

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE**

**PRESENT
THE HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

APPEAL SUIT NO: 355 OF 2005 AND 101 OF 2007

A.S. NO. 355 OF 2005

Appeal Under Section 96 of C.P.C. against the Judgment and decree dated 17-12-2004 in O.S.No. 3 of 2000 on the file of the Court of the I Additional District Judge, Ranga Reddy District.

Between:

1. L. Roopa Rani W/o. L. Panduranga Reddy , Hindu aged 36 years Occ: Household , 6417 Grassmere Lane, Carpenters Ville IL 60110 YSA , rep. by her G.P.A. Holder Sri L. Vasudeva Reddy S/o. L. Boom Reddy Flat No. 101 , Happy Homes, Domalguda, Hyderabad – 500 029.
2. N. Arthika Reddy W/o. Pradeep Reddy , Hindu aged 29 years, Occ: Household, presently residing at Canada , rep. by her G.P.A. Holder Sri N. Praveen Reddy S/o. N. Papi Reddy , Hindu, aged 32 years, R/o. H.No. 16-2-833/74/B/B, (APHB) (APHB) , New Saidabad Colony, Hyderabad ... Appellants / Defendant No. 4/ Plaintiff No. 3

And

1. M. Jaswant Reddy S/o. M. Gopal Reddy, aged 48 years, Occ: Business, Habsiguda, Hyderabad – 500 017
2. Smt. M. Mallamma W/o. Gopal Reddy, aged 63 years, Occ: Household, R/o. 6-3-609/24/2 , Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
3. M. Gopal Reddy S/o. Malla Reddy , Hindu, aged 66 years, Occ: Business R/o. 6-3-609/24/2, Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
4. M. Praveen Reddy, S/o. M. Gopal Reddy aged 33 years, Occ: Business, R/o. 6-3-609/24/2, Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
5. N. Vijaya W/o. Ramana Reddy , aged 50 years, Occ: Household , R/o. 2-3-703/3/A/1, Tirumalanagar, Amberpet, Hyderabad. .. Respondents/ Defendants 1, 2, 3, 5 & 6
6. M. Rajender Reddy S/o. Gopal Reddy, aged 40 years, Occ: Business, R/o. FlatNos. 501 and 502, Almelu Residency, H.No. 6-3-609/122, Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
7. S. Lavanya W/o. Narsimha Reddy , aged 42 years, Occ: Housewife , Flat No. 9 , H.I.G. – II, Block No. 17, Bagh Lingampally, Hyderabad – 500 004.
.. Respondents/ Plaintiffs 1 & 2

Note : Respondents 3 to 7 herein have been arrayed as respondents as per orders of Hon'ble Court passed in A.S.M.P.No. 199 of 2008 on 13-03-2008.

ASMP. NO: 1160 OF 2009

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 vacate the Order dated 24-03-2008 in ASMP.No. 2477 of 2007 in A.S.No. 355 of 2005 in so far as Ac.6.33 Guntas in Sy.No. 25 of Medpalli Village of Ghatkesar Mandal, R.R.District, which was described as part of Suit "E" Schedule Property and dismiss the application against 7th Respondent (Defendant No. 6) in the interest of justice.

ASMP. NO: 3155 OF 2012)

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 fix an early date for hearing and disposal of the appeal in AS No. 355 of 2005 and to pass

ASMP. NO: 3151 OF 2012)

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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 fix an early date for hearing and disposal of the appeal in AS.No. 355 of 2005

ASMP. NO: 1109 OF 2005

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 judgment & decree dt. 17-12-04 made in OS No. 3/00 on the file of the I Addl. Dist. Judge, R.R.Dist. at L.B.Nagar, Hyderabad, pending disposal of the above appeal suit

Counsel for the Appellant :Sri M.V. Suresh Kumar, for SRI T. P. ACHARYA

Counsel for the Respondent No.1: Sri V. RAVI KIRAN RAO FOR

SRI V. ROHITH

Counsel for the Respondent No. 2 SRI G. RAM GOPAL

Counsel for the Respondent No. 3 : SRI P. KAMALAKAR

Counsel for the Respondent No. 4: SRI Ch. JANARDHAN REDDY

Counsel for the Respondent No. 5 M.R.S. SRINIVAS

FIRST APPEAL NO: 101 OF 2007

Appeal Under Section 96 of C.P.C. against the Judgment and decree dated 17-12-2004 in O.S.No. 22of 2001 on the file of the Court of the I Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad

Between:

1. M. Gopal Reddy, S/o. Late Malla Reddy, Agriculture R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
2. M. Rajender Reddy, S/o. M. Gopala Reddy, R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
3. M. Praveen Reddy, S/o. M. Gopala Reddy, R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
4. Arthika, D/o. M. Gopala Reddy, student R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
5. N. Vijaya, W/o. Ramana Reddy, Household R/o.2-3-703/3/A/1, Tirumalanagar, Amberpet, Hyderabad.

...APPELLANTS/ Defendants

AND

1. M. Jaswant Reddy, S/o. M. Gopal Reddy, Business R/o.10-67, Uppal, Village & Mandal, Ranga Reddy District.
2. M/s. Chakilam Associates Archietects, and Developers, rep., by Sri G. Sudhakar, R/o.6-3-883, III Floor, Punjagutta, Hyderabad.

...RESPONDENTS

ASMP. NO: 663 OF 2009

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 fix an early date for hearing and disposal of the appeal in A.S.No. 101 of 2007.

Counsel for the Appellant No. 1 :SRI P. KAMALAKAR

Counsel for the Appellant No. 2 : SRI M.R.S. SRINIVAS

Counsel for the Appellant No. 3: SRI CH. JANARDHAN REDDY

Counsel for the Appellant No. 4 : SRI M.V. SURESH KUMAR APPEARING FOR SRI T.P. ACHARYA

Counsel for the Respondent No.1 SRI V. RAVI KIRAN RAO FOR SRI V. ROHIT

The Court delivered the following Common Judgment

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**
APPEAL SUIT NOS.355 OF 2005 AND 101 OF 2007

COMMON JUDGMENT: *(per Hon'ble Sri Justice P.Naveen Rao)*

The present appeals have been directed against a common Judgment passed in O.S.No.3 of 2000 and O.S.No.22 of 2001 by the 1st Additional District Judge, Ranga Reddy District, L.B Nagar, Hyderabad, (previously numbered as O.S.No.2266 of 1997 on the file of IV Addl. Judge, City Civil Court, Hyderabad). O.S.No.22 of 2001 is a suit for partition of scheduled properties filed by one Jaswant Reddy against his father and his family members excluding the married daughters. O.S.No.3 of 2000 is a more comprehensive suit for partition filed by M.Rajender Reddy, S.Lavanya and Arthika, Children of Gopal Reddy against all the family members with respect to the suit schedule properties. The lower court partly decreed the suit granting decree for partition of suit 'A' schedule properties. Hence, the present appeals.

2. For the sake of convenience herein after the parties are referred to as arrayed in O.S.No.3 of 2000.

3. One Gopal Reddy (Defendant No.1), who is married to MallamMa (Defendant No.6), is the father and Karta of the Hindu Joint Family consisting of three sons, Rajender Reddy (Plaintiff No. 1); Jaswanth Reddy (Defendant No.2); Praveen Reddy (Defendant No.3) and four daughters -

Lavanya (Plaintiff No.2); Arthika (Plaintiff No.3); Roopa Rani (Defendant No.4); Vijaya (Defendant No.5).

4. The properties in dispute are 'A' to 'E' schedule properties in O.S.No.3 of 2000. It is admitted that Items 1 to 3 of Schedule 'A' constitute a part of joint family property situated at Punjagutta and Khairatabad. Item No.4 of Schedule 'A' was purchased by defendant No.1 from his brother, which falls under the joint family property and same is not in dispute. Schedule 'B' and 'C' are residential houses situated at Uppal. Schedule 'D' and 'E' are lands situated at Medpalli.

5. It is the contention of all the family members, except defendant No.2 that all the above properties constitute joint family properties, which were purchased by defendant No.1 in the capacity of Karta of the joint family, though in the name of other family members. On the other hand, defendant No.2, the eldest son of defendant no.1 contends that the properties situated at Uppal and Medapalli (Schedules 'B' to 'E') were purchased by his late maternal grandfather, father of defendant No.6, Shri Adivi Reddy.

6. It appears, trigger point to initiate the suits is a Developmental Agreement with M/s Chakilam Associates (defendant No.5 in O.S.No.22 of 2001) for the development of Item No.1 of schedule 'A' in O.S.No.3 of 2000, which is item no.III of schedule 'A' in O.S.No.22 of 2001. During this time, Defendant no.2 contended that defendant no.1 refused to share the rents/profits arising from any of the properties. Defendant no.2 then filed O.S.No.93 of 1996 for bare injunction against defendant no.1 and obtained

an injunction with regard to lands situated at Medpalli. Defendant no.2 also filed O.S.No.2266 of 1997 for partition of joint family properties falling under Schedule 'A', which was transferred to I Additional District Judge, Ranga Reddy and renumbered as O.S.No.22 of 2001. In the said suit, defendant No.2 excluded three sisters on the ground that they were married. Another son and two daughters of Gopal Reddy filed O.S.No.3 of 2000, a more comprehensive suit for partition including all the family members. Plaintiff no.1 primarily contends that even schedules 'B' to 'E', i.e. properties situated in Uppal and Medpalli constitute joint family properties, as they were purchased by the defendant no.1 in the name of the other family members and they should be divided into 8 shares, allotting each family member $1/8^{\text{th}}$ share of the schedule properties.

A.S.No.355 of 2005 (O.S.No.3 of 2000):

7. A.S.No.355 of 2005 arises out of the judgment and decree passed in O.S.No.3 of 2000. The plaintiff no.1 is one of the three sons of defendant no.1 who is the father and Karta of the joint family. Plaintiff no.1 filed a suit for partition for the properties in Schedule 'A' to 'E' claiming that they constitute to be joint family properties. It is the case of the plaintiff no.1 that all these properties were purchased by defendant no.1 as the Karta of the joint family in the name of different family members. Defendant 1 had purchased Schedule 'B' property in the name of the plaintiff no.1, Schedule 'C' properties in the name of defendant no.2 and plaintiff no.1, Schedule 'D'

properties in his name and plaintiff no.1, Schedule 'E' properties in the names of plaintiff no.1, defendant no.2 and defendant no.6 (wife).

8. It is stated that defendant no.1 with the consent of all the family members entered into a development agreement with M/s. Chakilam Associates for the development of Item no.1 of Schedule 'A' properties and would receive 50% of the constructed area towards the share of joint family as per the agreement. All the family members have been living harmoniously, until conflicts arose between defendant no.1 and defendant no.2. It is stated, Defendant no.2 with the intention to harass defendant no.1, plaintiff no.1 and the other family members, has been creating illegal charge, over Schedule 'D' and 'E' properties and has been trying to sell the same.

9. The plaintiff no.1 and other family members have been residing at item III of Schedule 'A' properties. Defendant no.2 has been in the possession of schedule 'B' properties. The plaintiff nos.1 to 3 have filed O.S.No.3 of 2000 as it has become impossible to continue as members of joint family due to the actions of the eldest son, Defendant no.2.

10. Defendant no.1, the father in his written statement filed in the suit, has taken a similar stance as that of plaintiff no.1. He contended that his eldest son, defendant no.2 has been harassing the family members, and renting out the premises at Uppal and Schedule 'C' properties and has been keeping the rents to himself. According to this defendant, he purchased premises bearing Municipal No.10-67 in Uppal village as Kartha of joint

family, but 2nd defendant is collecting rent amounting to ₹ 6,000/- per month for last five years. He is also collecting ₹ 3,000/- per month on suit schedule 'C' properties from 1995 onwards, but has not submitted the accounts. He is further creating charges on the property with an intention to sell them to third parties. Defendant no.1 states that he had got some land allotted by the A.P. Industrial Infrastructure Corporation in the name of defendant no.2 and which is not included in the present schedule of properties and is also liable for partition.

11. Defendant no.2 filed a separate written statement in the suit. He firstly contends that defendant no.6 being the mother cannot be a member of the joint family. He further states that the marriages of the daughters, plaintiff no.2, defendants nos.4 and 5 have already taken place and were given large amounts of jewelry which should be considered as their share of the joint family properties, hence have no claim over the suit schedule properties, thereby the joint family properties will be divided into 5 shares only.

12. Defendant no.2 admits that Schedule 'A' properties constitute joint family properties but contends that Schedule 'B' to 'E' properties do not constitute joint family properties. It is the case of defendant no.2 that Schedule 'B' to 'E' properties were purchased by his late maternal grandfather Sri Adivi Reddy, father of defendant no.6. Defendant no.2 states that he was living with Adivi Reddy at Uppal since tender age and was brought up there. Adivi Reddy had purchased properties in Uppal with a

view to benefit his daughter (defendant no.6) and her sons. Adivi Reddy purchased 'C' to 'E' schedule properties in favour of his daughter (defendant no.6) his grandchildren plaintiff No.1, defendant no.2 and one Kamamma, who is the daughter-in-law of Adivi Reddy's brother in law under separate sale deeds. Following the execution of the sale deeds, their names have been mutated in the municipal records and the plaintiff no.1, defendant no.2 and 6 are in possession and enjoyment of their respective properties.

13. It is contended by defendant no.2 after signing of the developmental agreement, defendant no.1 started acting in a dictatorial manner, has been realizing rents of joint family properties and is refusing to render accounts of the same. Thereby, defendant no.2 issued a legal notice dated 26.03.1996 for partition, then filed O.S.No.93 of 1996 and obtained temporary injunction with respect to land in Sy.No.26 of Medpalli Village, which was affirmed by the High Court in C.R.P.No.4982 of 1997. In the above suit, defendant no.1 took the plea that schedules 'D' and 'E' properties were his self-acquired properties, which he purchased through his own funds in the names of plaintiff no.1, defendant nos. 2 and 6 as the Benamidars. Whereas defendant no.1 has taken a contrary pleading in the present suit that the said properties are joint family properties, and therefore is estopped. It is the case of defendant no.2 that the defendant no.1 in collusion with plaintiff no.1 and the other family members has filed the present suit (O.S.No.3 of 2000). Defendant no.2 submits that the said suit is absolutely unnecessary, and the rights of any or all members have to be worked out in O.S.No.22 of

2001 (O.S.No.2266 of 1997). Further, the suit is bad for mis-joinder of parties and properties.

14. The lower Court after examining the pleadings and evidence placed by both the parties framed the following issues for trial:

1. *Whether the plaint C, D and E schedule properties are the joint family properties and whether they are liable for partition?*
2. *Whether the first defendant is estopped from claiming the C, D and E schedule properties, as joint family properties, in view of his earlier pleadings in O.S No. 2266 of 1997?*
3. *Whether the marriages of the second plaintiff and defendants No.4 and 5 took place long time back and if they were given any jewelry and amount towards their share?*
4. *Whether the plaintiffs are entitled for the partition of the entire suit schedule properties and if so, to what share?*
5. *To what relief?*

A.S.No.101 of 2007 (O.S.No.22 of 2001):

15. A.S.No.101 of 2007 arises out of the judgment and decree passed in O.S.No.22 of 2001. A suit filed for partition of Schedule 'A' properties by one Jaswant Reddy plaintiff therein (respondent no.2 herein) against his father (defendant no.1) and his siblings defendants Nos.2 to 4 herein. M/s.Chakilam Associates who were developing Schedule 'A' properties was impleaded in this suit as Defendant no. 5.

16. It is the case of defendant no.2 that Schedule 'A' properties constitute joint family properties as they were inherited by defendant no.1. It is stated

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that all the family members executed GPA towards defendant no.1 to enter into a developmental agreement with M/s Chakilam Associates for the development of Item 1 of Schedule 'A' properties. It is stated that defendant no.1 received ₹ 15,00,000/- as security deposit and would receive half of the constructed floors as per the agreement. Defendant no.2 contends that his father defendant no.1 has been renting out other items in 'Schedule 'A' properties and none of the profits/income is being shared with defendant no.2 nor towards the maintenance of his family. Hence disputes arose between defendant No.1 and defendant no.2 over the possession and enjoyment of properties. In response to which, defendant no.2 issued a notice revoking his GPA executed by him towards his father defendant no.1. It is further submitted by Defendant no.2 that the other members of the family in collusion with defendant no.1 are trying to dispose item 3 of Schedule 'A'.

17. According to the defendant no.2, defendant no.1 has collected the entire sale proceeds, including the share of defendant no.2 and is not sharing the proceeds with defendant no.2. Hence, he has filed the suit for partition of joint family properties by dividing into five shares, excluding the shares to the married daughters.

18. The father, Defendant no.1 contends that plaintiff has got only 1/8th share and not 1/5th share in the joint family properties, as he cannot exclude the shares of the three married daughters. He contended that the entire schedule 'A' properties do not constitute joint family properties. Only

item nos.1 and 2 and a part of item no.3 of Schedule 'A' are ancestral properties. According to defendant no.1, item no.1 comprises of only 175 square yards and not 400 square yards. In item no.3, only 1000 square yards is ancestral property. Over and above, 1000 square yards i.e., 812 square yards was allotted to him towards his services for getting the said property decided and towards funeral expenses of his father borne by him and is his property. Item no.4 of schedule 'A' is not an ancestral property. It was purchased by the defendant no.1 from his brother, Ram Reddy. Similarly, Item No.5 of Schedule 'A' is not an ancestral property as it was purchased by defendant no.1 from one Mallamma w/o.Raj Reddy. Item Nos.3 and 6 of Schedule 'B' properties are also not joint family properties.

19. Defendant no.1 completely denies the claims made by defendant no.2 that properties situated in Uppal and Medpalli were purchased by his father-in-law Adavi Reddy in the name his daughter (defendant no.6) and grandsons (plaintiff no.1 and defendant no.2). It is contended that all the properties were purchased by the defendant no.1 himself, in the names of other family members and they are benamis. Hence, defendant no.1 is the real owner of lands situated at Uppal and Medpalli.

20. It is further contended that with an intention to harass and dispossess the defendant no.1 and the other family members, defendant no.2 has filed the suit.

21. The lower Court after examining the pleadings and evidence placed by both the parties framed the following issues for trial:

1. *Whether the plaintiff is entitled for partition of the plaint schedule property as prayed for?*
2. *To what relief?*

22. The main consideration before the lower Court was regarding the dispute as to what constitutes the joint family properties, what properties are liable for partition and who are the family members entitled for partition.

23. With respect to the issue whether the married daughters are entitled to a share in the partition, the lower court relied on the Hindu Succession (Andhra Pradesh Amendment) Act, 1986 which confers the equal right of coparcenership to the unmarried daughter by birth. The court observed that it was only defendant no.5 who had been married before the commencement of the above act, i.e. in 1982. The court therefore held that defendant no.5 has no coparcenary right and cannot claim a share over the joint family properties. Coming to defendant no.4 and plaintiff no.2, the court observed their marriages took place post the 1986 amendment and are hence entitled to their respective shares in the joint family properties. The court further observed that the contention that the daughters were given large amounts of jewelry, hence are not entitled to any share, is not tenable as there is no proof of such assertion. The court held even if there is proof of the same, it cannot deprive the daughters of their legitimate right over the joint family properties.

24. The Court held that that excluding defendant no.5, the rest of the family members which include, defendants nos.1 to 4 and plaintiffs no.1 to

3 are entitled to one share each, hence the joint family properties to be divided into 7 shares.

25. The court observed that it is not in dispute that Schedule 'A' properties were joint family properties. The main bone of contention was whether Schedule 'B' to 'E' properties constituted as joint family properties. It was observed that Schedule 'B' to 'E' properties were purchased under separate sale deeds and stood in the name of the plaintiff no.1, defendant no.2 and defendant no.6. The sale deeds executed in the names of plaintiff no.1, defendant no.2 and defendant no.6 are marked as exhibits Ex.A13, Ex.A12, Ex.A14, respectively, and the same is not disputed.

26. The court further dismissed the claims of defendant no.1 that Schedule 'B' to 'E' are his self-acquired properties, due to absolute lack of evidence. The court noted that apart from his assertion, there was no explanation as to the source of acquisition of schedule 'B' to 'E' by defendant no.1. The court further noted the deposition of D1 as DW.1 also did not inspire confidence to the court as to how he acquired the schedule properties. It was also noted that DW.1 admitted that schedule lands originally belonged to his father-in-law, Adavi Reddy, who in turn bequeathed the properties to his wife under a registered Will Deed. Therefore, the court found no merit in the contentions that Schedule 'B' to 'E' lands were acquired by defendant no.1.

27. The court further noted that defendant no.2 stated that before the execution of the sale deeds, Adavi Reddy has obtained agreements of sale in

the names of his daughter, defendant no.6 and one Kamamma dated 16.7.1999 and 23.7.1978, and all the sale deeds are preceded by their respective agreements of sale. The defendant no.1 was not aware of Bal Reddy, who is the husband of one of the agreement holders, Kamamma, which the court found very absurd.

28. The Court observed that O.S.No.93 of 1996 is a suit for the claim of exclusive title and possession of the schedule properties filed by defendant no.2 against defendant no.1, wherein defendant no.1 had taken the plea that Schedule 'D' and 'E' were purchased by his own funds, and that he is the real owner and the vendees were merely the benamidars. Defendant no.1 has taken the same plea in O.S.No.22 of 2001. In both the pleas, defendant no.1 sought to establish complete ownership over the properties and contended that none of the family members had right over the property. In O.S.No.3 of 2000, the defendant no.1 in collusion with the other family members have taken a different stance, i.e., the houses at Uppal and Medpalli are joint family properties. The court noted that the plea taken by defendant no.1 in the previous suits for injunction and partition are binding on him, and therefore is estopped from taking contradictory pleas.

29. The court further noted that, all the family members were living harmoniously in their respective properties, until the death of Adavi Reddy. It is after the demise of Adavi Reddy, the said differences arose between defendant no.1 and 2 with respect to the possession and enjoyment of the property. The court thus accepted the contentions of defendant no.2 that

acquisitions of the said lands were done by their maternal grandfather, Adivi Reddy, and only Schedule 'A' Properties constitute as joint family properties.

30. Based on the above reasoning, the lower court partly decreed the suit, ordering partition of Schedule 'A' properties into 7 shares, allotting 1/7th share each to plaintiff nos. 1 to 3 and defendant nos. 1 to 4.

31. Heard learned senior counsel Sri M.V.Suresh Kumar, appearing for Sri T.P.Acharya learned counsel for appellants, learned senior counsel Sri V.Ravi Kiran Rao appearing for Sri V.Rohith for respondent no.1, learned counsel Sri G.Ram Gopal for respondent no.2, learned counsel Sri P.Kamalakar for respondent no.3, learned counsel Sri Ch.Janardhan Reddy for respondent no.4, and learned counsel Sri M.R.S.Srinivas for respondent no.6 in A.S.No.355 of 2005; learned counsel Sri P.Kamalakar for appellant no.1, learned counsel Sri M.R.S.Srinivas for appellant no.2, learned counsel Sri Ch.Janardhan Reddy for appellant no.3, learned senior counsel Sri M.V.Suresh Kumar appearing for Sri T.P.Acharya for appellant no.4, and learned senior counsel Sri V.Ravi Kiran Rao appearing for Sri V.Rohit for respondent no.1 in A.S.No.101 of 2007.

32. Learned senior counsel Sri M.V.Suresh Kumar contended that all the properties shown in the schedules are joint family properties and are liable for partition among the family members. He would submit that trial Court grossly erred in not appreciating the evidence brought on record and holding that only schedule 'A' properties are amenable for partition, declining to grant the relief of partition in other schedules.

33. By referring to the deposition of DW.3, in his cross-examination, he would submit that though 1st defendant purchased the properties from out of the proceeds of the joint family properties, DW.3 deposed contrary to the true facts. In his cross-examination, he has clearly admitted that he has not invested a single rupee for purchase of the suit lands. It appears, though he stated that his grandfather invested the money, no proof is filed to show that money was actually invested by his grandfather. This fact was also admitted by DW.3. This portion of the deposition was not considered by the trial Court. DW.3 also admitted that income derived from the properties of the maternal grandfather is hardly sufficient to maintain. If that is so, how could he contribute the money to purchase the suit schedule properties. The deponent also admitted that his father paid entire loan amount borrowed by DW.3 and his brother Rajender Reddy for M/s.Magestic Firm. In his further deposition also, he has admitted that there was no record to show that his grandfather purchased schedule 'B' and 'C' properties. He admits that his father is Kartha of the entire family. He also admits that he has no proof to show that his maternal grandfather having income. This deposition is ignored by the trial Court while deciding the issues.

34. He would submit that learned trial Court failed to consider that by sale deed Ex.A11, 1st defendant purchased Acs.4.01 gts., forming part of Sy.No.83 and entire Sy.Nos.84 and 85, of Medpalli Revenue Village and then Hayatnagar Taluq, which is forming part of schedule 'D'. Even though father purchased the property from out of the proceeds of the joint family

properties, the trial Court erred in holding that the property does not form part of joint family property.

35. He would submit that though 2nd defendant was asserting that the properties were purchased by grandfather Advi Reddy, no material is produced in proof of such assertion. In the absence of the proof that Sri Advi Reddy invested the money for purchasing the properties, the properties have to be treated as belong to the joint family properties.

36. Learned senior counsel further pointed out that Acs.8.18 gts., was purchased by 1st defendant by way of sale deed dated 20.08.1979 registered in the name of his wife. From the endorsement on the back side of the page no.2 of the sale deed, it would show that the sale consideration was paid by the 1st defendant. In spite of such proof available on record, trial Court erroneously observed that it is not forming part of the joint family properties.

37. He would submit that trial Court erred in holding that defendant no.1 has taken contradictory plea in the instant suit as against the pleas raised in the earlier suit. On the issue of contrary pleadings, learned senior counsel placed reliance on the decision of High Court in **Abdul Latif Sahib and others vs. Shaik Dastagir Sahib and others**¹.

38. Learned senior counsel Sri V.Ravi Kiran Rao appearing for 2nd defendant would submit that appellants 1, 2, 4, 5 and 6 have withdrawn the

¹ 1993 (2) APLJ 169 (HC)

appeal on 13.03.2008. After their withdrawal, only 3rd appellant, who transposed as appellant from defendant no.4 before the trial Court, and 7th respondent who is plaintiff no.3 are continuing the appeal. According to the learned senior counsel, in view of withdrawal of the Appeal by appellants, 1, 2, 4, 5 and 6, the judgment and decree passed by the trial Court has become final insofar as they are concerned. As the issue concerns partition of the joint family property and decree has become final insofar as those appellants are concerned, present appeal is not maintainable.

39. He would submit that I.A.No.589 of 1996 was filed in O.S.No.93 of 1996 on the file of Prl.District Munsif, Hyderabad East & North, Ranga Reddy,district under Order XXXIX Rules 1 and 2 of CPC to grant temporary injunction. The 2nd defendant M.Jaswanth Reddy contended that petition schedule property was purchased in his name on 27.08.1979 by his maternal grandfather and the defendant father has no right in the suit property. Father as defendant No.6 purchased the property though sale deed was registered in the name of the 1st plaintiff, but he is in possession of the entire suit land.

40. On considering the respective submissions, the Court below, by Order dated 19.07.1996, observed that defendant failed to show that he purchased the suit land as benami in the names of the 1st plaintiff and defendants 2 and 6 and that he failed to prove his possession on suit land. The Court below further observed that plaintiff proved his title and possession to the suit land and granted injunction. Aggrieved thereby, defendant father filed

CMA No.66 of 1996 in the Court of Additional District Judge, Ranga Reddy district. Though the first appellate court has not agreed with the reasons assigned by the trial Court, but in view of the provisions in Section 4(1) and 4 (2) of the Benami Transaction Act, the claim of the appellant was denied and upheld the decision of the trial Court. Aggrieved thereby, CRP No.4982 of 1997 was filed before this Court. This Court observed that findings of the lower appellate Court with regard to the possession is vitiated by its failure to consider the other documentary evidence on record filed by the plaintiff and on account of palpable mistake committed by the Appellate Court regarding the date of Ex.B1 upheld the view taken by the trial Court. In view thereof, the claim that it is joint family property is no more valid.

41. He would submit that O.S.No.500 of 1985 was filed by the brother and mother of defendant no.1 in the suit. Said suit was filed to grant decree of partition and separate possession of the suit schedule lands. After conducting trial, trial Court passed judgment and decree on 04.02.1987. By this decree, first defendant was allotted land to an extent of 235.52 square yards out of 876 square yards in Municipal No.6-3-881 including passage on North and Eastern side situated at Premnagar, Hyderabad, shown in schedule 'A' and land to an extent of 1812.20 square yards out of 10836 square yards in Sy.Nos.145 and 146 of Dwarakapuri Colony, Punjagutta, Hyderabad. These are the only properties fallen to the share of the 1st defendant. With these properties, the 1st defendant could not have acquired the other properties, which are subject matter of instant partition suits. He would therefore submit that several properties standing in the name of the

individuals were purchased by the maternal grandfather and they are not the joint family properties. He would submit that sale deeds by which the properties were purchased were earlier to the settlement.

42. Learned senior counsel has taken us through the issues formulated in both the suits and findings recorded in paragraph-19 of the judgment. Learned senior counsel pointed out that on evaluation of evidence, the learned trial judge found that though defendant no.1 asserted that the properties are acquired by him as Kartha of joint family in the name of different members of the family, he could not come up with any explanation as to the source of his acquisition. Learned trial Judge observed that all the items in 'A' schedule are houses in Hyderabad and there could not be sufficient income from those houses enabling the 1st defendant to acquire the suit schedule properties. He would add that no evidence was found that Gopal Reddy purchased the properties in the name of his children and his wife. However, learned senior counsel fairly submitted that trial Court erred in denying the share to the 5th defendant and in view of the judgment of the Hon'ble Supreme Court in **Vineeta Sharma vs. Rakesh Sharma and others**², she is also entitled to a share and the judgment and decree passed by the trial court requires modification to that extent.

43. By relying on Section 91 of Indian Evidence Act, learned senior counsel would submit that as documents and evidence on record clearly

² (2020) 9 SCC 1

disclosed that the properties were purchased by the grandfather, those properties are not amenable for partition.

44. Learned counsel Sri M.R.S.Srinivas appearing for 1st plaintiff submitted that 1st plaintiff reconciled to the decision of the trial Court. By referring to Ex.A13, he would submit that there is no evidence to show that the father paid the money to purchase the property in the name of M.Rajender Reddy. Similar is the case with the document Ex.A10. Learned counsel also relied on Section 91 of the Indian Evidence Act. He has also placed reliance on the judgment of the Hon'ble Supreme Court in **D.S.lakshmaiah and another vs. L.Balasubramanyam and another**³ on what constitutes joint family property.

45. Learned counsel Sri P.Kamalakar appearing for 1st defendant drawn attention to the paragraphs 18, 19, 20 and 23 of the judgment of the trial court. On issues 1, 2 and 4 in O.S.No.3 of 2000 and on issue No.1 in O.S.No.22 of 2001, he would submit that there was no material on record on the plea of defendant no.1 that he purchased the suit schedules properties and they are forming part of the joint family. The 1st defendant has no independent income to purchase the properties shown in Exs.A10 and A13. He has drawn the attention of the evidence of P.W.1 to buttress his contention that sale deeds executed by the claimants represented by Sri V.Ravi Kiran Rao was not objected till date and is no more permissible to argue contrary to the said sale transaction.

³ (2003) 10 SCC 310

46. According to the learned counsel appearing for defendant no.6, 'E' schedule properties belong to her. On issue nos.1 and 2 at page no.23 of the impugned judgment, 'E' schedule are excluded from partition and accordingly the suit is dismissed to that extent. The decree has become final. No grounds are urged against findings in favour of 6th defendant and in the appeal, the 6th defendant described as 2nd respondent and said that she is not necessary party and, therefore, insofar as 'E' schedule properties are concerned, they are exclusively owned by the defendant no.6. He would further submit that Section 4 of the Benami Act prohibits purchase of properties in the name of third persons and the person on whose name properties were purchased become the owners of the properties. The exception carved out is applicable only with reference to co-parceners of joint family property, whereas mother is not a co-parcener and, therefore, exception is not attracted. Learned counsel relied on the decision of the Hon'ble Supreme Court in **Mangathai Ammal (died) through Legal Representatives and others vs. Rajeswari and others**⁴.

47. Learned counsel Sri G.Ram Gopal appearing for 2nd respondent/defendant no.6 submitted that as per Section 14 of the Succession Act, female Hindu self acquired properties are her own and not amenable for partition.

48. Learned counsel Sri Ch.Janardhan Reddy appearing for 4th respondent/3rd defendant submitted that defendant no.1 has no other

⁴ (2020) 17 SCC 496

means and even the property standing in his name, came to him much later on account of division of the property among the brothers of Gopal Reddy. He would submit that schedule 'B' to 'E' properties are self-acquired properties and not amenable for partition. He therefore prayed to confirm the findings recorded by the trial Court and to dismiss the appeal.

49. Following issues arise for consideration:

1) Whether by reason of withdrawal of A.S.No.355 of 2005 by appellants 1, 2, 4 to 6, the judgment and decree having become final insofar as those appellants are concerned can it be said that the appeal is barred by *res judicata* ?

2) Whether trial Court erred in holding that only suit schedule 'A' properties are joint family properties ? and

3) What relief ?

ISSUE NO.1:

50. O.S.No.3 of 2000 is filed by son and two daughters of M.Gopal Reddy. Gopal Reddy and his three other sons and two other daughters and his wife are arrayed as defendants. In the suit, plaintiffs prayed for partition of ancestral and joint family properties, to grant preliminary decree, to appoint Commissioner to effect partition of suit 'A' to 'E' schedule properties into eight (8) equal shares to be allotted to plaintiffs and defendants 1 to 5.

51. In O.S.No.22 of 2001 M.Jaswanth Reddy, son of M.Gopal Reddy is the plaintiff and further, two other sons, a daughter and Architect are made

defendants. Suit is filed praying to grant decree of partition and separate possession and to pass judgment and decree for partition of 'A' to 'D' schedule properties into five equal shares.

52. Plaintiff no.1 in O.S.No.3 of 2000 is 2nd defendant in O.S.No.22 of 2001. Plaintiff no.3 is 4th defendant in O.S.No.22 of 2001. Plaintiff in O.S.No.22 of 2001 is 2nd defendant in O.S.No.3 of 2000. Sri M.Gopal Reddy is defendant no.1 in both suits. Sri M.Praveen Reddy is defendant no.3 in both suits. Plaintiff in O.S.No.22 of 2001 has not chosen to implead his mother and other sisters. The properties in both suits are same and claim in both suits is for partition. The Trial Court clubbed both suits and passed common judgment. Issues 1, 2 and 4 in O.S.No.3 of 2000 and issue No.1 in O.S.No.22 of 2001 were considered together and a common finding is arrived. Trial Court held schedules 'B' to 'E' properties are not joint family properties and only schedule 'A' properties are joint family properties and are available for partition. Though M.Gopal Reddy was blessed with three sons and four daughters, the trial Court denied share to 5th defendant on the ground that she was married long ago and ordered for apportionment of schedule 'A' properties to three plaintiffs and four defendants 1 to 4 i.e., 7 shares.

53. A.S.No.355 of 2005 is filed by defendants 1, 3 to 5 and three plaintiffs in O.S.no.3 of 2000 not satisfied with the finding that other scheduled properties are not amenable for partition. A.S.No.101 of 2007 is filed by defendants 1 to 4 and N.Vijaya against decree in O.S.No.22 of 2001.

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54. As noticed above, common finding is recorded by trial Court in both suits and trial Court held suit 'A' schedule (as described in O.S.No.3 of 2000) properties are only available for partition. While so, appellants 1, 2 and 4 to 6 in A.S.No 355 of 2005 have withdrawn the appeal. The appeal is accordingly dismissed insofar as these appellants are concerned. Consequent to withdrawal of appeal by these appellants, the judgment and decree has become final insofar as they are concerned. In other words, for the appellants 1, 2 and 4 to 6 only suit 'A' schedule is available for partition.

55. That being so, accepting the contention of appellants 3 and 7 in A.S.No.355 of 2005 would result in two decrees in the same suit. Further, consequent to withdrawal of appeal, appellants 1, 2, 4 to 6 are no more parties to the appeal.

56. Further, in A.S.No.101 of 2007, appellant no.1 is appellant no.1 in A.S.No.355 of 2005. Appellant no.3 in A.S.No.101 of 2007 is appellant no.2 in A.S.No.355 of 2005. Appellant no.5 in A.S.No.101 of 2007 is appellant no.4 in A.S.No.355 of 2005. Appellant No.2 in A.S.No.101 of 2007 is appellant no.5 in A.S.No.355 of 2005. As these appellants have withdrawn A.S.No.355 of 2005, the judgment and decree in O.S.No.3 of 2000 is binding on them and cannot seek any other relief. This leaves appellant no.4 (who is appellant no.7 in A.S.No.355 of 2005) only to contest the A.S.No.101 of 2007.

57. We are of the opinion that principle of *res judicata* applies to the instant appeals and the two appeals must fail on this principle. Considering the appeals on merit will result in two inconsistent decisions.

58. Similar issue was considered by Hon'ble Supreme Court in **Sheodan Singh vs. Daryao Kunwar**⁵. In the said case, four suits tried together and common judgment was passed, but four separate decrees were drawn. In all the suits five issues were common. Against the judgment and decrees in four suits, four appeals were preferred. Out of four appeals, two appeals were dismissed, one on the ground of limitation and the other on account of failure to apply for translation and printing of record. A Full Bench of Allahabad High Court held that surviving two appeals must fail on the principle of *res judicata*.

59. Hon'ble Supreme Court held,

"13. Then it is urged that all the four suits were consolidated and decided on the same day by the same judgment and there can therefore be no question that Suits Nos. 77 and 91 were former suits and thus the decision as to title in those suits became *res judicata*. It is not in dispute that the High Court's decision in the appeals arising from Suits Nos. 77 and 91 was earlier. Reliance in this connection is placed on the decision of this Court in *Nahari v. Shankar* [1950 SCC 668 : (1950) SCR 754]. That case however has no application to the facts of the present case, because there the suit was only one which was followed by two appeals. The appeals were heard together and disposed of by the same judgment though separate decrees were prepared. An appeal was taken against one of the decrees. In those circumstances this Court held that as there was only one suit, it was not necessary to file two separate appeals and the fact that one of the appeals was time-barred did not affect the maintainability of the other appeal and the question of *res judicata* did not at all arise. *In the present case there were different suits from which different appeals had to be filed. The High Court's decision in the two appeals arising from Suits Nos. 77 and 91 was undoubtedly earlier and therefore the condition that there should have been a decision in a former suit to give rise to res judicata in a subsequent suit was satisfied in the present case. The contention that there was no former suit in the present case must therefore fail.*

⁵ AIR 1946 SC 1332

14. This brings us to the main point that has been urged in these appeals, namely, that the High Court had not heard and finally decided the appeals arising out of Suits Nos. 77 and 91. One of the appeals was dismissed on the ground that it was filed beyond the period of limitation while the other appeal was dismissed on the ground that the appellant therein had not taken steps to print the records. It is therefore urged that the two appeals arising out of Suits Nos. 77 and 91 had not been heard and finally decided by the High Court, and so the condition that the former suit must have been heard and finally decided was not satisfied in the present case. Reliance in this connection is placed on the well-settled principle that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. Where, for example, the former suit was dismissed by the trial court for want of jurisdiction, or for default of plaintiff's appearance, or on the ground of non-joinder of parties or misjoinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional court fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision not being on the merits would not be *res judicata* in a subsequent suit. But none of these considerations apply in the present case, for the Additional Civil Judge decided all the four suits on the merits and decided the issue as to title on merits against the appellant and his father. It is true that the High Court dismissed the appeals arising out of Suits Nos. 77 and 91 either on the ground that it was barred by limitation or on the ground that steps had not been taken for printing the records. Even so the fact remains that the result of the dismissal of the two appeals arising from Suits Nos. 77 and 91 by the High Court on these grounds was that the decrees of the Additional Civil Judge who decided the issue as to title on merits stood confirmed by the order of the High Court. In such a case, even though the order of the High Court may itself not be on the merit the result of the High Court's decision is to confirm the decision on the issue of title which had been given on the merits by the Additional Civil Judge and thus in effect the High Court confirmed the decree of the trial court on the merits, whatever may be the reason for the dismissal of the appeals arising from Suits Nos. 77 and 91. In these circumstances though the order of the High Court itself may not be on the merits, the decision of the High Court dismissing the appeals arising out of Suits Nos. 77 and 91 was to uphold the decision on the merits as to issue of title and therefore it must be held that by dismissing the appeals arising out of Suits Nos. 77 and 91 the High Court heard and finally decided the matter for it confirmed the judgment of the trial court on the issue of title arising between the parties and the decision of the trial court being on the merits the High Court's decision confirming that decision must also be deemed to be on the merits. To hold otherwise would make *res judicata* impossible in cases where the trial court decides the matter on merits but the appeal court dismisses the appeal on some preliminary ground thus confirming the decision of the trial court on the merits. It is well settled that where a decree on the merits is appealed from, the decision of the trial court loses its character of finality and what was once *res judicata* again becomes *res sub-judice* and it is the decree of the appeal court which will then be *res judicata*. But if the contention of the appellant were to be accepted and it is held that if the appeal court dismisses the appeal on any preliminary ground, like limitation or default in printing, thus confirming to the trial court's decision given on merits, the appeal court's decree cannot be *res judicata*, the result would be that even though the decision of the trial court given on the merits is confirmed by the dismissal of the appeal on a preliminary ground there can never be *res judicata*. We cannot therefore accept the contention that even though the trial court may have decided the matter on the merits there can be no *res judicata* if the appeal court dismisses the appeal on a preliminary ground without going into the merits, even though the result of the dismissal of the appeal by the appeal court is confirmation of the decision of the trial court given on the merits. Acceptance of such a proposition will mean that all that the losing party has to do to

destroy the effect of a decision given by the trial court on the merits is to file an appeal and let that appeal be dismissed on some preliminary ground, with the result that the decision given on the merits also becomes useless as between the parties. We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.

XXXX

22. *A consideration of the cases cited on behalf of the appellant therefore shows that most of them are not exactly in point so far as the facts of the present case are concerned. Our conclusion on the question of res judicata raised in the present appeals is this. (Where the trial court has decided two suits having common issues on the merits and there are two appeals therefrom and one of them is dismissed on some preliminary ground, like limitation or default in printing, with the result that the trial court's decision stands confirmed, the decision of the appeal court will be res judicata and the appeal court must be deemed to have heard and finally decided the matter. In such a case the result of the decision of the appeal court is to confirm the decision of the trial court given on merits, and if that is so, the decision of the appeal court will be res judicata whatever may be the reason for the dismissal.* It would be a different matter, however, where the decision of the appeal court does not result in the confirmation of the decision of the trial court given on the merits, as for example, where the appeal court holds that the trial court had no jurisdiction and dismisses the appeal even though the trial court might have dismissed the suit on the merits.) In this view of the matter, the appeals must fail, for the trial court had in the present case decided all the four suits on the merits including the decision on the common issues as to title. The result of the dismissal on a preliminary ground of the two appeals arising out of Suits Nos. 77 and 91 was that the decision of the trial court was confirmed with respect to the common issues as to title by the High Court. In consequence the decision on those issues became res judicata so far as appeals Nos. 365 and 366 are concerned and Section 11 of the Code of Civil Procedure would bar the hearing of those common issues over again. It is not in dispute that if the decision on the common issues in Suits Nos. 77 and 91 has become *res judicata*, Appeals Nos. 365 and 366 must fail.” (Emphasis supplied)

60. At the cost of repetition, it is to be noted that consequent to withdrawal of A.S.No.355 of 2005 by appellants 1, 2 and 4 to 6, the decree in O.S.No.3 of 2000 has become final. Therefore, it operates as *res-judicata* to other appellants in A.S.No.355 of 2005 and to the appellants in A.S.No.101 of 2007.

61. Following the decision in Sheodan Singh (supra), a learned single Judge of this Court has taken similar view in **K.Krishnan vs. Tirumala**

—

Tirupati Devasthanam⁶ and a Division Bench in **Sri Chintala Satyanarayana vs. smt. Chintala Kistamma⁷**.

62. In **Sri Gangai Vinayagar Temple and another vs. Meenakshi Ammal and others⁸**, three suits were clubbed, common issues were framed, common trial was conducted and common evidence was involved and common judgment was rendered. An appeal was filed against only one of the decrees. Hon'ble Supreme Court held non-filing of appeals in the other two suits, the decision in other two suits attained finality and operates as *res judicata*.

63. Thus, the principle of *res judicata* applies and the issue No.1 is answered accordingly.

ISSUE NO.2:

64. Though we are convinced that principle of *res judicata* applies and the appeals are liable to be dismissed on that ground, we have also considered merits of the issue involved to test whether the decision of the trial Court holding that only suit schedule 'A' properties are available for partition is sustainable.

65. While it is asserted by DW.2 that the suit schedule 'B' to 'E' properties were purchased by maternal grandfather Sri Adavi Reddy in the names of plaintiff, defendant no.2 and mother (defendant no.6), the plaintiffs and

⁶ 1995 (2) ALT 122

⁷ 1996 (2) ALD 683 (DB)

⁸ (2015) 3 SCC 624

defendant no.1 denied the same. It has been the assertion of defendant no.1 that these properties are purchased by him and form part of joint family assets. The trial Court considered the crucial aspect in Issues 1, 2 and 4 of O.S.No.3 of 2000 and issue no.1 of O.S.No.22 of 2001.

66. It is not in dispute that the properties shown in suit schedule 'B' to 'E' stand in the name of 1st plaintiff, defendants 2 and 6. The only question is who has invested to buy these properties. Except asserting that these properties were purchased by him, the defendant no.1 has not explained source of funds for such acquisition. On shuffling through the evidence, the trial Court found that items in schedule 'A' are only houses at Hyderabad and they do not generate sufficient income to purchase schedules 'B' to 'E' properties.

67. The trial court noticed that though defendant no.1 claimed that he owned Ac.1.20 guntas in Uppal by the time of purchase of other land in Uppal, he has admitted that the land originally belong to his father-in-law, who bequeathed to his wife under a registered will deed. His claim that by this property he could invest in other properties is shuttered.

68. The trial Court found that though the maternal grandfather obtained agreements of sale in the name of his daughter and another person by name Kamamma, Exs.A10 to A12 properties were purchased and registered in the name of his daughter (defendant no.6), 1st plaintiff and defendant no.2.

69. The trial Court noticed the shifting of stand by defendant no.1. In O.S.No.93 of 1996 filed by defendant no.2 against defendant no.1, defendant no.1 took the stand that 'D' and 'E' schedule properties were purchased by him with his own funds and he is the real owner and the vendors were only benamidars. The same plea was reiterated in O.S.No.2266 of 1997, renumbered as O.S.No.22 of 2001. In O.S.No.3 of 2000, defendant no.1 changed his version and contended that these acquisitions are for joint family as Kartha of joint family.

70. Whether he claimed they are it is self-acquired or joint family properties, important aspect to be noted is the source of funds to buy these properties. The defendant no.1 miserably failed to prove that properties shown in Exs.B to E are acquired by him with his own funds or funds of joint family. *Per contra*, the evidence clearly point out that Adavi Reddy purchased the properties in the names of plaintiff no.1, defendant nos.2 and 6. It is not in dispute that Adavi Reddy was financially sound and defendant no.6 was his sole daughter.

71. It is the assertion of defendant no.2 that defendant no.1 had no other means. In the family partition between defendant no.1 and his brothers, he was given only 232.52 square yards of house and even that property came to him much later and, therefore, he had no means to purchase suit schedules 'B' to 'E' properties. This assertion is not controverted with any cogent evidence. It shows that with meager means, defendant no.1 could not have acquired such volume of properties shown in schedules 'B' to 'E'. it

thus leads to irresistible conclusion that the properties shown in suit schedules 'B' to 'E' do not form part of joint family assets and are not available for partition.

72. Having regard to volume of evidence on record, we do not see any error by the trial Court in the assessment of evidence and conclusions arrived at in issues 1, 2 and 4 of O.S.No.3 of 2000 and issue no.1 of O.S.No.22 of 2001. The issue is answered accordingly.

ISSUE NO.3:

73. This takes us to consider fair submission of learned senior counsel Sri V.Ravi Kiran Rao on entitlement of defendant no.5 for share in the joint family property.

74. Sri Gopal Reddy was blessed with three sons and four daughters. If a partition of joint family property takes place, all of the above are entitled to a share. Thus, the joint family properties have to be divided into eight shares. That being the legal requirement, the trial Court denied share to 5th defendant on the ground that she was married prior to amendment to Hindu Succession Act, 1956. This view of the trial Court is erroneous. The 5th defendant is a coparcener and is entitled to a share in the joint family property.

75. In **Vineet Sharma** (supra), Hon'ble High Court held as under:

"68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities

as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Sections 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).

69. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9.9.2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).

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85. The right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9.9.2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of status. Under Sections 6(1) and 6(2), the rights of a daughter are pari passu with a son. In the eventuality of a partition, apart from sons and daughters, the wife of the coparcener is also entitled to an equal share. The right of the wife of a coparcener to claim her right in property is in no way taken away."

76. Having regard to Hindu Succession Act, 1956 and law enunciated by Hon'ble Supreme Court in **Vineeta Sharma** (supra), finding of trial Court in paragraphs-24 and 25 requires modification.

77. It is held that 5th defendant in O.S.No.3 of 2000 is also entitled to a share in the joint family property. Thus, suit 'A' schedule properties are to be partitioned into 8 shares and allotment of 1/8th share to each of

plaintiffs 1 to 3 and defendants 1 to 5. The Appeals are partly decreed to the above extent. Except to the above, the decision and the decree of the trial Court in O.S.No.3 of 2000 and O.S.No.22 of 2001 is upheld. In the circumstances no order as to costs. Pending miscellaneous applications if any shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The I Additional District Judge, Ranga Reddy District L.B. Nagar, Hyderabad (with records)
2. One CC to SRI. T. P. ACHARYA, Advocate [OPUC]
3. One CC to SRI. P. KAMLAKAR Advocate [OPUC]
4. One CC to SRI. Ch. JANARDHAN REDDY Advocate [OPUC]
5. One CC to SRI. V. RAVI KIRAN RAO Advocate [OPUC]
6. One CC to SRI. V. ROHITH Advocate [OPUC]
7. One CC to SRI. VENKATESWARA RAO GUDAPATI Advocate [OPUC]
8. One CC to Sri G. Ram Gopal , Advocate (OPUC)
9. One CC to Sri M.R.S. Srinivas, Advocate (OPUC)
10. Two CD Copies

A

HIGH COURT

DATED:27/06/2023

COMMON JUDGMENT

**AS.No.355 of 2005
AND 101 OF 2007**



**PARTLY ALLOWING
THE BOTH APPEALS**

⑫
MA
21/7/23

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

AND

THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

APPEAL SUIT NO: 355 OF 2005 AND 101 OF 2007

A.S. NO. 355 OF 2005

Between:

1. L. Roopa Rani W/o. L. Panduranga Reddy , Hindy aged 36 years Occ: Household , 6417 Grassmere Lane, Carpenters Ville IL 60110 YSA , rep. by her G.P.A. Holder Sri L. Vasudeva Reddy S/o. L. Boom Reddy Flat No. 101 , Happy Homes, Domalguda, Hyderabad – 500 029.
2. N. Arthika Reddy W/o. Pradeep Reddy , Hindu aged 29 years, Occ: Household, presently residing at Canada , rep. by her G.P.A. Holder Sri N. Praveen Reddy S/o. N. Papi Reddy , Hindu, aged 32 years, R/o. H.No. 16-2-833/74/B/B, (APHB) (APHB) , New Saidabad Colony, Hyderabad ...
Appellants / Defendant No. 4/ Plaintiff No. 3

And

1. M. Jaswant Reddy S/o. M. Gopal Reddy, aged 48 years, Occ: Business, Habsiguda, Hyderabad – 500 017
2. Smt. M. Mallamma W/o. Gopal Reddy, aged 63 years, Occ: Household, R/o. 6-3-609/24/2 , Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
3. M. Gopal Reddy S/o. Malla Reddy , Hindu, aged 66 years, Occ: Business R/o. 6-3-609/24/2, Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
4. M. Praveen Reddy, S/o. M. Gopal Reddy aged 33 years, Occ: Business, R/o. 6-3-609/24/2, Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
5. N. Vijaya W/o. Ramana Reddy , aged 50 years, Occ: Household , R/o. 2-3-703/3/A/1, Tirumalanagar, Amberpet, Hyderabad. .. Respondents/ Defendants 1, 2, 3, 5 & 6
6. M. Rajender Reddy S/o. Gopal Reddy, aged 40 years, Occ: Business, R/o. FlatNos. 501 and 502, Almelu Residency, H.No. 6-3-609/122, Anandnagar Colony, Khairatabad, Hyderabad – 500 004.
7. S. Lavanya W/o. Narsimha Reddy , aged 42 years, Occ: Housewife , Flat No. 9 , H.I.G. – II, Block No. 17, Bagh Lingampally, Hyderabad – 500 004.
..Respondents/ Plaintiffs
1 & 2

Note : Respondents 3 to 7 herein have been arrayed as respondents as per orders of Hon'ble Court passed in A.S.M.P.No. 199 of 2008 on 13-03-2008.

Appeal Under Section 96 of C.P.C. against the Judgment and decree dated 17-12-2004 in O.S.No. 3 of 2000 on the file of the Court of the I Additional District Judge, Ranga Reddy District.

The appeal coming on for hearing, upon perusing the Memorandum of grounds filed in the Appeal, the Judgment and Decree of the Lower Court and the record in the case and upon hearing the arguments of Sri M.V. Suresh Kumar, for SRI T. P. ACHARYA for appellant and Sri V. RAVI KIRAN RAO FOR SRI V. ROHITH Respondent No. 1 and SRI G. RAM GOPAL , Counsel for the Respondent No.2 and Sri P. KAMALAKAR , Advocate for Respondent No.3 and Sri Ch. JANAARDHAN REDDY , Advocate for Respondent No. 4 and Sri M.R.S. Srinivas, Advocate for Respondent No. 5

FIRST APPEAL NO: 101 OF 2007

Between:

1. M. Gopal Reddy, S/o. Late Malla Reddy, Agriculture R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
2. M. Rajender Reddy, S/o. M. Gopala Reddy, R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
3. M. Praveen Reddy, S/o. M. Gopala Reddy, R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
4. Arthika, D/o. M. Gopala Reddy, student R/o.6-3-609/24/2, Anandanagar Colony, Khairtabad, Hyderabad.
5. N. Vijaya, W/o. Ramana Reddy, Household R/o.2-3-703/3/A/1, Tirumalanagar, Amberpet, Hyderabad.

...APPELLANTS/ Defendants

AND

1. M.Jaswant Reddy, S/o. M. Gopal Reddy, Business R/o.10-67, Uppal, Village & Mandal, Ranga Reddy District.
2. M/s. Chakilam Associates Architects, and Developers, rep., by Sri G. Sudhakar, R/o.6-3-883, III Floor, Punjagutta, Hyderabad.

...RESPONDENTS

Appeal Under Section 96 of C.P.C. against the Judgment and decree dated 17-12-2004 in O.S.No. 22 of 2001 on the file of the Court of the I Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

The appeal coming on for hearing, upon perusing the Memorandum of grounds filed in the Appeal, the Judgment and Decree of the Lower Court and the record in the case and upon hearing the arguments of Sri P. Kamalakar,

Advocate for the Appellant No.1 and Sri M.R.S. Srinivas, Advocate for Appellant No.2 and Sri CH. Janardhan Reddy, Advocate for Appellant No.3 and Sri M.V. Suresh Kumar rep. for Sri T.P. Acharya, and Sri V. Ravi Kiran Rao for Sri V. Rohit, Advocate for Respondent No. 1

This Court doth order and Decree as follows:

1. That the both Appeals be and hereby are partly allowed.
2. That 5th defendant in O.S.No. 3 of 2000 is also entitled to a share in the joint family property.
3. Thus, Suit "A" schedule properties are to be partitioned into 8 shares and allotment of 1/8th share to each of plaintiffs 1 to 3 and defendants 1 to 5.
4. That the Appeals are partly decreed to the above extent. Except the above, the decision and the decree of the trial Court in O.S.No. 3 of 2000 and O.S.No. 22 of 2001 be and hereby is upheld.
5. That save as aforesaid, the decree of the lower court shall stand confirmed in all other respects; and
6. That there be no order as to costs in these appeals.

3

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR



//TRUE COPY//

SECTION OFFICER

To

1. The 1st Additional District Judge, Ranga Reddy Dist. At L.B.Nagar , Hyderabad.

2. Two C.D.Copies



HIGH COURT

DATED:27/06/2023

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COMMON DECREE

**AS.No.355 of 2005
AND 101 OF 2007**

PARTLY ALLOWING THE BOTH APPEALS

④
MA
29/7/23