any Will only on such circumstance. If the three daughters of Chinnamminayuralu were married much earlier and Chinnamminayuralu gave away the income from her properties to the three daughters only till Ex. A-5 as cited in Ex. A-5, there was nothing unnatural in the mother thinking of giving her properties to her only son subject, of course, to his taking care of her till her end and taking further care of the obsequies after her end. It is all the more natural, as P.W. 1 claimed that she is the daughter of Narayanamma and grand daughter of Chinnamminayuralu, who was married to Satyamnaidu by her maternal grand mother. If excluding the daughters from inheriting the properties is such a strong suspicious circumstance, so can be the claim of D.W. 1 in Ex. A-10 that Chinnamminayuralu executed a Will bequeathing all her properties only to the three daughters excluding her only son. A Will is executed only to interfere with the mode of succession intestate.

31. When the trial Court accepted the Will being written by the scribe as presented and deduced the existence of the Will to be probable from the admissions of D.W. 1 and 2 in Exs. A-10 and A-12 and also drew the presumption u/s 90 of the Evidence Act unhesitatingly in favour of the plaintiffs, the registration of Ex. A-5 at the residence of the testatrix bequeathing all the properties to the son and the son's active participation in the execution of the Will could not have been such strong suspicious circumstances rebutting the presumption u/s 90 of the Evidence Act and disproving Ex. A-5 Will.

32. In *Maria Stella, Karunai Nesam and David Mohan Babuji Vs. T. Joseph Catherine, T.X. Francis, A. Rosalin Stephen, N. Bernard, S. Christina, S. Philomina, S. Lidwin, S. Josephina*, rep. By mother and guardian and *A. Rosalin Stephen*, following the celebrated decision in *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, , it was held that if the attesting witness is not available, the propounder can prove the execution of the Will by any other evidence that may be available and it is not necessary to give positive evidence to prove that the testatrix did see the attesting witnesses put their signatures or that the attesting witnesses saw the testatrix sign the document. It was held that where there is proof of signature, everything else is implied till the contrary is proved and in the absence of the witnesses who are either dead or cannot be brought to Court or cannot recollect the facts, secondary evidence is permitted. It was also noted that where the Will is registered, it is some evidence of its

execution by the person by whom it purports to have been executed. It was also held therein that the intention of the testatrix that the property should go only to the male heirs of the family excluding the daughter, cannot be questioned as if the Court was sitting in appeal on such intention of the testatrix regarding the distribution of her properties. In that case, the daughter was given some properties under earlier Wills, while in this case Ex. A-5 states that the marriages of the daughters were performed and they were given income from the properties upto Ex. A-5. The decision further states about any illness of the testatrix not meaning that she was not in a sound disposing state of mind. The execution of the Will was, therefore, held proved therein and the facts in issue appear to bear a striking similarity to the facts of the present case.

33. In *Ramesh and Others Vs. Laxmamma and Others*, , the accepted principle that any and every circumstance is not a suspicious circumstance and that a circumstance would be suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person, is reiterated. The Will in that case was upheld by the trial Court and considered suspicious by the first appellate Court and the High Court pointed out that a presumption in favour of due execution of a Will including the attestation of the Will and the disposing power of the testator arises in the case of a document which is over 30 years old. It was also pointed out that while the drawal of such presumption is not mechanical, but with extreme caution and utmost circumspection within the judicial discretion of the Court, the Court cannot also arbitrarily refuse to draw presumption in case of a document 30 years old, provided the normal circumstances exist like production from lawful custody, the likelihood of the document having been executed having regard to the common course of human conduct and the absence of any suspicious circumstances surrounding the execution of the document like unnaturalness and artificiality or interlineations or corrections or tampering with the document. In such cases, it is not necessary for the propounder of the Will to prove due execution of the document, as the document proves itself in the absence of suspicious circumstances. In that case also the beneficiary called the attestors, which was not considered as a suspicious circumstance and an over all view of the evidence on record in this case shows nothing unusual or suspicious behind Ex. A-5 as to displace the presumption rightly drawn by the trial Court u/s 90 of the Evidence Act.

34. In *Haradhan Mahatha and Others Vs. Dukhu Mahatha* , it was observed that it is extremely difficult and sometimes impossible to prove handwriting, signature and execution and attestation of ancient documents after lapse of many years. Therefore, if a document 30 years old or more is produced from proper custody and is, on its face, free from suspicion, then the execution and attestation need not be formally proved. It was also pointed out that when the executant and the attesting witnesses are not alive or available in relation to a document, the genuineness of which is disputed and which cannot be proved in accordance with Section 69 of the Evidence Act, the Court should raise a presumption u/s 90 of

the Evidence Act in relation to due execution and attestation of the document, if it comes to the conclusion that the document is such that it is likely to have been executed, having regard to the common course of human conduct and there are no circumstances exciting suspicion of the Court such as artificiality and unnaturalness or correction or tampering with document. No unnaturality or correction or tampering or artificiality vitiate Ex. A-5 herein also, while the circumstances considered suspicious by the trial Court do not appear to be so, as already stated.

35. In *Sri Lakhi Baruah and others Vs. Sri Padma Kanta Kalita and others*, , it was, of course, pointed out that Section 90 of the Evidence Act does not apply to a copy or a certified copy even though thirty years old, but if a foundation is laid for the admission of secondary evidence u/s 65 of the Evidence Act 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 be presumed to be genuine u/s 90 of the Evidence Act. In the present case, such a question does not arise, as the registration extract of the registered Will was substituted in place of Ex. A-5 after disposal of the suit as per the order dated 19-4-2001 in I.A. No. 46 of 2001.

36. In *Munnalal v. Kashibai* AIR 1947 PC 15, it was held that the actual execution and attestation of a Will more than 30 years old and produced from proper custody can be presumed u/s 90 of the Evidence Act. It was also held that in the absence of any evidence as to the state of the testator's mind, the proof that he had executed a Will rational in character in the presence of witnesses must lead to a presumption that he was of sound mind, and understood what he was about. This presumption was justified u/s 90 of the Evidence Act also and fortified u/s 114 of the Evidence Act also.

37. In *Munshi Ram v. Thakar Dass* AIR 1951 Pepsu 87, it was pointed out that the Court is not bound to raise a presumption with respect to every document said to be more than 30 years old and may refuse to raise a presumption if it has reason to believe the document to be a fabrication or where a grave suspicion attaches to it from the circumstances which tend to raise doubts as to its authenticity. On the other hand, if no suspicious circumstances exist and the document was found to have been acted upon, there is a strong presumption in its favour. The Court can presume such a document to be genuine even if it was not satisfied with the evidence tendered to prove its execution.

38. In *Mallipudi Acharyulu v. Mallipudi Venkayamma* 1971 APLJ 350 (D.B.) also, a Division Bench observed that the presumption u/s 90 of the Evidence Act extends to the testator being in a sound and disposing state of mind and the Will being genuine, apart from the due execution and attestation of the Will and the signatures on it. While the Court may refuse to draw any presumption, if a document is suspicious, producing the document from proper custody, is to lead to exercise of judicial discretion in its favour.

39. The principles laid down by these authorities, applied to the facts of the present case, indicate the ultimate refusal of the trial Court to act upon the Will to be not a sound exercise of judicial discretion. The only discrepancy in the evidence for the plaintiffs about the Will was the claim of P.W. 1 that her husband took the testatrix to the Sub-Registrar's office and even that, she did not positively say, to be for the purpose of registration of the Will. The doubt regarding the health of the testatrix arose from nowhere, not definitely from the evidence, in the mind of the trial Court and as already stated, the exclusion of the daughters and bequeathing the properties to the testatrix's only son is neither opposed to the ordinary and natural course of human conduct nor can be considered so suspicious as to throw out the registered will executed more than 45 years prior to the suit, in favour of which the presumption u/s 90 of the Evidence Act was rightly drawn. Ex. A-5 could not have been manipulated 35 years prior to the commencement of disputes and suits between the parties.

40. Non-examination of the Sub-registrar who registered the document was commented upon, but no such Sub-Registrar would have been available in service after 46 years and it is not known whether he is available in this world to any party. The plaintiffs probably could not have been able to secure any information about his whereabouts when such Sub-Registrar was connected with Ex. A-5 only due to the accident of working at that place at that time.

41. Ex. B-3 certified copy of the judgment in A.S. No. 8 of 1996 arising out of the suit filed in O.S. No. 203 of 1989 by Satyamnaidu against the defendant herein and others, shows the appeal to have arisen against the dismissal of the suit by the trial Court and the purchasers from Satyamnaidu to have challenged that judgment. The first appellate Court dismissed the appeal holding Ex. A-5 Will to have not been proved apart from other things. Exs. B-1 and B-2 are certified copies of judgment and decree in A.S. No. 5 of 1996, which are the subject matter of S.A. No. 161 of 1998, which is under consideration along with this appeal.

42. While Exs. A-1 and A-2 are agreements of sale executed by plaintiffs 1 to 4 in favour of plaintiffs 7 and 8 and 6th plaintiff respectively, Ex. A-6 is unregistered agreement in favour of P.W. 5 executed by Satyamnaidu referring to Ex. A-5 Will also. Ex. A-3 is certified copy of the decree in O.S. No. 199 of 1989 dismissing the suit filed by the defendant herein, for which Ex. A-7 is the judgment. The trial Court in spite of opining the Will by Chinnamminayuralu in favour of Satyamnaidu to have not been proved, still dismissed the suit, as the defendant herein was unable to prove prima facie possession, title and enjoyment. The defendant preferred A.S. No. 1 of 1997 against the same, the judgment in which is Ex. A-4 by which the appeal was allowed. The first appellate Court held the Will to have not been proved and that the defendant herein established her possession and incidentally the title also. Exs. A-13 and A-14 are certified copies of decree and judgment in A.S. No. 3 of 1996 against Ex. A-15 judgment in O.S. No. 64 of 1989. In Ex. A-15 filed against Satyamnaidu

originally, the trial Court observed that there was no denial about the Will or its genuineness and in Ex. A-14 judgment the first appellate Court, of course, disagreed stating that Ex. B-1 Will therein required proof and not presumption, but still dismissed the appeal on facts. In considering the effect of the earlier litigation on the present suit, the trial Court noted that neither party filed the pleadings or the judgment in O.S. No. 66 of 1989 on the file of the District Munsif's Court, Rajam to consider any res judicata or estoppel operating against any party because of the decree and judgment in that suit. The trial Court also rightly observed that as S.A. No. 161 of 1998 is pending before the High Court in respect of O.S. No. 73 of 1989 and A.S. No. 5 of 1996, it would be premature to bring in any principle of res judicata or estoppel. Regarding O.S. No. 199 of 1989 and A.S. No. 1 of 1997, the trial Court found that plaintiffs 2 to 4 were not parties to the same and hence, the question of any res judicata or estoppel does not arise against them. None of the judgments or decrees of the trial Court or the first appellate Court can be considered to operate as res judicata or estoppel against the plaintiffs herein, as there was no final decision in any of the earlier proceedings about the truth, validity and binding nature of Ex. A-5 Will, apart from lack of identity of the parties or persons claiming through them in the various proceedings. It may also be noted that the findings of the trial Court about the drawal of presumption u/s 90 of the Evidence Act or the aspect of any bar of res judicata were not challenged by way of any separate appeal or cross-objections in this appeal by the defendants and all the findings of the trial Court in the impugned judgment to the extent they are favourable to the plaintiffs, have remained unchallenged by the defendants and may have to be considered as becoming final. Even assuming that this appeal itself gives an opportunity to the defendants to question and reopen all findings of fact, the findings to the extent they favour the plaintiffs do not appear to be susceptible for any contrary conclusion herein for various reasons stated.

43. While the claim of D.W. 3 about the state of health of Chinnamminayuralu, the division of her properties between the daughters and enjoyment of the same by the daughters and their successors can have no credibility in the light of Exs. A-13 to A-15 showing his failure before the trial Court in O.S. No. 64 of 1989 and the appellate Court in A.S. No. 3 of 1996, he is a person who accompanying D.W. 1 for every adjournment and his claims are obviously self-serving and interested. The claims of D.W. 2 about being an elder who effected division of the properties between the sisters, are uncorroborated by any document and he went to the extent of claiming that Satyamnaidu on being informed, expressed no objection for division of the properties of his mother between his sisters.

44. D.W.1, the defendant, who denied the agreements of sale by plaintiffs 1 to 4 in favour of plaintiffs 5 to 8, claimed that Satyamnaidu did not show the suit lands in the declaration filed by him under the Land Ceiling Act, but had to admit that she does not know when Satyamnaidu filed the declaration, and the defendants did not file any land revenue receipts or any other revenue record to show their possession and enjoyment of the suit properties. She was not able to

give the survey numbers and boundaries of the suit lands and she admitted that after the death of Satyamnaidu, his wife and sons are enjoying the lands of the family in other villages.

45. P.W. 6 spoke about Ex. A-2 agreement of sale in his favour by P.W. 1 and her sons and the 6th plaintiff as P.W. 6, of course, did not obtain any receipt or endorsement for payment of Rs. 2,000/- claimed to have been made by him after Ex. A-2 and the claim of P.W. 6 that he could not ask his vendors to execute registered sale deed, as the property was under litigation, is but natural. Of course, he did not file any revenue records to show that he enjoyed the said land at any time.

46. The 5th plaintiff as P.W. 4 deposed about Ex. A-6 agreement in his favour from Satyamnaidu and his sons-plaintiffs 7 and 8 purchasing about an acre of land from P.W. 1 and her sons. P.W. 4 claimed to have demanded execution of a registered sale deed, which was promised to be done after the disposal of the suits. Though P.W. 4 did not issue any notice requiring such a sale deed, the same may be natural due to the pendency of the litigation. Though P.W. 4 admitted that he did not file any revenue record to show his enjoyment of the property, he claimed that P.W. 1 paid the land revenue. The evidence of P.W. 2, who was unable to identify the signature of his maternal grandfather on Ex. A-1, is of no avail.

47. The 1st plaintiff as P.W. 1 apart from stating about the sale of different plots of land to plaintiffs 5 to 8 under different agreements of sale, claimed her husband and after him, themselves to be enjoying the suit properties since the death of Chinnamminayuralu about 35 years earlier and denied the sisters of her husband enjoying, the lands at any time or Chinnamminayuralu ever residing with her daughters. She claimed that the 5th plaintiff is in possession of items 9 to 11 of Lot I of plaint schedule sold to him by Satyamnaidu. While P.W. 1 does not know whether Satyamnaidu gave any declaration under the Land Ceiling Act, there was no admission of the suit lands being not covered by any such declaration and like D.W. 1, P.W. 1 also does not know the survey numbers and boundaries of the suit lands. She claimed that her husband paid land revenue and that her husband's name was mutated in revenue records in respect of the suit lands, the copies of any such documents, of course, not being filed into Court.

48. Thus, the evidence for both parties has absolutely no reference to any entries in the revenue or public records about the possession and enjoyment of the lands in question or about payment of any land revenue or any other public dues by any of the parties at any time. The documentary evidence may indicate that Satyamnaidu and after him, plaintiffs 1 to 4 were entering into agreements of sale with third parties regarding portions of the suit properties obviously claiming them to have come to Satyamnaidu under a Will executed by his mother. The contest in all earlier suits and appeals between the parties, was about the claim under the Will by Satyamnaidu and the claim under another Will by his sisters.

The same claims are continued by the successors-in-interest of both. While the validity of Exs. A-1, A-2 and A-6 is dependent upon the validity and truth of Ex. A-5 as observed by the trial Court, a careful scanning of the entire material on record does not disclose Ex. A-5 registered Will to be vitiated by such suspicious circumstances as to throw it out. Hence, it has to be concluded that the registered Will dated 2-3-1954 by Chinnamminayuralu is proved to be true, valid and binding.

Point No. 2:

49. The trial Court noted Exs. A-1, A-2 and A-6 to be silent about the delivery of possession of the properties to the purchasers. The trial Court also noted the absence of any documentary evidence from any public or revenue record by either party and concluded that both parties failed to prove their possession and enjoyment of the suit property, consequent to which Section 102 of the Evidence Act was applied to find the issue about the possession against the plaintiffs. However, if Ex. A-5 Will were to be held proved, the same can be inferred to have been acted upon in the ordinary and natural course of human events. That it must have been acted upon is evident from the way in which Satyamnaidu and his successors-in-interest are laying claim to the properties and dealing with the properties. There is no proof of the land ceiling declaration by Satyamnaidu excluding the suit properties or that no mutation was effected in favour of Satyamnaidu, in the light of the positive statements on oath by P.W. 1 in that regard. Mere pleadings in the written statement cannot be equated to proof in this regard.

50. In O.S. No. 73 of 1989, the trial Court analyzing the oral and documentary evidence found the evidence of P.W. 1 herein and P.W. 3 therein to be credible and found the version of the defendants who examined themselves as D.Ws. 1 to 3 to be unsupported by any documents. The trial Court noting that the defendants did not attack Ex. A-1 Will during the cross-examination of P. W.1 or during the evidence of D.Ws. 1 to 3, presumed the Will to be genuine and acted upon. The trial Court also noted that Ex. A-2 pattadar pass book covers S.No.227/3 which was item 5 of the plaint schedule and Ex. A-3 pattadar passbook to be covering S. Nos. 162/3 and 42/2 which are items 1 and 4 of plaint schedule. Though the trial Court did not rely upon Exs. A-2 and A-3 due to their proximity in time with the suit, the fact remains that at least regarding the three items of property claimed by Satyamnaidu and his successors-in-interest, there was acceptance of such claim by revenue authorities in issuing pattadar passbooks. Exs. A-4 and A-5 were, of course, found to be not connected with the suit lands by the trial Court and though there was no positive evidence of possession of the plaintiffs therein, the trial Court acted on the principle that possession follows title. The trial Court noted from Exs. B-1 and B-2 land ceiling declaration and verification report that Satyamnaidu did not refer to any lands at Tunivada. But the trial Court thought that mere omission in land ceiling declaration is no proof of the absence of any interest for Satyamnaidu in the

lands.

51. When it came to the appellate judgment, the learned Subordinate Judge formed certain impressions about the Will on perusing the same and considered the Will to have not been proved. It gave more weight to the absence of any reference to the suit lands in the land ceiling declaration and verification report. However, the first appellate Court itself noted that the defendants therein failed to prove any settlement of schedule properties in favour of the daughters by Chinnamminayuralu and also observed that the lands were suppressed in the land ceiling case creating a doubt. The first appellate Court also thought that the plaintiff cannot take shelter under the age of the Will, which was more than 30 years. But, if the fact that the document was more than 30 years, is before the Court, it is for the Court to examine and decide whether the aid of Section 90 of Evidence Act should be provided to appreciation of such a document.

52. As the conclusions in A.S. No. 5 of 1996 primarily revolved round the absence of proof of the Will and the omission to include the suit lands in the land ceiling declaration, in view of the conclusions herein on a consideration of both the appeals together that Ex. A-5 Will was proved, the primary basis for the conclusions of the first appellate Court has to be considered absent. Even if O.S. No. 73 of 1989 were to be considered independently vis-a-vis the evidence in that suit, if more than 30 years old Will was not questioned during the cross-examination of P.W. 1 or the evidence of D.Ws. 1 to 3, the trial Court may not be incorrect in accepting the Will or the probability of the genuineness and due execution of the Will. Though the suit lands were not mentioned in the land ceiling declaration of Satyamanaidu, it is not as though his claim to the suit lands was suppressed from public authorities or records in view of both the pattadar passbooks and as between the parties, it is not the claim of the defendants that they have any public record to probablise their possession nor did they produce any public or revenue records. It is also not clear as to when exactly Chinnamminayuralu died, but in all probability she might not have survived till the Land Ceiling Act. Though the plaintiffs have to succeed or fail on the strength of their own case, but not on the weakness of the defendants, the first appellate Court was apparently incorrect in refusing to act upon the registered Will more than 30 years old which remained unquestioned in the evidence of parties and not drawing the statutory presumption in its favour u/s 90 of the Evidence Act. If the Will were to be acted upon, apart from the other evidence, the principle that possession follows title helps the plaintiffs and not the defendants and a suit for injunction can, under such circumstances, succeed. Therefore, it has to be concluded that it was probablised that the plaintiffs in both the suits were respectively in possession of the respective suit schedule lands by the dates of the suits.

Point No. 3:

53. In view of the foregoing discussion, the plaintiffs in both the suits have to succeed and the impugned judgments under challenge have to be reversed.

Point No. 4:

54. While the appellants in both the appeals should succeed, the peculiar facts and circumstances of the case arising out of the disputes between the family members should lead to directing the parties to bear their own costs in both the suits and appeals.

55. In the result-,

(a) The judgment and decree in O.S. No. 14 of 1999 on the file of Senior Civil Judge's Court, Rajam, dated 18-4-2001 are set aside;

(b) O.S. No. 14 of 1999 on the file of the Senior Civil Judge's Court, Rajam is decreed without costs;

(c) The judgment and decree in A.S. No. 5 of 1996 on the file of the Subordinate Judge's Court, Rajam dated 30-7-1997 are set aside;

(d) The judgment and decree in O.S. No. 73 of 1989 on the file of the District Munsif's Court, Rajam, dated 19-12-1995 are restored;

and

(e) A.S. No. 1870 of 2001 and S.A. No. 161 of 1998 are allowed accordingly without costs.