



HC-KAR

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 10<sup>TH</sup> DAY OF OCTOBER, 2025**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**  
**REGULAR SECOND APPEAL NO. 2122 OF 2006**

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**BETWEEN:**

SMT GANGAMMA,  
W/O ERABYRAIAH @ KADAIHAH,  
AGED ABOUT 72 YEARS,  
MANDANI PALYA, BISKUR POST,  
KUDURU HOBLI, MAGADI TALUK,  
BANGALORE RURAL DISTRICT,  
PIN - 562121.

... APPELLANT

(BY SRI N KHETTY, ADVOCATE FOR  
SMT AKKAMAHADEVI HIREMATH, ADVOCATE)

**AND:**

1. SRI THIMMARAYAPPA,  
S/O VENKATA NARASIAH,  
AGED ABOUT 62 YEARS,  
SINCE DECEASED REP. BY HIS LRS

1(a) SMT KEMPAMMA,  
W/O LATE THIMMARAYAPPA,  
AGED ABOUT 65 YEARS,  
R/AT MADANIPALYA, BISKUR POST,  
KUDUR HOBLI, MAGADI - 562120,  
RAMANAGARA DISTRICT.

1(b) SMT GOWRAMMA,  
W/O NAGARAJ,  
D/O LATE THIMMARAYAPPA,  
AGED ABOUT 48 YEARS,  
RESIDING AT G G CHANNUVALLI,  
JAKANAHALLI POST, THYAMAGONDLU HOBLI,





NELAMANGALA TALUK,  
BENGALURU RURAL DISTRICT.

- 1(c) SMT SAROJAMMA,  
D/O LATE THIMMARAYAPPA,  
AGED ABOUT 44 YEARS,  
MADANIPALYA, BISKUR POST,  
KUDUR HOBLI, MAGADI - 562120,  
RAMANAGARA DISTRICT.
- 1(d) RAJU @ DODDANARASIMHAIHA,  
AGED ABOUT 41 YEARS,  
S/O LATE THIMMARAYAPPA,  
RESIDING AT C/O GANGALAKSHMAIAHA,  
CHIKKANAHALLI, MANDIGERE POST,  
THYMAGONDLU HOBLI,  
NELAMANGALA TALUK,  
BENGALURU RURAL DISTRICT.
- 1(e) KUMAR @ VENKATANARASIAHA,  
S/O LATE THIMMARAYAPPA,  
AGED ABOUT 36 YEARS,  
R/AT MADANIPALYA, BISKUR POST,  
KUDUR HOBLI, MAGADI - 562120,  
RAMANAGARA DISTRICT.
- 1(f) MUNIRAJU,  
S/O LATE THIMMARAYAPPA,  
AGED ABOUT 30 YEARS,  
RESIDING AT MADANIPALYA, BISKUR POST,  
KUDUR HOBLI, MAGADI - 562120,  
RAMANAGARA DISTRICT.

...RESPONDENTS

(BY SRI M C JAYAKEERTHY, ADVOCATE FOR R1(A, B, D, E & F),  
V/O/DT 12.09.2023, NOTICE TO R1(C) IS H/S)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE  
JUDGEMENT & DECREE DT.30.6.2006 PASSED IN  
R.A.NO.37/2004 ON THE FILE OF THE PRL. CIVIL JUDGE  
(SR.DN), RAMANAGARAM, DISMISSING THE APPEAL AND



CONFIRMING THE JUDGMENT AND DECREE DT.10.3.2004 PASSED IN O.S.NO.230/92 ON THE FILE OF THE CIVIL JUDGE (JR.DN) AND JMFC, MAGADI.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON **\*25<sup>TH</sup> SEPTEMBER, 2025** AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

**\*CAV JUDGMENT**

This second appeal arises from a divergent finding in a suit for declaration and injunction.

2. The suit is partly decreed holding that the plaintiff is owner of the properties bequeathed under the document dated 24.10.1960 which the Trial Court has held as a 'Will' executed by plaintiff's father, and not 'Vyasthapatra' (Settlement Deed) as claimed by the defendant. The defendant is fostered son of the plaintiff's father.

3. Plaintiff's claim based on registered sale deed dated 09.11.1960 said to have been executed by plaintiff's father is rejected on the premise that the execution of sale deed is not proved.

\*Corrected vide Court order  
dated 14.11.2025.

Sd/-  
**(ARHJ)**



4. The plaintiff filed an appeal against the said judgment and decree. The defendant filed cross objection against the judgment and decree assailing the finding that the document dated 24.10.1960 is not a Settlement Deed but a Will.

5. First Appellate Court noticed that the cross objection is not in time and accordingly, dismissed the cross objection. However, First Appellate Court permitted the cross objector/defendant to assail the findings on the document dated 24.10.1960.

6. First Appellate Court concurred with the findings of the Trial Court that the sale deed dated 09.11.1960 is not proved.

7. First Appellate Court reversed the finding of the Trial Court as to the nature of the document dated 24.10.1960 and held that the said document is not a 'Will' and also held that it is a 'Settlement Deed'.

8. First Appellate Court held that the plaintiff is the owner of certain properties in terms of the document dated 24.10.1960 which according to First Appellate Court is a Settlement deed.



9. This appeal was admitted on 23.10.2009 to consider the following substantial questions of law:

1. Whether the Courts below were justified in accepting the documents at Ex.D.1 dated 24.10.1960 styled as Will as per plaintiff which is prior to the documents dated 09.11.1960 which was marked at Ex.P.1.

2. Whether the Courts below have erred in accepting the proof of documents at Ex.P.1 in a different manner, by ignoring the provision contained in section 90 of the Evidence Act?

10. On 19.06.2025, on the application seeking modification of the substantial questions of law, after hearing both sides, substantial questions of law were reframed and later vide order dated 26.06.2005, noticing the typographical error in the substantial questions of law same are corrected as under:

“(i) Whether the trial Court and the First Appellate Court were justified in holding that execution of sale deed dated 09.11.1960 marked at Ex.P1 is not established despite the material placed on record and also in view of the presumption under Section 90 of the Indian Evidence Act?

(ii) Whether the document marked at Ex.D1 i.e., the document dated 24.10.1960 is a Will as contended by the plaintiff/appellant or Vyavस्था patra as contended by the defendant?



(iii) Whether the Trial Court is justified in holding that the document at Ex.D1 is a Will and the First Appellate Court is justified in holding that the said document is a Vyvastha patra in the absence of any counter claim by the defendant?"

11. Later, on 03.07.2025 after hearing the parties, the Court framed one more substantial question of law as under:

"Whether the registered sale deed dated 09.11.1960 will render the settlement deed dated 24.10.1960 registered on 09.12.1960 ineffective?"

The reasons are also assigned for framing additional substantial question of law, vide order dated 22.09.2025.

Thereafter, the arguments were heard on all the substantial questions of law.

12. Learned counsel appearing for the plaintiff/appellant raised the following contentions:

- (i) The document dated 24.10.1960 is not a Settlement Deed and it is a Will;
- (ii) No benefit is given to the plaintiff and the defendant under the said document during the lifetime of the executant and benefit is conferred only after the demise of the executant;



- (iii) Execution of the sale deed is proved as the document is more than 30 years old and there is a presumption relating to the signature and the handwriting of the executant;
- (iv) No rebuttal evidence is led to disbelieve the presumption arising under Section 90 of the Indian Evidence Act;
- (v) Except mere denial, no evidence is led to disbelieve the execution of the Will.
- (vi) One witness is examined to prove the execution of the sale deed;
- (vii) Assuming that the document dated 24.10.1960 is not a Will and is a Settlement Deed, still, as of the date of the execution the document dated 24.10.1960, the title is not conveyed to the parties to the said document as the document was not registered.
- (viii) There is no evidence on record to conclude that the document dated 24.10.1960 was executed in the presence of the plaintiff and the defendant or there was consensus of mind between the plaintiff's father, plaintiff and the defendant when the document was executed;



- (ix) At the most, plaintiff's father intended to execute a Settlement Deed which he did not do by registering the same before execution of the sale deed, and thereafter, plaintiff's father executed a registered sale deed in favour of the plaintiff conveying only certain portion of the properties covered under the document dated 24.10.1960.
- (x) Since the title was not conveyed under the document dated 24.10.1960 for want of registration, as on the date of execution of the sale deed dated 09.11.1960, plaintiff's father had every right to convey the properties and the subsequent registration of the document dated 24.10.1960 does not invalidate the valid sale transaction dated 09.11.1960.

13. Learned counsel for the appellant has also relied on the following judgments:

1. ***Narinder Singh Rao V. Air Vice Marshal Mahinder Singh Rao And ors***<sup>1</sup>
2. ***P.K.Mohan Ram V. B.N. Ananthachary And Others***<sup>2</sup>
3. ***Tek Bahadur Bhujil V. Debi Singh Bhujil And Others***<sup>3</sup>

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<sup>1</sup> AIR 2013 SC 1470

<sup>2</sup> (2010) 4 SCC 161

<sup>3</sup> AIR 1966 SC 292



**4. Subbegowda (Dead By Lr.) V. Thimmegowda  
(Dead By Lrs)<sup>4</sup>**

14. Learned counsel for the respondents who are substituted for deceased defendant/respondent raised the following contentions:

- (i) The document dated 24.10.1960 is a Settlement Deed and it cannot be construed as a Will;
- (ii) The document dated 24.10.1960 is duly executed and got registered by the father and the said document is acted upon. Based on the said document, in view of Section 47 of the Registration Act, 1908, the title gets conveyed from the date of execution of the document and not from the date of registration of the document;
- (iii) The sale deed is not proved as the witness to the said deed is not examined.
- (iv) The plaintiff cannot take shelter under the presumption under Section 90 of the Indian Evidence Act, 1872 to prove the execution of the sale deed as the presumption is only in respect of the thumb impression or handwriting or the

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<sup>4</sup> (2004) 9 SCC 734



signature of the executant and nothing beyond; and both Courts were justified in insisting on better evidence as there is no mandate to draw the presumption under Section 90 of Indian Evidence Act, 1872.

- (v) The mutation is not certified based on the sale deed. Sale deed is not acted upon.
- (vi) The suit is time barred as the document dated 24.10.1960 was registered in 1960 itself to the knowledge of the plaintiff and the plaintiff ought to have filed the suit within three years from the date of registration of the Settlement Deed.
- (vii) Plaintiff despite being aware that the revenue entries are standing in the joint names pursuant to the Settlement Deed, has not taken any action to file the suit by challenging the Settlement Deed or to claim declaration of title.

15. Learned counsel for the respondent has also relied on the following judgments:

- 1. *State Of West Bengal Vs. Nimai Chand Kundu*<sup>5</sup>**
- 2. *Ram Saran Lall And Others Vs. Mst Domini Kuer And Others*<sup>6</sup>**

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<sup>5</sup> AIR 1978 Cal 347

<sup>6</sup> AIR 1961 SC 1747



**3. Binod Bihari Singh Vs. Union Of India<sup>7</sup>**

**4. Chaturbhuj Sharma Vs. Durga Dayal And Ors<sup>8</sup>**

**Summary of the findings on the Trial Court and First Appellate**

**Court:**

16. The Trial Court held that the document dated 24.10.1960 is a Will as the document contains a recital that the beneficiaries under the document would inherit the properties after the demise of the executant.

The relevant clauses in the said document are as under:

“XXXX ನನ್ನ ನಂತರ ಸ್ವತ್ತನ್ನು ಸ್ವಾಧೀನಕ್ಕೆ ಪಡೆಯತಕ್ಕದ್ದು.”

“XXXX ನನ್ನ ನಂತರವೇ ಸ್ವತ್ತು ಸೇರತಕ್ಕದ್ದು.”

First Appellate Court construed document dated 24.10.1960 as the Settlement Deed by laying stress on the following recitals:

“----- ಈ ಕೆಳಕಂಡ ಒಂದುಸಾವಿರ ರೂಪಯಿ ಬೆಲೆಬಾಳತಕ್ಕ ಸ್ವತ್ತುಗಳನ್ನು ಈ ಕೆಳಗೆಕಂಡರೀತ್ಯ ವೈವಸ್ಥೆ ಮಾಡಿರುತ್ತೇನೆ. ಯೀ ಜಮೀನಿನ ಕಂದಾಯವನ್ನು ಕಟ್ಟಿಕೊಂಡು ಯಿದರಲ್ಲಿ ದೊರೆಯಬಹುದಾದ ಜಲತರುಪಾಷಣಾಧಿ ಅಷ್ಟಭೋಗತೇಜಸೌಮ್ಯಕ್ಕೊ ನೀವೇಭಾದ್ಯರಾಗಿ ನಿಮ್ಮ ಪುತ್ರಪೌತ್ರಪಾರಂಪರೈವಾಗಿ ಸುಖವಾಗಿ ಅನುಭವಿಸುವುದು. ನನ್ನ ಪೀತೀಯ ಮಗನು ನಾನು

<sup>7</sup> (1993) 1 SCC 572

<sup>8</sup> AIR 1976 All 7



ಜೀವಂತವಾಗಿರುವತನಕ ನನ್ನನ್ನು ಕಾಪಾಡಿ ನನ್ನ ಉತ್ತರಕ್ರಿಯೆಗಳನ್ನು ಮಾಡಿ ನನ್ನ ಸ್ವತ್ತಿಗೆ ಪೂರ್ಣ ಉತ್ತರಾಧಿಕಾರಿಯಾಗಿ ಅನುಭವಿಸತಕ್ಕದ್ದು. ನನ್ನ ವಾರಸುದಾರಗಾಗಲೀ, ದಾಯಾದಿಗಳಿಗಾಗಲಿ ಸ್ವತ್ತುಗಳ ಮೇಲೆ ಯಾವ ಹಕ್ಕೂಯಿರುವುದಿಲ್ಲ. ನನ್ನ ನಂತರ ಸ್ವತ್ತುನ್ನು ಸ್ವಾಧೀನಕ್ಕೆ ಪಡೆಯತಕ್ಕದ್ದು.”

Appellate Court relied on the judgment of the Apex Court in **Namburi Basava Subrahmanyam Vs Alapati Hymavathi and Others**<sup>9</sup> to hold that the document is a settlement deed and plaintiff's father had no right to execute the sale deed.

17. Both Trial Court and First Appellate Court have concluded that the sale deed dated 09.11.1960 is not proved by the plaintiff. The reasons assigned by the First Appellate Court and Trial Court to disbelieve the registered sale deed dated 09.11.1960 can be summarized as under:

- (a) Though the sale deed dated 09.11.1960 marked at Ex.P.1 is coming from proper custody and is more than 30 years old, the presumption under Section 90 of the Indian Evidence Act, 1872 alone is not sufficient to prove the execution of the document in the facts and circumstances of the case.

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<sup>9</sup> 1996 (9) SCC 388



- (b) The document though ancient, must be corroborated by evidence and mere production of the document without evidence is not sufficient to uphold the contention relating to execution.
- (c) The sale deed dated 09.11.1960 has come into existence within a span of 15 days of execution of the document dated 24.10.1960, and the plaintiff has not explained the circumstances for Doddanarasimhaiah to execute the sale deed 09.11.1960 within 15 days of execution of Ex.D.1 the document dated 24.10.1960.
- (d) The plaintiff has not led evidence to substantiate existence of debt which was supposed to be the reason for alleged sale under Ex.P.1.
- (e) Doddanarasimhaiah when executed Ex.D.1, has not whispered anything about the debt. If there was a debt, Ex.D.1 the Settlement Deed would have provided as to who would repay the debt.
- (f) In Ex.P.1 - sale deed, the name of the vendor is shown as Kodihalli Narasimhaiah. However, name of the plaintiffs'



father is Doddanarasimhaiah as found in rest of the documents. The plaintiff in her cross examination has admitted that she has not purchased any properties from Kodihalli Narasimhaiah.

- (g) Though Ex.P.1 is registered in 1960, revenue records were not changed pursuant to the said registered sale deed. However, the records are changed based on Ex.D.1 treating it as a Settlement Deed.
- (h) In terms of Ex.P.3— the mutation based on deed dated 24.10.1960, records are changed with the consent of the plaintiff.
- (i) Sale of property for Rs.1000/- when its value is about Rs.8000/- creates doubt about the alleged sale.
- (j) The plaintiff has not identified her father's thumb impression on the sale deed and defendant disputed the execution of Ex.P.1 by Dodda Narasimhaiah, and the document is not proved as required under Section 67 of the Indian Evidence Act, 1872.



- (k) Dodda Narasimhaiah had no right to execute the sale deed as he had already executed Ex.D.1 which according to the First Appellate Court is the Settlement Deed.

**Discussion on proof of Sale Deed dated 09.11.1960**

18. As already noticed, the Appellate Court has held that though the document is 30 years old, the Court has the discretion to insist on a better proof of execution of the document. There is no doubt that under Section 90 of the Indian Evidence Act, 1872, there is no mandate for the Court to draw presumption relating to the signature and the handwriting of the executant on a 30 year old document. Nevertheless, the presumption is certainly available in certain circumstances. Despite such presumption in appropriate cases, the Court may insist for better proof of the document.

19. Based on other evidence on record and attending circumstances, the Court may also proceed with the presumption in favour of the person who is relying on the 30 year old document and may call upon the person disputing the document to establish as to why the signature or handwriting on the document which is 30 years old should not be believed to be that of the executant.



20. It is relevant to notice that the plaintiff has filed the suit for declaration of title and injunction by making a specific reference to the registered sale deed dated 09.11.1960 and asserted that her father has executed the sale deed in respect of three properties covered under the sale deed. The original sale deed is produced and marked as Ex.P1.

21. The defendant in his pleading has denied the execution of the sale deed and contended that the sale deed is concocted. However, what is relevant to notice is in the examination-in-chief, the defendant does not make any reference to the sale deed dated 09.11.1960 at all. In the examination-in-chief, the defendant has only referred to the Settlement Deed dated 24.10.1960.

22. In the cross examination, when a specific question was put, about the sale deed dated 09.11.1960, the defendant pleads ignorance. In the cross examination, defendant does not deny the execution of the sale deed or dispute the signature/thumb impression of the executant on the sale deed.



23. First Appellate Court holds that in all the documents plaintiff's father's name is mentioned as Dodda Narasimhaiah. However in the sale deed, in the last page above his thumb impression, his name is mentioned as Kodihalli Narasimhaiah. Referring to this aspect, First Appellate Court has come to the conclusion that the sale deed is not proved.

24. This Court has perused the original sale deed which is duly registered. At two places, where sub-registrar's endorsement is found, before the thumb impressions, the executant's name is mentioned as Narasimhaiah. In first page at one place, document records the name of executant as Narasimhaiah. However, in the bottom of first page, there is an overwriting before the name 'Narasimhaiah'. It is not possible to read as to what was written before overwriting.

25. First Appellate Court has held that document is signed by Kodihalli Narasimhaiah by interpreting/reading the over-written portion on first page of Ex.P.1 - the original sale deed.

26. After having gone through the original sale deed - Ex.P.1, this Court is of the view that First Appellate Court could not



have concluded that the document is signed by Kodihalli Narasimhaiah by reading the over-written portion as “Kodihalli” when said overwritten portion is not legible at all.

27. The plaintiff has also contended that her father’s native place is also called as “Kodihalli” in addition to another name. Thus, the prefix before the name which is not legible, even if read as Kodihalli, may not really cast the doubt on the executant’s identity.

28. More importantly, the registered document dated 09.11.1960 contains two endorsements on the second page and those endorsements are by the Sub-Registrar, where one endorsement is relating to the presentation of the document and another is relating to the admission of execution of the document. Thumb impressions appearing in respect of both endorsements referred to above indicate that document is presented for registration by Narasimhaiah and contents are admitted by Narasimaiah.

29. It is an admitted fact that Narasimhaiah is also called as Dodda Narasimhaiah. This fact is pleaded in the plaint and not



disputed by the defendant. The process of registration is not under challenge. It is not the case of the defendant that it is case of impersonation.

30. This being the position, the Court has to attach sanctity to the process of registration and what emerges from the registered document is that, the document is presented for registration by Narasimhaiah and execution of the document is admitted by Narasimhaiah.

31. Under these circumstances, the Court can draw presumption under Section 90 of the Indian Evidence Act, 1872 to take a view that the document bears the thumb impression of the executant. This is more so in a situation where it is not alleged and established that the document is executed either by practicing fraud, coercion, misrepresentation or by impersonation.

32. As far as the finding that there is no mutation based on the registered sale deed dated 09.11.1960, there is no difficulty in holding that mutation based on the registered sale deed dated 09.11.1960 is not produced or no mutation is certified based on the



sale deed. However, that by itself will not invalidate the document in case the document is duly executed and registered.

33. It is also relevant to notice that though the document dated 24.10.1960 relied on by the respondents was registered in December, 1960, for 10 years there was no mutation based on the said document.

34. The plaintiff is not literate. Under law, party who has acquired right over the property, based on registered document, is exempted from reporting such acquisition of right for the purpose of mutation. Thus, the delay in changing the entry in the property records based on the registered document or no mutation being certified based on the sale deed dated 09.11.1960 would not be a ground to say that the document is not executed or not proved.

35. It is relevant to notice that the cross examination of DW1 is as under:

“I don’t know the fact that the sale deed is executed by plaintiff’s father to plaintiff. Plaintiff is in possession of some portion as per advise of her father, and remaining properties are in my possession as per settlement deed. In the year 1962 plaintiff’s father delivered some portion to the plaintiff. I cannot say the survey number and extent.”



36. DW1 in the cross examination has admitted that father during his lifetime has handed over certain properties to the plaintiff. DW1 states that he is not in a position to state which survey number is handed over to the plaintiff. When that is the position, more so in a situation where the defendant is unable to point out which other property is handed over to the plaintiff by her father, the Court may hold that the property covered under the sale deed must have been handed-over to the plaintiff by her father. This is more so, when the document dated 24.10.1960 relied on by defendant does not speak about delivery of possession. Thus, the defendant cannot contend that the property handed over is as per the document dated 24.10.1960. It is not the case of the defendant that some other properties were handed over to the plaintiff other than the properties covered under the registered sale deed dated 09.11.1960. Though DW.1 has not stated as to which is the property given to the plaintiff by her father, has admitted that some property was given. Considering the materials placed on record, the Court has to hold that the plaintiff's father must have delivered the properties covered under the sale deed dated 09.11.1960. This



also indicates that the sale deed is duly executed by plaintiff's father.

37. First Appellate Court has come to the conclusion that the document dated 09.11.1960 is not proved on the premise that the plaintiff has not identified her father's thumb impression in the sale deed dated 09.11.1960.

38. It is relevant to notice that the plaintiff in her plaint has made a statement that her father has executed the registered sale deed dated 09.11.1960 and in her examination-in-chief also such statement is made and original sale deed is produced and marked before the Court. Merely because the signature on the document is not marked, one cannot conclude that the plaintiff has not identified the thumb impression of her father. Once, the plaintiff makes a claim that her father executed a registered sale deed and produced the said document as the document executed by her father, it logically flows that the plaintiff is claiming that thumb impressions against plaintiff's father's name appearing in the said sale deed are the thumb impressions of the plaintiff's father.



39. It has also come in evidence that the plaintiff went to the Office of the Sub-Registrar on the same day for registration. It is suggested to the plaintiff in the cross examination that the thumb impression on the sale deed is not that of the plaintiff's father. Mere suggestion in the cross examination without any other evidence to disbelieve the thumb impressions on the registered sale deed to be the thumb impressions of the plaintiff's father and more so when the defendant does not make any statement in the examination in chief about the sale deed, is not sufficient to rebut the presumption available under Section 90 of the Indian Evidence Act, 1872.

40. It is true that there is no mutation based on the registered sale deed dated 09.11.1960. However, the property records for the years 1981-82 up to 1994 in Column No.12 would record the name of the plaintiff to the entire extent covered in the sale deed and not to the extent mentioned in the Settlement Deed. However, it is also noticed that in Column.No.9 of the Record of Right, the entries are made based on the settlement deed after 1971-72. What emerges from the aforementioned record of right is that even the name of the defendant is not fully reflected in Column.No.12 of the Record of Right.



41. This being the position, not much of importance can be given to the entries in the record of right as said entries are not completely based on the registered settlement deed or as per the registered sale deed.

42. First Appellate Court has also held that the reason why the property worth Rs.8,000/- is sold to the plaintiff for Rs.1,000/- is not properly explained. It is also held by First Appellate Court that the plaintiff has not explained as to what were the debts in the family which made the plaintiff's father to sell the property.

43. It is to be noticed that the finding of the First Appellate Court that property worth Rs.8,000/- is sold for Rs.1,000/- is incorrect. The registered sale deed dated 09.11.1960, specifically states that valuation of the property sold is Rs.1,000/- and not Rs.8,000/-.

44. The reference made by First Appellate Court to the market value of the property at Rs.8,000/- appears to be based on the valuation of the properties shown in the plaint which is filed in the year 1992 and said valuation is of the year 1992.



45. It is quite possible that from 1960-1992, in a span of 32 years, the market value of the property might have gone up and the findings of First Appellate Court that no reasons are forthcoming explaining why the properties worth Rs.8,000/- are sold for Rs.1,000/- is complete misinterpretation of the document at Ex.P.1.

46. Assuming that the document dated 24.10.1960 is construed as a Settlement Deed, even as per the finding of First Appellate Court, the executant has retained life interest in the properties and the document would come into operation after his demise. That being the position, it is quite possible that the plaintiff's father who intended to retain the properties, might have thought of repaying the loan on his own without imposing any burden on the plaintiff or the defendant. Thus, not mentioning anything about the debt in the document dated 24.10.1960 cannot be a ground to disbelieve the execution of the sale deed dated 09.11.1960.

47. Learned Counsel for the respondents urged that under Section 47 of the Indian Registration Act, 1908 the settlement deed does take effect from 24.10.1960 though it is registered on



21.12.1960. And in support of his contention learned counsel has also relied on the judgments cited above.

**Section 47 of the Registration Act, 1908 and its effect on the document dated 09.11.1960, registered on the same day, and on the document dated 24.10.1960 registered on 21.12.1960.**

48. Section 47 of the Registration Act, 1908 reads as under:

*“47. Time from which registered document operates.—A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.”*

49. On a reading of the said provision it is apparent that a document which does not require registration, if registered at a later date, the document operates from the time which it would have commenced (as specified in the document) and not from the date of registration.

50. In ***Ram Saran Lall v. Domini Kuer supra***, the Apex Court has held that transaction of a registered sale deed is complete only when the document is registered and not from the



date mentioned in the sale deed. Paragraphs No. 7 and 8 in the said judgment are as under.

*“7. In answer to this view of the High Court, the learned Attorney-General appearing for the appellants says that the High Court overlooked Section 47 of the Registration Act the effect of which was to make a registered document operate from the time from which it would have commenced to operate if no registration thereof had been required and not from the time of its registration. His contention is that once a document is registered, as the deed of sale in this case was, it begins to operate from the time it would have otherwise operated and therefore, the position in this case is that the sale became operative and hence complete on January 31, 1946. The learned Attorney-General further contends that the proper construction of the deed of sale was that it became operative from the day it was executed and that if it was not so, it was not a sale but could only be an agreement to sell in which latter case his clients, though this present suit might fail, would be entitled, if they so desired, to enforce their right of pre-emption when the sale was completed in pursuance of that agreement. As authority in support of his contention that in view of Section 47 of the Registration Act the sale in the present case must be deemed to have been completed on the day the instrument was executed, the learned Attorney-General relied on *Bindeshri v. Somnath Bhadry* [AIR (1916) All 199] and *Gopal Ram v. Lachmi Misir* [AIR (1926) All 549].*

*8. We do not think that the learned Attorney-General's contention is well founded. We will assume that the learned Attorney-General's construction of the instrument of sale that the property was intended to pass under it on the date of the*



*instrument is correct. **Section 47 of the Registration Act does not, however, say when a sale would be deemed to be complete. It only permits a document when registered, to operate from a certain date which may be earlier than the date when it was registered.** The object of this section is to decide which of two or more registered instruments in respect of the same property is to have effect. The section applies to a document only after it has been registered. It has nothing to do with the completion of the registration and therefore nothing to do with the completion of a sale when the instrument is one of sale. **A sale which is admittedly not completed until the registration of the instrument of sale is completed, cannot be said to have been completed earlier because by virtue of Section 47 the instrument by which it is effected, after it has been registered, commences to operate from an earlier date.** Therefore we do not think that the sale in this case can be said, in view of Section 47, to have been completed on January 31, 1946. xxx*

(Emphasis supplied)

51. The Apex Court in ***Ram Saran Lall supra*** has held that sale transaction is complete only from the date of registration and not from the date of execution of sale deed. If said ratio is applied, the transaction in document dated 24.10.1960, if construed as transfer by way of Settlement, gets completed on the date of registration and not earlier. If there are no other intervening transactions between 24.10.1960 the date of execution, and



21.12.1960 the date of registration, the document would be operative from the date when the document purports to operate.

52. The document dated 24.10.1960, if it is a Settlement deed, then the transaction under the document will be complete and title gets transferred when the document is duly registered. Because, admittedly the properties covered under the document dated 24.10.1960 were the self acquired properties of the executant. The beneficiaries under the document had no pre-existing right over the properties and would acquire right only on valid registration of the document.

53. The question to be answered is whether the executant had the right to convey the title under the document dated 24.10.1960, by registering on 21.12.1960 when he had sold the properties on 09.11.1960 under a registered sale deed. The answer is no. The reason is, before registration of the document dated 24.10.1960 which is registered on 21.12.1960 the executant had executed a registered sale deed dated 09.11.1960 in respect of some of the properties covered in the said deed dated 09.11.1960. Thus, the transaction under the document dated 24.10.1960, whether it is a Will or Settlement, is inoperative and



not valid in respect of the properties sold under the sale deed dated 09.11.1960 and the document dated 24.10.1960 is valid only in respect of the properties not covered under the said sale deed. Thus, the finding of First Appellate Court that the plaintiff's father had no right to execute the sale deed on 09.11.1960 is erroneous.

54. If the Court were to conclude that the document dated 24.10.1960 is a Will, then again the executant's title is not divested. Thus, on 09.11.1960, the plaintiff's father had all the right alienate and said right is not restricted because of unregistered document dated 24.10.1960.

**Whether the document dated 24.10.1960 is a Will or Settlement**

55. By referring to the recital in the document and by referring to the judgment in **Namburi Basava Subrahmanyam** *supra*, First Appellate Court concluded that the document dated 24.10.1960 is not a Will but a Settlement deed. The recital in the document for consideration before Apex Court in **Namburi Basava Subrahmanyam** *supra*, and the recital in the document dated 24.10.1960 are not one and the same, but may be similar in some aspects.



56. It is settled principle of law that while construing the document, if there is ambiguity in the recital, the Court should also take into consideration the surrounding circumstances.

The Trial Court has held that no right is conferred on the beneficiaries of the document dated 24.10.1960 during the life time of the executant and benefit is conferred only after his life time and on this premise held that the document is a Will. In addition the Trial Court noticed that no mutation is certified during the life time of executant based on document dated 24.10.1960 and mutation is certified only after his demise based on the said document and came to the conclusion that the document dated 24.10.1960 is a Will.

57. First Appellate Court reversed the said finding and held that it is a Settlement Deed. While reversing the finding of the Trial Court it was required to analyze the reasoning of the Trial Court. First Appellate Court has not dealt with the reasoning of the Trial Court on the nature of the document dated 24.10.1960. Without assessing the reasoning of the Trial Court it has come to the conclusion that the said document is a Settlement Deed and not a Will by placing reliance on few recitals in the said document and



the judgment of the Apex Court in ***Namburi Basava Subrahmanyam*** supra. First Appellate Court relying on the judgment of the Apex Court in ***Namburi Basava Subrahmanyam*** supra, has held that the plaintiff's father could not have executed a sale deed after executing the Settlement Deed. In the said case the Apex Court has interpreted the document before it as a Settlement deed. Unless the document in the said case is similar and attending circumstances in the said are similar, said judgment cannot be applied like a thumb rule to hold the document in question is a Settlement Deed.

58. It can be noticed from the recital in the document that at two places the plaintiff's father has recited that the document will come into existence after his demise. In other words, the title of the properties is not divested on the date of execution of the document. The document came to be registered on 21.12.1960. Thus, there is no difficulty in coming to the conclusion that on 24.10.1960, the date on which the said document was executed, the title remained with the plaintiff's father and the recital would also indicate that the beneficiaries under the said document viz., the plaintiff and the defendant will acquire right only after his demise.



59. It is indeed true that at two places, the document mentions the document as Settlement Deed. The well settled principle of law is the nature of the document in case of ambiguity is to be ascertained from the contents of the document and not from the nomenclature.

60. It is also relevant to notice that First Appellate Court has concluded that the plaintiff's father could not have executed a sale deed on 09.11.1960 on the premise that he had already executed a Settlement Deed. As already noticed as of 09.11.1960 the plaintiff's father had not registered the document dated 24.10.1960. Assuming that executant had considered/treated the document dated 24.10.1960 as a Settlement Deed, still he was competent to execute the sale deed on 09.11.1960 as the said Settlement Deed was not yet registered and was not acted upon. Admittedly as on the date of execution of the document dated 24.10.1960 the plaintiff and defendant had no right over the said properties. And more over they were not signatories to the said document. The title would not be divested unless the document is registered. Thus, as on 09.11.1960 the plaintiff's father was the owner.



61. It is very much evident from the document dated 24.10.1960 that the possession of the properties covered under the said document was still with the plaintiff's father. If this factor is taken into consideration, again one can conclude that the properties covered under the document dated 24.10.1960 were not sought to be transferred by way of Settlement Deed but were sought to be transmitted under a Will.

62. First Appellate Court came to the conclusion that the plaintiff's father has retained the life estate over the properties by executing the Settlement Deed. It is relevant to notice that the defendant has not raised any contention relating to execution of the Settlement Deed by the plaintiff's father by retaining life estate till his life, over the properties covered under the said document.

63. First Appellate Court committed an error in holding that the document dated 24.10.1960 is the Settlement Deed and not a Will by reversing the finding of the Trial Court that the document dated 24.10.1960 is a Will. The reason assigned by First Appellate Court to come to such a conclusion is the judgment in **Namburi Basava Subrahmanyam** *supra*. The ratio in the said judgment applied to the facts obtained in the said case and Apex Court in the



said case did not come across the situation where after an unregistered document, the same executant executed a registered sale deed. What is held in the said case is the interpretation of the document that was placed before the Court in the said case. For the reasons recorded above this Court is of the view that the document dated 24.10.1960 is not a Settlement deed and it is a Will. Assuming that it is s Settlement deed, for the reasons already discussed it cannot be given effect to in so far as the properties sold before the registration of the settlement deed.

64. Learned counsel for the respondents would urge that the plaintiff is not in possession of the properties and has not sought relief of possession and thus not entitled to the relief of declaration. In support of his contention, learned counsel relied upon the judgment of the Apex Court in ***Union of India vs Ibrahim Uddin***<sup>10</sup>, where the Apex Court has held that the suit for declaration of title is not maintainable without consequential relief of possession when the plaintiff is not in possession.

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<sup>10</sup> (2012) 8 SCC148



65. In the aforementioned judgments, the Apex Court has concluded that when the plaintiff is not in possession of the property, a mere suit for declaration is not maintainable unless he seeks the consequential relief.

66. In the instant case, the plaintiff has sought declaration as well as injunction i.e., consequential relief. The record of right would indicate that the plaintiff is in joint possession of some of the property covered under the Will as well as the sale deed and the suit cannot be construed as one without consequential relief. If it is established that the plaintiff is the owner and not in possession, then the suit for declaration and injunction cannot fall under the category of suit for mere declaration. In such an event, it is a suit for declaration and injunction and the consequential relief may not be an appropriate consequential relief. Hence, the contention that the suit is defective cannot be accepted. Apart from that the records of rights in column No. 12 reflect the plaintiff's name as the person in possession.

67. This Court has concluded that the registered Sale Deed in the name of plaintiff is established and Column No.12 in the record of right reveals the plaintiff's name till 1983-84 and



thereafter without any specific order the plaintiff's name is discontinued. Hence, the Court has to hold that the plaintiff is in possession of the properties and the relief of declaration and injunction sought is not in conflict with proviso to Section 34 of Specific Relief Act, 1963.

68. The contention relating to limitation urged by the respondent has to be rejected on the premise that the suit is filed within three years from the interference by the defendant. Merely because the mutation is certified in the year 1972, it does not mean that the plaintiff had the knowledge of the said mutation unless it is demonstrated that the plaintiff was aware of the mutation in the year 1972 and defendant asserted his exclusive title in possession of the properties based on the mutation. The records of right produced by the plaintiff would indicate that the plaintiff is in exclusive possession of the properties, as entry in Column.No.12 would point to the fact that the plaintiff is in possession of entire extent. The judgment *in Binod Bihari Singh supra* relied on by the learned counsel for the respondent does not come to the aid of the respondents to contend that the suit is barred by limitation.



69. The question of limitation is a mixed question of law and fact. This Court is of the view that the threat to the plaintiff's title became imminent only in 1992 when defendant asserted his exclusive title over the suit schedule properties. Hence, the suit filed in 1992 is in time. The real cause of action seems to have arisen in 1992 when the suit was filed. Merely because a mutation is certified conveying the different message and contrary to plaintiff's claim, that by itself may not be a cause of action to reckon the period of limitation. Despite mutation if the plaintiff's possession is not disturbed and if there is no real threat in the enjoyment of the property, the inaction to question the mutation by itself may not be a reason to reject the claim based on the registered sale deed when the plaintiff's name is also found in column No. 12 of the records of right for a considerable period after the mutation in 1972.

70. The plaintiff's claim is based on registered sale deed. Unless the sale deed is cancelled or proved to be not established, or unless the defendant establishes adverse possession, the title is not lost and in that event of the matter, the contention that the suit is time barred cannot be accepted merely because a mutation is



certified based on document dated 24.10.1960 and not based on registered sale deed dated 09.11.1960.

71. It is also relevant to notice that DW1 has admitted in the cross examination as under:

“In the year 1962 plaintiff’s father delivered some portion to the plaintiff. I cannot say the survey number and extent.”

72. In addition to aforementioned reasons, it is also relevant to take note of the fact that the father of the plaintiff had 7 daughters and all of them are married in 1960. The plaintiff was married and she was residing in the same village where her father lived. The properties covered under the Deed dated 24.10.1960 measured 5 acres 38 guntas in 7 survey numbers. The properties covered under the registered sale deed dated 09.11.1960 measured 3 acres 19 guntas. If the sale deed is ignored under the document dated 24.10.1960, whether it is Will or a Settlement, plaintiff i.e., the daughter of executant, will get 1 acre 11 guntas and defendant the fostered son will get 3 acres 19 guntas. If the sale deed is held to be valid, then the daughter will get almost equal extent as the fostered son. Perhaps the executant also thought on the same line and executed the Sale Deed.



73. Though learned counsel for the respondent placed reliance on the judgment of the Calcutta High Court in **State of West Bengal vs Nimai Chand Kundu** *supra* to contend that under Section 47 of the Registration Act, the document executed earlier and registered later will prevail over the document executed later and registered earlier, this Court is of the view in view of the law laid down by the Apex Court in **Ram Saran Lall** *supra*, the contention is not acceptable.

74. The plaintiff/appellant contended that when cross appeal is dismissed as time barred, First Appellate Court could not have reversed the finding of the Trial Court that the document dated 24.10.1960 is a Will, and could not have held that the said document is a Settlement Deed. It is to be noticed that the suit of the plaintiff is decreed in part. The Trial Court granted relief based on the document dated 24.10.1960 terming it as a Will. Though the defendant contended that it is a Settlement Deed, the defendant did not contend that the plaintiff is not entitled to some of the properties under the said Deed. Thus, there was no occasion for the defendant to file cross objection as he is not aggrieved by the said finding which resulted in the decree in his favour. Thus, he



was entitled to challenge the finding on the nature of the document dated 24.10.1960 without there being a cross objection.

75. For the reasons discussed above, the substantial questions of law framed are answered in favour of the appellant and against the respondents.

76. Hence the following:

**ORDER**

***\*a. Appeal is allowed.***

- b. The judgment and decree dated 30.06.2006 in R.A.No.37/2004 on the file of Principal Civil Judge, Senior Division at Ramanagaram are set aside.
- c. The judgment and decree dated 10.03.2004 in O.S.No.230/1992 on the file of Civil Judge Junior Division at Magadi are set aside in part.
- d. The suit in O.S.No.230/1992 on the file of Civil Judge Junior Division at Magadi is decreed.
- e. The plaintiff/appellant is declared as the owner of the suit schedule properties and the respondents and anyone claiming under them is restrained from interfering with the plaintiff/appellant in the physical

\*Corrected vide Court order dated 14.11.2025.

Sd/-  
**(ARHJ)**



possession and enjoyment of the suit schedule properties.

***\*f. Draw decree accordingly.***

g. No order as to costs.

**Sd/-  
(ANANT RAMANATH HEGDE)  
JUDGE**

brn  
List No.: 19 SI No.: 1

\*Corrected vide Court order  
dated 14.11.2025.

**(ARHJ)**