

APHC010341022025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3209]

WEDNESDAY, THE SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

SECOND APPEAL NO.277 OF 2025

Between:

1. KURAKULA SATYANARAYANA AND OTHERS

APPELLANTS

AND

1. KURAKULA YESURATNAM AND ANOTHER

...RESPONDENTS

Counsel for the Appellants:

1.V. VENKATA MAYUR

Counsel for the Respondent:

1.P.S.P.SURESH KUMAR

Judgment Reserved on : 10.10.2025

Judgment Pronounced on : 07.01.2026

Judgment Uploaded on : 08.01.2026

The Court made the following judgment:

The unsuccessful defendant Nos.1, 3 and 4 in O.S.No.44 of 1997 on the file of the Court of the Senior Civil Judge, Pithapuram, aggrieved by the judgment dated 30.12.2024, passed by the 12th Additional District Judge, Pithapuram in A.S.No.87 of 2014, confirming the judgment and decree of the Trial Court, filed the present Second Appeal.

2) For the sake of convenience, the parties are referred to as they are arrayed in the suit.

3) The plaintiff one Smt.Kurakula Yesuratnam, filed the above said suit seeking the relief of declaration and recovery of possession of the suit schedule property of an extent of Ac.0-75 cents in Sy.No.294/1 and an extent of Ac.0-94 cents in Sy.No.293/2 i.e., wet land an extent of Ac.1-69 cents in all, situated in Viravada village of Pithapuram Mandal. In the plaint, it is *inter alia* pleaded that one Mr.Kurakula Venkata Rao has three sons and three daughters. He gave the 1st defendant in adoption to his brother Lovaraju and he was brought up by the said Lovaraju. The marriage of the 1st defendant was performed by Mr.Lovaraju and since the date of adoption of the 1st defendant he has nothing to do with the properties of his natural family, that as on the date of adoption Mr.Kurakula Venkata Rao has no ancestral property and subsequently the said Mr.Kurakula Venkata Rao acquired immovable properties with the assistance of his other two sons. Mr.Kurakula Venkata Rao, after the death of his wife about 12 years ago, used to reside in the house of the plaintiff as she is no other than his granddaughter and wife of the

2nd defendant. It is further stated that the said Mr.Kurakula Venkata Rao was in the care and custody of the plaintiff and she did all services till he died on 21.02.1997, that during his lifetime the said Mr.Kurakula Venkata Rao executed his last Will on 18.02.1997 in a sound and disposing state of mind bequeathing the plaint schedule property to the plaintiff. After the death of the said Mr.Kurakula Venkata Rao, the 1st defendant obstructed the husband of the plaintiff to cultivate the suit schedule property and after issuing a legal notice, the plaintiff filed the suit initially for recovery of possession and thereafter sought relief of declaration of title by amending the prayer. By way of rejoinder the plaintiff also pleaded that the Wills executed by the said Mr.Kurakula Venkata Rao prior to the last Will dated 18.02.1997 have no sanctity and the defendants have no right to challenge the alienations or bequeaths made by the said Mr.Kurakula Venkata Rao in his Will dated 18.02.1997.

4) The 1st defendant initially filed written statement and an additional written statement after the amendment of the prayer in the suit. While denying the plaint averments, it was *inter alia* pleaded that settling the suit scheduled properties the said Mr.Karukula Venkata Rao executed a Registered Will dated 20.02.1995 in favour of the 1st defendant and further that the suit is filed with the help of a forged and fabricated Will. It was also pleaded that there is no possibility to execute the alleged Will dated 18.02.1997 in favour of the plaintiff as the said Mr.Kurakula Venkata Rao was bedridden since 5 to 6 days prior to his death.

5) Defendant Nos. 3 and 4 filed separate written statement denying the plaint averments and that a Registered Will dated 20.02.1995 was executed in their favour and prior to the execution of the Will in favour of the 1st defendant, the Will dated 18.02.1997 is fabricated.

6) The learned Trial Court settled the following issues for trial:

1. Whether the unregistered Will dated 18.02.197 is true, valid and binding on the defendants?
2. Whether the plaintiff is entitled to declaration of his title to suit property?
3. Whether the plaintiff is entitled to the relief of possession as prayed for?
4. To What relief?

7) It also framed additional issue – “Whether Ex.B2 dated 20.02.1995 is genuine Will or not?”

8) To substantiate her case, the plaintiff herself was examined as PW 1 and got examined PWs 2 to 11. She got marked Exs.A1 to A11. On behalf of the defendants they got examined DWs 1 to 11 and got marked Exs.B1 to B9.

9) Learned Trial Court after considering the contentions advanced on both sides and by appreciating both oral and documentary evidence answered the Issue No.1 in favour of the plaintiff holding that Ex.A1 dated 18.02.1997 is true, valid and binding on the defendants. In so far as additional issue is concerned, it held that Ex.B2 was true, valid and executed by the said Mr.Kurukula Venkata Rao. However, in the light of the findings/conclusions arrived at, the learned Trial Court while holding that Ex.A1 is the last Will executed by Mr.Kurakula Venkata Rao and all the previous Wills executed by

him contrary to Ex.A1 are unenforceable in law, answered the Issue No.2 holding that the plaintiff is entitled for the relief of declaration in respect of the plaint schedule property. While taking into account the orders passed by the Tenancy Court, Pithapuram, in ATC No.22 of 1996 (Ex.A12) against the Defendant No.1 and as the plaintiff established her title in respect of the plaint schedule property by virtue of Ex.A1 dated 18.02.1997 i.e., unregistered Will, which was upheld by it, the learned Trial Court decreed the suit granting the relief of recovery of possession of the suit schedule land from the Defendant No.1 declaring that he has no right, title over the plaint schedule property and the same is liable to be delivered to the plaintiff. Learned Trial Court also directed the Defendant No.1 to deliver the plaint schedule property to the plaintiff within two months from the date of decree.

10) Against the said Judgment and decree, the defendants filed A.S.No.870 of 2014. Before the Appellate Court various grounds were raised, *inter alia*, to the effect that the plaintiff failed to prove her case beyond all probabilities, that the plaintiff failed to discharge her burden to prove her case and she cannot depend upon the weaknesses of the case of the defendants and the learned trial Court without considering the evidence on record in a proper perspective decreed the suit.

11) The learned Appellate Court formulated the following points for consideration:

1. Whether the Appellants / defendants 1, 3 and 4 have established any ground for interfering with the decree and Judgment dated

28.02.2012 in O.S.No.44/1997 on the file of the Senior Civil Judge, Pithapuram?

2. Result of the appeal?

12) After discussing the arguments advanced by the learned counsel on both sides in brief, it opined that before recording findings / arriving at conclusions on point No.1, the following aspects have to be answered:

1. Whether the 1st defendant was given in adoption to Kurakula Lovaraju who is brother of Kurakula Venkatarao?
2. Whether Ex.B2 Will is genuine, valid and binds on the plaintiff?
3. Whether the executant Kurakula Venkatarao lived in the house of D2 and plaintiff and he was looked after by them and whether he executed Ex.A1 Will and same is valid and binding on the defendants?
4. Whether the Ex.A1 and A5 Wills were genuine and Ex.A1 Will binding on the defendant?

13) The learned Appellate Court after meticulously appreciating the oral evidence, recorded its categorical findings, which are extracted hereunder:

- a) The 1st defendant / DW 1 is adopted son of Mr.Kurukula Venkata Rao
- b) Ex.B2 Registered Will dated 20.02.1995 and Ex.B4 Kowl Deed (Lease deed) dated 20.07.1995 were genuine and valid documents.
- c) Ex.A1 is final Will executed by Mr.Kurukula Venkata Rao.
- d) Evidence of PW 1 established that she is daughter-in-law cum maternal granddaughter of Mr.Kurukula Venkata Rao and after the death of wife of Mr.Kurukula Venkata Rao, he used to stay with plaintiff and the 2nd defendant in their house and plaintiff looked after the

welfare of Mr.Kurukula Venkata Rao. As she served him, he executed Ex.A1 Will bequeathing the properties covered under Ex.A1 to her.

14) The learned Appellate Court in the light of the conclusions recorded by it, dismissed the appeal holding that the plaintiff successfully proved execution of Ex.A1 Will by clearing all suspicious circumstances and she proved that by the date of execution of Ex.A1, the executant Mr.KurukulaVenkata Rao was in sound and disposing state of mind.

15) Against the judgment of the Appellate Court, the present appeal is preferred under Section 100 of the Civil Procedure Code and the learned counsel for the appellants made submissions that the following substantial questions of Law arise for adjudication :

- a) Whether the propounder of the Will has satisfied the conscious of the Court by removing the suspicious circumstances?
- b) Whether the propounder could prove the Will is genuine in view of the suspicious circumstances?
- c) Whether the finding of the Courts below to accept the Will, without properly appreciating the evidence of defendant D.Ws.6 to 8 and exhibit B3 is valid?

16) The learned counsel for the appellants contends that the Trial Court as also the Appellate Court failed to appreciate that the evidence adduced on behalf of the plaintiff would hardly support her case with reference to the execution of the disputed Will dated 18.02.1997 (Ex.A1). He contends that the execution of the said Will in favour of the plaintiff was surrounded by suspicious circumstances and the plaintiff failed to discharge the burden of proving the same, in the facts and circumstances of the case. Laying much

emphasis on Ex.B3 i.e., the Certificate dated 24.11.1997 issued by a Doctor (D.W.11), he submits that the learned Trial Court had not properly considered the evidence of the Doctor, who attended the executant of the alleged Will dated 18.02.1997, just few days prior to the death of the executant in a proper perspective, that the learned Appellate Court also failed to appreciate that even as per the said Certificate Ex.B3, Sri Kurakula Venkata Rao, the executant of the Will was in-coherent and not responding to the questions of the Doctor and in those circumstances, the questions of execution of a Will by him does not arise at all. He submits that the findings recorded by the Trial Court as confirmed by the Appellate Court are contrary to the material on record and as the Courts below upheld the contentions with regard to execution of the alleged Will dated 18.02.1997 without properly appreciating the evidence let in on behalf of the defendants / appellants, the order under appeal confirming the judgment and decree of the Trial Court is liable to be set aside. Making the said submissions and placing reliance on the decision of the Hon'ble Supreme Court in **Lilian Coelho & Ors., v. Myra Philomena Coelho**¹, the learned counsel urges for allowing the appeal by setting aside the orders and decree of the Courts below.

17) On the other hand, the learned counsel for the respondents made submissions to sustain the order under appeal. He contends that the Trial Court as also the Appellate Court had examined the issues formulated by thorough scrutiny of the oral and documentary evidence on record and

¹ 2025 INSC 7

assigned cogent reasons for granting relief in favour of the plaintiff. He submits that the contention with regard to execution of the Will dated 18.02.1997 in suspicious circumstances, is misconceived and merits no appreciation. He submits that the evidence of the witnesses on the plaintiff's side categorically establishes the execution of the Will dated 18.02.1997 beyond reasonable doubt and therefore, the contentions contra are not sustainable. He submits that the attesor of the disputed Will was examined and the execution of the Will dated 18.02.1997 was clearly established. He also submits that the contention with reference to Ex.B3 is of no avail to the appellants in view of the categorical finding recorded by the Trial Court, which was confirmed in appeal by the Appellate Court. While seeking dismissal of the appeal, the learned counsel places reliance on the decision of the Hon'ble Supreme Court in **U.Sudheera and Others v. C.Yashoda and Others**².

18) This Court has considered the submissions made and examined the substantial questions of law extracted above with reference to the material on record.

19) At the outset, it may be appropriate to mention that the entire case of the respondent / plaintiff was based on Ex.A1 dated 18.02.1997. In support of the respondent / plaintiff's case of execution of the said Will, oral evidence was adduced and the learned Trial court after appreciating the evidence of P.Ws.1 to 6, answered the issues in this regard in favour of the plaintiff. It categorically held that from the evidence of P.Ws.1 to 6, it was established

² (2025) 4 SCC 215

that as on the date of Ex.A1, the testator is in fit state of mind and after the death of his wife, the testator resided in the house of his granddaughter, who is also daughter-in-law i.e., wife of defendant No.2 and out of love and affection, the testator modified Ex.A5 and executed Ex.A1 and it was duly attested by P.Ws.2 to 4 and within the short span after execution of Ex.A1, the testator died. Even the Appellate Court, after discussing the relevant evidence adduced by the respective parties at length, recorded its conclusions that by the date of death of Mr.Kurakula Venkata Rao, he was in the house of the plaintiff and they looked after the welfare of the said Venkata Rao and he executed Ex.A1 Will, after execution of Ex.A5 and further that with regard to execution of Ex.A1, Will the attestors and scribe clearly deposed about the manner of execution of Ex.A1, date, time and that it did not find any inconsistency in the evidence of attestors and scribe of Ex.A1, and that Ex.A1-Will was clearly proved by the evidence of the attestors and scribe of Ex.A1-Will, that it is final and genuine.

20) Though the learned counsel for the appellant sought to impress upon the Court that in the light of Ex.B3 and the evidence of the Doctor-D.W.11, the executant i.e., Mr.Kurakula Venkata Rao was not in a sound and disposing state of mind and the execution of the Will was surrounded by suspicious circumstances, the same merits no appreciation. The learned Trial Court had specifically dealt with this issue and has not given any credence to the evidence of D.W.11 much less Ex.B3-Certificate. In Para No.32, the learned Trial Court while answering the Issue No.1 opined as follows:

“32. Now coming into the evidence of D.W.11 who issued Ex.B-3 which reveals that at request of his brother he went to Venkatarao to examine him and he has not gone with any medical kit and on physical examination, he came to conclusion that he was suffering with breathlessness and he do not know Venkatarao died on 24.02.1997 and he has not gone to Venkatarao after his death and denied that he has not visited Venkatarao. The evidence of P.W.1 also reveals that prior to death, the testator suffered with Ayasam and in the evidence of D.W.1 also reveals that the testator suffered with breathlessness and the evidence of D.W.11 did not reveals that he is speechless. But as seen from Ex.B-3 certificate it reveals that the patient is incoherent and not able to respond to his questions, but the said facts was not deposed by the D.W.11, his evidence only in his chief-examination is that as on the date of Ex.B-3 the patient’s condition is feeling difficulties in taking respiration. Except that he did not depose that the patient is incoherent and not responded to his question. Therefore, in the light of evidence of D.W.11 since he did not depose the circumstances stated in Ex.B-3, B-3 has no credence.”

21. Appreciating the evidence on record, the Appellate Court concurred with the findings / conclusions arrived at by the Trial Court with regard to the evidence of D.W.11. The Appellate Court scrupulously sieved through the evidence and observed that D.W.11 went to the house of the executant Venkata Rao to examine him without carrying any medical kit and without conducting any tests issued Ex.B3-Certificate and that it did not disclose that after the medical test report, the said Certificate was issued. As noted above, both the Courts below have recorded categorical conclusions with regard to execution of the Will dated 18.02.1997 in favour of the plaintiff and the same are based on sound reasoning and supported by evidence adduced on behalf of the plaintiff. Therefore, the contention that the plaintiff failed to prove the

execution of Will which was surrounded by suspicious circumstances is misconceived. That apart, the submissions made more particularly with reference to the factual aspects which are concurrently held in favour of the plaintiff, merits no consideration and this Court see no questions of law much less, substantial questions of law in the case on hand, as sought to be urged.

22) In **Lilian Coelho's case**, the Hon'ble Supreme Court was examining an order passed by the Division Bench of High Court of Bombay reversing the judgment of a learned Single Judge. While setting aside the order of the Division Bench and remanding the appeal, the Hon'ble Supreme Court *inter alia* opined that even after holding that a Will is genuine, it is within the jurisdiction of the Court to hold that it is not worthy to act upon as being shrouded with suspicious circumstances when the propounder failed to remove such suspicious circumstances to the satisfaction of the Court.

23) The judgment in the considered opinion of this Court is not applicable to the present fact situation as no suspicious circumstances exist with regard to the Will executed in favour of the plaintiff and the execution of the same was proved by examination of the relevant witnesses.

24) In **U.Sudheera's case**, on which reliance is placed by the learned counsel for the respondent, the Hon'ble Supreme Court was examining a short question as to whether the High Court can pass any *ad interim* order for a limited period before framing substantial questions of law, dealing with a Second Appeal filed under Order 41 read with Section 100 CPC. In Para No.16.4, a reference to the judgment of **Roop Singh v. Ram Singh** (2003 3

SCC 708) was made, wherein, it was held that under Section 100 CPC jurisdiction of the High Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the High Court to interfere with pure questions of fact while exercising its jurisdiction under Section 100 CPC.

25) Further, at Para No.19, the Hon'ble Supreme Court opined as follows:

“19. Thus, the law is clear that a second appeal will be maintainable before the High Court, only if it is satisfied that the case involves a substantial question of law. If no substantial question of law arises, the second appeal could not have been entertained and the same ought to have been dismissed, as the jurisdiction of the High Court itself is not yet invoked.”

26) In the present case, on an appreciation of the submissions made, this Court is of the considered opinion that no substantial questions of Law are involved except questions of fact which are concurrently held against the appellant.

27) In the aforesaid view of the matter and the legal position referred to supra, the Second Appeal fails and the same is accordingly dismissed. No costs. Consequently, miscellaneous applications, pending if any, shall stand closed.

NINALA JAYASURYA, J

Date: 07.01. 2026
BLV

HON'BLE SRI JUSTICE NINALA JAYASURYA

S.A.No.277 OF 2025

Dt: 07.01.2026

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