



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

[3397]

WEDNESDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

APPEAL SUIT NO: 4145/2003

Between:

D. Vijaya Bhaskara Reddy

...APPELLANT

AND

Smt D Hanumanthamma and Others

...RESPONDENT(S)

Counsel for the Appellant:

1. K L N SWAMY

Counsel for the Respondent(S):

1. VIVEKANANDA VIRUPAKSHA

2. H PRAHALADA REDDY

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

I.A.Nos.1 and 2 of 2024

In/And

APPEAL SUIT No.4145 of 2003

JUDGMENT:

This Appeal, under Section 96 of the Code of Civil Procedure [for short '**the C.P.C.**'], is filed by the Appellant/plaintiff challenging the Decree and Judgment, dated 06.08.2003, in O.S.No.55 of 1996 passed by the learned Senior Civil Judge, Adoni, [for short '**the trial Court**']. The Respondents herein are the defendants in the said Suit.

2. The appellant herein is the plaintiff and the respondents herein are the defendants in O.S.No.55 of 1996 passed by the learned Senior Civil Judge, Adoni.

3. Originally, the appellant/plaintiff herein filed the suit in O.S.No.55 of 1996 against defendant Nos.1 to 3, seeking for partition of the plaint schedule properties into two halves and to allot one such share to the plaintiff.

4. Both parties in the Appeal will be referred to as they are arrayed before the trial Court.

5. The case of the appellant/plaintiff as per the plaint averments in O.S.No.55 of 1996, in brief, is as follows:

The plaintiff is the son of D. Hanuma Reddy, the defendant No.1 is his stepmother, and the defendant Nos.2 and 3 are his step sisters. The plaintiff

pleaded that he, his mother, and defendant Nos.1 to 3 are living jointly and Hanuma Reddy is managing the joint family properties. While so, on 17.01.1993, the said Hanuma Reddy died and after his death, differences had arisen between the parties and the plaintiff demanded his separate share, for which the defendants had agreed in the presence of the elders, but they are postponing doing the same. The plaintiff further pleaded that on 12.01.1996, the plaintiff issued a legal notice to the defendant No.2 for which the defendant No.2 had given a false reply and did not come forward for partition of the schedule property, as such the plaintiff is constrained to file the present suit.

6. The case of the defendant No.1 as per the written statement filed by the defendant No.1, which was adopted by the defendant Nos.2 and 3 is as follows:

The defendant No.1 pleaded that the plaintiff has to prove that Jayasree is the legally wedded wife and the plaintiff is the son of late Hanuma Reddy. The defendant No.1 pleaded that the plaintiff and Jayasree are strangers to the family of Hanuma Reddy, the said Hanuma Reddy is the husband of the defendant No.1, and the defendant Nos.2 and 3 are the daughters of the defendant No.1 and Hanuma Reddy. The defendant No.1 further pleaded that she and her daughters, i.e., the defendant Nos.2 and 3, are the only legal representatives of late Hanuma Reddy and due to the differences, Hanuma Reddy and the defendants have effected partition in respect of the properties fallen to the share of Hanuma Reddy under the registered partition deed dated

19.02.1971. The defendant No.1 further pleaded that since the date of partition, the defendants are in exclusive possession and enjoyment of the property and they have sold some lands to third parties and surrendered Ac.17.64 cents of land under the Land Ceiling Act. The defendant No.1 further pleaded that the defendant Nos.2 and 3 have taken one share each by oral partition and the pattadar passbooks were also issued in favour of the defendant Nos.2 and 3 and they are paying the land revenue and they have perfected their title by adverse possession. Therefore, the defendants prayed to dismiss the suit with costs.

7. Based on the above pleadings, the trial Court framed the following issues:

- 1) *Whether the plaintiff is the son of late Hanuma Reddy by Smt. Jayasree Reddy?*
- 2) *Whether the prior partition pleaded by defendants is true and was acted upon?*
- 3) *Whether the defendants have perfected their right over the plaint schedule properties by adverse possession?*
- 4) *Whether the plaintiff is entitled for any share in the plaint schedule properties and to seek the partition of the plaint schedule properties?*
- 5) *To what relief?*

8. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Ex.A-1 to Ex.A-16 were marked. On behalf of the defendants, D.Ws.1 and 2 were examined and Ex.B-1 to Ex.B-4 were marked. Ex.X-1 and Ex.X-2 were also marked.

9. After completion of the trial and on hearing the arguments of both sides, the trial Court dismissed the suit with costs *vide* its judgment, dated 06.08.2003, against which the present appeal is preferred by the appellant/plaintiff in the suit, questioning the decree and judgment passed by the trial Court.

10. The application in I.A.No.1 of 2024 is filed by the petitioner/appellant with a prayer to receive certain documents as additional evidence and the application I.A.No.2 of 2024 is filed by the petitioner/appellant to direct the respondents to come forward for DNA test in A.S.No.4145 of 2003.

11. Heard Sri K.L.N.Swamy, learned counsel for the appellant/plaintiff and Sri Vivekananda Virupaksha, learned Counsel for the respondents/defendants.

12. Now, in deciding the present appeal, the points that arise for determination are as follows:

- 1) Whether the appellant/plaintiff proved that he is the son of late D.Hanuma Reddy?**

2) Whether the plaintiff is entitled for any share in the plaint schedule properties? To what extent?

3) Whether the trial Court is justified in dismissing the suit filed by the appellant/plaintiff?

13. **Point Nos.1 and 2:**

Whether the appellant/plaintiff proved that he is the son of late D.Hanuma Reddy?

Whether the plaintiff is entitled for any share in the plaint schedule properties? To what extent?

The plaintiff pleaded in the plaint itself that he is the son of D. Hanuma Reddy, born through his 2nd wife Jayasree Reddy, who is none other than the mother of the plaintiff. The defendants pleaded that the plaintiff and Jayasree Reddy are strangers to the family of D. Hanuma Reddy and the plaintiff and Jayasree Reddy have no relationship with D. Hanuma Reddy. The paternity of the plaintiff is seriously disputed by the defendants. Therefore, it is for the plaintiff to prove that he is the son of late D. Hanuma Reddy.

14. Admittedly, the plaintiff did not state the alleged factum of marriage of his mother with Hanuma Reddy in the plaint. Though the mother of the plaintiff/P.W.2 is alive, she did not depose about the date and month of the marriage and the persons who attended the marriage. There is no whisper in the plaint that the alleged marriage of Hanuma Reddy with the mother of the plaintiff was performed, at which place and also the date and month of the

alleged marriage. The defendant No.1 is the legally wedded wife of Hanuma Reddy and she is alive during the pendency of the suit. It is not the case of the appellant that Hanuma Reddy obtained divorce from the defendant No.1 and subsequently, he married his mother. The mother of the plaintiff is examined as P.W.2, she simply stated in her evidence that during the year 1968 at Tirumala Hills she married Hanuma Reddy. Except the self-serving statement of P.W.2, there is no other evidence to show about the factum of marriage of P.W.2 with Hanuma Reddy. As stated supra, Hanuma Reddy did not obtain any divorce from the defendant No.1. Moreover, the plaintiff stated in his evidence itself that the marriage of P.W.2 with Hanuma Reddy was performed in the year 1965, which is quite contra to the statement given by P.W.2. The defendant No.1 is the legally wedded wife of Hanuma Reddy and the same is undisputed by the appellant, there is no whisper in the evidence of P.W.2 about the date and month of the alleged marriage of P.W.2 with Hanuma Reddy and also about the names of the persons who attended the alleged marriage of P.W.2 with Hanuma Reddy. Though P.W.2 admitted in her evidence in cross examination that her brother attended the marriage, she further reiterated that her brother is no more. According to P.W.2, her mother gave a sworn statement before the Magistrate at Hyderabad that P.W.2 married Hanuma Reddy and gave birth to a male child. But, for the reasons best known to P.W.2, her mother is not examined as a witness before the trial Court. Though P.W.2 is alive during the pendency of the suit, she failed to examine her mother, family members, or neighbors of P.W.2 to prove the

alleged factum of marriage with Hanuma Reddy and that they lived together as husband and wife.

15. As stated supra, the burden heavily lies on the appellant/plaintiff to prove that he is born to Hanuma Reddy and the paternity of the plaintiff with Hanuma Reddy itself is strongly disputed by the defendants. It is an admitted fact by the appellant that the defendant No.1 is the legally wedded wife of Hanuma Reddy and the defendant Nos.2 and 3 are none other than the daughters of the defendant No.1 and Hanuma Reddy. The plaintiff relied on his self-testimony as P.W.1 and also relied on the evidence of his mother as P.W.2. P.W.1 admits in his evidence in cross-examination that his mother married his father at Tirupati in the year 1965, whereas P.W.2, who is none other than the mother of the plaintiff, stated that her marriage with Hanuma Reddy was performed in the year 1968. Furthermore, she admitted that she applied for long leave for five (05) years after her marriage with Hanuma Reddy and she resided at Joharapuram. Whereas, P.W.1 admits that they have resided at Joharapuram for two (02) years and in order to prove the marriage of P.W.2, he has not filed any document such as marriage invitations, photos, etc., to show that his mother married Hanuma Reddy. But, for the reasons best known to either P.W.1 or P.W.2, they did not produce any evidence to prove the factum of marriage of Hanuma Reddy with P.W.2.

16. The plaintiff relied on Ex.A-1 to Ex.A-16. Ex.A-1 and Ex.A-2 are exchange of notices by both the parties, Ex.A-3 and Ex.A-4 are encumbrance certificates, and Ex.A-5 is the voters list. The law is well settled that "*voters list is prepared on the statement and particulars furnished by such person. It is in the nature of self-serving, it is not safe to place much reliance upon it*". As stated supra, the defendants are seriously disputing the paternity of the appellant, therefore, what prevented the appellant to produce oral evidence to prove that he is the son of late Hanuma Reddy, and that his mother and the said Hanuma Reddy married and lived as wife and husband. Ex.A-5 is the voters list of Alur constituency in the year 1993. As per Ex.X-1, Hanuma Reddy is residing at Adoni, and undergoing treatment since ten (10) years. Ex.X-1 is addressed to the Regional Director of Medical & Health by P.W.2, but both Adoni and Alur Assembly constituencies are different. The evidentiary value of the voters list of 1993 of another constituency is also of inconsequential nature. Moreover, the entries in the voters list do not create any relationship nor do they destroy the existing one, and it is only a piece of corroborative evidence, but the same may be rebutted by the other evidence, which may be direct or circumstantial. But, in the case at hand, the same is missing.

17. The appellant relied on Ex.A-6 and Ex.A-7 affidavits of Annamma and Hanuma Reddy. I have perused Ex.A-6 and Ex.A-7. Ex.A-6 is an alleged affidavit said to have been given by M. Annamma on 14.04.1971, before the Magistrate at Hyderabad. One M.D. Rajasekhar signed as witness in the said

affidavit and the residential address of Annamma is shown as 1-7-173, Bakaram, Musheerabad. Ex.A-7 is another alleged affidavit said to have been given by late Hanuma Reddy on 14.07.1971 and Annamma signed as a witness in the said affidavit and the residential address of Hanuma Reddy is shown as 5-1-289, Gowliguda, Hyderabad. It is not at all the case of the appellant or P.W.2 that Hanuma Reddy or the grandmother of the plaintiff stayed at Hyderabad and moreover, those two alleged affidavits are dated 14.04.1971, which are much prior to the filing of the suit, but those are not filed along with the plaint and only the exchange of notices alone are filed along with the plaint. Neither Ex.A-5, Ex.A-6, nor Ex.A-7 are yet filed along with the plaint. Moreover, the parties are residing at Kurnool District, therefore, the appellant has to explain why and how they have given the alleged affidavits at Hyderabad, and moreover, Ex.A-6 and Ex.A-7 are self-serving affidavits. As per Ex.B-1 partition deed dated 19.02.1971, there were existing disputes in the family of Hanuma Reddy with the defendants and these two (02) alleged affidavits are said to have been given on 14.04.1971, i.e., subsequent to the disputes aroused in the family of the late Hanuma Reddy. Therefore, the same are of little relevance, moreover, the same are self-serving statements of Hanuma Reddy and Annamma. Hanuma Reddy was no more and he died much prior to the filing of the suit. There is nothing in the evidence of P.W.2, whether her mother Annamma was alive or not. Moreover, Rajasekhar, who signed as witness in Ex.A-6, was not at all examined by the plaintiff.

18. The appellant also relied on Ex.A-8 Gazette Notification issued by the Government. As per the case of P.W.2, she is working as a staff nurse in the Government General Hospital at Kurnool in the year 1961. Moreover, Ex.A-8 shows Devanamma changed her name as Jayasree Reddy, therefore, Ex.A-8 is nowhere helpful to prove the paternity of the appellant.

19. The appellant relied on Ex.A-9 SSC certificate. As seen from Ex.A-9, the name, date of birth, and father's name of the candidate in the said certificate have been corrected with pen and made initials. The official who made the initials has not fixed his seal at the corrections in the said alleged Ex.A-9. The reason for such alterations and corrections on Ex.A-9 with regard to the name of the candidate, father's name of the candidate, and date of birth of the candidate is unexplained by the appellant. At least, the appellant has to summon the officials of the Board of Secondary Education to prove who made the initials on the Ex.A-9 SSC certificate, because the name of D. Vijayasekhar Reddy was corrected as Vijaya Bhaskar Reddy with pen and the name of Bala Naga Reddy is also corrected as Hanuma Reddy with pen, and the date of birth in words and figures in Ex.A-9 is also corrected as 12.06.1969 from 20.06.1969. Therefore, without examining the officials of the SSC Board, Ex.A-9 cannot be considered as a certificate of the appellant.

20. The appellant relied on Ex.A-10. Ex.A-10 is the alleged letter dated 02.03.1996, addressed by the Superintendent, Government General Hospital, Kurnool, to the Municipal Corporation, Kurnool, based on the representation given by P.W.2. In the said Ex.A-10 letter, it was stated that Devanamma, C/o.

Hanuma Reddy, Staff Nurse, G.G.H., Kurnool, the date of admission in the hospital for delivery is 06.06.1969 and she delivered on 12.06.1969 at 4.45 a.m. It does not contain whether the said child is a male child or a female child. The mentioning of the name of Devanamma, C/o. Hanuma Reddy, but not W/o. Hanuma Reddy, also creates a doubt about the case of the appellant. As could be seen from Ex.A-10, it is the letter said to have been addressed in the year 1996, Ex.A-10 is not a public document under Section 76 of the Indian Evidence Act. Moreover, a birth certificate is a public document and it must necessarily be proved as per the procedure prescribed under Section 76 of the Indian Evidence Act, but the same is missing in the present case.

21. Ex.A-11 to Ex.A-15 are the registered sale deeds and those are in no way connected to prove the paternity of the appellant. Ex.A-16 is unconnected to prove the paternity of the appellant. Ex.X-1 and Ex.X-2 are the letters alleged to have been addressed by P.W.2 and Hanuma Reddy respectively and those are undated, without acknowledgments of being sent or the postal receipts issued by the Postal Authorities, therefore, those Ex.X-1 and Ex.X-2 cannot be considered. In the absence of those documents, the alleged letters have no evidentiary value.

22. Admittedly, no evidence is produced by the appellant to show that his mother married Hanuma Reddy as the 2nd wife. The marriage of Hanuma Reddy with the defendant No.1 is subsisting, and the defendant No.1 is alive during the pendency of the suit. Moreover, no positive evidence is produced

by the appellant to show that the appellant was born to P.W.2 through Hanuma Reddy. The burden is on the plaintiff to prove that his mother married Hanuma Reddy and he born to P.W.2 through Hanuma Reddy.

23. The respondents relied on Ex.B-1 to Ex.B-4. Ex.B-1 is the registration extract of the partition deed dated 19.02.1971. The plaintiff/P.W.1 admits in his evidence in cross-examination itself that during the lifetime of Hanuma Reddy, he, his brothers, and his father had a partition for joint family properties and subsequently, Hanuma Reddy and the defendant Nos.1 to 3 also partitioned their joint family properties during the year 1971 under a registered partition deed dated 19.02.1971, and Hanuma Reddy expired during the year 1993. The plaintiff pleaded about the properties standing in the name of Hanuma Reddy as on the date of the death of Hanuma Reddy. Therefore, it is evident that the plaintiff is aware of the registered partition held between Hanuma Reddy and the defendants.

24. As per the case of the appellant, he was born on 12.06.1969 and the registered partition between the plaintiff and the defendant Nos.1 to 3 has taken place on 19.02.1971, i.e., two (02) years after the birth of the appellant, and by the date of the registered partition deed, the defendant Nos.2 and 3 were minors. The defendants relied on Ex.B-3 and Ex.B-4, the said proceedings reveal that Hanuma Reddy gave his evidence before the Land Reforms Tribunal, Adoni, in the year 1975, that he had no sons and had only two (02) daughters. The said Hanuma Reddy during his lifetime gave evidence before the Land Reforms Tribunal at Adoni, that lands were

partitioned among himself, his wife, and his two minor daughters, i.e., defendant Nos.1 to 3, and he had no sons. As stated supra, the said land acquisition proceedings relates to the year 1975, much subsequent to the alleged 2nd marriage of Hanuma Reddy with P.W.2 and after the birth of the plaintiff. Had there been any truth in the case of the appellant, the said Hanuma Reddy certainly would have disclosed the alleged factum of marriage with P.W.2 and also the birth of P.W.1. Therefore, the Court has to give much weight to the evidence given by Hanuma Reddy in the year 1975 in land acquisition proceedings before the Land Reforms Tribunal.

25. As seen from the plaint averments, the plaintiff pleaded in the plaint that he is the son of D.Hanuma Reddy, born through his 2nd wife Smt. Jayasree Reddy, who is the mother of the plaintiff. He further pleaded that he, his mother, and the defendant Nos.1 to 3 were living jointly, and Hanuma Reddy was managing the joint family properties. Absolutely, no evidence is produced by the plaintiff to prove that he, his mother, and the defendant Nos.1 to 3 lived jointly. In the plaint itself, it was recited that the plaintiff is residing at Adoni, whereas the defendant Nos.1 to 3 are residing at Joharapuram Village; both places are situated in different Mandals. The appellant failed to prove that he is the legal representative of Hanuma Reddy along with the defendant Nos.1 to 3. The appellant pleaded in the plaint that subsequently, after the death of Hanuma Reddy, differences arose between the plaintiff and the defendants, but the appellant failed to prove the alleged differences that occurred

subsequent to the death of Hanuma Reddy between the plaintiff and the defendants.

26. Another important circumstance to disbelieve the case of the appellant is that the plaintiff admits that there is a registered partition between Hanuma Reddy and the defendant Nos.1 to 3 under a registered partition deed dated 19.02.1971, and some alienations were affected by Hanuma Reddy, and the purchasers are in the possession of some of the plaint schedule property, and the same is admitted by the plaintiff in his evidence in cross-examination itself. But for the reasons best known to the appellant, the purchasers are not added as parties to the suit for partition. There is no whisper in the plaint itself that some of the properties are in the possession of 3rd parties/alienees, in view of the alienations made by Hanuma Reddy. The alienations and possession of 3rd parties in respect of some of the plaint schedule property prior to the suit are not pleaded by the plaintiff in the plaint, and the alienees are also not joined as parties in the suit. The aforesaid events clearly reveal that the plaintiff suppressed the truth and approached the Court with false theories for seeking relief of partition of the plaint schedule property. ***“The principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One, who comes to the Court, must come with clean hands.”*** As stated supra, in the case at hand, the plaintiff approached the Court with unclean hands for seeking the relief of partition of the plaint schedule property.

27. In the case at hand, as per the own admission of the appellant/plaintiff, some of the plaint schedule properties are in the possession of the 3rd parties under the registered sale deeds Ex.A-11 to Ex.A-15, which are dated 12.04.1984, 02.07.1985, 05.07.1982, 12.04.1984, 02.07.1985 respectively; these are much prior to the institution of the suit. As stated supra, the present suit for partition is filed by the plaintiff in the year 1996. Therefore, the suit itself is defective for non-joinder of necessary parties.

28. In a case of ***Vemuganti Venkata Kalyani Vs. Nyayapathi Padmavathamma and Others***¹, the Composite High Court of Andhra Pradesh, at Hyderabad, held as follows:

“19. Though no issue was framed by the trial Court, as to the non-joinder of necessary parties, it is, however, evident from the facts of the case that much before the suit came to be filed, half of the suit schedule property was sold, under Ex.B-11, and deed of settlement executed on the next day, through Ex.B-12. Substantial rights had accrued to the parties to the said document. Whatever may have been the justification for the plaintiff, in not impleading the purchaser under Ex.B-11, and beneficiary under Ex.B-12, when she filed the suit, she ought to have taken necessary steps, at least, when she came to know about the same, through the written statement filed by the first defendant. Grant of any relief in favour of the plaintiff, would certainly have its impact on the said persons, and they are necessary parties to the suit. Therefore, the suit is defective, for non-joinder of necessary parties also.”

In the present case, the plaintiff has knowledge about the alienations in respect of some of the plaint schedule properties, and he himself filed the registration extracts of sale deeds and got exhibited as Ex.A-11 to Ex.A-15, which are dated 12.04.1984, 02.07.1985, 05.07.1982, 12.04.1984, 02.07.1985 respectively. The suit was instituted in the year 1996, but the plaintiff failed to

¹ 2005 (6) ALD 204

implead the alienees as parties to the suit, which is against law. Any relief granted in favour of the plaintiff in the absence of alienees would certainly have its own impact on the alienees/3rd parties.

29. In a case of ***Rangammal Vs. Kuppuswami and Ors.***², the Apex Court held as follows:

“31. It hardly needs to be highlighted that in a suit for partition, it is expected of the plaintiff to include only those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned and if someone else's property meaning thereby disputed property is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial court, obviously it is the plaintiff who will have to first of all discharge the burden of proof for establishing that the disputed property belongs to the joint family which should be partitioned excluding someone who claims that some portion of the joint family property did not belong to the plaintiff's joint family in regard to which decree for partition is sought.”

30. There is no pleading in the plaint about the alienations made by Hanuma Reddy, but alienations made by Hanuma Reddy under registered sale deeds Ex.A-11 to Ex.A-15 in respect of some of the plaint schedule properties are in the possession of 3rd parties. The plaintiff approached the Court with a specific plea that he is a coparcener and he is a member of the joint family of Hanuma Reddy, he, himself, and the defendants are in the joint possession of the plaint schedule property. But the same is not proved by the appellant. There is no cogent evidence to prove the alleged jointness in between the plaintiff and the defendant Nos.1 to 3, but the plaintiff approached the Court with the specific plea that he is in joint possession with the

² Manu/SC/0620/2011

defendants and filed a suit for partition and paid fixed Court fees of Rs.100/- under Section 34 (2) of the A.P. Court-fees and Suits Valuation Act. In the plaint also, it is pleaded that the plaintiff, his mother Jayasree, and the defendant Nos.1 to 3 are living jointly and Hanuma Reddy was managing the joint family. As stated supra, the plaintiff is residing at a different place, and the defendant Nos.1 to 3 are residing at different place.

31. To prove the case of the appellant, the appellant/plaintiff relied on Ex.A-5 voter list and the affidavits of M.Annamma and Hanuma Reddy viz., Ex.A-6, Ex.A-7, and Ex.A-9 SSC certificate, Ex.A-10 letter pertaining to the birth of the plaintiff; these are not filed along with the plaint. As stated supra, Ex.A-5 to Ex.A-7, Ex.A-9 and Ex.A-10 are self-serving statements, and Ex.A-9 contains several corrections with pen, viz., the name of the candidate, the father of the candidate, and the date of birth of the candidate are corrected with pen. To prove the said corrections and who made them, the appellant failed to summon the original registers to know the correct facts about the name of the candidate, the father of the candidate, and the date of birth of the candidate, but the same was not done by the appellant. Moreover, the defendants relied on Ex.B-1 to Ex.B-4, and it is evident that there was a registered partition deed between Hanuma Reddy and the defendants, after the birth of the appellant, and six (06) years after the birth of the appellant, Hanuma Reddy gave evidence before the Land Reforms Tribunal that the defendant No.1 is his wife, and the defendant Nos.2 and 3 are his minor daughters; except them, he is not having any sons. Therefore, the said

evidence cannot be ignored. Moreover, as stated supra, the paternity of the plaintiff is seriously disputed by the defendants in the written statement itself, but for reasons best known to the appellant, he failed to produce any cogent evidence before the Court to prove the alleged marriage of P.W.2 with Hanuma Reddy, and he also failed to prove that he is the son of Hanuma Reddy.

32. For the aforesaid reasons, the appellant failed to prove the alleged marriage of his mother with Hanuma Reddy, and he also failed to prove that he is the son of Hanuma Reddy; the paternity of the appellant is not proved by the plaintiff. Therefore, the plaintiff is not entitled to any share in the plaint schedule property.

Accordingly, the point Nos.1 and 2 are answered against the appellant.

I.A.No.01 of 2024:

33. The application under I.A.No.01 of 2024 is filed by the petitioner/appellant under Order XLI Rule 27 and under Section 151 of the Code of Civil Procedure, with a prayer to permit the petitioner/appellant to receive additional evidence as prayed in the affidavit of the petitioner. The case of the petitioner is that Hanuma Reddy originally married respondent No.1 Smt. Late T.Hanumanthamma, and the respondent Nos.2 and 3 are their daughters, again, the father of the petitioner married the petitioner's mother, and out of their wedlock, the petitioner was born on 12.06.1969. The petitioner pleaded that his mother worked at Osmania General Hospital, Hyderabad,

and the petitioner studied up to Intermediate, and his father's name is recorded in the entire school records, including his Secondary School Certificate, as Devanabanda Hanuma Reddy.

34. The petitioner further pleaded that after searching the old files, he found his original Transfer Certificate issued by his school authority in the year 2005, and also he found the Gazette Publication dated 13.11.1969, wherein the name of the petitioner's mother was changed to Jayasree Reddy, and in the original service record of the petitioner's mother, the particulars of change of name of his mother were duly entered. The petitioner further pleaded that these documents are essential to prove the petitioner's parentage, but due to lack of knowledge and guidance, he could not secure the relevant documents at the proper time, and as such, the petitioner requested that an opportunity may be given to him to receive the documents as additional evidence.

35. The respondent Nos.2 and 3 filed a counter by denying the material allegations leveled in the petition and further contended that the delay in filing the interlocutory application is not properly explained by the petitioner, and there are no merits in the interlocutory application vide I.A.No.01 of 2024 filed by the petitioner/appellant, and the same may be dismissed.

36. Order XLI Rule 27 of Civil Procedure Code reads as under:

27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.

The general principle is that the appellate Court should not travel outside the record of the trial Court and cannot take any evidence in appeal. However, as an exception under Order XLI Rule 27 of Civil Procedure Code, enable the appellate Court to take evidence in exceptional circumstances only. The proviso under Order XLI Rule 27 C.P.C. permits the party to produce additional evidence before the appellate Court provided it has to be come under the ambit of Order XLI Rule 27 of Civil Procedure Code.

37. The suit for partition was filed by the petitioner/appellant in the year 1996, and after completion of trial and on hearing both sides, the trial Court dismissed the suit filed by the appellant on 06.08.2003, against which an appeal was filed in the year 2003. The petitioner filed the present application in the year 2024, i.e., after a lapse of 21 years. The document proposed to be received as additional evidence is Andhra Pradesh Gazette Notification No.46,

dated 13.11.1969; it relates to the change of name of P.W.2, Devanamma, to Jayasree Reddy. There is no mention in the said Gazette Notification that the said Devanamma is the wife of Hanuma Reddy, and the said document is marked as Ex.A-8 before the trial Court. Therefore, there is no need to mark the same document before the Appellate Court again to be received as additional evidence.

38. Another document, i.e., sought to be received as additional evidence, is the copy of the Service Register containing relevant entries from the service book of some of the pages pertaining to the petitioner's mother. The total certified copy of the service register of P.W.2 is not filed. Here, the relationship between the son and the mother, i.e., P.W.1 and P.W.2, is not in dispute, and the marriage of the mother of the plaintiff with Hanuma Reddy is seriously disputed by the defendants. To prove the marriage of the mother of the plaintiff, the mother of the plaintiff/P.W.2 has to furnish the details of her marriage, i.e., when her marriage was celebrated, date, month, and year of the alleged marriage of P.W.2 with Hanuma Reddy. But there is no mention in the plaint itself about the aforesaid details, viz., when the marriage of the mother of the plaintiff was solemnized with Hanuma Reddy. Though the mother of the plaintiff is examined as P.W.2, she also did not depose about the date and month of her marriage with Hanuma Reddy. P.W.2 did not depose about the solemnization of the marriage and also the persons who attended the marriage in her evidence-in-chief. There is no explanation from the plaintiff as to why the original service register was not summoned during

the course of trial, and why the employer of P.W.2 was not summoned to prove the entries in the service register. Moreover, on the self-declaration given by P.W.2, the name of the husband of P.W.2 could have been mentioned in the service register of P.W.2, therefore, it is not an authenticated document to prove the marriage of P.W.2 with Hanuma Reddy. Moreover, the plaintiff recitals themselves go to show that the defendant No.1 is the legally wedded wife of Hanuma Reddy, and the defendant Nos.2 and 3 are none other than the daughters of Hanuma Reddy and the defendant No.1. The defendant No.1 is alive during the pendency of the suit. In the plaintiff itself, it was recited that while the marriage of Hanuma Reddy with defendant No.1 is subsisting, Hanuma Reddy married the mother of the plaintiff as a 2nd wife. It is not at all the case of the plaintiff that after obtaining a divorce from the defendant No.1, Hanuma Reddy married his mother, and the solemnization of the marriage, date, month, and year of marriage is not at all stated by the plaintiff in the plaintiff itself. Though the mother of P.W.1 is examined as P.W.2 during the course of trial, she did not depose in her evidence that her husband's name is recorded in the service register. As stated supra, the suit was disposed of on contest by the trial Court in the year 2003, and for the first time after twenty-one (21) years of disposal of the main suit, the Xerox copy of some of the pages of the service register is filed and sought to be received as additional evidence. As stated supra, the entries in the service register are not conclusive proof of the solemnization of marriage of Hanuma Reddy with P.W.2. It is not at all the case of the plaintiff that the date, month, and year of

the solemnization of marriage of Hanuma Reddy with P.W.2 are mentioned in the service register of P.W.2. As stated supra, there is no explanation from the plaintiff as to why the original service register was not summoned during the course of trial, and why the service register and employer of P.W.2 were not summoned to elicit information about the alleged marriage of P.W.2 with Hanuma Reddy. The delay of more than twenty one (21) years in filing the present application is not yet properly explained by the petitioner.

39. Another proposed document to be received as additional evidence is the copy of the Transfer Certificate said to have been issued by the school authorities to the plaintiff. The said copy of the transfer certificate discloses that on 09.03.1984, the student actually left the school. The application for the transfer certificate was made on 04.01.2005 that too after two years of disposal of the main suit, and the transfer certificate is said to have been issued on 05.01.2005. The personal marks of identification are not yet mentioned in Column No.15 of the transfer certificate, and Column No.20 of the transfer certificate is also kept blank. As stated supra, though it is said to have been obtained on 05.01.2005, it was filed after a lapse of nineteen (19) years, and the said delay is unexplained by the petitioner. Moreover, it does not contain particulars about who admitted the plaintiff in the school and whether Hanuma Reddy gave a declaration before the school authorities that the plaintiff is his son; those are crucial aspects to decide the subject matter of the suit, and the same are missing in the alleged transfer certificate produced by the petitioner in the present application.

40. Another document proposed to be received as additional evidence is the duplicate Secondary School Certificate said to have been issued in the month of April, 2022. As stated supra, the original Secondary School Certificate is filed and marked as Ex.A-9 before the trial Court; it contains the name of the candidate, the father's name of the candidate, and date of birth of the candidate, which were altered with pen, and the said Ex.A-9 is disbelieved by the trial Court. I have compared the alleged duplicate Secondary School Certificate with Ex.A-9. In Ex.A-9, it was mentioned that the SSC examination was held in the month of March, 1984, but in the duplicate Secondary School Certificate, it was mentioned that the SSC examination was held in the month of April, 1984. Moreover, the issuance of the duplicate certificate would arise only when the original certificate was lost. It is not the case of the appellant that the original Secondary School Certificate was lost, and he applied for a duplicate Secondary School Certificate. Moreover, the proposed alleged duplicate Secondary School Certificate is not an exact duplicate of Ex.A-9. In Ex.A-9, it was not mentioned to which college/school the candidate belongs, but in the duplicate Secondary School Certificate, it was mentioned that the candidate belongs to G.J.C., Pathikonda..

41. In a case of ***Union of India Vs. Ibrahim Uddin***³, the Apex Court held as follows:

“49. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The

³ (2012) 8 SCC 148

admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.”

42. It is well settled that the generally parties are not entitled to produce additional evidence, oral or documentary at Appellate stage unless:

1. Trial Court refused to admit the evidence which ought to have been admitted.
2. Party could not produce evidence at trial stage inspite of his due diligence.
3. When Appellate Court requires any document or witness for pronouncement of judgment or any other substantial clause.

If a party does not fulfill the aforesaid conditions, allowing a party to adduce additional evidence at appellate stage would be against the spirit of the Civil Procedure Code. It is also well settled that the parties cannot be allowed to fill the lacunae at Appellate stage.

43. As stated supra, there is no pleading in the plaint about the date, month, and year of the marriage and solemnization of marriage of the mother of the plaintiff with Hanuma Reddy, and there is no mention in the plaint about the details contained in the service register of P.W.2. Moreover, in the plaint, it was mentioned that the defendant No.1 is the legally wedded wife of Hanuma

Reddy, and the defendant Nos.2 and 3 were born to Hanuma Reddy and the defendant No.1 is alive during the pendency of the suit. It is well settled that in the absence of pleading, evidence, if any, documents produced by the parties cannot be considered, and it is also equally settled that no party should be permitted to travel beyond its pleading, and that all necessary and material facts shall be pleaded by the party in support of the case set up by it. For the aforesaid reasons, there are no merits in the interlocutory application vide I.A.No.1 of 2024.

I.A.No.2 of 2024:

44. The petitioner, who is the appellant, pleaded that if the DNA test is conducted and compared with the DNA of the petitioner's step-sisters, i.e., respondent Nos.2 and 3, the fact of the petitioner's parentage would be established, and that the petitioner prayed to direct any one of the respondent Nos.2 and 3 to come forward for the DNA test.

45. The respondent Nos.2 and 3 filed a counter by denying the material allegations leveled in the petition, and they prayed for dismissal of I.A.No.2 of 2024.

46. The suit for partition was filed by the petitioner/appellant in the year 1996, and after completion of trial and on hearing both sides, the trial Court dismissed the suit filed by the appellant on 06.08.2003, against which an appeal was filed in the year 2003. The present interlocutory application was filed by the petitioner in the year 2024, i.e., on 22.11.2024, after a lapse of

twenty one (21) years at Appellate stage to direct the respondent Nos.2 and 3 to attend for the DNA test.

47. In a case of ***K.PALANISAMY Vs. State of Tamil Nadu and Ors.***,⁴ the High Court of Madras (Madurai Bench) held as follows:

“9. The petitioner failed to prove that how a DNA test between persons born of different mothers would prove their biological connection with the same father? In the absence of Kali Naicker, a DNA test between half brothers will not prove their paternity. The petitioner has failed to prove that a DNA test with an alleged half brother will prove their paternity. This is only a civil case and through evidence and documents, the case can be proved and the trial was already over and the case is pending at the stage of arguments. Thought the case is filed in the year 2012, the petitioner came forward with these petitions only in the year 2015 at the stage of arguments. As the petitioner fail to prove that the DNA test between the alleged half brothers will prove their paternity is not necessary.”

48. In the case at hand, as stated supra, the plaintiff approached the trial Court seeking relief of partition of the plaint schedule property in the year 1996, and the trial Court, after a full-fledged trial and on hearing both sides, dismissed the partition suit filed by the plaintiff in the year 2003. Aggrieved by the same, the plaintiff preferred the first appeal before this Court in the year 2003. The petitioner filed the present application in the year 2024, i.e., after a lapse of twenty-one (21) years, that too during the pendency of the first appeal. The marriage of the mother of the plaintiff with Hanuma Reddy and the paternity of the plaintiff is seriously disputed by the defendants. However, the plaintiff did not plead in the plaint itself about the solemnization of marriage, including the date, month, and year of the marriage of his mother

⁴ MANU/TN/1538/2019

with Hanuma Reddy. P.W.2 also did not depose in her evidence about the date, and month of the marriage. The legal position in this regard is well settled by the Apex Court in a case of ***Goutam Kundu Vs. State of West Bengal (1993 SCC (3) 418)***. In the aforesaid case law, the Apex Court laid down certain following parameters to decide whether a Court could order DNA test for the purposes of Section 112:

1. that courts in India cannot order blood test as a matter of course;
2. wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.
3. There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.
4. The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.
5. No one can be compelled to give sample of blood for analysis.

50. Considering the legal position as stated *supra* and for the aforesaid reasons, there are no merits in the present interlocutory application *vide* I.A.No.2 of 2024.

Hence, the present interlocutory applications *vide* I.A.Nos.1 and 2 of 2024 are dismissed.

51. **Point No.3:**

Whether the trial Court is justified in dismissing the suit filed by the appellant/plaintiff?

In view of my findings in Point Nos.1 and 2, I am of the considered view that after appreciation of entire evidence on record, the learned trial Judge came to right conclusion that the plaintiff failed to prove that he is the son of Hanuma Reddy and that he is not entitled to any share in the plaint schedule property and dismissed the suit filed by the plaintiff. Therefore, I do not find any illegality in the decree and judgment passed by the trial Court.

52. In the result, I.A.Nos.1 and 2 of 2024 in A.S.No.4145 of 2003 and A.S.No.4145 of 2003 **are dismissed**. Considering the facts and circumstances of the case, each party do bear their own costs in the appeal.

As a sequel, miscellaneous petitions, if any, pending in the Appeal shall stand closed

V. GOPALA KRISHNA RAO, J.

Date: 18.02.2026

SRT