

**IN THE COURT OF THE CIVIL JUDGE JUNIOR DIVISION::
MOVVA**

Present : Sri P. RAJAN UDAY PRAKASH

Civil Judge Junior Division, Movva.

Monday, this the Third day of February, Two Thousand and Twenty Five.

Original Suit No.168/2022

Between:

Medisetti Sreenivas Rao, s/o.Ram Babu,

50 years, Avurupudi village, Movva mandal.

... Plaintiff.

And

1. Medisetti Rama Krishna, s/o.Rambabu,

40 years, Avurupudi village, Movva mandal.

2. Medisetti Rama Tulasamma, w/o.Rambabu,

60 years, Avurupudi village, Movva mandal.

... Defendants.

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This suit came before me on 27-12-2024 for final hearing in the presence of Sri Vallabhaneni Rama Rao, learned counsel for the plaintiff and the defendants having been set *ex parte* and upon hearing the learned counsel for the plaintiff, this court delivered the following:

J U D G M E N T

1. The present suit is filed seeking the relief of a preliminary decree for partition of the suit schedule property and to allot 44/100th share to the plaintiff, 44/100th share to the defendant No.1, and 11/100th share to the defendant No.2 out of the suit schedule properties with separate possession for each of them, to grant future mesne profits to the plaintiff from the date of filing of the suit, and for costs of the suit.

The averments of the plaint:

2. The plaintiff is a resident of Avurupudi village of Movva mandal. The defendant No.1 is the younger brother of the plaintiff and the defendant No.2 is the mother of plaintiff. The father of the plaintiff by name Medisetti Ram Babu and his brothers Medisetti Pandu Ranga Rao and Medisetti Nagaraju partitioned their ancestral properties during summer 1995 by metes and bounds. In the partition, Medisetti Ram Babu got Acre 0.17 cents of land in resurvey No.93/5 and Acre 0.10 cents of land in resurvey No.93/5 of Avurupudi village towards his share under two

portions. Medisetti Ram Babu being the Karta of the Joint Hindu Family consisting of the plaintiff and the defendant No.1 enjoyed the joint family properties with joint rights, title and possession during his lifetime.

3. The father of the plaintiff, with his share of properties and income derived through the aforesaid property and income from the lease lands purchased an extent of Acre 0.65 cents of land in resurvey No.161/4 and an extent of Acre 0.78 cents of land in resurvey No.46/7 in Avurupudi village; an extent of Acre 0.70 cents of land out of Acre 0.68 cents in resurvey No.60/3 and an extent of Acre 0.48 cents of land out of Acre 0.68 cents of land in resurvey No.60/2 of Palankipadu village of Movva mandal. The plaintiff, the defendant No.1 and their father were the members of the Joint Hindu Family. The father of the plaintiff leveled an extent of Acre 0.10 cents of land in resurvey No.93/5 of Avurupudi village of Movva mandal and converted the same into a house site in summer 2009 and constructed a residential building bearing door No.1-46A in the year 2010 with the income derived through the joint family agricultural lands.

4. The house site and the building bearing door No.1-46A is in an extent of Acre 0.10 cents of site in resurvey No.93/5 of Avurupudi village i.e., item No.1 of the suit A schedule property. The land in an extent of Acre 0.17 cents in resurvey No.93/5 of Avurupudi village is shown as item No.2 of the suit A schedule property. The land in an extent of Acre 0.65 cents in resurvey No.161/4 of Avurupudi village is shown as item No.3 of the suit A schedule property and the land in an extent of Acre 0.78 cents in resurvey No.46/7 of Avurupudi village of Movva mandal is shown as item No.4 of the suit A schedule property. The land in an extent of Acre 0.57 cents of land out of Acre 0.70 cents in resurvey No.60/3 of Palankipadu village of Movva mandal is shown as item No.1 of the suit B schedule property and the land in an extent of Acre 0.48 cents out of Acre 0.68 cents in resurvey No.60/2 of Palankipadu village of Movva mandal is shown as item No.2 of the suit B schedule property. The father of the plaintiff being the Karta used to manage the joint family properties. The plaintiff and the defendant No.1 being the members of the joint family enjoyed the same during the lifetime of their father.

5. The father of the plaintiff died intestate on 28-11-2013. After his demise, the plaintiff and the defendants inherited his estate and jointly enjoyed the suit schedule properties. The defendant No.2, being the elder member of the family was treated as the Karta of the joint family. The defendant No.1 colluded with the defendant No.2 and taking advantage of the old age of the defendant No.2, the defendant No.1 influenced the defendant No.2 to cause harm and loss to the plaintiff. The defendant No.1 obtained a registered settlement deed on 25-07-2022 from the defendant No.2 in respect of a portion of item No.1 of the suit A schedule property. Though the entire Item No.1 of the suit A schedule property is a single piece, it was alleged that after the demise of Medisetti Ram Babu, the defendant No.2 inherited his estate being his sole legal heir. The defendant No.2 has only 11/100th share in Item No.1 of the suit A schedule property or the other suit schedule properties. The plaintiff came to know the mischief and fraud played by the defendant Nos.1 and 2 in August, 2022, obtained a certified copy of the registered settlement deed and requested the defendants to cancel the registered settlement deed.

6. The defendants did not take any steps for cancellation of the settlement deed. The settlement deed dated 25-07-2022 is a collusive and nominal document. The defendant No.1 had no right or title over the property covered in the settlement deed. The plaintiff is not a party to the settlement deed and therefore, it is not binding on the plaintiff. The plaintiff issued a registered legal notice to the defendants in August, 2022 to cancel the registered settlement deed dated 25-07-2022 and to cooperate for partition of the entire suit schedule properties. The defendants avoided the notice. The defendant No.2 had no right, title or possession to execute the registered settlement deed in favour of the defendant No.1. The item No.1 of the suit A schedule property and the other suit schedule properties are in joint possession and enjoyment of the plaintiff and the defendants. The plaintiff and the defendants are in joint possession and enjoyment of the suit schedule properties. The defendants did not cooperate for the partition of the suit schedule properties. Hence, the suit.

7. After receipt of summons, the defendant Nos.1 and 2 were called present. However, they failed to file their written statement and so,

they were set *ex parte* on 23-11-2023.

8. Though the defendants were set *ex parte*, the plaintiff must prove his own case.

9. The point for consideration is:

“ Whether the plaintiff and the defendant No.1 are entitled to 44/100th share each in the suit schedule property and the defendant No.2 is entitled to 11/100th share in the suit schedule properties along with separate possession of the same by metes and bounds ??”

P O I N T:

10. To substantiate the contention of the plaintiff, the plaintiff was examined as PW-1 and Exs.A1 to A9 were marked on his behalf. **Ex.A1** is the certified copy of the registered settlement deed dated 25-07-2022 vide document No.2701/2022. **Ex.A2** is the certified copy of the registered sale deed dated 05-05-2012 vide document No.1078/2022. **Ex.A3** is the certified copy of the registered sale deed dated 05-05-2012 vide document

No.1077/2012. **Ex.A4** is the Pattadar passbook. **Ex.A5** is the adangal pahani for the fasli 1432 dated 16-09-2022. **Ex.A6** is the adangal pahani for the fasli 1432 dated 16-09-2022. **Ex.A7** is the adangal pahani for the fasli 1432 dated 16-09-2022. **Ex.A8** is the adangal pahani for the fasli 1432 dated 14-10-2022. **Ex.A9** is the adangal pahani for the fasli 1432 dated 21-10-2022. It is settled law that the plaintiff must prove his case on his own without depending upon the vulnerability or weakness of the defendants. Either to rebut the contention of the plaintiff or to put forth their own contentions, the defendants have not filed their written statement despite making their appearance through their learned counsel. For reasons unknown or best known to them, the defendants have not put forth their defence by way of their written statement despite making their appearance before this Court.

11. Be that as it may, as has been held by the Hon'ble Courts on umpteen occasions, the laches on the part of the defendants are neither a ground to decree the suit nor can the same be relied upon by the plaintiff to prove his own case. As such, the plaintiff being the *dominus litis* must

prove his case on his own and the burden is cast on the plaintiff to do so. The contention of the plaintiff is that he along with the defendant No.1 is entitled to 44/100th share each in the entire suit schedule properties. The plaintiff further contended that the defendant No.2 is entitled to 11/100th share in the entire suit schedule properties. The plaintiff further argued that he is entitled to future mesne profits and that the registered settlement deed/Ex.A1 is not binding on him.

12. In this connection, the first and foremost aspect worth considering happens to be regarding the shares as sought for by the plaintiff. For apparent and obvious reasons, the sum of the individual shares of the parties should be equal to the total property liable to be partitioned. In other words, each and every portion of the property sought to be partitioned, no matter how little or how minute such part or portion might be, has to fall to the share of one party or the other. Thus, when a property is sought to be partitioned, no share or portion of it should be left outstanding without there being an owner or claimant or holder of such share or portion. On a similar note, the shares of the parties as sought for

cannot exceed the total property sought to be partitioned. In other words, the parties cannot claim between themselves or among themselves anything more than the actual property in existence. In the humble opinion of this Court, the former scenario i.e., a share of the suit schedule property being left out even after all the parties or claimants to the partition get their respective shares seems to occur in the present case.

13. Even according to the plaintiff, he is entitled to $44/100^{\text{th}}$ share and the defendant No.1 is entitled to $44/100^{\text{th}}$ share in the suit schedule properties. Thus, as per the plaint, the plaintiff and the defendant No.1 are entitled to a total of $88/100^{\text{th}}$ share of the suit schedule properties. The remaining share should be $12/100$. However, the plaintiff contended that the defendant No.2 is entitled to only $11/100^{\text{th}}$ share in the suit schedule properties. Thus, the same would only go to imply that $1/100^{\text{th}}$ share of the suit schedule properties would have no claimant or owner according to the plaintiff. The fate of such share of the properties does not find place in the plaint. When such is the case, it is more than evident that the shares as sought for by the plaintiff would only lead to a portion of the suit schedule

properties being left out, which cannot be permissible. The plaintiff did not adduce any reason or explanation regarding this discrepancy in the shares sought for. Thus, when the shares of the parties do not appear to be complete and choate, the claim of the plaintiff becomes questionable. Be that as it may, this Court is inclined to delve further into the case of the plaintiff without dismissing or discarding his case on this technical aspect.

14. Another aspect worth considering with regard to the shares as sought for is that the entire plaint does not mention anywhere as to how the plaintiff came to a conclusion that he along with the defendant No.1 are entitled to 44/100th share each whereas the defendant No.2 is entitled only to 11/100th share in the suit schedule properties. Admittedly, the defendant No.1 is the brother of the plaintiff and the defendant No.2 is the mother of the plaintiff. In addition, admittedly, even according to the plaintiff, the entire suit schedule properties belonged to his father i.e., the father of the defendant No.1 and the husband of the defendant No.2. When such is the case, the defendant Nos.1 and 2 are as closely and as equally associated with the father of the plaintiff as the plaintiff himself was. That being the

scenario, the plaintiff ought to have put forth the manner and mechanism under which he arrived at a conclusion that the defendant No.2 being his mother and more importantly, the wife of his father is entitled only to 11/100th share. No proper explanation or reason has been adduced by the plaintiff as to how he arrived at the shares as mentioned in the plaint.

15. As could be gleaned from the plaint, the plaintiff sought for partition of as many as six items of properties as shown in the suit schedule properties. In addition, the plaintiff has also sought to grant future mesne profits for his share of the suit schedule properties. In this connection, admittedly, even according to the plaintiff, the defendant No.2 executed a settlement deed in favour of the defendant No.1 for a part of item No.1 of the suit A schedule property. Though the plaintiff contended that the settlement deed is not valid and that it is not binding on him, still, in the humble opinion of this Court, the plaintiff ought to have sought for one relief or the other even in respect of such settlement deed. However, the record reveals that no relief whatsoever is sought against the settlement deed. This inaction of the plaintiff remains unexplained.

16. A perusal of the plaint reveals that according to the plaintiff, his father got an extent of Acre 0.27 cents of land in total in resurvey No.93/5 of Avuripudi village. It is contended that the father of the plaintiff got the same in a partition between the father of the plaintiff and the brothers of the father of the plaintiff namely Medisetti Panduranga Rao and Medisetti Nagaraju. It is further contended that the property was the ancestral property of the father of the plaintiff. The plaintiff contended that using the aforesaid property, the income derived from such property and the income from the leased lands, the other suit schedule properties were purchased. Thus, even according to the plaintiff, his 44/100th share in the suit schedule properties emanates out of this Acre 0.27 cents of land in resurvey No.93/5. Though Ex.A1 pertains to an extent of Acre 0.10 cents of land out of this Acre 0.27 cents of land in resurvey No.93/5, still, it does not depict the right of the defendant No.2 in the first instance over the property therein. Ex.A1 reveals that it was settled in favour of the defendant No.1 by the defendant No.2. However, Ex.A1 only states that the father of the plaintiff i.e., the husband of the defendant No.2 purchased the

property therein under a registered sale deed and after the death of the father of the plaintiff, the same fell to the share of the defendant No.2. In this connection, it must be noted that the registered document under which the father of the plaintiff purchased the property has not been adduced as evidence. When such is the case, Ex.A1 would have no value even with regard to Acre 0.10 cents of land and the house covered therein.

17. In this connection, a perusal of the record reveals that no documents whatsoever have been adduced on behalf of the plaintiff to show that his father had any right or interest over the Acre 0.27 cents of land in resurvey No.93/5 save for Ex.A1. It is already held that even Ex.A1 does not aid the plaintiff in this regard. Further, as a matter of fact, even the nature of the partition that purportedly took place between the father of the plaintiff and the brothers of the father of the plaintiff is not specifically mentioned in the plaint. If it is considered that an oral partition took place, for apparent reasons, no documents can be expected of such partition. However, even in such a case, it is incumbent upon the plaintiff to establish that the said property is his ancestral property. The plaintiff ought to

establish that the said property belonged to his ancestors by adducing one document or the other in this regard, even assuming that the partition was an oral partition. The plaintiff could have put forth the details as to how his ancestors acquired the said property and more importantly, he should have established that the property was ancestral property even prior to the partition.

18. The record reveals that absolutely no document whatsoever has been adduced by the plaintiff to show his right or the rights of his ancestors, for that matter, over the Acre 0.27 cents of land in resurvey No.93/5. Even assuming that Ex.A1 can be relied upon, still, there is no documentary evidence regarding the remaining Acre 0.17 cents of land. When such is the case, it can only be said that the plaintiff failed to prove that he or his ancestors had any right or interest in the Acre 0.17 cents of land in resurvey No.93/5. Thus, when the plaintiff fails to establish his right over the Acre 0.17 cents of land, his right to claim a share in the other properties that were purchased using the aforesaid Acre 0.17 cents of land is put to test. In addition, when it has not been established that the Acre

0.27 cents of land is the ancestral property of the plaintiff, for obvious reasons, the plaintiff and the defendant No.1 cannot claim a share larger than that of the defendant No.2. Thus, this inaction of the plaintiff in adducing any documentary evidence regarding the Acre 0.17 cents of land would only go to show that the plaintiff failed to prove any right over the same, besides raising a question over the quantum of shares as sought for. In addition, when the very foundation using which the rest of the suit schedule properties were purchased is not established, for obvious reasons, the plaintiff cannot be entitled to the shares as sought for.

19. One other aspect worth considering is that even putting aside any document evincing the title or interest of the plaintiff or that of his ancestors, for that matter, the plaintiff did not even adduce any document to show that he or his ancestors were in possession of the Acre 0.27 cents of land at any point of time. Even the pattadar passbook/Ex.A4 in the name of the father of the plaintiff does not depict the details of the land in resurvey No.93/5. In addition, it is already seen that the plaintiff did not seek any relief with regard to Ex.A1. Based on these two aspects, it can

only be said that the plaintiff is not entitled to any relief with regard to item No.1 of the suit A schedule property. Coming to item No.2 of the suit A schedule property, it is seen that no documentary evidence has been adduced whatsoever with regard to this item. As such, when the right of the plaintiff or that of his ancestors over item No.2 of the suit A schedule property is not established, the same cannot be partitioned.

20. With regard to item Nos.3 and 4 of the suit A schedule property, it is seen that the plaintiff relied upon Exs.A8 and A6 respectively. Exs.A8 and A6 contain the name of the father of the plaintiff against item Nos.3 and 4 of the suit A schedule property respectively. However, Exs.A8 and A6 happens to be revenue records and more precisely, adangal pahanis which, even considering to be true, would only establish the possession of the parties but not the title. It is settled law that revenue records do not confer any title. Save for Exs.A8 and A6, the plaintiff did not adduce any documentary evidence showing his right or the right of his ancestors over item Nos.3 and 4 of the suit A schedule property. As such, it only stands that the plaintiff is not entitled to seek any share in

item Nos.3 and 4 of the suit A schedule property as well.

21. Coming to item Nos.1 and 2 of the suit B schedule property, it is seen that the plaintiff relied upon Exs.A2 and A3 to establish his claim over the same. A perusal of Ex.A2 reveals that it pertains to Acre 0.57 cents of land in resurvey No.60/3 and that it is in the name of the father of the plaintiff. A perusal of Ex.A3 reveals that it pertains to Acre 0.48 cents of land in resurvey No.60/2 and Acre 0.13 cents of land in resurvey No.60/3. Ex.A3 is in the name of the father of the plaintiff. Thus, Exs.A2 and A3 pertains to a total extent of Acre 0.70 cents in resurvey No.60/3 and Acre 0.48 cents in resurvey No.60/2 and they depict that the father of the plaintiff purchased the same. In addition, Exs.A5 and A7 i.e., the adangal pahanis go to show that the father of the plaintiff was in possession of Acre 0.70 cents of land in resurvey No.60/3 and Acre 0.48 cents of land in resurvey No.60/2 respectively i.e., item Nos.1 and 2 of the suit B schedule property respectively. As such, the plaintiff has established that item Nos.1 and 2 of the suit B schedule property are the absolute properties of his father.

22. However, as stated above, the plaintiff failed to establish that his father had any right over the property in resurvey No.93/5, which according to the plaintiff, was the foundation for purchasing the other properties. In addition, the plaintiff failed to prove that the property in resurvey No.93/5 is his ancestral property. When such is the case, it cannot be assumed that item Nos.1 and 2 of suit B schedule property are the ancestral properties of the plaintiff. As such, it only stands that they can be treated as the self acquired property of the father of plaintiff and thereby, they should be partitioned equally among the plaintiff and the defendants. Even if the same is to be considered, the share as sought for by the plaintiff would stand in contrast to this finding arrived at by this Court. As such, it can only be said that the plaintiff along with the defendant Nos.1 and 2 is entitled to $1/3^{\text{rd}}$ share each in item Nos.1 and 2 of the suit B schedule property. With regard to item Nos.1 to 4 of the suit A schedule property, the plaintiff failed to prove that he or his ancestors have any right over the same, meaning thereby that he is not entitled to any share therein. The same would imply that no relief can be granted with regard to item Nos.1

to 4 of the suit A schedule property.

23. Thus, this Court finds itself in a predicament where no relief can be granted with regard to the suit A schedule property and even the relief as sought for by the plaintiff with regard to the suit B schedule property in respect of the shares as claimed for cannot be granted. A finding was arrived at that the plaintiff and the defendants are entitled to 1/3rd share each in the suit B schedule property, which does not happen to be the share as claimed by the plaintiff. The immediate question that arises for consideration is: Is this Court empowered to modify the quantum of shares as claimed for ?? To answer this question, it must be noted that this Court is empowered to decree the suit as prayed for if the plaintiff establishes his case and equally empowered to dismiss the suit if the plaintiff fails to establish his case. With regard to any modification in the relief as prayed for, in the humble opinion of this Court, any relief beyond pleadings cannot be granted.

24. In other words, the plaintiff cannot be bestowed with any relief

that exceeds what has been prayed for, even if it is found that the plaintiff is entitled to such excess relief. In addition, it is settled law that relief not prayed for cannot be granted. On the other hand, if a finding is arrived at that the plaintiff is entitled to a relief lesser than what is prayed for, or in modification of what is prayed for, such modification not exceeding what is originally prayed for and more importantly, not falling beyond the purview of pleadings, in the humble opinion of this Court, the same can undoubtedly be granted. For instance, if the plaintiff claims a half share in the suit schedule property and it is elicited that he is only entitled to a one third share, the suit need not be dismissed merely because there happens to be a discrepancy in the share claimed when juxtaposed with the share to which the plaintiff is entitled to. In such a scenario, granting one third share would not be contradictory or inconsistent with the relief as sought for and neither would it fall beyond the purview of pleadings. Applying this analogy to the present case, the shares as sought for can be modified and a relief with such modified shares to which the plaintiff has established that he is entitled to can be granted. As such, this Court holds that the

plaintiff and the defendant Nos.1 and 2 are entitled to one third share each in item Nos.1 and 2 of the suit B schedule property. This Court further holds that the plaintiff is not entitled to claim any share in item Nos.1 to 4 of the suit A schedule property. This point is answered accordingly.

25. In the result, the suit is decreed in part with costs. A preliminary decree is passed for partition of item Nos.1 and 2 of the suit B schedule property into three equal shares by metes and bounds with separate possession i.e., one share to the plaintiff, one share to the defendant No.1, and one share to the defendant No.2. The relief with regard to item Nos.1 to 4 of the suit A schedule property shall stand dismissed. Without prejudice to the right of the plaintiff to seek for a final decree in accordance with the preliminary decree, it is hereby informed that steps will be taken for preparation of the final decree.

Typed by me in my laptop, corrected and pronounced by me in the Open Court on this the 03rd day of February, 2025.

**CIVIL JUDGE (JUNIOR DIVISION),
MOVVA.**

Appendix of Evidence
Witnesses examined

Plaintiff:

PW-1 : Mediseti Srinivas.

Defendants:

Ex parte.

Exhibits Marked

Plaintiff:

Ex.A1 : Certified copy of the registered settlement deed dated 25-07-2022 vide document No.2701/2022.

Ex.A2 : Certified copy of the registered sale deed dated 05-05-2012 vide document No.1078/2022.

Ex.A3 : Certified copy of the registered sale deed dated 05-05-2012 vide document No.1077/2012.

Ex.A4 : Pattadar passbook.

Ex.A5 : Adangal pahani for the fasli 1432, dated 16-09-2022.

Ex.A6 : Adangal pahani for the fasli 1432, dated 16-09-2022.

Ex.A7 : Adangal pahani for the fasli 1432, dated 16-09-2022.

Ex.A8 : Adangal pahani for the fasli 1432, dated 14-10-2022.

Ex.A9 : Adangal pahani for the fasli 1432, dated 21-10-2022.

Defendants: Nil.

C.J.(J.D.), MOVVA.