



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3209]

THURSDAY, THE SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

SECOND APPEAL No: 800 of 2025

Between:

1.C. GOPAL REDDY, S/o.LATE VENKATASUBBA REDDY, AGED ABOUT 45 YEARS, CULTIVATION, R/o BOOCHIPALLE VILLAGE, H/o. KATNAGALLU, P.T.M. REVENUE MANDAL, CHITTOOR DISTRICT.

...APPELLANT/APPELLANT /DEFENDANT

AND

1.V LAKSHMIDEVAMMA, W/o.RAJA REDDY, AGED ABOUT 51 YEARS, CULTIVATION, R/o.VANKAPALLE VILLAGE, THANAKALLU REVENUE MANDAL, ANANTHAPUR DISTRICT.

...RESPONDENT/ RESPONDENT / PLAINTIFF

Counsel for the Appellant:

1.Mr.A.SYAM SUNDAR REDDY

Counsel for the Respondent:

-None-

The Court made the following Judgment:

Unsuccessful defendant in O.S.No.238 of 2011 on the file of Court of Principal Senior Civil Judge, Madanapalle, filed A.S.No.71 of 2019 on the file of the Court of VII Additional District & Sessions Judge, Madanapalle.

2. The said appeal was dismissed by Judgment dated 25.07.2025. Aggrieved by the Judgment of Appellate Court confirming the decree and judgment of Trial Court, present Second Appeal has been preferred.

3. For the sake of convenience, hereinafter, parties are referred to as they were arrayed in the suit.

4. The plaintiff / respondent, sister of defendant / appellant herein filed O.S.No.238 of 2011 on the file of the Court of Principal Senior Civil Judge, Madanapalle, seeking partition of plaint schedule properties into two equal shares by metes and bounds and to allot one such share to her and one such share to defendant by way of a preliminary decree and for costs.

5. In the suit, she *inter alia* pleaded that plaint schedule property was originally ancestral property of her father one Mr.C.Venkata Subbareddy, that he performed her marriage in the year 1987 and that her father and her brother / defendant used to cultivate plaint schedule property. It is also pleaded that her father died in the year 1996 leaving behind him, herself

and defendant as his legal heirs. Further, that her mother pre-deceased Mr.C.Venkata Subbareddy and she and her brother succeeded to the properties. It is also pleaded that after death of her father, defendant used to cultivate the land with her permission and give usufruct towards her share. In view of hostile attitude of her brother and denial of share of produce, she filed the suit for partition.

6. Defendant filed written statement denying the claim of plaintiff. It was specifically pleaded that marriage of the plaintiff was performed on 06.05.1985. While categorically stating that plaint schedule properties belong to Venkata Subbareddy and his two brothers Ramchandra Reddy and Venkata Narayana Reddy and that they got divided the properties more than 40 years back and since then they have been enjoying their respective properties separately, the defendant pleaded that his father Mr.Venkata Subbareddy, out of love and affection towards him voluntarily, in a sound and disposing state of mind, executed a Will dated 10.05.1987 (Ex.B2) in favour of defendant in respect of all his properties both movable and immovable and after his death, by virtue of Will dated 10.05.1987, defendant became entitled to all the properties of his father Venkata Subbareddy.

7. On the basis of aforesaid pleadings, learned Trial Court framed the following issues:

1. Whether the plaint schedule properties are liable for partition?
2. If so, whether the plaintiff is entitled for partition of two (2) equal shares and allotment of one such share to the plaintiff in the plaint schedule properties?
3. Whether the frame of the suit is not maintainable and Court fee paid U/Sec.34 (2) of A.P.C.F.Act is incorrect and whether she has to pay Court fee U/Sec.34 (1) of A.P.C.F.Act?
4. Whether the suit is bad for non-joinder of co-owners and co-sharers?
5. To what relief?

On 19.01.2018, Court framed the following Additional issue:

1. Whether the unregistered Will dated 10-05-1987 is true, valid and binding on the plaintiff?

8. In support of her case, the plaintiff examined P.Ws.1 to 3 and got marked Exs.A1 and A2. On behalf of defendant, Dws.1 and 2 were examined and Exs. B1 to B6 were marked.

9. Basing on the evidence on record, learned Trial Court, recorded it's conclusions *inter alia*, that plaint averments are not sufficient to believe that plaintiff's marriage was performed in the year 1987, but not in the year 1985 and that the plaintiff is not entitled to the benefit of Section 29 (A) of Hindu Succession (A.P.Amendment) Act i.e., Act 13 of 1986.

Learned Trial Court further examined the matter with reference to plea that plaintiff is entitled for share in the property under Section 8 of the Hindu Succession Act, irrespective of date of marriage of plaintiff and stand taken by defendant that by virtue of Will dated 10.05.1987 (Ex.B2) rights over all the properties of Mr.Venkata Subbareddy including suit schedule property devolved on defendant.

10. Learned Trial Court, after appreciation of oral and documentary evidence, recorded its opinion that since Mr.Venkata Subbareddy, father of plaintiff admittedly died intestate, plaintiff and defendant being Class-I heirs are equally entitled for half share in the suit schedule properties under Section 8 of Hindu Succession Act. It also held that defendant failed to prove that he is in exclusive possession and enjoyment of entire suit schedule property and that plaintiff is in constructive possession of joint family property along with defendant. Ultimately, it answered Issue Nos.1 to 4 and Additional Issue No.1 by recording following findings:

“49. On careful scrutiny of P.Ws.1 to 3 oral evidence and Exs.A1 and A2 documentary evidence and D.Ws.1 and 2 oral evidence and Exs.B1 to B6 documentary evidence, clearly shows that the plaintiff has satisfactorily discharged her legal burden to prove that she is entitled to half share in the suit properties being Class-I heir of Venkata Subba Reddy. The defendant has failed to prove the execution of Ex.B-2 Will in favour of defendant and same was acted upon. Due to enmity between Venkatasuba Reddy and DW-2, there is no possibility to obtain the signature of DW-2 as one of the attestors on Ex.B-2. If really, the defendant is in exclusively possession and enjoyment of the suit property and there is no

necessity to execute Ex.B-2 Will in favour of defendant. The defendant has failed to prove that the plaintiff is not in joint possession of suit property along with the defendant. The defendant has failed to prove that the suit is bad for non-joinder of necessary parties. Admittedly, there is no dispute in between the plaintiff's family and other co-sharers. Accordingly Issue No.1 to 4 and Addl.Issue No.1 dated 19-01-2018 are answered."

11. Aggrieved by the Judgment and Decree of Trial Court, defendant filed A.S.No.71 of 2019 on the file of Court of VII Additional District and Sessions Judge, Madanapalle. From a reading of the Judgment, it appears as though arguments with reference to Ex.B2-Will dated 10.05.1987 alone were addressed.

12. Before Appellate Court, it was contended that as the properties belong to late Sri Venkata Subbareddy, appeal may be allowed by believing Ex.B2-Will. On the other hand, counsel for plaintiff / respondent pleaded that defendant / appellant failed to prove execution of Will and the learned Trial Court rightly held that under Section 8 of the Hindu Succession Act, plaintiff is entitled for share, as suit properties are the absolute properties of late Sri Venkata Subbareddy.

13. Learned Appellate Court formulated the following points for consideration in the appeal:

1. Whether the plaintiff is entitled for half share in the plaint schedule properties as claimed for?
2. Whether the Ex.B2-Will dated 10.05.1987 of C.Venkata Subba Reddy is true, valid and binding on the plaintiff?

3. Whether the Judgment of the trial Court is factually and legally correct?

4. To what relief?

14. The learned Appellate Court, in the light of the material on record, opined that though originally properties were ancestral, after partition and allotment of share to C.Venkata Subbareddy, they became his exclusive properties liable for partition under Section 8 of Hindu Succession Act, as he died intestate. It relied on the decision of Hon'ble Supreme Court in **Commissioner Wealth Tax, Kanpur V. Chand Chandersen**¹ and the decisions in **Padala Prasad & Ors., v. Padala Ananda Rao**² and **Sadhineni Rajani and Anr., v. Sadhineni Hymavathi and Ors.**³ While holding that properties fall under Section 8 of Hindu Succession Act for division among the Class-I heirs of late Venkata Subbareddy by treating suit schedule properties as absolute properties of male Hindu, the learned appellate Court also examined the matter with reference to contentions advanced that by virtue of Ex.B2-Will, property in question devolved on the defendant.

15. The learned appellate Court disbelieved the execution of Ex.B2-Will after a detailed discussion. The relevant para reads as follows:

¹ Air 1986 SC 1753

² 2011 (5) ALT 448

³ 2012 (3) ALT 628

“13 (c) The defendant who is the propounder of the Will must prove that the Will was signed by his father in a sound and disposing state of mind duly understanding the nature and effect of disposition and that he has put his signature in the document out of own free will. But here, the evidence of DW-2 goes to show that at the time of execution of Ex.B2, the testator came from C.M.C., Vellore, that too, to the registrar office. As pointed out, the written statement also discloses that the testator was sick for a prolonged period. If the testator has executed this Will at the registrar office, why the Will was not registered is not understandable, though the registration of the Will is not compulsory.”

16. Challenging the concurrent findings recorded against the defendant, present Second Appeal came to be filed. Learned counsel for defendant / appellant sought to impress upon the Court that in view of substantial questions of law, matter deserves admission. He also seeks interim stay of operation of judgment and decree of learned Trial Court, which was confirmed in appeal.

17. This Court has considered made and perused the material on record.

18. At the outset, it may be appropriate to mention that the purported substantial questions of law raised in the Second Appeal, in the opinion of this Court, calls for no detailed examination. Suffice to state that as noted earlier, on behalf of defendant / appellant only contention with regard to Ex.B2 Will was raised. The arguments based on said Will dated 10.05.1987 and the evidence adduced with reference to the same was appreciated both by learned Trial Court and Appellate Court and

concurrently held that defendant failed to prove execution of the same by Mr.Venkata Subbareddy. In view of the above stated position, this Court cannot record any finding contrary to the same, by re-appreciating the evidence. On a reading of the judgment under appeal, this Court see no legal flaw and the conclusions / findings recorded against defendant are valid, cogent.

19. Insofar as findings / conclusions arrived at by learned Trial Court as confirmed by appellate Court with regard to entitlement of plaintiff to half share in the plaint schedule property, the same are based on well settled position in law and as such, warrants no interference by this Court.

20. For the foregoing reasons, the Second Appeal is dismissed at the admission stage, as it is devoid of merits, much less substantive questions of Law. No costs.

Consequently, Miscellaneous Applications pending, if any, shall also stand dismissed.

NINALA JAYASURYA, J

Date:07.05.2026.
BLV

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

Second Appeal No: 800 OF 2025

Date:07.05.2026

BLV