

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE, HINDUPUR

PRESENT: Sri. D.Tirumala Rao,

**Judge, Family Court-cum-VII Additional District & Sessions Judge,
Anantapuramu.**

FAC II Additional District Judge, Hindupur

Friday, the 9th day of September, 2022

A.S.No.28/2019

BETWEEN:

- 1) Mala Anjaneyulu, S/o Mala Lakshamma, aged 47 years, Hindu, Agriculture, R/o Guttur Village, Penukonda Mandal.
- 2) Mala Nagaraju, S/o Mala Lakshmana, aged 38 years, Hindu, Agriculture, R/o Guttur Village, Penukonda Mandal.
- 3) Mala Narayanamma, W/o Sreeramulu, aged 46 years, Hindu, Agriculture, R/o Yenumula Palli, Puttaparthi Mandal.

.....Appellants/Defendants

and

Mala Kommu Anjaneyulu, S/o Chinna Narasappa, aged 72 years, Hindu, Agriculture, R/o Guttur Village, Penukonda Mandal.

.... Respondent/Plaintiff

On appeal against the Decree and Judgment dated: 19-07-2019 in OS.85/2012 on the file of Senior Civil Judge court, Penukonda.

Between:-

Mala Kommu Anjaneyulu

.... Plaintiff

AND

1. Mala Anjaneyulu
2. Mala Nagaraju.
3. Mala Narayanamma

..... Defendants

This appeal came before me on 29-07-2022 for final hearing and disposal in the presence of **Sri P.Nagabhushana Rao, Sri B.Nagendra**, Advocates for the appellants and **Sri. R.Sreekanth Reddy**, Advocate for the Respondent and upon hearing both the parties and upon perusal of the material on record and having stood over for consideration till this day, this court delivered the following:-

J U D G M E N T

1. This appeal arises out of a decree and judgment dated 19-07-2019 in OS.85/2012 on the file of the learned Senior Civil Judge, Penukonda wherein the suit was decreed in favour of the respondent and against the appellants herein.

2. For the sake of convenience the parties herein are arrayed as parties before the trial court.

3. The brief facts of the plaintiff case are that originally the plaint schedule mentioned property belongs to Chinna Narisigadu @ Narasappa. The said Chinna Narisigadu @ Chinna Narasappa had one brother namely Pedda Narasappa. Both were enjoyed the plaint schedule mentioned property jointly and they were in joint possession. The said Pedda Narisigadu @ Pedda Narasappa died about 25 years ago leaving behind his only son namely Mala Lakshmanna and after the death of said Pedda Narasigadu, his half share in the plaint schedule mentioned property mentioned devolved on his only son Lakshmanna. The defendants 1 to 3 are the children of said Lakshmanna. After the death of father of the defendants, they succeeded the half share of their father. The said Chinna Narisigadu died leaving behind his wife namely Gangamma and his son i.e. plaintiff. The said Gangamma was also died about 14 years back as such the plaintiff has got half share in the plaint schedule mentioned property.

The said Chinna Narisigadu @ Chinna Narasappa was innocent person and his brother namely Pedda Narsigadu @ Pedda Narasappa was dominating the said Chinna Narisigadu. After the death of the father of the plaintiff and grand father of the defendants, plaintiff and the father of the defendants were jointly dug a open well in the plaint schedule mentioned property with the finance aid of young india project.

The plaintiff is innocent and illiterate and taking advantage of the same, the defendants 1 and 2 were obtained pattadar pass books in respect of the plaint schedule mentioned property and was also mortgaged the same in P.A.C.S. Guttur without knowledge of the plaintiff. After knowing the said fact there were serious disputes which arose between the plaintiff and the defendants as the defendants played fraud upon the Tahsildar, Penukonda and then got mutated their names in the revenue records. The defendants also obtained pattadar pass book in respect of the entire plaint schedule mentioned property without knowledge of the plaintiff, though they are in joint possession and enjoyment of the plaint schedule mentioned property. The plaintiff demanded the defendants for amicable partition, but the

defendants did not come forward. Therefore the plaintiff got issued legal notice to the defendants on 21.05.2012. But the defendants issued reply notice to the plaintiff on 11.06.2012 with false allegations. Therefore, the plaintiff was constrained to file the present suit for division of the plaint schedule mentioned property by way of partition into two equal share and to allot one share to the plaintiff and to deliver possession of his share of the property in the plaint schedule mentioned property. Hence, the suit.

3. The defendants 1 to 3 filed written statement and denied the pleadings of the plaint including relationship of the both parties. Further stated that originally the plaint schedule mentioned property is "Government Land". The then Tahsildar of Penukonda granted D-Form patta on 28.06.1929 to the Mala Narisigadu @ Pedda Narasappa, S/o Naganna who is the grandfather of the defendants and he was in possession and enjoyment of the same till his death and after his death, his son namely Lakshmanna succeeded the same. D-Form patta was granted in favour of the grandfather of the defendants stated to have lost, therefore they obtained certified copy from the concerned authorities.

During the life time of Lakshmanna who is father of the defendants he was in possession and enjoyment of the same and raised crops and his name was also mutated in the revenue records and pattadar pass book and title deed was also issued in favour of the defendants. The father of the defendants also dug a well in the plaint schedule mentioned property and also installed a electric motor pump to the said well and also obtained electric connections under Service Connection No.285 which also stands in the name of the father of the defendants.

The father of the defendants also dug a bore well in the plaint schedule mentioned property about 16 years back and obtained electric connection under service connection No.954 to the bore well. The defendants succeeded the plaint schedule mentioned property including other properties after the death of their father. The revenue authorities issued pattadar pass book and title deed in the name of the mother of the defendants.

During the life time of Lakshmanna himself and defendants mortgaged the plaint schedule mentioned property to P.A.C.S. Guttur i.e. on 24.10.1996 and

obtained loan from the said bank.

Further stated that about two years back the defendants partitioned their family properties orally and in that partition the plaint schedule mentioned property was allotted to the defendants 1 and 2 and their names were also mutated in the revenue records in respect of their respective shares and got obtained pattadar pass books and title deed.

Further stated that either the plaintiff or anybody have no manner of right or title in the plaint schedule mentioned property and the plaintiffs never in joint possession and enjoyment of the plaint schedule mentioned property. The plaintiff is well aware that, he has no right or title in the plaint schedule mentioned property even though he filed a false suit only to knock away the plaint schedule mentioned property. Hence, prays to dismiss the suit with costs.

4. Basing on the above pleadings, the trial court settled the following issues for trial:

- 1) Whether the suit schedule properties are absolute properties of grandfather of the defendants?
- 2) Whether the schedule land was assigned in favour of the defendants grandfather?
- 3) Whether after the death of their grandfather and father, the defendants had succeeded to the properties?
- 4) Whether the plaintiff is entitled to seek partition, division and separate possession of schedule property?
- 5) To what relief?

5. To substantiate the case of the plaintiff, Pws.1 and 2 were examined and got marked Exs.A1 to A4. On behalf of the defendants, Dws.1 and 2 were examined and got marked Exs.B1 to B11.

6. Having heard the learned counsels on record and having perused the material evidence on record, the learned trial court decreed the suit in favour of the plaintiff and against the defendants.

7. Aggrieved by the said decree and judgment, the defendants filed the present appeal on various grounds.

8. I have heard the learned counsels for the appellants/defendants and respondent/plaintiff. I have gone through the contents of the evidence available on record very carefully. I have seen the citation memo filed by the appellants.

9. Basing on the above rival submissions, now the points for determination are that

1. Whether the plaintiff has succeeded in proving his case for partition to allow half share out of the suit schedule property?
2. Whether there are any infirmities in the trial Court judgment warranting the interference of this Court?
3. To what relief?

10. **POINTS Nos.1 and 2:-**

Points 1 and 2 are interlinked. Hence, they are clubbed together and answered at a time.

The case of the plaintiff is that Pedda Narasigadu @ Pedda Narasappa and Chinna Narasigadu @ Chinna Narasappa are brothers who are sons of Nagadu @ Nagappa. As per settlement register, the grandfather of the plaintiff was pattadar of the suit schedule property. But the paternal grandfather of the plaintiff and his brother Pedda Narasigadu @ Pedda Narasappa were in joint possession and enjoyment of the suit schedule property. During the life time and after the death of Chinna Narasappa and Pedda Narasappa, the plaintiff and father of the defendants succeeded the suit schedule property and they were in joint possession and enjoyment of the same. The father of the plaintiff and defendants 1 to 3 also died. After their death, the plaintiff and defendants 1 to 3 succeeded the suit schedule property and they are in joint possession and enjoyment of the same. The plaintiff alleged that the defendants obtained pattadar pass book and title deed in their names in respect of the suit schedule property without the knowledge of the plaintiff and having known the same, the plaintiff demanded the defendants for amicable partition of the suit schedule property. But they did not come forward. Hence, the plaintiff filed the present suit.

11. Whereas the case of the defendants is that the suit schedule property is the Government land and the same was assigned to the grandfather of the defendants 1 to 3. After the death of their grandfather, their father namely Lakshmananna

succeeded the same and after the death of Lakshmananna defendants 1 to 3 succeeded the suit schedule property and that they are in exclusive possession and enjoyment of the suit schedule property. It is further case of the defendants that about two years ago, the defendants 1 and 2 got partitioned the suit schedule property and other properties orally and that in that partition the defendants 1 and 2 partitioned the suit schedule property along with other properties and obtained pattadar pass books and title deeds in their names in respect of their respective extent. As such, the defendants denied the share of the plaintiff and also claim of the plaintiff as that of joint family properties.

12. To substantiate the case of the plaintiff, the wife of the plaintiff was examined as PW.1 apart from marking Exs.A1 to A3. The son of the plaintiff was examined as PW.2 apart from marking Ex.A4. Chief affidavit of PW.1 filed. PW.1 by way of chief examination deposed that she is the wife of the plaintiff. After filing of the suit, the plaintiff became mentally disturbed and he is not in a position to give evidence. Hence, she is permitted to give evidence in this case on behalf of the plaintiff. PW.1 reiterated the case of the plaintiff. During the cross-examination of PW.1, it is elicited that the suit schedule property is in Sy.No.132. The extent of the suit schedule property is Ac.5.80 cents. Her husband is attending Court on every adjournment and looking after the litigation. She filed document to show that the plaintiff is mentally retarded. She filed document to show that the suit schedule property is in favour of her father-in-law Chinna Narasigadu. Her father-in-law was granted patta. She filed copy of said patta. She filed document to show that Pedda Narasigadu and Chinna Narasigadu jointly cultivated the suit land. She admitted that patta was granted in the name of Pedda Narasigadu about 90 years ago. She admitted that plaintiff has a sister by name Lakshamma and she has a son and daughter. She does not know whether the children of Lakshamma are parties to the proceedings. She admitted that Pedda Narasigadu has only son by name Lakshmananna and his wife is Lakshmakka. Lakshmakka died 9 years ago. She admitted that her husband issued Ex.A2 legal notice. She knows the contents of Ex.A2 legal notice. She admitted that pattadar pass book was issued in the name of Narasigadu. She does not know whether pattadar pass book was issued in the name

of Lakshmanna. The father of Lakshmanna is Narasigadu. She admitted that defendants 1 to 3 are the children of Lakshmanna. Again she repeated that the wife of Lakshmanna is Lakshamma. She admitted that Government acquired some part in the schedule land to lay NH Road. She does not know the extent of land acquired by the Government. She admitted that compensation was given for the above land to Lakshamma W/o Lakshmanna. She admitted that N.H. was laid about 12 years ago. She admitted that the acquired land was also shown in the suit schedule. She admitted that Lakshamma and her children partitioned their properties. She also admitted that schedule property fell to the share of defendants 1 and 2. She admitted that her father-in-law got Ac.0.82 ½ cents in that village.

13. Chief affidavit of Pw.2 filed. By way of chief examination, PW.2 reiterated his case apart from ill health of his father. During the cross-examination of PW.2 it is elicited that he did not file any document to show that plaint schedule property is in the name of Chinna Narasigadu. He did not see Chinna Narasigadu. He filed documents to prove that Chinna Narasappa and Pedda Narsappa were in joint possession. He admitted that Lakshmanna is only son of Pedda Narasappa. He admitted that defendants 1 and 2 were in possession of the plaint schedule property after the death of said Laxmanna. He admitted that Government acquired Ac.0-17 cents out of plaint schedule property for the purpose of National Highway in the year 2007. He also admitted that compensation in respect of Ac.0-17 cents was given to Lakshamma who is mother of defendants 1 and 2. He admitted that the available land at the ground level is Ac.5-63 cents. He does not know whether defendants 1 and 2 apart from their father dug well in the year 1996 and they availed loan from PACS, Guttur Branch for the purpose of digging well. He denied the suggestion that both defendants 1 and 2 got partitioned the suit schedule property equally and also obtained pattadar pass books to that extent.

14. The 2nd defendant was examined as DW.1. By way of chief affidavit, DW.1 reiterated his contention apart from marking Exs.B1 to B11. During the cross-examination of DW.1, it is elicited that Narasigadu is the owner of the suit schedule property as per resettlement register and register of rights of holdings. He did not

see Narasigadu. He does not know how many brothers to the said Narasigadu. Witness adds that Narasigadu was called as Pedda Narasappa and he is his paternal grandfather. The said Mala Nagadu had two sons namely Pedda Narasappa @ Pedda Narasigadu and Chinna Narasappa @ Chinna Narasigadu. He does not know personally in what way Pedda Narasigadu and Chinna Narasigadu enjoyed the plaint schedule property.

15. One T. Kesavappa was examined as DW.2. By way of chief examination, DW.2 supported the case of the defendants. During his cross-examination, it is elicited that Pedda Narasappa had one brother namely Chinna Narasappa and their father name is Nagulappa @ Nagadu. He saw Pedda Narasigadu and Chinna Narasigadu. He is the permanent resident of Sanepalli village of Roddam Mandal. The plaint schedule property is situated in Guttururu revenue village. The said Pedda Narasigadu is his relative. His cousin was given in marriage to the son of Pedda Narasigadu. He admitted that there is no wording in Ex.B1 like Pedda Narasappa @ Pedda Narasigadu. Ex.B1 stands in the name of Mala Narasigadu S/o Nagani.

16. Basing on the oral evidence and mostly relied on the evidence of DW.2, the trial Court placed onus on the defendants rather than the plaintiff. It is clear that the trial Court swayed away from the regular course of decisions in partition suit. It is settled law that the initial burden is always on the plaintiff. Thereafter, basing on the establishment of the prima facie evidence, then the defendant may be invited to discharge his onus and ultimately suit will be decided. The case of the plaintiff is that his grandfather and the grandfather of the defendants are two sons to their great grandfather. Both of their grandfathers succeeded the suit schedule property. The allegation of the plaintiff is that without their knowledge and taking undue advantage of the innocence of his grandfather, the defendants tried to grab away the property without allotting any share to him.

17. Both the counsels for the appellants and respondent strongly canvassed their respective contentions. The learned counsel for the appellants relied on a ruling in **Gorrela Lagumakkagari Anjappa vs. Gorrela Langamakkagari Narasimhulu and others 2012(2) ALT 242**. Basing on the above said ruling, the learned

counsel for the appellant strongly contended that when once the land is assigned by the Government under D form patta in terms of A.P. Assigned Lands (Prohibition on Transfers) Act, 1977, the assigned land has to be enjoyed exclusively by the individual in whose favour the assignment is made and it is not liable for partition between the joint family members. The assigned land may be heritable, but it cannot be divisible among the joint family members and it also cannot be alienated as laid down under the various provisions of the A.P. Assigned Lands (Prohibition on Transfers) Act, 1977.

18. With the above ruling, the learned counsel for the appellant vehemently canvassed that the trial Court came to an erroneous conclusion and decreed the suit ignoring the evidence available on record.

19. Basing on the above rival contentions, now this Court proposed to examine the documents available on record to ascertain the real facts of the case and also to answer real controversy between the parties. Ex.A1 is certified copy of re-settlement extract. Ex.A1 shows the survey number and the extent of the suit schedule property. Except the survey number and the extent of the land, nothing is there in Ex.A1. Ex.A2 is the office copy of the legal notice dated 21.05.2012 got issued by the plaintiff counsel to the defendants demanding partition by narrating the case of the plaintiff which is the basic document. Ex.A3 is the reply notice dated 11.06.2012 which narrates the case of the defendants and it is the basic document for the defendants. Both Exs.A2 and A3 are exchanged legal notices between the plaintiff and defendants. Ex.A4 is extract of resurvey and settlement register stands in the name of Mala Narsigadu issued by Deputy Tahsildar, Penukonda. It is reflecting the name of Mala Narsigadu without any details.

20. To prove the contents of Exs.A1 and A4, no revenue authority was examined to that extent. Ex.B1 is the D patta in the name of Mala Narasigadu S/o Naganna. It is clear that Ex.B1 does not disclose whether it is in the name of Pedda Narasigadu or Chinna Narasigadu. The version of the plaintiff is that Ex.B1 is not clear to the extent that whether it is issued in the name of Pedda Narasigadu or Chinna Narasigadu who are stated to be grandfathers of both the plaintiff and defendants.

Ex.B1 is filed by the defendants, but not by the plaintiff so that it can be considered that it came on record from the right person. The plaintiff failed to explain why he was not having the custody of Ex.B1 when it was issued in the name of his grandfather Narasigadu. The plaintiff tried to confuse the Court in respect of Ex.B1. Ex.B2 is encumbrance certificate which shows the defendants origin. Ex.B3 is the account for fasli 1398 which is in the name of Mala Pedda Narasappa. Ex.B4 is computerized copy of No.3 account for fasli 1422 issued by Tahsildar, Penukonda. Ex.B5 cist receipts in the name of Mala Lakshmanna who is the father of defendants. Ex.B6 is computerized adangal for fasli 1422 to 1428. Ex.B6 is in the name of defendants 1 and 2. Ex.b7 is computerized 1-B namoona in the name of M. Anjineyulu (defendant No.1). Ex.B8 is 1-B namuna in the name of Mala Nagaraju. Ex.B9 is identity card issued in the name of Mala Lakshamma who is the mother of defendants 1 and 2. Ex.B10 and B11 are original pattadar pass books in the name of defendants 1 and 2.

22. In consideration of the above documents under Exs.B1 to B11, it is clear that the original D patta was issued in the name of grandfather of defendants 1 and 2 and thereafter Ex.B2 to B11 were issued at various times to the rightful owners. The filing of the document under Ex.B1 is very clear that the defendants are rightful owners rather than the plaintiffs. Moreover, Ex.B1 came out from the rightful legal heirs to the original patta holder under Ex.B1. The plaintiff totally failed to establish his right over the suit schedule property and the issuance of pattadar pass books, obtaining of loan and also acquiring of land by the National Highway authorities and payment of compensation to the mother of the defendants clearly show that they are the rightful owners. The evidence of DW.2 supports the case of the defendants that originally the suit schedule property was assigned to Narasappa S/o Nagappa by the Government. The said Narasappa enjoyed the property by raising crops. The said Narasappa died leaving behind him only son by name Lakshmanna and after the death of Narasappa his only son Lakshmanna succeeded to the entire estate including the suit schedule property. During the life time of Lakshmanna, he had been in possession and enjoyment of the suit schedule property and thereafter Lakshmanna died leaving behind him Lakshmakka and defendants herein as his only

legal heirs. After the death of Lakshmanna, his wife Lakshamma looked after the property. Thereafter, defendants 1 and 2 succeeded in the oral partition of the property.

23. As rightly pointed out by the learned counsel for the appellant by relying on the ruling in **Gorrela Lagumakkagari Anjinappa**, the assigned land cannot be transferred except enjoying the same by the successors of the assignee. So therefore, it is the considered opinion of this Court that the trial Court miserably failed to consider the legal issues in a perspective manner and the trial Court wrongly placed burden on the defendants ignoring the discharge of initial burden by the plaintiff. The plaintiff miserably failed to prove his case in concurrence with the pleadings. Furthermore, the original plaintiff was not examined for the reasons best known to Pws.1 and 2 and they failed to place any material in respect of the health conditions of original plaintiff. It is admitted fact that original plaintiff filed the suit and continued the same to some extent and thereafter he kept quiet. But Pws.1 and 2 lead the suit for the reasons best known to them. They failed to place any material before the trial Court for considering the ill health of the original plaintiff. So therefore, it is the considered opinion of this Court that the trial Court miserably failed to consider the case of the defendants and came to an erroneous conclusion by placing wrong burden on the defendants. So therefore, there is glaring error in the finding of the trial Court to that extent. Hence, it is the considered opinion of this Court that the plaintiff miserably failed to prove his case in respect of the partition of the suit property and also failed to prove that the suit schedule property is joint family property of their grandfather Chinna Narasappa along with Pedda Narasappa. So therefore, the plaintiff is not entitled for any partition over the suit schedule property and the trial Court erroneously came to a conclusion in granting decree which is liable to be set aside. Accordingly, these two points are answered.

24. **POINT No.3:-**

In the result, the appeal is allowed and thereby the decree and judgment dated 19.07.2019 in O.S.No.85/2012 on the file of Senior Civil Judge, Penukonda is

hereby set aside. Basing on the facts and circumstances of the case, both parties shall bear their own costs.

Dictated to Stenographer Gr.I, transcribed by her, corrected and pronounced by me in the open Court on this the 9th day of September, 2022.

Sd/- D. Tirumala Rao
Judge, Family Court -cum-
VII Addl. District Court,
Ananthapuramu.
FAC II Addl. District Judge,
Hindupur

**Appendix of evidence
Witnesses examined for:**

Appellant

NIL

Respondents

NIL

Exhibits Marked for Appellant
NIL

Exhibits Marked for Respondents

NIL

Sd/- D. Tirumala Rao
Judge, Family Court -cum-
VII Addl. District Court,
Ananthapuramu.
FAC II Addl. District Judge,
Hindupur

Copy to: The Senior Civil Judge, Penukonda.

his wife was examined as PW1 and got marked Ex.A.1 to Ex.A.3. Ex.A.1 is certified copy of register of changes in holdings got issued by Sub Registrar, Penukonda. Ex.A.2 is office copy of notice dt.21.05.2012 got issued by the plaintiff to the defendants. Ex.A.3 is the certified copy of reply notice dt.11.06.2012 got issued by the defendants to the counsel for the plaintiff. To support the case of the plaintiff, his son was examined as PW.2 and got marked Ex.A.4. Ex.A.4 is extract of resurvey and settlement register stands in the name of Mala Narsigadu got issued by Deputy Tahsildar, Penukonda. On the other hand, the 2nd defendant was examined as DW.1 and got marked Ex.B.1 to Ex.B.11. Ex.B.1 is the duplicate 'D' Namoonna got issued by Mandal Revenue Officer, Penukonda on 15.07.1996 stands in the name of the Mala Narsigadu. Ex.B.2 is encumbrance certificate from 1986 to 1999 got issued by Sub Registrar, Penukonda. Ex.B.4 is true copy of No.3 account for the fasli 1398 got issued by Deputy Tahsildar, Penukonda Mandal on 19.03.2013. Ex.B.4 is computerized copy of No.3 account for the fasli 1422 (two in number) got issued by Tahsildar, Penukonda Mandal. Ex.B.5 is cist receipts (five in number) stands in the name of Mala Lakshmanna. Ex.B.6 is computerized copy of adangal for the fasli 1422 to 1428 (seven in number) which was obtained on 26.05.2013 and 04.02.2019 respectively from Mee Seva. Ex.B.7 is computerized copy of 1-B namoonna (ROR) stands in the name of M.Anjineyulu (D.1) which was obtained on 04.02.2019. Ex.B.8 is computerized copy of 1-B namoonna (ROR) stands in the name of 2nd defendant which was obtained on 04.02.2019. Ex.B.9 is entitlement cum photo identity card issued by National High Ways Authority of India in the name of Mala Lakshmanna. Ex.B.10 is original pattadar pass book stands in the name of M.Anjineyulu (D.1) under patta No.842 in respect of the land in Sy.No.132/2, 137 and 138. Ex.B.11 is original pattadar pass book stands in the name of 2nd defendant under patta No.841 in respect of the land in Sy.No.132/2, 137 and 138. To support the case of the defendants, on T.Kesavappa was examined as DW.2.