

***THE HON'BLE SMT. JUSTICE P.SREE SUDHA**

+ APPEAL SUIT No.726 OF 2010

% 13-04-2023

Kothawalli Raji Reddy and another.

...Appellants

vs.

\$ Kanukala Sathemma and another.

... Respondents

!Counsel for the Appellants: Sri Nimmanagoti Srinivas
& Sri B.Mohan

^Counsel for Respondents: Sri M.S.N.Prasad

<Gist :

>Head Note :

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

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Between:

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...Appellants

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... Respondents

JUDGMENT PRONOUNCED ON: 13.04.2023

THE HON'BLE SMT JUSTICE P.SREE SUDHA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : -
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : -

JUSTICE P.SREE SUDHA
THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

APPEAL SUIT No.726 of 2010

JUDGMENT:

This appeal is filed against the Judgment and decree dated 02.08.2010 in O.S.No.26 of 2006 passed by the learned Senior Civil Judge, Medak.

2. The respondent No.1/plaintiff filed suit in O.S.No.26 of 2006 for partition and also to declare the sale deeds executed in favour of the appellants/defendants No.2 & 3 as null and void and to grant Perpetual Injunction. The trial Court examined P.Ws.1 to 3 on behalf of the plaintiff and marked Exs.A1 to A23. D.Ws.1 to 4 were examined on behalf of the defendants and marked Exs.B1 to B21. The trial Court considering the entire evidence on record, decreed the suit in favour of the plaintiff and declared the sale deeds as null and void and not binding on the plaintiff and also granted perpetual injunction against the defendants and the counter claim was dismissed. Aggrieved by the said Judgment, defendants No.2 & 3 preferred the present appeal.

3. The appellants/defendants No.2 & 3 mainly contended that plaintiff was declared as the owner of the suit schedule property basing on the Certified Copy of the Will under Ex.A3, even without producing the original Will. Plaintiff has not proved the loss of original Will and had not followed formalities under Section 65 of the Indian Evidence Act before submitting the secondary evidence. The trial Court observed that the Certified Copy of the Will was not questioned by other daughters of testator and thus presumed it as valid. The plaintiff has not examined any of the two attesters. One of the attester expired, though the other attester was available, he was not produced by the plaintiff to prove the Will. P.W.2 stated that he drafted the Will, but in the Will he was not shown as the Scribe. P.W.3 is the son of one of the attester, but he could not identify the signature of his father on the Certified Copy. The trial Court ought to have seen that unless the Court is satisfied that the original Will was lost or damaged should not permit for secondary evidence under Section 65 of Indian Evidence Act. The Will was not proved by any acceptable evidence and thus Ex.A3 is not admissible in the evidence. The Counsel for the defendants suggested in the Cross-examination that Bamma revoked her Will. The other daughters of Bamma filed Suit in O.S.No.9 of 1987. The plaintiff for the first time produced the

Certified Copy in O.S.No.26 of 2006, claiming the title. Though the Exs.B1 and B2 executed in the year 2000, suit was filed in the year 2006 and it is barred by limitation. The names of the appellants were recorded in Pahanies from the year 2000. The appellants filed land revenue receipts, Gazette publication and Ex.B14 to show that they are the owners of the suit schedule land. Though, the appellants stated that defendant No.1 was colluded with plaintiff, the trial Court erred in observing that defendants have not examined defendant No.1, who remained ex parte. The Patta Passbook and title deeds issued in favour of the defendants No. 2 & 3 under Ex.B19 and B20 were not considered by the trial Court. Therefore, requested the Court to set aside the Judgment of the trial Court.

4. The plaintiff namely Kanukula Sathemma filed suit against her father B. Narayana Reddy/defendant No.1 and the purchasers of the property from her mother i.e, defendants No.2 & 3. She stated that she is the absolute owner of the property measuring an extent of Acs.6 – 06 gts and she acquired the same through the registered Will deed executed by her mother vide document No.10 of 1987, dated 23.06.1987 and the same was registered in the Office of the Sub-Registrar, Medak district. The suit schedule property is the exclusive property of her

mother and thus defendant No.1 has no right to deal with the subject properties. The name of her mother was reflected in the Pahanies for more than 30 years and she was in exclusive possession and enjoyment of the said property and she died on 20.06.2000. When plaintiff approached revenue authorities in the first week of March, 2006 she came to know that the names of defendants No.2 & 3 were incorporated in the Pahanies from 2000 – 2001 onwards and then she came to know that defendant No.1 sold the land in favour of the defendants No.2 & 3 through registered sale deeds vide document Nos.2150 & 2151 of 2000 dated 06.09.2000, without any valid right, title or possession. The defendant No.1 has no right or authority to alienate the suit lands belonging to the plaintiff and thus defendants No.2 & 3 did not get any better title basing on the said sale deeds and they are not binding on her. The plaintiff was in continuous, peaceful possession and enjoyment of the suit schedule land without any obstruction. As defendants are trying to dispossess her on 02.04.2006, she came to know about the legal transaction between the defendant No.1 and defendant Nos.2 & 3. She obtained Certified Copy of the sale deeds and filed the Suit for Declaration of title and for cancellation of the registered sale deeds.

5. The defendant Nos.2 & 3 by filing Written Statement along with Counter claim denied the allegations of plaintiff and stated that the property belong to the mother of the plaintiff namely Bachupalli Balamma and she executed an Agreement of Sale and agreed to sell the entire suit schedule property to the fathers of the defendants No.2 & 3 by way of Agreement of Sale dated 11.06.2000 for total sale consideration of Rs.2,58,300 @ Rs.42,000/- per acre and received advance sale consideration of Rs.58,300/- and the balance is to be paid at the time of registration of the sale deed and agreed to be executed on 30.08.2000 in favour of the vendees or their nominees. It was also mentioned that if Bachupalli Balamma could not execute the sale deed in case of her death, she authorized her husband i.e, defendant No.1 to execute the sale deeds in favour of the vendees. The said Agreement of Sale was countersigned by defendant No.1 and sons-in-law of defendant No.1. The mother of the plaintiff died on 20.06.2000, as per her wishes and authorization, defendant No.1 executed the registered sale deeds in favour of the defendants No.2 & 3 by receiving balance sale consideration.

6. They further stated that if, the Court comes to the conclusion regarding genuinity of the Will, the defendants are

entitled for Specific Performance of Agreement of Sale dated 11.06.2000 and the plaintiff is directed to execute the registered sale deeds in favour of father of the defendants No.2 & 3 or their nominees by receiving balance sale consideration as per the Agreement of Sale dated 11.06.2000 and thus they filed Counter claim. They further stated that the Suit filed by the plaintiff is barred by limitation. They requested the Court to direct defendant No.1 to pay the sale consideration of Rs.2,00,000/- and also the amount for Registration and Stamp expenses to the plaintiff for execution of the sale deeds in their favour.

7. In the additional Written Statement filed by the defendants No.2 & 3, they stated that Bamma has not disclosed about the Will deed said to have been executed by her in the sale deed. Though, the sale took place in the year 2000, plaintiff has not questioned the sale deed till 2006. The said Bamma was in possession of the property till her death. Her husband sold the property in pursuance of the authorization given by her. Even in the Agreement of Sale, she stated that there is no obligation towards her daughters, therefore the sale deeds executed in favour of defendants No.2 & 3 were valid and binding on the plaintiff. The Will was fabricated by the plaintiff and her husband. When the daughters of Bamma filed

O.S.No.9 of 1987 against the plaintiff and her husband, Bamma was suffering from Cancer and was admitted in the hospital, as the plaintiff and other daughters of Bamma failed to look after her, she and her husband were in dire need of medical expenses and thus she agreed to sell the suit schedule property in favour of fathers of defendants No.2 & 3 and also authorized defendant No.1 to execute the sale deed. As the Bamma has no male issues, her husband was only the legal heir and the daughters were married and living with their families. The other four daughters except the plaintiff and her sister who married Eswar Reddy attested the sale deeds.

8. The plaintiff filed the Suit at the instance of her husband who was trying to grab the land from Bamma from the beginning. The alleged Will was impliedly revoked by Bamma as she executed the Agreement of Sale authorizing her husband to sell the property. Plaintiff was never in possession of the property. After purchasing the property in the year 2000, the defendants No.2 & 3 were in possession and enjoyment of the said property. The Patta Pass book and title deeds were issued in favour of the defendants No.2 & 3 by the Mandal Revenue Officer, Jinnaram and their names were also mutated in the revenue records. They are cultivating the land and paying

revenue to the Government. When the authorities called for objections from the public, no objection was raised by the plaintiff before the revenue authorities. The defendants No.2 & 3 filed various applications before the Hyderabad Urban Development Authority for changing of the suit land usage from agriculture to residential. Even then, the plaintiff did not file any objections, as she was not in possession of the property. The trial Court framed as many as six issues and dealt with each issue in detail.

9. Now, it is for this Court to decide whether the Judgment of the trial Court is on proper appreciation of the facts or not and is liable to be set aside.

10. The Bamma and Narayan Reddy are blessed with six daughters namely Kamma, Amamma, Buchamma, Jayamma, Satamma and Shankamma. The Easwar Reddy married Satamma and Shankamma. O.S.No.9 of 1987 was filed by the two daughters of Bamma i.e., Kamma and Amamma against the father of Bamma i.e, Malla Reddy and other daughters of Bamma and Eswar Reddy for partition of the properties @ 1/8th to each of them. In the said Suit, it was held that Malla Reddy has no male issues, as such he kept his

daughter Bamma in his house and transferred all the A-Schedule properties in her name. The family pedigree of Bamma was given in the said suit and it was also stated that Bamma was giving equal amount to all the daughters every year towards their share. When they requested her to partition the suit schedule property on 05.01.1987, she refused for partition and also stated that in the first week of the January, 1987 Eswar Reddy refused to make partition and thus they filed the Suit for partition. In the said Suit, they stated that Eswar Reddy married Satamma and Shankamma and claiming entire suit schedule property depriving the lawful rights of the defendants and other daughters of Bamma and also trying to alienate the suit schedule property. His name was incorporated as cultivator in the Patta Passbook and they filed the Certified Copy of the Pattadar Passbook for the year 1985-86 to substantiate their version and added him as defendant in Suit.

11. The Written Statement was filed in O.S.No. 9 of 1987 on 25.08.1987, by Bamma, Satamma, Shankamma and Eswar Reddy, in which it was held that Bamma is the absolute owner of the suit schedule property. In the said suit it was mentioned that defendant No.2 sold the land bearing Sy.No.105, 140/aa and 142. It was also mentioned that

Satyamma and Shankamma are looking after the Bamma, her husband and her father and opposed the partition as claimed by the plaintiffs. In the said suit Acs.8 – 12 gts was shown as the suit schedule property and all the Survey numbers were mentioned in detail, but the suit was dismissed for default, in which it was mentioned that plaintiff was not ready inspite of the conditional Order, even the advocate of defendants No.2, 3, 5 and 7 was present and defendants No.1, 4 and 7 remained exparte on 03.08.1993.

12. It seems that during the pendency of the Suit, Bamma executed the Will deed vide document No.10 of 1987 which is filed under Ex.A3 and got it registered. Even in the Will deed it was mentioned that she was blessed with 6 daughters. All of them married and well settled. Her husband, herself and her father Malla Reddy are looked after by Satyamma w/o. Eswar Reddy from the past 8 years and her two daughters filed O.S.No.9 of 1987, as such she intended to execute the Will in favour of plaintiff and the Will shall come into effect on her death and ***she reserves her right to revoke the Will during her life time.*** She affixed her thumb impression and also stated that last Will and testament was executed with free will and in the presence of attesting witnesses. The defendants in the suit

mainly contended that Will was executed on 23.06.1987 i.e, two months prior to the filing of Written Statement in O.S.No.9 of 1987, but the Balamma has not stated anything regarding the execution of the said Will in O.S.No.9 of 1987 for the reasons best known to her.

13. The plaintiff got examined P.W.2, Advocate on her behalf who contested O.S.No.9 of 1987 on their behalf and he stated that as per the instructions of Balamma, he drafted the Will and also assisted her for registration. He clearly stated that when the suit for partition was filed by her daughters, she executed the Will and got it registered. He stated that Balamma was alive while preparing Written Statement in the said Suit and she gave instructions for preparing Written Statement. One Rami Reddy was the attester of the Will and he did not remember the name of other attester. He also stated that Balamma informed that the suit schedule property is the self-acquired property, as such he got executed the Will at her instance, but there was no recital in the Will that the property is the self-acquired property of the Balamma. He did not know whether Balamma revoked the Will subsequently, but in Ex.A3 she reserved her right to revoke the Will. He stated that Ex.A3 was drafted by him and he read over

the contents of the Will to Balamma, but his name was not shown as scribe in Ex.A3.

14. The plaintiff filed suit for Declaration basing on the Will executed by her mother on 23.06.1987, but she has not produced the original Will. She simply stated that the Will was in a damaged condition, as such they obtained the Certified Copy of the Will and marked the same. This Court finds it reasonable to extract the evidence of P.W.1, as she could not produced the original Will. It reads as follows:

“I lived with my mother at Bollarum till her death from the time of my marriage. My mother executed the Will in June 1987. In my absence I came to know about execution of the Will. Though I was with my mother, I do not know when my mother executed the Will under Ex A-3. My mother not signed Will in my presence.

I do not know who were persons who prepared the Will. After 5 years of execution of Will my mother informed me about the execution of Will by her. The original of Will was not with me. I do not know with whom the original Will was kept. After death of my mother I have not taken any steps to mutate the schedule property in my name. Even prior to the death of my mother in the year 2000, I came to know about the Will. Before the death of my mother she informed the Will was damaged. Only for the purpose of filing the Suit, I have obtained certified copy of the Will, and I have seen the original Will as my mother had shown to me.

As per the Will I have to inherit the property after death of my mother. I was not present at time of

registration of Will. I do not know who were the persons with my mother by the time of registration of Will. My mother had shown damaged Will to me, five years prior her death. After death of my mother, I have not seen the damaged Will. I have not enquired about the damaged Will and with whom it was kept.

It is not true to say that myself and my husband created original of Ex. A-3 to grab the property.

I came to know in the year 2003 names of Def no.2 & 3 in the column of pattedar and enjoyer. I filed Suit directly without making any application to the MRO.”

As per the citation reported in **(2014) 2 SCC 269** between ***Union of India and others Vs. Vasavi Cooperative Housing Society*** and others in which it was held as follows:

In a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it.

15. The case of the plaintiff is that Balamma executed the Will in her favour as she looked after her mother Balamma, father Narayan Reddy and Grand-father Malla Reddy from past 8 years prior to the execution of the Will in the year 1987, but her evidence shows that Will was not executed in her presence and she did not know about the execution of the Will. Only after five

years i.e, in the year 1991, her mother informed her about the execution of the Will, but she has not handed over the original Will to the plaintiff and not even informed with whom she kept the original Will. She stated that before the death of her mother, she informed that Will was damaged. Her mother shown the damaged Will, but she has not seen the damaged Will after the death of his mother. In the light of the evidence of P.W.1, during her Cross-examination she did not state anything about production of the original Will after the death of her mother and she filed the Suit in the year 2006. This Court finds that the evidence of P.W.1 is to be scrutinized with much care and caution before arriving to the conclusion.

16. The defendants in the suit mainly contended that it is for the plaintiff to produce the original Will and then request the Court for filing the Certified Copy of the Will by duly following the procedure laid down under Section 65 of the Indian Evidence Act, but the plaintiff directly filed the Certified Copy of the Will and thus it cannot be looked into. Admittedly, the name of Balamma was recorded in the copy of the Pahanies for the years 1999 – 20, 2000 – 01, 2001 – 02, 2004 – 05, 1999 – 2000, 1993 – 94, 1986 – 87, 1984 – 85, 1979 – 80. There is no dispute regarding the fact that Balamma was the absolute owner of the

suit schedule property and her name was recorded in the Pattadar Passbook from the past 50 years. Bamma also executed Agreement of Sale in favour of defendants No.2 & 3 during her life time i.e, on 11.06.2000, in which she stated that she intended to sell Acs.6 – 06 gts of land in favour of Veera Reddy and Prathap Reddy for an amount of Rs.42,000/- per acre i.e., Rs.2,58,300/- and she received Rs.58,300/- on the said date and instructed them to pay the balance on 30.08.2000 and then she will register the sale deed on that day. She further stated that in view of her health condition, if she dies in the meanwhile her husband Narayan Reddy will register the sale deed in their favour and she can take care of his daughters and there will not be any problem to the vendees. She executed the document with her own will and received the advance. The said document was attested by three daughters and three sons-in-laws and also defendant No.1.

17. Now, it is for this Court to see whether the execution of the sale deed by Bamma in favour of defendants No.2 & 3 amounts to revocation of the Will or not?

18. *The Will can be revoked expressly by another Will or codicil or by implied revocation, by some writing, by burning or tearing*

or by destroying otherwise. The revocation of the Will can be presumed by the conduct of the testator. For example, testator may make bequest of property in his Will to a person, but he may dispose of the said property during his life time. This is called implied revocation i.e., revocation by conduct. If the Will was seen with the testator, but could not be found after the death of testator, it will be presumed at the same has been revoked by the testator by destroying the same.

19. Admittedly, Will was executed by Balamma in favour of the plaintiff on 23.06.1987 and it was also registered. The trial Court believed the Will on the ground that if at all the Will was not executed, P.W.1 cannot get the Certified Copy of the same. As she contended that Will was damaged, the Certified Copy of the Will can be received in evidence and in view of the evidence of P.W.3 son of the attester, and evidence of P.W.2, who scribed the Will, it can be relied upon. This court also finds that there is no reason to disbelieve the execution of the Will, but as Balamma also executed the Agreement of Sale in favour of the defendants No.2 & 3, it is for the Court to see whether she revoked the Will during her life time or not.

20. Admittedly, P.W.1 has not filed the original Will before the Court and she mainly contended that her mother has shown the damaged Will prior to her death, but after her death she could not trace it out. The Balamma died 13 years after the execution of the Will i.e, in the year 2000 and prior to her death, she executed the Agreement of Sale just 9 days prior to her death and also authorized her husband to execute the registered sale deed, as she was not feeling well, in the sale deed it was mentioned that she can take care of her six daughters and vendees need not face any problem. Even in the Will deed, she reserved her right to revoke the Will and execution of the Agreement of Sale just before her death clearly shows that she revoked the Will and sold the same property to the fathers of defendants No.2 & 3 by duly receiving the advance amount with a direction to pay the balance amount on 30.08.2000 and accordingly, the said amount was paid and defendant No.1 also executed the registered sale deeds in their favour. Immediately, they obtained Pattadar Passbook and title deeds and got mutated their names in the revenue records and also filed various applications before the authorities of Hyderabad Urban Development Authority and also gave representation when their land was acquired by the Government. Even in the Notification given by the Government, the names of the defendants No.2 & 3

were reflected as owners of the property immediately after the execution of the sale deeds and thus they are in possession of the suit schedule property from then onwards.

21. Though, the plaintiff stated that she was in continuous possession of the property, her mother was in possession of the property till 2000 and from then onwards it is in the possession of the defendants No.2 & 3 and thus she was never in possession of the property. She also stated that in her Cross-examination that in the year 2003 she came to know about the mutation of the land in the name of defendants No.2 & 3, but she filed the Suit on 20.04.2006. The contention of the defendants is that the Suit is filed beyond the period of limitation and is not maintainable. If at all, the plaintiff really taken care of her mother till her death, the question of execution of the sale deeds by her mother in favour of defendants No.2 & 3 does not arise.

22. The learned Counsel for the plaintiff contended that there is no endorsement on Ex.B21 that it was read over and explained to her, but the document was written in Telugu in the presence of her husband and other daughters and sons-in-law and they signed on the said document. Therefore, the minor

discrepancies regarding the differences in Ink and alterations in the document which are pointed out by the plaintiff cannot be accepted. When it is the case of the plaintiff that her mother executed the Will deed in her favour in the year 1987 itself, why it was not acted upon and why her name was not mutated in the revenue records either during her life time or after her death immediately was not explained by her at any point of time.

23. The perusal of the record shows that the husband of the plaintiff intended to grab the property of Balamma. When the Suit was filed by her daughters for partition, he refused for partition and also got executed a Will deed through Balamma and also registered it and later six years after her death got filed the Suit through plaintiff by relying upon the said Will. In fact, P.W.1 has no knowledge of the execution of the Will. The trial Court observed that defendants could not examine defendant No.1 or the other daughters of Balamma to substantiate the Agreement of Sale under Ex.B21 and dismissed their Counter claim. Defendants 2 & 3 stated that defendant No.1 is the father of the plaintiff. Though, he executed the sale deed in their favour, he remained exparte. It is for the plaintiff to examine her father, as he was present at the time of execution of Ex.B21. The defendant No.1 was present not only at the time of

execution of Ex.B21, but also executed registered sale deeds in favour of defendants No.2 & 3 after the death of his wife as per the authorization given by her by duly receiving the balance amount. When he registered the document in favour of defendants No.2 & 3 on 30.08.2000 itself, it cannot be believed that plaintiff has no knowledge of the execution of the sale deeds till 2003 or till 2006 when she filed the Suit, as her father was residing with her. She has not examined the defendant No.1 for the reasons best known to her, though he is one of the crucial witnesses for her. When she herself could not examine her father and sisters, it is not practicable for the defendants No.2 & 3 to get the family members of plaintiff as witnesses and thus the trial Court erred in appreciating the facts properly.

24. Though, P.W.1 stated that the original Will was damaged, it has never seen the light of the day and moreover Balamma executed the Agreement of Sale during her life time by duly authorizing her husband to execute the sale deeds even in case of her death and thus it can be safely presumed that she revoked the Will executed by her way back in the year 1987 by implied revocation and it can also be presumed that the damaged Will was found when testator was alive and it could not be found after her death, and it was revoked by the testator

by destroying the same. Therefore, the authenticity of the Ex.B21 cannot be doubted. The argument of the plaintiff Counsel that as on the date of her death, the earlier Will was neither revoked nor cancelled cannot be accepted. Though, the plaintiff stated that one month prior to the date of execution of the Ex.B21 i.e, 11.06.2000, her mother was not in sound state of mind and unconscious and died on 20.06.2000, with serious illness is not tenable, as she was not present on 11.06.2000 and not attested the Ex.B21 and not even opposed the execution of Ex.B21 on the ground that Balamma already executed Will in her favour. When Ex.B21 was produced before the Court, it was impounded and in pursuance of Ex.B21, registered sale deeds were executed by defendant No.1 on 20.08.2000. Therefore, there is no reason to disbelieve Ex.B21.

25. The plaintiffs' Counsel contended that only one appeal has been preferred against the Judgment and decree of the trial Court and no appeal is filed against the dismissal of the Counter claim. Whereas, the defendants Counsel stated the trial Court decided all the issues between the parties in a single trial and passed one decree as the suit and counter claim are decided in one suit, it is not necessary to file two appeals.

26. The learned Counsel for the respondent No.1/plaintiff argued that it was not mentioned in Ex.B21 that she sold the property to meet out her medical expenses. Though it was not specifically mentioned in it, she executed the same 9 days prior to her death and received advance amount of Rs.58,300/- with a direction to pay the balance amount in August, 2000 and it clearly shows that she was in need of the money at the fag end of her life. If at all, any of the daughters or her husband was in a position to support her financially there is no requirement for her to execute the Agreement of Sale in favour of fathers of defendants No.2 & 3 on 11.06.2000.

27. The learned Counsel for the respondent No.1/plaintiff further contended that defendant No.1 is not competent to execute sale deeds. Admittedly, defendant No.1 executed sale deeds as per the authorization given by her wife Balamma and in pursuance of the same, Pattadar Passbook and title deed were also issued under Ex.B19 & B20. Plaintiff never sought for cancellation of the mutation in favour of defendants No.2 & 3 and thus the Pattadar Passbook and title deed issued by M.R.O under Section 6 of the Records of Rights Act by duly following the procedure shall be presumed to be valid and the plaintiff cannot seek for cancellation of the sale deeds without seeking

for cancellation of the entries in the revenue records. The learned Counsel for the defendants contended that sale deeds were registered on 06.09.2000 and the registration of the sale deeds is a public notice and thus she has to file the Suit within 3 years from the date of registration as per Article 38 of the Limitation Act, but the Suit was filed beyond 3 years and it is barred by limitation. There is no mention regarding execution of the Will in Ex.A21 and thus the defendants have no knowledge and thus the defendants are the bonafide purchasers without the knowledge of the Will and moreover, they are in continuous possession from 2006 onwards. Therefore, this Court finds that it is just and reasonable to set aside the Judgment of the trial Court.

28. In the result, the appeal suit is allowed by setting aside the Judgment of the trial Court in O.S.No.26 of 2006 dated 02.08.2010. The respondent No.1/plaintiff is not declared as the absolute owner of the property and thus she is not entitled for declaration of sale deeds executed by respondent No.2/defendant No.1 as null and void, as the respondent No.2 already executed sale deeds in favour of fathers of the appellants/defendants No.2 & 3 after receiving balance sale consideration and they also got mutated their names in the

revenue records and are in possession of the property from the date of purchase. Counter claim filed by the appellants/defendants No.2 & 3 is also allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 13.04.2023

tri

NOTE: *LR Copy to be marked (Yes/No)*