

(2011) 11 AP CK 0010

In the Andhra Pradesh High Court

Case No : S.A. No. 1273 of 2004 and S.A.M.P. No. 896 of 2010

Vippanapally Radha and another

APPELLANT

Vs

Brindavan Educational Society

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 2, Order 41 Rule 27, 144, 99
Constitution of India, 1950 — Article 20
Evidence Act, 1872 — Section 115
Societies Registration Act, 1860 — Section 6, 7
Transfer of Property Act, 1882 — Section 106, 107, 108

Citation : (2012) 2 ALD 487

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : S.A. Chari, for the Appellant; N. Subba Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Bhavani Prasad

1. Aggrieved by the judgment and decree in A.S. No. 12 of 2003 on the file of the III Additional District Judge's Court at Karimnagar, dated 14-07-2004, by which the judgment and decree in O.S. No. 121 of 1998 on the file of the Principal Junior Civil Judge's Court, Karimnagar dated 08-01-2003 were confirmed in respect of recovery of possession and set aside in respect of perpetual injunction, thus partly allowing and partly dismissing the appeal without costs, the defendants in the suit preferred the present second appeal. S.A.M.P. No. 896 of 2010 is a petition to receive copies of bye-laws of the respondent society and registered gift deed dated 05-10-2004 as additional evidence marking them as Exs.B.6 and B.7.

2. The parties are referred to herein as they are arrayed before the trial Court.

3. The plaintiff filed the suit originally for a perpetual injunction restraining the

defendants, etc., from interfering with the peaceful possession and enjoyment of the plaintiff over the suit leasehold premises in municipal door No. 1-5-165 old / 1-5-191 new, near Jubilee Kaman, Karimnagar unless otherwise evicted by due process of law. The relief was later amended to evict defendants 1 and 2 from the suit premises delivering the same to the possession of the plaintiff. The plaintiff registered society claimed to be represented by its President M. Satyanarayana and to be the lessee of the suit premises running Brindavan English Academy in the premises. Its President M. Satyanarayana alias Satyam is the sister's son of the 1st defendant who is the wife of the 2nd defendant. The oral lease in July, 1993 was for a monthly rent of Rs. 2,000/- to be enhanced by Rs. 100/- in every succeeding academic year. The registered school is running continuously with reputation and goodwill. The property tax was requested by the defendants to be paid by the President of the plaintiff whenever demanded by the municipal council, Karimnagar, to be adjusted in monthly rents and they also collected a deposit of Rs. 20,000/- agreeing to pay interest at 24 per cent per annum to be adjusted in the monthly rents. Additional amounts were collected from time to time as deposit to a tune of Rs. 1,38,630/- with a similar stipulation to adjust interest at 24 per cent per annum thereon in the monthly rents. The defendants furnished an account sheet in December, 1996 in the own hand of the 2nd defendant admitting the balance of Rs. 1,01,000/- towards deposit after adjustment of interest up to 30-11-1996. The President of the plaintiff found that interest was charged illegally on monthly rents without any oral or written agreement in the account to a tune of Rs. 22,986/- while not accounting for interest on Rs. 20,000/-, the original deposit, and not adjusting Rs. 15,852/- paid by the plaintiff towards property tax. When the defendants were questioned to furnish a correct account, they attempted to dispossess the plaintiff and its staff and students in March, 1998 with the help of unlawful elements, which attempts were resisted. The plaintiff sent monthly rent at the rate of Rs. 2,400/- per month from January, 1998 to March, 1998 through an account payee demand draft No. 0205779, dated 15-04-1998 by registered post, which was returned as refused on 17-04-1998. The plaintiff by way of caution sent an additional copy and copy of the demand draft by registered post to the office of the 2nd defendant, for which a reply with false averments was given. The plaintiff gave a reply notice against the threat for eviction and the defendants were intimidating with the active support of the police. Hence, the suit originally for a permanent injunction. The plaintiff alleged that in wilful disobedience and breach of the injunction granted on 17-06-1998 in I.A. No. 557 of 1998, defendants 1 and 2 forcibly occupied the suit premises on 21-06-1998 and hence, the amendment of the plaint seeking the relief of eviction and delivery of possession.

4. The defendants resisted the suit contending that the lease agreement was cancelled long back and the defendants were in exclusive possession and enjoyment of the house. The defendants demanded to vacate and deliver possession in March, 1998, but at the request of the plaintiff, the police and the

caste elders requested the defendants to wait till completion of the examinations of the students till 23-04-1998. The plaintiff, who has to hand over possession on 24-04-1998, did not do so in spite of requests and on 10-05-1998, the police and the caste elders personally present, got the plaintiff vacated from the suit house. The plaintiff and his goondas attacked the defendants and other inmates of the house causing injuries to the defendants and their daughter in-law who were referred to the civil hospital, Karimnagar by the police on 11-05-1998. A panchayat was held before Padmasali caste elders, V. Sambaiah, Lakshminarayana, Ravinder Rao and Vengaladas Narayana, Sarpanch of Bommakal. The plaintiff also received Rs. 1,00,000/- demand draft under a receipt and took away the furniture from the suit house. The defendants are, thus, in possession and enjoyment since prior to the filing of the suit and the plaintiff took another house on lease and is running a school therein since June, 1998. The suit has no cause of action and the President of the society took Rs. 1,00,904/- on 16-06-1998 through a demand draft and promised to withdraw the case before caste and village elders. There is no lease between the parties and the President of the society asked for huge amount to not press the suit through a memo, for which the defendants refused. Then the plaintiff got the plaint amended and the alleged forcible occupation on 21-06-1998 is false, the defendants having been in possession since 11-05-1998. The matter was discussed in I.A. No. 458 of 1999 by the Court, which modified its orders and any question of eviction or delivery of possession does not arise. Hence, the defendants requested for dismissal of the suit with heavy costs.

5. On such pleadings, the following issues were settled for trial.

(1) Whether the plaintiff is entitled for a perpetual injunction as prayed for ?

(2) To what relief ?

Additional issue No. 1 framed as per orders in I.A. No. 2344 of 2002:

Whether the plaintiff is entitled for recovery of possession of suit premises as prayed for ?

6. During the trial, P.Ws.1 to 7 and D.W.1 to 3 were examined and Exs.A.1 to A.16 and B.1 to B.5 were marked.

7. The trial Court rendered its judgment noting the admitted ownership of the premises with defendants 1 and 2 and the admitted leasing out of the premises to the plaintiff. It noted that D.W.1 admitted that he agreed for running of a school by Satyanarayana in the premises and the premises were, hence, considered to have been let out for running a school by the society under the oral tenancy without any fixed period of lease. While the relationship of landlord and tenant was hence noted to be continued, the defendants were noted to have not issued any notice terminating the tenancy and to have not obtained any document evidencing the alleged voluntary delivery of possession by the plaintiff. The evidence of D.W.1 about the Circle Inspector of Police first asking him to wait

till completion of academic year on 23-04-1998 and again advising him on 07-05-1998 to occupy the premises, on which the plaintiff's furniture was removed by keeping it in the compound and the defendants occupied the rooms, which went on till 10-05-1998, was noted to indicate that taking advantage of the influence of the police, the defendants occupied the suit premises forcibly from the hands of the plaintiff. While the plaintiff continued to run the school at Brahminwada in another premises since June, 1998, the evidence of D.W.1 about the Correspondent of the school shifting the furniture to the premises at Brahminwada after the panchayat on 02-06-1998 at I Town police station, Karimnagar and D.W.1 issuing a bankers cheque for Rs. 1,00,904/- on 16-06-1998 delivered under Ex.B.1 receipt by the plaintiff, was noted to be contrary to the alleged earlier vacation of the premises between 7th and 10th of May, 1998. The trial Court observed that the plaintiff has every right to be in possession of the premises as a continuing tenant till legally evicted by the defendants and the correspondence between the parties was noted to not contain any clear notice to quit as per the Transfer of Property Act. The version of D.W.1 about 5 or 6 panchayats by caste elders between 17th and 30th May, 1998, before which the demand draft sent by him for Rs. 1,00,000/- on 14-05-1998 was returned by Satyanarayana, though it was sent as per the panchayat on 02-06-1998, was noted to be discrepant as the award of elders allegedly executed on 02-06-1998 was not filed into Court and in the absence of the document showing any award passed once or twice, the contention about the panchayat was not accepted. The evidence of D.W.2 about the attack by Satyanarayana and 20 others on 11-05-1998 injuring D.W.1, D.W.3 and another woman at the suit premises was not acted upon, as the evidence of D.W.2 also showed the furniture of the school being there in the premises on 10-05-1998 showing the possession of the plaintiff by the date of the suit. The evidence of D.W.3, the daughter-in-law of D.W.1, was referred to as admitting presence of no witness contrary to D.W.2, the absence of any injury certificates or other evidence and the absence of any case against Satyanarayana and others on the complaint by the injured. If the plaintiff had voluntarily vacated the suit premises earlier, the alleged quarrel could not have taken place and the forcible occupation in June, 1998 was noted to be after the order of injunction. Exs.A.8 to A.11 were noted to be showing the absence of any amicable settlement regarding the due amounts between the parties and the evidence of P.Ws.2 to 7 was considered to be corroborating the claim of P.W.1 Satyanarayana and concluding that the suit premises was occupied by the defendants by force during the subsistence of the tenancy making the defendants liable to redeliver the possession of the premises to the plaintiff, the trial Court, hence, held that the plaintiff is entitled for recovery of possession and also for a permanent injunction.

8. The decree of the suit with costs was the subject of A.S. No. 12 of 2003 leading to the impugned judgment, wherein the first appellate Court referred to the rival pleadings leading to trial and decree of the suit and noted that one V. Srinivas is stated to represent the plaintiff's society as its President in the place

of M. Satyam alias Methuku Satyanarayana who instituted the suit claiming Srinivas to have become the President of the society. The plea by the defendants/appellants about the school being run elsewhere since six years, the criminal case filed by Satyanarayana ending in acquittal and the impermissibility of putting the tenant into possession, was noted as well as the contrary contentions for the plaintiff and the point considered was whether the decree and judgment of the trial Court require any interference by the appellate Court. After noting the admitted facts, the appellate Court noted the lease to have been admitted and any eviction to be only under due process of law. D.W.1, a retired Deputy Executive Engineer, was noted to have evicted the plaintiff with the assistance of police as proved by P.Ws.1 to 7, while the defendants failed to establish any voluntary delivery of possession by the plaintiff. Noting that there will be no protection for the tenants if landlords are permitted to evict them by taking the law into their hands, the appellate Court also referred to the absence of any receipt from the plaintiff about vacating the premises and not pressing the suit. The alleged incident on 11-05-1998 was disbelieved and it was opined that u/s 144 of the Code of Civil Procedure, even in a suit for simple injunction, if the person in possession was evicted during the pendency of the suit, the Court can direct restoration of possession. While the question of grant of any permanent injunction was considered not to arise, as the plaintiff is not in possession, the decree and judgment in respect of recovery of possession were confirmed.

9. The defendants claim in the second appeal that it was a continuous process by which the defendants came into possession of the suit house from 07-05-1998 to 10-05-1998 indicating consent of the plaintiff to vacate the house. The receipt of the demand draft for Rs. 1,00,904/- on 16-06-1998 indicated the plaintiff reconciling to his vacating the suit house and the petition for alleged breach of injunction was filed on 11-09-1998 after about two and half months after the alleged occupation on 21-06-1998. The plaintiff was running the school in a different building since 10-05-1998 itself and hence, the defendants claimed that substantial questions of law arise about the necessity of any notice under the Transfer of Property Act when the plaintiff vacated the house, necessity of obtaining anything in writing from the plaintiff about vacating the house and the misreading of the evidence on record about forcible occupation by the defendants.

10. As per the leave granted in S.A.M.P. No. 2215 of 2009 on 28-10-2009, additional grounds of appeal were received in which the defendants contended that further substantial questions of law arise about the maintainability of the suit without proper authority under the Andhra Pradesh (Telangana Area) Public Societies Registration Act 1350 F (for short "the Act"), the fraud played by the person filing the suit in a representative capacity without any authority, the existence of landlord and tenant relationship on the date of the suit, the provisions of Section 106 of the Transfer of Property Act being attracted, wrongful and unlawful possession of the plaintiff on the date of the suit, the delivery of possession u/s 108(q) of Transfer of Property Act, any entitlement to

the relief of restoration of possession after the plaintiff was out of possession without any right including a possessory right and grant of restoration of possession against the principles laid down by the Apex Court and the High Courts. Any oral lease beyond one year was claimed to be hit by Section 107 of the Transfer of Property Act making any notice u/s 106 thereof unnecessary. The tenancy was not perpetual, but was liable to be terminated when demanded. The discretionary reliefs under the Specific Relief Act should not have been granted to Satyanarayana who belied the trust of the aged defendants who had no other place to reside. Satyanarayana did not produce any evidence in support of any authority to file the suit and hence, the defendants desire the suit to fail.

11. In S.A.M.P. No. 896 of 2010, the defendants claimed that they were able to obtain the certified copy of bye-laws of the plaintiff society from the Registrar of Societies which will show the institution of the suit to be not in accordance with the provisions of the Societies Registration Act and the fraud played by Satyanarayana who had no authority or locus standi to file the suit. The registered gift deed dated 05-10-2004 executed by the 1st defendant in favour of her grand son was also requested to be received as additional evidence to mark them as Exs.B.6 and B.7.

12. The second appeal was admitted on 11-07-2005 on the following substantial questions of law.

(1) Whether in the facts and circumstances of the case, the Courts below are right in holding that the quit notice is necessary when it was a specific case of the defendants that the plaintiff voluntarily vacated the premises after having received an amount of Rs. 1,00,904/- ?

and

(2) Whether the appreciation of evidence is, in any manner, perverse ?

13. In view of the leave granted to receive the additional grounds of appeal, the following substantial questions of law also arise for consideration and determination herein.

(1) Whether the person filing the suit on behalf of the plaintiff had no authority or locus standi to file the suit and the suit as framed is not maintainable and whether the question can be raised and decided in the second appeal ?

(2) Whether the possession of the plaintiff on the date of the suit was wrongful and unlawful and whether the plaintiff has any right to have restoration of possession ?

(3) To what relief ?

14. Heard Sri S.A. Chari, learned counsel for the appellants and Sri N. Subba Reddy, learned senior counsel for the respondent. The learned counsel referred to various precedents, which will be contextually referred to in due course.

15. The points that arise for consideration in this second appeal are about receiving the documents tendered as additional evidence in S.A.M.P. No. 896 of 2010 and about the substantial questions of law originally formulated and now formulated.

16. In so far as the copy of the registered gift settlement deed dated 05-10-2004 by the 1st appellant in favour of her grand son is concerned, the said document subsequent to the suit and the first appeal, was sought to be introduced into evidence probably in proof of the recital therein about the delivery of possession of the property by the donor to the donee under the document. The copy of bye-laws of the plaintiff society issued by the Registrar of Societies was requested to be admitted into evidence with reference to the alleged lack of authority and locus standi for M. Satyam alias M. Satyanarayana to file the suit on behalf of the plaintiff. While the factual and legal impact of the two documents on the questions in issue have to be considered along with the other evidence on record, as the copy of bye-laws was subsequently obtained and as the gift settlement deed was subsequently executed and as the documents relate to running and governance of the plaintiff society and the possession of the subject property respectively, they cannot be considered irrelevant. As any request under will be considered with a view to rendering justice on all available evidence and not shutting out the same, if there is some sufficient cause for non-production of the documents earlier, admitting the documents with a view to subserve the ends of justice, which is a substantial cause, will be in order and hence, the copy of bye-laws be received in evidence as Ex.B.6 and the copy of registered gift settlement deed dated 05-10-2004 be received as Ex.B.7 and be admitted in evidence accordingly. In admitting such evidence, the principle laid down in Koppula Koteswara Rao v. Dr. Koppula Hemantha Rao 2002 AIHC 4950 by a learned Judge of this Court can be taken aid of and the learned Judge held that receiving additional evidence in a second appeal depends upon the facts and circumstances of a particular given case.

17. Coming to the evidence of the parties before the trial Court, Methuku Satyanarayana-P.W.1 claimed to be the President of the plaintiff society running the school in the subject premises owned by the defendants under an oral lease for a monthly rent of Rs. 2,000/- since July, 1993. He reiterated the allegations in the plaint and claimed the additional deposits collected from him from time to time to be a tune of Rs. 1,40,000/- excluding the original deposit of Rs. 20,000/- and referred to Ex.A.1 statement of account in the handwriting of the 2nd defendant furnished in December, 1996. He claimed the statement of account to be not showing the deposits in full and interest of Rs. 22,000/- and odd to be charged on rents up to 30-11-1996, no interest being calculated on the original deposit of Rs. 20,000/- and not showing payment of property tax of about Rs. 15,000/-. He stated that instead of showing the correct accounts as requested, the defendants tried to dispossess the plaintiff in March, 1998, which was resisted and he claimed to have sent rents from January to March, 1988 at Rs. 2,400/- per month through account payee demand draft dated 15-04-1988,

which was refused as seen from Exs.A.2 and A.3 returned postal covers. He claimed that Ex.A.4 is the copy of the letter addressed to the defendants and in Ex.A.4, the account sheet prepared by the 2nd defendant was not claimed to be incorrect, though a reference was made to the adjustability of Rs. 1,13,200/- towards deposits and amounts paid towards property tax. In Ex.A.8 legal notice issued by the defendants on 21-04-1998, it was stated that a panchayat was held before caste persons and later before the police and that P.W.1, who was addressed as the President of the plaintiff society, promised to vacate the premises on or before 23-04-1998. The defendants claimed to be enclosing a copy of demand draft for Rs. 1,00,000/- and promised to clear all accounts at the time of vacating. Ex.A.9 reply notice, dated 21-04-1998 from the defendants is to a similar effect, in which the allegation in Ex.A.4 about Rs. 1,13,200/- lying in deposit with the defendants is admitted, which was promised to be returned at the time of vacating the premises. Ex.A.10 is another reply notice from the defendants dated 23-04-1998 with similar allegations and Ex.A.11 dated 23-04-1998 is also similar. In all the communications, the defendants addressed P.W.1 as the President of the plaintiff society. P.W.1 further produced Exs.A.12 to A.14 property tax receipts and Ex.A.15 is the reply to the notices from the defendants on 30-04-1998, in which the plaintiff represented by P.W.1 denied any panchayat before the caste elders or involvement of Sri B. Srinivas, advocate or any request by the Sub-Inspector of Police to wait till completion of school examinations by 23-04-1998. The plaintiff alleged attempt at dispossession by force and stated that no demand draft or a copy of it were received by it and that interest and property tax payments were not properly accounted for in the rents. Another sum of Rs. 2,00,000/- was stated to be due towards the price of the car and the defendants were demanded to return the entire amount due with interest at 24 per cent per annum to P.W.1 who is the nephew of the defendants. The plaintiff also warned against forcible dispossession, in Ex.A.15.

18. P.W.1 claimed that after the suit and a temporary injunction in favour of the plaintiff dated 17-06-1998 after appearance of the defendants through a counsel, the defendants forcibly occupied the premises on 21-06-1998. P.W.1 admitted that he did not file any document showing that he is the President of the plaintiff or that the District Educational Officer, Karimnagar granted recognition to the school of the society. He claimed the lease to be a perpetual lease and the rent to have been paid at enhanced rates as agreed from time to time. He admitted the correctness of the statement of account in Ex.A.1 though he denied agreeing to pay the property tax or the defendants not agreeing to pay any interest on the initial advance of Rs. 20,000/-. He admitted issuing Ex.B.1 receipt, but claimed it to be unconnected with Ex.A.1 and under Ex.B.1, P.W.1 acknowledged receiving Rs. 1,00,904/- from the 2nd defendant towards a loan taken through Vysya bank for Rs. 1,00,000/- with interest at 11 per cent per annum. The contents of Ex.B.1 are in tune with the claim of P.W.1 that it relates to his personal account with the 2nd defendant and he denied there being no other dealings between them. He denied the injunction orders being vacated in I.A. No. 458 of 1999 or the plaintiff

not being in possession by the date of the suit. He denied being removed from the presidentship of the plaintiff and he denied the oral agreement to be for the plaintiff vacating the premises by May, 1997. He denied P.W.7 being the Secretary and Correspondent of the school.

19. P.W.2 spoke about the terms of the oral lease between the parties in July, 1993 and payments of Rs. 40,000/- and Rs. 30,000/- by the plaintiff on two occasions one year later. He also claimed dispossession of the plaintiff in June, 1998 by throwing away all the furniture of the plaintiff by the defendants. He claimed to be the only person present at the time of the lease being entered into and he claimed the lease period to be three years in the first instance. The same is contrary to the claim of P.W.1 about the lease being perpetual. P.W.2 also claimed to be the only person present at the time of payment of Rs. 40,000/- and Rs. 30,000/- and he could not give the date on which the plaintiff was dispossessed from the suit premises.

20. P.W.3 claimed P.W.1 to be the President and P.W.7 to be the Correspondent of the society and the school and he claimed to have gone to the school on 21-06-1998 to request to appoint his wife as a teacher. He claimed that the defendants, three constables and 40 ladies were forcibly throwing away the furniture of the school out of the premises, while the Correspondent and the teachers became helpless on-lookers. P.W.3, who claimed to have witnessed the incident for about a half an hour at about 4 P.M., was not referred to by P.W.1 anywhere.

21. Similarly, P.W.4 claimed to be the father of a student in the school for which P.W.7 is the Correspondent and P.W.1 is the President of the society. He also claimed about 40 ladies distributing pamphlets going to the school on 21-06-1998 and the 1st defendant, her daughter-in-law, three constables and the ladies throwing away the furniture from the suit premises and locking the doors. His daughter was stated to be continuing in the said school being run in Boyawada locality and his claim that P.W.1 and P.W.7 were not present when he saw the incident, was not in tune with the claim of P.W.3. P.W.4 could not give the names of about six teachers present.

22. P.W.5 is an auto driver who similarly claimed about 30 to 40 ladies distributing pamphlets coming to the school at about 4 P.M. in June, 1998 and their throwing out the furniture of the school and closing the doors of the school in the presence of about three constables. P.W.5 does not know the owner of the building and he could not state the date and month of the ladies distributing the pamphlets. It was claimed to be a Sunday.

23. P.W.6 claimed to be the President of Rajiv Mahila Sangham, Karimnagar and claimed that the 2nd defendant and his daughter-in-law requested her to come to the school a day earlier stating that some members of some Mahila societies from Warangal were coming there and when she went on 21-06-1998 she found about 30 ladies and some police people apart from the defendants and their

daughter-in-law throwing out the furniture of the school from the suit premises. She claimed to be not knowing P.W.1 and that the school is now run at Brahminwada.

24. P.W.7 claiming to be the Correspondent-cum-Secretary of the plaintiff also alleged that on 21-06-1998, the defendants, their daughter-in-law, Ravinder Rao and about 30 to 40 ladies of Mahila association came to the school at about 4 P.M. and forcibly evicted them from the school removing the furniture and other articles from the building. He claimed that pamphlets were distributed stating that the school is a bogus school and will ruin the children. He claimed the school to be continuing to run in a building in Brahminwada since one week later and he produced Ex.A.16 letter dated 28-01-1998 from the 2nd defendant, in which the 2nd defendant stated that they wanted to live in their house in their old age, as he got no other source of income and support. He also stated about returning the car of P.W.1 and promised to return any amount due to P.W.1. The 2nd defendant demanded the house to be vacated while stating that P.W.1 was not paying rents from March, 1994. He, of course, stated that they will be coming at any time with their samans and occupy the house and he will see who will object to it. P.W.7 denied running the school in the present premises since the beginning of the academic year 1998 and he denied one Srinivas being the President and not P.W.1 and stated that Srinivas is an honorary President. He denied P.W.1 being terminated for misappropriation of the funds of the school and Srinivas being appointed in 1998.

25. As against this evidence, the 2nd defendant as D.W.1 reiterated the defence and claimed that there was no interest payable on the initial advance of Rs. 20,000/-. He claimed to have requested the plaintiff to vacate the premises since his retirement in January, 1995 and to have served a copy of the account as per his demand in November, 1996 showing Rs. 1,13,200/- to be due from them. He claimed that on 28-02-1998 they shifted to Karimnagar with the entire luggage and as the suit premises was locked, they kept the luggage in the compound. When the Correspondent of the society and the teachers complained to the police about the attempts by D.W.1 to forcibly occupy the premises, the Circle Inspector of Police called him and advised him to wait till completion of the academic year on 23-04-1998. As the plaintiff did not vacate, they approached the police and the Circle Inspector advised him on 07-05-1998 to occupy the suit premises by keeping the articles there. D.W.1 claimed that they occupied the rooms by removing the furniture of the plaintiff and keeping it in the compound, which went on till 10-05-1998. He claimed that on 11-05-1998 P.W.1 came along with 20 persons, abused him and beat his daughter-in-law and her friend Rathnamala who were sent to hospital by the police for treatment of the injuries. The outpatient tickets issued to them were stated to be Exs.B.2 and B.3. The Circle Inspector was claimed to have given police protection from 11th to 13th and panchayats were claimed to have been held 5 or 6 times before caste elders in Padmasali Bhavan between 17-05-1998 and 30-05-1998, before which he sent a demand draft for Rs. 1,00,000/- on 14-05-1998, which was returned by P.W.1.

He claimed that a panchayat was held on 02-06-1998 in I town police station, Karimnagar, wherein Devasani Lakshminarayana and V. Narayana were elders on behalf of P.W.1 and B. Sambaiah and S. Ravinder Rao were elders on behalf of D.W.1. He claimed that on the advice of the elders, he took P.W.1 to Vysya bank on 16-06-1998 and issued a bankers cheque for Rs. 1,00,904/- under Ex.B.1, on which the suit should be withdrawn. The school Correspondent was advised to remove the furniture from the premises and P.W.1 was advised to pay the house tax up to 1998 by the elders. D.W.1 claimed that the suit was still continued and there is no subsisting lease between the plaintiff and the defendants. He claimed to have issued Ex.B.4 notice on 24-08-2000 to P.W.7 claiming that P.W.1 is not the President of the society and that the Court directed in I.A. No. 557 of 1998 to maintain status quo and desired the suit to be closed. They claimed that from December, 1996 till April, 1998, Rs. 34,400/- were due from the plaintiff towards rent for 17 months and hence, he is not due to pay any amount to P.W.1. He claimed that the property tax was agreed to be paid by the plaintiff only, which shall not be adjusted in the rents and he denied taking any loan of Rs. 1,38,630/-. He claimed that he did not pay interest, as the plaintiff failed to pay the rents and he claimed the suit to have been filed by P.W.1 and not by the plaintiff society, but again admitted the suit to be by the society through P.W.1. While admitting not issuing any written notice to P.W.1 to vacate the premises, he claimed to have put his luggage in the open space in the premises in the first instance. While admitting the absence of any arbitration agreement in writing in favour of panchayat elders, he claimed a written award to have been passed by the elders on 02-06-1998, which was not filed into Court.

26. D.W.2 claimed to be running a medical shop adjacent to the subject house and attempted to corroborate the incident on 11-05-1998 when P.W.1 and 20 others beat the 2nd defendant, the daughter-in-law of the defendants and another lady. He also claimed the defendants to be residing in the house since first week of May, 1998. He stated the shop, in which he is running the medical stores since 06-02-1994, to be belonging to M. Satyanarayana and he stated that on 10-05-1998, the furniture belonging to the school was taken out by D.W.1 and kept in the compound and D.W.1 occupied the premises. He claimed to have shifted his shop in the year 2000 to Bhoiwada.

27. D.W.3 is the daughter-in-law of the defendants who claimed that she and her friend Rathnamala helped her parents-in-law on 10-05-1998 in arranging the house hold articles in the subject house. She stated about the attack by P.W.1 and 20 others on 11-05-1998 beating D.W.1, herself and Rathnamala. She stated that there was no other witness to the incident.

28. Thus, the claim of P.W.1 that the oral lease is a perpetual lease, was contradicted by P.W.2 who stated the lease period to be for three years and though P.W.2 was not referred to by P.W.1, he was examined by the plaintiff as the only witness present at the time of the settlement of the lease and part payments of Rs. 40,000/- and Rs. 30,000/- on two occasions. The correctness of

Ex.A.1 statement of account in the handwriting of D.W.1 is also admitted, though the adjustment of any property tax paid towards rents is in dispute. Admittedly, since March, 1998 there was correspondence between the parties and requests or attempts by the defendants to get possession of the suit premises. The plaintiff claimed to have obtained an interim injunction on 17-06-1998 and to have been forcibly dispossessed on 21-06-1998. The defendants claimed to have come into possession on 07-05-1998 and to have completed their occupation by 10-05-1998, while they were attacked by P.W.1 and others on 11-05-1998. P.W.1 admittedly did not file any document to show that he was the President of the plaintiff and it was the suggestion to P.W.1 that he was removed from the presidentship of the society. Though P.W.1 denied P.W.7 being Secretary-cum-Correspondent of the school, P.W.7 was examined as such by the plaintiff itself. P.W.2 was not specific about being a witness to forcible dispossession, while P.Ws.3 to 7 claiming to be such witnesses are chance witnesses. The identity of 30 to 40 ladies or three constables involved in the incident is not known and the presence or involvement of Ravinder Rao in the incident as alleged by P.W.7 was not stated by the other witnesses. Srinivas stated to be the honorary President of the society by P.W.7 was shown as the President of the plaintiff in A.S. No. 12 of 2003 by the defendants who stated P.W.1 to be the Ex-President and in the second appeal, Sri V. Srinivas entered appearance through a counsel on 21-09-2010 though P.W.1 entered appearance through a counsel earlier on 20-07-2009.

29. The claim of D.W.1 about the lease was that the premises had to be vacated on his retirement in January, 1995 and his version itself shows that on 28-02-1998 the defendants kept their luggage in the compound of the subject premises on their own, against which the Correspondent and teachers of the school complained to the police. The advice of the Circle Inspector of police to wait till 23-04-1998 was not stated to be on any agreement between the parties nor was the advice of the Circle Inspector on

S.A.M.P. No. 896 of 2010 GBPJ 07-05-1998 stated to be so. The removal of the furniture of the plaintiff and occupation of the rooms by the defendants from 07-05-1998 to 10-05-1998 was not stated by D.W.1 to be with the consent of P.W.1 or the plaintiff and the alleged panchayats at Padmasali Bhavan or the police station are not evidenced by any documents. The alleged award by the elders in writing was not produced before the Court. While D.W.2 is also a chance witness, D.W.3 is an interested witness being the daughter-in-law of the defendants.

30. Ex.B.6 memorandum and bye-laws of the plaintiff society mentioning the executive body of the society to be consisting of the President, Vice-president, General Secretary, Joint Secretary, Treasurer and Executive Members did not specify the manner in which the society can sue or be sued or the manner in which the society should be represented while suing or being sued. Ex.B.7 copy of gift settlement deed dated 05-10-2004 is as though the possession of the

property was delivered to the donee under the document.

31. The trial Court considered the question of the plaintiff being out of the premises in May-June, 1998 to be not an important factor, while noting that even according to D.W.1, the furniture of the plaintiff was in the suit premises till June, 1998. The conclusion that the plaintiff society was forcibly dispossessed from the suit premises by the defendants, made the trial Court consider redelivery of possession to be rightful. The first appellate Court concluded that from the evidence of P.Ws.1 to 7, the plaintiff established that he was forcibly evicted on 10-05-1998 and the same is plainly contrary to the plaint and the evidence that forcible dispossession was on 21-06-1998. The suit for permanent injunction was filed on 08-05-1998 and the interim injunction was granted on 17-06-1998 and the amendment for recovery of possession was ordered on 18-02-1999. The forcible dispossession of the plaintiff on 10-05-1998 as claimed by the defendants was, thus, concluded from the evidence of P.Ws.1 to 7 by the first appellate Court contrary to the evidence.

32. With such background, the first question raised by the appellants is about the non-maintainability of the suit being in violation of the Act. The objection was admittedly not taken before the Courts below, but the appellants relied on Chief Engineer, Hydel Project v. Ravinder Nath 2008 (1) Supreme 544, wherein the Apex Court was dealing with a case in which the issue of jurisdiction was not raised before the first appellate Court or the second appellate Court and was raised for the first time before the Supreme Court. The tenability of the suit was noted by the Apex Court to have been raised in the written statement though not specifically and to have been considered by the trial Court in issue No. 3 though the jurisdiction aspect as highlighted before the Supreme Court was not adverted to by any of the three Courts. The Supreme Court referred to the earlier decision in Harshad Chiman Lal Modi Vs. DLF Universal and Another, 1, wherein the Supreme Court observed that objection to territorial and pecuniary jurisdiction has to be taken at the earliest possible opportunity before settlement of issues, but jurisdiction as to subject-matter is totally distinct making an order passed by a Court having no jurisdiction a nullity. The defect of jurisdiction strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. Such a decree is a coram non judge and hence, the Supreme Court concluded that there would be no question of upholding the original decree without jurisdiction hit by doctrine of coram non judge on the ground that the objection to the jurisdiction was not taken at the initial, first appellate or the second appellate stages.

33. Similarly in Chandrika Misir and Another Vs. Bhaiya Lal, , the Apex Court observed that though the contention that the civil Court had no jurisdiction at all to entertain the suit, had not been raised by the defendants in the trial Court, where the Court is inherently lacking in jurisdiction, the plea may be raised at any stage including even in execution proceedings.

34. Likewise in Perianayagam v. Maria Arokiam 1996 AIHC 4380, the Madras

High Court was dealing with a question of law raised in the second appeal regarding the maintainability of the suit on admitted facts, which contention was taken only for the first time in the second appeal. The question was not covered by the pleadings, but as it goes to the root of the case on admitted facts without the necessity to look into any other evidence, it was allowed to be taken for the first time in the second appeal. Precedents from the Apex Court in support were referred to.

35. The learned counsel for the appellants also relied on Alangadu Immudi Aghora Sivacharya Ayira Vysia Mutt, Nerinjipottai Vs. Sankarasubramaniam and another, , wherein a suit was filed against a minor defendant without the appointment of guardian and was, hence, not legally instituted. The point was not raised in the trial Court or the first appellate Court though raised in the written statement and the grounds of appeal. It was held that this being clearly a question of law and goes to the root of the matter, even at the second appellate state, the point can be argued. Seth Loon Karan Sethiya Vs. Ivan E. John and Others, which laid down that even in the execution stage, a question of law which goes to the root of the matter can be raised, was followed.

36. The decision in The Commissioner of Taxes v. Golak Nath Kakati AIR 1979 Gau 10 is also relied on, wherein following State of Rajasthan Vs. Rao Raja Kalyan Singh, (Dead by his Lrs.), it was held that the plea of non-maintainability of a suit is a legal plea and can be accepted although no specific plea was taken or precise issue framed. Such plea was, therefore, allowed to be urged for the first time in the second appeal.

37. As opposed to this, the respondent relied on Smt. Chander Kali Bai and Others Vs. Shri Jagdish Singh Thakur and Another, wherein a new question of fact was held to be not entertainable at any appellate stage. It was pointed out that where a claim has never been made in the defence presented, no amount of evidence can be looked into upon a plea which was never put forward even at the trial stage.

38 R.S. Madanappa and Others Vs. Chandramma and Another, was also referred to, to contend that a case of family settlement never set up by the defendants in the trial Court or in the High Court cannot be allowed to be set up as a new case before the High Court for the first time.

39 Thakur Virendra Singh Vs. Vimal Kumar, was also relied on for the principle that a case could not have been dismissed in view of Section 99 of the Code of Civil Procedure, which clearly says that a defect which does not affect merits of the case or the jurisdiction of the Court cannot invalidate the decision.

40. Gold Medal and Others Vs. Smt. Ameena Begum, is also relied on, wherein the learned Judge held the aspect of defect of the institution of the suit through a power of attorney to be only a curable irregularity in view of Section 99 of the CPC and definitely does not touch the jurisdiction of the Court. The learned Judge also refused to disturb the concurrent findings recorded by the Courts below in

this regard.

41. The observations of the Privy Council in AIR 1937 233 (Privy Council) were also referred to and it was observed that the rule embodied in Section 99 of the CPC proceeds upon a sound principle and is calculated to promote justice. In that case, when the alleged misjoinder has affected neither merits of the case nor the jurisdiction of the Court, the same was ignored.

42. P.J. Joseph Vs. Suhara Beevi Hussain, was also relied on, wherein it was held that Sections 99 and 99A of the CPC would clearly reveal that a decree or an order passed should not be reversed or varied on the sole ground of any error, defect or irregularity in any proceedings, in the suit, not affecting the merits of the case or the jurisdiction of the Court. It was opined that non-signing of the plaint by the plaintiff or the signing of the plaint by a person not authorized is not a matter affecting the merits of the case or the jurisdiction of the Court and the signing of the plaint, in fact, was only a procedural matter not affecting the merits of the case or the jurisdiction of the Court. Such a defect or error or omission can be rectified even at the appellate stage and the contention that permitting the appellant to sign the plaint takes away the right accrued by efflux of time, was repelled.

43. The decision in Garib Chand v. Municipal Committee 1979 PLR 527 is also referred to, wherein in the second appeal, a point was raised that no resolution of the Municipal Committee was filed with the first appeal, either taking a decision for filing an appeal against the judgment and decree of the trial Court or authorizing a person to sign and file appeal on behalf of the Municipal Committee. The resolution of the Municipal Committee was produced in answer and it was contended that no such point about competency of the appeal was raised before the first appellate Court and should not be allowed to be raised in the second appeal deeming the point to have been waived. Even otherwise, it was contended that the technical objection should not lead to interference with the decision on merits by virtue of Section 99 of the Code of Civil Procedure. It was held that the objection goes to the very root of the matter about the filing of a competent appeal before the lower appellate Court. Section 99 of the CPC was held not to refer to something substantial lacking, but only refers to matters not affecting the merits of the case or the jurisdiction of the Court. In the absence of an authority on behalf of the Municipal Committee to the Executive Officer who signed and filed the appeal, the objection was upheld. It was also observed that independent legal entities like the Local Bodies can only act through resolution and unless by a resolution the Body authorizes somebody to file an appeal, no appeal could be presented.

44. MBHD Iqbal v. K. Jagadeshwar Rao 1989 (1) APLJ 345 dealing with Section 99 of the CPC was also relied on to note that mere procedural irregularities, defects or errors, which do not affect the merits of the case, should not be a ground for reversing the decree as substantive rights have to be protected. In that case, it was held that when there was no service at all on the affected

defendant of summons under Order V, it was a gross error touching the jurisdiction of the Court and Section 99 of the CPC cannot be an impediment for the appellate Court to exercise its power.

45. The facts of the present case have to be examined in the light of the principles laid down in the above precedents relied on by both the parties to decide whether the questions raised about the representation of the plaintiff in the suit go to the root of the matter or not.

46. The plaintiff society is admittedly one governed by the Act and Section 7 thereof mandates that any such registered society may sue or be sued in the name of the Chairman or Secretary or Trustees, as shall be determined by the rules of the society, and if there are no rules in this behalf, in the name of such person as shall be nominated by the managing committee for this purpose. Ex.B.6 rules of the plaintiff society do not determine the name of the Chairman or Secretary or Trustees in whose name the plaintiff society may sue or be sued. As Ex.B.6 memorandum and bye-laws in their rules are silent on this aspect, the Managing Committee shall have to nominate and name a person who can sue or be sued as representing the plaintiff society and it is not the claim of the plaintiff in the pleadings or evidence or before any Court that the Managing Committee nominated P.W.1 for the purpose of suing the defendants in this suit. A Division Bench of this Court was dealing with similar situation in Vallabhaneni Neelakanteswara Rao and Others Vs. Sri Edupuganti Raghavendra Rao Memorial High School Committee and Another, wherein a specific issue was raised before the trial Court about a person styling himself as a Secretary of the society to file a suit for and on behalf of the society. Referring to the precedents and the provisions of the Societies Registration Act, 1860, the Division Bench held that when Article 20 of the Articles of association of the society in question provided the committee to sue or be sued in the name of the President, the suit brought by the society through its Secretary and Member was held to be not maintainable. It was pointed out that it is only an accredited representative of the society that could bring an action in its name. The Division Bench was following the judgment in Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, Section 6 of the Societies Registration Act, 1860 is in pari materia with Section 7 of the Act. The principle straight away applies.

47. The learned counsel for the appellants also referred to Nagumilli Narayanamurthy Vs. Gudimetla Gangaraju, to contend that both the right to sue and cause of action are same and synonymous and Rajasthan High Court Advocates Association v. Union of India AIR 2001 SC 416, wherein the expression "cause of action" in a wider sense was held to mean the necessary conditions for the maintenance of the suit and every fact which it would be necessary for the plaintiff to prove, if traversed in order to support his right to the judgment of the Court. The learned counsel also referred to Carona Ltd. v. M/s. Parvathy Swaminathan & Sons 2007 (7) Supreme 280 for the principle that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and

proceed to decide a matter conferring upon itself jurisdiction, which it otherwise does not possess. The Apex Court laid down that the existence of a jurisdictional fact is, thus, a sine qua non or condition precedent to the assumption of jurisdiction by a Court or Tribunal and the basic rule was stated to be that on the basis of the date of institution of the suit, the rights of the parties should be determined, but not on any cause of action arising subsequent to the filing of the suit.

48. When Ex.B.6 memorandum and bye-laws of the plaintiff society do not lay down the manner in which the plaintiff society can sue or be sued and do not name a person that can sue or be sued representing the plaintiff society, the provisions of Section 7 of the Act have to be mandatorily followed in enabling any person to so sue or be sued on behalf of the plaintiff society by nomination of the named person by the Managing Committee for the purpose. The plaint, while stating the plaintiff to be represented by its President P.W.1, did not refer to any rules of the society enabling P.W.1 to sue in the name of the plaintiff or the Managing Committee of the plaintiff society nominating him by name for the purpose. The evidence, oral or documentary, made no reference to this aspect at all and thus, even if P.W.1 was the President of the plaintiff society as on the date of the institution of the suit, the suit is in violation of the mandatory provisions of Section 7 of the Act and in view of the principle laid down in *Vallabhaneni Neelakanteswara Rao v. Sri Edupuganti Raghavendra Rao Memorial High School Committee* (18 supra), a binding precedent, the suit as framed was not tenable or maintainable on the date of the institution of the suit.

49. Though in the first appeal and the second appeal, the defendants had impleaded the plaintiff society as the respondent represented by its new President V. Srinivas, while showing P.W.1 as the 2nd respondent in the first appeal, the same cannot be considered to have cured the defect in the institution of the suit. As the Managing Committee, in the absence of any determination by the rules of the plaintiff society, still did not nominate anybody to represent the plaintiff society in the suit or the appeals, the proviso to Section 7 of the Act enabling a plaintiff to apply to the Managing Committee to nominate a person to be made the defendant and in the event of its failure to sue the Chairman or Secretary or Trustees of the society after a month or earlier, may not be available in the appeals, may not apply in the absence of any application by the defendants to the Managing Committee to nominate any person to be made the respondent in the first appeal or the second appeal and in any view, may not cure the fundamental defect in the institution of the suit itself. While P.W.1 did not even produce any document to show that he was the President of the plaintiff society at the relevant time, he did not speak of being authorized, in any manner, by the plaintiff to file the suit or defend the appeals and Sri V. Srinivas also similarly did not produce any such authorization in the first and second appeals.

50. It is true that Section 99 of the CPC like Section 99A prohibits any reversal or

modification or variance substantially of any decree or any remand on account of any misjoinder or non-joinder of the parties or causes of action or any error, defect or irregularity in the proceedings in the suit not affecting merits of case or jurisdiction of the Court. In *R.S. Maddanappa v. Chandramma* (11 supra) and *Smt. Chander Kali Bail v. Jagdish Singh Thakur* (10 supra), new questions of fact were attempted to be projected at the appellate stage or further above unlike the present case where the question though raised for the first time in the second appeal goes to the root of the matter. Section 99 of the CPC was taken recourse to in *Virendra Singh v. Vimal Kumar* (12 supra) also as the defect in pleading did not affect merits of the case or jurisdiction of the Court. The Privy Council in *Muhammad Husain Khan v. Babu Kishva Nandan Sahai* (14 supra) was dealing with mis-joinder of causes of action, which did not affect merits of the case.

51. In *M/s. Gold Medal v. Smt. Ameena Begum* (13 supra), the institutional defect in the suit in the power of attorney was corrected by a subsequent power of attorney, which question did not touch jurisdiction of the Court. Concurrent findings on record in favour of the maintainability of the suit were, hence, refused to be interfered with in the light of Section 99 of the Code of Civil Procedure. The opinion of the learned Judge that it can be said to be a curable irregularity not touching jurisdiction of the Court can be traced to Order III of the CPC and Rule 32 of the Civil Rules of Practice. Order III Rule 2 of the CPC provides for recognised agents of parties while Order III Rule 1 provides for appearances etc., by a party by his recognized agent. Rule 32 of the Civil Rules of Practice provides for filing of an affidavit about the subsistence of the authority along with the copy of power of attorney or written authority and sub-rule 2 provides for permission to the agent to appear and act on behalf of the party. The only prohibition in the absence of such permission enacted by sub-rule 2 is that unless and until the said permission is granted, no appearance, application or act, of an agent shall be recognized by the Court. The absence of such permission was not stated to have any effect on the application or suit itself and any irregularity in this regard was held not to go to the root of the case in *Md. Munawar Hussain Vs. Usha Kiran Chit Funds and Others*, In fact, Order III Rule 1 of the CPC provides for such appearances etc., by a recognized agent of a party only except where otherwise expressly provided by any law for the time being in force making it clear that where any law in force expressly provided for such appearance, such express provision has to be invariably complied with. In view of the suit by the plaintiff society being governed by the Special Statute and Section 7 thereof, a situation applicable to a defect in a power of attorney may not govern the facts of the present case.

52. Similar was the case in *P.J. Joseph v. Suhara Beevi Hussain* (15 supra), wherein the contentions about the power of attorney in favour of the husband of the plaintiff were similarly ignored with reference to Sections 99 and 99A of the Code of Civil Procedure, the issue not affecting merits of the case or jurisdiction of the Court. The plaintiff therein had, in fact, applied to the trial Court for permission to sign the plaint in the light of the defendant contending that her

husband was not specifically authorized by the power of attorney to institute the suit, but it was dismissed on the ground of limitation. The High Court, therefore, felt that even if there was any defect, the trial Court should have permitted the plaintiff to sign the plaint, as signing of the plaint is only a procedural matter.

53. A case of non-compliance with a specific statutory provision in the matter of a legal entity suing or being sued cannot be equated to a situation arising out of a power of attorney and if it is a gross error touching jurisdiction of the Court, Section 99 of the CPC is not an impediment against the appellate Court as held in *MBHD Iqbal v. K. Jagadeshwar Rao* (17 supra). Like in *Garib Chand v. Municipal Committee* (16 supra), there was no resolution by the Managing Committee of the plaintiff society so far alleged or proved and the matter goes to the competence and constitution of the suit leaving the Court with no jurisdiction to decide the suit. Such substantial defect cannot be equated to a case of merits or jurisdiction not being affected within the scope of Section 99 of the Code of Civil Procedure. The fact that the defendants themselves addressed Exs.A.8 to A.11 to P.W.1 or that they treated P.W.1 throughout as the President of the plaintiff society was contended to act as estoppel u/s 115 of the Evidence Act. But firstly there cannot be an estoppel against the Statute and secondly the incompetence and defective constitution of the suit does not arise from the conduct of the parties but in non-compliance with Section 7 of the Act. Any consent or waiver cannot cure the defect and as such a plea of non-maintainability of a suit could have been taken even at the second appellate stage even without any pleadings or evidence, the defendants are to be permitted to take such a plea and the plea has to be upheld on facts.

54. The appellants then raised the plea of fraud on the party and the Court and relied on *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others*, wherein the Apex Court referring to various precedents held that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. The colour of fraud in public law or administrative law arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal resulting in exercise of jurisdiction which otherwise would not have been exercised.

55. Likewise in *Hamza Haji Vs. State of Kerala and Another*, the Apex Court held that where the Court has been intentionally misled by the fraud of a party and a fraud has been committed upon the Court with the intention to procure its judgment, it will vitiate its judgment.

56. Similarly in *A.V. Papayya Sastry and Others Vs. Government of A.P. and Others*, the Supreme Court laid down that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-existent in the eye of law and can be challenged in any Court, at any time, in appeal, revision, writ or in collateral proceedings. The Court held that fraud may be defined as an act of deliberate deception with the design of securing some unfair

or undeserved benefit by taking undue advantage of another.

57. In *T. Vijendradas and Another Vs. M. Subramanian and Others*, it was pointed out that it would be wholly inequitable to confer a benefit on a party who is beneficiary under a decree obtained by commission of fraud, which is null and void.

58. In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat and Others*, 3 and *Meghmala v. G. Narasimha Reddy* 2010 (6) Supreme 321, deceit and injury to the person deceived were stated to be the two elements involved in fraud.

59. The plea of fraud is based on the alleged discovery by the defendants from Ex.B.6 that P.W.1 was not even a member of the plaintiff society at the time of its registration. It is true that Ex.B.6 does not show P.W.1 as a founder member at the time of formation of the society, but the lease was taken from July, 1993 much later to the registration of the society and the defendants entered into the oral lease with P.W.1, their nephew, for running the school on behalf of the society believing P.W.1 to be its President. The relationship went on cordially as per the terms of the agreement between the parties till differences arose and any element of deceit with a view to gain wrongfully or to cause wrongful loss, was not alleged even by the defendants. The failure of the school or the plaintiff, P.W.1, to vacate the premises as allegedly agreed originally may be breach of promise but not practice of fraud. The defendants themselves all through their dealings and correspondence dealt with P.W.1 as the President of the plaintiff society and in the absence of any plea or evidence on the aspect, any fraud cannot be presumed and the defendants cannot succeed on such ground.

60. Coming to the defences under the Transfer of Property Act, in *Samir Mukherjee Vs. Davinder K. Bajaj and Others*, , it was held that where the parties by a contract have indicated the duration of a lease, Section 106 of the Transfer of Property Act would not apply and it was also held that Section 106 would not be applicable if the statutory requirements of Section 107 are not satisfied. The defendants contend herein that if the lease is a perpetual lease as contended by P.W.1 or a lease initially for a period of three years as stated by P.W.2, it is required to be made by only a registered instrument and as the lease in question is said to be oral, Section 106 of the Transfer of Property Act has no application.

61. The defendants also relied on *Anthony v. K.C. Ittoop and sons* AIR 2000 SC 3523 to the effect that in the absence of a registered instrument, no lease exceeding one year was created.

62. In *P. Dharma Reddy Vs. B. Vijayalaxmi and others*, also, the Court held that after the expiry of the contractual tenancy where the landlord neither received the rent nor assented to the continuation of the tenant in possession, the question of tenancy continuing by holding over or waiver does not arise and no notice u/s 106 of the Transfer of Property Act to quit is required.

63. In *E. Chitra Ramacharandas Vs. National Remote Sensing Agency, Hyd. and another*, a learned Judge of this Court held that after expiry of the contractual tenancy, the relationship of the landlord and tenant ceases and no notice to quit u/s 106 of the Transfer of Property Act is necessary, more so when the landlord did not receive rents or otherwise assent to the continuance of the tenant.

64. Similar is the decision in *UCO Bank v. Amar Nath Jindal* 1998 (TLS) 116533, wherein the tenancy expired by way of efflux of time and as it got determined by efflux of time limited thereby, the landlord was not required to serve any notice u/s 106 of the Transfer of Property Act.

65. If the claim of P.W.1 that the lease created is a perpetual lease, is true and legal, the principles governing the absence of any necessity for a notice u/s 106 of the Transfer of Property Act may not apply, while if it was only for a period of three years initially as stated by P.W.2 and there was no continuance of the lease by an agreement between the parties, the principles may apply making a notice to quit unnecessary.

66. The defendants further relied on *State of West Bengal Vs. Birendra Nath Basunia and Others*, holding that on the termination of a lease, the full rights in the leasehold property, including the right to possession, revert to the lessor and if the lessee continues to remain on the land with no longer any right to be there and refuses to vacate, the lessor has every right to deal with him as a trespasser and use reasonable force against him for his eviction in defence of his right to property and in assertion of his right to possession which right to property embraces. The Court further held that if the lessor in making a forcible entry infringes the criminal law, he will make himself liable to be punished under a prosecution, but he will infringe no right of the lessee. If he uses more than necessary force, he may even expose himself to a civil liability to pay damages for the excess force used and for forcible entry, the lessee has no cause of action against the lessor merely on the ground that it was forcible.

67. Even the Supreme Court in *Kewal Chand Mimani (d) by Lrs. Vs. S.K. Sen and Others*, held that a tenant on the expiry of the lease cannot be said to continue in lawful possession of the property against the wishes of the landlord and referring to Section 108 of the Transfer of Property Act, the Apex Court held that a person, whose lease has expired, is still entitled to maintain possessory right so long as and until he be evicted by due process of law. However, when the lessee was deprived of its possession, question of putting back the lessee on to the possession after the expiry of the lease in accordance with the provisions of law, does not and cannot arise. However, it has to be noted that the right of the lessee stood obliterated in that case by reason of efflux of time coupled with the issuance of the requisition order as per law.

68. The right to possession reverting to the lessor on the termination of the lease even permitting re-entry with use of reasonable force is, thus, depending on the termination of the lease by efflux of time and even if a notice to quit in respect of

the oral lease for more than one year is not required u/s 106 of the Transfer of Property Act in view of non-compliance with Section 107 thereof, it is not clear whether the lessee can be considered to have lost its right to possession. If it were a perpetual lease as claimed by P.W.1 or lease initially for three years as claimed by P.W.2, it is not clear whether there was no landlord and tenant relationship between the parties by the date of the suit and if the possessory right did not cease to subsist, whether forcible dispossession as held to be proved concurrently by the Courts below will destroy any right of the plaintiff to seek re-entry into possession does not appear to be directly governed by the principles laid down in the precedents cited.

69. While not interfering with the concurrent findings of fact by the Courts below about the forcible dispossession of the plaintiff from the subject premises, notwithstanding the error of fact committed by the first appellate Court about the date of dispossession, in so far as appreciation of evidence by the Courts below is concerned, the remote possibility of taking a second view on the probabilities arising out of such evidence will not make such an appreciation perverse and the plaintiff cannot be considered to have voluntarily vacated the premises on the evidence on record nor can it be considered that the lease being determined by efflux of time limited thereby had been established, though a notice to quit u/s 106 of the Transfer of Property Act may become unnecessary on the ground of violation of Section 107.

70. While the forcible dispossession of the plaintiff by the defendants from the subject premises might have provided some reason for the Courts below to direct recovery of possession, in view of the non-maintainability of the suit due to the patent non-compliance with Section 7 of the Act and the consequential want of jurisdiction for the Court to entertain and determine the suit, the suit has to fail notwithstanding the substantial question of law being raised only at the stage of the second appeal without any pleadings or evidence or issue on that aspect in view of the admitted facts. Therefore, the defendants should succeed in the second appeal. Though the advanced ages of the old defendants by now, the retired 2nd defendant having no other residence and the school of the plaintiff successfully running in an alternative suitable premises since immediately after the forcible eviction from the subject premises are not relevant grounds for consideration, the defendants succeed on proof of non-compliance with the mandatory provisions of the relevant Statute in the institution of the suit by the plaintiff society and under the circumstances, the parties can be directed to bear their own costs throughout.

71. In the result, S.A.M.P. No. 896 of 2010 is allowed and Exs.B.6 and B.7 are received as additional evidence in the second appeal. The judgment and decree dated 14-07-2004 in A.S. No. 12 of 2003 on the file of the III Additional District Judge's Court, Karimnagar and the judgment and decree in O.S. No. 121 of 1998 on the file of the Principal Junior Civil Judge's Court, Karimnagar, dated 08-01-2003 are set aside and O.S. No. 121 of 1998 is dismissed without costs.

The second appeal is allowed without costs accordingly.