

IN THE COURT OF VI ADDL. DISTRICT JUDGE : MARKAPUR.

Present: **Sri.G.Rama Krishna**
VI Addl. Dist. & Sessions Judge,
Markapur.

Tuesday, the 24th day of September, 2019

A.S.No.3/2017

Between:

Panyam Subba Reddy S/o Kota Reddy, aged about 70 years, Hindu, cultivation, 4th ward, Krishnamsettypalli village, Giddalur Mandal, Prakasam District.

.. **APPELLANT**

A N D

Panyam Prabhakar Reddy S/o Subba Reddy, aged about 37 years, Hindu, cultivation, 5th ward, Krishnamsettypalli village, Giddalur Mandal.

.. **RESPONDENT**

On appeal filed against the orders and Decree Dt.30-11-2015 passed in O.S.116/2010 on the file of Senior Civil Judge Court, Markapur.

Between:

Panyam Prabhakar Reddy .. Plaintiff

A N D

Panyam Subba Reddy ... Defendant.

This Appeal Suit is coming on 29-08-2019 for final hearing before this court in the presence of Sri.V.V.Ramana Murthy, Advocate for Appellant, Sri.P.Bala Ranga Reddy, advocate for Respondent and having stood over for consideration to this day, this court delivered the following:-

// J U D G M E N T //

1. This appeal is filed against the judgment and decree passed in O.S.116/2010 dated 30.11.2015 on the file of Senior Civil Judge Court, Markapur. The appellant herein is the defendant and the respondent herein is the plaintiff in O.S.116/2010. Therefore, to avoid confusion this court is going to refer the parties as they arrayed in O.S.116/2010. Since this court being first appellate is also a fact finding court invariably for deciding this appeal, this court must refer the pleadings and evidence of both parties.

2. The case of plaintiff is that the defendant is his father. He is only son to the defendant. The plaint schedule properties are ancestral properties of the defendant. The defendant acquired some properties with the income from those properties. So the plaint schedule properties are joint family properties in their joint possession. Due to ill feelings the defendant sent the plaintiff and his mother out the house about 10 years back.

3. The defendant used to give something or other produce from the lands. Since six months he refused to give produce. The schedule properties are yielding Rs.50,000/- income per year.

4. The plaintiff felt it is not safe to keep the plaint schedule properties in joint possession. He got issued a legal notice demanding for partition. The defendant refused the requests of plaintiff for partition of properties, in the 1st week of august, 2010 before the village elders. There is no reply for the notice issued by the plaintiff. Unless and until the plaintiff ousted from possession, it is deemed that he is in possession and he is always in joint possession, no ouster would be arise. As his efforts for amicable partition failed, he was forced to file the suit for partition of plaint schedule properties between plaintiff and defendant and costs of the suit.

5. The case of defendant is that all the averments in the plaint are not true and correct. The description of entire plaint schedule property as ancestral is not true. Since the plaintiff not known anything about the schedule property as he never saw and enjoyed it, the details of property as to its boundaries, extent and survey numbers are not shown correctly in the plaint schedule. The court fee paid by the plaintiff is not correct one. The plaint schedule properties are never in joint possession of plaintiff and defendant. Therefore, section 34(a) of A.P. Court Fee and Suit Valuation Act applies to the suit, but not section 34 (b) of said Act. So the plaintiff ought to

have pay the advolaram court fee on the value relief but not the fixed court fee of Rs.200/-.

6. It is further contended that he married the mother of plaintiff more than 40 years back. By the time of marriage she did not attain puberty. After attaining her puberty, she refused to join with the defendant inspite of persuasion by elders. Thus the marriage of defendant with the mother of plaintiff was a forced marriage. She never liked the defendant who is rustic and a man of below average faculties. She never stepped into the house of defendant. After attain majority she repudiated the marriage and there was no marital tie between them. Thus even after marriage she stayed in the house of her parents as she was prior to her marriage. Thus the defendant had never access to her. The plaintiff is claiming himself as the son of defendant in order to grab the property. Thus the paternity of plaintiff with the defendant is specifically denied. The claim of plaintiff that he is in joint possession of schedule property is a mere phantom of his brain and not a reality either in fact or in law.

7. Except items 11 to 13 of plaint schedule property, which belong to the brother of defendant, all other properties of plaint schedule are in exclusive possession and enjoyment of defendant. Out of which items 3, 5 to 7 are his self acquired properties.

8. The plaintiff is never a co-owner or never in possession and received any yield of schedule property and impliedly she ousted from possession or title of schedule property. The plaintiff got filed false suit at the ill advice of real estate brokers keeping in view of the steep hike of values of immovable properties.

9. It is further contended that when the plaintiff filed the suit basing on his title as co-owner he has to file the suit within period of limitation. Thus the present suit is barred by limitation. The plaintiff is not entitled to any of the

reliefs claimed for in the plaint. The suit is liable to be dismissed with costs to the defendant.

10. Based on the above pleadings the trial court framed the following issues:-

1. Whether the suit schedule properties are joint family properties and liable for partition, if so, whether the plaintiff is entitled to seek the relief of partition of plaint schedule properties into two (2) equal shares by metes and bounds and entitle to receive one such share form the defendant as prayed for ?
2. Whether the plaintiff is entitled for future mesne profits as prayed for ?
3. Whether the court fee paid by the plaintiff is correct ?
4. To what relief ?

11. In order to prove his case the plaintiff P.Prabhakar Reddy was examined as P.W.1, his mother Salamma, Ambati Second Poli Reddy was examined as P.W.3 (his evidence in chief is eschewed from record as he failed to turn up for cross-examination). R.Hanumantha Reddy was examined as P.W.4. Exs.A1 to A10 are marked. On behalf of defendant P.Pedda Subba reddy, he got examined himself as D.W.1. On considering the oral and documentary evidence and on hearing both side the learned Senior Civil Judge, Markapur passed a preliminary decree for partition of plaint schedule property into two equal shares by metes and bounds and allot one such share to the plaintiff by giving liberty to the plaintiff to file separate petition for mesne profits and also directed the plaintiff to pay court fee under section 34 (1) of A.P. Court Fee and Suit Valuation Act. Aggrieved by the same the present appeal is filed.

12. The points for consideration are :

1. Whether the plaint schedule properties are ancestral properties and liable for partition as contended by the plaintiff ?

2. Whether items 11 to 13 of plaint schedule properties are the brother of defendant ?
3. Whether items 3, 5 to 7 are self acquired properties of defendant ?
4. To what relief ?

13. **POINTS No.1 to 3 :**

Since these three points are interconnected with each other, this court intended to answer them together.

According to the plaintiff P.Prabhakar Reddy (P.W.1) he is only son of defendant. The plaint schedule properties are ancestral properties. The defendant purchased some properties out of the income from the ancestral properties. Therefore, all the properties are joint family properties. The defendant sent away the plaintiff and his mother about 10 years back. The defendant is managing the joint family properties. He used to give something or other to the plaintiff out of produce from the lands. Since 6 months prior to filing of the suit, the defendant stopped giving the produce. Then the plaintiff felt that it is not safe to him to continue the jointness of the properties, he got issued a legal notice dated 10-6-2010 (Ex.A1) to the defendant demanding for partition. The defendant received the said legal notice under Ex.A2 postal acknowledgment on 12.6.2010. He got filed Ex.A3 market value certificate issued by the Sub Registrar, Giddalur dated 30-7-2010.

14. The main contention of defendant is that after his marriage with the mother of plaintiff, the plaintiff's mother never joined him, she disliked. There was no access between them. The plaintiff is not born to him, the plaintiff is not his son. In the written arguments, the counsel for defendant/appellant made an end against the observations made by the trial court in its judgment in para No.13. According to the contention of defendant the trial court ought to have held that without establishing that the plaintiff is natural son of defendant by proving paternity with the defendant mere filing of Exs.A4 to A7

cannot prove the case of plaintiff. Therefore, there is no evidence to show that the plaintiff is son of defendant.

15. In his evidence the defendant deposed that the mother of plaintiff never stepped into his house after marriage. He ruined the marriage. There was no material tie between him and the mother of plaintiff. Thus he has no access and no children were born to him through the mother of plaintiff. To meet that challenge the mother of plaintiff Salamma was examined as P.W.2. According to her due to ill feelings between her and the defendant, the defendant sent her and the plaintiff from his house about 10 years back. Since then they lived separately. The plaintiff is her son, born through the defendant. When it was suggested to her that after marriage she did not join the defendant and lead the marital life, she denied it. The parents place of P.W.2 is Akkampalli village of Kurnool District. If really the plaintiff never resided in Krishtamsettypalli village the defendant pursuing his studies in Krishtamsettypalli village would not occur. As per the evidence of plaintiff as P.W.1 he studied in Krishtamsettypalli village. To prove the same he filed Ex.A8 copy of study certificate, Ex.A9 copy of Form of Transfer certificate which was compared with the original in the presence of counsel for defendant in public court. Then only the copies are marked. Exs.A8 and A9 they are showing that the plaintiff studied from first class to 5th class from 26.8.1986 to 14.6.1993 in Krishtamsettypalli village. Later he studied 6th class in Z.P. High School Krishtamsettypalli village. In relevant columns of Exs.A8 and A9, his father's name is mentioned as Subba reddy (defendant). Ex.A10 copy of Aadhar card (which is compared with its original in public court) also shows that he is resident of Krishtamsettypalli village of Prakasam District whose son is of Subba Reddy. Thus the documents coupled with the evidence of P.Ws.1 and 2 are clinchingly established that the plaintiff, his mother Salamma P.W.2, the defendant Subba reddy lived in Krishtamsettypalli village. The plaintiff studied in the said village upto 6th class. There is no evidence from the side of

defendant to disprove the genuinity of Exs.A8 to A10. What was suggested to P.W.1 in the cross-examination by the defendant is that 2 years prior to filing of the suit he came to Krishtamsettypalli and resided there, it was denied by the plaintiff. In addition to that the evidence of P.W.4 is strengthening the case of plaintiff that the plaintiff is son of P.W.2 and the defendant. P.W.4 is resident of Krishtamsettypalli village. When he is resident of the said village, certainly he must know the fact that the plaintiff is son of defendant. When the defendant is denying and disputing that the plaintiff is his son what he made him not to take steps for DNA examination or at least not examined any other witness in support of his contenting that the plaintiff is not his son, when there is a clinching evidence by way of evidence of P.W.2, P.W.4 coupled with Exs.A8 to A10 that the plaintiff is son of defendant, it is for the defendant to prove that the plaintiff is not his son. Under section 104 of Indian Evidence Act the burden is on the defendant, but he failed to discharge his burden. Therefore, in view of evidence of P.Ws.1, 2, 4 coupled with evidence of Exs.A1 to A8 that the plaintiff is natural son of defendant. As held by the learned Senior Civil Judge, Markapur the presumption under section 112 of Indian Evidence Act is also in favour of plaintiff that the plaintiff is the son of defendant.

16. With regard to the schedule properties are concerned the contention of defendant is that items 11 to 13 of plaint schedule properties only are belonging to his brother Venkata Subba reddy. He further contents that items 3, 5 to 7 are his self acquired properties. It is the case of plaintiff that out of the income derived from the ancestral property some properties were purchased by the defendant. Therefore, even those properties which are purchased by the defendant also ancestral properties, they are joint. All the properties mentioned in plaint are liable for partition. The plaintiff filed Exs.A4 to A7 the certified copies of adangal pahani for the fasli 1422 in S.No.610A1B, survey No.619-2, S.No.620-1 and survey No.597-2 to show that those

properties are ancestral properties. With regard to items 3, 5 to 7 are concerned there is no evidence to show that those items are self acquired properties of defendant. If really the defendant purchased those properties out of his own earnings he must file documents to substantiate the same. But no such documents are filed. Therefore, an adverse inference can be drawn against the defendant that if those documents are produced before the court, certainly they will show that items 3, 5 to 7 are purchased by the defendant out of income derived from the ancestral properties because it is admitted case of defendant that items 1, 2, 4, 8, 9 and 10 are his ancestral properties. Therefore, it is acceptable contention of plaintiff that out of the income of ancestral property, the defendant purchased some properties. Therefore, those properties are also a joint properties of plaintiff and defendant.

17. While advancing arguments in the appeal it is argued by the learned counsel for defendant/appellant that the plaintiff in his cross-examination stated that itemNo.6 of plaint schedule property is self acquired property of Venkata Subba Reddy. The trial court failed to take note of the above admission in evidence of D.W.1. This court unable accept the said contention because it is the specific case of defendants that items 3, 5 to 7 are self acquired properties of defendant which was denied by the plaintiff. When the defendant himself claiming that item No.6 is his self acquired property even P.w.1 stated that item No.6 is the self acquired property of Venkata Subba reddy the brother of defendant, it will not helpful to the case of defendant. If really item No.6 of plaint schedule property is that of brother of defendant, certainly the defendant should have filed some proof before the court to prove the said aspect. Perhaps as the admission of P.W.1 is contrary to the case of defendant, he kept himself silent. Therefore, even if the said admission there in the evidence of P.W.1 that item No.6 of plaint schedule property is that of brother of defendant Venkata Subba reddy, it will not effect the entire case of plaintiff that the plaint schedule properties are ancestral properties of

defendants. At this context this court can say that the plaintiff as well the evidence of plaintiff is silent, when the brother of defendant is alive how the plaintiff and defendant alone are entitled for partition of entire plaintiff schedule property, so also the written statement and the evidence of defendant are also silent without questioning the maintainability of the suit for adding the brother of defendant 'as party to the suit'. It appears that after partition of ancestral property by the defendant and his brother the defendant got the plaintiff schedule properties from his ancestor that is why the plaintiff filed the suit for partition claiming his half share in the plaintiff schedule property. That might be the reason for the defendant in his evidence stated that except items 11 to 13 all other properties are in his exclusive possession and enjoyment. At the cost of repetition this court is going to say that with regard to items 11 to 13 are concerned there is no evidence to show that those properties are belonging to the defendant. Therefore, as it is categorically established by the plaintiff that the plaintiff schedule properties are ancestral properties of defendant, being coparcenor the plaintiff is also entitled to get half share in the plaintiff schedule properties. The plaintiff schedule properties are liable to be partitioned into two equal and equalent shares between the plaintiff and defendant, the plaintiff is entitled to one such share by metes and bounds and a separate possession of it. Point answered accordingly in favour of plaintiff.

18. **POINT NO.4:** In view of this court's opinion in points 1 to 3 as this court failed to find any ground to interfere with the judgment passed by the Senior Civil Judge, Markapur in O.S.116/2010 dated 30-11-2015, the appeal is dismissed. The judgment and decree passed dated 30-11-2015 in O.S.116/2010 on the file of Senior Civil Judge Court, Markapur is hereby confirmed.

Dictated to the Personal Asst., transcribed by her corrected and pronounced by me in Open Court, this the 24th day of September, 2019.

**VI ADDL.DIST. & SESSIONS JUDGE,
PRAKASAM AT MARKAPUR.**

APPENDIX OF EVIDENCE
-Nil-

VI A.D. & S.J.,
Markapur.

IN THE COURT OF VI ADDL. DISTRICT JUDGE : MARKAPUR.

Present: **Sri.G.Rama Krishna**
VI Addl. Dist. & Sessions Judge,
Markapur.

Tuesday, the 24th day of September, 2019

A.S.No.3/2017

Between:

Panyam Subba Reddy S/o Kota Reddy, aged about 70 years, Hindu, cultivation, 4th ward, Krishnamsettypalli village, Giddalur Mandal, Prakasam District.

APPELLANT

A N D

Panyam Prabhakar Reddy S/o Subba Reddy, aged about 37 years, Hindu, cultivation, 5th ward, Krishnamsettypalli village, Giddalur Mandal.

RESPONDENT

On appeal filed against the orders and Decree Dt.30-11-2015 passed in O.S.116/2010 on the file of Senior Civil Judge Court, Markapur.

Between:

Panyam Prabhakar Reddy .. Plaintiff

A N D

Panyam Subba Reddy ... Defendant.

This appeal is filed against the judgment and decree passed in O.S.116/2010 dated 30.11.2015 on the file of Senior Civil Judge Court, Markapur filed for partition of plaint schedule properties into two equal shares and for allotment of one such share to plaintiff and for mesne profits.

Court Fee:- A fixed court fee of Rs.200/- is paid U/s. 49 of APCF & S.V.Act.

This Appeal Suit is coming on 29-08-2019 for final hearing before this court in the presence of Sri.V.V.Ramana Murthy, Advocate for Appellant, Sri.P.Bala Ranga Reddy, advocate for Respondent and having stood over for consideration to this day, this court doth order and decree: -

- i) that this Appeal suit be and the same is hereby dismissed; and
- ii) that the judgment and decree passed dated 30-11-2015 in O.S.116/2010 on the file of Senior Civil Judge Court, Markapur is hereby confirmed; and
- iii) that the appellant do pay costs of the appeal to the respondent.

Given under my hand and the seal of the court, this the 24th day of September, 2019.

**VI ADDL DIST & SESSIONS JUDGE,
PRAKASAM AT MARKAPUR.**

TABLE OF COSTS

<u>FOR APPELLANT</u>		<u>FOR RESPONDENT</u>
C.M. & F.C.	Vakalath	2-00
Not filed	Advocate Fee	3000-00
	Typing & writing charges	<u>100-00</u>
	Total	<u>Rs.3102-00</u>

**VI A.D. & S.J.,
MARKAPUR.**