



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**WEDNESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE**

PRESENT

HONOURABLE JUSTICE DR V R K KRUPA SAGAR

SECOND APPEAL NOS: 182 and 302 OF 2013

SECOND APPEAL NO: 182 OF 2013

Appeal under section 100 of CPC against the Judgment and Decree dated 26.12.2012 in A.S.No.50 of 2011 passed by the Hon'ble II Addl. District Judge, Kurnool at Adoni, dismissing the appeal except in respect of Sl.No.1 of Item No. 2 and confirming the Judgment and decree dated 06.09.2011 in O.S.NO.85 of 2006 passed by Senior Civil Judge, Adoni.

Between:

1. H. Venkataramappa, S/o. H. Anjinaiah, Agriculturist, Johrapuram Village, Aspari Mandal, Kurnool District
2. H. Guruprabhanjanaiah, S/o. H. Venkataramappa, Agriculturist, Johrapuram Village, Aspari Mandal, Kurnool District
3. Smt. Baby Rani, W/o. Prasad, C/o. Jarugula Ramachandrappa, House wife, R/o. D.No. 20/139 Maddikera Village, Pathikonda Taluk, Kurnool District

...Appellants/Defendants No. 1,2 & 4

AND

1. Smt. H. Neelavathi @ Lalitha, W/o. Late H. Mohan Kumar, Johrapuram Village, Aspari Mandal, Kurnool District

...Respondent/Plaintiff

2. Chakali Ranganna, S/o. Chakali Yellappa, Agriculturist D.No. 235-2-2, Johrapuram Village, Aspari Mandal, Kurnool District

(Appeal Against R2 is dismissed Vide C.O.dt. 10-09-2017, since the appellant has given up the Claim against him).

...Respondents/Defendant No.3

I.A. NO: 1 OF 2013(SAMP. NO: 446 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in pursuance of the Judgment and decree dated 06.09.2011 in OS No. 85 of 2006 passed by Senior Civil Judge, Adoni, Kurnool District, pending disposal of above Appeal

Counsel for the Appellant: SRI. BUTTA VIJAYA BHASKER

Counsel for the Respondent No 1: Sri. G V S MEHAR KUMAR

SECOND APPEAL NO: 302 OF 2013

Appeal under section 100 of CPC against the judgment and decree dated 26.12.2012 passed in A.S.No.50 of 2011 on the file the II Additional District Judge Kurnool at Adoni, reversing the Judgment and Decree dated 06.09.2011 passed in O.S.No.85 of 2006, on the file of Senior Civil Judge, Adoni.

Between:

Smt.H.Neelavathi @ Lalitha, W/o late H.Mohan kumar, Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool Dist

...Appellant / 1ST Respondent / Plaintiff

AND

1. H.Venkataramappa (Died) , S/o H.Anjinaiah, Aged 50 Years Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool Dist.
2. H.Guruprabhanjanaiah, S/o H.Venkataramappa, Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool Dist.
3. Smt.Baby Rani, C/o Jarugula Ramachandrappa, Occ: House wife, R/o D.No.20/139, Maddikera Village, Pathikonda Taluka, Kurnool District.

...Respondents / Appellants / Defendant Nos,1,2 &4

4. Chakali Ranganna, S/o Chakali Yellappa, Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool District.

(Appeal against 4th Respondent is dismissed Vide C.O.dt 10-04-2017, since the appellant has given up the Claim against 4th respondent)

5. Smt. H. Jayamma, W/o late Venkata Ramappa, Occ: Household Duties, R/o Joharapuram Village, Aspari Mandal, Kurnool District.

(As per the Court order dated 13-09-2022, Respondent No: 5 brought on record as LR of deceased Respondent No:1 vide I.A.No:3 of 2022 in S.A No: 302 of 2013)

...Respondents / Respondents / 3rd Defendant

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to order attachment of the land of about an extent of Ac.4.23 cents covered under Survey No.667/2 which was shown in the Schedule of Properties in the suit O.S.No.85/2006 on the file of the Court of the Senior Civil Judge, Adoni, Kurnool

District for the acts of disobedience of the Respondents, as they are guilty in violating the Prohibitory Order or may order to detain the 5th Respondent in Civil Prison for a term not exceeding three months as she executed the Sale Deed dated 26.6.2019 at the instance of the Respondents 9 to 3 herein in the interest of justice pending disposal

I.A. NO: 1 OF 2013(SAMP. NO: 800 OF 2013)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of judgment and decree dated 26/12/2012 of the II Addl Dist Judge, Adoni passed in As.no.50 of 2011, pending disposal of the Second Appeal.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondents to deposit the amount equivalent to 1/4th share out of the sale proceeds which was completed by executing a Sale Deed dated 26.6.2019 by the Proposed 5th Respondent Smt. H. Jayamma, w/o Late Venkata Ramappa, R/o Joharapuram Village, Aspari Mandal, Kurnool District pertaining to a land of about an extent of 4 acres covered under Survey No.75 pending disposal of the above Second Appeal in the interest of justice

Counsel for the Appellant: SRI G V S MEHAR KUMAR

Counsel for the Respondents: SRI BUTTA VIJAYA BHASKER

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

SECOND APPEAL No.182 and 302 of 2013

COMMON JUDGMENT:

These two Second Appeals arose out of the same judgment and they are argued together and they are to be disposed of by this common judgment.

2. O.S.No.85 of 2006 is a suit filed for partition and separate possession of various items of the plaint schedule property. Suit was contested. After due trial learned Senior Civil Judge, Adoni by a judgment dated 06.09.2011 decreed the suit with costs and granted 1/4th share to the plaintiff directing the parties to move a separate application for determination of mesne profits.

3. Aggrieved by the said judgment of the trial Court, defendant No.1,2 and 4 preferred A.S.No.50 of 2011. In that appeal, the plaintiff was arrayed as respondent No.1. Defendant No.3 in the suit was arrayed as respondent No.2. After due hearing, learned II Additional District Judge, Kurnool at Adoni by a judgment dated 26.12.2012 allowed the appeal in part in the following terms:

It held that plaintiff in the suit is entitled for 1/4th share in all the items of plaint schedule properties except Sl.No.1 of item No.2 of the plaint schedule. That particular item of property which was excluded from partition was held to be the self-acquired

property of one Mr.Ramanna and that was not available for partition. In those terms, it modified the judgment and decree of the learned trial Court.

4. The above referred judgment of the first appellate Court gave rise to the presentation of S.A.No.182 of 2013 by defendant Nos.1,2 and 4 contending that both the Courts below erred in granting partition and the suit should have been dismissed and the first appellate Court wrongly confirmed part of the trial Court judgment and decree. Whereas the plaintiff in the suit assailing the first appellate Court's exclusion of one of the items of properties preferred S.A.No.302 of 2013 contending that a well reasoned judgment of the learned trial Court was erroneously modified by the learned first appellate Court.

5. Smt. Chakali Ranganna was defendant No.3 in the suit. In both the appeals, he is shown as one of the respondents and thereafter in both the appeals, the appellants gave up their claims against him and at their request, the appeals as against Sri. Chakali Ranganna were recorded as dismissed on 10.04.2017.

6. Sri H.Venkataramappa was defendant No.1 in O.S.No.85 of 2006. During the pendency of these appeals, he died. In S.A.No.302 of 2013, the wife of the deceased was impleaded as respondent No.5 by an Order dated 13.09.2022 in I.A.No.3 of 2022

but in S.A.No.182 of 2013 no legal representatives are added in the place of defendant No.1 as he died.

7. The facts leading to the present proceedings are required to be noticed.

In O.S.No.85 of 2006 partition was claimed over various items of agricultural lands and house. Lands in Survey Nos.75 and 85 situate in Pedda Hulthi Village of Kurnool District are shown as item No.1. Lands in Joharapuram Village of Kurnool District spread in Survey Nos.667/A2 and 222/A and 223 are shown as item No.2 in the plaint schedule. A house bearing Door No.1/31 and 1/30 in Joharapuram Village of Kurnool District is shown as item No.3 in the plaint schedule.

8. Sri H.Venkata Ramappa has two sons and a daughter. The sons are Sri H.Guruprabanjanaiah and Sri H.Mohan Kumar and daughter is Smt.Baby Rani. Sri H.Mohan Kumar died, his wife is Smt.H.Neelavathi alias Lalitha. Those two spouses did not have children. Claiming share of the deceased Sri Mohan Kumar, his widow Smt.H.Neelavathi filed O.S.No.85 of 2006 as against father, brother and sister of late H.Mohan Kumar stating that together they hold rights over the plaint schedule immovable property and each of them is entitled for 1/4th share and therefore the suit was laid claiming 1/4th share of Sri H.Mohan Kumar.

9. In the plaint, it is mentioned that marriage of Smt.H.Neelavathi was performed with Sri H.Mohan Kumar during February 2004 according to Hindu Rites and Customs and on 25.06.2005 Sri H.Mohan Kumar died. Plaint further narrates the troubles suffered by this widow and it made allegations about concealment of disease of her husband earlier to settlement of marriage and even after his death how she was necked out and how she was neglected by her father-in-law/defendant No.1 and other family members. Counter allegations from defendants would indicate that they admit the death of Sri Mohan Kumar and alleged that plaintiff was suffering from serious diseases and concealing that her marriage was solemnized. They further alleged that despite love and affection on their part, she harassed them and left them. In the present appeals, no findings are required on these aspects as the findings recorded by both the Courts below indicated the death of Sri Mohan Kumar was undisputed and the legal consequences entitled plaintiff to sue on his behalf for his share. The cause of death and the cause of erosion of love between the parties has not fallen for consideration before this Court.

10. In the plaint, it is averred that there is one Hanumanthamma and she owned the properties and she had only one child called Tirupatamma. The marriage of Tirupatamma was

performed with very brother of Hanumanthamma by name Sri H. Pedda Anjinaiah. As there were no other children for Hanumanthamma, she brought her son-in-law to her house and thus he was Illitam Son-in-law. These facts were admitted to be true by defendant No.1/DW.1 in his cross-examination. Nothing contrary has been ever agitated before this Court or the Courts below. For Smt.Tirupatamma and H.Pedda Anjinaiah two sons were born. One son is Sri H.Venkataramappa who is defendant No.1 in the suit. Another son is Sri H.Ramanna who is not a party to the suit but he testified before the Court as DW.2.

11. At para No.4 of the plaint, various averments are made. One must say that they are not precise and lack clarity and the assertions contradict each other in certain respects. It is pleaded that the plaint schedule lands belonged to Smt.Hanumanthamma and on her death, they came to Smt.Tirupatamma and she died intestate. Thus, the plaint schedule lands belonged to a Hindu woman who died intestate and survived by her two sons H.Venkataramappa/defendant No.1 and H.Ramanna. However, para No.4 of the plaint makes another assertion. It states that all the plaint schedule lands and other properties are ancestral and joint family properties between both parties to the suit as they fell upon them by way of succession. That Sri H.Pedda Anjinaiah and

his two sons cultivated the plaint schedule lands and other lands and acquired several landed properties out of the income derived from the plaint schedule lands. By the time of death of Smt.Tirupatamma and her husband Sri Pedda Anjinaiah, this joint family owned about more than AC.80.00 Cents of land. After their death, their two sons H.Venkataramappa/defendant No.1 and H.ramanna divided these joint family properties between them. In that partition, the plaint schedule lands and the plaint schedule houses fell to the share of defendant No.1. It is on these facts claim is made in the plaint that these are all joint family properties and they are all ancestral properties in the hands of defendant No.1. They shall be partitioned equally among defendant No.1 and his living son and deceased son as well as the living daughter. That is how the suit is laid for partition. However, smudging this there is another assertion made in para No.4 of the plaint that Smt.Tirupatamma and her husband H.Pedda Anjinaiah acquired the plaint schedule lands.

12. Thus, plaint indicated three things as below:

1. It states that entire plaint schedule property belonged to Smt.Tirupatamma (a Hindu woman).
2. Entire plaint schedule properties were acquired by Smt.Tirupatamma and her husband Sri H.Pedda Anjinaiah.

3. Sri H.Pedda Anjinaiah and his two sons worked on the plaint schedule properties and with that income earned several properties and among the two sons of Sri H.Pedda Anjinaiah there was partition in which plaint schedule properties fell to the share of defendant No.1.

With such averments, the plaintiff sought for partition of plaint schedule properties.

13. Resisting the suit, defendant No.1 Sri H.Venkataramappa filed a written statement and defendant Nos.2 and 4 who are his children filed a memo adopting the same. The relationships among parties were not disputed in the written statement. The allegation in the plaint that the plaint schedule properties are joint family properties is denied as incorrect. The allegation in the plaint that there was division of properties between defendant No.1/Sri Venakataramappa and his brother Sri Ramanna is admitted and it is mentioned that this was an oral partition that took place in the year 1989. It is further mentioned that subsequent to that division, entries in the Revenue records were mutated and necessary pass books were given.

14. In the written statement concerning item No.1 of the plaint schedule which consists of lands in Survey Nos.75 and 85 in Pedda Hulthi Village, it is stated that these lands originally belonged to

Sri Pedda Anjinaiah and his brother Sri Chinna Anjinaiah and they are their ancestral properties and they died without dividing them. Sri Pedda Anjinaiah was survived by his two sons namely defendant No.1 Venkataramappa and Sri Ramanna. Between these two brothers, division of properties took place and in that division all the items of properties mentioned in item No.1 of plaint schedule fell to the share of defendant No.1.

15. In the written statement concerning item No.2 of the plaint schedule, it is stated that land in Survey No.667/A2 is originally AC.8.32 Cents and under a registered sale deed dated 27.09.1976 that was purchased by Sri Ramanna and therefore it is his self-acquired property and that is not available for partition.

16. With reference to the lands in Survey No.222 and 223 which are mentioned in item No.2 of the plaint schedule, it is stated that under a registered sale deed dated 21.09.1960, the mother of the defendant No.1 Smt.Tirupatamma purchased them and therefore they are her self-acquired properties and she was in possession and enjoyment till her death and on her death they were inherited by defendant No.1 and in the hands of defendant No.1 they acquired the character of self-acquired properties and therefore partition of them could not be sought for by the plaintiff.

17. In the written statement, it is pleaded with reference to item No.3 house property stating that they are self-acquired properties of defendant No.1. It is in these circumstances, defendants sought for dismissal of the suit. The suit went for trial.

The following were the issues settled for trial by the learned trial Court:

1. Whether the plaintiff is entitled for partition and separate possession of 1/3rd share in suit properties?
2. To what relief?

At the trial, plaintiff testified as PW.1 and got marked Exs.A1 to A18. Defendant No.1 Sri H.Venkataramappa testified as DW.1 and his brother Sri H.Ramanna testified as DW.2. DWs.3 to 5 are witnesses to speak about possession and enjoyment of properties. Exs.B1 and B2 and Ex.X1 were marked.

18. On considering the entire oral and documentary evidence and on considering the arguments of learned counsel on both sides, the learned trial Court considered Section 18, Section 14 and Section 24 of Hindu Succession Act, 1956 and held that pleas raised by defendant No.1 are false and incorrect and claim made by plaintiff is correct and decreed the suit holding that plaintiff is entitled for 1/4th share. Defendant Nos.1,2 and 4 are entitled for 1/4th share each in all the properties in the plaint schedule.

19. Aggrieved by that defendant Nos.1,2 and 4 preferred AS.No.50 of 2011. No cross-objections were filed before that appellate Court. On considering the entire material on record and on considering the contentions raised on both sides and on considering the findings of the learned trial Court, the II Additional District Judge fixed the following points for his consideration.

1. Whether the plaintiff is entitled for 1/4th share in the suit schedule property?
2. Whether the judgment given by the learned trial Court suffered from any legal infirmities calling interference by the appellate Court?

The learned first appellate Court considered the pleadings and evidence in detail and on considering the evidence of Sri Ramanna/DW:2 and the registered sale deed standing in his favour, the learned first appellate Court observed that in Sl.No.1 of Item No.2 immovable property exclusively belonged to Sri Ramanna and it is his self-acquired property and it was not available for partition. To that extent, it found defect in the judgment of the learned trial Court and set aside that part of the judgment. Coming to rest of the properties, it observed that even from the evidence of DW.1, it could find that the properties were acquired from the joint family fund. Therefore, they were all available for partition and the

decree of the trial Court granting partition of remaining items of suit schedule is valid and it upheld it.

20. It is against that judgment, these two appeals have come up.

In S.A.No.182 of 2013, the following substantial questions of law were formulated:

1. Whether the suit schedule properties acquired character of self-acquired property in the hands of defendant No.1 as he succeeded this from his mother Tirupatamma in view of Section 15 of Hindu Succession Act, 1956?
2. Whether the Courts below are right in applying Section 8 of Hindu Succession Act and whether the impugned judgment is based on legal evidence and whether it suffers from incorrect appreciation of evidence on record?

In S.A.No.302 of 2013, the following substantial question of law was formulated:

1. Whether reversing judgment of learned first appellate Court is incorrect as it failed to consider the true purport of Exs.A17 and A18 and that property in Survey No.667/A2 is not self-acquired property of Mr.Ramanna as he purchased the said property from out of the fund he got by selling the ancestral properties at Alluru Village?

21. The joint family of Hindu Law is an institution of *Sue-generis*. It consists of a male, his wife and unmarried daughters and his male descendants, their wives and unmarried daughters. It is thus patriarchal in character. Inside this joint family there is what is called the Coparcenary. The Coparceners are the owners of the joint family properties. Coparcenary consists of common ancestor and three degrees of male lineal descendants. Since the advent of an amendment to the Hindu Succession Act in the year 2005 a daughter is also made a coparcener. The members of coparcenary have interest by birth in the joint family property. i.e., property inherited by a person from his father or father's father or father's father's father. In this property this son or son's son or son's son's son can acquire an interest by birth.

Coparcener's property include:

- a. Ancestral property
- b. Acquisitions made by coparceners with the help of ancestral property
- c. Joint acquisition of the coparceners when there is no intention on the part of the coparceners not to treat it as a joint family property.
- d. Separate property of the coparceners thrown into a common stock.

22. When it comes to the property of a female Hindu, Section 15 of Hindu Succession Act, 1956 provides general rights of succession. Sub-Rule 1 provides that the property of a female Hindu dying intestate shall devolve firstly upon the sons and the daughters and also the husband. In **Muhammad Hussain Khan V. Kishva Nandan Sahai**¹ by the Hon'ble Privy Council and in **Lakshminarasamma V. Rama Brahman**² the Hon'ble Madras High Court held that property inherited from maternal ancestor is not coparcener property and it is only self-acquired property in the hands of the one who inherited it.

23. The above principles of law are argued on both sides and or not disputed by both sides. The pleadings and evidence on both sides have not disclosed the date of death of Sri H.Pedda Anjinaiah as well as his wife Tirupatamma and they have also not disclosed who died first and who died later. It is undisputed on both sides that both of them died intestate. The averments in the plaint and the evidence of PW.1 is that by the time of death of Sri Pedda Anjinaiah and his wife Tirupatamma, the family got about AC.80.00 Cents of land. Defendants had not disputed that aspect of the matter.

¹ 1937 PC 233

² ILR 1950 Madras 1084

24. The assertion of plaintiff as PW.1 even during her cross-examination is that the plaint schedule properties belonged to Sri Pedda Anjinaiah and Tirupatamma. In the plaint schedule properties, the first set of properties are shown as three parcels of land as mentioned below.

Item No.1:

Sl.No.	Survey No.	Extent Acres – Cents
1.	75	9.32
2.	75	3.00
3.	85	2.88

They situate in Pedda Hulthi Village of Kurnool District. At page No.5 and 6 in the written statement of defendant No.1, it is mentioned that the above referred properties originally belonged to Sri Pedda Anjinaiah and his brother chinna Anjinaiah and they were their ancestral properties. There was no division of properties between them. Both of them died 30 years ago. It is then stated that defendant No.1/Sri Venkataramappa and Sri Ramanna are the children of Pedda Anjinaiah. They are the only legal heirs. Together they got these properties. Thereafter, there was partition between defendant No.1/Venkataramappa and his brother Ramanna. In that partition the above referred properties fell to the

share of defendant No.1/Venkataramappa. It is further mentioned that the division of properties between defendant No.1 and his brother was out of an oral partition. Defendant No.1 as DW.1 in his evidence-in-chief deposed that the division between him and his brother occurred in the year 1989. In his examination-in-chief at page No.4, defendant No.1 reiterated the above mentioned facts that were pleaded in his written statement.

25. Thus, the pleadings and evidence on both sides do indicate that the properties originally belonged to ancestors and from there they came to Pedda Anjinaiah and from there to defendant No.1. By the time of division between defendant No.1 and his brother, this defendant No.1 had his children including his late son Mohan Kumar whose wife is the plaintiff. Thus it is ancestral property and it belonged to the joint family and Late Mohan Kumar is a lineal male descendant and his right by birth over these properties cannot be disputed. On death of Mohan Kumar his wife was entitled to sue for his share. Therefore, to that extent judgments of both the Courts below are correct in granting that share to her. Hence no interference is needed.

Item No.3 of the plaint schedule:

House bearing No.1/31 and 1/30 situated in the Registration District of Kurnool, Sub Registration District of Asparti and within the Village limits of Joharapuram village.

In the plaint schedule, it is stated that these house properties are ancestral joint family properties. At page No.6 and 7 of the written statement, defendant No.1 pleaded that they are not ancestral joint family properties but they are his own self-acquired properties. In his evidence as DW.1, he asserted the same fact. However, during his cross-examination, DW.1 admitted that these two houses situate in Joharapuram Village and they were acquired by his father Pedda Anjinaiah. It is undisputed that defendant No.1 has not filed any documents indicating that they were acquired by defendant No.1 himself. Both sides did not produce any documents whatsoever about these house properties. Since DW.1 admitted that they are not his self-acquisitions but he got them from his father, they are joint family properties and therefore they are liable for partition. In that view of the matter both the judgments of both the Courts below are right in granting partition of these house properties which are described as item No.3 in the plaint schedule. Therefore, no interference is required in this regard.

Item No.2:

Lands in Joharapuram Village of Kurnool District.

Sl.No.	Survey No.	Extent Acres-Cents
1.	667/A2	4.23
2.	222/A	7.85
3.	223	8.31

Serious dispute among the parties revolve around these properties.

Sl.No.1 Survey No.667/A2:

Ex.X1 is a registered sale deed dated 27.09.1976. It stands in favour of Sri Ramanna. Sri Ramanna deposed as DW.2. In his evidence, he stated that he purchased AC.8.32 Cents of land under the above said registered sale deed. He further said that it is his self-acquired property and he has been in possession and enjoyment of it. He also said that entries in the Revenue records were mutated in his name and he was given pattadar and title deed pass books. It may be noted that according to DW.1, the partition between him and his brother Ramanna/DW.2 took place in the year 1989. Thus, earlier to the said division, this property was purchased by DW.2. In the written statement defendant No.1 contended that this property is the self-acquired exclusive property of his brother Ramanna/DW.2. Thus, the consistent stand of

defendants and the documentary evidence in the form of Ex.X1 and the evidence of DW.2 clearly disclosed that this particular item of property is the self-acquired property of Sri Ramanna/DW.2. It is true by the time DW.2 acquired this property, he was a member of joint family. It is based on that the contention led by plaintiff is that this item of property is also a joint family property. To substantiate this contention plaintiff relied on Ex.A17 which is a copy of adangal. In this the name of Sri H.Guruprabhanjanaiah is mentioned as pattadar and his name is also mentioned in column for possessor showing that he is in possession of it. The extent of property recorded is Ac.4.23 Cents. The said H.Guruprabhanjanaiah is defendant No.2 in the suit and he is the son of defendant No.1/Sri Venkataramappa. Based on this entry, plaintiff contend that it is joint family property as otherwise such an entry could not have been there in the name of defendant No.2. Without any discussion, learned trial Court agreed with the contentions of the plaintiff. However learned first appellate Court in great detail analysed the evidence and held that this item of property belonged to DW.2 and is not available for partition. The specific question raised by the plaintiff in her second appeal is that learned first appellate Court failed to consider Ex.A17 and therefore it committed a legal error. Having bestowed my attention

on these submissions and having scrutinized the entire evidence, I find that there is no merit in the contention raised by plaintiff. When a sale deed is produced and the said sale deed indicates that the property stands in the name of a particular individual, Court shall presume that it is self-acquired property. Since plaintiff contends contrary, she got the duty to plead and prove the same. The plaint in the suit is absolutely silent about this particular property standing in the name of DW.2 and that it was acquired by DW.2 from out of the joint family funds. The evidence of PW.1 is also silent on that. However, during the course of trial, plaintiff propounded the theory that certain properties at Alur which belonged to the joint family were sold out and with that money this particular property was purchased. Witnesses denied it as incorrect. What were those properties at Alur, when were they sold, how much was the money received and the proximity of time between that sale and the purchase of property under Ex.X1? These are some of the basic facts that are required to be stated and proved and all of them are totally absent. Thus, there is absolutely no legal evidence available on record to see that acquisition under Ex.X1 was out of joint family funds. The entry in Ex.A17-Adangal by itself does not convert the nature of the property. Therefore, this Court finds that the conclusions reached by learned first appellate

Court in holding that this particular item of property belonged to DW.2 who is not a party to the suit and such property is not available for partition is right on facts and law. No interference is required in that regard.

Survey No.222/A:

This Ac.7.85 Cents of land is in Joharapuram Village. One of the averments in the plaint is that the properties belonged to Smt.Tirupatamma. Defendants admitted that this particular property was the self-acquisition of Smt.Tirupatamma. It is in that regard, defendants filed Ex.B1. It is a registered sale deed dated 21.09.1960 where under from one Mr.Bala Rangaiah, this property was purchased by Smt.Tirupatamma. This document does not indicate the source of income or it was purchased by her utilising the funds of joint family headed by her husband Pedda Anjinaiah. Plaintiff produced Ex.A17-Adangal where under this property is shown in the name of defendant No.1 as pattadar as well as possessor. Learned trial Court granted partition of it. First appellate Court approved it. In the second appeal, the defendants contend that this property which belonged to Tirupatamma was succeeded by defendant No.1 on her death and in his hands, it acquires the character of self-acquired property and since it is self-

acquired property, the other members of the family have no right by birth and therefore none could seek for division of it. Plaintiff could not repel these arguments since even according to them this property belonged to Smt.Tirupatamma. The principle of law stated earlier in Section 15 of Hindu Succession Act and the rulings referred there show that property received from maternal ancestor is self-acquired property. Late Mohan kumar being grandson of late Tirupatamma had no right to seek division of the property which devolved on defendant No.1. Therefore, both the Courts below committed legal error in granting partition of this property. To that extent judgments of both the Courts below are to be set aside as they are against the evidence and against the law.

Survey No.223:

This is an extent of Ac.8.31 Cents of land. DW.1 produced Ex.B2 -Pattadar pass book. This particular property is recorded in his name. Plaintiff produced Ex.A17-Adangal. In this also the name of defendant No.1 is shown as Pattadar as well as possessor. In the written statement, defendants stated that this item of property is also a self-acquired property of Smt.Tirupatamma and it is stated that this was also purchased under the registered sale deed dated 21.09.1960. On verification of Ex.B1-AC.7.85 Cents of land in Survey No.222-A which was discussed already alone was

purchased by Tirupatamma. Thus, defendants failed to show that this property was the Self-acquired property of Tirupatamma and it stood in her name. It is not the case of defendants that defendant No.1 acquired this property by his own exertion. Thus, it is clear that this property is a joint family property. The evidence of PW.1 is that this item of property is joint family property and in the division between DWs.1 and 2, it fell to the share of DW.1. The contention of the learned counsel is that as it fell to the share of defendant No.1, the pattadar pass book and Adangal do indicate his name. Repelling this there is no contest on facts in the evidence. Therefore, Courts below are right in granting partition of this item of property.

26. One of the contentions raised on behalf of the appellants in S.A.No.182 of 2013(defendants in the suit) is that suit was filed by the plaintiff and therefore burden was on the plaintiff to prove the facts alleged and the plaintiff could not rely on the weakness on part of the defendants in their case and both the Courts below ignored this principle and reached to incorrect conclusions. In the opinion of this Court, this submission has no place in a suit for partition where all the family members are parties to the suit and it is the duty of every party to the suit to put forth the facts that are known to them to be true. A suit for partition has a different

complexion and rules that are applicable for pleadings in other suits may not be strictly applied. It has to be seen that defendant No.1 has been the member of joint family. Plaintiff is his daughter-in-law. She had her matrimonial life for a year and thereafter her husband died and she was away from this family. Thus, plaintiff is a woman who belonged to a different family came to this joint family lived there for a while and left the joint family. Her knowledge of facts would certainly be limited and whatever that she knew must be from the other family members. Defendant No.1 being the head of the family is expected to bring forth all the necessary facts. Facts that he pleaded assist the Courts in arriving at the truth. The trial is to find the truth. The question is not as to from whom the truth should be picked up. As long as the Court finds that a particular fact is true, there is no further need to see whether it is from the plaintiff or from the defendant. Therefore, the argument based on burden of proof etc., advanced on behalf of the appellants in S.A.No.182 of 2013 have no legal force.

In the result, the points are answered accordingly.

In the result, S.A.No.302 of 2013 is dismissed.

S.A.No.182 of 2013 is allowed in part holding that land in Survey No.222/A shown in Serial No.2 in Item No.2 of the plaint schedule property is the self-acquired property of Sri

Dr. VRKS, J
S.A.No.182&302 of 2013

H.Venkataramappa and is not available for partition. To that extent the judgments and decrees of Courts below shall be modified.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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SD/- S V S R MURTHY
JOINT REGISTRAR
chsn
for SECTION OFFICER

To,

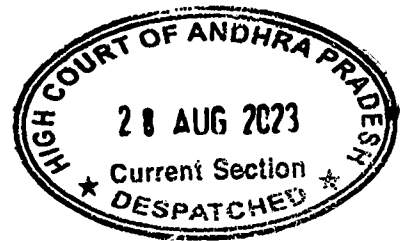
1. The II Addl. District Judge, Kurnool at Adoni (with records)
2. The Senior Civil Judge, Adoni
3. One CC to SRI. G V S MEHAR KUMAR, Advocate [OPUC]
4. One CC to SRI. BUTTA VIJAYA BHASKER, Advocate [OPUC]
5. The Section Officer, V.R. Section, High Court of A.P. at Amaravathi
6. Two CD Copies

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sree

M.M. Bar

HIGH COURT

DATED:19/07/2023



COMMON JUDGMENT + DECREES

SA.No.182 & 302 OF 2013

(7)
M.M.Ban
28/8/23

**DISMISSING THE SA.No.302 OF 2013
AND
ALLOWING THE SA.NO.182 OF 2013**



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**WEDNESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE**

PRESENT

HONOURABLE JUSTICE DR V R K KRUPA SAGAR

SECOND APPEAL NO: 182 OF 2013

Between:

1. H. Venkataramappa, S/o. H. Anjinaiah Agriculturist Johrapuram Vilage Aspari Mandal, Kurnool District
2. H. Guruprabhanjanaiah, S/o. H. Venkataramappa Agriculturist Johrapuram Vilage Aspari Mandal, Kurnool District
3. Smt. Baby Rani, W/o. Prasad C/o. Jarugula Ramachandrappa House wife R/o. D.No. 20/139 Maddikera Village Pathikonda Taluk Kurnool District

...Appellant / Defendants no. 1,2 & 4

AND

1. Smt. H. Neelavathi @ Lalitha, W/o. Late H. Mohan Kumar Johrapuram Village Aspari Mandal, Kurnool District
2. Chakali Ranganna, S/o. Chakali Yellappa Agriculturist D.No. 235-2-2 Johrapuram Village Aspari Mandal, Kurnool District

(Appeal Against R2 is dismissed Vide C.O.dt. 10-09-2017 Since the Appellant has given up the Claim against Petitioner)

...RESPONDENTS

Appeal under section 100 of CPC against by the Judgment and Decree dated 26.12.2012 passed in A.S.No.50 of 2011 passed by the II Addl. District Judge, Kurnool at Adoni, dismissing the appeal except in respect of Sl.No. 1 of Item No. 2 and confirming the Judgment and decree dated 06.09.2011 in O.S.NO. 85 of 2006 passed by the Senior Civil Judge, Adoni,

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment of the Lower Court and the material papers in the suit and upon hearing the arguments of Sri Butta Vijaya Bhasker, Advocate for the appellants and of Sri. G.V.S Mehar Kumar, Advocate for Respondent No.1.

This Court doth order and decree as follows:

1. That the Appeal be and is hereby allowed in part
2. That the land in Survey No.222/A show in serial No.2 in Item No.2 of the
Plaint Schedule Property is held to be the self-acquired property of Sri H
Venkataramappa and is not available for partition.
3. That the judgment and decrees of the courts below be and are hereby
modified to that extent
4. That there shall be no order as to costs in this appeal

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**SD/- S V S R MURTHY
JOINT REGISTRAR**

CSN
fw SECTION OFFICER

To,

1. The II Addl. District Judge, Kurnool at Adoni,
2. The Senior Civil Judge, Adoni
3. Two CD Copies

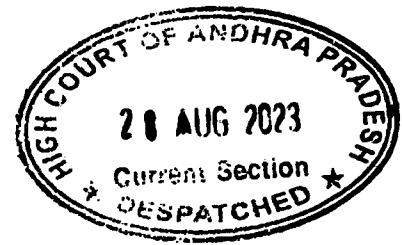
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HIGH COURT

DATED:19/07/2023



DECREE

SA.No.182 OF 2013

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Nm.Bon.
28/8/23

PARTLY ALLOWING THE SA.No.182 of 2013

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**WEDNESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE**

PRESENT

HONOURABLE JUSTICE DR V R K KRUPA SAGAR

SECOND APPEAL NO: 302 OF 2013



Between:

Smt.H.Neelavathi @ Lalitha, W/o late H.Mohan kumar, Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool Dist

...Appellant / 1ST Respondent / Plaintiff

AND

- 1. H.Venkataramappa (Died) , S/o H.Anjinaiah, Aged 50 Years Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool Dist.**
- 2. H.Guruprabhanjanaiah, S/o H.Venkataramappa, Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool Dist.**
- 3. Smt.Baby Rani, C/o Jarugula Ramachandrappa, Occ: House wife, R/o D.no.20/139, Maddikera Village, Pathikonda Taluka, Kurnool Dist.**

...Respondents / Appellants / Defendant Nos,1,2 &4

- 4. Chakali Ranganna, S/o Chakali Yellappa, Occ: Agriculturist, R/o Joharapuram Village, Aspari Mandal, Kurnool Dist.**

(Appeal against 4th Respondent of dismissed Vide C.O.dt 10-04-2017, Since the appellant has given up the Claim against 4th respondent)

- 5. Smt. H. Jayamma, W/o late Venkata Ramappa, Occ: Household Duties, R/o Joharapuram Village, Aspari Mandal, Kurnool District.**

(As per the Court order dated 13-09-2022, Respondent No: 5 brought on record as LR of deceased Respondent No:1 vide I.A.No:3 of 2022 in S.A No: 302 of 2013)

...Respondents / Respondents / 3rd Defendant

Appeal under section 100 of CPC against the judgment and decree dated 26.12.2012 passed in A.S.No.50 of 2011 on the file the II Additional District Judge Kurnool at Adoni, reversing the Judgment and Decree dated 06.09.2011 passed in O.S.No.85 of 2006, on the file of Senior Civil Judge, Adoni.

This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment of both the Courts below and the material papers in the suit and appeal, and upon hearing the arguments of Sri G.V.S MEHAR KUMAR advocate for the appellants and Sri. Butta Vijaya Bhasker advocate for Respondent No.1, And None Appeared for the Respondent No.2

This Court doth order and decree as follows:

1. That the SA be and hereby is dismissed
2. That there shall be no order as to costs in this appeal.

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**SD/- S V S R MURTHY
JOINT REGISTRAR**

fw **SECTION OFFICER**

To,

1. The II Additional District Judge, Kurnool at Adoni,
2. The Senior Civil Judge, Adoni
3. Two CD Copies

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HIGH COURT

DATED:19/07/2023

DECREE

SA.No.302 OF 2013



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DISMISSING THE SA.No.302 of 2013