

A THULASIDHARA & ANOTHER

v.

NARAYANAPPA & OTHERS

(Civil Appeal No.784 of 2010)

B MAY 01, 2019

[L. NAGESWARA RAO AND M.R. SHAH, JJ.]

- Code of Civil Procedure, 1908: s.100 – Exercise of power under, scope – Suit for title and permanent injunction based on sale deed – Claim of defendants that suit property fell into share of husband of defendant no.1 and father of defendant no.2 and 3 by way of partition – Trial court dismissed the suit holding that the partition deed is admissible in evidence and the plaintiff in collusion with PW2 got executed a sham document in his favour – First appellate authority upheld the decision of trial court – High Court framed only one substantial question as to whether the appellant was the owner and in possession of the suit land as he purchased it subsequent to the partition deed – High Court allowed the appeal holding that the partition deed required registration and therefore was inadmissible in evidence and that both the courts below were not justified in holding that the sale deed was only nominal one – On appeal, held: The jurisdiction of High Court under s.100 after the 1976 amendment is confined only with the second appeal involving a substantial question of law – In the instant case, no substantial question of law was framed – Trial court as well as first appellate court, both gave cogent reasons on appreciation of evidence on record more particularly the sale deed and the partition deed and held that the plaintiff was not entitled to declaration that he became the owner – While interfering with the orders by both the courts below, High Court again re-appreciated the entire evidence on record, which in exercise of powers under s.100 was not permissible – Under the circumstances, High Court committed a grave/manifest error in quashing and setting aside the findings recorded by both the courts below, which were on appreciation of evidence on record – Partition.*

Partition: The case of defendants was that husband of defendant no.1 and father of defendant no.2 and 3 purchased the

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suit property on 12.12.1948 under a registered sale deed – Said property was blended into the joint family properties by him – Thereafter when partition took place said suit property fell into his share – Plaintiff filed suit for declaration of title on the basis of sale deed – Trial court and first appellate court held that the said sale deed was only a nominal sale deed and not an out and out sale deed since it was executed as security for loan and never intended to sell the suit property – High Court allowed the appeal holding that in view of the registered sale deed executed in favour of the plaintiff, the plaintiff became the actual owner – On appeal, held: Father of defendants was not a signatory to the sale deed and therefore it was not binding on him or his heirs – Even otherwise, in a suit for a declaration on the basis of the registered sale deed, it is always open for the defendant, who is a stranger to the sale deed, to raise a plea that the sale deed was void, fictitious, collusive or not intended to be acted upon and or not binding to him – Partition deed relied upon by the defendants could be said to be a Palupatti which means list of properties partitioned – At the most, it can be said to be a family arrangement – Therefore, in the facts and circumstances of the case, the same was not required to be registered – The execution of this document/ Partition Deed/ Palupatta dated 23.04.1971 was established and proved by examining different witnesses – Even the plaintiff also categorically admitted that the oral partition took place on 23.04.1971 and he also admitted that 3 to 4 punchayat people were also present – Therefore, the same even can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties – So far as sale deed dated 18.05.1973 executed in favour of the plaintiff was concerned, there was serious dispute with respect to consideration paid by the plaintiff – In the facts and circumstances of the case, the High Court was not justified in interfering with the findings recorded by both the courts below – The orders passed by both the courts below dismissing the suit are restored.

Disposing of the appeal, the Court

HELD: 1. The jurisdiction of the High Court to entertain Second Appeal under Section 100 of the CPC after the 1976 amendment, is confined only with the Second Appeal involving a substantial question of law. The existence of ‘a substantial

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- A question of law' is a *sine qua non* for the exercise of the jurisdiction under Section 100 of the CPC. In the second appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower court were erroneous being; contrary to the mandatory provisions of the applicable law; or contrary to the law pronounced by the Apex Court; or based on inadmissible evidence or no evidence. The substantial question of law framed by the High Court in the instant case, as such, cannot be said to be a substantial question of law at all. The Trial Court as well as the First Appellate Court, both gave cogent reasons on appreciation of evidence on record, more particularly, the Sale Deed dated 22.06.1964, document dated 23.04.1971 and subsequent Sale Deed dated 18.05.1973 and thereafter held that the plaintiff is not entitled to the declaration that he has become the owner. While interfering with the Judgment and Decree passed by both the Courts below, the High Court again re-appreciated the entire evidence on record, which in exercise of powers under Section 100 of the CPC, is not permissible. [Paras 7.1, 7.2, 7.4, 8] [226-B-E; 227-C-E]

Kondiba Dagadu Kadam v. Savitribai Sopan Gujar,
**(1999) 3 SCC 722 : [1999] 2 SCR 728 ; Ishwar Dass
Jain v. Sohan Lal, (2000) 1 SCC 434 : [1999] 5 Suppl.
SCR 24 – relied on.**

- F 2. Admittedly, the father of defendant no. 2 and 3 was not a signatory to the registered Sale Deed dated 22.06.1964 (Exhibit P1). Therefore, as such, the said Sale Deed did not bind the father of defendant no. 2 and 3. The entire evidence on record shows that the suit property was initially purchased by the father of defendant no. 2 and 3 in the year 1948 and thereafter, due to some internal family problems with respect to said suit property, it was the father of defendant no. 2 and 3 who threw the same property into the joint family property in the year 1952 and then executed the Sale Deed in favour of his father stating that it belongs to joint family property. The entire evidence on record show that even the Sale Deed (Exhibit P1) was not acted upon. In the cross-examination, the original plaintiff specifically admitted
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that in the year 1965-66, when the father sold away the said suit schedule property, there was no partition between the brothers at that time. In the circumstances, the registered Sale Deed (Exhibit P1), by which the suit property was sold to 'S' would not bind the father of defendant no. 2 and 3. It was a registered Sale Deed which was not acted upon. Even otherwise, it is always open for the defendant, who is a stranger to the Sale Deed, to raise a plea that the Sale Deed was void, fictitious, collusive or not intended to be acted upon and or not binding to him. In the facts and circumstances of the case, without even challenging the Sale Deed (Exhibit P1) by way of independent proceedings, in a suit filed by the plaintiff seeking a declaration that he has become the owner pursuant to the registered Sale Deed, it is always open for the defendant, who is stranger to the Sale Deed, to raise a plea that either the Sale Deed is not binding to him or the same was without consideration or it was a nominal Sale Deed or void or fictitious, for that matter, collusive and not intended to be acted upon. [Paras 9.1, 9.2] [228-F-H; 229-A-D, F-G]

Vidhyadhar v. Manikrao and Another (1999) 3 SCC 573 : [1999] 1 SCR 1168 – relied on.

3.1 So far as the finding recorded by the High Court that as Partition Deed dated 23.04.1971 (Exhibit D4) was unregistered though required registration under the provisions of the Registration Act and, therefore, the same is not admissible in evidence is concerned, it is required to be noted that as such Exhibit D4 can be said to be a Palupatti which means list of properties partitioned. At the most, it can be said to be a family arrangement. Therefore, in the facts and circumstances of the case, the same was not required to be registered. Deed dated 23.04.1971, under which the suit property had gone /devolved in favour of the father of defendant no. 2 and 3 was reduced in writing before the Panchayat and Panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Exhibit D4, on considering the entire evidence on record and even the deposition of plaintiff (cross-examination),

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- A he has specifically admitted that the oral partition had taken place in the year 1971. He has also admitted that he has got the share which tallies with document dated 23.04.1971 (Exhibit D4). [Paras 9.3, 9.4][230-G-H; 231-A-D]

- 3.2 So far as the Sale Deed dated 18.05.1973 (Exhibit P2)
- B executed by 'S' in favour of the plaintiff was concerned, there was a categorically finding by both the courts below that the same document was sham. In the cross-examination, the plaintiff stated that he paid Rs. 3000 to 4000 to 'S' and the said property was purchased by him in the year 1973. However, in the document, the sale consideration is stated to be Rs.200/- . Therefore, there was serious dispute with respect to consideration paid by the plaintiff and received by the 'S' . In the facts and circumstances of the case, the High Court was not justified in interfering with the findings recorded by both the Courts below. [Paras 9.6, 10] [232-E-G]
- D *Kale and Others v. Deputy Director of Consolidation and Others (1976) 3 SCC 119 : [1976] 3 SCR 202 ; Kaliaperumal v. Rajagopal and Another (2009) 4 SCC 193 ; S. Shanmugam Pillai and Others v. K. Shanmugam Pillai and Others (1973) 2 SCC 312 : [1973] 1 SCR 570 – relied on*
- E *Roshan Singh and Others v. Zile Singh and Others (2018) 14 SCC 814 – referred to*

Case Law Reference

F	[1976] 3 SCR 202 (2018) 14 SCC 814 (2009) 4 SCC 193 [1999] 1 SCR 1168	relied on referred to relied on relied on	Para 5.4 Para 5.5 Para 5.10 Para 9.2
G	[1999] 2 SCR 728 [1999] 5 Suppl. SCR 24 [1973] 1 SCR 570	relied on relied on relied on	Para 7.2 Para 7.3 Para 9.4

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 784 of A
2010

From the Judgment and Order dated 25.07.2007 of the High Court of Karnataka at Bangalore in Regular Second Appeal No.1033 of 2001

Ms. Kiran Suri, Sr. Adv., Ms. Aishwarya Kumari, S. J. Amith, B
Ms. Ritika Gambhir Kohli, Dr. (Mrs.) Vipin Gupta, Advs. for the Appellants.

Ms. K. V. Bharathi Upadhyaya, Advs. for the Respondents.

The Judgment of the Court was delivered by C

M.R. SHAH, J. 1. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court of Karnataka at Bengaluru dated 25.07.2007 passed in Regular Second Appeal No.1033 of 2001, by which, in exercise of powers under Section 100 of the CPC, the High Court has allowed the said appeal preferred by the respondent herein-original plaintiff and has quashed and set aside the Judgment and Decree passed by both the Courts below dismissing the suit, and consequently decreeing the suit, original defendants have preferred the present appeal. D

2. The facts leading to the present appeal in nutshell are as under : E

That the respondent herein-original plaintiff (hereinafter referred to as the ‘original plaintiff’) instituted the suit in the Court of Munsiff and JMFC at Gubbi (learned Civil Judge, Junior Division, Gubbi) being Original Suit No.141 of 1984 praying for the Judgment and Decree in his favour to the effect that he be declared as the owner of the suit schedule property and also for permanent injunction restraining the appellants herein-original defendants (hereinafter referred to as the ‘original defendants’) from interfering with his peaceful possession and enjoyment of the suit schedule property. It was the case on behalf of the original plaintiff that he has become an owner of the suit property having purchased the same under a registered Sale Deed and therefore the defendants have no right whatsoever to interfere with his peaceful possession and enjoyment of the suit schedule property. The suit was resisted by the defendants by filing the written statement. It was the F

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- A case on behalf of the defendants that husband of defendant no.1 and father of defendant nos. 2 and 3 i.e. A.N. Krishnappa (deceased), purchased the suit property on 12.12.1948 under a registered Sale Deed for a consideration of Rs.400/- . That the suit property was blended into the joint family properties by him. That thereafter the partition between the sons of deceased Nanjappa was recorded on 23.04.1971 and the suit property fell into the share of the deceased A. N. Krishnappa. It was also the case on behalf of the defendants that they are enjoying the possession of the suit property. It was also the case on behalf of the defendants that no Sale Deed has been executed by the defendants in favour of the plaintiff and the alleged Sale Deed is fabricated by the plaintiff.
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2.1 That the learned Trial Court framed the following issues:

- (i) Does the plaintiff prove his title to the suit schedule property?
- (ii) Whether the plaintiff proves his lawful possession of the suit schedule property on the date of suit?
- (iii) Does the plaintiff prove the interference by the defendants to his possession of the suit property?"

- 2.2 That both the parties led evidence, both, oral as well as documentary. That after considering the submissions made on behalf of the rival parties and on appreciation of evidence, learned Trial Court held that there was a partition between family on 23.4.1971 and for that the learned Trial Court observed and held that Exhibit D4(Partition Deed dated 23.04.1971) is admissible in evidence. The learned Trial Court also observed and held that the suit property was available at the time of partition. The learned Trial Court also observed and held that Exhibit P1 (the Sale Deed relied upon by the original plaintiff) was only a nominal Sale Deed and not an out and out sale deed since Exhibit P1 was executed as security for loan and never intended to sell the suit property. The learned Trial Court also observed and held that the suit property was purchased by late Krishnappa for a sum of Rs.400/- in 1948 and thereafter it is stated to have been sold at Rs.200/- after 16 years i.e. in 1964, which is highly improbable. The learned Trial Court also gave a specific finding that there was a concealment of material facts in the suit, which shows *malafide* intention of the plaintiff. The learned Trial Court also held that plaintiff, in collusion with PW2, has got executed a sham
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document in his favour. By holding so and recording above findings, the learned Trial Court dismissed the suit. A

2.3 The First Appellate Court dismissed the appeal preferred by the original plaintiff and confirmed the Judgment and Decree passed by the learned Trial Court dismissing the suit. While dismissing the appeal, the learned First Appellate Court observed that Exhibit D4 cannot be said to be a Partition Deed and can be said to be only a list of properties partitioned and does not create or extinguish any right in the immovable property and therefore not a compulsorily registrable document and therefore Exhibit D4 is admissible in evidence.

3. Feeling aggrieved and dissatisfied with the Judgment and Decree passed by the learned Trial Court confirmed by the First Appellate Court, the original plaintiff filed a Regular Second Appeal No.1033 of 2001 before the High Court. The High Court framed only one substantial question of law which reads as under :

“Whether the appellant is the owner and in possession of the suit land as he purchased it in the year 1973, that is, subsequent to the date 23.4.1971 when Ex.D1 – Partition deed – Palupatti is alleged to have come into existence?” D

3.1 That by the impugned Judgment and Order, the High Court has allowed the said appeal and has interfered with the findings of facts recorded by both the Courts below and consequently has decreed the suit by holding that Exhibit D4 required registration and therefore the same was inadmissible in evidence. The High Court further observed and held that both the Courts below are not justified in holding that document - Exhibit P1 was only a nominal sale deed and that the same was not acted upon. E F

3.2 Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court, original defendants have preferred the present appeal.

4. Ms. Kiran Suri, learned Senior Advocate has appeared on behalf of the appellants-original defendants and Ms.K.V. Bharathi Upadhyaya, learned Advocate has appeared on behalf of the respondent-original plaintiff and wife and son of the original plaintiff (newly added respondents), who are permitted to be impleaded as respondents by this Court. G

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A 5. Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants has vehemently submitted that the High Court has exceeded in its jurisdiction under Section 100 of the CPC by interfering with the concurrent findings of facts recorded by both the Courts below.

B 5.1 It is further submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that in fact substantial question of law framed by the High Court as such cannot be said to be a substantial question of law at all and the same can be said to be a question of fact. It is submitted that therefore the High Court has committed a grave error and/or has exceeded in its jurisdiction by entering into the question of fact and thereby by interfering with the concurrent findings of facts recorded by the Courts below.

C 5.2 It is further submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that High Court has committed a serious error in holding that Exhibit D4 requires registration, whereas, both the courts below clearly recorded that Exhibit D4 does not require any registration.

D 5.3 It is further submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that High Court has committed a grave error in observing and holding that as Exhibit D4 was an unregistered document and therefore the same was not admissible in evidence.

E 5.4 It is vehemently submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that assuming that Exhibit D4 requires registration and the same was unregistered, in that case also, the same document can be used and considered for collateral purpose. It is submitted that even otherwise and as held by this Court in the case of *Kale and Others v. Deputy Director of Consolidation and Others* (1976) 3 SCC 119 even if the family settlement was not registered, it would operate as a complete estoppel against the original plaintiff who was party to such family settlement. It is submitted that therefore, the High Court has committed a grave error of law in not giving effect to the Doctrine of Estoppel.

F 5.5 Relying upon the decision of this Court in the case of *Subraya M.N. v. Vittala M.N. and Others* (2016) 8 SCC 705, Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants

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has vehemently submitted that as held by this Court in the aforesaid decision, when family arrangement/settlement is orally made, no registration is required and that would be admissible in evidence, however, when reduced in writing, registration is essential, without which it was not admissible in evidence. It is submitted that however it is further observed and held by this Court in the aforesaid decision that even without registration, written document of family arrangement/settlement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. It is submitted that it is further observed and held by this Court in the aforesaid decision that unregistered document of family arrangement can be used as corroborative piece of evidence for explaining the nature of settlement/arrangement arrived at between the parties, conduct of plaintiff members in receiving money from the defendant members of the family in lieu of relinquishing their interest in certain family properties. It is submitted that in the present case, document D4 dated 23.04.1971 was in fact acted upon by all the parties including the plaintiff and therefore assuming that document D4 required registration, in that case also, the same can be used as corroborative evidence.

5.6 It is submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that as such document D4 cannot be said to be a Partition Deed and it can be said to be a document containing list of properties allotted to parties and therefore the same was not required to be registered. It is submitted that, therefore, the High Court has committed a grave error in holding that as Exhibit D4 was an unregistered document, the same was inadmissible in evidence. In support of her above submissions, she has heavily relied upon the decisions of this Court in the case of *Roshan Singh and Others v. Zile Singh and Others* (2018) 14 SCC 814.

5.7 It is further submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that the High Court has committed a serious error in holding that the suit property was not available for partition in the year 1971 with the joint family in the year 1971. It is submitted that by holding so, the High Court has not at all considered the fact that Exhibit P1, a Sale Deed relied upon by the plaintiff, was a nominal Sale Deed and everybody understood.

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- A 5.8 It is further submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that the High Court has committed a grave error in interfering with the findings of the Courts below that Exhibit P1 exhibits only as a security and is not a document for sale.
- B 5.9 It is further submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendants that High Court has committed a grave error in interfering with the findings of facts recorded by both the courts below that Exhibit P1 was not acted upon. It is further submitted that both the Courts below clearly recorded in their respective findings that the possession remained with the defendants and the consideration for the sale Exhibit P1 was inadequate and therefore no title passed on.
- C 5.10 It is submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the appellants-original defendants that as observed and held by this Court in the case of *Kaliaperumal v. Rajagopal and Another* (2009) 4 SCC 193 that though on registration of Sale Deed under the Registration Act, 1908, title will normally pass to the purchaser from the date of the execution of the Sale Deed, true test is the intention of the parties. It is submitted that it is held by this Court that the registration is *prima facie* proof of intention of transfer of property, but not a proof of operative transfer. It is submitted that it is further observed and held by this Court that where recitals are insufficient or ambiguous, circumstances and conduct of parties can be looked into, subject to provisions of Section 92 of the Evidence Act.
- D 5.11 It is further submitted by Ms. Kiran Suri, learned Senior Advocate appearing on behalf of the original defendantsthat the High Court has committed a very serious error in setting aside the findings of facts recorded by both the Courts below that Exhibit P1 was a nominal Sale Deed. It is vehemently submitted by Ms. Kiran Suri that in the facts and circumstances of the case, the High Court has committed a grave error in giving much emphasis on Exhibit P1 being registered Sale Deed, without considering the surrounding circumstances and the intention of the parties which are brought/borne out from the conduct of the parties.
- E 5.12 Now, so far as not praying to set aside the Sale Deed(Exhibit P1) by the defendantsby filing a suit is concerned, relying upon the decision
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of this Court in the case of *Vidhyadhar v. Manikrao and Another*(1999) 3 SCC 573, it is vehemently submitted that in a suit filed by the plaintiff for a declaration to declare him an owner on the basis of the Sale Deed, the defendant who is a stranger to the Sale Deed can raise a plea that the Sale Deed was void, fictitious, collusive or not intended to be acted upon and/or not binding to him. It is submitted that as held by this Court in the aforesaid decision, defendant can raise any legitimate plea available to him under the law to defeat the suit of the plaintiff. It is submitted that therefore non-filing of the suit by the defendant to set aside the Sale Deed(Exhibit P1) and/or not specifically praying to quash and set aside the Sale Deed(Exhibit P1), would not defeat the case of the defendant and the same cannot go against the defendant.

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5.13 Making above submissions and relying upon the decisions of this Court, it is prayed to allow the present appeal and quash and set aside the impugned Judgement and Order passed by the High Court and restoring the Judgement and Decree passed by the learned Trial Court dismissing the suit.

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6. Present appeal is vehemently opposed by Ms. K. V. Bharathi Upadhyaya, learned Advocate appearing on behalf of the newly added respondents (wife and son of the original plaintiff).

6.1 It is vehemently submitted by Ms. K. V. Bharathi, learned Advocate appearing on behalf of the contesting respondents that in the facts and circumstances of the case, the High Court has rightly decreed the suit and has rightly held that the original plaintiff is entitled to the declaration that he had become the owner of the suit property under the registered Sale Deed.

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6.2 It is vehemently submitted by Ms. K. V. Bharathi, learned Advocate appearing on behalf of the contesting respondents that on appreciation of evidence and having found that there was a registered Sale Deed in favour of the original plaintiff, the High Court has rightly interfered with the findings recorded by both the Courts below as the said findings were perverse.

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6.3 It is further submitted by learned Advocate appearing on behalf of the contesting respondents that as such, the High Court had framed the substantial question of law and thereafter had answered the substantial question of law framed and therefore the High Court has not

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- A exceeded in its jurisdiction permissible under the law, and more particularly, has exercised the Jurisdiction within the parameters of Section 100 of the CPC.
 - 6.4 It is further submitted by Ms. K. V. Bharathi, learned Advocate appearing on behalf of the contesting respondents that as such, there was a registered Sale Deed in favour of the original plaintiff, on payment of the sale consideration and in fact the same was acted upon and the possession was handed over pursuant to and under the registered Sale Deed and, therefore, the High Court has rightly held that the original plaintiff has become the absolute owner pursuant to the registered Sale Deed dated 22.06.1964 (Exhibit P1).
- B was a registered Sale Deed in favour of the original plaintiff, on payment of the sale consideration and in fact the same was acted upon and the possession was handed over pursuant to and under the registered Sale Deed and, therefore, the High Court has rightly held that the original plaintiff has become the absolute owner pursuant to the registered Sale Deed dated 22.06.1964 (Exhibit P1), which was also signed by the plaintiff along with two brothers and their father Nanjappa, the suit property in question, was sold in favour of Siddalingappa.
- C 6.5 It is further submitted by Ms. K. V. Bharathi, learned Advocate appearing on behalf of the contesting respondents that in fact by registered Sale Deed dated 22.06.1964 (Exhibit P1), which was also signed by the plaintiff along with two brothers and their father Nanjappa, the suit property in question, was sold in favour of Siddalingappa.
- D Therefore, Siddalingappa became the absolute owner and thereafter the plaintiff purchased the suit property from the above Siddalingappa under registered Sale Deed dated 18.05.1973 (Exhibit P2). It is submitted therefore, the plaintiff became the absolute owner of the suit property under the registered Sale Deed dated 18.05.1973 (Exhibit P2).
- E 6.6 It is further submitted by learned Advocate appearing on behalf of the contesting respondents that the registered Sale Deed dated 22.06.1964 (Exhibit P1) cannot be said to be a nominal Sale Deed as held by the High Court.
- F 6.7 It is further submitted by Ms. K. V. Bharathi, learned Advocate appearing on behalf of the contesting respondents that in any case, nobody challenged either the registered Sale Deed dated 22.06.1964 (Exhibit P1) or the subsequent registered Sale Deed dated 18.05.1973 (Exhibit P2). It is submitted that none of the defendants challenged the aforesaid two registered Sale Deeds. It is submitted therefore, in absence of any challenge, in respect of the aforesaid Sale Deeds, more particularly, the Sale Deed dated 18.05.1973 (Exhibit P2) and considering Section 54 of the Transfer of Property Act, the original plaintiff has become the absolute owner pursuant to the registered Sale Deed(s).
- H 6.8 It is further submitted by Ms. K. V. Bharathi, learned Advocate appearing on behalf of the contesting respondents that the so-called

Partition Deed dated 23.04.1971 (Exhibit D4) is rightly held to be not admissible in evidence as the same was unregistered. It is further submitted that Exhibit D4 cannot be said to be a list of property partitioned. It is submitted that Exhibit D4 is a Partition Deed and therefore the same was required to be registered. It is submitted that as the same was unregistered, as rightly held by the High Court, the same was not admissible in evidence. It is submitted, therefore, the High Court has rightly not considered the so-called Partition Deed dated 23.04.1971 (Exhibit D4).

6.9 It is further submitted by learned Advocate appearing on behalf of the contesting respondents that even otherwise and in view of the earlier Sale Deed dated 22.06.1964 (Exhibit P1), by which the suit property was sold by the plaintiff along with his two brothers and his father Nanjappa in favour of Siddalingappa, at the time of alleged partition dated 23.04.1971, the suit property was not available for partition. It is submitted that therefore, even otherwise, at the time of so-called partition on 23.04.1971, as the property was already sold, the same could not have been subjected to partition and therefore the Krishnappa could not have acquired any interest in the suit property pursuant to the alleged Partition Deed dated 23.04.1971.

6.10 Making above submissions it is prayed to dismiss the present appeal.

7. Heard learned Advocates appearing on behalf of the respective parties at length.

7.1 At the outset, it is required to be noted that by the impugned Judgment and Order, in a Second Appeal and in exercise of the powers under Section 100 of the CPC, the High Court has set aside the findings of facts recorded by both the Courts below. The learned Trial Court dismissed the suit and the same came to be confirmed by the learned First Appellate Court. While allowing the second appeal, the High Court framed only one substantial question of law which reads as under :

“Whether the appellant is the owner and in possession of the suit land as he purchased it in the year 1973, that is, subsequent to the date 23.4.1971 when Ex.D1 – Partition deed – Palupatti is alleged to have come into existence?”

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- A No other substantial question of law was framed. We are afraid that the aforesaid can be said to be a substantial question of law at all. It cannot be disputed and even as per the law laid down by this Court in the catena of decisions, the jurisdiction of the High Court to entertain Second Appeal under Section 100 of the CPC after the 1976 amendment, is confined only with the Second Appeal involving a substantial question of law. The existence of ‘a substantial question of law’ is a *sine qua non* for the exercise of the jurisdiction under Section 100 of the CPC.
- B 7.2 As observed and held by this Court in the case of *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*, (1999) 3 SCC 722, in the Second Appeal under Section 100 of the CPC, the High Court cannot substitute its own opinion for that of the First Appellate Court, unless it finds that the conclusions drawn by the lower Court were erroneous being :

- C (i) Contrary to the mandatory provisions of the applicable law;
- D OR
- (ii) Contrary to the law as pronounced by the Apex Court;
- OR
- (iii) Based on in-admissible evidence or no evidence.
- E It is further observed by this Court in the aforesaid decision that if First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. It is further observed that the Trial Court could have decided differently is not a question of law justifying interference in Second Appeal.
- F 7.3 When a substantial question of law can be said to have arisen, has been dealt with and considered by this Court in the case of *Ishwar Dass Jain v. Sohan Lal*, (2000) 1 SCC 434. In the aforesaid decision, this Court has specifically observed and held :

- G “Under Section 100 CPC, after the 1976 amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate court without doing so. There are two situations in which interference with findings of fact is permissible. The first one is

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when material or relevant evidence is not considered which, if considered, would have led to an opposite conclusion. The second situation in which interference with findings of fact is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted, an opposite conclusion was possible. In either of the above situations, a substantial question of law can arise.”

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7.4 Considering the law laid down by this Court in the aforesaid decisions and even considering Section 100 of the CPC, the substantial question of law framed by the High Court in the present case, as such, cannot be said to be a substantial question of law at all.

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8. Having gone through the findings recorded by the Trial Court as well as the First Appellate Court, it appears that both, the Trial Court as well as the First Appellate Court, gave cogent reasons on appreciation of evidence on record, more particularly, the Sale Deed dated 22.06.1964 (Exhibit P1), document dated 23.04.1971 (Exhibit D4) and subsequent Sale Deed dated 18.05.1973 (Exhibit P2) and thereafter held that the plaintiff is not entitled to the declaration that he has become the owner. While interfering with the Judgment and Decree passed by both the Courts below, it appears that the High Court has again reappreciated the entire evidence on record, which in exercise of powers under Section 100 of the CPC, is not permissible. Under the circumstances, the High Court has committed a grave/manifest error in quashing and setting aside the findings recorded by both the Courts below, which were on appreciation of evidence on record. The High Court has exceeded in its jurisdiction while exercising the powers under Section 100 of the CPC.

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9. Even otherwise, on merits also, the impugned Judgment and Order passed by the High Court allowing the appeal and consequently decreeing the suit, is not sustainable. It was the case on behalf of the original plaintiff that the suit property was sold by registered Sale Deed dated 22.06.1964 (Exhibit P1) by the plaintiff, along with his two brothers and their father Nanjappa in favour of one Siddalingappa from whom the plaintiff subsequently purchased the suit property under the registered Sale Deed dated 18.05.1973 (Exhibit P2). On the other hand, it was specific case on behalf of the defendants that the Sale Deed dated 22.06.1964 was a nominal Sale Deed and was never acted upon and as such was not to be acted upon at all. It was also the case on behalf of

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- A the defendants that thereafter in the year 1971, the partition took place and the same was reduced in writing by document dated 23.04.1971 (Exhibit D4) and under the same document, it was recorded that the suit property had gone in favour of Krishnappa. Plaintiff denied that any partition was reduced in writing, more particularly, in the form of Exhibit D4 dated 23.04.1971. The High Court has observed and held that in view of the registered Sale Deed executed in favour of the plaintiff, the plaintiff has become the actual owner. The High Court has allowed the appeal and subsequently has decreed the suits mainly on the ground that :
- C (i) That the registered Sale Deed dated 22.06.1964 (Exhibit P1) was an out and out Sale Deed and the same was not a nominal Sale Deed;
- (ii) That the defendants have never challenged the registered Sale Deed dated 22.06.1964 (Exhibit P1) and even the subsequent registered Sale Deed dated 18.05.1973 (Exhibit P2).
- D (iii) Exhibit D4-Partition Deed dated 23.04.1971 purports to convey interest in the immovable property in favour of Krishnappa and that therefore the same was required to be registered and as such it was an unregistered document and therefore having regard to the provisions of the Registration Act, the same is not admissible in evidence and therefore E the same cannot be looked into.
- F 9.1 Now so far as the registered Sale Deed (Exhibit P1) is concerned, it is an admitted position that Krishnappa is not a signatory to the said Sale Deed. Therefore, as such, the said Sale Deed does not bind Krishnappa. Even in the cross-examination, the original plaintiff F has admitted that Exhibit P1 was not signed by Krishnappa. He has also admitted that his other brothers Rangappa and Govindaiah also did not sign. From the entire evidence on record, it appears that the suit property was initially purchased by Krishnappa in the year 1948 and thereafter, due to some internal family problems with respect to said suit property, it G was the Krishnappa who thrown the same property into the joint family property in the year 1952 and Krishnappa executed the Sale Deed in favour of his father Nanjappa stating that it belongs to joint family property. From the entire evidence on record, it appears that even the Sale Deed (Exhibit P1) was not acted upon. Between 1964 to 1971, even the name of Siddalingappa was not mutated/recorded in the revenue H

record. Both the Courts below considered in detail the aforesaid aspect which has been upset by the High Court. It is required to be noted that even in the cross-examination the original plaintiff was not sure about the sale consideration received from Siddalingappa as a remuneration in view of the registered Sale Deed dated 22.06.1964 (Exhibit P1). Even otherwise, even according to the plaintiff and even considering the material on record, as the suit land was a joint family property and/or was in the name of Nanjappa, all the brothers had an equal share and therefore the same could not have been sold by Nanjappa, plaintiff and other two brothers only and without consent of other brothers including Krishnappa unless the property was partitioned. In the cross-examination the original plaintiff has specifically admitted that in the year 1965-66, when the father sold away the said suit schedule property, there was no partition between the brothers at that time. In the circumstances, the registered Sale Deed dated 22.06.1964 (Exhibit P1), by which the suit property was sold to Siddalingappa, cannot bind Krishnappa. It was a registered Sale Deed which was not acted upon. Even the plaintiff and Siddalingappa tried to mutate the name of Siddalingappa in the year 1973, which was the subject matter of the Revenue Authority.

9.2 Now so far as the submission on behalf of the plaintiff that as the registered Sale Deed dated 22.06.1964 (Exhibit P1) was not challenged by the defendant by way of suit or even counter claim and therefore thereafter it was not open for the defendants to challenge the same is concerned, at the outset, it is required to be noted and as observed hereinabove, Krishnappa was not a signatory to the said document/Sale Deed and therefore it cannot bind him or his heirs. Even otherwise and as held by this Court in the case of *Vidhyadhar* (supra), in a suit filed by the plaintiff for a declaration on the basis of the registered Sale Deed, it is always open for the defendant, who is a stranger to the Sale Deed, to raise a plea that the Sale Deed was void, fictitious, collusive or not intended to be acted upon and or not binding to him. In the aforesaid decision, it is observed and held by this Court that a person, in his capacity as a defendant, can raise any legitimate plea available to him under the law to defeat the suit of the plaintiff. In paragraph 21 this Court has observed and held as under :

“21. The above decisions appear to be based on the principle that a person in his capacity as a defendant can raise any legitimate plea available to him under law to defeat the suit of the plaintiff.

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- A This would also include the plea that the sale deed by which the title to the property was intended to be conveyed to the plaintiff was void or fictitious or, for that matter, collusive and not intended to be acted upon. Thus, the whole question would depend upon the pleadings of the parties, the nature of the suit, the nature of the deed, the evidence led by the parties in the suit and other attending circumstances. For example, in a landlord-tenant matter where the landlord is possessed of many properties and cannot possibly seek eviction of his tenant for bona fide need from one of the properties, the landlord may ostensibly transfer that property to a person who is not possessed of any other property so that that person, namely, the transferee, may institute eviction proceedings on the ground of his genuine need and thus evict the tenant who could not have been otherwise evicted. In this situation, the deed by which the property was intended to be transferred, would be a collusive deed representing a sham transaction which was never intended to be acted upon. It would be open to the tenant in his capacity as a defendant to assert, plead and prove that the deed was fictitious and collusive in nature. We, therefore, cannot subscribe to the view expressed by the Privy Council in the case of Lal Achal Ram [(1905) 32 IA 113 : ILR 27 All 271] in the broad terms in which it is expressed but do approve the law laid down by the Calcutta, Patna and Orissa High Courts as pointed out above.”
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Therefore, in the facts and circumstances of the case, we are of the opinion that without even challenging the Sale Deed (Exhibit P1) by way of behalf of independent proceedings, in a suit filed by the plaintiff F seeking a declaration that he has become the owner pursuant to the registered Sale Deed, it is always open for the defendant, who is stranger to the Sale Deed, to raise a plea that either the Sale Deed is not binding to him or the same was without consideration or it was a nominal Sale Deed or void or fictitious, for that matter, collusive and not intended to be acted upon.

G 9.3 Now so far as the finding recorded by the High Court that as the Partition Deed dated 23.04.1971 (Exhibit D4) was unregistered though required registration under the Provisions of the Registration Act and therefore the same is not admissible in evidence is concerned, it is required

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to be noted that as such Exhibit D4 can be said to be a Palupatti as has been described as Palupatti. Palupatti means list of properties partitioned. At the most, it can be said to be a family arrangement. Therefore, in the facts and circumstances of the case, the same was not required to be registered.

9.4 It is required to be noted that the deed dated 23.04.1971, under which the suit property had gone /devolved in favour of the Krishnappa, was reduced in writing before the Panchayat and Panchas, and the same was signed by the village people/panchayat people and all the members of the family including even the plaintiff. Though the plaintiff disputed that the partition was not reduced in writing in the form of document Exhibit D4, on considering the entire evidence on record and even the deposition of plaintiff (cross-examination), he has specifically admitted that the oral partition had taken place in the year 1971. He has also admitted that he has got the share which tellies with the document dated 23.04.1971(ExhibitD4). Execution of the document/ Partition Deed/ Palupatta dated 23.04.1971 has been established and proved by examining different witnesses. The High Court has refused to look into the said document and/or consider document dated 23.04.1971 (Exhibit D4) solely on the ground that it requires registration and therefore as it is unregistered, the same cannot be looked into. However, as observed by this Court in the case of *Kale* (Supra) that such a family settlement, though not registered, would operate as a complete estoppel against the parties to such a family settlement. In the aforesaid decision, this Court considered its earlier decision in the case of *S.Shanmugam Pillai and Others v. K. Shanmugam Pillai and Others* (1973) 2 SCC 312 in which it was observed as under:

“13. Equitable principles such as estoppel, election, family settlement, etc. are not mere technical rules of evidence. They have an important purpose to serve in the administration of justice. The ultimate aim of the law is to secure justice. In the recent times in order to render justice between the parties, courts have been liberally relying on those principles. We would hesitate to narrow down their scope.

As observed by this Court in T.V.R. Subbu Chetty’s Family Charities case, that if a person having full knowledge of his right as a possible reversioner enters into a transaction which settles his claim as

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- A well as the claim of the opponents at the relevant time, he cannot be permitted to go back on that agreement when reversion actually falls open."

9.5 As held by this Court in the case of *Subraya M.N.* (Supra) even without registration a written document of family settlement/family

- B arrangement can be used as corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. In the present case, as observed hereinabove, even the plaintiff has also categorically admitted that the oral partition had taken place on 23.04.1971 and he also admitted that 3 to 4 punchayat people were also present. However, according to him, the same was not reduced in writing. Therefore, even C accepting the case of plaintiff that there was an oral partition on 23.04.1971, the document Exhibit D4 dated 23.04.1971, to which he is also the signatory and all other family members are signatory, can be said to be a list of properties partitioned. Everybody got right/share as per the oral partition/partition. Therefore, the same even can be used as D corroborative evidence as explaining the arrangement made thereunder and conduct of the parties. Therefore, in the facts and circumstances of the case, the High Court has committed a grave/manifest error in not looking into and/or not considering the document Exhibit D4 dated 23.04.1971.

- E 9.6 So far as the Sale Deed dated 18.05.1973 (Exhibit P2) executed by Siddalingappa in favour of the plaintiff is concerned, as there was a categorically finding by both the Courts below that the same document was sham. It is required to be noted that in the cross-examination, the plaintiff has stated that he paid Rs. 3000 to 4000 to Siddalingappa and the said property was purchased by him in the year 1973. However, in the F document, the sale consideration is stated to be Rs.200/. Even PW2 Siddalingappa has stated that he purchased the suit schedule property for Rs.200/- and he sold the suit schedule property to the plaintiff for Rs.600/- Therefore, it is a serious dispute with respect to consideration paid by the plaintiff and received by the Siddalingappa.

- G 10. In the aforesaid facts and circumstances of the case, the High Court was not justified in interfering with the findings recorded by both the Courts below. For the reasons stated above, the impugned Judgment and Order passed by the High Court cannot be sustained and the same

deserves to be quashed and set aside and is accordingly quashed and set aside. The Judgment and Order passed by both the Courts below dismissing the suit, are hereby restored and consequently the suit filed by the original plaintiff is dismissed. No costs. A

Devika Gujral

Appeal disposed of.