



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

[3397]

TUESDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

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

APPEAL SUIT NO: 2467/2000

Between:

M.lakshmi Narasimha Acharyulu & Anr and Others **...APPELLANT(S)**

AND

M Gopalamma 6 Ors and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

- 1.PARTY IN PERSON
- 2..

Counsel for the Respondent(S):

- 1.P V NARSIMHA RAO
- 2..
- 3.A ANASUYA
- 4.M LAXMINARASIMHAM

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

APPEAL SUIT No.2467 of 2000

JUDGMENT:

This Appeal, under Section 96 of the Code of Civil Procedure [for short 'the C.P.C.'], is filed by the Appellants/Defendant Nos.1 and 2 challenging the Decree and Judgment, dated 14.12.1999, in O.S.No.13 of 1991 passed by the learned Senior Civil Judge, Kakinada, [for short 'the trial Court'].

2. The appellants herein are the defendant Nos.1 and 2, the respondent Nos.1 to 5 herein are the defendant Nos.3 to 7 and the respondent No.6 herein is the plaintiff in O.S.No.13 of 1991, on the file of the Senior Civil Judge, Kakinada. During the pendency of the appeal, the appellant No.1 died and the appellant No.2 was added as legal representative of the deceased appellant No.1. The respondent No.3 died during the pendency of the appeal and the respondent Nos.7 to 9 were added as legal representatives of the deceased respondent No.3. The respondent No.2 also died during the pendency of the appeal and the respondent No.10 was added as legal representatives of the deceased respondent No.2.

3. Originally, the respondent No.6/plaintiff herein filed the suit in O.S.No.13 of 1991 against defendant Nos.1 to 7, seeking for partition of plaint schedule property and for allotment of plaint 'A' and 'B' schedule properties into 40 equal shares with reference to good and bad qualities and for allotment of one such share to the plaintiff and other share to the defendants that is $5/40^{\text{th}}$

share to the defendant No.1, 9/40th share to the defendant No.3 and 20/40th share to other defendant Nos.4 to 7 and for future profits and costs of suit.

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

5. The case of the respondent No.6/plaintiff as per the plaint averments in O.S.No.13 of 1997, in brief, is as follows:

The plaintiff is the daughter and the defendant Nos.1 and 2 are the sons and the defendant No.3 is the wife of late Mamillapalli Raghava Acharyulu. The defendant Nos.4 and 5 are the daughters and the defendant Nos.6 and 7 are the sons of late Mallimpally Sobhanadra Acharyulu and the other brother M.V.G. Krishnama Acharyulu died issueless, and his wife also died subsequently. The plaintiff further pleaded that as per the terms of the compromise decree, the plaintiff's father and the father of the defendant Nos.4 to 7 and M.V.G. Krishnama Acharyulu got 3/5 share and their mother and the appellant in the present appeal by name Mangamma was given 1/5th share, and the plaintiffs therein and his sister and mother representing Manavallaswamy branch were given 1/5th share in the plaint schedule properties in O.S.No.48 of 1952, on the file of the Sub-Court, Eluru. The plaintiff further pleaded that in pursuance of the compromise decree, a final decree petition was filed for partition vide I.A.No.725 of 1962 for partition and for separate possession by the plaintiff in the said suit by name M. Rangachary.

The plaintiff further pleaded that his paternal grandmother Mangamma executed a Will for her 1/5th share in the plaint schedule properties to her three sons, Shobhanadra Acharyulu, the father of the defendant Nos.4 to 7, M.V.G. Krishnama Acharyulu, who subsequently died issueless, and to the father of the plaintiff and the defendant Nos.1 and 2 and also to the husband of the defendant No.3 by name late Raghava Acharyulu and subsequently, the defendant No.3 also died during the pendency of the final decree petition for partition vide I.A.No.725 of 1962. The plaintiff further pleaded that he had two more brothers besides defendant Nos.1 and 2, who died unmarried and their share devolved upon the defendant No.3 and thus, the plaintiff, the defendant Nos.1 to 3 are entitled to a joint 1/2 share and the defendant Nos.4 to 7 are entitled to a joint half share.

The plaintiff further pleaded that in the plaint schedule properties, the plaintiff and the defendant Nos.1 to 3 are jointly entitled to a joint 1/2 share and the plaintiff is having a joint 1/20 share in her father's share and the defendant No.1 is having 5/20th share and the defendant No.2 is having 5/20 share and the defendant No.3 is having 9/20th share in the plaint schedule properties and the balance of remaining 1/2 share belongs to the defendant Nos.4 to 7. The plaintiff further pleaded that the defendant Nos.1 and 2, who are looking after the interest of the plaintiff and the defendant Nos.1 to 3 in the plaint schedule properties on behalf of the plaintiff and the defendant Nos.1 to 3, are not properly managing the said properties and are not acting in the interest of the plaintiff and are acting to the detriment of the plaintiff with a

view to cause wrongful loss to the plaintiff. The plaintiff further pleaded that the defendant No.3, who is an old lady, is not aware of these things and is helpless and cannot do anything in the matter and the defendant Nos.1 and 2 are enriching themselves to the detriment of the plaintiff and are managing the family properties and the plaintiff pleaded that the plaintiff schedule properties are both landed and house properties and as such, the plaintiff is constrained to file the present suit.

6. The defendant Nos.1 and 2 filed common written statement and the case of the defendant Nos.1 and 2 as per their written statement is as follows:

The defendant Nos.1 and 2 pleaded that the suit filed by the plaintiff is not maintainable in law and the relationship between the parties is admitted. The defendant Nos.1 and 2 pleaded that the paternal grandmother late Mamillapalli Mangamma died pending the final decree petition and she executed a Will for her share of property in favour of her three sons, Shobhanadracharyulu, Venu Gopala Krishnamacharyulu and Raghavacharyulu and that the final decree was passed taking into consideration the said Will. The defendant Nos.1 and 2 further pleaded that subsequent to the final decree, M.V.G. Krishnamacharyulu, third son of late Mangamma and the paternal uncle of these defendants, died on 23.01.1977. The defendant Nos.1 and 2 further pleaded that they had two more brothers who died at an infant stage at the age of less than a year and one of them died in 1947 and the other in 1951, i.e., much earlier to the death of M. Raghavacharyulu, who is the father of the defendant Nos.1 and 2 and the

plaintiff. The defendant Nos.1 and 2 further pleaded that M. Raghavacharyulu died in 1971 and the said fact was wantonly suppressed by the plaintiff with a bad intention to mislead the Court and the defendant No.1 who was born around 1944 had a very little remembrance of his two deceased brothers.

The defendant Nos.1 and 2 further pleaded that the plaintiff's marriage was performed by them by borrowing money from LIC, friends, relatives and banks. They further pleaded that a sum of Rs.30,000/- was spent for the marriage of the plaintiff and the plaintiff was given 10 sovereigns of gold, besides the expenditure, at the time of her marriage thereby leaving no liquid assets to the family. The defendant Nos.1 and 2 further pleaded that their father had very little practice as a Lawyer and the maintenance of the family itself was very difficult with the income from the properties. The defendant Nos.1 and 2 further pleaded that they had borrowed money and performed the marriage of the plaintiff and for discharging the said debt, the defendant Nos.1 and 2 had to sell the Ac.0.40 cents belonging to their father's share in Item No.1 of the plaint schedule R.S.No.481/2 out of total Ac.1.53 cents. The defendant Nos.1 and 2 further pleaded that as the amount received from selling Ac.0.40 cents of land was not sufficient, the defendant Nos.1 and 2 had to sell the other Ac.0.40 cents belonging to M.V.G. Krishnamacharyulu which they got under a Will of late M.V.G. Krishnamacharyulu and the said Ac.0.80 cents were sold for about Rs.12,000/- to one Ramarao.

The defendant Nos.1 and 2 further pleaded that the item No.2 of the plaint schedule property in Puttagunta village was never in possession of the

family and it is in possession of one Reddy of Puttagunta village and item No.3 of the plaint schedule Ac.10.30 cents of land of Ramanayyapet village of Kakinada Taluk was in possession of Mamillapalli Venkatachari and Mamillapalli Narasimhachari, who are the sons of late Sobhanadracharyulu and the defendant Nos.6 and 7 are managing the same on behalf of the family. The defendant Nos.1 and 2 further pleaded that they are always demanding the plaintiff and other defendants to co-operate to get the property divided and the plaintiff who was transferred from Tadepalligudem to Kakinada promised to personally look after the matter and would co-operate for partition or sale of the properties whenever it is required, but, she filed the suit with false allegations.

These defendant Nos.1 and 2 and defendant Nos.6 and 7 had an oral partition of the said house nearly 10 years back and ever since the defendant Nos.6 and 7 are in possession of their 1/3rd share in the said house. The defendant Nos.1 and 2 further pleaded that the rest 2/3rd share of the said house which is almost in a fallen condition is in possession of defendant Nos.1 and 2 herein and the fact of oral partition between defendant Nos.1 and 2 and the defendant Nos.6 and 7 is very well known to the plaintiff and she promised to co-operate whenever the share of late M. Raghavacharyulu is put to sale as the said house property is not fetching any income because it is in a fallen condition. They further pleaded that the defendant Nos.1 to 2 are entitled to the entire share of late M.V.G. Krishnamacharyulu in their own right by virtue of his Will and are entitled to share with the plaintiff and defendant No.3 as per

law. The defendant Nos.1 and 2 pleaded that the plaintiff herself is not co-operating for partition and is claiming for illegitimate share in M.V.G. Krishnamacharyulu's property to her part and excess share to the defendant No.3 in M. Raghavacharyulu's property.

The defendant Nos.1 and 2 further pleaded that the suit is bad for non-joinder of necessary parties and the suit is filed purposefully at Kakinada to trouble the defendant Nos.1 and 2 and to force them for compromise. The defendant Nos.1 and 2 have no objection for the appointment of a receiver to take possession of Item No.3 of the plaint schedule landed property at Kakinada. The defendant Nos.1 and 2 further pleaded that the said property can be sold in open market as one piece or the same can be divided and the respective shares be delivered to the parties in the suit as per law. Therefore, the defendant Nos.1 and 2 prayed to dismiss the suit with costs and award suitable punishment to the plaintiff for all her false allegations.

7. The case of the defendant No.7 as per the written statement filed by the defendant No.7 is as follows:

The defendant No.7 pleaded that late Venugopalacharyulu never executed any Will and the alleged Will set up by the defendant Nos.1 and 2 is not true and correct and it is not a genuine Will. The defendant No.7 further pleaded that the defendant Nos.1 and 2 have not filed the original Will before the Court and it was not executed by late Venugopalacharyulu and the alleged Will has also not seen the light of the day. The defendant No.7 pleaded that

there is no possibility for late Venugopalacharyulu to execute any Will on 22.08.1974 and there is no possibility for the said Venugopalacharyulu to attend the Registrar's Office on 22.08.1974. The defendant No.7 pleaded that late Venugopalacharyulu was not in Machilipatnam on 22.08.1974.

The defendant No.7 further pleaded that an arrangement was made between the defendant Nos.1 and 2 representing the family and the defendant Nos.6 and 7 and orally it was agreed that the plaintiff and the defendant Nos.1 and 2 should not claim any share in item No.3 of the plaint 'A' schedule property and the defendant Nos.6 and 7 should not make any claim in the house property, and in view of the family arrangement made between the family of the defendant Nos.1 and 2, Venugopalacharyulu and the defendant Nos.6 and 7, the defendant No.7 prayed to dismiss the suit with costs.

8. The case of the defendant No.2 as per the rejoinder filed by the defendant No.2 is as follows:

The alleged family arrangement is neither true nor valid and the document dated 23.08.1974 alleged to be obtained from Silam Verellu is neither true nor valid. The document dated 23.08.1974 alleged to be written by the defendant No.7 is not admitted by the defendant No.7 and it is neither true nor valid and that the defendant No.7 claim may be dismissed.

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

- 1) *Whether the share of late M.V.G.Krishnama Acharyulu in the plaint schedule was devolved upon the plaintiff's father and the father of the defendants 4 to 7 and each of them became entitled to a joint half share in the plaint schedule properties is true?*
- 2) *Whether the plaintiff contention that the plaintiff and defendants 1 to 3 are jointly entitled to the half share?*
- 3) *Whether the plaintiff is entitled for partition of plaint 'A' and 'B' schedule properties into 40 equal shares and for allotment of one such share is true?*
- 4) *Whether the plaintiff is entitled for future profits?*
- 5) *To what relief?*

On 21.09.1995, the trial Court has framed the following additional issues:

- 1) *Whether the Will dated 22.08.1974 is true, valid and executed in a sound and disposing state of mind?*
- 2) *Whether the plaintiff is entitled to a share claimed by her in the plaint?*
- 3) *Whether the 7th defendant is entitled to the share in the property and to what extent and whether he is entitled to a separate share in the properties?*

On 30.08.1996, the trial Court has framed the following additional issues:

- 1) *Whether the family arrangement pleaded by the defendant No.7 in Para 8(a) of his written statement, is true, valid and binding the plaintiff and the other defendants?*

10. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 was examined and Ex.A-1 to Ex.A-3 were marked. On behalf of the defendant Nos.1 and 2, D.Ws.1 to 9 were examined and Ex.B-1 to Ex.B-47 were marked. Ex.X-1 to Ex.X-7 were also marked.

11. 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 14.12.1999, against which the present appeal is preferred by the appellants/defendant Nos.1 and 2 in the suit, questioning one of the findings arrived by the trial Court in its decree and judgment.

12. The appellant No.2 contended that the judgment of the Court below is contrary to law, weight of evidence and probabilities of the case. He would further contend that having dismissed the suit, the Court below erred in holding on additional issue No.1 dated 30.08.1996 that the family arrangement pleaded by the defendant No.7 is true. He would further contend that having observed that there is no documentary evidence in proof of the alleged family arrangement, the Court below erred in assuming that it was acted upon and

that the appeal may be allowed by setting aside the finding arrived at by the learned trial Judge.

13. Learned counsel for the respondent Nos.8 & 9 contended that the appeal itself is not at all maintainable since the prayer of the appellants/defendant Nos.1 and 2 in the written statement is that the suit in O.S.No.13 of 1991 has to be dismissed, which was already granted by the trial Court on merits vide its judgment dated 14.12.1999. Learned counsel for the respondent No.6/plaintiff in the suit proceedings filed a Memo stating that the plaintiff is agreeing to the findings of the lower Court in O.S.No.13 of 1991 and she is not contesting the same and the plaintiff has also withdrawn her appeal vide A.S.No.387 of 2001.

14. Heard M.Venkateswarlu, Appellant No.2/Party-in-person, Sri M.Laxminarasimham, learned counsel for the respondent Nos.8 and 9 and Sri P.V.Narasimha Rao, learned counsel for the respondent No.6/plaintiff.

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

1) Whether the appeal filed by defendant Nos.1 and 2 is maintainable?

2) Whether the decree and judgment dated 14.12.1999, passed by the trial Court needs any interference?

16. **Point No.1:**

Whether the appeal filed by defendant Nos.1 and 2 is maintainable?

The undisputed facts are that the father of plaintiff, defendant Nos.1 and 2 and the husband of the defendant No.3 is one Mamillapalli Raghava Acharyulu. The defendant Nos.4 to 7 are the children of Mamillapalli Sobhandra Acharyulu. The said Raghava Acharyulu and Sobhandra Acharyulu are brothers. The plaintiff filed a suit in O.S.No.13 of 1991, before the trial Court against the defendants for seeking the relief of partition of the entire plaint schedule property viz., item Nos.1 to 3 of the plaint schedule property and plaint 'B' schedule property. In the suit, the defendant Nos.1 and 2 filed a common written statement and prayed to dismiss the suit with exemplary costs. The appellant contended that in the rejoinder filed by the defendant No.2, the defendant No.2 pleaded that the claim of the defendant No.7 may be dismissed. Initially the plaintiff filed the suit for seeking the relief of partition of the plaint schedule property which includes item Nos.1 to 3 of the plaint 'A' schedule property and plaint 'B' schedule property. The defendant Nos.1 and 2 filed common written statement with a prayer for dismissal of the entire suit. It was not prayed by the defendant Nos.1 and 2 in the written statement that the suit for partition may be partly decreed by granting relief of partition of Item No.3 of the plaint 'A' schedule property. The other defendant/defendant No.7 also filed a written statement with a specific prayer to dismiss the suit. The trial Court dismissed the suit with costs on merits. Aggrieved by the said decree and judgment, the defendant Nos.1 and 2 filed a first appeal vide A.S.No.2467 of 2000. The appellant No.1 died during

the pendency of the first appeal and the appellant No.2 is prosecuting the present appeal.

17. The learned counsel for the respondent No.6/plaintiff filed written submissions, wherein the learned counsel for the respondent No.6/ plaintiff reiterated that the plaintiff is agreeing to the findings of the lower Court in its judgment in O.S.No.13 of 1991 and not contesting the same in the present appeal and she also withdrew her appeal vide A.S.No.387 of 2001.

18. The learned counsel for the respondent would contend that the present appeal itself is not at all maintainable, since, no appeal can be filed against the findings and when the prayer of the appellants/defendant Nos.1 and 2 in the suit in O.S.No.13 of 1991 was for dismissal of the suit which was already granted by the trial Court. The defendant Nos.1 and 2 are the appellants herein and the defendant No.1 died during the pendency of the appeal. Though the defendant Nos.1 and 2 filed a common written statement, the defendant No.1 did not enter into the witness box to prove the defence. The legal position in this regard is no more *res-integra* and the same is well settled by the Hon'ble Apex Court in ***Vidhyadhar Vs. Manikrao and another***¹, wherein the Hon'ble Apex Court held as follows:

“Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.”

¹ AIR 1999 Supreme Court 1441(1)

19. As noticed supra, the very contention of the respondent Nos.7 to 9 in the present appeal is that the appeal filed by the defendant Nos.1 and 2 is not at all maintainable. The defendant Nos.1 and 2 filed a common written statement and the prayer of the defendant Nos.1 and 2 in the written statement itself is to dismiss the suit with costs and the same was granted by the trial Court on merits. The legal position in this regard is no more *res-integra* and the same is well settled in ***Banarsi and Others Vs. Ram Phal***², wherein the Hon'ble Apex Court held as follows:

*“8. Sections 96 and 100 of the CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal (See ***Phoolchand and Anr. v. Gopal Lal***, [1967] 3 SCR 153; ***Smt. Jatan Kanwar Golcha v. M/s Golcha Properties (P) Ltd.***, [1970] 3 SCC 573; ***Smt. Ganga Bai v. Vijay Kumar and Ors.***, [1974] 2 SCC 393. No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 of the CPC provide for an appeal against decree and not against judgment.*

9. Any respondent though he may not have filed an appeal from any part of the decree may still support the decree to the extent to which it is already in his favour by laying challenge to a finding recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the Court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging finding on ground (B) and persuade the

² AIR 2003 Supreme Court 1989

appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of defendant-appellant the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross objection. A right to file cross objection is the exercise of right to appeal though in a different form. It was observed in **Sahadu Gangaram Bhagade v. Special Deputy Collector. Ahmednagar and Anr., [1971] 1 SCR 146** that the right given to a respondent in an appeal to file cross objection is a right given to the same extent as is a right of appeal to lay challenge to the impugned decree if he can be said to be aggrieved thereby. Taking any cross objection is the exercise of right of appeal and takes the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross objection is preferred by one who can be said to be aggrieved by the decree. **A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross objection though certain finding may be against him. Appeal and cross-objection - both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended CPC.**

10. CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:-

(i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;

(ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.”

20. In the present case also, the prayer of the appellants/defendant Nos.1 and 2 in the written statement itself is for dismissal of the suit with costs and that was awarded by the trial Court itself on merits. The defendant Nos.1 and 2 have not filed any cross-objections in the appeal filed by plaintiff. They filed an appeal against the decree passed by the trial Court. Therefore, it is evident that the defendant Nos.1 and 2/appellants are not aggrieved by the decree and judgment passed by the trial Court. As noticed supra, in the aforesaid case law, the Hon'ble Apex Court held that an appeal cannot be maintainable against one of the findings of the trial Court.

21. In a case of ***Smt.Ganga Bai Vs.Vijay Kumar and Others***³, wherein the Hon'ble Apex Court held as follows:

“16. Under section 96(1) of the Code of Civil Procedure, save where otherwise expressly provided by the Code or by any other law for the time being in force, an appeal lies from every decree passed by any court exercising original jurisdiction, to the court authorised to hear appeals from the decisions of such court. Section 100 provides for a second appeal to the High Court from an appellate decree passed by a court subordinate to the High Court. Section 104(1) provides for appeals against orders of the kind therein mentioned and ordains that save as otherwise expressly provided by the Code or by any law for the time being in force an appeal shall lie "from no other orders". Clause (i) of this section provides for an appeal against "any orders made under Rules from which an appeal is expressly allowed by rules". 'Order 43, Rule 1 of the Code, which by reason of clause (i) of section 104(1) forms a part of that section, provides for appeals against orders

³ AIR 1974 Supreme Court 1126

passed under various rules referred to in clauses (a) to (w) thereof, Finally, section 105(1) of the Code lays down that save as otherwise expressly provided, no appeal shall lie from any order made by a court in exercise of its original or appellate jurisdiction.

17. These provisions show that under the Code of Civil Procedure, an appeal lies only as against a decree or as against an order passed under, rules from which an appeal is expressly allowed by Order 43, Rule 1. No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal.”

22. In a case of **S.Sadiq Pasha Vs. Aktharunnissa & Others⁴**, wherein the High Court of Karnataka by referring the aforesaid case law held as follows:

“14. In view of the declaration of law by the Supreme Court, in the decisions noticed supra, it is well settled position of law that, an appeal lies under S.96 CPC against a decree and a mere finding on the issue/s in a suit, where the suit itself has been dismissed cannot be construed as a decree. A party who has succeeded in securing the relief prayed for, before the Court below cannot file an appeal only for the sake of clearing himself from the effect of an adverse finding on any issue, as he would not be a person falling within the meaning of the words "person aggrieved". When the suit itself has been dismissed, a finding on any issue, even if it is against the defendant when there was no counter claim will not act as res-judicata. Since a finding on an issue/s in a suit cannot be considered as a decree and there being no decree against the defendant /appellant, this appeal is not maintainable.”

The facts in the aforesaid case law relates to a suit for partition filed by the plaintiff and the defendant filed the written statement and contested in the suit and no counter-claim was made by either of the defendants. In the present case also, the suit for partition is filed by the plaintiff, wherein the defendant Nos.1 and 2 filed a common written statement and no counter claim

⁴ 2013 (3) AKR 716

was filed by the defendant Nos.1 and 2 in the present case. Therefore, the ratio laid down in the aforesaid case law is squarely applicable to the present case. Considering the ratios laid down in the aforesaid case laws and considering the facts and circumstances, the present appeal itself is not at all maintainable.

Accordingly, the Point No.1 is answered.

23. **Point No.2:**

Whether the decree and judgment dated 14.12.1999, passed by the trial Court needs any interference?

The appellant No.2 contended that he filed a re-joinder after allowing the amendment application filed by the defendant No.7 and in the re-joinder itself he specifically pleaded that the amendment sought by the defendant No.7 may be dismissed. As could be seen from the material available on record and after hearing both sides, the trial Court allowed an application for amendment filed by the defendant No.7 and it has reached its finality and the said amendment was not set aside by the Appellate Court. Even after amending the written statement of the defendant No.7, the defendant No.2 has not amended his original written statement that he has no objection to pass a decree of the suit for partition in respect of item No.3 of the plaint schedule property. The claim of the plaintiff is to divide the entire plaint schedule property including item Nos.1 to 3 and plaint 'B' schedule property. The claim of the defendant No.7 is that in view of the family arrangement that

took place among the defendant Nos.1, 2, 6 and 7, the total plaint 'B' schedule house property fell into the share of the appellants and item No.3 of the plaint schedule property fell into the share of the defendant Nos.6 and 7. The defendant No.7 is examined as D.W.7 before the trial Court, he deposed in his evidence about the family arrangement that took place in the year 1975 among the defendant Nos.1, 2 and 4 to 7.

24. As seen from the evidence of D.W.1, in cross-examination, D.W.7 admits that in the year 1975, a partition was effected among Venu Gopala Krishnama Acharyulu, defendant Nos.1, 2, 6 and himself representing their respective families and it is an oral partition and he has not stated about the said oral partition anywhere earlier. In cross-examination, when elicited, D.W.7 admits that in the year 1975 they partitioned Ac.1.25 cents of land owned by them at Tanuku and Ac.10.00 cents of land at Kakinada, which was given to them and the house property at Machilipatnam, which was partitioned into two shares and one such share was given to Venu Gopala Krishnama Acharyulu and the other share was given to the defendant Nos.1 and 2 and since 1975, the defendant Nos.1 and 2 are enjoying their respective shares exclusively. The trial Court on considering the documentary evidence viz., Ex.B-24, Ex.B-27, Ex.B-20 and Ex.B-46 and also on considering the surrounding facts and circumstances of the case came to a conclusion that there was a family arrangement in the year 1975 among the defendant Nos.1, 2, 6 & 7. The trial Court also considered the individual alienations made by the defendant Nos.1 and 2 under Ex.A-34,

Ex.A-45, Ex.B-20 and Ex.B-46 and on considering the pleadings in Ex.B-2 and also on considering the fact that putting up for sale the entire plaint 'B' schedule property of 1200 Sq.yards by the appellant No.2, which is situated in a commercial locality by showing it as his exclusive property and further on considering the aforesaid facts, the trial Court had arrived at a conclusion that there was a family arrangement among the defendant Nos.1, 2, 6 and 7 in the year 1975.

25. As stated supra, though the plaintiff filed a separate first appeal vide A.S.No.387 of 2001, the same was withdrawn by the plaintiff. The trial Court came to a conclusion that there was a family arrangement in the year 1975. Except giving formal suggestion for denial of the alleged family arrangement to the defendant Nos.7/D.W.7, no evidence is produced by the defendant No.2 to disprove the alleged family arrangement. As noticed supra, the defendant No.1 did not enter into the witness box to substantiate his defence in the written statement. In the evidence in chief examination as D.W.1, the appellant deposed about the oral partition of house property among the defendant Nos.1, 2 and 4 to 7 and the defendant Nos.4 to 7 took four (04) rooms in the said property. But Ex.B-46 shows that the defendant No.2 gave publication for alienation of total 1200 Sq.yards, of house site along with tiled house as his absolute property.

26. The appellant No.2 placed a case law in **Rangammal Vs. Kuppuswami and Anr.**⁵, wherein the Hon'ble Apex Court held as follows:

*“20. Since the High Court has misplaced burden of proof, it clearly vitiated its own judgments as also of the courts below since it is well established dictum of the Evidence Act that misplacing burden of proof would vitiate judgment. It is also equally and undoubtedly true that the burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular way definitely vitiates the judgment as it has happened in the instant matter. This position stands reinforced by several authorities including the one delivered in the case of **Koppula Koteshwara Rao vs. Koppula Hemant Rao, 2002 AIHC 4950 (AP).**”*

27. In the present case, the contention of the appellant No.2 is that no person would ever agree to relinquish the Ac.7.00 cents of land at Kakinada for 400 Sq.yards of site in Machilipatnam, which is an old, tiled, dilapidated house. The alleged family arrangement that is said to have taken place in the year 1975 is denied by the appellant. The trial Court came to a conclusion that in view of the family arrangement in the year 1975, the plaint 'B' schedule house property fell into the share of the defendant Nos.1 and 2 and no share was allotted to the defendant Nos.6 and 7 in the plaint 'B' schedule house property and that the trial Court believed the family arrangement said to have taken place in the year 1975.

28. It is an admitted fact by both the parties that the defendant No.7 is in exclusive possession of item No.3 of the plaint 'A' schedule property since 1975 and no suit is filed by the defendant No.2 for seeking relief of partition of

⁵ AIR 2011 SC 2344

item No.3 of the plaint schedule property till so far. The defendant No.1 also remained silent in a suit for partition filed by his sister i.e. in the present suit. The findings of the trial Court in respect of the plaint 'A' and 'B' schedule properties are accepted by the appellant, but the appellant is disputing the other finding arrived at by the trial Court in respect of item No.3 of the plaint 'A' schedule property. The appellant also admitted that there was an oral partition in respect of the plaint 'B' schedule property among the defendant Nos.1, 2, 6 and 7, but he is denying the oral partition in respect of item No.3 of the plaint 'A' schedule property. The appellant as D.W.1 in one way admitted in his evidence that there was an oral partition in respect of the plaint 'B' schedule house property among the parties and the appellant is also accepting all other findings given by the trial Court, but he is disputing the one of the finding of the trial Court in respect of item No.3 of the plaint schedule property.

29. The appellant placed a case law in ***Kantham Narasimha Reddy and Others Vs. Puran Buchaiah***⁶. In the present case, the petition filed by the defendant No.7 for amendment of the written statement itself is allowed by the trial Court and it reached its finality.

30. The appellant No.2 placed a case law in ***Naganna (Dead) By Lrs.; Devamma & Ors. Vs. Siddaramegowda (Since Deceased) By Lrs. & Ors.***⁷. The ratio laid down in the aforesaid case law relates to a suit for prohibitory injunction sought by the plaintiff.

⁶ 1999 (1) ALD 231

⁷ 2025 LawSuit (SC) 388

31. The appellant relied on a judgment in **Angadi Chandranna vs. Shankar & Ors.**, in **Civil Appeal No.5401 of 2025**, wherein the Hon'ble Apex Court held as follows:

“13. Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term ‘nucleus’ it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities.”

32. In the present suit, it is not the case of either of the parties that item No.3 of the plaint 'A' schedule property is not an ancestral property. The contention of the respondent No.7/defendant No.7 is that in pursuance of the family arrangement among the defendant Nos.1, 2, 6 and 7, item No.3 fell into the share of the defendant Nos.6 and 7 and item 'B' schedule property fell to the share of defendant Nos.1 and 2. The defendant No.1 made individual alienations and the defendant No.2 also made individual alienations under registered documents subsequent to the year 1975. For the reasons best known to the appellant No.1/defendant No.1, he did not adduce any evidence and he did not enter into the witness box. It is admitted by the defendant No.2 in his evidence in chief-examination itself that there is an oral partition among them and the defendant Nos.4 to 7 took four (04) portions situated in the

eastern side portion of their house. The trial Court held in its judgment that in pursuance of the family arrangement in the year 1975, the total house property fell into the share of the appellant and the item No.3 fell into the share of the defendant Nos.6 and 7. The appellant herein is accepting the findings of the trial Court in respect of the house property but he remained silent and he is challenging only one finding arrived at by the trial Court in respect of item No.3 of the plaint 'A' schedule property.

33. The appellant relied on a judgment in ***Bachhaj Nahar vs. Nilima Mandal & Anr.***, in ***Civil Appeal Nos.5798-5799 of 2008***, wherein the Hon'ble Apex Court held as follows:

“9. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court of its consideration. This Court has repeatedly held that the pleadings are meant to give each side intimation of the case of the other, so that it may be met, to enable courts to determine what is really an issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.”

In the present case, the plaintiff filed a suit for partition of the item Nos.1 to 3 of the plaint schedule property and item 'B' of the plaint schedule property. The prayer of the defendant Nos.1 and 2 in the written statement is for dismissal of the suit. After filing of the re-joinder also, the appellant has not even amended the original written statement.

34. The appellant placed a case law in **S.P.Chengal Varaya Naidu (Dead) by Lrs. Vs. Jagannath (Dead) By Lrs. and Others**⁸, wherein the Hon'ble Apex Court held as follows:

"5.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. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

In the present case, no evidence is adduced by the appellant to show that both the plaintiff and the defendant No.7 are colluded together.

35. The appellant placed a case law in **Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) Through Legal Representatives and Others**⁹ and another case law in **Ramesh Chand Vs. Raj Kumar**¹⁰. The facts in the aforesaid case laws are different to the instant case.

36. The appellant placed a judgment of the High Court of Madras in **Backiam Vs. Rm.Subramaniam**. The facts in the aforesaid case law are a suit for partition filed by the plaintiff was dismissed and the plaintiff therein filed an appeal. Here the defendant Nos.1 and 2 filed an appeal *vide* A.S.No.2467

⁸ (1994) 1 SCC

⁹ (2019) 14 Supreme Court Cases 449

¹⁰ 2002 (5) JT 69

of 2000 and the plaintiff also filed an appeal *vide* A.S.No.387 of 2001 and subsequently, the plaintiff had withdrawn her appeal and the defendant No.2 alone is challenging one of the findings arrived by the trial Court in its judgment.

37. In a case of ***Backiammal Vs. C.Vasantha*** in ***A.S.No.126 of 2011***, the High Court of Madras held as follows:

“10. It is thus beyond the pale of any doubt that properties inherited through the female line/maternal line will not form part of joint family.

A) Oral partition-Burden on the party asserting:

The plea of oral partition should be proved by cogent evidence by the claimant.”

In the present case, the contention of the defendant No.7 is that there was a family arrangement among the defendant Nos.1, 2, 6 & 7, the appellant/D.W.1 deposed in his chief examination itself that there was a oral partition among the defendant Nos.4 to 7 and the defendant Nos.1 and 2, and the defendant Nos.4 to 7 got three (03) rooms in the suit house property. Ex.B-4 shows that he gave proper publication for alienation of total 1200 sq.yards with tiled house which is plaint 'B' schedule property. As stated *supra*, the trial Court on considering the evidence of D.W.7 and also on considering the voluminous of the documentary evidence produced, arrived at a conclusion that there was a family arrangement in the year 1975 and that the plaintiff is not entitled to any relief of partition in the plaint schedule property. As stated *supra* in the Point No.1 itself that, the present appeal is not at all maintainable since no appeal shall lie against one of the findings which

is against the appellant herein when the prayer of the appellant in the written statement itself is for dismissal of suit which was granted by the trial Court. For the aforesaid reasons, there is no need to interfere with the arrived given by the trial Court in its judgment. Therefore, there are no merits in the present appeal and the appeal suit is liable to be dismissed.

Accordingly, Point No.2 is answered.

38. In the result, the appeal in A.S.No.2467 of 2000 is **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: 21.04.2026

SRT