

**HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA  
PRADESH**

**AS :1124 of 2016**

**Between:**

**VARIKOPULA RAMAIAH (DIED) & 6 ORS**

**..... APPELLANT(S)**

**AND**

**VARIKOPULA NARSASIMMA & 8 ORS**

**.....RESPONDENT(S)**

**Appeal from the decree and Judgement dated 28-10-2016 , OS 551 of 2011 of  
the Court of VII ADDL DIST AND SESSIONS JUDGE R.R DT AT L.B NAGAR-**

Take notice that appeal petition from the above decree/order has been presented by the above named appellant and registered in this Court, and that if you intend to defend the same you must enter an appearance in this court and give notice to the appellant or his pleader within 30 days after service of this notice on you.

If no appearance is entered on your behalf by yourself, your pleader or someone by law authorised to act for you in this appeal it will be heard and decided in your absence.

The address for service of the appellant is that of his Advocate MSIVANANDA KUMAR

A copy of the Memorandum of which is annexed here to - A

by order of the Court

Date: 09/01/2017;  
Hyderabad

  
ASSISTANT REGISTRAR



MEMORANDUM OF REGULAR APPEAL  
(UNDER SEC. 96 CPC)

IN THE COURT OF THE SPECIAL SESSIONS JUDGE FOR TRIAL OF  
CASES UNDER SCs & STs (POA) ACT 1989-CUM-VII ADDL. DIST. &  
SESSIONS JUDGE, RANGA REDDY DISTRICT  
AT : L.B. NAGAR

O.S. No. 551 of 2011

IN THE HIGH COURT OF JUDICATURE AT : HYDERABAD

FOR THE STATE OF TELANGANA AND  
THE STATE OF ANDHRA PRADESH

A.S. No. 1124 of 2016

Between :

1. Varikoppula Ramaiah (died)
2. Varikoppula Yellamma,  
W/o. V. Ramaiah, aged 75 years,  
R/o.Bodangiparthi Village,  
Chandur Maïdal, Nalgonda District
3. Varikoppula Anjiah,  
S/o. V. Ramaiah, aged 60 years,  
R/o.Bodangiparthi Village,  
Chandur Mandal, Nalگوڈا District
4. Varikoppula Narsimha  
S/o. V. Ramaiah, aged 57 years,  
R/o.Bodangiparthi Village,  
Chandur Mandal, Nalgonda District
5. Varikoppula Iddaiah  
S/o. V. Ramaiah, aged 47 years,  
R/o.Bodangiparthi Village,  
Chandur Mandal, Nalgonda District
6. Varikoppula Yadagiri  
S/o. V. Ramaiah, aged 38 years,  
R/o.H.No. 3-5-164, Near Water Tank,  
Narayanaguda, Hyderabad

7. Smt. Orsu Parvathamma,  
Orsu Bheemaiah, aged about 56 years,  
Nermetta Village, Chandur Mandal,  
Nalgonda District

...Appellants/  
Plaintiffs

AND

1. Varikoppula Narsamma,  
W/o. Not known, aged 77 years,  
R/o. H.No.1-4-485, Basheerabad (V) & (M)  
R.R. District
2. V. Laxman, S/o. Not known,  
aged 52 years, R/o.H.No.1-4-485,  
Basheerabad (V) & (M), R.R.District
3. V. Yadagiri, S/o. Not known,  
aged 48 years, R/o. H.No.1-4-485,  
Basheerabad (V) & (M), R.R. District
4. Suresh Bajaj,  
S/o. Paramanand Bajaj, aged 52 years,  
R/o. H.No. 8-2-210/B/A,  
Road No.14, Banjara Hills, Hyderabad
5. Satish Modi (died) (Per LRs)
6. State of A.P., rep. by District Collector,  
R.R. District, at Hyderabad
7. Dy. Collector/Tahsildar, Balanagar,  
R.R. District
8. Soham Satish Modi,  
S/o. Late Satish Modi, Major,  
R/o. H. No. Plot No. 280, Road No. 25,  
Jubilee Hills, Hyderabad
9. Sourabh Satish Modi,  
S/o. Late Satish Modi, Major,  
R/o. H. No. Plot No. 280, Road No. 25,  
Jubilee Hills, Hyderabad

...Respondents/  
Defendants

Respondents/defendants 8 and 9 are  
the legal heirs of deceased 5<sup>th</sup> respondent/  
Defendant)

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Address for service of all notices and process on the above named Appellants is that of their Counsel M/s. M. Sivananda Kumar, M. Siva Subba Rao, Dr. D. Manikyala Rao, T. Balaswami and M. Giri, Advocates, Flat No. 102, Arunodaya Apartments, Beside Minerva Hotel, Himayathnagar, Hyderabad-500 029

The above named Appellants beg to present this Memorandum of Regular Appeal against the Judgment and Decree dated 28.10.2016 in O.S. No. 551 of 2011 on the file of the Court of the Special Sessions Judge for Trial of Cases under SCs & STs (POA) Act, 1989-Cum-VII Addl. District & Sessions Judge, Ranga Reddy District at L.B. Nagar for the following among other :

**GROUND S**

1. The judgment of the lower court is contrary to law, weight of evidence and probabilities of the case.
2. The lower court ought not have ignored the pleadings.
3. The lower court ought to have seen that Sec. 80 CPC has no application to the suit
4. The lower court ought not have ignored the written arguments submitted wherein it is clearly referred to para-7 of the plaint which stated that defendants 6 and 7 are added as pro-forma defendants and in fact a reading of the relief (b) of the plaint shows that it is for a declaration that the claim of defendants 1 to 5 that 1<sup>st</sup> plaintiff is dead and no more and they are the legal heirs of the 1<sup>st</sup> plaintiff is fraud and no relief is claimed against defendants 6 and 7.
5. The lower court ought to have noticed, if it has applied its mind to the relief, that no relief is sought for against the Government.
6. The lower court ought not have forgotten the fundamentals of law about the applicability of Sec. 80 CPC, only in case where a relief is claimed for.

7. The lower court ought to have seen that till the date of judgment no one raised the issue of a necessity of framing an issue under Sec. 80 CPC. Therefore, without such an issue being framed leading to the trial of the case, the lower court is expected to put to surprise the parties during the course of its delivery of judgment by raking up irrelevant things, not germane in pleading.

8. The lower court ought to have seen that the issues framed, as contained in para-7 of the judgment, also do not disclose about the court entertaining a question of applicability of Sec. 80 CPC and it has happened suddenly in para-27 of the judgment as though it is an afterthought.

9. The lower court ought to have seen that the suit is not about a declaration of a right in a property, but it is for a declaration that the 1<sup>st</sup> plaintiff is alive as on the date of filing of the suit.

10. The lower court ought not have spacially ignored the fact that 1<sup>st</sup> plaintiff examined himself as P.W. 1 and also cross-examination done by the contesting defendants 1 to 5 did not say that the 1<sup>st</sup> plaintiff is not Ramaiah @ Ramulu.

11. The lower court ought to have seen that when 1<sup>st</sup> plaintiff came to the court for a declaration with wealth of documentary evidence to show that he is alive and kicking and in fact he gave evidence in the court and the contesting defendants 1 to 5 cross-examined the witness where under they admitted that they have no knowledge whether 1<sup>st</sup> plaintiff is alive or not before the suit is filed, whereas defendants 1 to 5 in their written statement admitted about the ignorance of the admissions of 1<sup>st</sup> plaintiff and they further stated that defendants 1 to 3 have misrepresented that 1<sup>st</sup> plaintiff expired clearly show that defendants have not denied the fact that 1<sup>st</sup> plaintiff is V. Ramaiah @ Ramulu. Therefore, the lower court ought not have indulged in sing and dance about the identity of the 1<sup>st</sup> plaintiff.

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12. When parties to the suit admit about the identity while not questioning the same, the lower court ought to have seen that it is not the duty of the court to raise negativity as against the admitted pleadings.

13. Para-4 of the judgment of the lower court would show that the first part of judgment is mechanically copied while short judgment starting from para-25 shows the pre-determination of the Hon'ble Judge to dismiss the suit. The findings of the lower court in para-23 of the judgment are only to be mentioned to be ridiculous. The finding that the 1<sup>st</sup> plaintiff is a fictitious person according to D.W. 2 is false even according to the evidence of D.W. 2.

14. The lower court ought to have seen that when the suit is simplicitor for declaration that the 1<sup>st</sup> plaintiff is alive as on the date of filing of the suit and the defendants have not denied the same, the issue should be whether 1<sup>st</sup> plaintiff is alive or not as on the date of filing of the suit and appellants suspect that the original issues were not considered and new issues were introduced for the purpose of delivery of the judgment and as per the pronouncement of the defendants' Counsel outside the court after the judgment is delivered. Therefore, the judgment is suspect.

15. The judgment of the lower court shows that the Hon'ble Judge has not applied his mind to the record, pleading and the relief sought for or in the alternative dishonestly ignored the same for reasons unknown to the record.

16. When a suit for declaration that 1<sup>st</sup> plaintiff is alive as on the date of filing of the suit, it is duty of the court to decide whether the 1<sup>st</sup> plaintiff is alive or not as on the date of filing of the suit, especially in the teeth of his own evidence as P.W. 1 and about the fact that he is alive as on the date of filing of the suit is not denied in the pleading, nor a suggestion was made to him that he is a different person. The court is bound to give a decision on that aspect especially in the teeth of the quoted ruling of Bhava Sanyasi (PC).

16. The lower court ought to have seen that if the court has to come to a conclusion that 1<sup>st</sup> plaintiff is a different person or he is not the person whom he is claiming to be and that he is alive as on the date of filing of the suit, it is for the defendants to claim that 1<sup>st</sup> plaintiff is not whom he is claiming to be or it is for the defendants to claim that the person with the name V. Ramaiah @ Ramulu is dead and no more and he is a different person by making such claim in the written statement in the first place and nextly by proving with evidence, documentary or parole evidence, to the effect that 1<sup>st</sup> plaintiff is a different person and that he died earlier by producing his death certificate.

17. In the absence of the same and in the absence of pleading and evidence, the lower court ought not have spun a new story during the course of judgment unconnected with the pleading, evidence and the lower court ought not have forgotten that whatever be the compelling reason to the court to give such judgment, it is the duty of the court to apparently be fair to the parties to the lis.

18. The judgment of the lower court is absurd and scandalously ignorant of the importance of pleading and non-denial of alleged fact in pleading by the defendants, which amounts to admission and further the positive evidence adduced by the plaintiffs is ignored on surmises of a spun story of evidence for the first time during the course of judgment, as such arguments are not addressed even by the defendants' Counsel. Therefore, leaving a perplexity on the appellants/plaintiffs from where the court has generated new grounds to dismiss the suit without touching the important aspect.

For these and other grounds that might be urged at the time of arguments, this Hon'ble Court may be pleased to set aside the Judgment and Decree dated 28.10.2016 in O.S. No. 551 of 2011 on the file of the Court of the Special Sessions Judge for Trial of Cases under SCs & STs (POA) Act, 1989-

Cum-VII Addl. District & Sessions Judge, Ranga Reddy District at L.B. Nagar and decree the suit as prayed for otherwise appellants will suffer serious hardship.

The value of the appeal is the same as in the lower court below i.e., Rs.10,10,100/- and a court fee of Rs.12,637/- is paid thereon.

HYDERABAD  
DATE : 9 .12.2016

  
COUNSEL FOR APPELLANTS



RANGA REDDY DISTRICT

HIGH COURT :: HYDERABAD

A.S. No. 1124 of 2016

Against

O.S. No. 551 of 2011

(Special Sessions Judge for  
Trial of Cases under SCs & STs  
(POA) Act, 1989-Cum-VII Addl.  
District & Sessions Judge,  
R.R. District at L.B. Nagar

MEMORANDUM OF GROUNDS

M/s. M. Sivananda Kumar (6323)  
M. Siva Subba Rao  
Dr. D. Manikyala Rao  
T. Balaswami  
M. Giri  
Advocates

COUNSEL FOR APPELLANTS