

**THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI**

**I.A.No.4 of 2022**

**In and**

**A.S.No.301 OF 2020**

**JUDGMENT:**

Aggrieved by the judgment and decree dated 15.06.2020 in O.S.No.1062 of 2013 (hereinafter will be referred as 'impugned judgment') passed by the learned VIII Additional District Judge, Ranga Reddy District at L.B.Nagar (hereinafter will be referred as 'trial Court'), the plaintiff preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the appellant to file the present appeal are that, the plaintiff filed suit for declaration, cancellation of documents and for delivery of peaceful and physical possession in respect of suit schedule property against the defendant Nos.1 to 3. The averments of the plaint in brief are as under:

a) The father of the plaintiff by name Darga Malla Reddy was the absolute owner and possessor of land in Sy. No. 38, 39, 43, 44, 153 and 154 situated at Peerzadiguda village, Ghatkesar Mandal, Ranga Reddy District. That said Darga Malla Reddy

was having five sons namely Darga Ram Reddy, Darga Narayana Reddy/plaintiff, Darga Gopal Reddy, Darga Narsimha Reddy and Darga Satti Reddy. During the life time, late Darga Malla Reddy executed affidavit/declaration dated 17.09.1979 by declaring the above said properties in favour of his five sons equally with every right of conveyance, cultivation and enjoyment and further he has no right, claim or interest over the said properties. Thereafter plaintiff got mutated his share of land in his name and he was issued Pattedar passbooks and title deeds vide Patta No. 75, Book No. Z129433 and Title deed No. 72, Book No.Z181143 in respect of land in Sy. Nos. 38 admeasuring A: 0-07 guntas Sy. No. 39 admeasuring Ac 3-18 guntas and Sy. No. 43/AA admeasuring Ac 1-20 guntas total admeasuring Ac 5-05 guntas by paying necessary taxes to the revenue authorities.

b) Thereafter the plaintiff has converted the land admeasuring Ac 1-10 guntas in Sy. Nos. 39 and 43 into house sites in the total plotted area 4800 square yards in total 6040 square yards and obtained layout permission from Peerzadiguda Grampanchayat and sold out some of the plots to the prospective purchasers and retained some of the plots including

the plot No. 49 admeasuring 190 square yards in Sy. No. 39 and 43 i.e., the Suit Schedule Property. While the matter stood thus defendant No. 3 with a malafide intention has filed a suit for perpetual injunction vide O.S. No. 1231/2008 on the file of Principal Junior Civil Judge, Ranga Reddy District wherein he stated that he is in peaceful possession and enjoyment of the Suit Schedule Property which he alleged to have purchased from defendant No.2 vide registered Sale Deed bearing document No. 2619/1994 date 18.04.1994 and in turn defendant No.2 has purchased the same from defendant No.1 through registered Sale Deed bearing document No.5193/1991 dated 12.08.1991, who in turn purchased the said property i.e., Suit Schedule Property from the father of the plaintiff through registered Sale Deed bearing document No.4354/1983 dated 24.11.1983. The plaintiff contested the matter by filing his written statement by denying the alienation by his father and other subsequent documents and the said suit was decreed *exparte* against the plaintiff herein who filed a set aside petition and the same is pending.

c) The father of the plaintiff divided his property amongst his five sons way back in the year 1979 and plaintiff got mutated

his share in the revenue records as such the question of alienation of Suit Schedule Property in favour of defendant No.1 by the father of the plaintiff does not arise and as on the alleged date of document bearing No. 4354/1983 dated 24.11.1983 the entire Sy. Nos. 39 and 43 was an agricultural land the plaintiff himself converted the said land into house sites by obtaining the layout plan from the Grampanchayat Peerzadiguda and that defendants have created the above said false documents and trying to alienate the suit property and on 28.08.2013, plaintiff came to know that the defendant No.3 is trying to alienate the suit property to the third parties which may result in multiplicity of litigation, hence filed the present suit.

4. The Defendant Nos. 1 and 2 remained *exparte*.
5. Defendant No.3 filed his written statement denying the averments of the plaint and contended as under:
  - a) The defendant No.3 is the sole and absolute owner of plot bearing No. 49, Western part admeasuring 210 square yards in Sy. No.39 and 43 situated at Peerzadiguda village, Uppal Mandal, R.R. District by virtue of Registered Sale Deed bearing document No. 2619/1994 dated 18.04.1994 having purchased the same from defendant No.2, who in turn purchased the same

from defendant No.1 vide registered document bearing document No. 5193/1991 dated 12.08.1991 and the said defendant No.1 purchased the said property from the father of the plaintiff vide registered document bearing No. 4354/1983 dated 24.11.1983.

b) The defendant No.3 got the house building plan approved from Grampanchayat, Peerzadiguda on 26.05.2004 and obtained construction loan of Rs.6,00,000/- from APSRTC Employees Thrift and Credit Cooperative Society and commenced the construction and the plaintiff and his son along with henchmen came to the suit property on 19.10.2008 and 22.10.2008 and tried to encroach the same, as such the defendant No. 3 approached the Police, Uppal and on the advise of police, defendant No. 3 approached the Court and filed O.S.No.1231/2008, which was decreed in favour of defendant No. 3.

c) During the life time father of the plaintiff, Darga Malla Reddy has converted the agricultural land into house plots and sold out many plots and executed registered sale deeds in favour of prospective purchasers, the copies of which were filed by him for the perusal of the Court. Finally the Defendant No.3

prayed to dismiss the suit.

6. Basing on the rival pleadings, the following issues were framed for trial:

*(i) Whether the plaintiff is entitled for declaration of his right and title over suit schedule property?*

*(ii) Whether the plaintiff is entitled for declaration that the registered sale deeds vide document Nos. 4351/1983 dated 24.11.1983, 5193/1991 dated 12.08.1991 and 2619/1994 dated 18.04.1994 are void documents?*

*(iii) Whether the plaintiff is entitled for the relief of possession of the suit schedule property against the defendants as prayed for?*

*(iv) To what relief?*

7. The plaintiff examined himself as PW1 and Exs. A1 to A11 and Ex. X1 were marked. On behalf of defendant No.3, DW1 was examined and Exs. B1 to B10 were marked. On considering the oral and documentary evidence adduced on behalf of both the sides, the trial Court has dismissed the suit of the plaintiff and aggrieved by the same, the plaintiff has filed the present appeal to set aside the impugned judgment.

8. Heard both sides and perused the record including the grounds of appeal.

9. Both the parties are claiming title over the suit schedule

property from the original owner i.e., Darga Malla Reddy, who is none other than the father of the plaintiff. Thus, there is no dispute that father of the plaintiff Darga Malla Reddy was the absolute owner and pattedar of agricultural lands including suit schedule property in Sy. Nos. 38, 39, 43, 44, 153 and 154 situated at Peerzadiguda village, Ghatkesar Mandal, Ranga Reddy District.

10. The plaintiff is solely relying on the Affidavit/Declaration dated 17.09.1979 alleged to have been executed by father of the plaintiff in favour of his five sons including the plaintiff declaring the above said properties in favour of his five sons equally with the rights of cultivation, enjoyment and conveyance and that defendant has no right claim and interest over the said land. It is the contention of the plaintiff that after execution of such affidavit and declaration, the plaintiff applied to revenue authorities for mutation of land and was issued with patta pass book and title deeds in respect of land admeasuring Ac 0-07 guntas in Sy. No. 38, Ac 3-18 guntas in Sy. No. 39 and Ac 1-20 guntas in Sy. No.43/AA total admeasuring Ac 5-05 guntas and paid the necessary taxes to the revenue authorities. Now, the question to be adjudicated is whether the said declaration is

valid mode of conveying title over an immovable property to others. It is settled law that only a registered sale deed is the proper method of conveying title and ownership over an immovable property from one person to other. It is surprising to note that the plaintiff though produced the said affidavit alleged to have been executed by the original owner i.e., his father Darga Mall Reddy, it was not marked for the reason that it is not a registered document. The trial Court has rightly observed in the impugned judgment that the affidavit of the father of the plaintiff shall not convey any right in the suit schedule property to the plaintiff, therefore the said document i.e., affidavit based on which the plaintiff claims right on the suit schedule property is neither admissible nor can be considered for any purpose as desired by the plaintiff.

11. It is further contention of the plaintiff that the view of trial Court at para Nos.8 and 9 of the judgment that since the registered documents Exs.A1 to A3 carry the presumption of genuine transaction and transfer of title and since the registered sale deeds will prevail over the revenue records, the defendants have proved by title over the property. It is further contention of the plaintiff that mere marking of a registered sale deed does



not amount to proof of the contents of the document and the admissibility of the document is different from proof of the contents of the document. It is the specific contention of the plaintiff that the burden is on the defendants to prove that there was no distribution of property between the plaintiff and his brothers by their father and that their father continues to own the property. In support of the above contention, the learned counsel for the plaintiff relied upon a decision of **PRS Hospital and others v. P. Anil Kumar**<sup>1</sup>, wherein the High Court of Kerala at Ernakulam observed as under:

*“26. There are four stages before a Court of law can rely upon a document. They are (i) marking of a document, (ii) admissibility of a document, (iii) proof of contents of the document, and (iv) evaluation of the document. Reliance upon a document can be made by the court only if all the above four stages are complied with or satisfied. By the mere marking of a document, it does not become admissible in evidence. Further, the marking of a document and being admissible in evidence, will still not render the contents of a document as 'proved'. When a document, admissible in evidence, is marked, still to be relied upon by the courts, its contents will have to be proved. For the contents of a document to have a probative value, the person who wrote the contents or is aware of the contents and its veracity must be invited to give evidence about it. It is thereafter the last stage i.e. evaluation takes place. Evaluation of the document is a judicial exercise. Unless all these stages are done, a court of law cannot rely upon any document produced or marked before it.”*

12. In the decision relied upon by the plaintiff, it is a suit for damages on the alleged medical negligence. But in the case on hand, it is the plaintiff, who has approached this court seeking

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<sup>1</sup> MANU/KE/3644/2020

declaration of title over the suit schedule property and for other consequential reliefs and thus, the facts and principle laid down in the above said decision cannot be made applicable to the facts of the case on hand.

13. The learned counsel for the plaintiff further contended that a certified copy of a registered sale deed is not a public document under Section 74 of the Evidence Act so that the Court can readily accept the same and rely upon it and thereby relied upon a decision in **Deccan Paper Mills C. Limited v. Regency Mahavir Properties and others**<sup>2</sup>, wherein the Honourable Supreme Court observed that a registered sale deed is not a public document but it is only a private document. In order to refute the above said contentions, the defendant No.3 relied upon an authority of the Honourable Supreme Court in **Jagdish Prasad Patel (dead) through LRs and another v. Shivnath and others**<sup>3</sup>, wherein it was observed as under:

*“41. In the suit for declaration for title and possession, the plaintiffs-respondents could succeed only on the strength of their own title and not on the weakness of the case of the defendants-appellants. The burden is on the plaintiffs-respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The plaintiffs-respondents have neither produced the title document i.e. patta-lease which the plaintiffs-respondents are relying upon nor proved their right by adducing any other evidence. As noted above, the revenue*

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<sup>2</sup> AIR 2020 Supreme court 4047

<sup>3</sup> 2019 Laws Suit (SC) 1038

*entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title. Observing that in a suit for declaration of title, the plaintiffs-respondents are to succeed only on the strength of their own title irrespective of whether the defendants-appellants have proved their case or not, in Union of India and others v. Vasavi Co-operative Housing Society Limited and others (2014) 2 SCC 269, it was held as under:-*

*“15. It is trite law that, 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.”*

14. In view of the principle laid down in the above said decision, it is quite clear that the burden is upon the plaintiff to establish that he is the owner and possessor of the suit schedule property as on the date of filing of the suit and that his possession over the suit schedule property was encroached upon by the defendants. The plaintiff has to stand or fall upon his own legs but cannot depend upon the weakness of the defendants, more particularly, in a declaratory suit. Though the trial Court has made observations on the genuineness of the documents under Exs.A1 to A3, since it is the plaintiff, who has approached this Court seeking declaratory relief, the plaintiff has to establish his own case rather than depending upon the weakness of the defendants. Now, whether the plaintiff could establish his title and ownership over the suit schedule property

by adducing cogent and convincing evidence is to be ascertained.

15. Exs. A4 and A5 are the patta pass book and title deeds and Exs. A6 to A11 are the pahanies showing the names of plaintiff and his brothers with regard to land in Sy. No.43/A. As per the plaint averments, Darga Malla Reddy was the absolute owner and possessor of land in Sy. No. 38, 39, 43, 44, 153 and 154 situated at Peerzadiguda village, Ghatkesar Mandal, Ranga Reddy District. But there is no mention as to what is the extent of land that was possessed by Darga Malla Reddy in the above said survey numbers. Except mentioning that father of the plaintiff was the owner and possessor of lands in specific survey numbers, the plaintiff has not mentioned what is the extent of land possessed by his father in each survey number. Moreover, it is settled law that mere entry in the revenue records will not confer any title or ownership over an immovable property. In **P. Kishore Kumar v. Vittal K. Patkar**<sup>4</sup> the Honourable Apex Court observed as under:

*“11. It is trite law that revenue records are not documents of title.*

*12. This Court in Sawarni vs. Inder Kaur and Ors.<sup>2</sup> held that mutation in revenue records neither creates nor extinguishes title, nor*

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<sup>4</sup> 2023 Live Law (SC) 999

*does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.*

*13. This was further affirmed in Balwant Singh & Ors vs. Daulat Singh (Dead) by LRs and Ors.3 wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.*

*14. In Jitendra Singh vs. State of Madhya Pradesh and Ors. 4 , this Court after considering a catena of judgments, reiterated the principle of law as follows: “6. \*\*\*mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose.”*

16. In view of principle laid down in the above said citation, it is evidently clear that entries in revenue records do not confer any valid title over the immovable property. Even for the sake of arguments, if the pahanies are taken into consideration as documents of title, those documents pertain to lands in Sy.No.43/A but not the lands in Sy.Nos.39 and 43, which are subject matter of the appeal. Moreover, as rightly observed by the trial Court in the impugned judgment that though the said documents i.e., Exs. A4 and A5 appear to be in the name of plaintiff, it is not clear as to when they were issued. Even otherwise, the registered documents Exs.A1 to A3, which are registered sale deeds for valid consideration carry the presumption of genuine transaction and transfer of title. It was further observed by the trial Court in the impugned judgment

that the registered sale deeds also prevail over the revenue records like patta pass book, title deeds and pahanies which are not often updated for various reasons.

17. The plaintiff alleged to have converted land admeasuring Ac. 1-10 guntas in Sy. Nos. 39 and 43 into house sites and obtained layout permission and sold out some of the plots to the prospective purchasers by retaining some of the plots including plot No. 49 admeasuring 190 square yards in Sy. No. 39 and 43 which is the suit schedule property. But the plaintiff failed to produce any proceedings through which he alleged to have converted alleged agricultural lands into house sites.

18. As per the evidence of DW1, the father of plaintiff during his life time sold out the suit schedule property to defendant No. 1 by way of registered sale deed bearing No.4354/1983 dated 24.11.1983 under Ex. A1. Since the suit schedule property was owned by father of the plaintiff as on the date of Ex.A1 and there was no legal transfer of property prior to Ex. A1, the sale affected by Ex. A1 in favour of defendant No.1 is legal and valid. It is to be seen that defendant No.3 is relying upon Exs.A1 to A3, which are nothing but registered sale deeds and they are legally admissible documents to prove that the suit schedule

property was legally transferred by the father of the plaintiff to the defendant No.1 and thereafter to defendant No.2, who in turn sold the same to defendant No.3 i.e., DW1. In Ex.A1 the possession over the suit property was also alleged to have been delivered to the defendant No.1. It is not the case of the plaintiff that he is cultivating the suit schedule property even as on the date of filing of the suit. It is an admitted fact that the suit schedule property, which was earlier an agricultural land, was converted into house sites. Admittedly, it is the defendant No.3, who is in possession of the suit schedule property as on the date of filing of the suit. If at all the plaintiff has any right over the suit schedule property, certainly he would have been in possession of the suit schedule property as on the date of filing of the suit.

19. As per the evidence of DW1/defendant No.3 coupled with documentary evidence in the form of Exs. B1 to B9, which are the certified copies of registered sale deeds, it is evident that the father of the plaintiff has alienated some other pieces of land in same survey number by way of plots to third party purchasers. It is the specific contention of the plaintiff that as per the alleged notarized affidavit/declaration, the father of the plaintiff has no

right, claim or interest over the said properties. If at all the father of the plaintiff has no right, claim or interest over the said properties after execution of such affidavit, the probability of existence of Ex.A1 or Exs.B1 to B9 does not arise. It is pertinent to note that Exs.B1 to B9 are pertaining to the year 1983, in which year Ex.A1 was also executed by father of the plaintiff in favour of defendant No.1, as such the proximity of executing Ex.A1 by father of the plaintiff in favour of defendant No.1 is substantial. It is not the case of the plaintiff that he along with his other brothers has challenged the sale deeds under Exs.B1 to B9. It is to be observed that plaintiff herein is one of the attestors to Ex.B9. In the cross examination, the plaintiff (PW1) deposed that defendant No.3 filed all his title deeds in the suit but those are bogus documents. However, PW1 admitted that he did not state before the Junior Civil Judge's Court in O.S.No.1231 of 2008 that the documents filed by the defendant No.3, who is the plaintiff therein, are bogus documents. If at all the documents filed by the defendant No.3 herein in O.S.No.1231 of 2008 were bogus, then certainly, the plaintiff herein would have brought to the notice of the learned Junior Civil Judge's Court while filing written statement. But there is no such instance.



20. The evidence produced by the plaintiff under Exs.A1 to A3 clearly discloses that defendant No.3 is the legal owner and possessor of suit schedule property since the date of his purchase under Ex. A3 in the year 1994 and even prior to that suit schedule Property was in possession of previous owners as can be seen from Exs. A1 and A2 right from the year 1983. Admittedly, defendant No. 3 has earlier filed a suit for permanent injunction against the plaintiff vide O.S. No. 1231/2008 on the file of Principal Junior Civil Judge, Ranga Reddy District and the said suit was decreed in favour of defendant No.3. Though the plaintiff alleged to have filed set aside petition and contended that the said suit is pending, it is nothing to do with the present case as the said case is filed by defendant No.3 for mere injunction and whereas the present suit is a comprehensive suit for declaration of title and delivery of possession apart from seeking cancellation of the Exs.A1 to A3 and whereas in the present suit the plaintiff failed to establish his own case that he is the owner of the suit schedule property. The plaintiff failed to enumerate the reasons as to how Exs.A1 to A3 and Exs.B1 to B9 came into existence when his father has no right, claim or interest over the properties owned by his father after execution of the alleged affidavit/declaration.

Even on perusal of unmarked declaration/affidavit alleged to have been executed by father of the plaintiff, there is no specific date on which it was alleged to have been executed. The said declaration also does not disclose the extents of land possessed by the father of the plaintiff in each survey number. There is no whisper at all in the said affidavit/declaration about the total extent or any extent of land possessed by the father of the plaintiff. Except contending that Exs.A1 to A3 were created by the defendants, the plaintiff failed to bring out the facts behind execution of all these registered sale deeds by his father under Ex.A1 and Exs.B1 to B9.

21. The plaintiff as PW1 in his cross examination admitted that he cannot say how many plots were sold by him due to his illiteracy. The cross examination of DW1 by the learned counsel for the plaintiff is mostly on the ground that the defendant No.3 has not filed any document to show that he has purchased the land vide registered document bearing No.2619 of 1994 and that he has not filed original or certified copies of the documents bearing Nos.4354 of 1983 and 5193 of 1991. It is pertinent to note that though the above said documents were not filed by defendant No.3, the said documents were filed by the plaintiff

himself and marked as Exs.A1 to A3. Further, the learned counsel for the plaintiff has cross examined DW1 on the aspect of the efforts of plaintiff in producing original document bearing No.4354 of 1983 which was alleged to have been executed by his father in favour of Bandi Bikshapathi for sending the same to expert opinion for comparison of thumb impression of Darga Malla Reddy. But as stated supra, it is a suit for declaration of title, as such, the plaintiff has to establish his ownership and title over the suit schedule property rather than pointing out lacunae in the case of the defendants. Thus, merely because the plaintiff is making attempts to prove that documents executed by the father of the plaintiff in favour of defendants are bogus and created, it will not be of any help to the plaintiff to seek the relief of declaration of title and ownership over the suit schedule property. The plaintiff shall establish that he is the owner of the suit schedule property by virtue of valid title deed.

22. It is pertinent to note that the plaintiff has filed petition vide I.A.No.4 of 2022 in this appeal under Section 151 of the Code of Civil Procedure permitting the plaintiff to file additional material paper i.e., registered sale deed vide document No.2252 of 1983 dated 17.03.1983 executed by the father of the plaintiff

for better adjudication of the case. It is pertinent to note that the petition ought to have been filed under Order XLI Rule 27 of the Code of Civil Procedure. However, it is trite law that wrong mentioning of the section does not invalidate any action if the action can otherwise be sustained in law. Order XLI Rule 27 of the Code of Civil Procedure prescribes that the parties to an appeal cannot be permitted to lead additional evidence whether in oral or documentary unless the party appealing is able to prove that despite his best efforts, he was unable to produce the evidence when the trial Court issued the decree being appealed. In ***State of Karnataka v. KC Subramanya***<sup>5</sup> the Honourable Supreme Court observed as under:

*“6. On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.*

*7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.”*

23. The Honourable Supreme Court in ***Union of India v. Ibrahim Uddin and another***<sup>6</sup> observed as under:

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<sup>5</sup> (2014) 13 SCC 468

<sup>6</sup> (2012) 8 SCC 148

*“36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide K. Venkataramiah v. A. Seetharama Reddy [AIR 1963 SC 1526], Municipal Corpn. of Greater Bombay v. Lala Pancham [AIR 1965 SC 1008], Soonda Ram v. Rameshwarlal [(1975) 3 SCC 698 : AIR 1975 SC 479] and Syed Abdul Khader v. Rami Reddy [(1979) 2 SCC 601 : AIR 1979 SC 553])*

*48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.*

24. In view of the principle laid down in the above said decisions, as seen from the affidavit filed in support of the petition in I.A.No.4 of 2022, there is no whisper at all as to what are the reasons that compelled the plaintiff to file the said document before this appellate Court without filing the same before the trial Court. It is not the case of the plaintiff that

despite his best efforts, he could not produce the said document before the trial Court. Thus, this Court is not inclined to entertain the said application at this belated stage more particularly when the plaintiff failed to explain cogent and convincing reasons as to why he could not produce the said document before the trial Court. The only reason assigned by the plaintiff for permitting him to file the said document is in the cross examination of DW1 the original of registered sale deed executed by Darga Malla Reddy was requested in order to send the same to FSL for tallying of signatures of his late father in the said registered sale deed. The plaintiff failed to explain as to why he has not filed the said document before the trial Court. Since the plaintiff failed to comply with the requisites required to adduce additional evidence in an appeal, the petition in I.A.No.4 of 2022 is liable to be dismissed.

25. It is to be seen that the defendant No.3 has filed O.S.No.1231 of 2008 against the plaintiff stating that the plaintiff and his son and their henchmen came to the suit property on 19.10.2008 and 22.10.2008 and tried to encroach the suit schedule property. In the plaint averments, the plaintiff averred that he received summons in O.S.No.1231 of 2008 and

filed his written statement denying entire contentions of the plaintiff. On one hand, the plaintiff is contending that the suit in O.S.No.1231 of 2008 was decreed *ex parte* and on the other hand, the plaintiff is contending that he has filed written statement in O.S.No.1231 of 2008 after receipt of summons. In the cross examination the plaintiff, who was examined as PW1, admitted that he has filed an appeal against the said decree and judgment. Thus, there is an ambiguity as to whether the plaintiff has preferred an appeal or filed an *ex parte* petition or whether he filed his written statement or not in O.S.No.1231 of 2008. If at all the plaintiff, who is defendant in O.S.No.1231 of 2008 has filed written statement, there would not be any occasion for the trial Court to pass an *ex parte* decree. It is not the case of the plaintiff that he has not received summons in O.S.No.1231 of 2008. Thus, it is evident from the pleadings in O.S.No.1231 of 2008 that on 19.10.2008 and 22.10.2008 or from the date of receipt of summons itself the probability of plaintiff having knowledge about the execution of Exs.A1 to A3 cannot be denied in toto.

26. Though the plaintiff has mentioned the dates from 28.11.1983 to 28.08.2013 in the cause of action paragraph, he

has cleverly not mentioned the date on which he came to know about existence of Exs.A1 to A3. Though the defendant No.3 filed a complaint with SHO, Uppal Police Station against the plaintiff and his son for the alleged offence on 22.10.2008, in the cross examination of DW1, it was elicited that the said criminal case ended in acquittal. In this regard, an inference can be drawn that the dispute between the parties over the suit schedule property is pertaining to the year 2008. The plaintiff, who is the defendant in O.S.No.1231 of 2008 alleged to have filed written statement in the said suit on 18.02.2009. In such circumstances, the plaintiff ought to have filed the suit immediately i.e., in the year 2008 itself rather than filing the suit after five years after the alleged cause of action shown in O.S.No.1231 of 2008 i.e., in the year 2013. At least the plaintiff ought to have filed the present suit immediately after receipt of summons in O.S.No.1231 of 2008 or after filing of the written statement in the year 2009. The plaintiff could have filed counter claim in O.S.No.1231 of 2008 rather than filing a separate suit after lapse of limitation period. The limitation to file a suit for cancellation of documents is three years from the date of documents or from the date of knowledge of such documents. In such circumstances, the suit of the plaintiff is



certainly barred by limitation and on this ground also the suit of the plaintiff is liable to be dismissed.

27. It is the specific contention of the plaintiff that the defendant Nos.1 to 3 in collusion with each other, created the story that the father of the plaintiff has alienated the suit schedule property to defendant No.1. If at all there is any amount of collusion among defendant Nos.1 to 3, defendant No.1 would not have waited for eight long years i.e., from 1983 to 1991 to alienate the suit schedule property to defendant No.2. Likewise, the defendant No.2 would not have waited for three years i.e., from the year 1991 to 1994 to alienate the suit schedule property in favour of defendant No.3 if at all defendant No.3 has malafide intention to gain illegally.

28. From the above discussion, it is clear that the plaintiff failed to establish his case before the trial Court as well as before this appellate Court. Since the present suit is for declaration of title and other consequential relief, it is immaterial as to whether the defendants have succeeded in establishing their case and it is the plaintiff, who has to establish his own case by adducing proper evidence rather than depending upon the weakness of the defendants. Except relying

upon the entries in the revenue records, the plaintiff has not adduced any documentary evidence to establish that he is the absolute owner of the suit schedule property having been acquired by him from his father through valid conveyance deed.

29. In view of the above facts and circumstances, this Court is of the considered view that the trial Court has elaborately considered all the aspects meticulously and arrived to an appropriate conclusion and thereby there are no merits in the appeal to set aside the impugned Judgment. Thus, the appeal is devoid of merits and liable to be dismissed.

30. In the result, this appeal as well as I.A.No.4 of 2022 are dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

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**JUSTICE M.G. PRIYADARSINI**

Date: 19.07.2024

Note: LR copy to be marked.  
B/o. AS