

IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS
JUDGE: (FTC) MAHABUBNAGAR.

Wednesday, this the 7th day of April, 2021

Present:- **Sri A. Veeraiah,**
II Addl. District and Sessions Judge,
(FTC) Mahabubnagar.

Appeal Suit No.41 of 2018
and
I.A.No.70 of 2021

Between:-

K. Sridevi W/o. N. Sudhakar Rao, aged 47 years, Occ: Household,
R/o:Khammam.

...Appellant/plaintiff.

AND

1. K. Narsaiah S/o. Late Kotaiah, aged 70 years, Occ: Agriculture,
R/o: Munnanoor village of Midjil mandal.
 2. Muthyala Nirmala W/o. Muthyala Gopal Reddy, aged 45 years,
 3. Muthyala Chandana D/o. Muthyala Gopal Reddy, aged 34 years,
 4. Muthyala Ashwini D/o. Muthyala Gopal Reddy, aged 21 years,
- above 2 to 4 all R/o: Devi Colony, Behind Chandrakanth Sidhore House
Gurdwar gate Opposite, Bidar.

...Respondents.

Appeal Under Section 96 r/w Order XLI Rule 1 CPC against the
judgment and decree dated 05.02.2018 in O.S.No.160 of 2006 on
the file of Prl. Junior Civil Judge at Kalwakurthy.

Between :-

K. Sridevi

...Plaintiff.

AND

1. K. Narsaiah.
2. Muthyala Nirmala.
3. Muthyala Chandana.
4. Muthyala Ashwini.

...Defendants.

* * *

This appeal and IA came up on 26.03.2021 for final hearing before me in the presence of Sri K.C. Narsimulu, Counsel for the appellant, and of Sri Kage Uttam Kumar, Counsel for respondent No.1, Sri M. Achutha Reddy, Counsel for respondents 2 to 4 and having stood over for consideration, till this day the Court delivered the following:-

JUDGMENT

This appeal is filed by the unsuccessful plaintiff against the
decree and judgment dated 05.02.2018 in O.S.No.160/2006 filed for

partition and separate possession of suit schedule lands passed by the learned Junior Civil Judge at Kalwakurthy. I.A.No.70/2021 is filed by the appellant for receiving the additional evidence under Order XLI Rule 27 of C.P.C. As per settled practice, legal procedure and guidelines of Hon'ble Superior Courts, both appeal and the application filed for receiving of evidence in terms of order XLI Rule 27 C.P.C are being considered and disposed together.

2. For the sake of convenience the parties will be hereinafter referred to as plaintiff and defendants as and how they are arrayed in the impugned proceedings.

3. Case of the plaintiff in brief is that she is sole daughter of defendant No.1 and defendant No.1 who belongs to Guntur district, sold away entire ancestral properties at Guntur and came to Mannanur village of Midjil mandal and purchased land in Sy.No.206 in his name, Sy.No.209 in the name of his mother and Sy.No.210 in the name of his younger brother Chinna Venkataiah to an extent of Ac.8-30 gts, Ac.8-13 gts and Ac.3-21 gts respectively and that defendant No.1 and plaintiff became absolute owners of said lands. It is further averred that the due to demise of his sons and younger brother and mother the first defendant became mad and he was sent to mental hospital through JFCM Court, Kalwakurthy and he was discharged from hospital on 05.05.1989. It is further averred that the defendant No.1 being alone without knowing the consequences of alienations of lands sold entire lands to defendants 2 to 4 in the year 2000 and they entered into possession in January, 2000, when the plaintiff questioned them,

the defendants claimed as purchasers of suit lands. The plaintiff was under impression that Muthyala Gopal Reddy is looking after the lands on behalf of his father due to his mental condition. The plaintiff informed the defendants through her, she is half shareholder of suit lands and requested them to vacate the suit lands but the defendants 2 to 4 refused and that the defendants stepped into the shoe of half shareholder as such they are to be treated as cosharers along with plaintiff and that the possession of one cosharer is also the possession of other coshareholders and since suit lands are still in joint possession and plaintiff and defendant No.1 did not partition by metes and bounds and there is no need to seek additional reliefs with regard to the documents created by defendant No.1 in favourof defendants 2 to 4. Hence, the plaintiff is entitled for partition of suit schedule lands.

4. The defendant No.1 was set exparte in the suit.

5. The defendants 2 to 4 filed their common written statement contending that the defendants 2 to 4 are not aware of relationship between plaintiff and defendant No.1 and also native place of defendant No.1 as of Guntur District and about the alienations of properties at Guntur by defendant No.1. It is averred that defendant No.1 was absolute owner, pattadar and possessor of suit schedule land situated at Vemula village. It is denied that Sy.No.209 was purchased in the name of his mother and Sy.No.210 in the name of his brother. Defendant No.1 is absolute owner and the same is self-acquired property of defendant No.1 and plaintiff is nothing to do with it. It is denied that defendant No.1 became mad due to demise of his sons, younger brother and mother. Defendants 2 to 4 have no knowledge of

sending of defendant No.1 to Mental Hospital through Court of JFMC at Kalwakurthy and about his discharge from the hospital on 05.05.1989. The defendant No.1 was hale and healthy and capable person and he himself approached the defendant No.2 offered to sell the suit schedule lands in the year 2000 and defendant No.1 accepted the offer and purchased the suit schedule lands in Sy.No.206/A to an extent of Ac.8-30 gts through registered sale deed dated 31.01.2000 vide document No.210/A to an extent of Ac.6-30 gts of Vemula village in the name of her minor daughter Kumari Muthyala Chandana from defendant No.1 through registered sale deed document bearing No.186/2000 dated 31.01.2000. Similarly defendant No.2 purchased the land in Sy.No.209/A to an extent of Ac.3-21 gts and Sy.No.210/A to an extent of Ac.1-21 gts through registered sale deed document No.185/2000 dated 31.01.2000 in the name of defendant No.4. It is denied that defendant No.1 sold the suit schedule lands through defendants 2 to 4 without knowing the consequences of alienations. Defendant No.1 received the entire sale consideration amount from the defendant No.2 and sold out suit schedule lands and delivered vacant possession in favour of defendants 2 to 4 and the names of defendants 2 to 4 carried out in the records of rights and that pattadar passbooks and title deeds in favour of defendants 2 to 4, as such defendants 2 to 4 are the absolute owners and they constructed farm house and raised mango garden. It is further averred that the plaintiff neither approached defendants 2 to 4 nor she informed anything to defendants 2 to 4. The plaintiff herself averred that the suit schedule lands are self-acquisition of defendant No.1 and she is not entitled for

any share. The registered sale deeds are valid and binding including those persons claiming rights under defendant No.1. The very relationship between the plaintiff and the defendant No.1 is disputed. It is further averred that the defendant No.1 himself got filed the present suit by designing the plaintiff as his daughter and it is the collusive suit filed to harass the bonafide purchasers. The defendant No.1 got filed another suit by one K. Rama Devi posing herself as the wife of late Venkateshwarlu in respect of lands in Sy.No.207 and 208 and the same is pending. The Court fee paid by the plaintiff is insufficient. As plaintiff herself admitted the possession of defendants 2 to 4, the defendants cannot be equated with that of the cosharers of plaintiff. The defendants prayed to dismiss the suit.

6. Basing on the above pleadings the Trial Court framed the following issues :

- 1) Whether the plaintiff is entitled for partition and separate possession of half share in the suit property as prayed for?
- 2) Whether the suit schedule properties are self-acquired properties of defendant No.1?
- 3) Whether the registered sale deeds executed by defendant No.1 in favour of defendants 2 to 4 in respect of suit schedule properties are true, valid and binding on the plaintiff?
- 4) Whether the defendant No.1 has become insane after the death of his wife, sons and younger brother?
- 5) Whether the Court fee paid by the plaintiff is insufficient?
- 6) To what relief?
- 7) Whether the suit is bad for joinder of necessary parties?

7. The plaintiff got examined herself as PW-1 and through her Exs.A1 to A12 marked and got examined PWs.2 and 3.

Ex-A1 is copy of registered sale deed dated 17.06.1977 in respect of land bearing Sy.No.206.

Ex-A2 is copy of registered sale deed dated 17.06.1977 in respect of land bearing Sy.No.209.

Ex-A3 is copy of registered sale deed dated 17.06.1977 in respect of land bearing Sy.No.210.

Ex-A4 is death certificate of Chinna Venkateswarul dated 13.02.2006.

Ex-A5 is copy of pahani for the year 1990-91.

Ex-A6 is copy of pahani for the year 1992-93.

Ex-A7 is copy of pahani for the year 1994-95.

Ex-A8 is copy of pahani for the year 1997-98.

Ex-A9 is copy of pahani for the year 1977-78.

Ex-A10 is copy of pahani for the year 1979-80.

Ex-A11 is copy of pahani for the year 2000-2001.

Ex-A12 is valuation certificate dated 04.02.2006.

On behalf of the defendants 2 to 4 the second defendant herself examined as DW-1 and through her Exs.B1 to B86 are marked. The defendants got examined DWs.2 and 3.

Ex-B1 is the registered sale deed dated 31.01.2000 in favour of Chandana.

Ex-B2 is the registered sale deed dated 31.01.2000 in favour of Nirmala.

Ex-B3 is original pass book in favour of Chandana.

Ex-B4 is original pass book in favour of Nirmala.

Ex-B5 is the original proceedings issued by MRO in favour of Nirmala (210/A).

Ex-B6 is the original proceedings issued by MRO in favour of Chandana (206/A).

Ex-B7 is the pahani for the year 2000-01 (206/A)

Ex-B8 is the pahani for the year 2000-01 (206/A) of Nirmala.

Ex-B9 is the pahani for the year 2002-03 (206/A) of Nirmala.

Ex-B10 is the pahani for the year 2003-04 (206/A) of Nirmala.

Ex-B11 is the pahani for the year 2004-05 (206/A) of Nirmala.

Ex-B12 is the ROR abstract in Sy.No.206/A of the year 2004-05.

Ex-B13 is the pahani for the year 2005-06 (206/A) of Nirmala.

Ex-B14 is the pahani for the year 2000-01.

Ex-B15 is the pahani for the year 2001-02.

Ex-B16 is the pahani for the year 2001-02.

Ex-B17 is the pahani for the year 2002-03.
Ex-B18 is the pahani for the year 2003-04.
Ex-B19 is the ROR abstract.
Ex-B20 is the pahani for the year 2005-06.
Ex-B21 is the pahani for the year 2006-07 (5 copies).
Ex-B22 is the 1-B Namuna ROR.
Ex-B23 is the pahanai fasli 1420.
Ex-B24 is the pahanai fasli 1421.
Ex-B25 is the pahanai fasli 1422.
Ex-B26 is the pahanai fasli 1423.
Ex-B27 is the pahanai fasli 1424.
Ex-B28 is the pahanai fasli 1425.
Ex-B29 is the pahanai fasli 1426.
Ex-B30 is the pahani for the year 2009-10 (3 copies).
Ex-B31 is the pahani for the year 2007-08 (4 copies).
Ex-B32 is the pahani for the year 2008-09 (4 copies).
Ex-B33 is the pahani for the year 2006-07 (2 copies).
Ex-B34 is the pahani for the year 2007-08.
Ex-B35 is the pahani for the year 2008-09.
Ex-B36 is the pahani for the year 2009-10.
Ex-B37 is the pahani for the year 2006-07 (6 copies).
Ex-B38 is the pahani for the year 2006-07 (2 copies).
Ex-B39 is the pahani for the year 2007-08 (5 copies).
Ex-B40 is the pahani for the year 2008-09 (4 copies).
Ex-B41 is the pahani for the year 2009-10 (4 copies).
Ex-B42 is the 1-B Namuna ROR.
Ex-B43 is the pahanai fasli 1425 Sy.No.210/AA.
Ex-B44 is the pahanai fasli 1425 Sy.No.208/O.
Ex-B45 is the pahanai fasli 1425 Sy.No.209/I.
Ex-B46 is the pahanai fasli 1424 Sy.No.208/O.
Ex-B47 is the pahanai fasli 1424 Sy.No.210/AA.
Ex-B48 is the pahanai fasli 1424 Sy.No.209/I.
Ex-B49 is the pahanai fasli 1423 Sy.No.209/I.
Ex-B50 is the pahanai fasli 1423 Sy.No.210/AA.
Ex-B51 is the pahanai fasli 1423 Sy.No.208/O.
Ex-B52 is the pahanai fasli 1422 Sy.No.210/AA.
Ex-B53 is the pahanai fasli 1422 Sy.No.209/I.
Ex-B54 is the pahanai fasli 1422 Sy.No.208/O.
Ex-B55 is the pahanai fasli 1421 Sy.No.210/AA.
Ex-B56 is the pahanai fasli 1421 Sy.No.209/I.

Ex-B57 is the pahanai fasli 1421 Sy.No.208/O.
Ex-B58 is the pahanai fasli 1420 Sy.No.209/I.
Ex-B59 is the pahanai fasli 1420 Sy.No.210/AA.
Ex-B60 is the pahanai fasli 1420 Sy.No.208/O.
Ex-B61 is the 1-B Namuna ROR.
Ex-B62 is the pahanai fasli 1420 Sy.No.208/O.
Ex-B63 is the pahanai fasli 1420 Sy.No.207/O.
Ex-B64 is the pahanai fasli 1421 Sy.No.208/I.
Ex-B65 is the pahanai fasli 1421 Sy.No.207/O.
Ex-B66 is the pahanai fasli 1422 Sy.No.208/I.
Ex-B67 is the pahanai fasli 1422 Sy.No.207/O.
Ex-B68 is the pahanai fasli 1423 Sy.No.208/I.
Ex-B69 is the pahanai fasli 1423 Sy.No.207/O.
Ex-B70 is the pahanai fasli 1424 Sy.No.208/I.
Ex-B71 is the pahanai fasli 1424 Sy.No.207/O.
Ex-B72 is the pahanai fasli 1425 Sy.No.208/I.
Ex-B73 is the pahanai fasli 1425 Sy.No.207/O.
Ex-B74 is the pahanai fasli 1426 Sy.No.208/I.
Ex-B75 is the pahanai fasli 1426 Sy.No.207/O.
Ex-B76 is the pahanai fasli 1426 Sy.No.210/AA.
Ex-B77 is the pahanai fasli 1426 Sy.No.209/I.
Ex-B78 is the pahanai fasli 1426 Sy.No.208/O.
Ex-B79 is the 1-B Namuna ROR.
Ex-B80 is the pahanai fasli 1420 Sy.No.210/AA.
Ex-B81 is the pahanai fasli 1421 Sy.No.210/A.
Ex-B82 is the pahanai fasli 1422 Sy.No.210/A.
Ex-B83 is the pahanai fasli 1423 Sy.No.210/A.
Ex-B84 is the pahanai fasli 1424 Sy.No.210/A.
Ex-B85 is the pahanai fasli 1425 Sy.No.210/A.
Ex-B86 is the pahanai fasli 1426 Sy.No.210/A.

8. The Court below in the impugned judgment dismissed the suit without costs. The findings of the Court below on the issues that

1. The plaintiff has not filed any single record to show that there was some ancestral property stands in the name of their ancestors in Adigoppula village of Gurazala Taluq, Guntur district and that the defendants are in possession of the suit lands.

2. The properties are self-acquired properties of defendant No.1 and during the life time of defendant No.1 no partition can be maintainable.
3. The registered sale deeds executed by defendant No.1 in favour of the defendants 2 to 4 are valid and binding on the plaintiff.
4. The plaintiff not filed any record to show that the defendant No.1 was sent to hospital through the Court and discharged him on 05.05.1989 and after discharge he was continued the said ill-health.
5. The Court fee paid by the plaintiff is incorrect as plaintiff is not in joint possession over the suit lands.
6. The suit is bad for non-joinder of plaintiff's paternal aunts namely Purnamma and Laxmamma.

9. Aggrieved by the decree and judgment passed by the Court below, the present appeal is filed on the following grounds.

- a. The defendant No.1 alienated the ancestral lands situated at Adigoppula village, purchased the suit lands in the name of his mother, himself and his younger brother Venkateshwarlu and they enjoyed the lands as their ancestral lands and after death of mother of defendant No.1 and younger brother of defendant No.1, defendant No.1 became mad and was sent to mental hospital and discharged on 05.05.1989 and since then he was mentally disordered and the defendants 2 to 4 got executed registered sale deed when the defendant No.1 was mentally disordered.
- b. The Lower Court dismissed the suit only on the ground that the appellant did not file any record to show that defendant No.1 purchased the suit lands after alienating the ancestral lands at Gurujala. One C. Krishna Murthy was examined PW-2 but he was not cross-examined. So the evidence of PW-2 remained unchallenged. But the Lower Court did not give any weight given evidence of PW-2.

c. The grandfather of defendant No.1 Narsaiah got three sons namely Ramaiah, Subbaiah and Kotaiah. To show that they were owners of lands situated in the limits of Gurazala Taluq Guntur District, the certified copies of Revenue records are filed through a separate petition as additional evidence. The defendant No.1 was in mental hospital upto 29.04.1989, thereafter the same was continued and during the year 2000 he was suffering with same disease and the appellant could not file the letter and now same is obtained from Sessions Court Mahabubnagar and the same is submitted as additional evidence and it is therefore prayed to set aside the judgment and decree and to allow the appeal.

10. Along with the appeal, the appellant filed IA under Order 41 Rule 27 which is numbered as 70/2021 for receiving additional evidence. The contention of the appellant in IA.70/2021 is that late Sri. M. Kishan Rao Advocate was on record on behalf of plaintiff but during the pendency of the suit he died due to his illness and subsequently all his files were looking after by Laxmana Sharma advocate and she is already handed over the relevant revenue records of Gurazala Taluq pertaining to ancestral lands but the said advocate could not file those documents and she has been settled at Khammam and only on information she came to Kalwakurthy and Advocates took her signatures on affidavit and so she came to know the non-filing of revenue records of ancestral lands and after going through the judgment of the Court, immediately she has secured the revenue records from Gurazala and now filing the same and the documents are public documents and it will not cause any prejudice to other side if they are filed at this stage. It is further averred that her father was in mental hospital, within one year after discharge the registered sale

deeds were executed without her consent and knowledge and at the time of execution of registered sale deed her father and mother was alone in the house and obtained the certified copy of letter Superintendent of mental hospital after disposal of the suit and the records are fully in support of pleadings and PW-2 was not cross-examined by other side and in the circumstances additional evidence is most essential and it is prayed to grant leave to file above records as additional evidence. The documents mentioned in the petition are

1. Copy of adangal pahani issued by deputy Tahasildar dated 28.08.2014.
2. Copy of pahani for the year 1380 fasli issued by Tahasildar Gurazala.
3. Attested copy of private sale deed dated 26.05.1971.
4. Certified copy of letter No.ALD/261/89 dated 05.05.1989 issued by superintendent of mental hospital, Hyderabad.

11. Written arguments are filed by both sides.

12. The arguments of learned counsel for the appellant is that the suit lands purchased by defendant No.1 out of the sale proceeds of ancestral lands situated at their native village Gurazala village of Guntur district and that Sri M. Krishan Rao advocate was conducting the case and he died and after his death his junior advocate namely Laxmana Sharma conducted the same. It is further mentioned in the written arguments that the Court dismissed the suit on the ground that revenue records not filed in respect of ancestral lands of Adigoppula village of Gurazala Taluq and also not filed hospital certificate and only on these defects the suit was dismissed and that the appellant obtained certified copies from Gurazala and filed documents as additional evidence, through separate petition and all

the documents are public documents and there is sufficient explanation not filing the same during the trial and the additional evidence documents may be received and case may be remanded to Lower Court for fresh disposal on the basis of those document otherwise the appellant will be deprived from her due share in the suit schedule lands.

13. Heard counsel for respondent No.1, he has argued to remand the case to the Lower Court.

14. Written arguments filed by the respondents 2 to 4 contending that in the suit for partition and separate possession the burden to prove that the suit lands are ancestral properties and have been purchased from and out of sale proceeds ancestral lands at Guntur lies on plaintiff only and the plaintiff has to prove that as on the date of sale and execution of sale deeds the first defendant was suffered with mental disorder. The plaintiff not pleaded in the plaint nor stated in the affidavit filed by her as chief examination with regard to the details of ancestral properties held and acquired by the first defendant from his ancestors, alienations made by him, particulars of period sales consideration, if any and period of relevancy with regard to the purchase of suit lands. PW-1 vaguely pleaded that suit lands are acquired out of the sale proceeds of properties at Guntur. The plaintiff did not file any document to prove ancestral properties at Guntur, sales made by defendant No.1 and diversion of said funds for purchase of suit lands. The suit lands are purchased by defendant No.1 and his mother and brother under registered sale deeds Exs.A1 to A3 dated 17.06.1977 vide document No.676, 677, 679/77. It is

further mentioned in the written arguments that PWs.2 and 3 examined in support of plaintiff's case and filed their evidence improvements in respect of land of first defendant in Guntur district. PWs.2 and 3 are not persons to depose the said fact further their evidence is without pleading. PWs.2 and 3 made certain improvements in their evidence with regard to lands alleged to have been hold by defendant No.1 Narsaiah in Guntur district but no documents filed in support thereof.

14.1. It is further mentioned that there is no material on record to prove that suit lands are out come of ancestral properties of defendant No.1 and as on the date of sale of suit lands first defendant suffered with mental disorder. Whereas the recitals of sale deeds Exs.A1 to A3 proves that suit schedule lands are purchased by them with their money, they are self-acquired properties of defendant No.1 only. The plaintiff did not adduce any cogent evidence to prove as ancestral properties, the only presumption is that suit lands are self-acquired properties of defendant No.1 purchased under sale deeds Exs.A1 to A3. The first defendant is alive but he did not file any written statement and not given any evidence and he was set exparte and he is proper person to depose the fact if any with regard to sale of ancestral properties at Guntur and purchase of suit lands with the sale proceeds of that property. The defendants 2 to 4 purchased suit lands from defendant No.1 for valid sale consideration under registered sale deeds of the year 2000 and they are in possession and enjoyment of the same. The plaintiff did not object the sale of suit lands by

defendant No.1 to defendants 2 to 4 and did not file suit within 3 years from the date of sale.

14.2. It is further mentioned in the written arguments that defendants got examined DWs.1 to 3 and marked Exs.B1 to B86 and proved their possession. It is further mentioned that the rightly arrived at conclusion with regard to all the issues and dismissed the suit and there is no error in the judgment of Trial Court. It is further mentioned in the written arguments that the I am not filed the petition under Order XLI Rule 27 C.P.C. along with the appeal and documents are pahanies in the year 2014, pahanies for the year 1380 fasli issued by Tahasildar Gurazala and copy of private sale deed dated 26.05.1971 and letter dated 05.05.1989 issued by Superintendent, mental hospital, Hyderabad. It is further argued that copies of pahanies filed by appellant as additional evidence are not sufficient to prove that the suit lands are ancestral properties. Further the copy of private sale deed dated 26.05.1971 is not valid document and it is not admissible in evidence and cannot be relied on. Moreover the said document is pertaining to 1971 and the sale deeds Exs.A1 to A3 pertains to 1977 and no relevancy can be placed and cannot be considered as the suit lands are out come of ancestral properties. In another document is dated 05.05.1989 alleged discharged letter and it is no way concerned for the year 2000. It is further argued that the documents filed by the appellant are not admissible and not relevant to prove her case as such there is no need to remand the appeal to the Court below for consideration on inadmissible and irrelevant documents without proper pleadings in the plaint. As such the petition

under Order XLI Rule 27 C.P.C is liable to be dismissed. It is further argued to dismiss the appeal.

15. **Now the points that arises for determination are :**

1. Whether the documents filed along with IA.70/2021 are to be received as additional evidence, if so, what shall be reiterates as to receiving the documents and whether such receiving the documents will necessity remand of the matter to Court below and whether oral evidence also become necessary to support the documentary evidence sponsored by way of additional affidavit?
2. Whether the decree and judgment dated 05.02.2018 passed in the suit OS.160/2006 on the file of Junior Civil Judge, Kalwakurthy are sustainable in law and on facts or whether any inference is necessary, if so, and on what ground and to which extent?
3. What is the result of IA.70/2021?
4. What is the result of the appeal?

16. **Point No.1 :**

The application for receiving the additional evidence require consideration in terms of Order XLI Rule 27 C.P.C which reads as follows :

Production of additional evidence in appellate Court :

- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court. But if, –
 - (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
 - [(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

- (b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate Court may allow such evidence or document to be produced, or witness to be examined.

- (2) Where additional evidence is allowed to be produced by an appellate Court, the Court shall record the reason for its admission.

17. As per the order XLI Rule 27 CPC the circumstances permit production of additional evidence at appellate stage are

- i) Whether the Trial Court refused to admit the evidence ought to have been admitted. This circumstance is not present in the case.
- ii) Not with standing due to diligence, the evidence proposed to be adduced it appellate state says within the knowledge of the party sponsoring such additional evidence. This circumstance is also not present in respect of the documents 1 to 3 mentioned in the petition. In the petition it is mentioned that she has already handed over the the revenue records of Gurazala Taluq pertaining to their ancestral lands but the said advocate could not file those documents. In the affidavit it is not mentioned whether the petitioner handed over revenue records at Gurazala Taluq to M. Kishan Rao advocate or Laxman Sharma advocate. Simply the petitioner stated that she handed over the relevant revenue records but the said advocate could not file those documents. It shows that the documents were very much present and they were handed over to the counsel and petitioner came to know after going through the judgment of the Court. In the affidavit it is mentioned that immediately she has secured the revenue records from Gurazala and now filing the same. On perusal of the petition and documents filed it shows that first document dated 20.08.2014, second document dated 22.09.2007. Therefore, the petitioner is not diligence in prosecuting her case. It is only after realized that the documents not filed. In respect of the document No.4 i.e., C.C. of letter No.A&D/261/89 dated 05.05.1989 issued by Superintendent of mental hospital, Hyderabad. In the petition the appellant stated that she

has obtained certified copy after disposal of the suit. On perusal, it is mentioned at para No.2 of plaint that the defendant No.1 was sent to mental hospital through the JFCM Court, Kalwakurthy and he was discharged from the hospital Hyderabad on 05.05.1989. The copy of letter of mental hospital, Hyderabad is also submitted herewith for kind perusal, however in the list of documents the said documents not filed. Therefore, the appellant has knowledge about the documents at the time of filing of the suit.

iii) The third circumstance is that the appellate Court must find it necessary. How and why the appellate Court shall find it necessary to permit additional evidence in IA.70/2021 sponsored is of most important question.

18. The plaintiff had knowledge about the existence of the documents 1 to 3 mentioned in the petition which were ought to have filed before the Trial Court. Lack of legal knowledge and lack of proper advise cannot be a ground for not producing the documents. The plaintiff is not expected to improve her case stage wise and fill up the gaps.

19. The appellant filed four documents by mentioning the 4th document certified copy of letter No.A&D/261/89 dated 05.05.1989 issued by Superintendent of Mental Care Hospital, Hyderabad it is certified copy issued by the Hon'ble District and Sessions Court, on 18.06.2018. This document is somehow relevant, therefore this document can be received. Therefore, this Court is of opinion that the document can be received as additional evidence. On perusal of the evidence of PW-1, PW-1 deposed in her chief-examination that defendant No.1 was sent to mental hospital through JFCM Court, Kalwakurthy and he was discharged from the hospital on 05.05.1989. Since the PW-1 deposed about the fact that the document can be

received and exhibited as Ex-A13. Accordingly the point No.1 is answered allowing the petition partly and there is no necessity to adduce oral evidence before the Trial Court and the relevancy of the document will be addressed at proper stage.

20. **Point No.2 :**

The plaintiff filed suit for partition contending that defendant No.1 sold away entire ancestral properties at Guntur and came to Mannanur village. PW-1 in her chief-examination reiterated the contents of plaint. PW-1 in her cross-examination deposed that their forefathers sold out the lands situated Adigoppula village and purchased the properties and settled at Wadyala village of Midjil mandal. But she does not know whether the said lands stands in the name of her grandfather namely Kotaiah and she did not file any document to show that her grandfather having lands at Adigoppula village. The learned counsel for appellant has argued that the PW-2 was not cross-examined and the Trial Court not considered the evidence of PW-2. In the plaint, the plaintiff pleaded that her father defendant No.1 sold away entire ancestral properties at Guntur. The plaintiff not pleaded about where the ancestral properties are situated and its survey numbers and existence and other particulars. In the absence of pleadings any amount of evidence by PW-2 cannot be looked into. The version of PW-1 in her chief-examination is that her father sold away ancestral properties and in her cross-examination it is mentioned their forefathers sold away properties and purchased the properties and settled at Wadyala and PW-2 deposed that after selling ancestral lands defendant No.1 and his parents came to Mannanur

village. Therefore, the evidence of PWs.1 and 2 is inconsistent. In the grounds of appeal also it is pleaded that defendant No.1 alienated ancestral lands. The plaintiff not filed any document before the Court about the particulars of lands and its survey numbers in any revenue records to show that there are ancestral properties at Adigoppula village. There is no document in which year either defendant No.1 or plaintiffs' forefathers sold away. In the absence of the particulars, when the defendant No.1 purchased the properties as admitted by PW-1 in her cross-examination the properties to be treated as self-acquired properties of defendant No.1.

21. The another ground urged in the appeal is that defendant No.1 was sent to mental hospital on 29.04.1989 and thereafter he was discharged and the disease was continued during the year 2000. PW-1 in her chief-examination deposed that her father was sent to mental hospital and discharged from the hospital on 05.05.1989. Ex-A13 certified copy of letter No.A&D/261/89 dated 05.05.1989 addressed from the superintendent, circle inspector of police, Kalwakurthy shows that Mr. Kongera Narsaiah was admitted in the institute of mental health on 12.04.1989 and he was discharged on 29.04.1989 and he was suffering from "Reactive Depression" as a result of losing self-esteem through Court cases failure. It further shows that he was asked to continue medication prescribed and report to hospital after one month for follow up. Except Ex-A13 there is no other document filed by the plaintiff to show that defendant No.1 was suffering with mental illness. Here PW-1 in her cross-examination deposed that she does not know the period in which her father was

suffered with the said disorder. She admitted that her marriage was performed in the year 2003 and she studied in Nirmala Machinery School at Kalwakurthy and her father joined her in that school and her father used to pay the school fee of her. The plaintiff not filed any document of medical prescription to show that in the year 2000 the defendant No.1 was suffering with mental disorder. DW-1 in her chief-examination deposed that defendant No.1 was hale and healthy and was capable person and he himself approached and offered to sell the suit lands in the year 2000 for which she accepted it and purchased it. DW-1 in her cross-examination denied the suggestion that after demise of K. Narsimulu and brothers and suffered mental as such he gave the suit lands of her husband for cultivation and under that guise of mental ill-health of K. Narsimulu they fraudulently obtained his signature and created fake sale deeds in their favour. DW-2 Kavali Narayana deposed that the father of plaintiff was owner of suit lands and he sold the suit lands as the head of family for the family need in favour of Muthyala Nirmalamma about 17 years back. DW-2 in his cross-examination denied the suggestion that defendant No.1 was suffering from ill-health and his family members leased the suit lands to Gopal Reddy for cultivation but Gopal Reddy created a false sale deed in favour of defendants. DW-3 Pathalavath Thavarya Naik in his chief-examination deposed that the defendants 2 to 4 cultivating the lands from 17 years. DW-3 in his cross-examination denied the suggestion that Gopal Reddy has forged the signature of defendant No.1 and created the document in favour of defendants 2 to 4. The plaintiff failed to prove that the defendant No.1 has suffered

from mental disorder in the year 2000. PW-1 in her cross-examination admitted that her paternal aunts Laxmamma and Purnamma were alive. The plaintiff not made them as parties to the suit. Therefore the Trial Court held the suit is bad for non-joinder of parties. PW-1 in her cross-examination deposed that she does not know whether her father sold the lands in favour of defendants 2 to 4. In the plaint it is mentioned that the defendants entered into possession of lands in January, 2000. Therefore, the plaintiff is not in possession of the suit schedule property. Therefore the Court fee paid by the plaintiff is not correct. The Trial Court correctly answered the issues. Therefore the plaintiff is not entitled for partition of the suit schedule properties. Therefore, the Trial Court arrived at right decision. Therefore the findings of the Trial Court are fit for confirmation. Accordingly point No.2 is answered.

22. **Point Nos.3 and 4 :**

In the result :

- 1) I.A.No.70 of 2021 is partly allowed and document No.4 received and marked as Ex-A13.
- 2) The appeal is dismissed.
- 3) The decree and judgment dated 05.02.2018 in O.S.No.160/2006 on the file of Prl.Junior Civil Judge's Court at Kalwakurthy shall stand confirmed.
- 4) Both parties are directed to bear their own costs.

Dictated to stenographer, transcribed by her, corrected and pronounced by me in the open Court, this the 7th day of April, 2021.

Sd/-
II Addl. District and Sessions Judge,
(FTC) Mahabubnagar.

APPENDIX OF EVIDENCE:
EXHIBIT MARKED FOR

Appellant :

Ex-A13 is CC of letter No.A&D/261/89, dated 05.05.1989.

Sd/-
II Addl. District and Sessions Judge,
(FTC) Mahabubnagar.

// True copy //

Head Clerk,
II Addl. District and Sessions Judge's Court,
(FTC) Mahabubnagar.