

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.C.C.A.No: 71 of 2020

AND

CROSS OBJECTIONS NO.3 of 2022

Appeal Under and Memorandum of Cross Objections Under Order 41 Rule 22 of CPC against the Judgment and decree dated 14-07-2020 in O.S.No.319 of 2006 on the file of the Court of the XXVI Additional Chief Judge, City Civil Court, Hyderabad.

C.C.C.A.No.71 of 2020

Between:

1. Basani Radhamma (died as per LRs)
2. Basani Seetharam, S/o.Late Kanakaram, Aged about 86 years, Occ. Retired Employee,
3. Basani Prolaram, S/o.Late Kanakaram, Aged about 66 years, Occ. Retired Employee,

(Both 2 and 3 are resident of H.No.7-3-32, Brahmanawada, Hanamkonda, Warangal.)

Amended as per the orders in IA.No.413 of 2013 dated 29-8-2015.

...Appellants/Plaintiffs

AND

Smt. Basani Nirmala, W/o.Late Sri B.Athmaram, Aged about 83 years, Occ: Housewife, R/o. Plot NO.122, HMT Shatavahana Nagar, Opp: KPHB Colony, Kukatpally, Hyderabad.

...Respondent/Defendant

Cross Objection No.3 of 2022

Between:

Smt. Basani Nirmala, W/o.Late Sri B.Athmaram, Aged about 83 years, Occ: Housewife, R/o. Plot NO.122, HMT Shatavahana Nagar, Opp: KPHB Colony, Kukatpally, Hyderabad.

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Amended as per the orders in IA.No.413 of 2013 dated 29-8-2015.

...Respondent/Defendant

IA No: 2 of 2020 in CCCA No.71 of 2020

Petition under Order 39 Rule 1 & 2 R/w 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 ad-interim injunction restraining the respondent, his agents, GPA etc., or anybody claiming through her or under her from alienating or creating third party interest or deal with the property in any way or encumber B schedule property.

IA NO: 1 OF 2023 in Cross Objections 3 of 2022 in CCCA No.71 of 2020

Petition under Section 195 R/w Section 340 of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to lodge Complaint to the concerned Magistrate under section 195 Cr.P.C against the Respondent Nos.2 & 3/Appellants 2 & 3 herein for the offences punishable under sections 193, 196, 199, 405, 468 & 471 etc of IPC.

**Counsel for the Appellants in CCCA
And Respondents in Cross Objections : SRI V. HARI HARAN**

**Counsel for the Respondent in CCCA
And Cross Appellant in Cross Objection : SRI P. DAMODAR REDDY**

The Court delivered the following: COMMON JUDGMENT

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.C.C.A.NO.71 of 2020

AND

CROSS OBJECTIONS NO.3 OF 2022

COMMON JUDGMENT :

Being aggrieved by the judgment and decree dated 14-07-2020 in OS.No.319 of 2006 on the file of XXVI Addl. Chief Judge, City Civil Court, Hyderabad, where under their suit for partition was dismissed, the plaintiffs in the said suit filed the first Civil Appeal vide CCCA.No.71 of 2020 under Section 96 of Civil Procedure Code (for short 'C.P.C.') and being not happy with the findings of the Court in Issue No.2 and Additional Issue No.2, where under the trial Court gave a finding against her contest, the defendant in the suit has filed Cross Objection No.3 of 2022 under Order 41 Rule 22 C.P.C. Since the appeal and cross objections are filed against the same judgment and decree and as both of them are interconnected it is proposed to dispose the appeal and cross objections under this common judgment.

2. Before advertent to the contentions in the appeal and cross objections, it is just and necessary to give a brief note of the pleadings of the parties, evidence adduced by them and as how the same was dealt with by the trial Court.

3. OS.No.319 of 2006 has been filed by one B.Radhamma for partition of plaint 'A' and 'B' schedule properties against the defendant who is no other than her daughter-in-law being wife of her second son. However, in view of the death of said Radhamma, during the trial, the other plaintiffs i.e., plaintiff Nos.2 and 3 were brought on record.

4. According to the averments made in the plaint, it was the case of plaintiffs that said Radhamma has got three sons namely Seetharam, Athmaram, Prolaram. The defendant is wife of said Athmaram. Athma Ram was working as Superintending Engineer, Panchayatraj Department in Zilla Parishad, Karimnagar. He retired from service on 31-03-2005, but continued to work under the World Bank Organization at Karimnagar and continued to reside in ZP Quarter i.e., Quarter No.A-3. Athmaram and defendant have no issues. He used to keep all the valuables like property documents, Bank pass-book, locker keys, share certificates, gold, silver ornaments etc., in the above said Quarter.

5. The said Athmaram died on 14-06-2005 in a road accident during mid-night at Kuknoorpally Village. The last rituals of Athmaram were done by the brothers at their native place Warangal and after the said last rites, the defendant had been to the house of her parents at Hyderabad.

6. The plaintiffs have further averred that the defendant after she went to her parents house, tried to remove all the valuables of Athmaram from Quarter No.3, ZP Quarters, Karimnagar and in order to protect her interest, the first plaintiff Radhamma being Class-I heir of Athmaram, filed a suit in OS.No.426 of 2005 before Principle Junior Civil Judge, Karimnagar and sought for a perpetual injunction and got appointment of a Commission to prepare inventory of the valuables, non-valuables, articles available in the Quarter. After preparing of such inventory by the Commission, the first plaintiff filed OS.No.319 of 2006 seeking partition of plaint 'A' and 'B' schedule properties into two shares and for allotment of one such share in her favour and other share in favour of defendant.

7. The defendant resisted the suit claim on the ground that all the plaint 'A' and 'B' schedule properties are her exclusive properties being presented by her parents. The defendant has claimed that all the gold and silver ornaments presented by her parents at the time of her marriage, as such, the plaintiff No.1 has no right over the properties. She has also claimed that since she was shown as nominee as per the choice of her husband, she is entitled to receive all the retirement amounts of her husband and the first plaintiff has no right to claim any share in the send

amounts. It is also her case that the properties in the lockers are her exclusive property. As the lockers were in her name, she denied the claim of plaintiff No.1 in FDRs, Bank deposits and sought for dismissal of the suit on the ground that her husband bequeathed the properties in her favour by way of will.

8. After the death of first plaintiff, plaintiff Nos.2 and 3 are brought on record, however, they have categorically claimed that first plaintiff executed a will and bequeathed her share in the plaint schedule properties in favour of her second son, thereby, second son claimed share of his mother by virtue of the will deed.

9. Based on the rival contentions referred above, the trial Court framed the following issues on 27-04-2007.

1. Whether the movable property invented by Advocate Commissioner and also found in the locker at Vysya Bank, Mankamma Tota, Karimnagar is the exclusive property of defendant?
2. Whether Atmaram executed will deed on 01-07-2004?
3. Whether the defendant is having share in plaint schedule property, if so, what is her share?
4. Whether the plaintiff is entitled to partition?
5. To what relief?

10. In view of the subsequent changes and filing of additional pleadings, the following Additional Issues were framed on 18-12-2012.

1. Whether all the legal heirs of deceased 1st plaintiff are brought on record?
2. Whether the 1st plaintiff executed will deed in favour of 3rd plaintiff as averred in the IA.No.413/2013?

11. During the trial, the first plaintiff has been examined as PW.1. 3rd plaintiff has been examined as PW.2 and one more witness was examined as PW.3. The plaintiffs have marked Exs.A1 to A22. The defendant herself was examined as DW.1. She did not examine any other witness but marked Exs.B1 to B8.

12. After completion of trial and on hearing both parties, the trial Court though disbelieved the contention of defendant about the will deed said to have been executed by Athmaram in her favour, and having accepted the contest of plaintiffs that first plaintiff executed will in favour of her second son, dismissed the suit on the ground that the plaintiffs failed to add the necessary parties i.e., other children of first plaintiff to the suit.

13. The plaintiffs have filed the appeal on the following grounds:

The Court below failed to appreciate that the respondent has not adduced any cogent evidence to show that the amounts mentioned in the schedule 'A' property including gold and silver articles exclusively belong to her. The Court below having observed that the specific plea of the respondent in written statement that most of the movables are in joint names of the respondent and the deceased, ought to have allowed the partition as the appellant No.2 is also in law entitled to respective share, being legatee under the will deed dated 25-09-2006 marked under Ex.A21, executed by his mother. The Court below failed to take into consideration of admission on the part of the respondent at Para No.3 of written statement that the 'A' schedule property belongs to the deceased and items 4, 5, 11, 12, 13, 14 and 15 which were fixed deposits made by the deceased, forming part of A-schedule property, as such, the appellant No.2 is entitled to respective share, by virtue of will under Ex.A21.

14. The Court below misdirected itself that the mother of the deceased is not entitled in the terminal benefits of her deceased son, as the nomination is in favour of the respondent, as such, cannot claim ownership exclusively over the same to the exclusion of other legal heirs.

15. The Court below ought to have drawn adverse inference under Section 114 of Indian Evidence Act with regard to the specific plea of the respondent that locker item 27 of schedule 'A' property consists of articles belongs to her, but she has not produced any proof showing ownership of articles.

16. The Court below while deciding issue No.2, having held and observed at Para No.26, the will deed under Ex.B8 dated 01-07-2004 produced by the respondent is not proved, and having held and decided additional issued No.2 in favour of the appellant No.2 at Para No.29 that the will deed dated 25-09-2006 marked under Ex.A21 stood proved, ought to have allowed the suit for partition. The Court below could have allowed the suit having accepting the Will under Ex.A21, thereby, the appellant No.2 is beneficiary under the Will, as such, the other legal heirs are not necessary to be brought on record. The Court below observed that at Para No.35 with regard to Items No.4 and 5 and account books No.599931 to 599934 are contradictory, and that it exclusively belongs to the deceased, on the other hand observed that it belongs to the respondent, thus, misunderstood the whole case and rejected the claim erroneously.

17. The Court below failed to appreciate that merely because the FDRs Ex.B7 standing in the name of respondent, does

not mean that they belong to her, particularly she being a housewife and no source of income. The Court below ought to have rejected the plea of the respondent as she has not even examined one person to substantiate her contentions, except to rely upon her sole testimony. The Court below ought to have considered the age of the plaintiff No.1 as 87 years as on the date of deposing as PW.1, as such, there is every possibility of memory loss or inconsistency in the deposition which in fact is not fatal. The Court below rejected the claim without any basis though the details are evident from property No.28 of Schedule-A. The Court below having held at Para No.39 that pension and retirement benefits are self acquired property of Athmaram, ought to have divided the same amongst the plaintiff No.1 and defendant. The Court below erroneously decided the issue and rejected the claim that the judgment quoted against the appellants at Para No.40 does not cover terminal benefits, but confines to pension.

18. The Court below erred in holding that the payment of Court fee is not proper, though both 'A' and 'B' schedule properties are in joint possession of both plaintiff No.1 and the defendant. The Court below failed to take into consideration the evidence of PW.1, more particularly her cross-examination.

19. Whereas, the defendant has filed Cross Objections on the ground that the Court below did not properly appreciate the oral evidence and could not come to a correct conclusion about the will deed executed by Atmaram, thereby, there is a necessity to allow the Cross Objection. It is the further contention of the learned counsel for respondents that in the light of the admission of PW.1 (first plaintiff) that she did not sign the plaint and vakalath filed along with the plaint, it amounts to forgery and plaintiffs are liable for Penal action and sought for a suitable direction for registration of case against the plaintiffs No.2 and 3.

20. Heard both parties.

21. the learned counsel for the appellant has submitted that even though the Court below properly appreciated the evidence and came to the conclusion that the first plaintiff executed a will deed and bequeathed her share in favour of the second son and in spite of the finding that the contention of defendant that her husband executed a will in her favour was not accepted due to her failure to examine at least one of the attesting witnesses of the will and having found that there are valuable properties left by Athmaram, dismissed the suit only on the ground that the daughters of the first plaintiff were not added as parties to

the suit. The counsel has further argued that the Court below failed to consider that in view of the will deed which is proved through the evidence, the second son of plaintiff No.1 alone is entitled to succeed the share of first plaintiff. Therefore, there is no necessity to add the daughters of the first plaintiff as parties to the suit but the Court below committed an error and wrongly dismissed the suit, thereby, sought for setting aside the judgment and prayed for a preliminary decree for partition of plaintiff schedule properties.

22. The learned counsel for the respondent/defendant has submitted that there is a clear admission of first plaintiff that she did not sign the plaint and vakalath, that itself shows that the suit was not filed by the plaintiff. The evidence of DW.1 clearly shows that all the properties shown in the plaintiff schedule are self-acquired properties of defendant and on the basis of the nomination given by the deceased Atmaram, she alone entitled to the schedule mentioned properties. Therefore, the Court below rightly came to a conclusion with regard to plea taken by the plaintiffs and rightly dismissed the suit. Therefore, according to the counsel for the respondent, there is a necessity to allow the cross objection to the extent of findings recorded by the trial Court with regard to will deed of Atmaram.

23. In view of the above contentions, the following points arose for consideration:

1. Whether the suit filed by the plaintiff is liable to be dismissed on the ground that the plaint was not signed by the first plaintiff?
2. Whether the trial Court is wrong in dismissing the suit on the ground that the plaintiffs failed to add all the children of Radhamma i.e., non-joinder of necessary parties?
3. Whether the defendant is able to prove that all gold and silver ornaments, Bank deposits are her exclusive property?
4. Whether the defendant can claim exclusive right on the retirement benefits of Athmaram on the ground nomination was in her favour? In spite of her failure to prove the exclusive will by Athmaram?
5. Whether the first plaintiff is entitled to half share in 'A' and 'B' schedule properties and whether in view of her death, her second son is entitled for the same in view of the will executed by plaintiff No.1?

24. The above referred original suit was filed in the year 2006. As on the date of filing the suit itself, the deceased Athmaram retired from service and continued to reside in the Government Quarter as he worked under World Bank Organization. The age of the first plaintiff was shown as 83 in the plaint. Therefore, by the date of death of Athmaram, he must have been more than 58 years. The defendant was not an employee but only

home-maker. There is no dispute about the employment of the deceased Atmaram as Superintending Engineer in Panchayatraj Department. There is no dispute about the relationship between the parties. It is an admitted fact that Atmaram died issue less. The defendant cannot deny the claim of first plaintiff that she is a Class I heir of the deceased Atmaram. Therefore, the first plaintiff and defendant being mother and wife of the deceased are his Class I legal heirs.

25. Before deciding the claim of plaintiff, about the share etc., it is important to examine whether the claim of defendant that the plaint was not signed by the first plaintiff and it was forgery. The basis for the said contest is the cross-examination of PW.1. As already stated, the plaint was filed in the year 2006 and in fact before filing this suit, she had filed another suit vide OS.No.426 of 2005 for a perpetual injunction. The first plaintiff was examined as PW.1 in the year 2009. Till the date on which PW.1 filed her chief affidavit before the trial, there was no dispute about her filing the suit. The basis for the defendant to take this plea is the cross-examination of PW.1. It is true, when PW.1 was cross-examined, PW.1 deposed as if, the signature on vakalath dated 13-09-2005 was not by her and she never used to sign as appearing in the plaint. It is also her evidence before the Court

that the signature appearing in the affidavit under Section 26 (2) of C.P.C. filed along with the plaint was not that of her. From further cross-examination, it is elicited that she cannot say whether the signature appearing in the chief affidavit (chief of PW.1) is by her or not by her. However, PW.1 categorically stated that she filed a suit against the defendant immediately after the death of her son and when a specific suggestion was given to PW.1 that she did not file the main suit and somebody filed a suit by forging her signature, she denied the said suggestion. Therefore, a cumulative reading of the entire cross-examination of PW.1 goes to show that she was conscious of suit filed by her against the defendant and she know the purpose for which those suits were filed. The entire cross-examination of PW.1 clearly shows the way in which she want to claim right over the plaint 'A' and 'B' scheduled properties. Therefore, simply because if the witness denied the signature on the plaint, it cannot be said that somebody filed a suit. In fact as already stated in the previous paragraphs by the time the suit was filed, PW.1 was 83 years and six years later her evidence was recorded by the trial Court. Perhaps she might have denied the signature due to old age or because such a question was posed in the cross-examination. There is a clear denial by PW.1 to the question that she did not file the suit and

somebody filed the plaint by forging her signature. Therefore, the trial Court by giving unnecessary importance to a particular sentence in the cross-examination, came to a conclusion as if, the plaint was not signed by the plaintiff.

26. The trial Court missed another important aspect that her sons i.e., plaintiff Nos.2 and 3. If really, they committed a forgery and filed a suit, they could have tutored the witness before entering into the plaint, so that she cannot disclose the alleged forgery. Therefore, the conclusion arrived at by the trial Court that the first plaintiff did not sign the plaint is nothing but incorrect conclusion. The cross-examination of PW.1 clearly shows that she was conscious of the relief sought for in the plaint. When a suggestion was given by the learned counsel for the defendant stating that during the lifetime, Atmaram settled all the movables in favour of the defendant, executed a will deed and she is not entitled to any share in paint 'A' and 'B' schedule properties and that the defendant alone is entitled to the properties, PW.1 categorically denied the suggestion and claimed her share over the plaint 'A' and 'B' schedule properties. This itself shows that the first plaintiff filed the suit at the initial stage and later her sons were brought on record as her legal representatives.

27. In order to deny the share of first plaintiff in 'A' and 'B' schedule properties, the defendant apart from claiming exclusive right of gold and silver ornaments on the ground that those ornaments were presented by her parents, further contented that her husband nominated her to receive the retirement benefits and executed a will in her favour. However, the defendant could not examine any witness to prove the execution of such will deed. The trial Court rightly held that there was failure on the part of the defendant to prove the will deed and there was a failure in compliance of Section 68 of Transfer of Property Act (for short 'T.P. Act'), thereby, the Court below rightly held that there was no such will deed. Even though, the defendant filed cross objections, she could not substantiate her claim as to how the Court can believe a will deed without there being the evidence of atleast one of the attesting witnesses of the Will. Therefore, the cross objection filed by the defendant is liable to be dismissed and the trial Court rightly held that there was no such will by the deceased Atmaram in favour of the defendant.

28. The defendant has claimed an exclusive right on the gold and silver ornaments stating that they were presented to her at the time of her marriage and on the subsequent dates. If really there was such presentation, nothing prevented her to examine

her parents, brother or some relative in support of the said contention. As already stated, the deceased Atmaram was a superintending Engineer and the couple has no issues. The contention of first plaintiff that her son himself purchased all the gold and silver ornaments is more probable than the contention of defendant that she got the properties from her parents. Had there been such a presentation, it could not have been a difficult task for defendant to prove the same.

29. The defendant has contended that the Bank deposits, share certificates and other movable properties are her exclusive properties on the ground that she was nominated by her husband and that the lockers etc., were in her favour. There is no wrong for a husband to open a Bank locker in the name of his wife, that itself may not be a ground for the wife to claim exclusive right on the lockers and properties in those lockers. The deceased Atmaram having completed his tenure as a superintending Engineer still worked in the World Bank Organization. Therefore, that itself shows that the above referred properties are hard earned money of the deceased. The defendant could not place any contra evidence to show that she has contributed for acquiring the movable properties or for making Bank deposits or for purchasing the share certificates etc., There is no dispute about the relation

of first plaintiff with deceased, as such, being a mother, she is also Class I Heir and has got an equal share along with the defendant.

30. The defendant apart from claiming right on the schedule properties by virtue of will said to have been executed by her husband, further claimed that her husband nominated her to receive all the benefits. Such nomination will not create any right in favour of defendant.

31. It is true, the plaintiffs did not add the other children of plaintiff No.1 as parties to the suit. Here is a case where the plaintiffs took a specific stand that the deceased Radhamma, executed a will deed and bequeathed her share in favour of the second son. In fact, the trial Court accepted the side contention and held the issue in favour of the plaintiffs. When once the will is proved and it is accepted that the deceased Radhamma bequeathed her share in favour of her son, the question of adding her daughters as parties to the suit does not arise and they are not proper or necessary parties to the suit. Therefore, the trial Court came to an incorrect conclusion while dismissing the suit on this ground. The above discussion clearly shows that Atmaram having acquired gold, silver, cash deposits, share certificates, died in the road accident, thereby, his mother and wife being Class I Heirs

have got equal share in the properties. The defendant is not able to substantiate her claim, as such, the second son of the first plaintiff is entitled to have half share in the plaint 'A' and 'B' schedule properties and the trial Court could have passed a preliminary decree accordingly. In view of the same, the appeal deserves to be allowed and cross objection is liable to be dismissed.

32. In the result, appeal is allowed and cross objection is dismissed.

Consequently, Miscellaneous applications if any, are closed.

No costs.

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Sd/- B.S. CHIRANJEEVI
JOINT REGISTRAR



SECTION OFFICER

To,

1. The XXVI Additional Chief Judge, City Civil Court, Hyderabad.
2. One CC to SRI V. HARI HARAN, Advocate [OPUC]
3. One CC to SRI. P. DAMODAR REDDY, Advocate [OPUC]
4. Two CD Copies

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**HIGH COURT
DATED:20/09/2023**



COMMON JUDGMENT+COMMON DECREE

CCCA.No.71 of 2020

AND

CROSS OBJECTIONS NO.3 of 2022

**ALLOWING CCCA AND
DISMISSING CROSS
OBJECTIONS
WITHOUT COSTS**

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14/2/24

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AT HYDERABAD**

**WEDNESDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

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AND

CROSS OBJECTIONS NO.3 of 2022

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Appeal Under and Memorandum of Cross Objections Under Order 41 Rule 22 of CPC against the Judgment and decree dated 14-07-2020 in O.S.No.319 of 2006 on the file of the Court of the XXVI Additional Chief Judge, City Civil Court, Hyderabad.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal and Cross Objection the Judgment and Decree of the Lower Court and the material papers in the Suit and upon hearing the arguments of Sri V. Hari Haran, Advocate for the Appellants in CCCA and Respondents in Cross Objections and Sri P. Damodar Reddy, Advocate for the Respondents in CCCA and Cross appellant in Cross Objections.

This Court doth Order and Decree as follow:

1. That the City Civil Court Appeal be and hereby is allowed and the mother and wife being Class-I heirs have got equal share in the properties and the Second son of the First plaintiff is entitled to have half share in the plaint 'A' and 'B' schedule properties;
2. That the Cross Objection be and hereby is dismissed; and
3. That there shall be no order as to costs in CCCA and Cross Objections.

**Sd/- B.S. CHIRANJEEVI
JOINT REGISTRAR**

//TRUE COPY//



SECTION OFFICER

To,

1. The XXVI Additional Chief Judge, City Civil Court, Hyderabad.
2. Two CD Copies

Asr-2/kam

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**HIGH COURT
DATED:20/09/2023**

COMMON DECREE

CCCA.No.71 of 2020

AND

CROSS OBJECTIONS NO.3 of 2022

**ALLOWING CCCA AND
DISMISSING CROSS
OBJECTIONS
WITHOUT COSTS**

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