

**IN THE COURT OF THE PRINCIPAL JUNIOR CIVIL JUDGE
MANGALAGIRI**

**PRESENT: CH.V.RAMAKRISHNA
PRINCIPAL JUNIOR CIVIL JUDGE, MANGALAGIRI.
THURSDAY, THIS THE 10TH DAY AUGUST, 2023.
ORIGINAL SUIT NO.146/2015**

BETWEEN:

1. Karri Suseela, W/o.Late Rattaya, aged about 42 years, Hindu, Ccool, presently resident of Gundimeda village, Tadepalli Mandal, Guntur District.
2. Karri Prakash, S/o.Late Rattaya, aged about 27 years, Hindu, Student, presently resident of Gundimeda village, Tadepalli Mandal, Guntur District.
3. Karri Bhanu, S/o.Late Rattaya, aged about 17 years, Hindu, Student, resident of Gundimeda village, Tadepalli Mandal, Guntur District. (Minor represented by his next friend-cum-natural guardian i.e., 1st plaintiff Karri Suseela) **(Died)**

...PLAINTIFFS

and

1. Karri Lokanandham, S/o.Late Moshe, aged about 75 years, Hindu, Cultivation, resident of Kantheru village, Tadikonda Mandal, Guntur District.
2. Dara Naramma, W/o.Gidigiri, aged about 50 years, Hindu, House-wife, resident of Kantheru village, Tadikonda Mandal, Guntur District.
3. Tirumalapalli Annapoorna, W/o.Ramaiah, aged about 50 years, Hindu, House-wife, resident of Kantheru village, Tadikonda Mandal, Guntur District.
4. Bojankula Minimma, W/o.Vasanth Rao, aged about 50 years, Hindu, House-wife, resident of Tangellamudi village, Sangamjagarlamudi Post, Chebrolu Mandal, Guntur District.
5. Namthoti Rathamma, W/o.Venkateswara Rao, aged about 45 years, Hindu, House-wife, R/o.Gundimeda village, Tadikonda Mandal, Guntur District.
6. Karlapudi Venkayamma, W/o. Ravi, aged about 35 years, Hindu, resident of Kantheru village, Tadikonda Mandal, Guntur District.

...DEFENDANTS

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This suit came up before me for final hearing on 05-07-2023 in the presence of Sri M.Mallikarjuna Rao, Advocate for Plaintiffs, and Sri V.Rama Gopal Goud, Advocate for Defendants, and upon hearing both sides and upon perusal of the material on record,

PJCJ, MNGL.

and this matter having stood over for consideration till this day, this Court delivered the following:

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

Initially, this suit is filed for partition of the plaint schedule properties into 21 equal shares and for allotment of one such share each to the plaintiffs 1 to 3 towards share of Rattayya and three shares each to the defendants 1 to 6 and put them in possession of the same and for costs.

2. The averments, in brief, of the original plaint are that, the 1st plaintiff is daughter-in-law of 1st defendant and that plaintiff Nos.2 and 3 are grandsons of 1st defendant and that defendant Nos.2 to 6 are daughters of 1st defendant. The 1st defendant had a son by name Rattaya and he is the husband of 1st plaintiff and father of plaintiff Nos.2 and 3. All of them constitute Hindu undivided joint family. The plaint schedule properties are undivided Hindu joint properties. It is submitted that the mother of 1st defendant by name Suvarthamma purchased Item No.1 of the plaint schedule property under valid registered sale deed in the year 1972. During the life time of Karre Moshe, who is the father of 1st defendant, he acquired Item No.2 of the plaint schedule property which is a poramboke land and he died intestate. By the date of death of said Moshe, the 1st defendant was in the womb of Suvarathamma. During her life time, the Government of Andhra Pradesh assigned Item No.3 of the plaint schedule property which is a house site to

the said Suvarthamma. The said Suvarthamma died intestate in or about 2004. The son of 1st defendant and the husband of 1st plaintiff by name Rattaya died on 29.02.2002 leaving behind him the plaintiffs 1 to 3 as his legal heirs. It is submitted that Item Nos.1 to 3 of plaint schedule properties are joint family properties and are not partitioned till today. The plaintiffs and defendants are jointly enjoying the plaint schedule properties. The defendant No.1 also got pattadar passbook in his name in respect of Item Nos.1 and 2 of plaint schedule properties. The husband of plaintiff No.1 died due to HIV. When the said bifurcation was done and the cost of lands was increased all the defendants hatched up a plan and neglected and necked out the plaintiffs with a mala fide intention to avoid their shares in the plant schedule property. As there is no other alternative, the plaintiffs came to Gundimeda village which is the parental house of 1st plaintiff and residing there. Subsequently, the plaintiffs demanded in amicable ways the defendants to partition the plaint schedule properties, but the defendants paid deaf ear to them. The plaintiffs thought that it is not safe to keep the plaint schedule properties jointly and they got issued a legal notice through their Advocate on 21.01.2015 to all the defendants demanding partition of the plaint schedule properties. The defendants have wantonly refused to receive the said notice. Hence, the suit.

3. The plaint schedule properties as per the original plaint reads as follows:

Item No.I:

Guntur District, Tadikonda Sub District, Kantheru village in Survey No.290/A an extent of Ac.75 cents out of Ac.4.25 cents is bounded by:

East : Meka Venkata Reddy
South : Kondamadugula Chilakayamma
West : Epuri Gabriel
North : Epuri Gabriel

Within the boundaries an extent of Ac.0-75 cents - Value : 3,75,000/-

Item No.II:

Guntur District, Tadikonda Sub District, Kantheru village, in Survey No.257 an extent of Ac.0.42 cents is bounded by:

East : R & B Road.
South : Sika Sankar.
West : Ippala Mohana Reddy.
North : Panchayat Bazar.

Within the boundaries an extent of Ac.0.42 cents - Value : 2,30,000/-

Item No.III:

Guntur District, Tadikonda Sub District, Kantheru Village, Grama Kantakam, in S.No.233 an extent of Ac.0.44 cents of house site is bounded by:

East : Buradagunta Jeeva Ratnam
South : Panakalu Daya.
West : Sikha Vijaya Ratnam.
North : Panchayat Raod.

Within the boundaries an extent of Ac.0.4 cents of house site – Value : 1,16,160-00

4. The plaint schedule properties as per the neat copy of the plaint dated 28.04.2015 reads as follows:

Item No.I:

Guntur District, Tadikonda Sub-Dist., Tadikonda Mandal, Kantheru village, D.No.290/A an extent of Ac.0-75 cents out of Ac.4.25 cents wet land bounded by:

East : Land of Penumaka Ankallu

South : Land of Kattepogu Venkatramaiah
 West : Land of Kattepogu Venkatramaiah
 North : Nutakki Kondaiah and others

Value : 3,75,000/-

Item No.II:

Guntur District, Tadikonda Sub-District, Kantheru Village, in Survey No.257, an extent of Ac.0.42 cents wet land bounded by:

East : R & B Road.
 South : Sika Sankar.
 West : Ippala Mohana Reddy.
 North : Panchayat Bazar.

Within the boundaries an extent of Ac.0.42 cents.

Value : 2,30,000/-

Item No.III:

Guntur District, Tadikonda Sub-District, Kantheru Village, Grama Kantakam, in Survey No.233 an extent of Ac.0.4 cents is bounded by:

East : Buradagunta Jeeva Ratnam
 South : Panakalu Daya.
 West : Sikha Vijaya Ratnam.
 North : Panchayat Raod.

Within the boundaries an extent of Ac.0.4 cents House site.

Value : 1,16,160/-

5. Subsequently, in view of the intestate death of the 1st defendant on 22.07.2018, the plaintiff Nos.1 and 2 have filed I.A.No.2186/2019 under Order 22 Rule 9 CPC to set aside the abatement order passed against the 1st defendant and also I.A.No.108/2020 under Order VI Rule 17 CPC as a consequence of the death of the 1st defendant. The said I.A.No.2186/2019 was dismissed as not pressed on 22.11.2019. The I.A.No.108/2020 was allowed on 13.02.2020. As a consequence of allowing of I.A.No.108/2020 neat copy of plaint was filed on 13.03.2020 making the following amendments.

“During pendency of the suit, the 1st defendant died intestate on 22.07.2018. Except both parties in the suit there are no

other legal representatives or legal heirs to the 1st defendant. Hence the share of the 1st defendant is fell upon the remaining both parties. Therefore the plaintiffs pray that the Hon'ble Court may be pleased to partition the plaint schedule properties into 18 equal shares and allot one such share each to the plaintiffs 1 to 3 and three such shares to each defendants 2 to 6 and put them in possession of the same."

So, the relief now claimed is (a) for partition of the plaint schedule properties into 18 equal shares and allot one such share to each plaintiffs 1 to 3 towards share of Rattayya and 3 such shares each to the defendants 2 to 6 and put them in possession of the same and the mesne profits over the schedule properties from the date of the suit and for costs.

6. Subsequently, in view of the intestate death of the 3rd plaintiff on 04.04.2016 in the status of minor, the plaintiffs 1 and 2 have filed I.A.No.3207/2016 and the same was initially dismissed for default on 26.10.2017 and, however, again by filing I.A.No.567/2022 and I.A.No.568/2022 and upon allowing those applications on 16.05.2022 and 23.06.2022, respectively, I.A.No.3207/2016 was allowed on 05.07.2022 and consequently neat copy of plaint was filed on 14.07.2022 making the following amendments.

"The second son of the 1st plaintiff and grandson of the 1st defendant by name Bhanu has passed away on dated 04.04.2016 as being minor, as such his undivided share in the joint family property was devolved upon 1st plaintiff as his sole surviving successor."

Now the prayer is amended as “(a) for partition of the plaint schedule properties into 18 equal shares and allot one such share to each plaintiffs partition of plaint schedule properties into 21 equal shares may be substitute with the words to allot 5/63 share 1st plaintiff and 4/63 to the second plaintiff”, apart from the mesne profits and costs of the suit. (Note: relief (a) is extracted as it is).

7. The 1st defendant filed written statement denying all the averments made in the plaint as false, baseless and are invented for the purpose of the suit. It is submitted that the plaintiffs are put to strict proof of all the averments made in the plaint. It is contended that the suit is not maintainable in accordance with law. The suit is liable to be dismissed in limini. It is submitted that plaint “A” schedule property was purchased by the 1st plaintiff (sic for 1st defendant) with his own earnings and so it is his self acquired property vide document No.138/1972 dated 05.04.1972 of SRO, Tadikonda, and since then the 1st defendant was in peaceful possession and enjoyment of the property with absolute rights. It is false to state that the mother of the 1st defendant by name Suvarathamma purchased Item No.1 of the plaint schedule property under valid registered sale deed in the year 1972. It is submitted that plaint “B” schedule property is also self acquired property of the 1st defendant and he got the same in the year 1977 after cyclone, as the then Tahsildar, Mangalagiri, issued Patta in

Survey No.257 an extent of Ac.0.42 cents in Kanteru village. It is false to aver that during life time of Karri Moshe who is father of 1st defendant item No.2 of the plaint schedule property which is a Poramboke land was assigned to him by the Government and that the said Moshe died intestate and that by time of death of said Moshe the 1st defendant was in womb. It is also submitted that the house property i.e., plaint "C" schedule property is also self acquired property of 1st defendant as he occupied the same and constructed a thatched house in that site. It is false to aver that during the life time of Suravathamma the Government of Andhra Pradesh allotted Item No.3 house site to the said Suravathamma. It is submitted that the marriage of 1st defendant took place in the year 1960 with one Mariyamma. In the year 1969, his son Rattaiah was born as 3rd child. The 1st defendant has got one male child (husband of plaintiff No.1 and father of plaintiff Nos.2 and 3) and five female children i.e., defendant Nos.2 to 6. The 1st defendant has no ancestral properties as Undivided Hindu Joint Properties, as alleged by the plaintiffs. It is false to aver that the plaintiffs and defendants are jointly enjoying the plaint schedule properties and thus Item Nos.1 to 3 of plaint schedule properties are joint family properties and not partitioned till today. It is submitted that 1st plaintiff is an adamant lady and from the day of her marriage with the son of the 1st defendant, her behaviour towards family members of 1st defendant is totally different and in

a harassment and indecent manner. Due to the harassment and high handed acts of 1st plaintiff only the son of 1st defendant died. The 1st plaintiff also filed a false complaint against the 1st defendant in the year 2002 at Tadikonda Police station and since then the 1st plaintiff along with other plaintiffs and her men have been harassing the 1st defendant. Due to the recent harassment of the plaintiffs, the 1st defendant filed a report before Tadikonda Police and Superintendent of Police, Guntur Urban District on 03.02.2015. So, in order to take vengeance against the 1st defendant the plaintiffs have filed the present suit with false averments. Hence, the suit is liable to be dismissed with costs.

8. The suit summons on 2nd defendant through court served personally and on 03.08.2015 which is day fixed for his appearance 2nd defendant was called and as he remained absent and as there was no representation for him, the 2nd defendant was set ex parte.

9. The defendant Nos.3, 5 and 6 filed memo adopting the written statement of 1st defendant. Subsequently, 4th defendant also filed a memo adopting the written statement of 1st defendant.

10. Based on the above pleadings and documents, the following issues are settled for trial:

- [1] Whether plaintiffs are entitled for partition as prayed for ?
- [2] Whether plaintiffs are entitled for mesne profits ?
- [3] To what relief?

11. Subsequent to the death of the 1st defendant, the 6th defendant filed additional written statement. In her additional written statement all the averments made in the neat copy of plaint are contended to be false, baseless and invented for the purpose of the suit. It is submitted that the suit is not maintainable as per law and same is liable to be dismissed in limini. It is submitted that the 1st defendant filed written statement when he was alive and the 6th defendant adopted the same in mutatis mutandis. It is submitted that there is no Hindu Joint Family between the plaintiffs and the defendants and that the plaint schedule properties are self acquired properties of the 1st defendant. It is submitted that only to take vengeance against the 1st defendant, the 1st plaintiff, after filing the present suit, also filed a suit vide O.S.No.631/2016 on the file of Principal Junior Civil Judge Court, Tenali, based on a promissory note and after trial the said suit was dismissed without costs in favour of 1st defendant on 26.06.2018. It is submitted that during the life time of 1st defendant and pendency of this suit, the 1st defendant executed an Unregistered-Will on 20.06.2018 in the presence of attestors and scribe in favour of 6th defendant herein, as the 6th defendant lived with her parents till their death and looked after their welfare. The 1st defendant died on 22.07.2018. Since then, the 6th defendant is in possession and enjoyment of the plaint schedule property. It is submitted that the 1st defendant borrowed

an amount of Rs.90,000/- when he was in dire necessity for his medical expenses of Cancer disease from one Popuri Koteswara Rao and the said Koteswara Rao taking advantage of innocence and illiteracy of 1st defendant got executed a sale deed bearing Doc.No.376/2011, SRO, Tadikonda, for an extent of Ac.0.30 cents in D.No.290/A of Kantheruvu village which is part and parcel of Item No.1 of the plaint schedule property. But, on the same day, the said Popuri Koteswara Rao executed a Oppudala Patram (unregistered) in favour of 1st defendant agreeing that he will re-register the sale deed in favour of 1st defendant after payment of the total amount to him. But, the total extent of plaint schedule properties are in peaceful possession and enjoyment of the 6th defendant. A criminal case is also pending before Tadikonda Police station. Hence, the suit is liable to be dismissed with costs.

12. The defendant Nos.3 to 5 have filed memo adopting the said additional written statement of defendant No.6.

13. No additional issues have been framed as a consequence of filing of neat copy of plaints as well as additional written statement by 6th defendant and adoption of the same by the defendant Nos.3 to 5 consequent upon the death of the 1st defendant and 3rd plaintiff.

14. In support of the case of the plaintiffs, the 1st plaintiff is examined as PW1 and 2nd plaintiff is examined as PW2 and they got marked Ex.A1 to Ex.A9. Per contra, in support of their case,

the 3rd defendant is examined as DW1 and 6th defendant is examined as DW2 and they got marked Ex.B1 and Ex.B2.

15. Heard the learned counsel for both sides at length. Perused the material on record.

ISSUE NOS.1 AND 2

16. In view of the facts and circumstances of the suit, these two issues need to be dealt with and disposed of together and hence they are taken up together.

17. The 1st plaintiff as PW1 in her chief-examination affidavit reiterated all the averments made in her neat copy of plaint. She got marked Ex.A1 to Ex.A9. Ex.A1 is Certified copy of sale deed in respect of Item No.1 of the plaint schedule. Ex.A2 is Office copy of legal notice dated 21.01.2015. Ex.A3 is Returned cover from defendant No.1 dated 29.01.2015. Ex.A4 is Returned cover from defendant No.2 dated 23.01.2015. Ex.A5 is Returned cover from defendant No.3 dated 27.01.2015. Ex.A6 is Returned cover from defendant No.4 dated 29.01.2015. Ex.A7 is Returned cover from defendant No.5 dated 29.01.2015. Ex.A8 is Returned cover from defendant No.6 dated 29.01.2015. Ex.A9 is Certified copy of Sale deed dated 23.02.2011 executed by defendant No.1 in favour of Pokuri Koteswara Rao.

18. In her cross-examination, PW1 denied the suggestion that the first defendant has purchased item No.1 of the suit schedule

property out of his own earnings on 05.04.1972 vide document No.138/1972 of SRO, Tadikonda. PW1 added to say that item No.1 was purchased by the mother of the 1st defendant by name Suvarthamma. PW1 denied the suggestion that item No.2 of the suit schedule property was acquired by the 1st defendant in the year 1977 when the Tahsildar of Mangalagiri issued patta to him after cyclone effect. PW1 added to say that the patta was issued in favour of the father of the 1st defendant. PW1 denied the suggestion that item No.3 of the suit schedule property was occupied by the 1st defendant and he constructed a house with his own earnings. PW1 added to say that the mother of the 1st defendant was given patta in respect of item No.3. PW1 admitted that she is not having any documentary proof to show that item Nos.1 to 3 are the properties of the parents of 1st defendant. PW1 stated that she got married about 25 years ago in a Church. PW1 stated that she does not know whether any marriage registration certificate was given to her in-laws. PW1 admitted that the cremation of her husband was also performed as per Christian rites. PW1 denied the suggestion that from the date of her marriage she has no amicable relationship with her in-laws. PW1 denied the suggestion that her husband demised due to her harassment. PW1 added to say that her husband used to work as a lorry driver and died due to HIV and the same was attacked to her and children. PW1 admitted that she had lodged a police

report against the 1st defendant in the year 2002. PW1 also admitted that on 03.02.2015 the 1st defendant had filed a report before the Superintendent of Police against her. PW1 denied the suggestion that though she is not entitled to the suit schedule property in any way she has filed the false suit with false allegations to gain wrongfully and to harass the defendants and that she is not entitled for any relief sought by her.

19. The second plaintiff, who is son of first plaintiff, was examined as PW2 and in his chief affidavit he submitted that himself and the 3rd plaintiff are the grandsons of 1st defendant and 1st plaintiff is his mother and defendant Nos.2 to 6 are daughters of 1st defendant. The 1st defendant got a son by name Rattayya who is his father. All of them constitute a Hindu undivided joint family. The plaint schedule properties are undivided Hindu joint properties. It is submitted that the mother of 1st defendant by name Suvarthamma purchased Item No.1 of plaint schedule property under valid registered sale deed in the year 1972. During the life time of Karre Moshe who is father of 1st defendant acquired item No.2 of plaint schedule property which is a poramboke land and he died intestate. By the date of death of said Moshe, the 1st defendant was in womb. During her life time, the Government of Andhra Pradesh assigned item No.3 which is a house site to the said Suvarathamma. The said Suvarathamma died intestate in or about 2004. The son of 1st defendant who is his father by name

Rattayya died on 29.02.2002 leaving behind them as his legal heirs. It is submitted that item Nos.1 to 3 of plaint schedule property are the joint family properties and not still partitioned. Themselves and the defendants are jointly enjoying the plaint schedule properties. The 1st defendant also got pattadar passbook in his name in respect of Item Nos.1 and 2 of the plaint schedule properties. His father died due to HIV. When the State bifurcation was done and the cost of lands was increased, all the defendants hatched up a plan and neglected and necked out them with a mala fide intention to avoid their shares in the plaint schedule property. As there is no other alternative, they came to Gundimeda village which is his grand parental house and residing there. Subsequently, they demanded the defendants to partition the plaint schedule properties in amicable ways. But the defendants paid deaf ear to them. They thought that it is not safe to keep up the plaint schedule properties joint and issued a legal notice through their advocate on 21.01.2015 to all the defendants demanding partition of plaint schedule properties. The defendants wantonly refused to receive the said notice. Hence, they constrained to file this suit for partition of the plaint schedule properties into 21 equal shares and for allotment of one such share each to them towards share of Rattayya and three shares each to the defendant Nos.1 to 6 and put them in possession of the same and for future profits and costs of the suit. It is

submitted that the 1st defendant filed the written statement with all false allegations. PW2 got marked Ex.A9. Ex.A9 is Certified copy of Sale Deed dated 23.02.2011 executed by the 1st defendant in favour of Pokuri Koteswara Rao.

20. In his cross-examination, PW2 stated that he is doing painting works and that he completed his X standard about three years ago and that he had filed the suit for partition of his share in the suit schedule property against his grand father and maternal aunts. PW2 stated that recently the 1st defendant suffered from cancer. He has been residing at Gundimeda village since 10 or 12 years i.e., after the death of his father. PW2 stated that after the 1st defendant sold away property under Ex.A9, the same was at present in possession of Popuri Koteswara Rao. PW2 added to say that the property under Ex.A9 is only 30 cents. PW2 stated that at present the defendant Nos.1 and 6 are residing in Item No.3 of property. PW2 denied the suggestion that though he does not have any documentary proof that he is entitled for a share in the suit schedule property, he had filed the suit with false allegations. PW2 denied the suggestion that he never looked after the welfare of the 1st defendant who is suffering from cancer.

21. In support of the case of the defendants, the 3rd defendant is examined as DW1. In her chief affidavit, DW1 reiterated all the averments and contentions taken in the written statements and additional written statements filed for and on behalf of the

defendant Nos.1 and 3 to 6. It is also stated that during pendency of the suit, her father executed an unregistered Will on 20.06.2018 in favour of 6th defendant at Guntur in the presence of attestors i.e., 1) Tirumalapalli Ramulu, 2) S.George Victor and scribe M.Srinivasa Rao and she was also present at the time of execution of the said Will. The plaint schedule properties all are self acquired properties of her father and so her father executed the Will in favour of 6th defendant and later the 1st defendant died on 22.07.2018. Since then the 6th defendant was in peaceful possession and enjoyment of the schedule property as an absolute owner as she got the same through the Will executed by the 1st defendant. Thus, there is no joint family property or ancestral property to her father i.e., 1st defendant and that all the properties are self acquired properties of 1st defendant.

22. In her cross-examination, DW1 stated that she is an illiterate but is a signatory. She is an agricultural coolie. Her husband was a lorry cleaner. Her husband was a native of Thulluru. More than 30 years ago, her husband migrated to Kantheru village. Her husband purchased house property at Kantheru village. 1st Defendant is her father. Moshe is father of 1st defendant. DW1 admitted that herself and other defendants are daughters of 1st defendant. One Rattaiah is son of 1st defendant. DW1 admitted that her father had one son and five daughters. DW1 admitted that the 1st plaintiff is wife and

plaintiffs 2 and 3 are sons of said Rattaiah. She is not having knowledge about the properties acquired by her paternal grand father Moshe. Her paternal grand father was a native of Kantheru village. She knows the plaint schedule items 1 to 3. DW1 admitted that Suvarthamma is wife of Moshe. DW1 denied the suggestion that there were house sites and some land property belonging to Moshe and the same was sold away by 1st defendant. Her father during his life time was an agricultural coolie and also used to attend as mason works in yard. She had not filed separate written statement on her behalf. She had adopted the written statement filed by her father. She knows the defence taken by her father. DW1 denied the suggestion that Item No.1 of plaint schedule property was purchased by her paternal grand mother Suvarthamma and her father has no capacity to purchase the said property and her grand mother got purchased the said property in the name of her father. DW1 denied the suggestion that the then MRO issued a patta in respect of Item No.2 of plaint schedule property in the name of her paternal grand father. DW1 denied the suggestion that during the life time of her paternal grand mother Suvarthamma, she occupied poramboke land i.e., item No.3 of plaint schedule property and got constructed a thatched hut therein. DW1 adds to say that the Government had issued patta in respect of item No.3 of plaint schedule property in the name of 1st defendant. DW1 denied the suggestion that Item

Nos.2 and 3 of plaint schedule property was given to her grand parents by the Government. DW1 stated that at present the 6th defendant was residing in item No.3 of the plaint schedule property. DW1 stated that Item No.1 of plaint schedule property till now stands in the name of 1st defendant. Item No.1 of plaint schedule property was in possession and enjoyment of 6th defendant and at present they have laid ground nut crop. DW1 denied the suggestion that item No.1 of plaint schedule property was never in possession and enjoyment of 6th defendant. DW1 admitted that herself and the 6th defendant have no talking terms with 1st plaintiff. The electricity bill pertaining to Item No.3 of plaint schedule property stands in the name of 1st defendant. Her father i.e., 1st defendant died due to old age and he was not hospitalized prior to his death. DW1 adds to say that her father was bedridden for three days prior to his death. There were civil cases pending between her father and 1st plaintiff at Tenali Court. DW1 admitted that the 1st plaintiff lodged a complaint against the 1st defendant and others at Tadikonda police station and vice versa. DW1 denied the suggestion that the pleadings in the written statement of 1st defendant and her chief affidavit are totally contradictory. Her father got executed the Will on 06.07.2018. The said Will was an unregistered Will. They had not brought to the notice of the Court about the said alleged Will. The said Will is in her possession and it was kept in her iron safe. The

said Will was prepared at SRO, Guntur. The said Will was typed at SRO, Guntur, to the narration of 1st defendant. DW1 denied the suggestion that the plaint schedule Items 1 to 3 are ancestral properties of her paternal grand father and they are not the properties of her father i.e., 1st defendant. DW1 denied the suggestion that herself and 6th defendant created the alleged Will.

23. The 6th defendant as DW2 filed chief affidavit reiterating all the averments and contentions taken in the written statements and additional written statements filed for and on behalf of the defendant Nos.1 and 3 to 6 and also supporting the chief affidavit of DW1. She got marked Ex.B1 and Ex.B2. Ex.B1 is Certified copy of registered sale deed dated 05.04.1972 executed by Karri Subba Rao and others in favour of 1st defendant on the file of SRO, Tadikonda. Ex.B2 is copy of complaint issued by Karri Lokanandam i.e., 1st defendant to the Superintendent of Police, Guntur, dated 03.02.2015.

24. In her cross-examination, DW2 stated that she is doing agricultural coolie work and she studied upto 2nd class. Her marriage was performed in the year 1999 with one Ravi. Her husband is alive and he is a painter. She filed one DVC case against her husband and his relatives. She also lodged one criminal case alleging arson against the 1st plaintiff and others and the said case is pending. She is having good cordial relationship with other family members. DW2 admitted that she is not having

talking terms with 1st plaintiff since her marriage. There no talking terms with 1st plaintiff for petty quarrels. Defendants 2 to 5 are her elder sisters. She is having cordial terms with defendants 2 to 5. She knows the properties shown in plaint schedule. She knows the contents of plaint. DW2 denied the suggestion that she had not filed written statement in the above suit. Her family owns items 1 to 3 of plaint schedule property. The 1st defendant is an agriculturist and he used to attend in Mirch yard. Her father died in the year 2018. At that time her father was aged about 60 years old. Her father died due to health problems. Her parents had not given any property at the time of her marriage. DW2 adds to say that she performed love marriage. Her parents had given dowry at the time of marriages of her sisters. Her father purchased item No.1 of plaint schedule property from Karri Subba Rao, Kurnelu and Prakasam. Suvarthamma is her paternal grand mother. Karri Moshe is her paternal grand father. DW2 denied the suggestion that her paternal grand mother Suvarthamma purchased item No.1 of the plaint schedule property and her father is not having source of income in the year 1972. DW2 admitted that the Government gave patta for item No.2 of plaint schedule property in the name of 1st defendant. DW2 denied the suggestion that during the life time of her paternal grand father Moshe, the government gave item No.2 of plaint schedule property in his name. DW2 denied the suggestion that item No.3 of plaint

schedule property was given to Suvarthamma by the Government during her life time. DW2 denied the suggestion that the 1st defendant is not having any right and share in item Nos.2 and 3 of plaint schedule property. DW2 denied the suggestion that due to family disputes she got lodged a false complaint against the 1st plaintiff and others under Ex.B2. DW2 denied the suggestion that her father died intestate without writing any document in respect of item No.1 to 3 of plaint schedule property. DW2 adds to say that her father during his life time had executed a Will. DW2 denied the suggestion that she had not averred about execution of Will by her father during his life time in her written statement. DW2 stated that, in the month of June 2018, her father executed Will. DW2 admitted that the 3rd defendant deposed in her evidence as DW1 that their father executed a Will on 06.07.2018. DW2 stated that at present the said Will is in the custody of the Court. Their family members are known about the execution of Will by her father. In the year 2016 or so she filed her written statement. DW2 admitted that her father demised on 22.07.2018. DW2 stated that she had submitted the pattadar passbook and other relevant documents in respect of item nos.1 to 3 of plaint schedule property before the Court. The item Nos.1 and 2 of plaint schedule property are in her possession and enjoyment. DW2 denied the suggestion that she had not filed any pattadar passbook before the Court. DW2 denied the suggestion that her

father executed sale deed dt.23.11.2011 for an extent of 30 cents in item No.1 in favour of one Popuri Koteswara Rao at SRO, Tadikonda. DW2 adds to say that her father mortgaged the property of an extent of 30 cents in favour of said Koteswara Rao. DW2 denied the suggestion that in the said sale deed it was also recited that he acquired the said property from his ancestors. DW2 adds to say that the said Koteswara Rao had misrepresented her father and obtained sale deed instead of mortgage deed. DW2 denied the suggestion that the alleged Will dt.06.07.2018 is created and fabricated one. DW2 denied the suggestion that the plaint schedule property is liable for partition and the plaintiffs are entitled for their share.

25. Though, the defendants took a contention that during his life time, the 1st defendant had executed an unregistered Will Deed dated 20.06.2018 in the presence of attestors and scribe for the reasons best known to them, they did not produce the said unregistered Will Deed dated 20.06.2018 before the Court. It is to be stated that through DW2, the defendants wanted to mark as many as eight documents including the original of the Will Deed dated 20.06.2018 but they got marked only two documents as noted above on their behalf. Further, the defendants also failed to examine the attestors and scribe of the alleged Will Deed dated 20.06.2018.

26. Though, the plaintiffs in all cause titles in the plaint and amended plaints and also in her chief affidavit claimed that herself as Hindu, her cross-examination clearly shows that her marriage was performed in a Church as per Christian Religious rites and customs. Further, PW1 also categorically admitted that the cremation of her husband was also performed as per Christian religious rites. If that is so, it is very much clear that the plaintiffs are only Christians but not Hindus and as such they cannot claim that themselves and the defendants as Hindus and as such they cannot constitute Hindu joint family and as such the plaint schedule properties are Hindu joint family properties. So, it is very much clear that the plaintiffs approached the Court with unclean hands. Further, no document whatsoever has been filed by the plaintiffs to show that they belong to Hindu religion and that themselves and the defendants put together constitute a Hindu undivided family and that the plaint schedule properties are Hindu undivided joint family properties and that all of them have been in possession and enjoying the said properties as Hindu undivided joint family property.

27. Further, it is the categorical admission of PW1 in her cross examination that she is not having any documentary proof to show that Item Nos.1 to 3 are properties of the parents of 1st defendant. Of-course, though PW1 claimed that all such documents are with the 1st defendant, the plaintiffs never took any

steps to issue notice to the defendants more particularly to the 1st defendant for production of all such documents. Further, no secondary evidence of such documents is also filed in proof of their claim that Item Nos.1 to 3 of plaint schedule properties are acquired by the 1st defendant as ancestral property.

28. Further, from Ex.B1 which is produced by DW1, which is a Certified copy of unregistered sale deed dated 05.04.1972, it is clear that vide Document No.138/1972 one Karri Subba Rao sold Item No.1 of the plaint schedule property to the 1st defendant. Though, PW1 denied the execution of Ex.A1 by one Karri Subba Rao in favour of defendant No.1, her mere denial cannot be accepted as gospel truth in the presence of Ex.B1 particularly. So, it is clear that Item No.1 of the plaint schedule property is not available for partition. Further, it is to be noted that the plaintiff No.1 as herself produced a photocopy of said sale deed styling it as a certified copy. When PW1 herself is having a photocopy of the said document she cannot claim that all the said documents are only with the 1st defendant or say the defendants. When PW1 is having copy of Ex.B1 which is a photocopy of sale deed which is marked as Ex.A1, she cannot claim that all the plaint schedule Item Nos.1 to 3 are ancestral properties of 1st defendant for the plaintiffs to claim partition of plaint schedule properties.

29. Further, in the amended plaints there is no clarity from the plaintiffs as to how the plaint schedule properties subsequently

became 63 shares for the plaintiffs 1 and 2 to claim allotment of 5/63 share to 1st plaintiff and 4/63 share to the 2nd plaintiff as a consequence of death of 3rd plaintiff and 1st defendant. At first instance, it was shown as 21 shares for all the parties on both sides and, however, after the death of 1st defendant, the shares were shown 18 equal shares and later the shares were shown as 63. Further, no document whatsoever has been filed by the plaintiffs to show that they are in joint possession and enjoyment of the plaint schedule properties. Of-course, it is true if the plaintiffs are entitled for partition, the Court is at liberty to direct the plaintiffs to pay the remaining Court fee or say to pay the deficit Court fee for the decree or the preliminary to be enforced. However, it is to be noted that the plaintiffs have come to the Court with unclean hands by making an averment that there are in joint possession and enjoyment of the plaint schedule properties and that they constitute Hindu joint family, though in fact it is false.

30. Hence, in such circumstances, I hold that plaintiffs are not entitled to the partition as prayed for and as such the plaintiffs are not entitled for mesne profits. Hence, these two issues are answered against the plaintiffs.

31. In view of the answers given to the issue Nos.1 and 2, the suit is liable to be dismissed.

ISSUE NO.3:

32. In the result, suit is dismissed with costs.

Dictated to the Stenographer, transcribed and typed by him, corrected, signed and pronounced by me, in open court, on this the 10th day of August, 2023.

Sd/-Ch.V.Ramakrishna

**Principal Junior Civil Judge
Mangalagiri**

APPENDIX OF EVIDENCE**WITNESSES EXAMINED****For Plaintiffs:**

PW1: Karri Susela.

PW2: Karri Prakash.

For Defendants:

DW1: Tirumalapalli Annapoorna.

DW2: Karlapudi Venkayamma.

DOCUMENTS MARKED**For Plaintiffs:**

Ex.A1 : Certified copy of sale deed in respect of Item No.1 of the plaint schedule.

Ex.A2 : Office copy of legal notice, dated 21.01.2015.

Ex.A3 : Returned cover from defendant No.1 dated 29.01.2015.

Ex.A4 : Returned cover from defendant No.2 dated 23.01.2015.

Ex.A5 : Returned cover from defendant No.3 dated 27.01.2015.

Ex.A6 : Returned cover from defendant No.4 dated 29.01.2015.

Ex.A7 : Returned cover from defendant No.5 dated 29.01.2015.

Ex.A8 : Returned cover from defendant No.6 dated 29.01.2015.

Ex.A9 : Registration Extract of Sale deed, dated 23.02.2011 executed by defendant No.1 in favour of Pokuri Koteswara Rao.

For Defendants:

Ex.B1 : Certified copy of registered sale deed dated 05.04.1972 executed by Karri Subba Rao and others in favour of 1st defendant of SRO, Tadikonda.

Ex.B2 : Copy of complaint dated 03.02.2015 given by 1st defendant to the Superintendent of Police, Guntur.

Sd/-Ch.V.Ramakrishna

**Principal Junior Civil Judge
Mangalagiri**