Mrs Leena Rego vs Smt Laura on 12 November, 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

REGULAR SECOND APPEAL NO.1253 OF 2006

BETWEEN:

MRS. LEENA REGO
W/O P P REGO
R/C CHRISTAIN ADULT
AGED 61 YEARS
RESIDING AT CASCIA,
MANGALURU.

...APPELLANT

(BY SRI G BALAKRISHNA SHASTRY, ADVOCATE)

AND:

1. SMT. LAURA
   A MONTEIRO
   W/O LATE JEROME A MONTERIO
   AGED 76 YEARS

2. SMT. DARRYL
   A G MONTERIO
   S/O LATE JEROME A MONTERIO
   AGED 47 YEARS

3. SMT. MARISA PHILOMENA
   D'SOUZA
   S/O LATE JEROME A MONTERIO
   AGED 45 YEARS

4. SRI ERROL JUDGE MONTEIRO

S/O LATE JEROME A MONTERIO,
AGED 43 YEARS

NO.1 TO 4 ARE ROMAN CATHOLIC
AND ARE R/AT ZARINA MANSION
II FLOOR, S. MARYS ROAD MAZAGAON
BOMBAY-400010.

5. SMT. MARTHA THANGARAJA
D/O LATE MARY MONTEIRO
MAJOR, RESIDING AT MARTHA COTTAGE
SRIRAMAPURAM COLONY.

6. SMT. ALICE MONTEIRO
W/O LATE CYRIL MONTEIRO, MAJOR
ROMAN CATHLOIC
RESIDING AT NEAR VALENCIA CHURCH
KANKANADY POST
MANGALURU-2

7. SRI W J A MONTEIRO
S/O LATE CYRIL MONTEIRO
ROMAN CATHOLIC
RESIDING AT C/O L B ARANHA VAS LANE
II CROSS, MANGALURU.

8. SRI DONALD P MONEIRO
SINCE DECEASED REPRESENTED BY HIS LRS.

8A. MR. EMILDA MONTEIRO
W/O LATE DONALD MONTEIRO
AGED ABOUT 64 YEARS

8B. MRS. DIVYA GOMESH
D/O LATE DONALD MONTEIRO
W/O LOBY GOMES
AGED ABOUT 37 YEARS

8C. MRS DEEPTHI SERRAO
D/O LATE DONALD MONTEIRO
W/O ASHOK SERRAO
AGED ABOUT 37 YEARS

8D. MR. DHEERAJ ANTHONY
PAUL MONTEIRO
S/ O LATE DONALD MONTEIRO
AGED ABOUT 32 YEARS

ALL ARE RESIDING AT "DAYAL"
VALENCIA HALL ROAD
KANKANADY POST
MANGALORE-570 002.

9. SRI CLIFFORD J MONTEIRO
SINCE DECEASED REPRESENTED BY HIS LRS

9A.MRS. NOREIN MONTEIRO
W/O CLIFFORD J MONTEIRO
MAJOR
R/AT NANDAN F
I FLOOR, FERVER COLONY
NEAR VALENCIA CHURCH
MANGALURU.

10. SRI BONIFACE MONTEIRO
S/O LATE CLIFFORD J MONTEIRO
AGED ABOUT 49 YEARS
R/AT NANDAN FERVER COLONY
NEAR VALENCIA CHURCH
MANGALURU.

11. SMT. JENIFER MASCARENHAS
D/O LATE CYRIL MONTEIRO
AGED ABOUT 47 YEARS
R/AT ST. ARPANA APARTMENTS
BENDOOR
MANGALURU.

12. SRI NOEL MONTEIRO
S/O LATE CYRIL MONTEIRO
ADULT, ROMAN CATHOLIC

13. SRI ROLLANT MONTEIRO
S/O LATE CYRIL MONTEIRO

ADULT, ROMAN CATHOLIC
NO.12 AND 13 ARE R/AT NEAR
VALENCIA CHURCH
KANKANADY POST
MANGALURU-2.

14. SRI JOHN H MONTEIRO
S/O LATE MARY MONTEIRO
ADULT, MAJOR, ROMAN CATHOLIC
R/AT C/S CYNARRO CO-OP
BOMBAY-70.

15. SRI MICHAEL J MONTEIRO
S/ O LATE MARY MONTEIRO
ADULT MAJOR
R/AT 0-3, TOCHANA APARTMENTS

VITTAL BAI PATEL ROAD
ANDHERI WEST
BOMBAY-400 059.

16. SRI VICTOR MONTEIRO
SINCE DECEASED REPRESENTED BY HIS LRS
ALREADY ON RECORD ARRAYED AS
R14, 15 AND 17

17. SMT. JESSIE FERNANDES
D/O LATE MARY MONTEIRO
MAJOR
R/AT PINTO MANSION, II FLOOR
FLAT NO.207, SETAL DEVI ROAD
OPP:VICTORIA CHURCH
MAHIM, BOMBAY.

18. SMT. CHRISTINE FERNANDES
SINCE DECEASED REPRESENTED BY LRS

18A. MR. PATRICK FERNANDES
S/O LATE JOSEPH FERNANDES
FERNANDES COMPOUND
NEAR VALENCIA CHAPEL
KANKANDY POST
MANGALURU.-575 002.

19. SMT. LILLY MASCARENHAS
W/O NENRY MASCARENHAS
R/AT C/O KHADER STORES
BHADRAVATHI

20. LOUIS LOBO
SINCE DECEASED REPRESENTED BY HIS LRS.

20A. MRS. EUNICE REGO
W/O MICHAEL REGO
AGED ABOUT 58 YEARS
R/AT 135, I FLOOR
16TH MAIN ROAD
BANASHANKARI FIRST STAGE
II BLOCK
BENGALURU.

20B. MR. DENIS LOBO
S/O LOUIS LOBO
AGED 56 YEARS
R/AT LOBO VILLA VALENCIA
MANGALURU-575 002.

20C. MRS. RITA MADTHA
W/O CRYIL MADTHA
AGED ABOUT 53 YEARS
R/AT FLORA, NO.3
AICOBOO NAGAR, 17TH MAIN
3RD CROSS, BTM LAYOUT
I PHASE
BENGALURU-560 068.

20D. MR. VINCENT LOBO
S/O LOUIS LOBO
AGED 47 YEARS
R/AT LOBO VILLA VALENCIA
MANGALURU-575 002.

20E. MRS. THERESA M R LOBO
W/O F M LOBO
AGED ABOUT 51 YEARS

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R/AT DOOR NO.25-4-302
CHURCH VIEW, VALENCIA
MANGALURU-575 002.

21. MR. CHARLES LOBO
S/O SALVADOR LOBO
R/AT S L MARTHIAS ROAD
KAPRIGUDDE
MANGALURU

22. SMT. DULCINE LOBO
W/O LOUIS LOBO
R/AT NEAR VALENCIA CHURCH
MANGALURU-2

23. SMT.SUNDARI BAI
S/O THANIA GATTI
ADULT
R/AT KOTEKAR VILLAGE
MANGALURU.

24. KAMALA
D/O THANIA GATTI
ADULT
R/AT KOTEKAR VILLAGE
MANGALURU

...RESPONDENTS

(BY SRI K G RAGHAVAN, SENIOR COUNSEL APPEARING FOR

SRI RANGAPPA Y FOR DUA ASSOCIATES, ADVOCATES
FOR R20 (A, C TO E);
SRI M VISHWAJITH RAI, ADVOCATE FOR R8(A TO D);
V/O DATED 16.02.2009 NOTICE TO R1 TO 7, 10 TO 15, 17 &
19 IS DISPENSED WITH)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE AGAINST THE JUDGMENT AND DECREE DATED 17TH DECEMBER, 2005 PASSED IN REGULAR APPEAL NO.165 OF 2004 ON THE FILE OF THE I ADDITIONAL DISTRICT JUDGE, DAKSHINA KANNADA, MANGALORE, PARTLY ALLOWING THE APPEAL FILED AGAINST

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THE JUDGMENT AND DECREE DATED 17TH DECEMBER, 1994 PASSED IN ORIGINAL SUIT NO.1229 OF 1989 ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE (JR. DN), MANGALORE.

In this appeal, arguments being heard, judgment and decree reserved, coming on for "Pronouncement of Orders" this day, the Court delivered the following:

JUDGMENT

This Regular Second Appeal is filed by the plaintiff challenging the judgment and decree dated 17th December, 2005 in Regular Appeal No.165 of 2004 on the file of the District Judge, Dakshina Kannada, Mangaluru, partly allowing the appeal against the judgment and decree dated 17th December, 1994 passed in Original Suit No.1229 of 1989 on the file of the II Additional Munsiff at Mangaluru, Dakshina Kannada, dismissing the suit of the plaintiff.

2. For the sake of convenience, parties in this appeal are referred to with respect to their status before the trial Court.

3. Relevant facts for adjudication of this appeal are that, the plaint 'A' and 'B' schedule properties belong to one Salvador Lobo who died on 17th February, 1971. It is the case of plaintiff that the said Salvador Lobo lived post centenary and was deaf for many years and also was not in a sound state of mind, at least, ten years prior to his death. It is further stated that pursuant to the death of his wife, the said Salvador Lobo stayed with his crippled son-Sylvester Lobo. It is stated that taking undue advantage of the infirmity of both, Salvador Lobo and his son-Sylvester Lobo, one of the sons of Salvador Lobo i.e. Louis Lobo (defendant No.21), along with his wife Dulcine Lobo (defendant No.23), had obtained power of attorney from Salvador Lobo in the name of Dulcine Lobo to manage the properties of Salvador Lobo. It is the case of the plaintiff that the defendant No.21 was a tenant under Salvador Lobo and defendant No.23 was a Teacher by occupation. It is further averred that, defendants 21 and 23, in respect of the suit schedule properties, have fraudulently got certain documents in their favour and are claiming that they are the owners of the said properties. It is the

specific case of the plaintiff that Salvador Lobo was not capable of executing any document, at least ten years prior to his death and defendants 21 and 23 have played fraud against the said Salvador Lobo and got certain documents in their name, which are not valid and not binding on the plaintiff and therefore, it is the case of the plaintiff that the said Salvador Lobo died intestate. It is also pleaded in the plaint that, apart from Schedule 'A' and 'B' properties, said Salvador Lobo had liquid assets including deposits in Bank and the plaintiff being the daughter of Joseph Lobo (elder son of Salvador Lobo), is also entitled for share in the property left by the deceased- Salvador Lobo. It is further stated by the plaintiff that her father-Joseph Lobo pre-deceased Salvador Lobo, and as such, she is entitled for one-sixth share in the estate of late Salvador Lobo and as such, the plaintiff stated that defendants 21 and 23 have no absolute right or interest over the suit schedule properties and hence, filed suit in OS No.1229 of 1989 before the trial Court seeking relief of partition.

4. On service of summons, defendants 1 to 7 and 9 to 17 remained absent and hence were placed ex-parte. Defendant No.20 reported dead. Defendants 8, 18, 19, 21 to 24 appeared through their Advocates. Defendants 18, 19 and 22 have not filed written statement. It is the case of the defendant No.8 that the said Salvador Lobo died intestate on 17th February, 1971 and Schedule 'A' and 'B' properties belong to him. Defendant No.8 pleaded that the said Salvador Lobo was suffering from dotage and was not in sound and disposing state of mind and as such, defendant No.8 supports the contention of the plaintiff. It is further stated that the settlement deeds and documents relied upon by defendants 21 and 23 are void and illegal and as such, it is the case of the defendant No.8 that he is entitled for one- seventh share in suit schedule 'A' and 'B' properties.

5. Defendants 21 and 23 have filed written statement contending that the original plaintiff-Agnes Lobo had filed suit in OS No.432 of 1980, seeking relief of forma pauperises and the defendant No.7-(Leena Rego) is the present plaintiff. She was transposed a legal heir to Agnes Lobo. It is the main contention of defendants 21 and 23 that the plaintiff has not sought for cancellation of settlement deeds executed by Salvador Lobo and therefore, the plaint itself is not maintainable. It is further averred that, by virtue of executing settlement deeds, deceased Salvador Lobo himself lost title over the suit schedule property and, that apart, he is also bound by settlement deeds. It is also their specific defence that there is no property that is heritable in nature and therefore, mere seeking partition without challenging cancellation of settlement deeds, cannot be entertained in this suit. It is the specific case of defendants 21 and 23 that they are in actual possession of portion of the plaint 'A' schedule property as per registered settlement deeds dated 26th December, 1968, 14th November, 1968 and 17th September, 1969 and the remaining property in plaint 'A' schedule property are the tenanted lands in possession of Mulageni or Chalgeni tenants of Salvador Lobo. It is also averred in the written statement that Salvador Lobo had executed registered settlement deed dated 29th December, 1966 in respect of kotekar lands in favour of the defendant No.11 and the same is within the knowledge of plaintiff. It is also stated that late Salvador Lobo executed another settlement deed dated 29th May, 1968 in respect of Mulgeni lands in favour of defendants 21 and 23. It is also further stated in the written statement that Salvador Lobo executed registered settlement deeds dated 14th November, 1968, 26th December, 1968 and 17th September, 1969 in favour of defendants 21 and 22. It is further stated that the whereabouts of Joseph Lobo (father of plaintiff) is not known to the parties and therefore, it is the contention of defendants 21 and 23 that without proving with regard to existence of Joesph Lobo, plaintiff cannot claim share of Salvador

Lobo and therefore, sought for dismissal of the suit. It is also the contention of defendants 21 and 23 that Salvador Lobo died leaving behind Will wherein, one of the attesting witnesses was induced to put his signature on the Will and the other witness was residing at Gulf at that relevant point of time and therefore, the Will was not proved before the competent Court. It is also stated in the written statement that plaint 'A' schedule properties belong to Salvador Lobo and these defendants have also invested along with Salvador Lobo towards purchase of shares. Salvador Lobo was baptised on 23rd April, 1876 at Razario Cathedral Church, Mangaluru, which shows that at the time of his death, Salvador Lobo was aged about 95 years. Defendants 21 and 23 denied the averments in the plaint that Salvador Lobo was deaf for many years, so also, was not in a sound and disposing state of mind, at least, ten years prior to his death. It is their defence that Salvador Lobo was a strong-willed person and was mentally sound and there was no impairment as alleged by the plaintiff. Salvador Lobo had executed several documents during his lifetime, relating to his properties. Defendants 21 and 23 denied the fact of being tenant under Salvador Lobo and contended that these defendants along with their children, were residing as members in Salvador Lobo's house which was situated nearer to the place where Salvador Lobo was staying and as such, it is the contention of these defendants that they had looked after Salvador Lobo and Sylvester Lobo. It is also the case of defendants 21 and 23 that Salvador Lobo made his last Will in respect of collection of Mulgeni, in favour of the plaintiff and her mother; and another item of the property was in the occupation of monthly tenant by name Xavier Alwares in Attavar Village and same has been bequeathed in favour of plaintiff and her mother and therefore, the plaintiff and her mother are entitled for these properties only. However, as the Will has not been accepted, these two items are also liable for division among the children of Salvador Lobo. These defendants further stated that the settlement deeds executed by Salvador Lobo are valid and therefore, the plaintiff is not entitled for relief in the suit and as such, sought for dismissal of the suit. Defendant No.23 filed additional written statement contending that the item added as Sl.No.8/2A2A1 of Jappinamogaru village does not belong to Salvador Lobo and accordingly, sought for dismissal of the suit.

6. Defendant No.24 has filed separate written statement denying the averments made by the plaintiff that Salvador Lobo was not in a sound and disposing state of mind due to dotage and taking advantage of infirmity of Salvador Lobo and crippleness of his son-Sylvester Lobo, defendants 21 and 23 have misused the properties belonging to Salvador Lobo. It is the specific defence of defendant No.24 that Salvador Lobo had executed a registered settlement deed on 29th December, 1966 in favour of his son-Louis Lobo settling his properties and same has been acted upon by the parties and as such, denied the averments made by plaintiffs that the defendants have acted fraudulently. It is further averred in the written statement that the settlement deeds are valid and the father of defendant No.24-Thania Gatti was enjoying the property bearing No.124 described in the plaint 'A' schedule as chalgeni tenant from 1923 along with other properties and after the demise of his father, defendants 24 and 25 are in possession and cultivation of the said properties. It is also stated in the written statement that defendant No.25-Kamala sold her undivided share in favour of one B. Sundara, resident of Bagamandala of Kotekar Village, Mangaluru Taluk as per the registered Sale Deed 19th February, 1982 and thereafter, the said B. Sundara has filed suit for partition against her in Original Suit No.268 of 1982 and the said suit was settled and deed of partition was registered on 07th November, 1983 and therefore, it is the contention of defendant No.24 that she is entitled to the properties mentioned above, in terms of her continuous possession in item 'A' schedule property

and accordingly, sought for dismissal of the suit. Defendant No.25 has filed memo adopting the written statement filed by defendant No.24.

7. The trial court, based on pleadings on record, has formulated the following issues and additional issues for its consideration:

1. Whether the plaintiff proves that there is a partiable properties?

2. Whether the plaintiff further proves that her father late Joseph Lobo had 1/7th right in the properties late Salvador Lobo?

3. Whether the plaintiff further proves that she is entitle to 1/7th share of her father in the suit schedule property?

4. Whether the defendant No.21 and 23 prove that the plaintiff is not entitle for the relief for the reasons stated in para 3 of the written statement?

5. Whether the defendant No.21 and 23 proves that some item of properties of late Salvador Lobo are in possession of the tenants?

6. Whether they further prove that the properties in possession of the plaintiff are liable to be partitioned for the reasons stated in para 15 of the written statement?

7. Whether the plaintiff is entitle for mesne profits?

8. What order or decree?

Additional Issues: Framed on 07.08.1990:-

1. Whether defendant No.8 proves that deeds executed by Salvador Lobo are void for the reasons stated in the written statement?

Additional Issues: Framed on 05.01.1991:-

2. Whether court fee paid is proper and correct?

3. Whether defendant No.23 proves that this court has no jurisdiction to try the suit?

Additional Issue No.6 framed on 17.12.1994:-

4. Does defendant No.24 and 25 prove that they are bonafide purchasers for consideration of suit schedule property by virtue of sale deed in their favours?

> 5. Whether defendants prove that Sl.No.8/2A2A1 of Jeppinamogru village is not belong to the parties to suit and it is not property of late Salvador Lobo?
>
> 6. Whether defendants further prove that properties added to schedule are not in their possession?"
>
> In order to establish their case, plaintiff got examined as PW1 and marked 25 documents as Exhibits P1 to P25. On the other hand, defendants examined four witnesses as DW1 to DW4 and produced 34 documents as Exhibits D1 to D34.

8. The trial Court, after considering the material on record, by its judgment and decree dated 17th December, 1994 dismissed the suit of the plaintiff and being aggrieved by the same, the plaintiff preferred Regular Appeal in No.165 of 2004 on the file of First Appellate Court. The said appeal was resisted by the defendants. The First Appellate Court, after re- appreciating the facts on record, by its judgment and decree dated 17th December, 2005 partly allowed the appeal and consequently, held that parties are entitled for one-sixth share in the suit schedule property, however, held that the plaintiff fails to prove that the settlement deeds are invalid. Being aggrieved by the judgment and decree passed by the Courts below, the appellant has preferred this Regular Second Appeal under Section 100 of CPC.

9. This Court, by its order dated 18th January, 2007 formulated the following substantial question of law:

> "Whether the Lower Appellate Court was justified in holding that the settlement deed set up by the defendants 21 and 23 are proved, and consequently denying the share to the plaintiff to the suit schedule properties?"

10. I have heard Sriyuths G. Balakrishna Shastry, learned counsel appearing for the appellant; K.G. Raghavan, learned Senior Counsel, appearing on behalf of Rayappa for Respondents; and M. Vishwajith Rai, learned counsel appearing for respondent No.8.

11. Sri Balakrishna Shastry, learned counsel for the plaintiff/appellant submitted that Salvador Lobo died on 17th February, 1971 leaving behind seven children. He contended that the finding recorded by both the courts below that Salvador Lobo has executed settlement deeds dated 29th May, 1966 (Exhibit D27); 29th December, 1966 (Exhibit D26); 14th November, 1968 (Exhibit D28); 26th December, 1968 (Exhibit D29); and 17th September, 1969 (Exhibit D30) in favour of defendants 21 and 23 are valid, is contrary to facts and law. Emphasising on the mental capacity of Salvador Lobo, he argued that Salvador Lobo was very old and had crossed 100 years at the time of his death and same was admitted by DW1 in her evidence and same would establish the fact that, taking advantage of the old age of Salvador Lobo, defendants 21 and 23 got registered the aforementioned settlement deeds, which is non-est and without any authority of law. He further contended that First Appellate Court failed to notice the Will dated 20th January, 1969 alleged to have been executed by Salvador Lobo in favour of defendant No.21, which also is of the year 1969. In this regard, he referred to the judgment dated 18th January, 1980 passed in Original Suit No.24 of 1977 by the District Judge,

Dakshina Kannada at Mangalore wherein, it was held that Salvador Lobo was not mentally sound to bequeath the property in terms of the Will questioned in the said Suit and same was confirmed by this Court in MFA No.901 of 1980 decided on 01st June, 1984. He further contended that attestor to settlement deeds-D.R. Lobo (DW2) who was an employee in MCC Bank, and the said D.R. Lobo was also an attestor to the Will and some other documents and therefore, the First Appellate Court has not properly re-appreciated the evidence of D.R. Lobo (DW2).

12. Continuing his submission on the aforementioned proceedings, Sri G. Balakrishna Shastry submitted that the General Power of Attorney said to have been executed by Salvador Lobo was also held to be invalid in the aforementioned proceedings stating that he was incapable of executing the documents. He further contended that Salvador Lobo was deaf and he was called "keppa Lobo" and therefore, he argued that as Salvador Lobo was mentally incompetent so also with the condition of hearing impairment, he could not have executed the settlement Deeds referred to above and in this regard, the finding recorded by the courts below is required to be interfered with in this appeal. Referring to the genealogical tree of Salvador Lobo, Sri Balakrishna Shastry submitted that, Salvador Lobo had four sons and three daughters and one of his sons- Sylvester Lobo, was crippled and without making any provision for his remaining children, particularly-Sylvester Lobo, execution of settlement deeds in favour of defendants 21 and 23 is surrounded with suspicious circumstances. He further contended that the contesting defendants 21 and 23 have admitted that the said Salvador Lobo was residing separately and therefore, the acceptance of evidence by the courts below that the said Salvador Lobo was under the care and control of defendants 21 and 23, is contrary to the evidence. He further submitted that defendant No.23 was working as a Teacher and she used to operate the Bank account of Salvador Lobo jointly with him. Defendant No.23 has withdrawn cash from the Bank after the demise of Salvador Lobo and same was admitted in her evidence and the said aspect of the matter was not appreciated by the courts below. Defendants have not examined the Sub-Registrar who has registered the settlement deeds. DW1 (Defendant No.23) admitted in the evidence that Salvador Lobo was an illiterate person and the Scribe to the aforementioned settlement deeds was not examined by the defendants and in that view of the matter, the finding recorded by the First Appellate Court is contrary to records. Both the courts below have failed to compare the signature and thumb impression of Salvador Lobo to find out whether Salvador Lobo had actually executed the documents or not. Referring to the settlement Deeds-Exhibits D26 to D30, he submitted that there is no whisper in the pleadings or in the evidence as to why settlement deeds were executed on different dates which would create a serious doubt and the said suspicious circumstance has not been removed by the defendants and the said aspect of the matter was not considered by both the courts below. He further contended that properties mentioned in Settlement Deeds are valuable properties and are located in the heart of Mangaluru City and the properties which are left out from the Settlement Deeds are of no value, inter alia, some of them have been leased-out in favour of permanent tenants for nominal rent and the said aspect of the matter was ignored by the courts below. Arguing on the execution of settlement deeds, Sri Balakrishna Sastry submitted that, in the absence of consideration in the settlement deeds, the said deeds are contrary to Section 25 of the Indian Contract Act, 1972. He further submitted that even if it is taken as a Gift, there is no recital regarding love and affection in the Settlement Deeds and same is not proved as per Section 63 of the Indian Evidence Act, 1872. He further contended that though defendant No.23-Dulcine Lobo, was examined as DW1, however, her husband i.e. Defendant No.21-Louis

Lobo, did not step into the witness box to prove settlement deeds and therefore an adverse inference be drawn regarding the conduct of defendant No.21. He further contended that nothing is stated about the execution of alleged Settlement Deeds in Original Suit No.24 of 1977 and MFA No.901 of 1980 and therefore, it may be inferred that the settlement deeds are after-thought by defendants 21 and 23 and the said aspect of the matter was ignored by the courts below. In support of his contentions, Sri Balakrishna Shastry referred to the judgment of Hon'ble Supreme Court in the case of RANGANAYAKAMMA v. K.S. PRAKASH (DEAD) BY LRS AND OTHERS reported in (2008)15 SCC 673 and by placing reliance on paragraphs 31 and 32 of the judgment, he argued that the settlement deeds are void and cannot be given effect to taking into consideration the admission made by DW1 which is conclusive in nature. He further submitted that though there is no issue relating to limitation which is a mixed question of fact and law, as well as the defendants having not taken any plea in their written statement about limitation, the finding recorded by the First Appellate Court is contrary to law. In this regard, he referred to the judgment of this Court in the case of SIKKA-N-SIKKA ENGINEERS PVT. LTD. BENGALURU, v. CARGO TRANSPORTS, BANGALORE reported in ILR 1992 KAR 1421 and contended that the 'cause of action' and 'right to sue' are different concepts and therefore, the finding recorded by the First Appellate Court without considering the averments made in the written statement is bad in law. With regard to his argument that alleged Settlement Deeds are sham and made under suspicious circumstances, he places reliance on the judgment of the Apex Court in the case of A.C. ANANTHASWAMY v. BORAIAH (D) BY LRS reported in (2004)8 SCC 588, and argued that the level of proof required to prove "fraud" is extremely higher and the said aspect of the matter was ignored by the First Appellate Court. Referring to the signature of Salvador Lobo on various documents including the Settlement Deeds, he referred to the judgment of this Court in the case of KENCHAWWA v. AMAGONDA reported in (1988)1 KLJ 530 and referred to paragraphs 14 and 15 of the judgment. He further argued that Exhibits D26 to D30 cannot be construed as Settlement Deeds, in view of the judgment of this Court in the case of MRS. DEVAKI AND ANOTHER v. MRS. LINGAMMA reported in ILR 2002 KAR 2125 and in this regard he referred to paragraphs 8 and 10 of the judgment. He also referred to the definition of "settlement" under Section 2(1)(q) of the Karnataka Stamp Act, 1957 and Section 2(b) of Specific Relief Act, 1963, he argued that since the attestors to settlement deeds were not examined by the defendants and as such, it may be held that the documents are not proved as required under law and as such, he submitted that the finding recorded by the First Appellate Court requires interference in this appeal.

13. Sri Vishwajith Rai, learned counsel appearing for the respondent No.8 submitted that the finding recorded by the First Appellate Court is contrary to records and requires reconsideration in this appeal. Accordingly, he adopted the arguments of Sri Balakrishna Shastry, learned counsel appearing for the appellant.

14. Per contra, Sri K.G. Raghavan, learned Senior Counsel appearing on behalf of Sri Rayappa, learned counsel for the respondent No.20(A, C to E) argued in support of the impugned judgment and decree and contended that the scope of interference by this Court under Section 100 of the Code of Civil Procedure is very limited and confined only to the question of law and not on facts. In this regard, he referred to the law declared by the Hon'ble Supreme Court in the case of DODDANARAYANA REDDY (DEAD) BY LRs AND OTHERS v. C. JAYARAMA REDDY (DEAD) BY

LRs AND OTHERS reported in (2020)4 SCC 649 and argued that the finding of fact by the First Appellate Court cannot be disturbed by this Court. He further contended that, the interference is required only when the courts below have ignored the material evidence and had come to conclusion by drawing wrong inferences. Emphasising on these aspects, the learned senior counsel submitted that the First Appellate Court has re-appreciated the entire material on record as required under law and rightly allowed the appeal in part, which cannot be disturbed in this appeal. The learned Senior Counsel placed reliance on the law declared by the Apex Court in the case of GURNAM SINGH (D) BY LEGAL REPRESENTATIVES AND OTHERS v. LEHNA SINGH (D) BY LEGAL REPRESENTATIVES reported in (2019)7 SCC 641.

15. Nextly, Sri K G Raghavan contended that the plaintiff has not sought for cancellation of settlement deeds as required under Section 31 of Specific Relief Act, 1963. He further contended that as per Article 59 of Limitation Act, 1963, the period for seeking cancellation or setting aside an instrument or decree is three years and in the present case, as the plaintiff has not sought for cancellation of settlement deeds within the prescribed period as required under Article 59 of the Limitation Act, the finding recorded by the First Appellate Court is just and proper and cannot be interfered with in this appeal. In this regard, he referred to the judgment of Hon'ble Supreme Court in the case of SUHRID SINGH AILAS SARDOOL SINGH v. RANDHIR SINGH AND OTHERS reported in (2010)12 SCC 112 and places reliance on paragraph 7 of the judgment and argued that if the executants of a deed want the documents to be annulled, they have to seek cancellation of the deed. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of PREM SINGH AND OTHERS v. BIRBAL AND OTHERS reported in (2006)5 SCC 353, he argued that the Limitation Act bars a remedy but not extinguish a right except under Section 27 of the Limitation Act (see ILR 2015 KAR 3554).

16. Nextly, learned Senior Counsel contended that since the plaintiff has not sought for cancellation of settlement deeds, he cannot be permitted to argue regarding annulling settlement deeds. In this regard, he places reliance on the judgment of the Hon'ble Supreme Court in the case of BACHHAJ NAHAR v. NILIMA MANDAL AND ANOTHER reported in (2008)17 SCC 491. He also referred to the law declared by the Hon'ble Apex Court in the case of P.K. PALANISAMY v. N. ARMUGHAM AND ANOTHER reported in (2009)9 SCC 173 and argued that unless the Settlement Deed is nullified by a competent court as invalid and void and until its validity is challenged, the legality of the settlement deed is to be accepted.

17. Sri K.G. Raghavan, further argued that though Salvador Lobo was aged, however, was mindful and had the conscious capacity to execute the document as required under Sections 11 and 12 of the Indian Contract Act, 1872.

18. Opposing the arguments advanced by the learned counsel appearing for the appellant with regard to judgment and decree in Original Suit No.24 of 1977 and MFA 901 of 1980 and referring provisions of Sections 41 and 43 of the Indian Evidence Act, 1872 to Exhibit P1 and P25, Sri K.G. Raghavan submitted that the judgment and decree passed in the probate proceedings cannot declare any person to be disentitled to acquire or be dispossessed from the property and the relevance of legal character plays a vital role and do not take away the legal character of Salvador Lobo. He also

referred to the judgment of Bombay High Court in the case of MAJOR GENERAL SHANTA SHAMSHER BAHADUR RANA v. KAMANI BROTHERS PRIVATE LIMITED AND OTHERS reported in AIR 1959 BOM 201; and in the case of PASUPATI NATH DAS (DEAD) v. CHANCHAL KUMAR DAS (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS reported in (2018)18 SCC 547 and argued that title cannot be considered by the Probate Court. Further, referring to the law declared by the High Court of Bombay in the case of PRABHAKAR SATPUTE v. SHAMITA SANJAY GALWANKAR AND ANOTHER reported in 2016 SCC ONLINE BOM 16004, learned Senior Counsel submitted that the law does not expect a testator to be perfectly having physical health and free from ailment and thereby referred to Section 59 of the Indian Succession Act.

19. Referring to paragraph 3 of the plaint, Sri K.G. Raghavan, argued that it is nobody's case that the General Power of attorney being executed by Salvador Lobo in favour of Dulcine Lobo to manage the properties and taking the advantage of the circumstances and the Power of attorney, defendants 21 and 23 acquired the suit schedule properties. In this regard, he submitted that the plaintiff has not proved the element of 'fraud' as required under Order VI Rule 4 of Code of Civil Procedure and in this regard he referred to the law declared by the Hon'ble Supreme Court in the case of M/S. GRASIM INDUSTRIES LIMITED AND ANOTHER v. M/S. AGARWAL STEEL (2010)1 SCC

83. He also referred to the law declared by this Court in the case of MADEGOWDA v. MADEGOUDA AND ANOTHER reported in (1981)1 KLJ 174 and relied on paragraph 9 of the judgment. He also referred to the law declared by the Division Bench of this Court in the case of K.S. MARIYAPPA v. K.T. SIDDALINGA SETTY reported in ILR 1989 KAR 425 and argued that the requirement of pleading to enable opposite party to meet the case and bald and general allegation of fraud and collusion, without clear pleadings and proof, cannot be considered. In addition to this, Sri K.G. Raghavan, learned Senior Counsel, also placed reliance on the judgment of the Hon'ble Apex Court in the case of UNION OF INDIA v. M/S. CHATURBHAI M. PATEL AND COMPANY reported in (1976)1 SCC 747 and referred to paragraph 7 of the judgment.

20. He further contended that Salvador Lobo has no animosity against any of his children and thereby the plaintiff has failed to prove the ingredients of Sections 12 and 16 of the Indian Contract Act, 1872. Emphasising on these aspects, the learned Senior Counsel submitted that there is no averment in the plaint requiring the ingredients of Sections 12 and 16 of the Indian Contract Act and he further contended that, any amount of evidence without pleadings, has no value and in this regard, he submitted that the additional issue framed on 07th August, 1990 is properly answered taking into consideration the written statement of defendant No.8 and therefore, he contended that there is no necessity for the defendant No.21 to step into witness box to adduce evidence.

21. Refuting the contention of the learned counsel appearing for the appellant with regard to Settlement Deeds as provided under Section 2(b) of the Specific Relief Act, 1963 and Section 2(1)(q) of the Karnataka Stamp Act, 1957, the learned Senior Counsel argued that there is no obligation on the part of defendants 21 and 23 to examine the attesting witness to the Settlement Deeds (Exhibits D26 to D30). In this regard, he drew the attention of the Court to the observation made in paragraph 10 of the judgment of this court in the case of DEVAKI (supra) and accordingly, he sought for dismissal of the appeal.

22. Heard the learned counsel appearing for both the parties and perused the material on record.

23. The main controversy in this appeal is with regard to the execution of settlement deeds by Salvador Lobo in favour of defendants 21 and 23. The main argument of the learned senior counsel for the respondent was that the plaintiff has not challenged the settlement deeds or sought for cancellation of settlement deeds. In this regard, it is relevant to extract the prayer in the plaint which reads as under:

> a) That the court may be pleased to partition the properties described in the schedule A and B in to 1/6th share taking into consideration the good and bad soil and put the plaintiff in possession of one such 1/6th share. The said relief is valued at Rs.14,319.90 and a fixed court fee of Rs.200/- is payable thereon.
>
> b) Directing the defendants 21 and 23 to render on account of income and expenditure of 'A' schedule properties and the same is tentatively valued at Rs.100/-.,
>
> c) For costs and such other and further reliefs.

24. Undisputedly, the plaintiff has not challenged settlement deeds, however, made reference in the plaint stating that certain documents executed by Salvador Lobo in favour of defendants are not binding on the plaintiff. In this regard, it is useful to refer to the law declared by the Hon'ble Apex Court in the case of BACHHAJ NAHAR (supra), wherein at paragraphs 23 and 24 of the judgment, it is held thus:

> "23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non- joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of Rs.one lakh, the court cannot grant a decree for Rs.Ten lakhs. In a suit for recovery possession of property `A', court cannot grant possession of property `B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.
>
> 24. In the absence of a claim by plaintiffs based on an easementary right, the first defendant did not have an opportunity to demonstrate that the plaintiffs had no

> easementary right. In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not have converted a suit for title into a suit for enforcement of an easementary right. The first appellate court had recorded a finding of fact that plaintiffs had not made out title. The High Court in second appeal did not disturb the said finding. As no question of law arose for consideration, the High Court ought to have dismissed the second appeal. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement. But the High court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, grant the relief of injunction in regard to an easementary right by assuming that they had an easementary right to use the schedule property as a passage."

25. In the case of P.K. PALANISWAMY (supra) at paragraph 25 of the judgment, it is observed as under:

> "25. It is now a well settled principle of law that an order passed by a court having jurisdiction shall remain valid unless it is set aside. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) & Ors. [AIR 1996 SC 906], it is stated:
>
> "8. In Halsbury's Laws of England, 4th edition, (Reissue) Volume 1(1) in paragraph 26, page 31, it is stated, thus:
>
> "If an act or decision, or an order or other instrument is invalid, it should, in principle be null and void for all purposes: and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a Court of competent jurisdiction. Until its validity is challenged, its legality is preserved."

In the Judicial Review of Administrative Action De Smith, Wolf and Jowell, 1995 edition, at pages 259-260 the law is stated, thus:

"The erosion of the distinction between jurisdictional errors and non-jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The courts have become increasingly impatient with the distinction, to the extent that the situation today can be summarised as follows:

> (1) All official decisions are presumed to be valid until set aside of otherwise held to be invalid by a court of competent jurisdiction.

Similarly, Wade and Forsyth in Administrative Law, Seventh edition -1994, have stated the law thus at pages 341-342:

> ...every unlawful administrative act, however invalid, is merely voidable. But this is no more than the truism that in most situations the only way to resist unlawful action is by recourse to the law. In a well- known passage Lord Radcliffe said:
>
> An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.
>
> This must be equally true even where the brand of invalidity is plainly visible : for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed put repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects."

26. This Court, in the case of BINNY MILL LABOUR WELFARE HOUSE BUILDING CO-OPERATIVE SOCIETY LIMITED v. D.R. MRUTHYUNJAYA ARADHYA reported in ILR 2008 KAR 2245, at paragraphs 36, 37 and 38 held thus:

> "36. When the owner of a property sells/conveys the property to - the purchaser under a written document and get the same registered, the right and the title to the said property is transferred from the owner to the purchaser on registration of the said documents. After such registration the owner of the property ceases to have any interest and all his rights in the property gets extinguished. He would not have any right to meddle with the property thereafter. If such a person were to execute one more sale deed and get it registered in respect of the said property the said sale deed has no value in the eye of law. The reason being on the date of the second sale deed, he is not the owner of the property. Therefore, the purchaser would not get title to the property as the vendor could convey only that title which he has in the property on the date of execution and registration of the sale deed. Similarly, if after execution and registration of the sale deed, the owner wants to get back the property, it has to be done by canceling the sale deed on any of the grounds which are available to him under the provisions of the Indian Contract Act. Unilaterally he cannot execute what is styled as a deed of cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property. Normally what can be done by a Court can be done by the parties to an instrument by mutual consent. Even otherwise if the parties to a document agree to cancel it by mutual consent for some reason and restore status quo ante, it is possible to execute such a deed. An agreement of sale, lease or mortgage or partition may be cancelled with the consent of the parties thereto. Because in the case of agreement of sale, lease, mortgage or partition, each of the parties to the said document even after the execution and registration of the said deed retains interest in the property and, therefore, it is permissible for them to execute one more document to annul or cancel

the earlier deed. However, it would not apply to a case of deed of sale executed and registered. In the case of a sale deed executed and registered the owner completely loses his right over the property and the purchaser becomes the absolute owner. It cannot be nullified by executing a deed of cancellation because by execution and registration of a sale deed, the properties are being vested in the purchaser and the title cannot be divested by mere execution of a deed of cancellation. Therefore, even by consent or agreement between the purchaser and the vendor, the said sale deed cannot be annulled. If the purchaser wants to give back the property, it has to be by another deed of conveyance. If the deed is vitiated by fraud or other grounds mentioned in the Contract Act, there is no possibility of parties agreeing by mutual consent to cancel the deed. It is only the Court which can cancel the deed duly executed, under the circumstances mentioned in Section 31 and other provisions of the Specific Relief Act, 1963. Therefore, the power to cancel a deed vests with a Court and it cannot be exercised by the vendor of a property. In this context it is necessary to see Section 31 of the Specific Relief Act, which reads as under:

31. When cancellation may be ordered.-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

37. A reading of the aforesaid provision makes it clear that both void and voidable instruments can be cancelled by the Court. The cause of action for such an action is an apprehension, if such an instrument is left outstanding may cause serious injury to the person against whom the written instrument is void or voidable. Such a person has the discretion to approach a competent Civil Court for adjudging the said instrument to be delivered up and cancelled. Even though in law a void instrument is unenforceable, has no value in the eye of law, void ab initio, the very physical existence of such a document may cause a cloud on the title of the party or cause injury or one can play mischief. Therefore, the law provides for cancellation of such instruments which are also non est, but which are in existence as a fact physically to get over the effect of such instrument. Once such an instrument is registered, the said registration has the effect of informing and giving notice to the World at large that such a document has been executed. Registration of a document is a notice to all the subsequent purchasers or encumbrances of the same property. The doctrine of constructive notice is attracted. Therefore, the effect of registration of an instrument not only affects the rights of the parties to the instrument but also affects parties who may claim under them. Therefore, once such an instrument is ordered to be delivered up and cancelled an obligation is cast upon the Court to send a copy of its decree to the officer in whose office the instrument was

registered, so that such an officer shall note on the copy of the instrument contained in his books the fact of its cancellation. Once such an entry is made in the books of the Sub-Registrar about the cancellation of the registered instrument, it also acts as a notice of cancellation to the whole World and it is also a constructive notice of cancellation of the said instrument.

38. Part X of the Indian Registration Act, 1908 deals with effect of registration and non-registration of an instrument. A combined reading of Sections 47, 48 and 49 makes it clear that an instrument which purports to transfer title to the property requires to be registered, the title does not pass until registration has been affected. The registration by itself does not create a new title. It only affirms a title that has been created by the deed. The title is complete and the effect of registration is to make it unquestionable and absolute. Section 47 of the Act makes it clear that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. The Section however does not say when a sale would be deemed to be complete. However, Section 47 of the Registration Act makes it clear that, though a document is registered on a particular date, the effective date would be the date on which the said document was executed and not from the date of registration. If the document is not registered but is compulsorily registerable, though the document is duly executed, it has no legal effect and it does not affect the immovable property comprised in the said document in view of Section 49 of the Act. The registration of such a duly executed document comes into operation, the moment it is duly registered, not from the date of registration but from the date of execution of the said document. Section 54 of the Transfer of Property Act, 1882, which deals with sales of immovable property mandates emphatically the transfer of tangible immovable property of the value of one hundred rupees and upwards, can be made only by a registered instrument. Thus, without registration there is no transfer of ownership of the property. Therefore, it is clear that the act of registration in the scheme of things is not a mere instance of the State collecting some registration fee and providing authenticity to a written instrument. It is by the act of registration, the title in the property passes to the transferor, from the date of execution of the deed of transfer. Once such sale takes place, transfer is complete, the vendor of the property ceases to be the owner of the property. Thereafter if he executes one more sale deed in respect of the same property or a cancellation deed in respect of the property already sold, in law it has no value, and it in no way affects the sale deed already executed. It is invalid, void, and non-est."

27. It is also useful to refer to the law declared by this court in the case of MR. VIKRAM RAVI MENEZES v. MR. VICTOR GOVEAS reported in ILR 2015 KAR 3554. In the said case, at paragraphs 10 and 11 of the judgment, it is held as under:

> "10. Therefore, Section 31 of the Specific Performance Act, 1963 has to be read along with Section 38 of the Karnataka Court Fee Suit Valuation Act. In the light of these provisions, we, now would consider the facts of this case. Admittedly, there is registered sale deed executed by the plaintiff's father. The plaintiff belongs to the Christian community. He has no right in the property in respect of which his father has executed the sale deed, though, he contends that his father acquired the title under a Will, where he was not permitted to alienate the property. That by itself, would not convey right on the plaintiff in presenting a suit for any right in the

property. Once, father executes a sale deed, and confers title on the defendant, the title vests with the defendant. Unless the said registered document is cancelled in a manner known to law, the title of the property chooses to rest with the defendant.

11. Since the plaintiff has no title to the property and is not a party to the sale deed, the said sale is not binding on him. The declaration that a particular sale deed is not binding on the plaintiff would become necessary only when a person who has interest in the property, but is not a signatory to the document, and some other person purports to convey the said title. The plaintiff would in no way be bound by the document, though registered, when he is not a party to the said instrument. In such an event, he can seek declaration. If the plaintiff has no right or interest in the property, the question of granting declaration that the said alienation is not binding on him, would not arise."

28. Perusal of aforesaid judgments would clearly indicate that if the plaintiff raises a plea that certain documents vitiated by fraud or other provisions mentioned in the Indian Contract Act and such documents having not been cancelled by the parties by mutual consent, then the remedy available for the aggrieved party is to challenge those documents before the civil court under Section 31 of Specific Relief Act, 1963. In the instant case, perusal of the prayer in the plaint would clearly substantiate the fact that the plaintiff has not sought for cancellation of settlement deeds and in this regard, the arguments advanced by the learned Senior Counsel for the respondent is to be accepted.

29. It is to be noted that the main contention of the learned counsel appearing for the appellant that Salvador Lobo was deaf and was an illiterate person and defendants 21 and 23 illegally got the documents signed against the will of Salvador Lobo. In this regard, I have carefully noticed the recital in the settlement deeds. It is useful to extract the reason assigned by Salvador Lobo for execution of the settlement deeds, which are as follows:

(i) Recital in the settlement deed dated 29th December, 1966 (Ex.D26).

"a. The Deed says that, since D-21 is looking after Selvadoor Lobo at his old age with a view to make provision for his future they without paying any consideration, the deed was executed out of love and affection.

b. The total area of 7-acres 3-cents of lands were settled in favour of D-21 as below:-

RS No.	Kind of Land	Extent
79-1	Garden	0-15 cents
79-3	Nanja	1-48 cents
79-5	Nanja	1-14 cents
231-2B	Nanja	2-16 cents
307-1	Punja	0-44 cents
308-2	Bagayath	0-58 cents
78-3	Nanja	0-08 cents
78-1	Nanja	2-00 cents

Attesting witnesses:
1. Alex Norona S/o Joseph Norona

2. Noroule Francis Norona, S/o Joseph Norona c. Age of the Settlor is shown as 87 years d. None of the attesting witnesses are examined to prove this settlement deed. Atleast one attesting witness should be examined to prove this document. Whether it is treated as a will or a Gift Deed or S ASettlement Deed without examination of one attesting witness, these documents execution was not established."

(ii) Recitals in the settlement deed dated 29th May, 1968 (Ex.D27) reads thus:

"a. Settlement Deed says that, D-21 is a retired Clerk and D23 is a Teacher in High School. Settlement Deed is executed to help future life of D21 and D23. No consideration is shown in the settlement deed. Not even a love and affection is stated. So, this document is void being one without consideration under Section 25 of the Indian Contract Act.

b. The document further states that, after the death of Settlor, the properties should be taken over by the D21 and D23 and Patta (Khatha) shall be transferred in their favour. This document is in the nature of Will.

Attesting witnesses are:

1. D R Lobo (DW-2)

2. R A Uriga c. The lands settled situated at Kankanady village, Mangalore City described below.

RS.No.	TS No.	Kind of Land	Extent
12-1A2	733-B	Bagayath	2-46 cents

The lands situated at Attavara of Mangalore City.

RS.No.	TS No.	Kind of Land	Extent
933-2B	555-2B	Bagayath	50 cents"

(iii) The recitals in the settlement deed dated 14th November, 1968 (Ex.D28) reads as under:

"a. Settlement Deed says that, Settless are entirely depending on the Settlor for their life and that D-21 is jobless. To help both of them for their future life, property is settled in their favour for helping them little bit. During the life of the Settlor, settlees shall pay Rs.44/- per year and obtained a receipt.

b. The lands settled situated at Kankanady, Mangalore Municipality:-

RS.No./TS No.	Kind of Land	Extent
12-3	Punja	5 cents
12-2	Punja	1 ½ cents

Attesting witnesses are:

a. Kanthappa
b. Mahalinga S/o Subbaraya

Note: None of the attesting witnesses are examined to prove this document. DW-3 S/o Kanthappa so examined to identify the signature of Kanthappa. The Trial Court has disbelieved DW-3 holding that, DW-3 has not looked into the signature of Kanthappa in other documents. Under section 69 of Indian Evidence Act, provides that when attesting witnesses have died two things required to be proved -(a) that signature of the executants to be proved and (b) at least signature of one attesting witnesses to be proved as that of the attesting witnesses.

c. Though both the attesting witnesses have died. Ex.D20 is not proved as required under Section 69 of the Evidence Act."

(iv) The recitals in the settlement deed dated 29th December, 1968 (Ex.D29) reads as under:

"a. This Settlement Deed was executed in favour of D-

21. it is stated that, D-21 is not in good health for the future life of the settlee and to help him little bit, settlement Deed was executed. Till the life time of the Settlor, he has kept right over the property with himself. After the death of Settlor, rights will go to the Settlees.

Note: This document is in the nature of a Will and all the circumstances relating to execution, removal of suspicious circumstances should be proved.

Attesting Witnesses:

1. D R Lobo-DW2

2. Mahalinga S/o Subbaraya Properties settled:

1. Lands situated at Kankanady village, Mangaluru Municipality Sy.No. kind of land Area (Acre-cents) 12-2 Bagaith 1-59 12-1 Bagaith 0-74 Total 2-33

2. Lands situated at Attavar Village of Mangaluru City Sy.No. TS No. Kind of land Area (Acre-cents) 105/1 67/1 Bagaith 0-9"

(v) The recital in the settlement deed dated 17th September, 1969 (Ex.D30) reads as under:

" a. Deed says settlement deed was executed in favour of defendant No.21 and 23.

b. The reasons for executing the Settlement Deed is that both of them (D21 and D23) are dependants on the settler and to help little bit for the future life of D21 and D23.

c. Patta to be changed after the death of settler to the name of Settlees d. The Settlement Deed do not discloses any consideration.

e. Age of the Selvadoor Lobo is shown as 99 years f. Stamp paper was purchased by Dulcine Lobo(D23).

g. Attesting witnesses:

1. A L Quadron, S/o J S Quadron
2. V F Sequiera S/o P B Sequiera

h. Properties settled at Kankanady, Mangaluru Municipality:-

RS No.	Kind of land	Extent
12-2	Punja	2 ½ Cents
12-3	Punja	3 cents

Note:- This document is in the nature of Will. Patta/Khatha is to be transferred to the name of Settlee after the death of Settlor. Rights in the properties does not pass to settlee immediately bu after the death of the settler. None of the attesting witnesses are examined to prove Ex.D30. No attesting witnesses are examined to prove this deed."

30. Perusal of the recitals in the aforementioned five settlement deeds would make it clear that the said Salvador Lobo was conscious about the execution of settlement deeds in favour of defendants 21 and 23. In the settlement deed dated 25th September, 1968 (Ex.D27), Salvador Lobo had taken care of the welfare of the Sylvester Lobo. In the settlement deed dated 17th September, 1969 (Ex.D30), Salvador Lobo stated that the defendants 21 and 23 have to change the revenue records

only after his demise. This would clearly establish the fact that Salvador Lobo was conscious about the welfare of his crippled son-Sylvester Lobo and his own maintenance. In order to ascertain whether the contents of the settlement deed were known to Salvador Lobo or not, I have carefully noticed that Salvador Lobo had struck-off certain paragraphs in the General Power of Attorney (Ex.D31) dated 17th September, 1969. The struck off portion reads thus:

> "7. To execute on my behalf all contracts, transfers, assignments, deeds and instruments whatsoever.
>
> 8. To sell, exchange, surrender, lease or dispose of any of my properties and to transfer, mortgage or otherwise alienate any of my properties.
>
> 9. To secure suitable buyers for my properties and sell them either in a whole lot or by portions to such buyers for such which my said attorney thinks fit and proper.
>
> 10. To manage my properties and to receive consideration of the mortgage deeds or sale deeds of my properties and to sign and execute such instruments and present them for registration before the concerned Sub- Registrar admit execution thereof and to do all other necessary acts deeds and things in the connection.
>
> 12. To improve and expand my properties and for such purpose to take loans, advance etc., from any person or bodies and to execute such documents for the aforesaid purpose."

31. Looking into these aspects, it may be inferred that, striking off of certain clauses that provided for alienation of the properties, was withdrawn by Salvador Lobo. The said act would also substantiate the fact that Salvador Lobo was conscious about making documents and was not incapacitated under Sections 11 and 12 of the Indian Contract Act, 1872 and therefore, the contention raised by the learned counsel appearing for the appellant that Salvador Lobo, being aged, was incapable of taking independent decision regarding properties, cannot be accepted.

32. Insofar as the plea raised by the learned counsel appearing for the appellant regarding "fraud", as contemplated under Order VI Rule 4 of Code of Civil Procedure is concerned, I have carefully noticed the averments made in the plaint. It is well-established principle of law that when a plea of "fraud" is raised by the party to the suit, pleadings and proof for the same. have to be clear, consistent and constant and should not create any suspicion in the mind of the Court. In this regard, it is apt to consider the law declared by the Hon'ble Apex Court in the case of M/S. GRASIM INDUSTRIES LIMITED AND ANOTHER (supra), wherein the observation made at paragraph 6 read as under:

> "6. In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being

careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the respondent while admitting that the document Ex.D-8 bears his signatures that it was signed under some mistake. We cannot agree with the view of the High Court on this question. On this ground alone, we allow this appeal, set aside the impugned judgment of the High Court and remand the matter to the High Court for expeditious disposal in accordance with law."

33. In the case of MADEGOWDA (supra), this Court at paragraphs 8 and 9 of the judgment, has observed thus:

"8. It is difficult to accept these contentions. Under Order VI Rule 2 and 4 CPC it is for the plaintiff to aver in detail the circumstances of the commission of fraud and the manner in which misrepresentation was made and the circumstances in detail which would constitute the act of undue influence. But, as already summarised pleadings of the plaintiff were totally wanting in such particulars. Therefore, at no point of time was there any need for the defendant to discharge any burden in regard to any presumption that would arise under Section 16 of the Indian Contract Act. The law in this behalf is well- settled. It is sufficient to refer to the latest decision of the Supreme Court in the case of Asfar Shaikh V S Soleman Bibi (1). In that case, Sarkaria J, speaking for the Court has stated as follows:

"While it is true that 'undue influence', 'fraud', 'misrepresentation', overlap in some cases, they are in law distinct categories, and are in view of Order 6, Rule 4 read with Order 6, Rule 2 of the Code of Civil Procedure, required to be separately pleaded with specificity, particularity and precision. A general allegation in the plaint that the plaintiff was a simple old man of 90 who had reposed great confidence in the defendant was much too insufficient to amount to an averment of undue influence of which the High Court could take notice particularly when no issue was claimed an no contention was raised on that point at any stage in the trial Court, or in the first round, even before the first appellate Court."

9. From the above, it is clear that in the absence of pleadings as required under law, the burden was entirely on the plaintiff to prove his case. The only way the learned counsel for the plaintiff-appellant may urge this Court to take a different view is if he can bring the case within the ambit of Section 16 of the Indian Contract Act. It is clear from Section 16(2) of the Contract Act that in certain circumstances, undue influence can be presumed either on account of the authority the defendant may reasonable exercise on the plaintiff or on account of fiduciary relationship from which it can be inferred that the defendant had gained advantage of the plaintiff on that account. The learned Counsel has pointed out the relationship between the parties. But, from such relationship as being a grand-uncle, it cannot be inferred that the 1st defendant at the relevant point of time exercised any authority over the plaintiff. On the other hand, it was in evidence before the trial Court that the plaintiff, after his mother's death, had lived in different places for nearly a period

of five years including places of his married sisters. It was only thereafter that he came and settled down with the first defendant. If the 1st defendant has no control during the minority of the plaintiff after his mother died, it cannot be reasonably said that he would have any control over the plaintiff or any authority over the plaintiff after he had grown up to be an adult."

34. In the case of K.S. MARIYAPPA (supra), this Court at paragraphs 9 and 14 of the judgment, observed as follows:

> "9. In Paragraph III, the plaintiffs have averred thus:
>
> "The defendants acting in collusion among themselves have neglected the plaintiff."

In Paragraph V they have further averred thus:

> "The defendants 1 to 4 filed a suit in O.S. 28/ 52- 53 on the file of the District Judge, Mysore, against the defendants 5 and 6 for partition and possession which was indeed a collusive suit. The 6th defendant has prejudiced to the rights of the plaintiffs by colluding with the other defendants and this has caused serious injury and irreparable loss to the plaintiffs. In fact, there is deliberate fraud made by the defendants 1 to A, in their suit as they have stated that they are entitled to 5/9th share while they were really entitled to only a half share. Even to this patent fraud the defendants 5 and 6 have not objected and thus fraud and collusion played by them as prima facie clear."

Again in Paragraph VI they have further averred as follows:

> "The first defendant met the plaintiffs on the 15th ultimo and demanded them to co-operate for change of khata of some of the properties mentioned in the schedule. In fact, the 1st defendant posed himself to help the plaintiffs financially in case they should co- operate for change of khata. At that juncture the plaintiffs were set on enquiry about the previous proceedings mentioned supra. The plaintiffs thereupon understood the ulterior motives of the defendants, made enquiries and they were able to know how the defendants have colluded themselves and practised fraud as stated above. So there is no bar of limitation to this suit."

Rule 4 of Order VI of the Code of Civil Procedure requires that in all cases in which the party pleading relies on any fraud particulars (with dates and items if necessary) shall be stated in the pleading. Therefore, it is necessary for the party pleading if it relies upon any fraud and/or collusion to give necessary particulars of fraud practised with date/s. The particulars pleaded must be such as to give the nature of fraud and the manner in which it was practised so as to enable the opposite party to know the case it is required to meet. The aforesaid averments in the plaint regarding fraud and collusion do not contain averment giving particulars of fraud and collusion in the plaint. The averment that the plaintiffs and the defendants in the previous suit colluded and defrauded the plaintiffs in the present suit in the absence of material particulars does not amount to a plea of fraud

and collusion. Thus, in the absence of necessary particulars pleaded by the plaintiffs regarding fraud and collusion, it is not possible to hold that the plaint contains necessary averments as to fraud and collusion. Such a bald and general allegation without material particulars in the light of Rule 4 of Order 6 of the Code of Civil Procedure cannot be held to be sufficient to lead to an issue. Mere general allegation that an act or the deed is vitiated by fraud and collusion is no plea of fraud and collusion. Material particulars such as when and how and who and in what manner and for what purpose the fraud was practised and who colluded with whom and in what manner and with what object or purpose etc., must be averred. Therefore we are of the view that the plaint does not contain necessary averments of fraud and collusion. (See: SUBHASHCHANDRA v. GANGA PRASAD , AFSARA v.

SALEMAN and VARAVASYA SANSKRIT VISHWAVIDYALAYA v. RAJKISHORE.)

14. In view of the fact that there were two unmarried daughters, the allotment of larger share to defendants 1 to 4 might be due to the fact that there were two unmarried daughters. As such, at this distance of time, in the absence of clear pleadings and proof as to fraud and collusion, it is not possible to hold that the allotment of larger share to defendants 1 to 4 herein in the previous suit was as a result of fraud and collusion. For the reasons stated above, points 1 to 3 are answered in the negative."

35. Applying the principles laid down in the aforementioned cases to the facts on hand, the plaintiff has not pleaded in unequivocal terms about the "fraud or misrepresentation" by the defendants 21 and 23. In this regard, observation made at paragraph 7 of the judgment rendered by the Hon'ble Apex Court in the case of M/S. CHATURBHAI M. PATEL AND COMPANY (supra) would be relevant. The same is extracted below:

> "7. The High Court has carefully considered the various circumstances relied upon by the appellant and has held that they are not at all conclusive to prove the case of fraud. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in A. L. N. Narayanan Chettyar v. Official Assignee, High Court Rangoon. However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stronger than fiction. In these circumstances, therefore, after going through the judgment of the High Court we are satisfied that the appellant has not been able to make out a case of fraud as found by the High Court. As such the High Court was fully justified in negativing the plea of fraud and in decreeing the suit of the plaintiff."

36. Considering the law enunciated by the Hon'ble Apex Court in the aforementioned cases, I am of the considered opinion that the plaintiff failed to prove the element of "fraud" or "misrepresentation" at the instance of defendants 21 and 23 while execution of settlement deeds by Salvador Lobo.

37. Nextly, I have considered the submission made by the learned counsel appearing for the appellant that the Probate Court in Original Suit No.24 of 1977 has held that the said Salvador Lobo was incapacitated to make a Will. Section 11 and 12 of the Indian Contract Act read as follows:

> "Section 11. Who are Competent to contract:- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

Section 12. What is a sound mind for the purposes of contracting:- A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind. Illustrations (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals. (b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts."

38. Elaborate arguments were also advanced by learned Senior Counsel, drawing the attention of the Court that Section 59 of the Indian Succession Act would be aptly applicable to the facts on hand. In this regard, it is relevant to quote paragraph 19 of the judgment rendered by the High Court of Bombay in the case of PRABHAKAR SATPUTE (supra), which reads as under:

> "19. The cross-examination is entirely ineffective. As to the second issue of testamentary capacity, other than a suggestion that the deceased suffered from blood pressure, hypertension diabetes, there is nothing to indicate the lack of testamentary capacity. These ailments in themselves do not point to any one of testamentary capacity. They are not such as would render a Testator incapable of understanding that which he was doing when he made his Will. The law does not expect a Testator to be in complete and perfect physical health and wholly ailment free when making a disposition. The explanations to Section 59 make it clear that certain impediments such as hearing, speech or sight impediments do not constitute testamentary incapacity. Under Explanation 3 even persons who are, to use the unfortunate expression of the statute, "insane" -- afflicted by any one or more of the well-known medical mental health disorders that are known to medical science today -- he or she may still validly make a Will during an interval of lucidity. Consequently, it is never enough merely to say, for instance, that a testator suffered from this or that ailment. It is unreasonable to expect a testator to be in a most complete and perfect state of health. Nobody ever is. That is most emphatically not mandate of the law, as the Privy Council itself noted in Judah v Isolyne Shrojbashini Bose & Anr, a view followed by this Court in Dr. Feroze Homi Duggan v Jean Duggan, and by the Delhi High Court in K.L. Malhotra v Sudershan Kumari & Anr.4 The law does not require every testator to be in peak physical and mental condition, or to be possessed of

'sound and disposing mind and memory' in the highest degree. Were it so, few would be able to make testaments at all. It is not even necessary for a testator to be in the same state as once he used to be, for even this would disable most in the inevitable decline of life. Enfeeblement with age and a degree of debilitation is to be expected. So long as the testator has enough to discern and discreetly to judge the matters that enter into a rational, fair and just testament, that is surely enough. So long as the testator has enough to discern and discreetly to judge the matters that enter into a rational, fair and just testament, that is surely enough. A.E.G. Carapiet v A.Y. Derderian, a decision frequently (and usually wrongly) cited on the issue of the need of 'putting one's case' also deals with this issue:

16-19. The question of a sound mind is a dominant question in a court of probate. Numerous decisions of high authorities have laid down from time to time tests by which to judge a sound disposing mind. It is not an absurd test. Nor is it the test of a perfectly healthy and perfect mind. Indeed most of the wills are not made by persons young and vigorous and glowing in health. The test of a sound disposing mind is in law a workable test. It means in plain language an appreciation of the fact that the man is making a will, an appreciation of the contents of that will and an appreciation of the nature of disposition that he is making having regard to the claims of affection and family relationship and claims of the society or community to which he belongs. It is not a hypothetical nor an impracticable test. It is not the test of a psychologist or a psycho-analyst or a psychiatrist who in the modern age is prone to consider all human mind to be inherently unsound by nature and abnormal. Nor is it the too Scientific test which would satisfy the highest technical medical examinations. Some idea of what this sound disposing mind in testamentary law is, can be gathered from Section 59 of the Succession Act and the statutory Explanations thereunder. In Explanation 2 of Section 59 of the Succession Act it is expressly stated that persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it. Similarly under Explanation 4 of Section 59 of the Succession Act no person can make a will while he is in such a state of mind whether arising from intoxication or from illness or from any other cause that he does not know what he is doing. The illustrations make it clear that a mere perception of what is going on in the immediate neighbourhood and an ability to answer familiar questions but without competent understanding as to the nature of his property or the persons who are kindred to him or in whose favour it would be proper that he should make his Will, will not be enough proof of a sound mind within the meaning of Section 59 of the Succession Act. These Statutory Explanations are not intended to be exhaustive but they give practical illustrations to explain a sound disposing mind."

39. In this regard, the learned Senior Counsel further contended that the judgment of the Probate Court was affirmed by this Court in MFA No.901 of 1980. It is well-settled principle that the scope of matter arising from probate proceedings is limited. The Hon'ble Apex Court in the case of PASUPATI NATH DAS (supra) at paragraph 14 of the judgment has observed thus:

"14. We must, at the outset, say that the scope of the matter arising from Probate proceedings is very limited. The scope of the matter is primarily and principally regarding the genuineness of the execution of the testament or Will. This part has been succinctly dealt with in a decision rendered by this Court in Krishna Kumar Birla v. Rajendra Singh Lodha and Others. Paragraphs 57, 66 and 67 of the said decision spell out the scope of the enquiry in Probate proceedings as under:

"57. The 1925 Act in this case has nothing to do with the law of inheritance or succession which is otherwise governed by statutory laws or the custom, as the case may be. It makes detailed provisions as to how and in what manner an application for grant of probate is to be filed, considered and granted or refused. Rights and obligations of the parties as also the executors and administrators appointed by the court are laid down therein. Removal of the existing executors and administrators and appointment of subsequent executors are within the exclusive domain of the court. The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the will. A question of title arising under the Act cannot be gone into the (sic probate) proceedings. Construction of a will relating to the right, title and interest of any other person is beyond the domain of the Probate Court.

66. We may, however, at the outset, notice a decision of this Court in Elizabeth Antony v. Michel Charles John Chown Lengera (1990) 3 SCC 333 which is binding on us. Therein, the testatrix viz. one Mary Aline Browne, was the wife of one Herbet Evander Browne, the eldest son of John Browne. Mary died on 28-3-1972. She had executed a will on 12-3-1962. An application for grant of a letter of administration with a copy of the will annexed was filed by Michel. Petitioner Elizabeth Antony and her husband Zoe Enid Browne filed caveats on the plea that the said will was a forged document. The petitioner therein also claimed that her daughter Browne had executed a will on 23-6-1975 and she had executed a deed of gift in favour of the petitioner. She also claimed herself to be a trustee of John Browne Trust. The Probate Court held that they had no caveatable interest. Caveatable interest, therefore, was claimed as an executor and legatee of the will executed by Zoe Enid Browne as also a deed of gift in respect of one item of the estate executed in their favour. Caveatable interest was also claimed on the premise that the petitioner was appointed a trustee of John Browne Trust. This Court noticed a large number of High Court judgments. It was, however, opined that the petitioner therein failed to establish a caveatable interest stating:

"6. ... We have perused the entire order of the trial court in the context. Admittedly neither the original nor a copy of the will said to have been executed by Zoe Enid Browne, was filed. Now coming to the trust, it is in the evidence of PW 1 that John Browne Trust has come to an end in March 1972 and the same was not in existence. The trial court has considered both the documentary and oral evidence in this regard and has rightly held that the petitioner has no existing benefit from the trust. Likewise the registered gift deed or a copy of it has not been filed. Before the learned

> Single Judge of the High Court also same contentions were put forward. The learned Judge observed that from the objections filed by the caveator she desires the court in the probate proceedings to uphold her title on the strength of a gift deed and the trust deed. It is observed:
>
> 'Equally, the petitioner has not placed before the court the will dated 23-6-1975 stated to have been executed by Zoe Enid Browne to establish that under the will dated 12- 3-1962 stated to have been executed by Mary Aline Browne some interest given to the petitioner under the will dated 23-6-1975 of Zoe Enid Browne, is liable to be in any manner affected or otherwise displaced, by the grant of letters of administration in respect of the will dated 12-3-1962 stated to have been executed by Mary Aline Browne.' Accordingly, the learned Judge held that the petitioner has not established that she has a caveatable interest justifying her opposition to the probate proceedings for grant of letters of administration. In this state of affairs, we are unable to agree with the learned counsel that the petitioner has caveatable interest."

This Court, thus, categorically opined that while granting a probate, the court would not decide any dispute with regard to title. A separate suit would be maintainable therefor. If probate is granted, they have a remedy in terms of Section 263 of the 1925 Act also.

> "67. In the recent judgment of Kanwarjit Singh Dhillon v. Hardyal Singh Dhillon (2007) 11 SCC 357 this Court inter alia relying upon Chiranjilal Shrilal Goenka v. Jasjit Singh (1993) 2 SCC 507 and upon referring to a catena of decisions of the High Court and this Court, held that the Probate Court does not decide any question of title or of the existence of the property itself.""

40. In the aforementioned judgment, it was held that the scope of interference by the Probate Court is limited insofar as genuineness of the Will and not with respect to any other requirement to prove the Will and therefore, learned Senior Counsel appearing for the respondent rightly submitted that the judgment rendered in Original Suit No.24 of 1977 is not applicable to the present proceedings. That apart relief sought for in both the suits are distinct. In this regard, the provisions contained under Sections 41 and 43 of the Indian Evidence Act, is fully applicable and therefore, I do not find any merit in the contentions raised by the learned counsel appearing for the appellant with regard to applicability of judgment in Original Suit No.24 of 1977 (Ex.P1) to the present proceedings.

41. Sri. Balakrishna Shastry has vehemently argued that the defendants 21 and 23 have not proved the settlement deeds and they have not examined the attesting witnesses to the alleged settlement deeds and therefore, same is not applicable to the case on hand. In this regard, I have carefully considered the finding recorded by both the Courts below and taking into consideration the fact that the plaintiff has not challenged the settlement deeds as well as the remedy for challenging the said settlement deeds was extinguished by limitation in view of inordinate delay in challenging those documents, the submission made by the learned counsel appearing for the appellant cannot be accepted. It is also notable that the testimony of DW1 would establish the fact that DW1 had joint account with her father-in- law (Salvador Lobo) and also it is not in dispute that DW1 got

transferred the shares of her father-in-law in the name of her children and these aspects were known to the plaintiff and therefore, these facts make it clear that the execution of settlement by Salvador Lobo cannot be doubted. Further, in order to prove that these settlement deeds have been fraudulently executed by Salvador Lobo in favour of defendants 21 and 23, the plaintiff has not examined any independent witness to prove the said fact and in view of the law declared by the Hon'ble Apex Court referred to above, I am of the view that the finding recorded by both the Courts below accepting the settlement deeds as valid, is in accordance with law and no interference is called for in this appeal.

42. Yet another aspect to confirm the judgment and decree passed by the First Appellate Court is with regard to the fact that the settlement deeds-Exhibits D26 to D30 are the registered documents. If at all, defendants 21 and 23 had forced Salvador Lobo to execute those documents inter alia the documents have been executed fraudulently or through misrepresentation by defendants 21 and 23, there was no impediment for Salvador Lobo himself to challenge the same stating that his signature has been obtained fraudulently. It is also to be noted that the plaintiff ought to have challenged the same immediately, after the execution of the settlement deeds. In this regard, law declared by the Hon'ble Apex Court in the case of SUHRID SINGH (supra) is applicable to the case on hand, wherein the Hon'ble Apex Court, at paragraph 7 of the judgment, has observed as follows:

> "7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to `A' and `B' -- two brothers. `A' executes a sale deed in favour of `C'. Subsequently `A' wants to avoid the sale. `A' has to sue for cancellation of the deed. On the other hand, if `B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by `A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If `A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If `B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if `B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad- valorem court fee as provided under Section 7(iv)(c) of the Act."

43. It is also relevant to mention that the purpose of registration is to put public to notice regarding the particular document and the registration of the document makes it a public document and thereby it indicates the encumbrance created on the property. Registration of the document is a constructive notice to the public. In this regard, it is useful to refer the law declared by the Hon'ble Apex Court in the case of JANARDHANAM PRASAD v. RAMDAS reported in (2007)15 SCC 174,

wherein at paragraph 14 the Hon'ble Apex Court observed thus:

> "14. The 1st Defendant was a friend of the 2nd Defendant. Admittedly, the usual stipulations were knowingly not made in the agreement of sale dated 11.4.1983. The 1st Defendant may or may not be aware about the agreement entered by and between the respondent herein. But he cannot raise a plea of absence of notice of the deed of sale dated 4.9.1985, which was a registered document. Possession of the suit land by the appellant also stands admitted. Registration of a document as well as possession would constitute notice, as is evident from Section 3 of the Transfer of Property Act, 1882, which is in the following terms :
>
> "...."a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.
>
> Explanation I. Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub- section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:
>
> Provided that (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder, (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II. Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III. A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material :

> Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

44. It is also well-established principle of law that any amount of evidence without pleading, has no value and therefore, in the absence of consistent plea of fraud/misrepresentation/undue influence in the plaint, I do not find any acceptable ground to interfere with well-founded judgment and decree passed by the First Appellate Court.

45. The Hon'ble Apex Court in the case of PREM SINGH (supra) in paragraphs 11 to 20 of the judgment, has held as follows:

> "11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.
>
> 12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.
>
> 13. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.
>
> 14. A suit for cancellation of instrument is based on the provisions of Section 31 of the Specific Relief Act, which reads as under:
>
> "31. When cancellation may be ordered.--(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.
>
> (2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

15. Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable document. It provides for a discretionary relief.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non-est in the eye of law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary Article would be.

18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. [See Unni & Anr. vs. Kunchi Amma & Ors. (1891) ILR XIV Mad. 26) and Sheo Shankar Gir vs. Ram Shewak Chowdhri & Ors. [(1897) ILR XXIV Cal. 77].

19. It is not in dispute that by reason of Article 59 of the Limitation Act, the scope has been enlarged from old Article 91 of 1908 Act. By reason of Article 59, the provisions contained in Articles 91 and 114 of 1908 Act had been combined.

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void."

46. It is also useful to refer to observation made at paragraph 27 of the said judgment. The same reads as under:

> "27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption."

47. Perusal of the document would indicate that the last settlement deed was executed on 17th September, 1969 (Ex.D30) and the suit is filed in the year 1989. In this regard, it is relevant to extract the Article 59 of the Limitation Act. The same reads as under:

> Article 59 Description of suit Period of Time from which Limitation period begins to run
>
> 59. To cancel or set aside Three years When the facts entitling an instrument or decree the plaintiff to have the or for the rescission of a instrument or decree contract. cancelled or set aside or The contract rescinded first become known to him.

48. Though there is no issue framed with regard to application of Limitation Act to the case on hand, however, the said fact is a mixed question of fact and law and in this regard, the arguments advanced by the learned counsel for the appellant cannot be accepted.

49. In order to ascertain the true character of settlement deeds-Exhibits D26 to D30, I have carefully considered the law declared by this Court in the case of DEVAKI (supra), wherein this Court, after evaluating the entire gamut of law relating to settlement deed, at paragraph 10 of the judgment has held as follows:

> "10. The crucial question is the interpretation of the deed-Exhibit P. 1. That is to say, the question I have to examine is whether the deed-Exhibit P. 1 is a deed of settlement or a deed of gift. In interpreting a document, the intention of the parties has to be ascertained, if possible from the expressions used therein. More often, than not, this causes no difficulty, but if difficulty is felt owing to inarticulate drafting or inadvertence or other causes, the intention may be gathered reading the entire document and if so necessary, from the other attending circumstances also. If through such a process, the intention of the parties can be culled out consistently with the rule of law, the Courts are required to take that course. Keeping these principles in mind, I shall proceed to consider the facts of the instant case in order to find out whether the document in question namely, Exhibit P. 1 is a deed of settlement or a deed of gift as sought to be contended on behalf of the appellants herein. It has to be stated that the recitals in the document as a whole and the intention of the executant and acknowledgement thereof, by the parties are conclusive. The Court has to find out whether the document in question confers any interest in the property in praesenti so as to take effect intra vivos and whether an irrevocable interest thereby, is created in favour of the recipient or the beneficiary under the document, or whether the executant intended to transfer the interest in the property only on the demise of the settlor. Those could be gathered from the recitals in the document read as a whole. The contents or the recitals of the deed-Exhibit P. 1 as has been extracted by the Trial Court in its impugned judgment would show that the deceased Pudu settled the properties in favour of the plaintiff and her mother (the daughter and the wife of the deceased Pudu). It was to take effect on the same day. The deceased Pudu created rights thereunder, intending to take effect from that date. A reading of the document- Exhibit P. 1 would give an indication that the deceased Pudu while divesting himself of the title, created a right and interest in praesenti in favour of the plaintiff and her mother. Thus, by this deed-Exhibit P. 1, the deceased testator has settled his property in favour of his wife and daughter during his lifetime. The word 'settlement' has been defined in the Specific Relief Act, under Section 2(b) and it means an instrument (other than a Will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in movable or immovable property is disposed off or is agreed to be disposed off. It has to be stated that underlying the idea of settlement, there is to some extent the notion or conception of trust. Furthermore, the word 'settlement' as it is generally understood really refers to a disposition of successive interest in immovable property and is generally couched in the form of a trust and it is such a settlement, which is in the nature of disposition of property, movable and immovable either in consideration of marriage or for want of some of the objects specified under Section 2(24) of the Indian Stamp Act or Section 2(1)(q) of the Karnataka Stamp Act, 1957. The definition

of the word 'settlement' is the same in both the enactments. The word 'settlement' as defined under Section 2(24) of the Indian Stamp Act and Section 2(1)(q) of the Karnataka Stamp Act is a non- testamentary disposition, in writing, of movable or immovable properties made in consideration of marriage, for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him or for any religious or charitable purpose and includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms bf any such disposition. When the document is executed for any of the purposes mentioned in the above sections of the Indian Stamp Act or the Karnataka Stamp Act, then it could be called a 'settlement deed'. There is no doubt at all that in construing a document, one has to consider the document as a whole and to decide whether on a reading of the entire document, it amounts to a deed of settlement or a deed of gift and that the nomenclature given to the document cannot be a conclusive factor. It is equally well-settled that where a statute defines a term, it is that definition which must be applied for construing that term for the purposes of that statute. That is to say, where a particular term is defined by a particular statute, the Court has always recognised that it is highly dangerous to seek guidance from the definition given to that term in other statutes for limiting or enlarging the connotation of that term. It is with these principles in mind, one has to consider the relevant provisions of the above said two Acts which defines the term 'settlement'. Section 2(10) of the Indian Stamp Act defines the term 'conveyance' and it prescribes that the 'conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. The term 'settlement' is defined in Sub-section (24) of Section 2 of the Indian Stamp Act, which means any non-testamentary disposition, in writing, of movable or immovable property made in consideration of marriage, for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him or for any religious or charitable purpose and includes an agreement in writing to make such a disposition and, where, any such disposition has been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition. Section 3 deals with instruments chargeable with stamp duty. Schedule I provide for proper stamp duty to be charged on the various documents referred to therein. Item 23 of Schedule I provides for the rate of stamp duty payable on a conveyance as defined in Section 2(10), not being a transfer charged or exempted under Item No. 62. Item No. 33 of Schedule I provides that stamp duty has to be paid on an instrument of gift, not being a settlement (Item No. 58) as on conveyance. It is to be seen therefore, that a clear distinction has been maintained between the two documents namely, the deed of gift and the deed of settlement under the Stamp Act and they are chargeable with different rate of duties. It is to be seen however, that both the documents are recognised under law as mode of conveyance. I therefore, do not accept the

contention of the learned Counsel for the appellants that a deed of settlement as a mode of transfer of property is unknown to law. The very fact that there is a clear distinction between the two deeds and the very fact that the term 'settlement' has been defined both under the Stamp Act as well as under the Specific Relief Act, it is very clear that there is a clear distinction between the deed of settlement and a deed of gift and both the documents are recognised as the mode of conveyance of the property. No doubt, it was sought to be contended by the learned Counsel for the appellants that it is only for the purpose of stamp duty such a distinction has been maintained between the two deeds. But then, when the Stamp Act recognises the settlement deed as one of the conveyance and prescribes a different rate of stamp duty for the said documents, it has to be stated that it is also one of the recognised mode of deed of conveyance. Coming to the present case, it appears to me that a plain reading of the document-Exhibit P. 1 in question makes to clear that what the deceased did under the settlement deed-Exhibit P. 1 was to distribute his properties referred to in that deed to his wife and daughter for the purpose of providing for them who were dependent on him and were also the members of his family. Thus, the document in question namely, Exhibit P. 1 squarely falls within the term Clause (b) of Sub-section (24) of Section 2 of the Indian Stamp Act which Sub-section defines the term 'settlement' under the Indian Stamp Act and the same is the definition of the word 'settlement' under the Karnataka Stamp Act also. A perusal of the document-Exhibit P. 1 shows that the purpose of the same was to distribute or to settle the property of the deceased to his wife and daughter who were dependent on him. When once the document-Exhibit P. 1 falls within the definition of the term 'settlement' under the above said subsection, in my view it is clear that the said document-Exhibit P. 1 is a deed of settlement and not a deed of gift. As I have already stated, the purpose of the said deed-Exhibit P. 1 is to settle the property of the deceased settlor to his wife and daughter who were dependent on him. Having regard to the said nature of the document and having regard to the definition of the term settlement given under the Stamp Act as well as under the Specific Relief Act, I am of the clear view that the document in question amounts to a deed of settlement and not a deed of gift as sought to be contended by the learned Counsel for the appellants. Therefore, taking an overall view of the matter, I find that the document in question is a settlement deed and not a gift deed. Now, it would be useful to refer to a decision of the High Court of Madras in the case of S. Thirupathi Pillai v. Ganthimathi Ammal and Anr., (1966)79 Mad. L.W. 459, wherein, it is held that once the settlement deed is executed, then the settlor has no right to revoke the settlement deed except under certain circumstances and that lurcher he has no legal capacity to execute the sale deed because he has no title to the property. That means, once a deed of settlement is executed in respect of certain property by the settlor, then the settlor will have no right in respect of the said property which has been settled in favour of some other person or persons. In the instant case, it is not in dispute that the deceased Pudu was the owner of the property in question and now, it has been established that the deceased had settled his property under Exhibit P, 1 in favour of his wife and daughter (the plaintiff) and when once the property has been settled in favour of the

said two persons under a settlement deed Exhibit P. 1, the deceased had no right or interest therein, at the time of his death and hence, the defendant acquired no interest in the property of the deceased settlor. No doubt, it was sought to be argued by the learned Counsel for the appellants that the said document-Exhibit P. 1 has not been proved in accordance with law. It has to be stated at the outset, that the settlement deed-Exhibit P. 1 does not require to be attested and it has to be proved in accordance with Section 72 of the Indian Evidence Act. That is to say, the settlement deed-Exhibit P. 1 is not a document required by law to be attested. Section 72 of the Indian Evidence Act prescribes that an attested document not required by law to be attested may be proved as if it was unattested. It is true that the settlement deed-Exhibit P. 1 though not required by law to be attested, has been attested by attestors. But then under Section 72 of the Indian Evidence Act, it is not obligatory on the part of the person propounding the document to examine the attesting witness. The testimony of the attesting witness is not the only evidence by which a settlement deed can be established. It can be done by other kinds of evidence. In the instant case, it is not in dispute that the plaintiff was one of the beneficiary under the said settlement deed- Exhibit P. 1 and she gave evidence before the Trial Court as P.W. 1. She has stated in her chief examination that the plaint schedule property originally belonged to her father, who died about 20 years ago. After the death of their father, herself and her children continued in possession of the suit schedule property. Her mother died about 15 years back. Before the death of her father, he had executed a settlement deed dated 4-10-1968 in favour of herself and her mother in respect of the suit schedule property and that under the settlement deed 1/2 share was given to her and 1/2 share was given to her mother. After the death of her mother, she is entitled for 2/3rd share in the suit schedule property. Further, in the examination in chief, she has stated that the settlement deed executed by her father is at Exhibit P. 1. She has produced the RTC extracts in respect of the suit schedule property which is at Exhibit P. 2. Further in the cross- examination, she has stated that at the time of his death, her father was aged more than 75 years. She has denied the suggestion that her father Pudu had lost his vision and he was incapable of understanding the things. She has however, stated that her father was not in a position to go over to the bazaar, but he was capable of moving about. She has denied the suggestion that her father was in the habit of consuming drinks. She admits that her father was not in a position to read and write. She has further stated that the suit schedule property was a Government land granted to her father with regard to the deed of settlement Exhibit P. 1. It is elicited in the cross- examination of P.W. 1 on behalf of the defendants that Exhibit P. 1 was written by a writer who was staying at the Taluk Office and that in the presence of the document writer, her father had affixed his thumb impression to Exhibit P. 1. Out of the two attesting witnesses, one was by name Veerappa, resident of Kodialbail and the said Veerappa was called by her father. After affixing the thumb impression of her father, Veerappa and other witness signed the document Exhibit P. 1. Her father brought the stamp papers for the purpose of preparing Exhibit P. 1 to the Taluk Office. Exhibit P. 1 was prepared on the very same day when the stamp paper was purchased. Her father has not received any consideration for Exhibit P. 1.

The document Exhibit P. 1 was registered at 2.00 P.M. The document writer presented the document for registration. She has specifically stated that Exhibit P. 1 was not executed at her instance and that her father got it executed on his own. Exhibit P. 1 was handed over to her and to her mother by her father. She has denied the suggestion that her father did not have the right to execute Exhibit P. 1, nor he executed the document. All these answers which are obtained by the defendants in the cross-examination would go to show that the document Exhibit P. 1 was executed by the deceased on his own and not at the instance of any other person. Thus, on a careful perusal of the entire material placed on record, it clearly indicates that the settlement deed-Exhibit P. 1 stands proved from the evidence of P.W. 1. Besides this, the said document Exhibit P. 1 is a registered document. It is no doubt true that the learned Counsel for the appellants sought to contend that the deceased was not in a position to move about and that further, he was an illiterate person and hence, in all probability, he could not have executed the settlement deed-Exhibit P. 1 with the full knowledge of its contents. I am unable to accept this contention of the learned Counsel for the appellants. In fact, the answers elicited in the cross-examination of P.W. 1 by the appellants themselves, would indicate that it is the deceased who got this settlement deed-Exhibit P. 1 prepared and registered at the office of the Sub-Registrar. Merely because, the deceased was not in a position to go to the bazaar etc., it cannot be said that he was not aware of the consequences of his act. That apart, as has been observed by the Trial Court, the defendants did not take any such specific contention in their written statement and it is only at the stage of evidence or trial, they sought to make out a case that the deceased was incapable of executing the said document. But, even in that attempt, they were unsuccessful. Therefore, having given my anxious consideration to the entire matter in issue, I am of the clear view that the learned Trial Judge was right in holding that the settlement deed-Exhibit P. 1 stands proved from the evidence on record. It was further urged on behalf of the appellants that in order to constitute a family settlement, it is necessary that there must be an agreement between the members of the joint family to settle any existing or possible disputes relating to rights in property and to adjust their mutual rights and a document, whereby, one party gives his property without consideration to the other members of the family, cannot be regarded as a deed of settlement, but must be regarded as a deed of gift. But then, it has to be stated that it is open to a person to select the form of document to be entered into or to be executed and to word it appropriately. In the instant case, as I have already stated, the deed-Exhibit P. 1 is a non-testamentary disposition in writing and it relates to the immovable properties of the deceased and the purpose of that deed- Exhibit P. 1 is to settle the property of the deceased settlor to his wife and daughter, who were dependent on him and were also the members of his family. This is very clear from the recitals of the document-Exhibit P. 1. Thus, the document-Exhibit P. 1 squarely falls within the term of Clause (b) of Sub-section (24) of Section 2 of the Indian Stamp Act which sub-section defines the term 'settlement'. A perusal of the document-Exhibit P. 1 shows that the purpose of the same was to settle the property of the deceased to his wife and daughter, who were both dependant on the deceased. When once, the

> document falls within the definition of the term settlement under the said sub-section of the Indian Stamp Act, in my view it is futile to contend that it is not a settlement deed and that it is a gift deed. The facts and circumstances of this case would clearly indicate that the document in question was a deed of settlement and not a deed of gift. Thus, it was construed rightly as a settlement deed, but not as a gift by the Trial Court. Having divested self thereunder, the deceased Pudu had thereafter, no right so as to devolve upon his successors on his death. Under the settlement deed-Exhibit P. 1, the plaintiff acquired 1/2 the right in the property and also l/3rd of the 1/2 share belonging to her mother, as her natural heir along with the other heirs namely, the defendants. Thus, the plaintiff was entitled to 2/3rd share in the property. The Trial Court has rightly decreed the suit of the plaintiff to the extent of 2/3rd share holding the document-Exhibit P. 1, in question to be a settlement deed. Therefore, having given my anxious consideration to the entire matter in issue, I am of the view that the impugned judgment and decree made by the Trial Court warrants no interference in the appeal by this Court. I find no merit in any of the contentions urged on behalf of the appellants. With regard to decisions relied upon by the learned Counsel for the appellants, it has to be stated that there is no quarrel about the principles enunciated therein, but the difficulty is about the application of the said decisions to the facts and circumstances of this case. In my view, the said decisions have no application to the facts and circumstances of this case. In the instant case, the document in question clearly connotes that it is a deed of settlement and the same having been proved in accordance with the provisions contained in Section 72 of the Indian Evidence Act, the plaintiff was bound to succeed. I therefore, find that the appeal filed by the appellants is devoid of merits and it is liable to be dismissed."

50. Though the learned counsel appearing for the appellant placed reliance on the judgment of the Hon'ble Apex Court in the case of RANGANAYAKAMMA (supra) and argued that a void document need not be set aside and also there is no necessity to seek cancellation of the such document and in this regard, as I have already held that the settlement deeds are registered and unless these documents are cancelled by mutual consent by the parties or by the competent Court in a civil suit, it remains to be in operation and in that view of the matter, the said decision of the Hon'ble Apex Court relied upon by the learned counsel for the appellant cannot be made applicable to the facts on hand.

51. The trial Court has dismissed the suit on merits. The First Appellate Court, partly decreed the suit, however, upheld the finding recorded by trial Court with regard to alienation of the property made by Salvador Lobo in favour of defendants 21 and 23 in terms of settlement deeds. In this connection, it is apt to consider the law declared by the Hon'ble Apex Court in the case of HERO VINOTH (MINOR) v. SESHAMMAL reported in (2006)5 SCC 545. It is useful to refer to the observations made at paragraphs 16 to 20, which read as under:

> "16. It is now well settled that an inference of fact from a document is a question of fact. But the legal effect of the terms or a term of a document is a question of law.

Construction of a document involving the application of a principle of law, is a question of law. Therefore, when there is a misconstruction of a document or wrong application of a principle of law while interpreting a document, it is open to interference under Section 100 CPC. If a document creating an easement by grant is construed as an 'easement of necessity' thereby materially affecting the decision in the case, certainly it gives rise to a substantial question of law.

17. After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such a question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the question so formulated. However, the respondent at the time of hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso to the section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such a question was not formulated at the time of admission either by mistake or by inadvertence.

18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that :

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for

> discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

20. The question of law raised will not be considered as a substantial question of law, if it stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court. Where the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. There mere appreciation of facts, the documentary evidence or the meaning of entries and the contents of the documents cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the fact appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India v. Ramkrishna Govind Morey (1976 (1) SCC 803) held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.([See: Kondiba Dogadu Kadam v. Savitribai Sopan Gujar and Others (1999(3) SCC 722)]."

52. Further, in the aforementioned judgment, at paragraph 24, the Hon'ble Apex Court has laid down the principles relating to interference of this Court under section 100 of Code of Civil Procedure. The same read as under:

> "24. The principles relating to Section 100 CPC, relevant for this case, may be summerised thus:-
>
> (i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of

a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

53. The Hon'ble Apex Court in the case of GURNAM SINGH (DEAD) BY LEGAL REPRESENTATIVES AND OTHERS v. LEHNA SINGH (DEAD) BY LEGAL REPRESENTATIVES reported in (2019)7 SCC 641 at paragraph 19 of the judgment, has observed as follows:

"19. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the 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. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law."

54. In the context of the finding recorded by both the Courts below concurrently against the plaintiff with regard to execution of the settlement deeds, it is useful to refer the observation made by this Court in the case of MR. ALEX PINTO v. MRS. FLORINE MORAS AND OTHERS in Regular Second Appeal No.1667 of 2017 decided on 06th August, 2021. The observation at paragraphs 14 and 15 of the judgment, read as under:

> "14. Further, I am also conscious that the power to be exercised by this Court under Section 100 of Code of Civil Procedure is limited and second appeal be accepted only if the Courts below have ignored the material evidence or acted as no evidence and had come to conclusion drawing wrong inferences. In this regard, as rightly pointed out by the learned counsel appearing for the respondent, the law declared by the Hon'ble Supreme Court in the case of C. DODDANARAYANA REDDY (supra) is aptly applicable to the case on hand. It is settled principle of law that even if two inferences are possible in a given set of circumstances, the finding recorded by the lower appellate court is binding on the high Court. In this regard, it is relevant to deduce the observation made by the Hon'ble Supreme Court in the case of C. DODDNARAYANA REDDY (supra) at paragraphs 25 and 26 of the judgment. The same read thus:
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> "25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman- E- Ismail Madris- Un-Niswan, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:
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> "12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.
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> 13. In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC 392), this Court held:
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> "It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its 8 (1999) 6 SCC 343 jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did."

14. In Navaneethammal v. Arjuna Chetty (1996 6 SCC 166), this Court held :

> "Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In

> any case, the High Court is not expected to re- appreciate the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a re- appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

15. And again in Secy., Taliparamba Education Society v. Moothedath Mallisseri Illath M.N. (1997 4 SCC

484), this Court held:

> "The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible."

26. In a judgment reported as Kondiba Dagadu Kadam v. Savitkibai Sopan Gujar & Ors.9, this Court held that from a given set of circumstances if two inferences are possible then the one drawn by the lower appellate court is binding on the High Court. In the said case, the First Appellate Court set aside the judgment of the trial court. It was held that the High Court can interfere if the conclusion drawn by the lower court was erroneous being contrary to mandatory provisions of law applicable or if it is a settled position on the basis of a pronouncement made by the court or based upon inadmissible evidence or arrived at without evidence. This Court held as under:

> "5. It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible.
>
> The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the tower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon in inadmissible evidence or arrived at without evidence."

15. It is also relevant to mention that the Apex Court in the case of NARESH (supra), has held that the High Courts should be slow and cautious while interfering with the concurrent finding on facts by the courts below, in exercise of powers under Section 100 of Code of Civil Procedure. In the instant case, both the courts below, on facts and law, have appreciated and re- appreciated the entire material on record and have arrived at a conclusion, which cannot be interfered with by exercising power under Section 100 of Code of Civil Procedure."

55. It is also apt to refer the law declared by the Hon'ble Apex Court in the case of D.R. RATHNA MURTHY v. RAMAPPA reported in (2011)1 SCC 158, wherein the observation made at paragraph 9 of the judgment reads as under:

> "9. Undoubtedly, the High Court can interfere with the findings of fact even in the Second Appeal, provided the findings recorded by the courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the re-appreciation of evidence in those proceedings, however, such a course is permissible in exceptional circumstances."

56. In view of the principles laid down by the Hon'ble Apex Court and this Court in the judgment mentioned above and in the light of the thorough discussion made above, the arguments advanced by the learned counsel for the appellant on each count cannot be accepted and I am of the considered view that the plaintiff failed to give clear details of the particulars of fraud and misrepresentation in the pleadings as well as in the evidence and therefore, the finding recorded by the trial Court with regard to execution of settlement deeds by Salvador Lobo in favour of defendants 21 and 23 is just and proper and the same has been examined and reappreciated by the First Appellate Court as required under Order XLI Rule 31 of Code of Civil Procedure in detail, and the First Appellate Court has rightly re- appreciated the entire material on record while answering points 1 and 2 in favour of the defendants and therefore, I do not find any perversity or illegality in the judgment and decree passed by both the Courts below.

57. That apart, it is also useful to refer to the judgment of the Hon'ble Supreme Court in the case of LAXMIDEVAMMA AND OTHERS v. RANGANATH AND OTHERS reported in (2015)4 SCC 264, whereunder at paragraphs 13 and 16 of the judgment, it is observed as under:

> "13. Based upon oral and documentary evidences, the courts below have recorded concurrent findings that the plaintiffs are the owners of 'A' schedule property. While so, the High Court ignoring the material evidence, erred in interfering with the concurrent findings of fact. ...
>
> 14 and 15. xxx xxx xxx
>
> 16. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that plaintiffs have established their right in 'A' schedule property. In the light of concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for re-appreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff has earmarked the 'A' schedule property for road and that she could not have full fledged right and on that premise proceeded to hold that declaration to plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 C.P.C., concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are

> shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained."

58. In the case of THULASIDHARA AND ANOTHER v. NARAYANAPPA AND OTHERS reported in (2019) 6 SCC 409, at paragraphs 7.2 and 7.3 of the judgment, the Hon'ble Supreme Court has observed thus:

> "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:
>
> (i) Contrary to the mandatory provisions of the applicable law;

OR

(ii) Contrary to the law as pronounced by the Apex Court;

OR

(iii) Based on inadmissible evidence or no evidence. 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.

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:

> 10. 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.
>
> 11. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered, would have led to an opposite conclusion.
>
> 12. 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.

13. In either of the above situations, a substantial question of law can arise."

59. The Hon'ble Supreme Court in the case of S. SUBRAMANIAN v S RAMASAMY ETC. reported in AIR 2019 SCC 3056, at paragraphs 8.1, 8.2 and 8.5 of the judgment, has observed thus:

"8.1. ...As per catena of decisions of this Court, while deciding the second appeal under Section 100 of the CPC, the High Court is not required to re-appreciate the entire evidence on record and to come to its own conclusion and the High Court cannot set aside the findings of facts recorded by both the Courts below when the findings recorded by both the Courts below were on appreciation of evidence. That is exactly what is done by the High Court in the present case while deciding the second appeals, which is not permissible under the law.

8.2. Even otherwise, it is required to be noted that as per catena of decisions of this Court and even as provided under Section 100 of the CPC, the Second Appeal would be maintainable only on substantial question of law. The Second Appeal does not lie on question of facts or 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. As observed and held by this Court in the case of Kondiba Dagadu Kadam, in a 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....

8.3. and 8.4. xxx xxx xxx 8.5. As observed hereinabove, while passing the impugned Judgment and Order, the High Court has re- appreciated the entire evidence on record as if the High Court was deciding the first appeal. By the impugned Judgment and Order, while exercising the powers under Section 100 of the CPC and on re appreciation of entire evidence on record, the High Court has set aside the findings of facts recorded by both the Courts below on blending of the suit properties with the joint family properties. The same is wholly impermissible. So far as the facts are concerned, the First Appellate Court is the final court and unless and until the findings of facts recorded by the Courts below are found to be manifestly perverse and/or contrary to the evidence on record, the High Court would not be justified in setting aside the findings of facts recorded by the Courts below which were on appreciation of evidence on record. It is not permissible for the High Court to re appreciate the entire evidence on record and come to its own finding when the findings recorded by the Courts below, more particularly, the First Appellate Court are on appreciation of evidence. Therefore, the procedure adopted by the High Court while deciding the Second Appeals, is beyond the scope and ambit of exercise of its powers under Section 100 of Code of Civil Procedure. High Court to re-

appreciate the entire evidence on record and come to its own finding when the findings recorded by the Courts below, more particularly, the First Appellate Court are on appreciation of evidence. Therefore, the procedure adopted by the High Court while deciding the Second Appeals, is beyond the scope and ambit of exercise of its powers under Section 100 of the CPC."

60. It is also settled principle of law that even if two inferences are possible in a given set of circumstances, the finding recorded by the lower appellate court is binding on the high Court. In this connection, it is relevant to deduce the observation made by the Hon'ble Supreme Court in the case of DODDANARAYANA REDDY (DEAD) BY LRs AND OTHERS v. C. JAYARAMA REDDY (DEAD) BY LRs AND OTHERS reported in (2020)4 SCC 649, wherein at paragraphs 25 and 26 of the judgment the Hon'ble Supreme Court has observed thus:

> "25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman-E- Ismail Madris- Un-Niswan, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:
>
> "12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.
>
> 13. In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC
>
> 392), this Court held:
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> "It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did."

14. In Navaneethammal v. Arjuna Chetty (1996 6 SCC

166), this Court held :

> "Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciate the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a re- appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material."

15. Again in Secy., Taliparamba Education Society v. Moothedath Mallisseri Illath M.N. (1997 4 SCC 484), this Court held:

> "The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible."

26. In a judgment reported as Kondiba Dagadu Kadam v. Savitkibai Sopan Gujar & Ors., this Court held that from a given set of circumstances if two inferences are possible then the one drawn by the lower appellate court is binding on the High Court. In the said case, the First Appellate Court set aside the judgment of the trial court. It was held that the High Court can interfere if the conclusion drawn by the lower court was erroneous being contrary to mandatory provisions of law applicable or if it is a settled position on the basis of a pronouncement made by the court or based upon inadmissible evidence or arrived at without evidence. This Court held as under:

> "5. It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the tower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon in inadmissible evidence or arrived at without evidence."

61. In the light of the discussion made above, and in view of the law declared by the Hon'ble Supreme Court as stated above, in my considered view, the impugned judgment and decree passed by the courts below require to be confirmed by dismissing the appeal. Hence, I pass the following:

> ORDER
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> i) Regular Second Appeal is hereby dismissed;
>
> ii) Judgment and decree dated 17th December, 2005 passed in Regular Appeal No.165 of 2004 on the file of District Judge, D.K., Mangaluru, confirming the judgment and decree dated 17th December, 1994 in Original Suit No.1229 of 1989 by the II Additional Munsiff at Mangaluru, D.K. dismissing the suit, is upheld;
>
> iii) Suit in OS No.1229 of 1989 is dismissed to an extent of properties conveyed to defendants 21 and 23 by way of settlement deeds by Salvador Lobo. Parties to the suit are entitled for one-sixth share in respect of properties mentioned in the operative portion of the judgment by the First Appellate Court.

Sd/-

JUDGE lnn/SB