



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

[3397]

THURSDAY, THE SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

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

APPEAL SUIT NO: 1220/2000

Between:

Shaik Pyare Jan & 2 Others and Others

...APPELLANT(S)

AND

D Satyanarayana 25 Ors and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1. M N NARASIMHA REDDY

Counsel for the Respondent(S):

1. K RAJA REDDY

2. S S BHATT

3. Y NAGAIAH

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

APPEAL SUIT No.1220 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 01.03.2000, in O.S.No.100 of 1983 passed by the learned Senior Civil Judge, Madanapalli, [for short 'the trial Court'].

2. The appellants herein are the defendant Nos.1 and 2 and the respondent Nos.1 and 2 herein are the plaintiffs and the respondent Nos.3 to 19 herein are the defendant Nos.3 to 19 in O.S.No.100 of 1983 passed by the learned Senior Civil Judge, Madanapalli.

During the pendency of the appeal the appellant No.2 died and the appellant No.3 was brought on record as legal representative of the deceased appellant No.2. The appellant No.1 also died during the pendency of the appeal and the appellant Nos.4 and 5 were brought on record as legal representatives of the deceased appellant No.1.

During the pendency of the appeal the respondent No.4 died and the respondent Nos.1 and 2, who are already on record along with respondent Nos.22 to 26 were brought on record as legal representatives of the deceased respondent No.4. Subsequently, the respondent No.5 died and the respondent Nos.20 to 21 were brought on record as the legal representatives of the deceased respondent No.5. Thereafter, the respondent Nos.7 and 17 also

died and the respondent Nos.27 to 29 and the respondent Nos.30 to 34 were brought on record as the legal representatives of the deceased respondent Nos.7 and 17.

3. Originally, the respondent Nos.1 and 2/plaintiffs herein filed the suit in O.S.No.100 of 1983 against defendant Nos.1 to 19, seeking for partition of the schedule properties into two equal shares and for allotment of one such share to the plaintiffs.

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

5. The case of the respondent Nos.1 & 2/plaintiff Nos.1 & 2 as per the plaint averments in O.S.No.100 of 1983, in brief, is as follows:

The plaint schedule properties are joint and ancestral properties of the plaintiff Nos.1 and 2 and the defendant Nos.4 and 5. The plaintiff and the defendant No.5 are the sons of the defendant No.4 and each of them are entitled to 1/4th share in the plaint schedule properties. The plaintiffs further pleaded that the defendant No.4 has five more daughters and he started living with a profligate life and wayward life, since five or six years and totally neglected to maintain joint family consisting of the plaintiffs and their sisters, brother and mother. The plaintiffs further pleaded that the defendant No.4 addicted to bad habits such as, gambling, womanizing etc., and failed to realize his obligation as dutiful father. The plaintiffs further pleaded that the defendant No.4 is weak minded and is capable of being influenced and by

taking advantage of the same, the defendant Nos.1 to 3 seem to have influenced the defendant No.4 to create a nominal and spurious documents in respect of the schedule property in order to defeat the legal and valuable rights of the plaintiffs and the defendant Nos.1 to 4 have no right to do so.

The plaintiffs further pleaded that the defendant No.4 had no legal necessities to part with the schedule property and the plaintiffs and the other members of the family have not derived any benefit under those transactions. The plaintiffs further pleaded that since the defendants did not co-operate with the plaintiffs for division and partition of the plaint schedule property, they got issued a legal notice on 26.08.1981, which was duly acknowledged by the defendants and no reply was sent virtually by admitting the contents therein and as such the plaintiffs are constrained to file the present suit.

The plaintiffs pleaded that since the defendant No.5 has also not co-operated with the plaintiffs in filing the suit, he was formally impleaded as party to the suit and the defendant No.5 is also a necessary party to the suit.

6. The case of the defendant No.1 as per the written statement filed by the defendant No.1 is as follows:

The defendant No.1 pleaded that neither the plaintiffs' nor the defendant No.5 have any right or share in the plaint schedule property and even now the plaintiffs', defendant No.4, defendant No.5 and other members of the family are living together and the defendant No.4 is the manager of the family. The defendant No.1 further pleaded that as there was no sufficient income from

the properties, the question of accounting the income to the family does not arrive at all and the defendant No.4 has no bad habits and as such the question of giving up those bad habits does not arise at all. The defendant No.1 pleaded that the plaint schedule property is the self acquired property of the defendant No.4 and the 4th defendant's father has acquired the plaint schedule property by his own earnings. Subsequently, out of love and affection towards the defendant No.4, he gave some of the properties i.e. the plaint schedule property to the defendant No.4. The defendant No.1 pleaded that the father of the defendant No.4 and his brother Krishna Murthy have fallen into debts and the defendant No.4 who was also in the same position has also fallen into debts and the father of the defendant No.4 in order to discharge the debts sold half share in the plaint 1 to 16 items to the defendant No.1, one Chenna Reddy, Buchipalli Narayana and P.Krishna Murthy.

The defendant No.1 further pleaded that the defendant No.4 sold his remaining half share to the defendant No.1 in some items and two items to the defendant No.2 and one item to the 3rd defendant's sons. The defendant No.1 pleaded that Krishna Murthy sold the properties given to him by his sister to 3rd parties towards discharging the debts and as such from the beginning, the family of the defendant No.4 was economically in bad position. The defendant No.1 further pleaded that after purchasing the said property from the defendant No.4, he improved the property by spending Rs.60,000/- and because of the improvement effected by the defendant No.1 and after conversion of the dry land into wet land, naturally the value of the property has

gone up and thereafter, the defendant No.4 who has become greedy seems to have instigated and set up the plaintiffs to claim or to extract some more money from the defendant No.1. The defendant No.1 pleaded that the plaintiffs have no right to question the alienations in favour of the defendant No.1 and further the family may be joint family, but may not possess joint family properties, even though the plaintiffs, defendant Nos.4 and 5 are living together and the properties of the defendant No.4 are self acquired properties and that the plaintiffs have no right to question the alienation, as alienation effected for legal necessities and for discharge of antecedental debts. Therefore, the defendant No.1 prayed to dismiss the suit with costs.

7. The case of the defendant No.2 as per the written statement filed by the defendant No.2 is as follows:

The defendant No.2 pleaded that the suit is not maintainable either in law or on facts and further pleaded that the plaintiffs and the defendant Nos.4 and 5 do not have any right and title in respect of item Nos.15 and 16 of the Plaint 'A' schedule property and they are not in possession and enjoyment of the same. The defendant No.2 further pleaded that those properties are in open, uninterrupted and exclusive possession and enjoyment of the defendant No.2 from the date of purchase of the said properties. The defendant No.2 further pleaded that the defendant No.4 is not a person, who is addicted to bad vices of life and he is a very prudent and wise man and is a very conservative and highly principled orthodox person and he absolutely had no vices. The defendant No.2 further pleaded that the defendant No.4 sold item

Nos.15 and 16 of the plaint 'A' schedule for a valuable consideration of Rs.22,000/- and had executed an agreement dated 11.09.1979 in pursuance of which he had later executed a registered sale deed dated 28.11.1979 and had put this defendant No.2 in possession of the said items of the property.

The defendant No.2 further pleaded that the defendant No.4 sold the properties to him for the legal necessities of the joint family consisting of himself, the defendant No.5, the plaintiffs and their mother and sisters and also for discharging some antecedent debts and for the performance of his daughters' marriage of the defendant No.4. The defendant No.2 further pleaded that the said sale deed is binding on all the members of the family including the plaintiffs and the defendant No.5 and the plaintiffs' mother and sisters who all knew about the said sale transaction and had never either protested or objected to it. The defendant No.2 further pleaded that the sale deed executed by the defendant No.4 as joint family manager and for the legal necessities of the family is binding on all including the plaintiffs and the defendant No.2 has acquired absolute right and title over item Nos.15 and 16 of the plaint schedule and further pleaded that there is no cause of action for the plaintiffs to the suit and after purchase of items Nos.15 and 16 by the defendant No.2, he had effected repairs to the well by having a bore well in it by spending more than Rs.10,000/- and had thus effected improvements in respect of that property. The defendant No.2 further pleaded that the suit is collusive and filed at the instance of the defendant No.4 only to have unlawful gain and therefore, the defendant No.2 prayed to dismiss the suit with costs.

8. The case of the defendant No.3 as per the written statement filed by the defendant No.3 is as follows:

The defendant No.3 pleaded that the defendant No.4 for his legal necessity agreed to sell some of the items of the suit properties to the defendant No.3 and executed a valid agreement and subsequently, the sons of the defendant No.3 who are divided long back intended to purchase the schedule property of the above mentioned agreement. The defendant No.3 further pleaded that the sons of the defendant purchased some of the suit properties from the defendant No.4 they were in possession of the same and the defendant No.3 is not in possession of any of the item of the suit properties and the plaintiffs unnecessarily added the defendant No.3 as a party to the suit and that the defendant No.3 is not a necessary party to the suit and as such, the suit is bad for non-joinder of necessary parties. The defendant No.3 pleaded that there is no cause of action to file the present suit against the defendant No.3 and the plaint schedule is incorrect and described wrongly. Therefore, the defendant No.3 prayed to dismiss the suit with costs.

9. The defendant No.4 remained *set-exparte* before the trial Court. The case of the defendant No.5 as per the written statement filed by the defendant No.5 is as follows:

The properties described in the plaint schedule were purchased by the grandfather of the defendant No.5 and the plaintiff Nos.1 and 2 together with the income from the ancestral properties possessed by them and also by

selling some ancestral properties out of the joint efforts of him and his sons. The defendant No.5 pleaded that the defendant No.4 is not evincing any interest in the management of the family and has not been maintaining the family at all and he was addicted to bad habits as mentioned in the plaint. The defendant No.5 pleaded that he and the plaintiff Nos.1 and 2 are under no obligation to discharge the debts due by the defendant No.4 and the defendant No.5, defendant No.4 and the plaintiff Nos.1 and 2 are having equal shares in the plaint schedule properties and the defendant No.4 never allowed the defendant No.5 to manage the properties and as a result of which the defendant No.4 was also not aware about the properties possessed by the family and also the defendant No.4 has also not accounted the income realized from the suit lands. Therefore, the defendant No.5 prayed to dismiss the suit with costs.

10. The defendant Nos.6 to 15 remained *set-exparte* before the trial Court. The case of the defendant Nos.16 to 18 as per the written statement filed by the defendant No.16 to 18 is as follows:

The defendant Nos.16 to 18 purchased Ac.0.18^{3/4} cents in Sy.No.894/2, 894/5 and 895/6 i.e. suit items Nos.3, 4 and 5 respectively under a registered sale deed dated 31.07.1980 for Rs.7,000/-, which is their own income from D.V.Narayana Chetty i.e. the defendant No.4 in the suit. The defendant Nos.16 to 18 pleaded that the defendant No.4 also sold away Ac.1.00 cents in Sy.No.895/1 under the registered sale deed dated 31.07.1980 for a valuable consideration to the defendant Nos.16 to 18 i.e. item No.1 of the plaint 'A'

schedule property and from 31.07.1980, the defendant Nos.16 to 18 have been in continuous possession and enjoyments of the extents purchased by them under the aforesaid registered sale deed without having any objection or interruption. The defendant Nos.16 to 18 further pleaded that they also perfected their right and title to their purchased extents as mentioned above by adverse possession by way of possession and enjoyment from the year 1980 to till date.

The defendant Nos.16 to 18 further pleaded that some of the items in the suit properties are in possession and enjoyment of the 3rd parties, who are not the parties to the suit and there is also a building and swimming pool constructed by Raja Reddy and his father T.Venkatramana Reddy and the same are in possession of them. As such the defendant Nos.16 to 18 pleaded that the suit is bad for non-joinder of necessary parties and they prayed to dismiss the suit with costs.

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

- 1) *Whether the plaintiffs are entitled for partition to half shared in the plaint schedule properties?*
- 2) *Whether the properties sold to defendants and the other properties are the self acquired properties of the 4th defendant, the father of the plaintiffs?*
- 3) *Whether the alienations are not binding on the plaintiffs?*

4) *Whether the defendants have affected improvement and if so, whether they are entitled for equities?*

5) *To what relief?*

On 21.06.1997, the trial Court has framed the following additional issues:

1) *Whether the suit is bad for non-joinder of necessary parties as averred in Paragraph No.4 of the written statement filed by the defendant Nos.16 to 18?*

2) *Whether the defendant Nos.16 to 18 have got right, title and possession over their purchased extent as alleged by them in Paragraph No.4 of their written statement?*

3) *To what relief?*

12. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 to 6 were examined and Ex.A-1 to Ex.A-11 were marked. On behalf of the defendant Nos.1,2 and 16 to 18, D.Ws.1 to 9 were examined and Ex.B-1 to Ex.B-6, Ex.B-6(a) and Ex.B-7 to Ex.B-28 were marked.

13. After completion of the trial and on hearing the arguments of both sides, the trial Court decreed the suit without costs *vide* its judgment, dated 01.03.2000, against which the present appeal is preferred by the appellants/defendant Nos.1 and 2 in the suit, questioning the decree and judgment passed by the trial Court.

14. Heard A.Syam Sunder Reddy, learned counsel, representing on behalf of Sri M.N.Narasimha Reddy, learned counsel for the appellants and Sri K.S.Gopala Krishna, learned Senior Counsel, representing on behalf of Sri S.S.Bhatt, learned Counsel for the respondents.

15. The learned counsel for the appellants would contend that the judgment of the trial Court is contrary to law, evidence on record and the probabilities of the case. He would further contend that the trial Court having held that the alleged bad vices of the defendant No.4 are invented for the purpose of the suit and committed error in holding that there is no legal necessity and that the sales are not for the benefit of the estate and are not binding on the plaintiffs to the extent of their shares. He would further contend that the conduct of the defendant No.5, who is none other than the brother of the plaintiffs and major by the date of all the sale deeds in not challenging the alienations made by the defendant No.4 is a strong circumstance to interfere that the sales are affected for legal necessity and binding on the sons of the defendant No.4. The learned counsel for the appellants would further contend that the trial Court committed error in construing Ex.A-7 in holding that the properties covered in Ex.A-7 are treated to be the joint family. He would further contend that the learned trial Judge wrongly appreciated the evidence on record and failed to interpret the ingredients of Ex.A-7 in proper manner and decreed the suit for partition filed by the plaintiffs and the decree and judgment passed by the trial Court is not in accordance with law and the same may be set aside.

16. *Per contra*, the learned counsel for the respondents/plaintiffs would contend on appreciation of the entire evidence on record, the learned trial Judge rightly decreed the suit and there is no need to interfere with the findings arrived by the learned trial Judge.

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

- 1) Whether the suit schedule properties are the joint and ancestral properties of the plaintiff, defendant Nos.4 and 5? or Whether the suit schedule properties are self acquired properties of the father of the defendant No.4 or the joint family properties of the defendant No.4?**
- 2) Whether the defendant No.4 alienated all the plaint schedule properties to the 3rd parties including the defendant Nos.1 to 3? and Whether the sale deeds are nominal sale deeds as pleaded by the plaintiffs?**
- 3) Whether the suit is bad for non-joinder of some of the purchasers in respect of part of plaint schedule property as parties to the suit?**
- 4) Whether the plaintiffs are entitled to the relief of partition of the plaint schedule property?**
- 5) Whether the decree and judgment passed by the trial Court needs any interference?**

18. **Point No.1:**

Whether the suit schedule properties are the joint and ancestral properties of the plaintiff, defendant Nos.4 and 5? or Whether the suit schedule properties are self acquired properties of the father of the defendant No.4 or the joint family properties of the defendant No.4?

The specific case of the plaintiffs in the plaint itself is that the suit schedule properties are the joint and ancestral properties of the plaintiff Nos.1 and 2, defendant Nos.4 and 5 and the plaintiff Nos.1 and 2 and defendant No.5 are the sons of the defendant No.4 and each of them are entitled to 1/4th share in the plaint schedule properties. The plaint schedule properties in Item Nos.1 to 16 agricultural properties situated at Vempalli Revenue Village, comprising Ac.17.13^{1/2} cents and also a terraced house bearing Nos.8/234 to 8/237 at Mandanapalli Town limits. There is no whisper in the plaint itself that which properties are joint and which properties are ancestral. The plaintiff also did not plead about the existence of coparcenary property and self-acquired property blended with it. The law is well settled that "*in the absence of any pleading, any amount of evidence will not help the party and the same cannot be looked into*". The settled proposition of law is that "*no evidence could be led beyond the pleading*".

19. The plaintiffs relied on the evidence of P.W.1 to P.W.6. P.W.1 is the plaintiff No.1, P.W.2 is the own brother of the defendant No.4. There is no whisper in the plaint or in Ex.A-7 that which properties are succeeded from the

grandfather of the defendant No.4 or which properties are the self-acquired properties of the defendant No.4. In the absence of any particulars in the plaint, a suit for partition by mere assertion that the plaint schedule properties are joint and ancestral properties of the plaintiffs and the defendant Nos.4 and 5, is not even sufficient to ascertain the existence of coparcenary. The plaintiffs have to necessarily plead and prove the existence of ancestral nucleus and also application of "*Doctrine of Blending*". ***"The legal principle, therefore, is 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 a nucleus with which the joint family property could be acquired, there would be a presumption of the property being joint and the onus would shift on the person who claims it to be a self-acquired property to prove that he purchased the property with his own funds and not out of the joint family nucleus that was available"***. In the case at hand, there is no evidence on record to show about the existence of coparcenary property, in the absence of existence of any coparcenary property, there can obviously be no blending or throwing of self-acquired property into common stock. Even as per the own admission of the plaintiff/P.W.1, the father of the defendant No.4 purchased Item Nos.1 to 16 of the plaint schedule properties in between 1936 and 14.03.1942. The plaint clearly reveals by that date the defendant No.4, who is the father of the plaintiff is aged about 13 years, therefore, the question

of acquisition of the said property from out of the jointness by the defendant No.4 and his father does not arose.

20. The learned counsel for the respondent/plaintiff would contend that a pleading shall state only material facts and not the material particulars and the plaintiffs relied on Ex.A-7 registered relinquishment deed said to have been executed by their father in favour of the father of the defendant No.4 and the said Ex.A-7 shows that the suit schedule properties are ancestral and joint family properties. The plaintiff No.1/P.W.1 admits in his evidence in cross-examination that his paternal grandfather purchased the properties at Vempalli Village in Item Nos.1 to 16 between 1936 and 14.03.1942, from one Nazirulla Saheb, Kotaratnam Modhali and Others. The plaintiff averments shows that by the date of filing of the suit in the year 1982, the father of the plaintiff i.e. the defendant No.4 was aged about 59 years, therefore, by the year 1936 the father of the plaintiff was aged about 13 years. As noticed *supra*, therefore the question of joint acquisition of plaint schedule properties from out of joint income of the defendant No.4 and his father does not arose. Absolutely, there is no specific pleading or evidence on behalf of the plaintiffs to show that the suit schedule properties were acquired from out of joint nucleus.

21. The plaintiffs are mainly relying on Ex.A-7 registration extract of the relinquishment deed said to have been executed by the defendant No.4 in favour of the father of the defendant No.4. No doubt, Ex.A-7 document is the own document of the defendant No.4, it is in between the defendant No.4 and

his father. The recitals of Ex.A-7 are that the father of the defendant No.4 succeeded some of the properties from his father and further some of the properties are his self-acquired properties. There is no specific recital in the said Ex.A-7 that which properties are succeeded by the father of the defendant No.4 and when he succeeded, which properties are self-acquired properties of the father of the defendant No.4. Even if assumed, the recitals of Ex.A-7 document is taken into consideration that some of the properties are acquired by the father of the defendant No.4 from his father and during his lifetime, his son/defendant No.4 will not get any rights in the suit schedule properties. Therefore, the defendant No.4 is not having any pre-existing right in Ex.A-7 properties, hence question of relinquishing his right in Ex.A-7 properties does not arise. As per the own admissions of the plaintiff/P.W.1, his paternal grandfather died on 05.02.1988 i.e. seven (07) years subsequent to the institution of the suit and Ex.A-7 is said to have been executed on 02.01.1969, therefore, it is evident that by the date of Ex.A-7, the defendant No.4 was not having any pre-existing right in Ex.A-7 property, hence, the question of relinquishing the right under Ex.A-7 document is '**meaningless**'.

22. The appellants specifically pleaded in the written statement itself that the suit schedule property is the self-property of the father of the defendant No.4 and the father of the defendant No.4 acquired the suit schedule property by his own earning and out of love and affection, he had given some of the properties i.e. plaint schedule property to the defendant No.4 and Ex.A-7 can be treated as a gift deed only and therefore, the suit schedule property

becomes the self-acquired property of the defendant No.4 and the suit schedule properties are the absolute properties of the defendant No.4 and that the defendant No.4 can deal with the said properties exclusively. It is an admitted fact by both the parties that the father of the defendant No.4 namely Venkatramanaiah Chetty is a practicing advocate at Madanapalli and died on 05.02.1988 as practicing advocate at Madanapalli. The suit for partition is filed in the year 1982.

23. Ex.A-9 goes to show that the minor daughter of Rangantham Chetty i.e. the granddaughter of Venkatramanaiah Chetty filed a suit in O.S.No.119 of 1985, for partition of the plaint schedule properties against Venkatramanaiah Chetty and his sons including the defendant No.4, P.W.2 herein. In the said suit the father of the defendant No.4 as defendant No.1 filed written statement, which was got marked as Ex.B-12. In Ex.B-12, the father of the defendant No.4 pleaded that he has not inherited any property from his ancestors and all properties are his self-acquired and separate properties and neither his sons nor his grandsons have no manner of right, title and interest. The explanation given by Venkatramanaiah Chetty for execution of relinquishment deeds in favour of all his sons in the said written statement in O.S.No.119 of 1985, is that to avoid future claims and unnecessary litigation in his old age, he obtained relinquishment deeds from all his sons.

24. Ex.B-13 is the written statement filed by one Somasekhar, who is the defendant No.5 in the present suit and in the said suit the defendant No.5 herein is shown as defendant No.12. He also asserted that the suit properties

are the self-acquired properties of his grandfather Venkatramanaiah Chetty and those are self-acquired and separate properties of his paternal grandfather Venkatramanaiah Chetty. Ex.B-14 is the written statement filed by Srinivasa Murthy in O.S.No.119 of 1985 i.e. the 4th son of Venkatramanaiah Chetty, he also pleaded in the said suit that the entire properties are the self-acquired properties of Venkatramanaiah Chetty. Ex.B-15 is the written statement filed by Gopal Chetty/defendant No.13 in the said suit. He specifically pleaded in the written statement that all the properties are self-acquired properties of Venkatramanaiah Chetty and he acquired them out of his self earnings in his profession as an advocate at Madanapalli. It is relevant to say that the said suit in O.S.No.119 of 1985 is filed during the pendency of the present suit before the trial Court.

25. In a case of ***Ramkishorelal and another Vs. Kamalnarayan***¹, the Five Judges Bench of the Hon'ble Apex Court held as follows:-

“12. The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes' it

¹ AIR 1963 Supreme Court 890

*happens in the case of documents as regards disposition of properties, whether they are testamentary or nontestamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar in-stance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See **Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo, (1960) 3 SCR 604 at p.611: (AIR) 1960 SC 953 at p.957**). It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible, e. g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."*

26. P.W.2 is the own brother of the father of the defendant No.4. P.W.2 also specifically admitted in his evidence in cross-examination that except the properties at Chembakur, the other properties owned at Mandapalli, Vempalli, were got by his father by way of purchase. Here, Item Nos.1 to 16 agriculture properties situated at Vempalli Revenue Village and the house property in the plaint schedule is situated at Madanapalli Town limits. Therefore, even according to the own admissions of P.W.2/the paternal grandfather of the plaintiffs, the suit schedule properties were purchased by Venkatramanaiah Chetty from out of his self earnings. P.W.2 further asserts that his father sold away the properties at Chembakur on different occasions, but he cannot say that at which year those properties were sold by Venkatramanaiah Chetty. It is not the case of either of the plaintiffs or P.W.2 that with the ancestral income,

Venkatramanaiah Chetty purchased the plaint schedule property in the present suit. Moreover, in Ex.B-21 registered sale deed dated 10.09.1979, executed by the father of the defendant No.4 in favour of the defendant No.15 Venkatramanaiah Chetty asserted that the suit schedule property is his self-acquired properties. Moreover, P.W.2 admits that his father executed relinquishment deed in his favour for some property and he himself alone alienated the said property to 3rd parties and no objections were raised by any of his sons. The above series of events as narrated *supra*, clearly indicates that the suit schedule properties are the self-acquired properties of the Venkatramanaiah Chetty, moreover, the defendant No.4/father of the plaintiffs and the defendant No.5 were alive during the pendency of the suit and he remained *set-exparte* and the defendant No.4 did not enter into the witness box. The grandfather of the plaintiffs Venkatramanaiah Chetty was alive by the date of filing of suit and he died six years after filing of the present suit.

27. The learned counsel for the respondent/plaintiff placed reliance on a case law in ***Roop Kumar Vs. Mohan Thedani***², wherein the Hon'ble Apex Court held as follows:

“19. The Sections 91 and 92 apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document which limitation imposed by Section 92 relates only to the parties to the document. If after the document has been produced to prove its terms under Section 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement

² (2003) 6 Supreme Court Cases 595

each other. Section 91 would be inoperative without the aid of Section 92, and similarly Section 92 would be inoperative without the aid of Section 91.”

28. The learned counsel for the respondent/plaintiff placed reliance on a case law in ***Yellapu Uma Maheswari and Another Vs. Buddha Jagadheeswararao and Others***³, wherein the Hon'ble Apex Court held as follows:

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question.”

29. In the present case, by the date of Ex.A-7 relinquishment deed, defendant No.4 was not having any pre-existing in Ex.A-7 property. Therefore, the question of relinquishment of right in Ex.A-7 property by the defendant No.4 does not arise. The relinquishment of right arises only in case of any pre-existing right of the defendant No.4 in Ex.A-7 property. Moreover, in the case at hand, the trial Court failed in applying the rule of interpretation of Ex.A-7 document for ascertaining the intention of the parties and also failed to consider the written statement of the father of the defendant No.4 and the brothers of defendant No.4 in suit proceedings in O.S.No.119 of 1985.

³ (2015) 16 Supreme Court Cases 787

30. The learned counsel for the respondent/plaintiff placed reliance on a case law in **Angadi Chandranna Vs. Shankar and others**⁴, wherein the Hon'ble Apex Court held as follows:

*“14. It is also to be noted that in Hindu law, for a property to be considered as an ancestral property, it has to be inherited from any of the paternal ancestors up to three generations. In this regard, it would be appropriate to refer to the judgment of this Court in **Govindbhai Chhotabhai Patel & Ors. v. Patel Ramanbhai Mathurbhai**, wherein it has been held as under:*

*“18. The learned counsel for the appellants has referred to **Shyam Narayan Prasad [Shyam Narayan Prasad v. Krishna Prasad, (2018) 7 SCC 646 : (2018) 3 SCC (Civ) 702]**. That is a case in which the property in question was held to be ancestral property by the trial court. The plaintiffs therein being sons and grandson of one of the sons of Gopal Prasad, the last male holder was found to have equal share in the property. The question examined was whether the property allotted to one of the sons of Gopal Prasad in partition retains the character of coparcenary property. It was the said finding which was affirmed by this Court. This Court held as under: (SCC p. 651, para 12)*

“12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth.

The share which a coparcener obtains on partition of ancestral property is (2020) 16 SCC 255 ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.”

⁴ 2025 SCC Online SC 877

31. In the present case the plaintiffs did not pleaded the existence of coparcenary by describing the three (03) lineal descendents, inheritance of unobstructed heritage from father's father's father. Moreover, the plaintiffs did not plead and prove the existence of ancestral property. The basis of '*Doctrine of Blending*' is the existence of coparcenary and coparcenary property as well as the existence of separate property of the coparcener. The existence of coparcenary property is essential for blending of coparcener's separate property with the coparcenary property. In the case at hand, admittedly there is no evidence to show that there is a coparcenary property. Therefore, obviously there can be no blending or throwing of the self-acquired property into common stock. **A Hindu coparcener** is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property, these are sons, grandsons and great grandsons of the holder of the joint property for the time being, in other words, the three (03) generations next to the holder in unbroken male descendant. Property inherited by a Hindu from his father, father's father or father's father's father, is ancestral property.

32. The learned counsel for the respondent/plaintiff placed reliance on a case law in ***Mallesappa Bandeppa Desai and Another Vs. Desai Mallappa Alias Mallesappa and Another***⁵, wherein the Hon'ble Apex Court held as follows:

"10. It is, we think, unnecessary to investigate whether any other text can be treated as the foundation of the said doctrine since the said doctrine has

⁵ (2015) 16 Supreme Court Cases 787

*been recognised in several decisions and has now become a part of Hindu law. In **Rajani Kanta Pal v. Jaga Mohan Pal**, the Privy Council held that “Where a member of a joint Hindu family blends his self-acquired property with property of the joint family, either by bringing his self-acquired property into a joint family account, or by bringing joint family property into his separate account, the effect is that all the property so blended becomes a joint family property”.*”

33. The learned counsel for the respondent/plaintiff placed reliance on a case law in **Smt. Rani and another Vs. Smt. Santa Bala Debnath and Others**⁶, wherein the Hon’ble Apex Court held as follows:

“10. Legal necessity to support the sale must however be established by the alienees. Sarala owned the land in dispute as a limited owner. She was competent to dispose of the whole estate in the property for legal necessity or benefit to the estate. In adjudging whether the sale conveys the whole estate, the actual pressure on the estate, the danger to be averted, and the benefit to be conferred upon the estate in the particular insistence must be considered. Legal necessity does not mean actual compulsion: it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alinee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity.”

As noticed *supra*, the plaint schedule property is not a coparcenary or joint family property of the plaintiffs and the defendant Nos.4 and 5. Therefore, the ratio laid down in the aforesaid case law is not applicable to the present facts of the case.

34. As noticed *supra*, in the present case, there is no existence of coparcenary and there is no evidence to show that the plaint schedule

⁶ 1970 (3) Supreme Court Cases 722

property is the joint family property. Therefore, the plaintiffs are not entitled any share in the absence of existence of coparcenary or joint family property. Moreover, the defendant No.4 alienated all the properties under the registered documents and by the date of alienations, the plaintiff No.1 is aged about 19 years and another son of the defendant No.4 i.e. the defendant No.5 also major, by the date of alienations is aged about 22 years and he has not raised any objections for sale. Even as per the own evidence of P.W.1, he is aware of the enjoyment of the property and making improvements in the said property by a purchasers. The father of the defendant No.4 was alive by the date of filing of the present suit, he died after six (06) years of filing of the present suit.

35. For the aforesaid reasons, this Court is of the considered view that the plaint schedule properties are the self-acquired properties of the father of the defendant No.4. Moreover, Ex.A-7 is the own document of the defendant No.4, which was executed by the defendant No.4 in favour of his father in relinquishing his rights in Ex.A-7 properties, by the date of Ex.A-7, the defendant No.4 is not having any pre-existing right in Ex.A-7 property. Therefore, the question of relinquishing his alleged right in the said property does not arise. It is well settled that the relinquishment of right in the property arises only in the case of joint right in Ex.A-7. The right of the defendant No.4 in Ex.A-7 property is created by way of Ex.A-7 registered document of the year 1969 for the first time. By the year 1969, the sons of defendant No.4/plaintiffs are aged about 13 years and 10 years respectively and another

son/defendant No.5 was aged about 16 years. The enjoyment of the property by the defendant No.4 from 1969 onwards till the date of alienation of the properties by the defendant No.4 is not at all questioned by anyone including his father also, though the father of the defendant No.4 was alive till the year 1988, the absolute right of the defendant No.4 was never questioned by his father and the defendant No.4 enjoyed the plaint schedule property as his own by enjoying absolute rights under Ex.A-7 document. The original owner of the property in Ex.A-7/father of the defendant No.4 has not questioned the said Ex.A-7 and the defendant No.4 enjoyed the property as his own from the date of Ex.A-7 as his exclusive property. The defendant No.4 alienated the suit schedule property as his own property and nobody including the father of the defendant No.4 questioned the right of the defendant No.4 in the suit schedule properties. Therefore, the plaintiffs failed to prove that the suit schedule properties are joint family properties and also coparcenary properties, in the absence of any evidence, it is quite clear that suit schedule properties are the self-acquired properties of the defendant No.4. The absolute rights of the defendant No.4 in the plaint schedule property is not question by his father during his lifetime. As noticed *supra*, the father of the defendant No.4 died six (06) years after filing of the present suit.

Accordingly, the Point No.1 is answered in favour of the appellants.

36. **Point Nos.2 and 3:**

Whether the defendant No.4 alienated all the plaint schedule properties to the 3rd parties including the defendant Nos.1 to 3? and

Whether the sale deeds are nominal sale deeds as pleaded by the plaintiffs?

Whether the suit is bad for non-joinder of some of the purchasers in respect of part of plaint schedule property as parties to the suit?

The plaintiffs pleaded in the plaint itself that taking advantage of the weak mind of the defendant No.4, the defendant No.1 to 3 seems to have influenced him to create a nominal documents in respect of plaint schedule properties in order to defeat the rights of the plaintiffs. The defendant No.1 examined himself as D.W.1 and he relied on Ex.B-16 registration extract of the sale deed dated 13.12.1979, said to have been executed by the defendant No.4 in favour of the defendant No.1, in respect of Item Nos.7 to 9, 12 and 13, house property and Ac.1.27 cents in R.S.No.779 for a sale consideration of Rs.44,000/-. According to the plaintiffs, the plaintiff No.1 is aged about 20 years (19 years completed) by the date of said sale deed and the plaintiff No.2 is aged about 17 years, and the defendant No.5 is aged about 22 years. The defendant No.1/D.W.1 deposed in his evidence in chief examination itself that he sold the Item Nos.7 to 9 of plaint 'A' schedule properties in between the year 1981-1982 and the alienees are in possession and enjoyment of the schedule property and one Radhakrishna is in possession of the said plaint schedule property and he further deposed Item Nos.1 and 2 of the schedule properties, which are in the possession of P.Krishnamurthy and Chenna Reddy and Item Nos.1 and 2 of the schedule properties are purchased by Rawoof from the defendant No.4 and he in turn sold the same to

P.Krishnamurthy and Chenna Reddy. He further deposed that in Item No.13 of the plaint schedule, he has got Ac.0.98 cents and the remaining extend of land is in the possession of Buchepalle Narayana and Buchepalle Kadirappa and the father of the defendant No.4 sold it to Kadirappa and Narayana. In cross-examination it was elicited from the defendant No.1/D.W.1 by the learned counsel for the plaintiffs that D.W.1 is not in possession and enjoyment of Item No.1 of the plaint schedule property and so also Item Nos.2 to 4 and Item No.14 of the plaint schedule property. Therefore, it is evident that the plaintiff are having very much knowledge that Item Nos.1, 2, 4 and 14 of the plaint schedule properties are in the possession of the alienees. For the reasons best known to the plaintiffs, the aforesaid alienees are not shown as parties to the suit. Moreover, the plaintiff/P.W.1 also admits in his evidence in cross-examination that the defendant No.1 has sold away certain extent from his purchased land and his purchasers are now in possession of the same and he informed the same to his advocate, his advocate informed him that at present, it is not necessary as the trial is going on. He further admits that even the extents purchased by the alinees have been transferred in the names of alienees in revenue records as pattadars, he has not filed any application before the Revenue authorities by objecting their possession and the purchasers also paying land revenue to the Government in respect of the said properties. For the aforesaid own admissions of the plaintiff/P.W.1, it is evident that some of the plaint schedule properties are in the possession of 3rd

parties, though the plaintiffs are having very much knowledge about the same, the alienees are not shown as parties to the suit.

37. The defendant No.2 is examined as D.W.1 and as per his evidence he purchased item Nos.15 and 16 of the plaint schedule from the defendant No.4 under a registered sale deed under Ex.B-2 dated 28.11.1979 and prior to Ex.B-2 sale deed, Ex.B-1 sale agreement was executed by the defendant No.4 in favour of the defendant No.2. He further deposed that as per Ex.B-1 and Ex.B-2, sale consideration was Rs.22,000/- and on the date of Ex.B-1, the defendant No.2 paid Rs.3,000/- on 16.11.1979, and he also paid another sum of Rs.2,000/- and the same is endorsed on the reverse of Ex.B-1 as Ex.B-1(a) and D.W.3 and one Syed Saheb Valli were present and attested Ex.B-1. He further deposed that the balance sale consideration of Rs.17,000/- was paid at the time of Ex.B-2 before Sub-Registrar and the endorsement was made to that effect by the Sub-Registrar. D.W.1 further deposed that he and one Khader Saheb were present and attested Ex.B-2 and the said Khader Saheb is no more.

38. The plaintiffs/P.W.1 and further deposed that at that time, Ex.B-19 and Ex.B-20 are the two land revenue receipts, those were also handed over to D.W.1 and on the date of Ex.B-2, the father of the defendant No.4 has also executed a sale deed under Ex.B-21, in favour of Subbamma and others in respect of his share in Item Nos.15 and 16 dated 10.09.1979. Ex.B-22 is the pattadar passbook issued to D.W.1 and Ex.B-23 is a bunch of three land revenue receipts paid by D.W.1. The plaintiff/P.W.1 asserted that his paternal

grandfather Venkatramanaiah Chetty sold away his share in item No.15, 16 and also in Item No.1 of the plaint schedule property for Rs.6,000/- on 10.09.1979 i.e. much prior to the filing of the suit in favour of Subbamma and Nagamma wives of one Chenna Reddy and he is also aware of the contents of the said sale deed. He further admits that his paternal uncle Ranganatham and Srinivasa Murthy also attested the sale deed. He further admits that he has not impleaded the said Subbamma and Nagamma as parties to the suit. He further admits that he is not in possession of any of the plaint schedule properties and the purchasers have been in possession of the plaint schedule properties. P.W.1 further admits that he has also not raised any objection for ploughing and making improvements in respect of their properties by the 3rd parties. The aforesaid own admissions of P.W.1 itself go to show that “***the plaintiffs suppressed the truth and approached the Court for seeking relief of partition of the plaint schedule property. Even as per the own admission of the plaintiff/P.W.1, as on the date of filing of the suit, entire plaint schedule properties are in the possession of the purchasers and no property is available for partition***”.

39. It was specifically pleaded by the defendant No.3 in the written statement that the defendant No.4 for his legal necessity agreed to sell some of the items of the suit properties to the defendant No.3 and executed a valid agreement and subsequently, the sons of the defendants who are divided long back intended to purchase the schedule property of the above mentioned agreement. The defendant No.3 further pleaded that the defendant Nos.16 to

18 i.e. his sons purchased some of the suit properties from the defendant No.4 and they were in possession of the same and the defendant No.3 is not in possession of any of the item of the suit properties and the plaintiffs unnecessarily added the defendant No.3 as a party to the suit and that the defendant No.3 is not a necessary party to the suit and as such, the suit is bad for non-joinder of necessary parties. After filing of the written statement also by the defendant No.3, the plaintiffs did not join the sons of the defendant No.3 as parties to the suit. During the pendency of the suit, the defendant No.3 died in the year 1997 i.e. subsequent to fifteen (15) years of institution of the suit. The defendant Nos.16 to 18 were brought on record on 09.04.1997 as legal representatives of the defendant No.3. The defendant No.16 to 18 filed the written statement and they pleaded that they purchased Ac.0.18^{3/4} cents of land in Sy.No.894/2, 894/5 and 895/6 i.e. suit items Nos.3, 4 and 5 respectively under a registered sale deed dated 31.07.1980 for Rs.7,000/-, which is their own income from D.V.Narayana Chetty i.e. the defendant No.4 in the suit. The defendant Nos.16 to 18 further pleaded that the defendant No.4 also sold away Ac.1.00 cents in Sy.No.895/1 under the registered sale deed dated 31.07.1980 for a valuable consideration to the defendant Nos.16 to 18 i.e. item No.1 of the plaint 'A' schedule property and from 31.07.1980, the defendant Nos.16 to 18 have been in continuous possession and enjoyments of the extents purchased by them under the aforesaid registered sale deed without having any objection or interruption. Those sale deeds in favour of the defendant Nos.16 to 18 by the defendant No.4 are much prior to

filing of the present suit. The defendant Nos.16 to 18 further pleaded that they also perfected their right and title to their purchased extents as mentioned above by adverse possession by way of possession and enjoyment from the year 1980 to till date.

40. D.W.8 deposed in his evidence that the consideration of Rs.7,000/- was paid by him to the defendant No.4 and the defendant No.4 sold the property to meet his family expenses and also for education of his children. D.W.8 further deposed that they dug a well in the year 1981 and obtained electricity service connection in the year 1982, Ex.B-27 is the electricity passbook and Ex.B-28 is the electricity temporary receipt. He further deposed that they got to know about the filing of the suit in the year 1997 and since the date of purchase of the property, they have been in possession and enjoyment of Item Nos.1 to 5.

41. The written statement of the defendant Nos.16 to 18 together with the evidence of D.W.8 goes to show that by the year 1980 itself i.e. much prior to the filing of the present suit, the defendant No.4 alienated Item Nos.3, 4 and 5 of the plaint schedule properties to the defendant Nos.16 to 18. It is well settled that ***“the impleadments of the defendant Nos.16 to 18, after fifteen (15) years of institution of the suit as the legal representatives of the deceased defendant No.3 cannot be treated as parties, as the plaintiffs did not implead them by seeking amendment of the plaint pleadings.*** The law is well settled that ***“in the absence of pleadings, no amount of evidence will be looked into”***. For the aforesaid reasons, it is evident that

the plaintiffs suppressed the truth and approached the trial Court with false averments for seeking the relief of partition of the plaint schedule properties.

42. As notice *supra*, the entire plaint schedule properties are the self-acquired property of the father of the defendant No.4 and the defendant No.4 got the said property for the first time under Ex.A-7 relinquishment deed. As stated *supra*, the defendant No.4 is not having any pre-existing right by the date of Ex.A-7 in Ex.A-1 properties, therefore, relinquishing the alleged joint right in Ex.A-7 does not arise. The defendant No.4 for the first time created right through Ex.A-7. The enjoyment of the properties of the defendant No.4 from the date of Ex.A-7 continuously for more than of nine (09) years till the date of alienation of all the plaint schedule properties by the defendant No.4 were never questioned by the father of the defendant No.4. As noticed *supra*, the original owner/father of the defendant No.4 has not questioned Ex.A-7 document and the defendant No.4 enjoyed the property as exclusive property of his own. The father of the defendant No.4 did not question the absolute possession and enjoyment of the defendant No.4. It is relevant to say that the present suit for partition of the properties is filed in the year 1982 and the father of the defendant No.4, who acquired the schedule properties by way of self acquisition died in the year 1988. Therefore, undoubtedly, the defendant No.4 is not having any pre-existing right in Ex.A-7 property as on the date of Ex.A-7.

43. It was contended by the respondent/plaintiffs that all the sale deeds are nominal sale deeds and no consideration is passed under the said sale deed.

The learned counsel for the respondent/plaintiffs relied on a case law in **Vithal Bapu Mane Vs. Balsahed Sidhu Masal and Others**⁷, wherein the High Court of Bombay held as follows:

*“In a suit for partition by a Hindu Coparcener, in these facts, it is not necessary to seek a specific declaration for setting aside the alienation in favour of the purchaser. I am fortified in this view by a decision of Karnataka High Court in the case of **Ganpati Santaram Bhosale v. Ramchandra Subbarao Kulkarni**, ILR 1985 KAR 1115 where the Court has held that it is now well settled that in a suit for partition by a Hindu coparcener it is not necessary for him to seek setting aside of a sale affected by another coparcener in favor of a third party. It is sufficient if he asks for his share in the joint family properties and for separate possession thereof on the basis that he is not bound by any alienation or interest of others created in such properties which fall to his share.”*

The learned counsel for the respondent/plaintiffs also relied on a case law in **Ganpati Santaram Bhosale v. Ramchandra Subbarao Kulkarni**⁸.

44. The law is well settled that **“for non-payment of sale consideration or any part of a sale consideration, the sale cannot be vitiated”**, the same also well settled by the Apex Court in **Vidhyadhar Vs. Manikrao and Another**⁹.

45. Another important circumstance to disbelieve the case of the plaintiffs is that the own brother of the plaintiffs/defendant No.5 filed written statement in the present case supporting the case of the plaintiffs herein. But in his earlier written statement, which is filed in O.S.No.119 of 1985 under Ex.B-13, the defendant No.5 herein asserted that the suit properties are not the ancestral

⁷ 2017 SCC OnLine Bom 51

⁸ AIR 1985 KAR 143

⁹ (1993) 3 SCC 573

properties of Venkatramanaiah Chetty and they are his separate and self acquired properties and he acquired them from his earning in his profession as a pleader. He further asserted that those properties were also never treated as joint family properties and the plaintiff in the said suit has absolutely no right whatsoever in the suit properties. The contents of the written statement of the defendant No.5 herein in O.S.No.119 of 1985 are quite contrary to the pleadings in the written statement filed by the defendant No.5 in the present suit. For the reasons best known to the defendant No.5, he did not enter into the witness box to prove his defense in the written statement. Moreover the defendant No.5 is major by the date of alienations by the defendant No.4 and he did not file any suit for partition or also not filed any suit for cancellation of the said registered sale deeds. By the date of filing of the suit in the year 1982, plaintiff Nos.1 is aged about 22 years.

46. The law is well settled by the Hon'ble Apex Court in ***Vidhyadhar Vs. Manikrao and Another***¹⁰, wherein it was 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.”

47. For the aforesaid reasons, this Court is of the considered view that as on the date of filing of the present partition suit, no property is available for partition and the entire plaint schedule property was alienated by the defendant No.4 as an absolute owner of the plaint schedule property and his

¹⁰ (1993) 3 SCC 573

rights were not questioned by his father/original owner of the property and nobody questioned the right of the defendant No.4 in alienation of the plaint schedule property to the defendant Nos.1 to 3 and other alienees till so far. Moreover, another son of the defendant No.4 /defendant No.5, who is a major by the date of alienations of properties by the defendant No.4, he has not filed any suit for partition or also not challenged the sale deed said to have been executed by his father. As noticed *supra*, the plaint schedule properties are the absolute property of the defendant No.4 and therefore, he is entitled to deal with the said property exclusively. As per the own admissions of the P.W.1 and as per the house hold card and voters' list, their brother, themselves and their father are residing in the same house. Though the defendant No.4/father of the plaintiffs and defendant No.5 are alive during the pendency of the suit, he did not file any written statement and he remained *set-exparte*. Therefore, it is quite evident that to cause wrongful loss to the purchasers, the plaintiffs, who are having very much knowledge about the alienations by their father remained silent and the defendant Nos.4 and 5 colluded with the plaintiffs got filed the present suit for partition by the plaintiffs to cause wrongful loss to the purchasers.

48. The above series of circumstances as narrated *supra* indicates that some of the properties are in possession of the 3rd parties/alienees and the defendants have raised the said objection in the initial stage, but, the plaintiff proceeded with the suit without taking any steps to add the alienees, who are in the possession of the properties as parties to the suit, whose non-joinder

has been objected. Therefore, this Court finds that the objection is well founded and the suit for partition must be dismissed on the ground of non-joinder of necessary parties/alienees of the part of the plaint schedule property. If the present suit is decreed in the absence of the proper and necessary parties, their valuable rights will certainly be defeated.

Accordingly, Point Nos.2 and 3 are answered against the respondent/plaintiffs.

50. **Point No.4:**

Whether the plaintiffs are entitled to the relief of partition of the plaint schedule property?

The plaintiffs in the present case approached the Court for seeking relief of partition of plaint schedule property and the plaintiffs did not specifically plead about the existence of coparcenary property. No evidence is produced by the plaintiffs to show about the existence of coparcenary property and also joint family property. As noticed *supra*, the plaintiffs also did not plead as to the throwing of the self-acquired properties into common stock.

As on the date of filing of the suit, no property is available for partition and the entire plaint schedule property is in the possession of the purchasers. There is no pleading in the plaint or in the evidence of plaintiff which properties are self-acquired and which properties are ancestral.

51. The plaintiffs failed to prove that the plaint schedule properties are joint and ancestral properties. The father of the plaintiffs/defendant No.4 alienated the suit schedule property to the 3rd parties under the registered sale deeds in the year 1979 itself i.e. much prior to the filing of the suit itself. Even as per the own admissions of the plaintiffs, the entire plaint schedule properties are in the possession of the purchasers from the date of the said sale deeds. As per the own admissions of the plaintiff No.1/P.W.1, he is having very much knowledge about the cultivation of the plaint schedule Item Nos.1 to 16 of the schedule properties by the purchasers and also the improvements made by the purchasers. As noticed *supra*, the plaintiffs relied on the Ex.A-7 registered relinquishment deed said to have been executed by their father in favour of their grandfather. There is no whisper in Ex.A-7 or in the plaint that which properties are joint and which properties are ancestral. The plaint schedule properties consist of Item No.1 to 16 and also house properties. Furthermore, the plaintiffs did not plead the coparcenary property and self-acquired property blended with it. Admittedly, there is no evidence on record to show about the existence of coparcenary property, therefore, there can obviously be no blending or throwing the self-acquire property into common stock. Even taking into consideration of the recitals of Ex.A-7, the father of the plaintiffs will not get any rights during the lifetime of his father. Admittedly, the father of the defendant No.4/paternal grandfather of the plaintiffs was alive till 1988 and he died after six (06) year of filing of the present suit for partition of the plaint schedule property.

52. ***It is noteworthy that Sections 6(3) and 8 gives an indication that the succession would open, only on the death of a person, whose property is to devolve. Coparcenary is a typical concept, specific person, professing Hindu religion. It clothes an individual, with right to property, with the incidence of mere birth. Though succession is also a concept through which, an individual gets right, vis-à-vis the property, on account of his kinship to the owner, there exists a clear distinction between these two concepts. The first is that, the right of coparcener is against a property, which is held by joint family, and not an individual. Succession, on the other hand, is, in respect of the property held by one individual. The second is that a coparcener can enforce his right at any point of time, by seeking partition, whereas succession would take place only after the death of the owner of the property.***

53. In the case at hand as on the date of filing of suit, the father of the plaintiffs and grandfather of the plaintiffs were alive. As stated *supra*, as on the date of Ex.A-7 registered relinquishment deed, the father of the plaintiffs/defendant No.4 is not having any pre-existing right. Therefore, the question of relinquishment of his alleged joint right in Ex.A-7 is meaningless. Even if assume the recitals of Ex.A-7 is taken into consideration, during the lifetime of the father of the defendant No.4, his sons will not get any right in the plaint schedule property. Admittedly, the suit for partition is filed in the year 1982 and the paternal grandfather of the plaintiff died on 05.02.1988 i.e. seven (07) years subsequent to the institution of the suit.

54. As stated *supra*, the plaintiffs, who approached the Court for seeking relief of partition of the plaint schedule property failed to plead and prove about the existence of coparcenary and also joint family property. Furthermore, a part of the plaint schedule properties are in the possession of the 3rd parties, those 3rd parties are not added as parties to the suit. The evidence of P.W.1 clinchingly establishes that P.W.1 is having very much knowledge about the possession of the 3rd parties in respect of the part of the plaint schedule properties and even as per his own admissions, he did not raised any objection for possession of the plaint schedule properties by the purchasers. There is evidence on record to show that some of the plaint schedule properties are in possession of the 3rd parties by the date of institution of the suit itself. But, for the reasons best known to the plaintiffs, the plaintiffs did not implead them as parties to the suit and in the absence of proper and necessary parties as noticed *supra*, a suit for partition cannot be decided. For the foregoing reasons, the plaintiffs are not entitled to the relief for partition as prayed for.

Accordingly, the point No.4 is answered against the plaintiffs.

55. **Point No.5:**

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

In view of my findings in Point Nos.1 to 4, this Court is of the considered view that the learned trial Judge failed to appreciate the oral and documentary evidence on record in a proper manner and erroneously decreed the suit.

Therefore, the decree and judgment passed by the learned trial Judge is liable to be set aside and the suit in O.S.No.100 of 1983, on the file of the Senior Civil Judge, Madanapalli is dismissed.

56. In the result, the appeal in A.S.No.1220 of 2000 is **allowed**. 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: 02.04.2026

SRT