IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
FRIDAY ,THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE
PRESENT
THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

ORIGINAL SIDE APPEAL NO: 2 OF 2024 IN APPLICATION NO. 1043 OF 2011 IN C.S. NO. 7 OF 1958

Appeal Under Clause 15 of Letter Patent Appeal aggrieved by the Order and Final Decree made in Application No. 1043 of 2011 in C.S.No. 7 / 1958 dated 30-12-2011 on the file of the High Court.

Between:

1. Mohammed Shamsuddin Khan, S/o. Late Nawab Lateefuddin Khan, aged about 75 years, Occ. Retired, R/o. H.No. 11-5-416/1. Red Hills, Hyderabad.
2. Ahmedunnisa Begum, D/o. Late Nawab Lateefuddin Khan, aged about 73 years, Occ. Household, R/o. Suite 339, 515, St. Laurent, Bivd, Ottawa KIK 3 5 Ontario, Canada.
3. Mohd. Fakruddin, S/o, Late Lateefuddin Khan, aged about 73 years, R/o. H. No.8-2-603/2/C, Road No 10, Banjara Hills, Hyderabad-500034.
4. Jamalunnisa Begum, D/o. Late Nawab Lateefuddin Khan aged about 61 years, Occ. Household, R/o. H.No.5037, Willow Wood Drive, Missisauga L5R 3 Rs.Ontario, Canada.
5. Mohammedunnisa Begum, D/o. Late Nawab Lateefuddin Khan, aged about 60 years, Occ. Household, R/o. H.No. 11-5-416/1 Red Hills, Hyderabad.

Appellants 1, 2, 4 and 5 are represented by their GPA Holder Appellant No. 3 vide Notarized GPA. **...APPELLANTs/ Defendants No. 4 (b) (c) (f)(g)&(h) in Application No. 1043 of 2011 in C.S.No. 7 /1958**

AND

1. Mr. B. Subba Rao, S/o Late B. Appa Rao, Aged about 80 years R/o H.No. 4-35,Nidamanoor Village, Krishna District, Andhra Pradesh .. Respondent/ Applicant in Application No. 1043/2011 in C.S.No. 7/ 1958
2. Nawab Zahir Yar Jung Bahadur (D. 1), 2(a) Hasmatunnissa Begum 2(b) Fareedunnisa Begum 2(c)Mhod. Fazluddin Khan 2(d) Mohd. Laigruddin Khan 2(e) Mohd. Khutubuddin Khan 2(f) Smt. Kareemunnissa Begum
3. Magharuddin Khan (D.2), 3(a) Nawab Mohd. Moinuddin Khan 3(b) Nawab Mohd. Mohiuddun Khan 3(c) Janab Parwarishunnisa Begum 3(d) Janab Qamarunnisa Begum 3(e) Janab Viquarrunnisa Begum
4. Bashir Jung (D.3), 4(a) Nawab Khan 4(b) Nawab Shoduddin Khan 4(c) Siddiqa Sultana Begum 4(d) Nawab Nizamuddin Khan 4(e) Mohamunnissa Begum 4(f) Iftaquaunnissa Begum

5. Lateefuddin Khan, 5(a) Kamalunnissa Begum 5(d) Habeebunnissa Begum 5(e) Mahboobunnisa Begum 5(i) Noorunnissa Begum 5(j) Mohd. Naseeruddin Khan 5(k) Asia Begum 5(1) Shaheba Begum 5(m) Muneer Begum 5(n) Khamruddin Khan 5(o) Azeezuddin Khan

6. Iftakaruddin Khan, 6(a) Aziunnissa Begum 6(b) Gaounnissa Begum 6(c) Mohd. Khamaruddin Khan 6(d) Shoukatunnisa Begum 6(e) Akbaruddin Khan 6(f) Khairunnissa Begum

7. Ahmeduddiu Khan, 7(a) Janab Afalunnissa Begum 7(b) Janab Vizuarunnissa Begum 7(c) Janab Hameedunnissa Begum 7(d) Janab Khaza Moinuddin Khan 7(e) Nawab Mohd. Khaza Nizamuddin Khan 7(f) Janab Maherunnissa Begum 7(g) Janab Gousufunrsissa Begum 7(h) Janab Hasibunnissa Begum 7(i) Nawab Mohd. Rafuddin Khan 7(j) Nikchatunnisa Begum

8. Afsaruddin Khan, 8(a) Basheer Bhanu 8(b) Janaba Viqar Bhanu 8(c) Nawab Mohd. Jahangiruddin Khan

9. Iqbaluddin Khan

10. Wajihuddin Khan, 10(a) Smt. Fareedunnissa Begum 10(b) Nawab Afzaluddin Khan 10(c) Azemuddin Khan 10(d) Nawab Yousufuddin Khan 10(e) Smt. Viquarunnissa Begum 10(f) Farhatunnissa Begum 10(g) Nawab Asifuddin Khan 10(h) Nawab Moinuddin Khan 10(i) Smt. Parwarishunnissa Begum

11. Bahauddin Khan, 11(a) Janaba Mahboob Begum 11(b) Nawab Mohd. Rukmuddin Khan 11(c) Nawab Mohammed Yousuffuddin Khan 11(d) Janaba Parwarishunnissa Begum

12. Badruddin Khan, 12(a) Janaba Asmathunnissa Begum 12(b) Nawaba Mohd. Naseeruddin Khan 12(c) Janaba Ameerunnissa Begum 12(d) Janaba Qamarunnissa Begum

13. Jalaluddin Khan

14. Zainulaboddin Khan

15. Ghaziuddin Khan

16. Warisuddin Khan

17. Fareedunnissa Begum

18. Laiqunnissa Begum

19. Izzatunnissa Begum, 19(a) Janaba Tahniyat Unnisa Begum 19(b) Janaba Jeenathunnissa Begum 19(c) Smt. Tayneytunnissa Begum

20. Iftakharunnissa Begum

21. Malika Jahan Begum

22. Akhtar Johan Begum

23. Dawoodunnissa Begum

24. Mahaboobunnissa Begum

25. Rashimunnissa Begum

26. Ladli Begum, 26(a) Moisudhowla 26(b) Sultamuddin 26(c) Bozar Ali Baig 26(d) Liakatali Baig 26(e) Kulsum Begum

27. Liaquatunnisa Begum

28. Fareed Jahan Begum

29. Sultana Begum

30. Ghulam Mohammed

31. Mansab Jung

32. Sahik Mohiuddin

33. William Cessar

34. Mohd. Mahboob Khan

35. Shamsuddin Khan

36. Govind Rao

37. Sridhar Rao

38. Jayarao Sambrani

39. N.K. Guruswamy

40. Dr.E.N. Dass

41. Sahebzada Dildar Ali Khan

42. Syed Waliulla Hussaini

43. Alinuddin Hussaini, No details

44. Hyderabad Development Cooperative Society

45. Col, Ali Raza

46. Syed Ali Abbas

47. C.S. Venkat Rao

48. Jagir Administrator, Government of A.P.

49. Secretary, Finance Department, Government of A.P, Hyderabad

50. Hari Pershad

51. A.P. Policemen Coop. Housing Society Ltd, rep. By its President P. Mallesam, Amberpet police Lines, Hyderabad.

52. M/s Rashanna Builders and Developers P. Ltd, rep. By its M.D. Sri Qaiyamuddin Siddiqui, Red Hills, Hyderabad.

53. G. Raji Reddy

54. P. Pradeep Reddy

55. M. Padmanabha Raju

56. A. Srinivasa Raju
57. V. Lakshminagamani
58. V. Vijaya Lakshmi
59. K. Hema
60. A.L.N. Raju
61. P. Ranga Raju
62. P.Joshi Raju
63. P. Bhima Raju
64. S. Vidya Sagar
65. G. Padmanabha Reddy
66. A Gopal Raju
67. A V.K.V. Raju
68. Sanga Reddy
69. M. Vittal Reddy
70. T. Krishna Kumar
71. T. Sandhya
72. Poonam
73. Asita
74. Satoodhan Upadhya
75. Satya
76. Kanhaya
77. Chinta Devi
78. Archana
79. P. Vijaya Bharati
80. P. Narayanamma
81. Nisarunnisa
82. Habeeb Sarwar
83. Rafeeq Feroze
84. Syed Muqtadur
85. Noman Mohiuddin
86. Md. Shajiuddin
87. Nansheer Mecheerunnisa

88. Syed Naifullah Hussain

89. Syed Muhshir

90. A. Roopa

91. D.S. Rao

92. K. Balasubrahmanyam

93. Salesh Amer Singh

94. Mohammed Majeed Khan

95. Rizwan Izbal

96. Jaffer Yamani

97. Shaik Mohammed Ayub

98. A.V. Jai Raj

99. Ali Bin Sayeed

100. Abdul Quadri

101. Md. Ibrahim

102. Syed altaf Hussain

103. Syed Yousuf Hussain

104. Syed Muntaz Ahmed

105. Nikhat Jahan

106. Asid Bin Sayed Brawaz

107. Ali Bin Syed Brawaz

108. Asif Bin Syed Brawaz

109. Syed Bin Sayeed Brawaz

110. Moem Begum

111. Ayut Bin Salam

112. Ghousemohiddin

113. Nama Basheer

114. Siraj Mohiddin

115. Kum. A. Harini

116. Zarina Begum

117. Insane Aali

118. Moiddinzzamam, (D.50 to 117 are added as per court order dt 9-3-2000 in application Nos. 215 and 217 of 2000.

119. My Palace Mutually Aided Coop. Society, Shantinagar, Hyd.

120. P. Narsa Reddy
121. D. Prabhakar Reddy
122. P. Veera Reddy
123. D. Balakrishna Reddy
124. Om Sri Sai Mutually Aided Coop. Housing Society Ltd
125. Pleasant Engineers, rep. By Sripada Deshpande,
126. M/s S Deshpande and Co, rep. By Sripada Deshpande,
127. M/s Anish Constructions, rep. By Smt. Nirmala D.
128. M/s Orient Constructions, rep.by Smt. Afroze Shabana Siddiqui,
129. T. Narsing Rao
130. Smt. Susheela
131. Nawab Saleemuddin Khan
132. Smt. Nigar Sultana
133. T. Ganesh Kumar
134. Smt. Swarnalatha
135. M. Ganesh
136. Kaushik Mutually Aided Coop. Society Ltd., No details
137. Ishrath Begum
138. Mohd Rasheed Khan
139. Abdul Raheem Khan
140. Veshan Singh
141. Shiek Naseem
142. Ameer Khan
143. M/s Bhaskara Estates P. Ltd
144. Ms Swetha Estate P. Ltd.
145. Ms Sai Venkata durga Coop. Housing Society
146. Krishna Prasad
147. M. Shobharani
148. M. Bhagawathi
149. G. Venkat Reddy
150. M/s Build Links
151. Abdul Hakeem

152. Qamarunnisa Begum
153. Pyari Devi
154. Rajesh Singh
155. Vikram Singh
156. Rekha Devi
157. Abdul Rahman Khan
158. Farooz Khan
159. Yousuf Khan
160. Bepasha Begum
161. Ayoob Khan
162. Nadeem Begum
163. Rahene Begum
164. Ameer Khan
165. Rubina Begum
166. Tizwana Begum
167. Noorjahan Begum
168. Shaik Naseem
169. Meerujahid Hussain
170. Zubaida Begum
171. Sadeya Begum
172. Syed Anwaruddin
173. Mukhtar Ahmed Khan
174. S.Q. Huda
175. A. Goparaju,
176. A. Krishna Raju
177. M/s. Kalyani Constructions
178. Mr. Sharad Sanghi
179. M/s. Emsan Construction Pvt. Ltd.
180. Baba Sharfuddin Colony Residents Welfare Society
181. Syed Mahmood Hussain
182. Faisalbin Abood
183. Syed Saifuddin

184. Mohd. Khaja Omer Hussain
185. Mohd. Yousuf
186. Alibin Mohd. Bin Hajeb
187. Babu Rao
188. M.A. Hai
189. Mohd. Maroof Ali
190. Yousuf Bin Abood
191. Mahmood Alikhan
192. Md. Noorjahan Begum
193. Md. Khayyamuddin
194. Sadat Ali Khan
195. Mohd. Naseeruddin
196. Mahmood Ali
197. Imran Khan
198. Syed Sardar Ali Khan
199. Kalyan Constructions Pvt. Ltd.
200. K. Jyothi
201. K. Rajaiah
202. Prameela
203. Urmila
204. K. Sudhershan
205. K. Prabhakar
206. K. Ravi
207. K. Krishna
208. K. Ramu
209. Mohd. Wasif Zaman
210. Zeenath-Uz-Zaman
211. B. Radha
212. Meena Kulkarni
213. T. Kusuma Reddy
214. T. Balaram Reddy
215. Syed Ghouse Khadri

216. Smt. Sajeda Begum
217. Smt. Sajeda Khatoon
218. K. Sujatha
219. Y.V.N. Prabhakar
220. P. Raghunandan
221. Khaiseruddin Khan
222. M/s Pearl Plaza, rep. By its Managing Partner Capt. Kishan,
223. Kastajeevula Sanghatana, rep. By its President T. Krishna
224. Y. Anita
225. Smt. Laiquinnisa Begum
226. Smt. K. Sulochan
227. Nazia Parveen
228. K. Dhanender Reddy
229. V. Srinivas Reddy
230. P.S. Naidu, No details
231. Janaba Yousufunnisa Begum
232. Janaba Tyaba Begum
233. Nawab Mohd. Abdul Barkath Khan
234. Nawab Mohd. Fareeduddin Khan
235. Janaba Younisunnissa Begum
236. Mohd. Basheeruddin ahmed
237. Nawab Mohd. Daveruddin Khan
238. Mohd. Sirajuddin Ahmed
239. Janaba Wajahatunnisa Begum
240. Janaba Qadeerunnisa Begum
241. Ayesha Bano Ahmed
242. Janaba Mahboobunnisa Begum
243. Janaba Atiya Begum
244. Janaba Azmath Ftima
245. Jaraba Zainubunnisa Begum
246. Karishif Unnisa Begum
247. Khader Unnisa Begum

248. Nawab Mohd. Zainul Mutakheen Khan

249. Nawab Mohd. Ruknuddin Khan

250. Nawab Mohd. Ismailuddin Khan

251. Nazab Mohd. Zainul abedin Khan

252. Janaba amen Unnisa Begum

253. Janaba bilques Unnisa Begum

254. Janaba Humera Unnisa Begum

255. Janaba Anees Fathima Begum

256. The District Collector, Ranga Reddy District.

257. The Tahsildar, Balanagar Mandal, R.R.District.

258. M.A. Bari and B. Shyamsunder Rao, Advocate Receiver-cum Commissioners, High Court of A.P., Hyderabad.

259. Sahaszadi Sultan Jahan Begum .. Respondents/ Respondents

260. The District Collector, Medchal Malkajgiri District.

261. The Tahsildar, Kukatpally Mandal, Medchal Malkajgiri District.

262. The District Registrar, Medchal Malkajgiri District.

263. The Sub-Registrar, Kukatpally, Medchal Malkajgiri District.

.. Proposed Respondents

(Respondents 1, 260 to 263 are only necessary parties to this Appeal. Respondents 2 to 259 are not necessary parties).

IA NO: 3 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings arising out of the above said final Order and Decree made in Application No. 1043/2011 in C.S.No. 7/1958, dated 02.12.2011 , in the interest of Justice.

IA NO: 4 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to initiate proceedings under Section 340 CrPC against 1st respondent i.e. Sri. B. Subba Rao and his G.P.A holder Smt. P.Krishna Priya and the Vendors in the Sale Deed for fabricating the sale deed and giving false affidavit and committing perjury, in the interest of justice.

IA NO: 5 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct respondent No. 1 not to create any third party interest in respect of the Petition Schedule (Schedule A, B and C) Properties of the Order and Decree in Application No. 1043/2011 in C.S.No. 7/1958, dated 02.12.2011, to the extent of Ac.7-00 Gts. based on fraudulent unregistered sale deed in the Interest of Justice.

I.A NO: 6 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct respondent No. 1 not to encroach into the land allotted to the appellant, in the Interest of Justice .

IA NO: 7 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents No. 261 and 262 not to entertain any further registration in respect of the Petition Schedule (Schedule A, B and C) Properties, in the Interest of Justice.

Counsel for the Appellants: SRI. T. K. SRIDHAR

Counsel for the Respondents: SRI S. GANESH, ADDL. ADVOCATE GENERAL

The Court delivered the following Judgment :

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

O.S.A. No.2 of 2024 in Application No.1043 of 2011 in C.S. No.7 of 1958

JUDGMENT: *(Per the Hon'ble Sri Justice N.V. Shravan Kumar)*

Mr. T.K. Sreedhar for the appellants.

Mr. S. Ganesh and the learned Additional Advocate General for the respondents.

This Original Side Appeal has been filed under Clause 15 of Letters Patent aggrieved by the order and final decree dated 30.12.2011 passed by the learned Single Judge of this Court in Application No.1043 of 2011 in C.S. No.7 of 1958 on the ground that the same has been obtained by playing fraud on the Court.

2. The appellants herein submits that they are the Defendants No.4(B)(C)(F)(G) & (H) in Application No.1043 of 2011 in C.S. No.7 of 1958 and the appellants 1, 2, 4 & 5 are represented by their GPA holder Appellant No.3 vide notarised GPA.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the present appeal i.e. Appellants/ Respondents and respondent/petitioner.

4. The Respondent/Petitioner has filed Application No 1043 of 2011 in C.S. No.7 of 1958 with the following prayer:

"Application under order 20 Rule 18 R/2 Sections 146 & 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass a final decree in respect of land admeasuring Ac.7.00 in Sy.No.57 of Shamshiguda Village, Ranga Reddy District and direct the registry to engross the same on appropriate stamp paper, as per the boundaries given in the schedule hereunder and grant such other relief as it deems fit and proper in the circumstances of the case."

5. The learned Single Judge vide order dated 30.12.2011 allowed the application to the extent of passing final decree only. Assailing the same, the appellants/respondents filed the present appeal on the following grounds:

"1. This application is filed against the order passed in Application 1043 of 2011 in C.S.No.7 of 1958 for passing the Final Decree in favour of Sri. B.Subba Rao, S/o Late B. Appa Rao, on the basis of Unregistered Sale Deed dated 23/2/1982 said to have been executed by Defendant No. 2,3,7,8,10,11,12,14,15,17,19 & 20 in C.S.No.7 of 1958 for an extent of Ac.7-00 of land in Sy.No.57 of Shamshiguda Village, item No.252 of Schedule 'A' attached to preliminary decree in C.S.No.7 of 1958, and the Hon'ble Court was pleased to pass an order on 30th December 2011, and the same is assailed on the following grounds:

2. That the Appellant submits that the order dated 02/12/2011 passed in Application No.1043 of 2011 is illegal void and contrary to the principles of law and ex facie fraudulent.

3. That the Appellant submits that the Final Decree is passed on a false affidavit showing an unregistered Sale Deed dated 23/2/1982 and there is no mention of validation of the said unregistered Sale Deed, dated 23/2/1982 and any validation cannot be a basis for Title and unregistered Sale Deed does not confer Title and it is nothing but a paper transaction without creating any rights as per Laxman Das Vs. Ramlal 1989 (3) SCC 99.

4. The Appellant submits that unregistered document is inadmissible and hit by section 17 of the Registration Act, 1908 and the same is illegal and it prohibits the user of the documents for establishing any rights, Title or interest for any immovable property as per Umde Bhojram vs Wadla Gangadhar 2004 (2) ALD 339-2004 (2) ALT 367-2004 (1) LS 415-2004 (2) APLJ 200(HC)= 2004 (2) ICC 800 (A.P) = 2004 (3) CCC 193(A.P) See also (1) G.Lalitha Kumari vs B. Neela Kantham 2004 (2) ALD 315= 2004 (1) LS 326 = 2004 (1) An W.R.378 (A.P) =2004 (2) ICC 776 A.P. Korukonda Chalapathi vs Korukonda Annapurna Sampath Kumar 2021 (SCC) on Line SE 847. Any document which is compulsorily registerable under Section 17-1(b), the said document cannot be admitted in evidence nor decree can be passed in terms of the same. Ramesh Kumar Vs Furu is Ram and another 2012 (1) ALD 53(SC). When rights pertaining to an immovable property are relinquished through a document, the document is compulsory registerable and if the document is not registered it is inadmissible in evidence Rami Reddy vs Yella Reddy 1961 Andhra Weekly Reporter 16 NRC full bench and also as per Laxmi Narasimha vs Venkat Reddy 2013 4(ALT) 3003. Once the document by itself brings about severance of Status it is liable to be registered under Section 17 of the Registration Act. G. Udaya Kiran Reddy vs Rama Krishna Reddy 2011 - 3(ALD) 54. Unless the document is registered in accordance with Law no presumption can be drawn

for it is properly executed, Bellachi (dead) by LRs Vs. Pakeeran 2009-12(SCC) 95 Suraj Lamps and Industries Pvt Ltd vs Sate of Haryana 2009 (7) SCC-363 and Narendra Khante vs Anuradha Khante 2010-1(ALT).

5. The appellant submits that as per the terms of unregistered Sale Deed dated 23.02.1982 also it is mentioned in page 5, clause 2 that the vendors after receipt of full consideration amount have delivered the actual, vacant and peaceful physical possession of the schedule property to the vendee to hold and to have the same as absolute owners forever. As such the so called executors putting the vendees into possession for AC.7-00 falling in boundaries as per the following Schedules:

SCHEDULE-A

All that land to an extent of Ac.3.00 guntas in Survey No: 57 (part) of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District bounded by

North: Hitension Line

South: Part of Land In Survey No.57.

East: Part of Land in Survey No. 57

West: Katcha Road.

SCHEDULE-B

All that land to an extent of Ac.2-20 gunts in Survey No.57 Shamshiguda Village, Balanagar Mandal, Ranga Reddy District bounded by

North: Katcha Road

South: Hitension Line

East: Part of Land in Survey No.57.

West: Katcha Road,

SCHEDULE-C

All that land to an extent of Ac.1.20 guntas in Survey No.57 (part) of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District bounded by

North: Part of Survey No. 57

South: Part of Survey No.57.

East: Katcha Road

West: Part of Survey No.57.

does not arise at all as their preliminary decree adjudication with C.S. No.7 of 1958. That it is a settled principle of law was that persons who are capable of conveying the Title and possession can alone do so, but the so-called vendors had a symbolic Title but no actual physical possession. That really so the said Sale Deed dated 23/2/1982 which was relied upon there is no need for filing an application No.1045 of 2011 seeking once again Final Decree and possession based on the Advocate-cum-Receiver cum Commissioners Scheme of Partition Report.

6. The Appellants submits that the Schedule allegedly given by the vendors for AC.7-00 by the Defendants No's.2,3,7,8,10,11,12, 14,15,17, 19 & 20 in C.S. No.7 of 1958 is vague and absolutely unclear and by that time no report of the Receiver-cum-Commissioners is existing and once the Receiver-cum-commissioners was approved by the Hon'ble High Court on 17-07-2009 the claim of the vendors and vendee of unregistered Sale Deed if any dated 23/02/1982 shall be in accordance with the shares allotted as per the Survey Map submitted by the Receivers-cum Commissioners only.

7. The appellant submits that a crystal-clear inference can be drawn that the Vendors and Vendees played fraud on the statute and on the Court. The said fraud came to the knowledge of the petitioner on 23/07/2023 when the vendee B. Subba Rao, S/o. Late B. Appa Rao represented by his daughter and G.P.A holder namely Mrs. P.Krishna Priya W/o P. Venkateswara Rao is trespassing into the Land of the appellant allotted by the Receiver Cum Commissioner in favour of Defendant No.4 and trying to erect fencing with steel sheets. As such a report was given to the Station House Officer Jagadgirgutta Police Station, Hyderabad on 25/07/2023 explaining fraud, cheating and forgery by the vendors and vendees.

8. The appellants submits that Prima facie reading of the Sale Deed shows that it is unregistered and at Page 3, Para 6 of the Application No: 1043 of 2011 dated 29th day of November 2011, the Sale Deed dated 23/02/1982 was referred, giving an impression as if it is a registered Sale Deed which act itself is a fraudulent one which amounts to gross misrepresentation before the Hon'ble Court thus amounts to palpable fraud.

9. The appellants submits that after 29 years of alleged Execution of Sale Deed dated 23/02/1982, the same was validated on 26/11/2011 Vide No: 3620/AR/2011 at District Registrar office, Ranga Reddy District. Hyderabad which does not amount to Registration at all and the same is hit by Section 17 of the Registration Act 1908 and the validation has no value in the Eye of Law, that too done in the absence of original Executants by way of a registered Sale Deed. A Confirmation cum Ratification Deed was executed on 28.12.2011 at SRO, Kukatpally, Ranga Reddy District vide Document No. 5979/2011 on the basis of unregistered Sale Deed dated 23.02.1982, which does not amount to Registration and hit by Section 17 of the Registration Act,

1908. A bare reading of this document shows that the Executants of this Deed are different from that of unregistered Sale Deed dated 23.02.1982.

10. The appellants submits that any other documents registered or unregistered are not brought to the notice of the court in Application No. 1043 of 2011 for passing final decree and any Acts done will not give affect to the Final Decree which was obtained by playing fraud.

11. The appellant submits that he is the defendant No. 4(f) in Application No. 1043 of 1958 in C.S.No.7 of 1958 in the Hon'ble High Court of Telangana and Legal Heir of Defendant No.4 by name Late. Nawab Mohammed Lateefuddin Khan in respect of Matruka properties of Asia Jahi Paigah Estate. And as per the Preliminary Decree in C.S.No.7 of 1958 in the Hon'ble High Court of Telangana the Legal heirs of Nawav Moin-ud-Dowla Bahadur of Asman Jahi Paigah who are defendants 2 to 22 in C.S.No.7 of 1958 are entitled to shares in Item Nos.230 to 254 in Schedule 'A' Annexed to preliminary decree, each male member getting 2/35 share and each female member getting 1/35 share in the properties. The preliminary decree dated 06.04.1959 is filed herewith in which Shamshiguda is Item No.252 of Schedule 'A' annexed to preliminary decree.

12. The appellants submits that Survey No.57 of Shamshiguda village, is item No: 252, Schedule 'A' annexed to preliminary decree in C.S.No 7 of 1958, dated 06/04/1959, belongs to Asman Jahi Paigah Estate. Whereas, the scheme of partition for Maqta Shamshiguda was submitted by Mr. M. A. Bari & Mr. Shyamsunder, Advocates, Receiver-cum-Commissioners in respect of item No: 252 Shamshiguda, of schedule 'A' Annexed to the preliminary decree in C.S.No.7 of 1958 as directed by the Hon'ble Court of Andhra Pradesh by

order dated 15/10/2008 in Application S.R.No: 3679 & 5917 of 2007. And the scheme of partition was presented to the Hon'ble High Court in favour of Defendents No's. 2 to 22 i.e., Son's and Daughters of Nawab Moin-ud-Daula Bahadur. The total extent of land in Survey No.57, Shamshiguda village, as per the scheme of Partition submitted and allotted to Defendant No's.2 to 22 is AC.303-91 gts. And the Scheme of Partition was approved by the Hon'ble High Court on 17.07.2009 in Application No.495 in C.S.No.7 of 1958. As per the Scheme of Partition, approved by the Hon'bel High Court and the Survey Map showing the scheme of partition, defendant No.4 was allotted shares as separate bits and marked in the map as follows :

1. *914-647 cents (9.146 Acres)*
2. *668-16 cents (6.681 Acres)*
3. *107-14 cents (1.071 Acres)*
4. *24-110 cents (0.241 Acres)*
5. *14-290 cents (0.142 Acres)*
6. *8-389 cents (0.083 Acres)*

13. The appellants reserve their right to raise any other grounds at the time of hearing.

KNOWLEDGE :

a. That the appellants came to know about the magnitude of fraud on 25.07.2023 when respondent No.1 tried to encroach upon the allotted property of the petitioner. The earlier round of litigation in Application No. 1043/2011, the petitioner / appellant filed objection petition, which was not considered by this Hon'ble Court on a bonafide impression that as if the petitioner / appellant had share which was not affected and which he can contest. But

subsequently, as per the illegal acts, the passage of final decree is ex-facie illegal and caused severe prejudice to the petitioner / appellant and in such a situation, the Hon'ble Court is under obligation to undo the wrong done to a party by the Act of the Court as per the established legal maxim "Actus Curiae Neminem Gravabik" which means that the act of the Court shall prejudice no one, becomes applicable in such a case. In such a case, the Court is under obligation to undo the wrong done to a party by the Act of the Court.

b. As per the Judgement in Inderchand Jain (Dead) through LRs vs. Motial (Dead) through LRs (2009) 14 SCC 663, wherein the Hon'ble Supreme Court held that the said Maxim is established upon justice and equity and help in the law administration.

The Court observed hence;

This well settled position need not detain us, when the second point urged by the appellant is focused. There can be no quarrel with the proposition as noted by the Hon'ble High Court that a party cannot be made to suffer on account of an act of the Court. There is well recognized maxim of equity; namely "actus curiae neminem gravabit" which means an act of the Court shall prejudice no man. This maxim is founded upon justice and good sense, which serves a safe and certain guide for the administration of law.

c. And also as per Judgment in UPSRTC vs. Imityaz Hussain 2006 (1) SCC 380 the said maxim was analyzed.

d. And also as per Judgment in Orissa Development Corporation VS. Anupam Traders, no party should suffer due to Act of Court.

FRAUD:

a. And as per legal maxim "Fraus est calare fraudam" it is fraud to conceal a fraud. And also "Justice nemini neganda est" justice is to be denied to nobody. Maxim - The fraud and justice will never dwell together as per legal maxim "Fraus et jus nunquam cohabitant" which is relied upon by the Hon'ble Supreme Court in United India Insurance Co. vs. Rajender Singh and others Manu/SC/0180/2000.

b. And also compulsory registration of conveyance of immovable property U/s.49 & 17 of the Registration Act, 1908 as per Suraj Lamps and Industries Pvt. Ltd. through Director vs. State of Haryana (2009) 7 SCC 363.

Fraud on Court : Parties must come before the Court with clean hands and fraud on the Court whereby the Judgment and Decree obtained by playing fraud will be a nullity including consent decree obtained by fraud. Hence such decree and also all subsequent Judgements and Decrees passed on claims of Right, Title, interest and possession based on decree which is vitiated by fraud liable to be set aside Badami (deceased) by LRs Vs, Bali (2012) 1I SCC 574.

c. Any Judgment or Order obtained by playing fraud is a nullity and it can be challenged at any stage, at any time in appeal, revision, writ Or even in collateral proceedings as per Hon'ble Supreme Court Judgment in A.P. Papayya Sastry and Others vs. Government of A.P. and others (2007) 4 SCC 221.

d. The Judgment or Decree obtained by fraud to be treated as nullity and can be questioned even in collateral proceedings. Non-disclosure of relevant

documents with a view to obtain advantage amounts to fraud. Held decree obtained by non-disclosure of release deed amount of fraud on Court and hence decree liable to be set aside (1994) 1 SCC S.P. Chengalavarai Naidu (dead) by LRs vs. Jagannath (dead) by LRs.

PRAYER:

It is therefore prayed that this Hon'ble Court may set aside the Order and Decree made in Application No.1043/2011 in C.S.No.7/1958, dated 20.12.2011, on the file of this Hon'ble Court, as the same was obtained by playing fraud on the Court: In the interest of justice, this Hon'ble Court by allowing this appeal may be pleased to pass such other order and orders as may deem fit and proper in the circumstances of the case."

6. Heard the learned counsel for the parties and perused the material made available on the record.

7. For better appreciation, it is necessary to extract the order dated 30.12.2011 passed in Application No.1043 of 2011 in C.S. No.7 of 1958 by the learned Single Judge.

> "This is an application for passing of final decree in favour of the applicant in respect of the application schedule lands admeasuring Ac.3-00 guntas, Ac.2-20 guntas and Ac.1-20 guntas in Sy.No.57 (Part) of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District, with the boundaries as stated in the affidavit filed in support of the application.

The applicant has purchased the said extents of lands from Defendant Nos.2, 3, 7, 8, 10, 11, 12, 14, 15, 17, 19 and 20 under a registered sale deed dated 23.02.1982 and as a purchaser, the present application is filed seeking passing of final decree.

It is seen that the land in Sy.No.57 of Shamshiguda Village is the suit schedule property in C.S.No.7 of 1958 and the Advocate-Receiver has submitted a report showing the division of the shares of the defendants in the main suit. I have made a reference to the said report while passing order in Application No.495 of 2009. I had also referred to the judgment of the Apex Court relating to law about passing of final decree in partition suits.

Since the partition suit is pending till final decree is passed, the parties, if aggrieved, by any final decree application are supposed to file objections. In the present case, some of the legal representatives of Defendant No.4 have filed counter affidavit wherein it is stated that they are not parties to the sale deed of the applicant and hence, they are objecting for passing of final decree.

I have already observed that while passing orders in Application No.495 of 2009 that if any person who has a share as per the preliminary decree can seek a final decree, and they are at liberty to file such an application. In so far as the present application is concerned, Defendant No.4 is not his vendor and hence, the objections filed on behalf of Defendant No.4 do not have any effect

or the entitlement of the applicant for passing final decree.

It is seen from the proceedings of the suit that C.S.No.7 of 1958 was filed for partition of the Matruka properties of Asman Jahi Paigah and this Court passed a preliminary decree in the suit on 06.04.1959 in determining the extent of shares of the parties to the suit. As per the preliminary decree, an Advocate-Receiver was appointed for preparing a scheme of partition for the purpose of dividing the lands and properties and for allotment of the same to the respective sharers. It is settled law that a purchaser from a sharer steps into the shoes of the sharer and hence the purchaser is entitled to file an application for passing of final decree.

It is on record that the Advocate-Receiver appointed by this Court has submitted a scheme of partition in respect of Item No.252 (Shamshiguda) of Schedule-A of the suit and the report of the Advocate-Receiver dated 12.03.2009 which is accompanied by a plan showing the division of land and the said report has referred to the entire extent of land in Sy.No.57 Shamshiguda and it has also taken into account the present final decree application along with the other applications which are all concerned with the land in Sy.No.57 of Shamshiguda.

Heard the learned counsel for the applicants, the learned counsel appearing for the objection petitioner and Sri M.A.Bari, learned Advocate-Receiver appointed by this Court.

There is no dispute about the acquisition of right by the applicant and the objection petitioner has not made any claim for passing of final decree for the share which he has got as per the preliminary decree. I do not find any specific objection to the prayer in the present application. It is open to the objection petitioner to come forward with an application for final decree for the extent of share, if any, which he got under the preliminary decree. Hence, the objection for passing of final decree in favour of the applicant is devoid of any merit.

The learned Advocate-Receiver has submitted that the applicant herein has become entitled to final decree since his vendors were sharers in the preliminary decree and as per the sketch annexed to the report, the application schedule land is clearly delineated with boundaries. Since the report of the Advocate-Receiver was already approved by this Court on 17.07.2009 (as per the orders passed by my learned brother P.S.Narayana,J), the present application is allowed and a final decree is passed for the application schedule land and the Registry is directed to issue the same after engrossment of stamp papers.

In the result, the application is accordingly allowed. The fee of the Advocate-Receiver is fixed at 2% of the basic value depicted in the basic value register, which shall be payable by the applicant at the time of delivery of possession.

Registry is directed to append a copy of the order passed Application No.495 of 2009 to this order."

8. The aforesaid order was followed by the decree dated 30.12.2011 drafted in Application No.1043 of 2011 in C.S. No.7 of 1958, which reads as under:

> "1. That this Application be and hereby is allowed and final decree is passed for the application schedule land,
>
> 2. That the applicants herein be and hereby are entitled and a final decree since his vendors were sharers in the preliminary decree as per the sketch annexed to the Report, the applications schedule land is clearly delineated with boundaries.
>
> 3. That a final decree be and hereby is passed in respect of land admeasuring Ac.7.00 in Survey No.57 of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District, with the boundaries as stated in the affidavit filed in support of this application.
>
> 4. That the fee of the Advocate Commissioner-cum-Receiver is fixed at 2% of the basic value depicted in the basic value register, the fee is payable by the applicant at the time of delivery possession.
>
> 5. That the final decree to be engrossed on the requisite stamp papers, as per the boundaries given in the Schedule hereunder and the same be issued after engrossment of stamp papers.

Schedule-A

All that land to an extent of Ac.3.00 guntas in Survey No.57 (part) of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District bounded by

North	:	Hitension Line
South	:	Part of Land in Survey No.57.
East	:	Part of Land in Survey No.57
West	:	Katch Road

Schedule-B

All that land to an extent of Ac.2.20 guntas in Survey No.57 (part) of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District bounded by

North	:	Katcha Road
South	:	Hitension Line.
East	:	Part of Land in Survey No.57
West	:	Katch Road

Schedule-C

All that land to an extent of Ac.1.20 guntas in Survey No.57 (part) of Shamshiguda Village, Balanagar Mandal, Ranga Reddy District bounded by

North	:	Part of Survey No.57
South	:	Part of Survey No.57.
East	:	Katcha Road
West	:	Part of Survey No.57"

9. At this juncture, it is significant to note that the Division Bench of this Court vide order dated 09.01.2025 closed the C.S. No.7 of 1958 wherein at para No.36 observed as under:

"36. On a perusal of the paragraph 4(g) of the preliminary decree dated 06.04.1959, it is evident that the defendant Nos.2 to 22 were entitled to the properties mentioned at item Nos.230 to 254 of Schedule 'A' annexed to the preliminary decree, in case the same are restored or released in favour of Asman Jahi Paigah. In the instant case, admittedly, there is no material to indicate that the properties mentioned at serial No.230 to 254 of Schedule 'A' to the preliminary decree have been restored or released in favour of Asman Jahi Paigah. It is pertinent to note that as per para 4(g) of the preliminary decree dated 06.04.1959, the Commissioners-cum-Receivers have the power to sell the property by way of public auction and exercise all powers necessary for effecting the division of the sale between the defendants No.2 to 12 and 14 to 22. Accordingly, each son would get 2/33 and each daughter would get 1/33 in the properties of Schedule 'A' except items 230 to 254 of the Schedule and items of properties allotted to the plaintiff. The defendant Nos.2 to 22 will get their share, namely, each son getting 2/35 and each daughter getting 1/35 from the arrears of income future income, compensation or commutation or sale proceeds of the items 230 to 254 of Schedule 'A' detailed under the head of "Makthas" in case of the same are restored or released in favour of Paigah Asman Jahi."

10. It is not out of place to note here that the learned counsel Mr. T.K. Sreedhar appearing for the appellants herein represented in C.S. No.7 of 1958 wherein he made the following submission, which reads as under:

> "…. Mr.T.K.Sridhar, learned counsel for the legal representatives of defendant No.4 in the suit and for respondent No.4 in application No.24 of 2024 submitted that the report dated 06.09.2023 submitted by the receiver cum commissioner in so far as it pertains to lands mentioned in Sl. Nos.232 to 254 is required to be rejected. Learned counsel further submitted that the receiver cum commissioner appointed by this Court ought to have appreciated that the final decree cannot be passed in application Nos.1409 of 2013 and 837 of 2013 as the unregistered assignment deeds were executed and a title in respect of the immovable property cannot be passed on the basis of the unregistered document. Therefore, the application seeking final decree at the instance of the applicants in application Nos.1409 of 2013 and 837 of 2013 is not maintainable and it is also pointed out that the receiver cum commissioner has cursorily prepared the report and ought to have examined the issue in greater detail as the Government is in possession of some of the lands covered under the preliminary decree."

11. The subject property under appeal is in respect of Item No.252 falling in Schedule 'A' of the preliminary decree dated 06.04.1959 and the land admeasuring Ac.7.00 in Sy.No.57 (part) of Shamshiguda Village, Balangar Mandal, Ranga Reddy District is schedule property of the suit in O.S. No.7 of 1958. The Division Bench of this Court vide order dated 09.01.2025 had closed the C.S. No.7 of 1958 wherein at Para No.40 observed that *"As such, the submissions made on behalf of the objectors are unsustainable and in that view of the matter, it can*

safely be concluded that no lands are available for partition in item Nos.230 to 254 of Schedule 'A' attached to the preliminary decree. In the absence of preliminary decree for item Nos.230 to 254 in Schedule 'A', no final decree could have been passed. Therefore, reports filed earlier are without proper verification, are fictitious and the same are treated as nullity and are hereby rejected."

12. Since the C.S. No.7 of 1958 was closed with specific observation that no lands are available for partition in Item No.252 and the subject land i.e. admeasuring Acs.7.00 in Survey No.57 of Shamshiguda Village, Balangar Mandal, Ranga Reddy District, in Application No.1043 of 2011 in C.S. No.7 of 1958 as such, no further adjudication is required in this appeal.

13. Accordingly, this O.S.A. No.2 of 2024 in Application No.1043 of 2011 in C.S. No.7 of 1958 is disposed of leaving it open to the parties to pursue their remedies as available under law, if they so feel aggrieved by this order. There shall be no order as to costs

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

SD/-K.SRINIVASA RAO
JOINT REGISTRAR

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SECTION OFFICER

To,

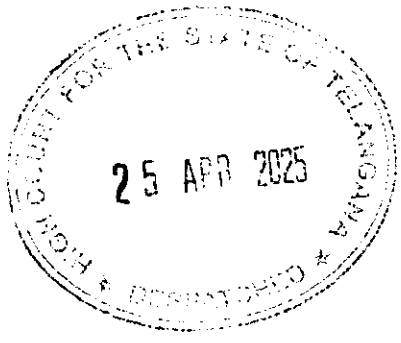
1. The District Collector, Ranga Reddy District.
2. The Tahsildar, Balanagar Mandal, R.R.District.
3. M.A. Bari and B. Shyamsunder Rao, Advocate Receiver-cum Commissioners, High Court for the State of Telangana at Hyderabad. # 11-3-627, Mosque Road, New Mallepally, Hyderabad -1
4. The District Collector, Medchal Malkajgiri District.

5. The Tahsildar, Kukatpally Mandal, Medchal Malkajgiri District.
6. The District Registrar, Medchal Malkajgiri District.
7. The Sub-Registrar, Kukatpally, Medchal Malkajgiri District.
8. The Section Officer, O.S. Section, High Court for the State of Telangana at Hyderabad.
9. One CC to SRI. T. K. SRIDHAR, Advocate [OPUC]
10. One CC to SRI. S. GANESH, Addl. Advocate General, High Court for the State of Telangana at Hyderabad
11. Two CD Copies

kul/gh

HIGH COURT

DATED:07/03/2025



Judgment

ORIGINAL SIDE APPEAL NO: 2 OF 2024

IN

APPLICATION NO. 1043 OF 2011

IN

C.S. NO. 7 OF 1958

DISPOSING OF THE APPEAL

WITHOUT COSTS

(13)

kpr

24/4/25