

IN THE COURT OF THE IV ADDITIONAL DISTRICT JUDGE, TIRUPATHI

PRESENT: Sri G. Rama Gopal,  
IV Additional District Judge,  
Tirupati

Friday, the Twenty Ninth (29<sup>th</sup>) day of November, Two Thousand  
Nineteen

ORIGINAL SUIT No. 130 of 2015

Between:

- (1) Smt P. Hemalatha
- (2) Smt P. Swarnlatha
- (3) Smt P. Dhanalakshi

... Plaintiffs

And:

- (1) Smt P. Padmavathamma
- (2) Sri P. Prasad Babu
- (3) Smt P. Usha Rani
- (4) Sri Mani
- (5) Sri Hameed
- (6) Federal Bank, Rep. by its Branch Manager
- (7) Sri Sekhar
- (8) Sri Ashok
- (9) The Manager, Muthoot Finance
- (10) Sri B.J. Vinod
- (11) Smt Andalamma.

... Defendants

This original suit coming on 28-11-2019 for final hearing before me in the presence of Sri N. Ravikumar, Advocate for plaintiffs and the defendants remained exparte and the matter having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

1. This original suit is filed by the plaintiffs against the above defendants to pass a preliminary decree of division of plaint schedule property into five six equal shares and allot three such shares to the plaintiffs by taking into good and bad qualities into consideration by metes and bounds and put them in possession, failing which the same can be done through process of law and for costs.

2. In brief, the plaintiff case as adumbrated in the plaint is as follows: The 1<sup>st</sup> defendant is their mother, the 2<sup>nd</sup> defendant is their brother and the 3<sup>rd</sup> defendant is their sister, the defendant no. 4 to 11

are the tenants in the plaint schedule properties and the plaint schedule properties are their joint family properties, and same is in joint possession and enjoyment of plaintiffs and the defendants 1 to 3.

Their father Late Pasupuleti Subramanyam during his life time purchased the plaint schedule properties, out of his hard earnings by doing business as General Merchant in the name and style as "Dhanalakshmi General Stores" one is at D. No. 2-112-1, Post Office Street, and another at D.No. 10-176, Gangammagudi Street, Renigunta, Chittoor District.

The plaint 'A' schedule properties were purchased by their father Late Pasupuleti Subramanyam on 7-11-1966, from its law full owners Punyakoti Krishna Pillai S/o Lakshmaiah, vide document No. 3535/1966, to an extent of 30x25 feet, and also 30x4 feet, from same vendor on 12-3-1968 vide document No. 682 of 1968.

The plaint 'B' schedule property was purchased by their father in the name of their mother i.e., defendant No.1 on 17-7-1980, by way of registered sale deed vide document No. 2903/1980, the 'C' schedule property was purchased in the name of their mother i.e., defendant No.1 by way of three registered sale deeds dt. 9-4-1984, vide document No. 2023/1984, from its lawful owner A.Nagaraja Reddy, and registered sale deed dt. 5-7-1989, vide document No. 2898/1989 from its lawful owner Bojjaiah Naidu and registered sale deed dt. 5-7-1989 vide document No. 2909/1989, from its lawful owner P. Nagarathnamma. The 'D' schedule property was purchased by the plaintiff's father Late Pasupuleti Subramanyam, in the name of 2<sup>nd</sup> defendant on 22-7-1987 vide document No. 3211/1987 from its lawful owner C.Lakshamma, the 'E' schedule property was purchased in

the name of 2<sup>nd</sup> defendant out of the income derived from the plaint A to C schedule properties on 22-4-1999, vide document No. 693/1989, from its lawful owner P.V. Rajan, since the date of purchase of the above said plaint schedule properties, their father was in absolute possession and enjoyment, after his demise, the plaintiffs along with the defendant No.1 to 3 are in joint possession and enjoyment of the same.

The said Late Pasupuleti Subramanyam died intestate on 8-10-1989, leaving behind the plaintiffs and defendants No. 1 to 3, as his legal heirs and legal representatives to succeed his estate.

The plaint 'A' schedule properties is consisting of 8 shop rooms in the ground floor and one office room in the 1<sup>st</sup> floor and in the 2<sup>nd</sup> floor half portion was constructed. The 4<sup>th</sup> defendant is running a foot wear shop, 5<sup>th</sup> defendant is running hotel, 6<sup>th</sup> defendant is running ATM, 7<sup>th</sup> defendant is running Barber shop, 8<sup>th</sup> defendant is running pawn broker shop and the remaining three shop rooms, 2<sup>nd</sup> defendant is doing business and they are paying rents at the rate of 3,000/- per shop, and the 1<sup>st</sup> floor was given to 9<sup>th</sup> defendant on a monthly rent of Rs. 15,000/-.

The plaintiffs along with defendant No.1 to 3 constructed two portion building in the plaint 'B' schedule property out of the amount received in land acquisition proceedings pertaining to part of 'C' schedule property. The 1<sup>st</sup> floor was given on rent to the 8<sup>th</sup> defendant at the rate of Rs. 7,000/- per month. The plaint 'D' schedule property consisting of ground floor and 1<sup>st</sup> floor given on rent to the 10<sup>th</sup> defendant at the rate of Rs.15,000/- per month, consisting of one floor

given on rent to the 11<sup>th</sup> defendant at the rate of Rs. 2,000/- per month.

After their marriages, they are residing separately along with their families. The 1<sup>st</sup> defendant being the Karha and managing the joint family affairs and collecting the rents and appropriating the shares of the plaintiffs, 2<sup>nd</sup> and 3<sup>rd</sup> defendants and they are in joint possession and enjoyment of the entire plaint schedule properties.

Since, January 2015, as the 2<sup>nd</sup> defendant refused to pay the rents for the three shop rooms enjoying by him, in the plaint 'A' schedule property and also refused to adjust the same in his share of rents, due to which some misunderstandings arose between the plaintiffs and the defendant No.1 to 3 and the 2<sup>nd</sup> defendant warned the plaintiffs that they have no right over the plaint schedule properties, and the 1<sup>st</sup> defendant and 3<sup>rd</sup> defendant joined together and acting adverse to the legitimate rights of the plaintiffs over the plaint schedule properties, having felt, it is no longer safe to them in keeping the plaint schedule properties in joint, they demanded for amicable partition of the plaint schedule properties into six equal shares, through elders and mediators. But all their efforts became futile and the defendant No.1 to 3 are trying to create sham and nominal documents pertaining to plaint schedule properties, if any such documents were brought into existence, they are not binding on the plaintiffs. Hence, the suit.

2. The defendants 1 to 11 remained exparte.
3. Heard the learned counsel for the plaintiff and perused the record.

4. On behalf of the plaintiffs, PWs 1 and 2 were examined and Exs. A-1 to A-7 were marked.

5. PW1 is the 1<sup>st</sup> plaintiff and PW2 is the 3<sup>rd</sup> party. PWs 1 and 2 filed examination in chief by way of affidavits as contemplated U/Or. XVIII Rule 4(1) CPC by reiterating the plaint averments. There is no necessity to reproduce their evidence.

In the instant case, the defendants did not come into witness box to depose the facts alleged in the written statement. It is settled that one must plead and prove his or her case by adducing necessary oral and documentary evidence. Mere pleading itself cannot be said that the case of party is proved without adducing evidence.

Therefore, when the defendants failed to come into witness box and state their case, an adverse inference can be drawn against the defendants and believe the case of the plaintiffs. As stated above, no circumstances were brought in the cross examination of PWs 1 and 2 in support of the plea set up by the defendants.

Ex. A-1 is the Certified copy of registered sale deed dated: 7-11-1966 in favour of Pasupuleti Subramanyam vide document No. 3535/1966 for A schedule property, Ex. A-2 is the Certified copy of registered sale deed dated: 12-3-1968 in favour of Pasupuleti Subramanyam vide document No. 682/1968 for A schedule property, Ex. A-3 is the Certified copy of registered sale deed dated: 9-4-1984 in favour of P. Padmavathamma (defendant No.1) vide document No. 2023/1984 for item No.1 of C schedule property, Ex.A-4 is the Certified copy of registered sale deed dated: 5-7-1989 in favour of P. Padmavathamma (defendant No.1) vide document No. 2898/1989 for item No.2 of C schedule property, Ex. A-5 is the Certified copy of

registered sale deed dated: 5-7-1989 in favour of P. Padmavathamma (defendant No.1) vide document No. 2909/1989 for item No.3 of C schedule property, Ex. A-6 is the Certified copy of registered sale deed dated: 9-4-1984 in favour of P. Prasad Babu (defendant No.2) vide document No. 3211/1987 for item No.1 of D schedule property, and Ex.A-7 is the Certified copy of registered sale deed dated: 22-4-1999 in favour of P. Prasad Babu (defendant No.2) vide document No. 693/1999 for E schedule property.

The plaintiffs and defendant No.2 and 3 are the children of Late Pasupuleti Subramanyam and 1<sup>st</sup> defendant. The said Late Pasupuleti Subramanyam died intestate on 8-10-1989 leaving behind the plaintiffs and the defendant No. 1 to 3. The defendant No. 4 to 11 are the tenants in the plaint schedule properties and the plaint schedule properties are their joint family properties of the plaintiffs and defendants 1 to 3 and same are in joint possession and enjoyment of the plaintiffs, and the defendants 1 to 3 and they constitute members of Hindu Joint Family.

Exs. A-1 to A-7 clearly show that the all the plaint schedule properties stands in the name of Late Pasupuleti Subramanyam, the 1<sup>st</sup> defendant and defendant No. 2 only and the 1<sup>st</sup> defendant is the Kartha of the joint family and managing the joint family affairs and collecting the rents and appropriating the shares of the plaintiffs, 2<sup>nd</sup> and 3<sup>rd</sup> defendant and the plaintiffs and the defendant No.1 to 3 are legal heirs and legal representatives of Late Pasupuleti Subramanyam. All the plaint schedule properties are in joint possession and enjoyment of the plaintiffs and the defendant No. 1 to 3.

There is no basis to discard the plaint averments and evidence of PWs1 and 2. The oral evidence of PWs1 and 2 apart from Exs A-1 to A7 clearly proved the plaintiff's case.

Therefore, the plaintiffs made out their case. The plaintiffs are entitled for partition as prayed for.

9. In the result, the suit is preliminarily decreed with costs by dividing the plaint schedule properties into six equal shares; allot three such shares to the plaintiffs and three such shares to the defendant No. 1 to 3.

Typed to my dictation by the Stenographer, corrected and pronounced by me in Open court, this the 29<sup>th</sup> day of November, 2019

IV Additional District Judge,  
Tirupati

#### APPENDIX OF EVIDENCE

##### Witness examined on behalf of Plaintiff:

PW-1 :P. Hemalatha

PW2: K. Narayana.

##### Witness examined on behalf of Defendant:

Exparte

##### Exhibits marked on behalf of Plaintiff:

Ex. A-1: Certified copy of registered sale deed dated: 7-11-1966 in favour of Pasupuleti Subramanyam vide document No. 3535/1966 for A schedule property

Ex. A-2: Certified copy of registered sale deed dated: 12-3-1968 in favour of Pasupuleti Subramanyam vide document No. 682/1968 for A schedule property.

Ex. A-3: Certified copy of registered sale deed dated: 9-4-1984 in favour of P. Padmavathamma (defendant No.1) vide document No. 2023/1984 for item No.1 of C schedule property.

Ex.A-4: Certified copy of registered sale deed dated: 5-7-1989 in favour of P. Padmavathamma (defendant No.1) vide document No. 2898/1989 for item No.2 of C schedule property.

Ex. A-5: Certified copy of registered sale deed dated: 5-7-1989 in favour of P. Padmavathamma (defendant No.1) vide document No. 2909/1989 for item No.3 of C schedule property.

Ex. A-6: Certified copy of registered sale deed dated: 9-4-1984 in favour of P. Prasad Babu (defendant No.2) vide document No. 3211/1987 for item No.1 of D schedule property

.Ex.A-7: Certified copy of registered sale deed dated: 22-4-1999 in favour of P. Prasad Babu (defendant No.2) vide document No. 693/1999 for E schedule property.

##### Exhibits marked on behalf of Defendants:

-Nil-

IV.A.D.J.  
Tirupati