APHC010096352002

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

TUESDAY,THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

APPEAL SUIT NO: 804/2002

Between:

Ch.varalakshmi **...APPELLANT**

AND

Ch Hanumantha Rao 17 Ors and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1. V K SHIVA SHANKAR

Counsel for the Respondent(S):

1. M R S SRINIVAS
2. A VEERASWAMY

APPEAL SUIT NO: 820/2002

Between:

Sripurapu Varalakshmi **...APPELLANT**

AND

Chokkakula Narayanamma Died As Per Lrs **...RESPONDENT**

Counsel for the Appellant:

1. V K SHIVA SHANKAR

Counsel for the Respondent:

1. A VEERASWAMY

The Court made the following:

Reserved on 05.02.2026
Pronounced on 24.02.2026
Uploaded on 24.02.2026

THE HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

APPEAL SUIT Nos.804 & 820 of 2002

COMMON JUDGMENT:

The Appeal in A.S.No.804 of 2002 has been filed, under Section 96 of the Code of Civil Procedure [for short 'the C.P.C.'], by the Appellants/Defendant No.5 challenging the Decree and Common Judgment dated 09.09.1998 in O.S.No.13 of 1986 passed by the learned Subordinate Judge, at Tanuku [for short 'the trial Court'].

2. The Appeal in A.S.No.820 of 2002 has been filed, under Section 96 of the Code of Civil Procedure [for short 'the C.P.C.'], Appellant/Defendant No.1 challenging the Decree and Common Judgment dated 09.09.1998 in O.S.No.18 of 1986 (O.P.No.38 of 1980) passed by the learned Subordinate Judge, at Tanuku [for short 'the trial Court'].

3. Originally, the trial Court clubbed the aforesaid two suits in O.S.Nos.13 & 18 of 1986, common evidence was recorded in O.S.No.13 of 1986 and a common judgment was passed by the trial Court. Since all the two appeals are filed against one common judgment, they are clubbed together and a common judgment is being pronounced in these two appeals.

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

5. **A.S.No.804 of 2002 (O.S.No.13 of 1986):**

The suit in O.S.No.13 of 1986 is filed by Chokkakula Hanumanta Rao, seeking for partition of plaint schedule house into eight equal shares and allot three such shares to the plaintiff and for mesne profits.

6. The case of the plaintiff in O.S.No.13 of 1986, on the file of the Subordinate Judge, Tanuku, is as under:

One Chokkakula Madhavarao and Tammi Naidu are the sons of Appalaswamy and Narayanamma, and Anjamma is his mother and she is the wife of the said Chokkakula Madhavarao and he was born to Anjamma through Chokkakula Madhavarao and the said Anjamma and Madhavarao are the parents of the plaintiff. The plaintiff further pleaded that Chokkakula Narayanamma died during the pendency of the suit vide O.S.No.18 of 1986 (O.P.No.38 of 1980) and after the death of the said Narayanamma, the legal heirs of Madhavarao i.e. the plaintiff and his mother viz., the defendant No.1 and Tammi Naidu's branch succeeded to the plaint schedule property under the settlement deed dated 07.10.1939, executed by Sattemma, and the defendant Nos.2 to 4 are the daughters of Narayanamma, and the defendant No.5/Chokkakula Varalaxmi, who is the defendant No.1 in O.S.No.18 of 1986, her status as the wife of Tammi Naidu is disputed by the plaintiff, and the creditors of Tammi Naidu are added as defendant Nos.6 to 9, and the

defendant Nos.10 to 14 are the legal representatives of the defendant No.9 in O.S.No.13 of 1986. The plaintiff further pleaded that he and the defendant No.1/his mother got issued a registered notice on 01.05.1983, demanding the partition of the plaint schedule property, and the defendant No.4/Marrapu Seetamma got issued a reply notice with false allegations, and the plaintiff is entitled to half share in the share of Madhavarao in the plaint schedule property, and Narayanamma succeeded to half of the share of Tammi Naidu in the plaint schedule property being his mother. Since the defendants failed to cooperate for partition of the plaint schedule property, the plaintiff is constrained to file the suit.

7. Defendant Nos.1, 2, 7, 13 and 14 remained ex-parte before the trial Court and the defendant Nos.8 and 9 died.

Defendant No.3/Marrapu Adilaxmi pleaded in the written statement that she has no objection for partition of the plaint schedule properties as claimed by the plaintiff.

8. Defendant No.4/Marrapu Seetamma, who is the plaintiff No.2 in O.S.No.18 of 1986, filed her written statement. The brief averments in the said written statement are as follows:

The plaintiff herein is not the son of Madhavarao and the defendant No.1 is not his wife; after the death of the said Madhavarao, his property devolved on his mother Narayanamma. She further pleaded that Tammi Naidu and Narayanamma are entitled to each half share in the property as per the

settlement deed and Narayanamma executed a Will dated 09.10.1981, bequeathing her estate to the defendant No.4 and died. She further pleaded that the defendant Nos.2 and 3 have no right over the schedule properties and defendant No.5/Chokkakula Varalakshmi is not the wife of Tammi Naidu and that the entire plaint schedule property devolves on the defendant No.4 only and it should be partitioned only between the defendant Nos.4 and 5 in 3:1 ratio even assuming the plaintiff and the defendant No.1 are the legal heirs of Madhavarao and Narayanamma is also a legal heir and each of them is entitled to 1/3rd share in the half share of Madhavarao.

9. The defendant No.6 adopted the written statement filed by the defendant No.4.

10. The case of the defendant No.9 is that he lent money on the fact of a mortgage bond executed by late Tammi Naidu mortgaging the plaint schedule properties and O.S.No.31 of 1987 was filed by him.

11. The contention of the defendant No.5/Chokkakula Varalakshmi, who is the defendant No.1 in another suit, is one and the same in both the suits and she contended that she is the wife of late Tammi Naidu and she is entitled to the property and she disputed the relationship of late Madhavarao with the plaintiff and the defendant No.1.

12. Based on the above pleadings, the trial Court framed the following issues in O.S.No.13 of 1986:

1) Whether the plaintiff is entitled to seek partition of the plaint schedule property?
2) Whether the will dated 09.10.1981 executed by Narayanamma is true?
3) Whether the 5th defendant is the wife of late Tamminaidu?
4) Whether the plaintiff is entitled to any profits?
5) Whether the valuation of the schedule is correct? and
6) To what relief?

13. **A.S.No.820 of 2002 (O.S.No.18 of 1986):**

The suit in O.S.No.18 of 1986 is filed by Chokkakula Narayanamma *vide* O.P.No.38 of 1980 for recovery of plaint 'A' schedule covered under the said settlement deed and plaint 'B' schedule properties or in the alternative for partition of the said properties into four equal shares and for separate possession of three such shares and also for past profits. During the pendency of the suit, the plaintiff No.1/Chokkakula Narayanamma died and her daughter Marrapu Seetamma added as plaintiff No.2 under a Will said to have been executed by the said Narayanamma.

14. The case of the plaintiffs in O.S.No.18 of 1986, on the file of the Subordinate Judge, Tanuku, is as under:

The eldest son of Narayanamma by name Madhavarao died even prior to the death of Sattemma and as such the undivided half share in the schedule property vested in Narayanamma, who is his Class-I heir. The plaintiffs further pleaded that the other son of Narayanamma by name Tammi

Naidu used to stay in a part of the schedule property with his wife by name Challayamma, who died in the year 1976. The plaintiffs further pleaded that Tammi Naidu was habituated to vices and brought the defendant No.1/Varalakshmi, who started living in the schedule house and he was beaten by her under intoxication, and he died with injuries on 20.09.1979, the defendant No.1 had been collecting rents from the tenants. The plaintiffs further pleaded that the plaint 'B' schedule properties are movable properties and as both the vested remainder holders died, Narayanamma being a Class-I heir became the absolute owner of the schedule property. She further pleaded that the defendant No.1 murdered Tammi Naidu and as such she is disqualified from inheritance and the relinquishment deed dated 06.09.1968, is not true and valid and it was obtained by Tammi Naidu by inducement from Narayanamma and irrespective of relinquishment, Narayanamma is entitled to the entire property in view of subsequent changes and that the plaintiff is constrained to file the suit.

15. The case of the defendant No.1 by name Chokkakula Varalakshmi (defendant No.5 in O.S.No.13 of 1986)/appellant herein is as follows:

She is the widow of Chokkakula Tammi Naidu and she is the legally wedded wife. She further pleaded that the plaintiff No.1 is her mother-in-law and later Chokkakula Tammi Naidu died and as per the postmortem examination dated 19.09.1979, the death of Tammi Naidu was a natural death. The defendant No.1 further pleaded that the marriage between herself and Tammi Naidu was performed at Kagulapadu Village of Tadepalligudem

and the defendant No.1 was first wedded wife to one Gunpudi Sambasiva of Aakiveedu village, who died even before the consummation of marriage. The defendant No.1 further pleaded that during the lifetime of Tammi Naidu, the plaintiff No.1 used to live with the defendant No.1 and Tammi Naidu and after the death of Tammi Naidu also she continued to live in the plaint schedule property. She further pleaded that the entire plaint 'B' schedule properties are the Streedhana properties of the defendant No.1, which she got from her parental house and they are not the joint properties. She further pleaded that Tammi Naidu got 196 Sq. yards of the plaint 'A' schedule properties as per the relinquishment deed dated 06.09.1968, and the said property was mortgaged. She further pleaded that after the death of Tammi Naidu, the defendant No.2 bore grudge against her because the defendant No.1 was not willing to act according to the directions of the defendant No.2. She further pleaded that she is the legally wedded wife of Tammi Naidu and she married Tammi Naidu after the death of her first husband. She further pleaded that she is the sole legal heir of Tammi Naidu as per the Hindu Succession Act and she is entitled to half share in the plaint schedule property.

16. The defendant No.2 is none other than a tenant, he contended that he stayed in the northern portion of their house by paying an amount Rs.30/- towards rent to one Chokkakula Tammi Naidu till 29.09.1979. He further pleaded that subsequent to the death of Tammi Naidu, the defendant No.1/appellant collected the rents and from 01.04.1980 onwards he has been depositing the rents into the Court. He further pleaded that he vacated the

portion of the schedule property in the month of March, 1996 and the claim against the defendant Nos.4 and 5 was given up since they have vacated the premises.

17. Based on the above pleadings, the trial Court framed the following issues in O.S.No.18 of 1986:

1) Whether the 1st defendant is not the legally wedded wife of Tamminaidu?
2) Whether the relinquishment deed dated 06.09.1968, is vitiated by fraud and misrepresentation and not binding on the plaintiffs?
3) Whether the plaint B schedule property is the Streedhana property of 1st defendant?
4) Whether the 2nd plaintiff is entitled for partition of Plaint A and B schedule properties?
5) Whether the 2nd plaintiff is entitled for the alternative relief as prayed for?
6) Whether 1st defendant is disqualified? and
7) To what relief?

18. During the course of trial in the trial Court, on behalf of the plaintiffs in O.S.No.13 of 1986 connected with O.S.No.18 of 1986, P.W.1 to P.W.3 were examined and Ex.A-1 to Ex.A-5 were marked. On behalf of the Defendants in O.S.No.13 of 1986 connected with O.S.No.18 of 1986, D.W.1 to D.W.8 were examined and Ex.B-1 to Ex.B-5 were marked.

19. After completion of the trial and hearing the arguments of both sides the trial Court decreed the suits *vide* its common judgment, dated 09.09.1998, against which the appeal in A.S.No.804 of 2002 is preferred by the defendant No.5 in O.S.No.13 of 1986 and A.S.No.820 of 2002 is preferred by the defendant No.5 in O.S.No.18 of 1986, questioning the common Judgment and decree passed by the trial Court.

20. Heard Sri V.K.Shiva Shankar, learned counsel for the appellants and Sri M.R.S.Srinivas, learned counsel for the respondents and Sri A.Veeraswamy, learned counsel for the respondent/plaintiff No.2 in O.S.No.18 of 1986.

21. Learned counsel for the appellant would contend that the trial Court has failed to observe that the plaintiff in O.S.No.13 of 1986 by name Chokkakula Hanumanta Rao failed to establish by any evidence that his mother was the legally wedded wife of late Madhavarao and he is the son of K.Madhavarao, and Madhavarao died on 21.09.1966. Learned counsel for the appellant would contend that the suit filed by the plaintiff in O.S.No.13 of 1986, is not maintainable under law and plaint 'A' schedule property vested in the husband of the appellant by virtue of relinquishment deed dated 06.09.1968. Learned counsel for the appellant would contend that the trial Court, while accepting Ex.B-5, which was executed by Narayanamma in favour of Tammi Naidu, ought to have dismissed both the suits, but the learned trial Judge decreed both the suits.

22. Learned counsel for the respondent No.1/plaintiff in O.S.No.13 of 1986 connected with A.S.No.804 of 2002 contended that Madhavarao and Tammi Naidu predeceased Narayanamma and she has a share along with Anjamma and the plaintiff herein in respect of half of the share of Madhavarao and she does not have any right without any partition to execute any document, and that Ex.B-5 relied on by the appellant had no value in the eyes of law and it is not binding. He would further contend that it is for the appellant to claim right in respect of the estate of Tammi Naidu, which devolved upon Narayanamma after his death, but in view of the specific recital of Ex.A-1, the plaint 'A' schedule property would vest on the male progeny of Tammi Naidu and in strict sense no right is vested in favour of the appellant as there are no issues for Tammi Naidu, but in strict sense, the property has to revert back to the plaintiff only. He would further contend that however, as there is no cross-appeal filed by him and he accepted the share given by the trial Court.

23. Learned counsel for the respondent/plaintiff No.2 in O.S.No.18 of 1986 connected with A.S.No.820 of 2002 would contend that the findings of the trial Court that Varalakshmi is the legal wedded wife of Tammi Naidu is totally erroneous. He would further contend that the other finding given by the trial Court that the marriage between Anjamma and Madhavarao is valid and the P.W.1 was born to Anjamma and Madhavarao is also equally erroneous. He would further contend that the plaintiff in O.S.No.13 of 1986, his mother along with the appellant in both the appeals are liable to be non-suited totally. He would further contend that both the appeals may be disposed of by dismissing

O.S.No.13 of 1986 and the suit filed by Marrapu Seetamma vide O.S.No.18 of 1986 may be decreed in respect of the entire plaint 'A' schedule properties. It is undisputed that both the appeals are instituted by the defendant No.1 in O.S.No.18 of 1986, connected with A.S.No.820 of 2002, who is the defendant No.5 in O.S.No.13 of 1986, connected with A.S.No.804 of 2002. No cross-appeals to challenge the finding and the decree and judgment given by the trial Court are filed and no cross-appeal or appeal is filed by the respondent/plaintiff in O.S.No.13 of 1986 and also by the respondent/Plaintiff No.2 in O.S.No.18 of 1986.

24. Now in deciding the present first appeals, the points that arise for determination are as follows:

1. **Whether the appellant/Chokkakula Varalakshmi is wife of Tammi Naidu?**
2. **Whether Chokkakula Hanumanta Rao and Anjamma are the legal representatives of late Madhavarao?**
3. **Whether the Ex.B-1 Will deed dated 09.10.1981 said to have been executed by Narayanamma in favour of the plaintiff No.2 in O.S.No.18 of 1986, is proved in accordance with law?**
4. **Whether the relinquishment deed dated 06.09.1968, is vitiated by fraud and misrepresentation as alleged by the plaintiffs in O.S.No.18 of 1986? and whether Narayanamma was having any right to execute the said relinquishment deed?**

5. **Whether the plaintiff in O.S.No.13 of 1986 and the plaintiff in O.S.No.18 of 1986 are entitled to the relief of partition of the plaint schedule property? and, Whether the decree and common judgment passed by the trial Court in O.S.Nos.13 and 18 of 1986 needs any interference?**

25. **Point No.1:**

Whether the appellant/Chokkakula Varalakshmi is wife of Tammi Naidu?

The appellant contended that she is the legally wedded wife of Tammi Naidu; the respondents pleaded that Tammi Naidu married one Chellayamma and she died in the year 1976, and Tammi Naidu was habituated to vices and brought one Varalakshmi, who started living in the plaint schedule house. The contention of the appellant is that she is the legally wedded wife of Tammi Naidu and her marriage with Tammi Naidu was performed at Kagulapadu of Tadepalligudem, as per the caste customs and that she and Tammi Naidu lived together as man and wife till the death of Tammi Naidu. The appellant herein was examined as D.W.6 before the trial Court and her evidence shows that her marriage with Tammi Naidu took place about seventeen (17) years ago at Kagulapadu Village of Pentapadu Mandal, which is the native place of her parents. She further deposed that after the marriage, they put up their residence in the house belonging to her husband at Tanuku, and they lived together for about two (02) years and thereafter, her husband died.

26. To discharge her burden, the appellant examined her brother as D.W.7 and he asserted about the marriage of D.W.6 with Tammi Naidu, which was performed on 22.02.1976, and later, on the 3rd day of marriage, the appellant was sent along with her husband to Tanuku, and the marriage of the appellant with Tammi Naidu was performed as per caste customs. Furthermore, the tenant who stayed in the house of Tammi Naidu was examined as D.W.8, and he also asserted about the marriage of Tammi Naidu with defendant No.5 while he was staying as a tenant in the schedule-mentioned property, and after their marriage, Tammi Naidu brought D.W.6 to the schedule property house. He further asserted that Tammi Naidu and Varalakshmi lived in one portion and subsequently he shifted his residence to another house which was newly constructed by him. Apart from the oral evidence of D.W.6 and D.W.7, the appellant also relied on Ex.B-2, the certified copy of the sworn statement given by Chokkakula Tammi Naidu in C.C. No.220 of 1979 before the learned Additional Judicial Magistrate of First Class, Tanuku, and the same was exhibited as Ex.B-2. In Ex.B-2, Tammi Naidu asserted that the complainant Varalakshmi is his wife, and furthermore, the appellant also relied on Ex.B-3, the certified copy of the complaint, and the recitals in Ex.B-3 show that Varalakshmi is described as the wife of Tammi Naidu in the said copy of the complaint.

27. The oral evidence of D.W.7 and D.W.8 and Ex.B-2 and Ex.B-3 supports D.W.6. Ex.B-2 and Ex.B-3, along with the evidence of D.W.6 to D.W.8, clinchingly establish that the appellant is the wife of Tammi Naidu and after

their marriage they lived together in the plaint schedule property house for a period of two (02) years and subsequently, Tammi Naidu died. D.W.1/Marrpau Adilakshmi admitted in her evidence that Tammi Naidu and Varalakshmi are wife and husband. Though D.W.2 disputed the relationship of husband and wife between Varalakshmi and Tammi Naidu in her written statement, she pleaded her ignorance about the marriage of Tammi Naidu with Varalakshmi. D.W.2 admitted in her evidence that both of them lived together for about two (02) years till the death of Tammi Naidu and the respondents failed to prove that the appellant is not the legally wedded wife of Tammi Naidu. By giving cogent reasons, the learned trial Judge held that the appellant/Chokkakula Varalakshmi is the legally wedded wife of Tammi Naidu, against which no cross-objections or appeal was filed by any of the respondents. Having accepted the said finding, all the parties in the suits, now, in the appeal proceedings after a lapse of twenty-four (24) years now, the respondents are contending that Chokkakula Varalakshmi is not the legally wedded wife of Tammi Naidu, therefore, the same cannot be accepted. There is a evidence on record to show that the appellant herein is the wife of Tammi Naidu. By giving cogent reasons and on considering the legal position, the trial Court held that the appellant is none other than the wife of Chokkakula Tammi Naidu. Therefore, there is no need to interfere with the said findings arrived at by the trial Court.

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

28. **Point No.2:**

Whether Chokkakula Hanumanta Rao and Anjamma are the legal representatives of late Madhavarao?

The appellant by name Varalakshmi disputed the relationship of the plaintiff and the defendant No.1 in O.S.No.13 of 1986 with Madhavarao, and Marrapu Seetamma/plaintiff No.2 in O.S.No.18 of 1986 also disputed the relationship of Anjamma and her son/plaintiff with Chokkakula Madhavarao. Admittedly, the trial Court arrived at the conclusion that the plaintiff in O.S.No.13 of 1986 is none other than the son of Madhavarao and the defendant No.1 Anjamma, against which no cross-appeal or appeal has been filed by any of the respondents except the defendant No.5. As seen from the written statement filed by the appellant and the written statement of Seetamma, except for the formal denial, they have not taken any specific defence in the pleadings about the relationship of the plaintiff and Anjamma with Madhavarao.

29. To discharge the burden, the plaintiff in O.S.No.13 of 1986 was examined as P.W.1. P.W.1 asserted that the defendant No.1 is his mother and he was born to P.W.2 through Madhavarao, and the defendant No.1 was also examined as P.W.2. The plaintiff in O.S.No.13 of 1986 also relied on the evidence of P.W.3. P.W.2 narrated in her evidence about the performance of her marriage with Madhavarao, and P.W.3, who is a resident of Tadepalligudem, also asserted in his evidence that he knows P.W.2 and that he attended the marriage between P.W.2 and Madhavarao about thirty (30) years ago. In the cross-examination, he asserted that he knew Madhavarao

even prior to the marriage with P.W.2. The defendant No.3, who was examined as D.W.1, also asserted in her evidence that the plaintiff is none other than the son of Madhavarao.

30. Though P.W.1 admitted in his evidence in cross-examination that prior to the marriage of his mother with Madhavarao there was an earlier marriage of his mother with her first husband, P.W.1, in his evidence in cross-examination, affirmed that his mother, after obtaining a divorce from her first husband, married Madhavarao and after the marriage of P.W.2 with Madhavarao, he was born to P.W.2 through Madhavarao, and the family members of Madhavarao are aware of the same.

31. In a case of ***Chowdamma (D) by LR and Another Vs. Venkatappa (D) by LRs and Another***[1]***,*** wherein the Apex Court held as follows:

> ***"38****. The foregoing authorities indicate that the legal position enunciates a presumption in favour of a marriage where a man and woman have engaged in prolonged and continuous cohabitation. Such a presumption, though rebuttable in nature, can only be displaced by unimpeachable evidence. Any circumstance that weakens this presumption ought not to be ignored by the Court. The burden lies heavily on the party seeking to question the cohabitation and to deprive the relationship of legal sanctity.*

In the aforesaid judgment, the Apex Court further held as follows:

> *"**195**. In order to appreciate the evidence of such witnesses, the following principles should be kept in mind:*
>
> *"(1) The relationship or the connection however close it may be, which the witness bears to the persons whose pedigree is sought to be deposed by him.*
> *(2) The nature and character of the special means of knowledge through which the witness has come to know about the pedigree.*

[1] **2025 SCC OnLine SC 1814**

(3) The interested nature of the witness concerned.

(4) The precaution which must be taken to rule out any false statement made by the witness post litem motam or one which is derived not by means of special knowledge but purely from his imagination, and

(5) The evidence of the witness must be substantially corroborated as far as time and memory admit."

32. The specific case of the plaintiff herein is that by the date when Madhavarao died, the plaintiff was aged about one and a half (1½) years and that he did not know about the family details of his father. His mother/P.W.2 asserted in her evidence that she was married to one Apparao during her childhood and later she became a child widow and later she married Madhavarao as a second marriage. There was positive evidence on record before the trial Court to establish that there was a marriage between Madhavarao and P.W.2 and during their lawful wedlock the plaintiff was born to them. D.W.2 asserted in her evidence that Hanumanta Rao was born in Badampudi, which is the native place of Anjamma, and she used to stay with other family members at Tanuku at her in-laws' place. The defendant No.4 was also examined as D.W.2 and she deposed that after the death of the first wife, Appayamma, Madhavarao did not marry, but he kept a woman by name Anjamma. In cross-examination, D.W.2 admitted that she did not attend the marriage performed between Anjamma and Madhavarao, but Anjamma and Madhavarao lived together, and she also pleaded ignorance about the birth of the plaintiff to P.W.2 and about the date of birth of the plaintiff.

33. The evidence on record clearly reveals that Madhavarao and Anjamma lived together as man and wife and D.W.6/appellant in her evidence admitted

that Chokkakula Hanumanta Rao, i.e., the plaintiff in O.S.No.13 of 1986, and his mother used to visit their house, and further that the mother-in-law of the plaintiff's mother is alive and staying with them. The plaintiff in O.S.No.13 of 1986, in the evidence of P.W.2, proved that Hanumanta Rao is born to P.W.2 through Madhavarao. Therefore, there is ample evidence on record to prove that Madhavarao married the mother of the plaintiff/Hanumanta Rao and that he was born during their wedlock. By giving cogent reasons and on considering the case law of the Hon'ble Apex Court, the trial Court came to the conclusion that the plaintiff was born to Madhavarao and Anjamma and the evidence of P.W.1 to P.W.3 along with the admissions of the defendants supports that the plaintiff is the son of Madhavarao and Anjamma. The trial Court has given the finding that after the marriage of Anjamma with Madhavarao, Anjamma gave birth to P.W.1 through Madhavarao, Hanumanta Rao was born to Madhavarao and Anjamma, against which no cross-appeal or appeal has been filed by any of the other defendants except the defendant No.5 in the suit in O.S.No.13 of 1986.

Accordingly, Point No.2 is answered by holding that the plaintiff in O.S.No.13 of 1986 was born to Anjamma through Madhavarao.

34. **Point No.3:**

Whether the Ex.B-1 Will deed dated 09.10.1981 said to have been executed by Narayanamma in favour of the plaintiff No.2 in O.S.No.18 of 1986, is proved in accordance with law?

The suit in O.S.No.18 of 1986 was originally instituted by Narayanamma and during the pendency of the suit, Narayanamma died and one of her daughters was added as plaintiff No.2, based on the Will said to have been executed by Narayanamma, and she is also the defendant No.4 in another suit vide O.S.No.13 of 1986 and she was examined as D.W.2. Since the other parties disputed the execution of Ex.B-1 Will, the defendant No.4 examined both the attestors to Ex.B-1 as D.W.4 and D.W.5, and the scribe was also examined as D.W.3.

35. The law is well settled that even though the alleged Will is a registered Will, no importance will be given to the registered Will and it cannot be treated as a genuine Will unless it is proved in terms of Section 68 of the Indian Evidence Act, 1872 read with Section 63 of Indian Succession Act, 1956. Section 68 of the Indian Evidence Act reads as under:

> *"**68. Proof of execution of document required by law to be attested –***
>
> *If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*
>
> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specially denied."*

It is evident that in cases where the document sought to be proved is required by law to be attested, the same cannot let be in evidence unless at least one of the attesting witnesses has been called for the purpose of proving the attestation if any such attesting witness is alive and capable of giving evidence and is subject to the process of the Court. Section 63 of the Indian Succession Act deals with execution of

unprivileged Wills and, inter alia, provides that every Testator except those mentioned in the said provision shall execute his Will according to the rules stipulated therein. It reads:

> ***"63. Execution of unprivileged wills.-*** *Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:*
>
> *(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.*
>
> *(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.*
>
> *(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."*

36. As per the own evidence of the propounder of the Will, she was not present at the time of execution of the Will. D.W.3 is the scribe and D.W.3 testified about the execution of Ex.B-1 Will by Narayanamma, D.W.3 is a pleader's clerk aged about 93 years as on the date of giving evidence, and he is also the neighbor of Narayanamma, and the Will is dated 09.10.1981 and the date of recording his evidence is 08.07.1987, and sixteen (16) years have been elapsed. However, his evidence testifies that he prepared the Will on the dictation of the testatrix and after preparing the Will, he read over the contents of the Will to the testatrix and thereafter obtained her thumb impression on the Will and at that time the attestors were also present and they witnessed the same.

37. D.W.4 testified that the Will was executed at the house of the scribe and Narayanamma came to his house and took him to the house of the scribe. He further stated that the other attestor, Surya Rao, was also present at the time of preparation of the Will and he put his signature as an attestor to the Will and the scribe read over the contents of the Will and Narayanamma gave instructions to draft the Will and he witnessed that she put her thumb impression on the Will and he also witnessed that he himself and the other attestor attested the Will. He further admitted that Ex.B-1 is the Will which was executed by Narayanamma.

38. D.W.5 testified that he is running a pan-shop near Eswar Villas, and the house of Narayanamma is abutting to the rear side of his shop and Narayanamma executed a Will and sent word to him to attest the Will, the Will was scribed at the house of D.W.3. He further testified that Narayanamma gave instructions to draft the Will, the scribe read over the contents of the Will and on hearing the same, Narayanamma admitted the contents therein.

39. All the witnesses, i.e., D.W.3 to D.W.5, testified about the giving of instructions by the testatrix to prepare the Will to the scribe and after preparing Ex.B-1 Will, the scribe read over the contents to the testatrix and the testatrix admitted the contents of the Will and in the presence of the attestors and scribe, the testatrix affixed her thumb impression on the Will. All the witnesses D.W.3 to D.W.5 were cross-examined by the counsel for the other parties to the suit, and in cross-examination, their evidence was not at all shattered on the material aspects of the case. There is a evidence on record to show that

the propounder of the Will used to look after the testatrix after the death of her husband. There are no suspicious circumstances surrounding the execution of Ex.B-1 Will by the testatrix. Therefore, Ex.B-1 Will is proved in accordance with law.

Accordingly, Point No.3 is answered.

40. **Point No.4:**

Whether the relinquishment deed dated 06.09.1968, is vitiated by fraud and misrepresentation as alleged by the plaintiffs in O.S.No.18 of 1986? and whether Narayanamma was having any right to execute the said relinquishment deed?

Learned counsel for the appellant would contend that the trial Court, having considered Ex.B-5 relinquishment deed executed by Narayanamma, should not have granted the shares to the parties and instead of dismissing the suit for partition, the trial Judge granted shares to the parties. Learned counsel for the appellant further contends that in view of the relinquishment deed under Ex.B-5 executed by Narayanamma, both the suits should have been dismissed and the appellant alone, being the wife of Tammi Naidu, is entitled to the entire plaint 'A' schedule property and she alone has total rights in the plaint 'A' schedule property.

41. The recitals in Ex.A-1 settlement deed dated 07.10.1939, said to have been executed by Sattemma, go to show that Narayanamma is entitled to enjoy the said property during her lifetime without any power of alienation and

the vested remainder rights were given to Madhavarao, Tammi Naidu and to their male progeny. The alleged relinquishment deed is said to have been executed by Narayanamma is dated 06.09.1968 and the plaintiffs in O.S.No.18 of 1986 pleaded that the relinquishment deed dated 06.09.1968 is not true and valid and it was obtained by Tammi Naidu by inducement from Narayanamma. Admittedly, the same was not pleaded by the plaintiffs in O.S.No.18 of 1986.

42. By assigning reasons, the trial Court held that the relinquishment deed under Ex.A-5 was executed by Narayanamma and the said finding is not challenged by the respondents. Now the crucial fact to be decided is whether Narayanamma was having the right to execute a relinquishment deed. It is undisputed by both the parties that Narayanamma was only having limited rights to enjoy the plaint schedule property by virtue of Ex.A-1 settlement deed and did not get absolute rights over the property and a limited right of enjoyment without any power of alienation was given to Narayanamma by the settlor. Ex.A-1 document, read as a whole, leaves no doubt that Sattemma gave limited rights of enjoyment to Narayanamma and vested rights were given to Madhavarao and Tammi Naidu and their male progeny. Therefore, Narayanamma was not having absolute rights in the plaint ‘A’ schedule property and that she was not having the right to execute any relinquishment deed.

43. The law is well settled that “the limited estate holder cannot convey any better title than what she has.” It is a fact that Madhavarao and Tammi Naidu

predeceased Narayanamma. The object of executing the settlement deed by Sattemma was obviously to confer the benefit on the family of Madhavarao and Tammi Naidu and their male progeny as per the recitals of Ex.A-1 settlement deed and not on Narayanamma alone. The vested rights were conferred in favour of Madhavarao and Tammi Naidu on the date of Ex.A-1 registered settlement deed, and the right to enjoy the property alone was postponed till the death of Narayanamma. Narayanamma, i.e., the limited estate holder, she died in the year 1981, and upon her death her limited rights were terminated since, by the date of her death, the wife of Tammi Naidu and the wife and son of Madhavarao were having vested rights in the plaint 'A' schedule property, which were conferred upon the death of Tammi Naidu and Madhavarao.

44. The recitals in Ex.A-1 go to show that by the date of Ex.A-1 settlement deed, Madhavarao and Tammi Naidu were born and both were having vested rights by virtue of Ex.A-1 settlement deed, but not contingent rights. As stated supra, both Madhavarao and Tammi Naidu, who were having vested rights in the plaint 'A' schedule property predeceased Narayanamma, and by the date of the relinquishment deed, Madhavarao was not alive, but his wife and son were alive. Upon the death of the vested rights holder, the vested rights of the deceased could not be defeated by his death before he obtained possession, and his widow Anjamma and son, being the legal representatives of Madhavarao, are entitled to the vested rights of Madhavarao. By the date of the alleged relinquishment deed, Anjamma and her son were having rights

vested in the property to the extent of the share of Madhavarao, but their enjoyment of the property to the extent of Madhavarao's share was postponed till the death of Narayanamma, who was no more. For the aforesaid reasons, Narayanamma was not having any right to execute the relinquishment deed in favour of Tammi Naidu.

45. As stated supra, the object of executing Ex.A-1 settlement deed was obviously to confer the benefit on the family of Tammi Naidu and Madhavarao, who were in distress, and not that Narayanamma should alone be benefitted. Ex.A-1 document conferred the vested rights in favour of Madhavarao, Tammi Naidu, and their male progeny, but the right to enjoy the property was only postponed till the death of Narayanamma. Since Madhavarao and Tammi Naidu had acquired the vested rights in the property on the date of the settlement deed, their rights could not be defeated by their death before obtaining possession, and their widows and male progeny, being the legal heirs, are entitled to the suit property upon the termination of the life estate of Narayanamma.

46. It is not in dispute by both the parties that Ex.A-1 is a registered settlement deed and its recitals are also not disputed by both the parties. Therefore, it is evident that the death of the ultimate beneficiary during the lifetime of the life estate holder will not have the effect of defeating the rights which had already vested in the beneficiary, i.e., Madhavarao. Upon the death of Madhavarao, his legal representatives will automatically succeed to the rights of Madhavarao what he had.

47. For the aforesaid reasons, the plaintiffs in O.S.No.18 of 1986 failed to prove that the relinquishment deed was obtained by fraud or misrepresentation. As stated *supra*, Narayanamma was not having any right to execute the relinquishment deed.

Accordingly, point No.4 is answered.

48. **Point No.5:**

Whether the plaintiff in O.S.No.13 of 1986 and the plaintiff in O.S.No.18 of 1986 are entitled to the relief of partition of the plaint schedule property? and, Whether the decree and common judgment passed by the trial Court in O.S.Nos.13 and 18 of 1986 needs any interference?

The case of the appellant/defendant No.5 is that the plaint 'B' schedule property is her Streedhana property which was given by her parents. It is not the case of the other respondents that the plaint 'B' schedule property belongs to Tammi Naidu. The appellant/D.W.6 asserted in her evidence that the plaint 'B' schedule property in O.S.No.18 of 1986 was given by her parents. No suggestion was given to D.W.6 by counsel for the other respondents on record that the plaint 'B' schedule property was not given by her parents to D.W.6. By giving detailed reasons, the trial Court held that the plaint 'B' schedule property belongs to the appellant herein, and the said finding was unchallenged by the respondents in both the appeals.

49. Learned counsel for respondent No.5/plaintiff No.2 in O.S.No.18 of 1986 contended that Chokkakula Varalakshmi is not the wife of Tammi Naidu, and Anjamma is not the wife of Madhavarao, and the plaintiff in O.S.No.13 of 1986 is not the son of Madhavarao, and that the plaintiff No.2 in O.S.No.18 of 1986 is entitled to the total plaint 'A' schedule property. As could be seen from the judgment of the trial Court, the trial Court, by giving detailed reasons, held that Varalakshmi is the wife of Tammi Naidu, and Anjamma was the wife of Madhavarao, and the plaintiff in O.S.No.13 of 1986 is the son of Madhavarao and Anjamma, and they are entitled to shares in plaint 'A' schedule property. For the reasons best known to the plaintiff No.2 in O.S.No.18 of 1986, no cross-appeal or no appeal was filed by the plaintiff No.2 in O.S.No.18 of 1986 against the said findings given by the trial Court.

50. Sri A.Veeraswamy, learned counsel for the plaintiff No.2 in O.S.No.18 of 1986, placed reliance in ***Dilip Vs. Mohd. Azizul Haq and another***[2], wherein the Apex Court held as follows:

> *"7. In theory the appeal is only a continuation of the hearing of the suit. Accordingly, the word "suit" in the Order has to be understood to include an appeal. The result is that at the time of the institution of the suit for eviction clause 13-A was not in force, but at the time of appeal such a clause is introduced, the tenant in appeal becomes entitled to its protection. We draw support for these propositions from the three decisions of this Court cited by the learned counsel for the appellants. Therefore, we are of the view that the High Court was not justified in holding that there was no appeal filed or pending against the tenant. In this case, although a decree for eviction had been passed in the suit, that decree was under challenge in a proceeding arising out of that suit in appeal and was pending in court. Thus an appeal being a re-hearing of the*

[2] **AIR 2000 SUPREME COURT 1976**

suit, as stated earlier, the inference drawn by the High Court that no proceedings were filed or pending against the tenant as on the date would not be correct."

51. Learned counsel for the plaintiff No.2 in O.S.No.18 of 1986, placed further reliance in ***Malluru Mallappa (D) Thr. Lrs. Vs. Kuruvanthappa***[3], wherein the Apex Court held as follows:

"An appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions. The judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons."

52. Learned counsel for the plaintiff No.2 in O.S.No.18 of 1986, placed reliance in ***Panna Lal Vs. State of Bombay***[4], wherein the Apex Court held as follows:

"The wide wording of O.41 R.33 was intended to empower the appellate court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondent as "the case may require." In the present case, if there was no impediment in law the High Court could therefore, though allowing the appeal of the defendant-appellant by dismissing the plaintiff's suits against it, give the plaintiff-respondent a decree against any or all the other defendants who were parties to the appeal as respondents. While the very words of the rule make this position abundantly clear the illustration puts the position beyond argument. If a party

[3] **ILR 2020 Kant 1219 (SC)**
[4] **AIR 1963 SUPREME COURT 1516**

who could have filed a cross-objection under O.41 R.22 has not done so it cannot be said that the Appeal Court can under no circumstances give him relief under the provisions of O.41 R.33."

53. In the case at hand, the plaintiff No.2 in O.S.No.18 of 1986 filed a suit for recovery of possession of the plaint 'A' schedule property and plaint 'B' schedule property or alternative plea for partition of the plaint schedule property into four (04) equal shares and to allot three (03) such shares to the plaintiff No.2 in O.S.No.18 of 1986. The trial Court, by giving detailed reasons in its judgment dated 09.09.1988, held that Narayanamma was entitled to 5/12th share only in the plaint 'A' schedule property, and the plaintiff No.2 in O.S.No.18 of 1986 is entitled to get the share of Narayanamma by virtue of Ex.B-1 Will, since Narayanamma died. Admittedly, no appeal or cross-objections are filed by the plaintiff No.2 in O.S.No.18 of 1986 in the present appeals, which are filed by the defendant No.5, and the plaintiff No.2 in O.S.No.18 of 1986 has also not filed any appeal against the decree and judgment passed by the trial Court. As stated supra, the trial Court passed the common judgment on 09.09.1988, after a lapse of more than twenty five (25) years, and having accepted the said findings given by the Trial Court, now, the plaintiff No.2 in O.S.No.18 of 1986 cannot contend that she is entitled to total plaint 'A' schedule property and the trial Court has given erroneous findings in its judgment.

54. As per the recital of Ex.A-1 settlement deed, Madhavarao, Tammi Naidu and their male progeny born together in future have rights in the plaint schedule property. Chokkakula Sattemma was no more and she died long

back, and the life estate owner/Chokkakula Narayanamma also died. As per the recitals of Ex.A-1 settlement deed, Madhavarao, Tammi Naidu and their male progeny born subsequent to Ex.A-1 altogether are entitled to enjoy the plaint schedule property after the death of Sattemma, and the said Sattemma gave life interest alone to Narayanamma, without giving any power of alienation. In view of the recitals in Ex.A-1, by the date of Ex.A-1, Madhavarao and Tammi Naidu were born and they have the vested rights. Madhavarao and Tammi Naidu predeceased Chokkakula Narayanamma, and Madhavarao died leaving his wife by name Anjamma, and son Hanumanta Rao, and mother Chokkakula Narayanamma. Tammi Naidu also died leaving his wife Varalakshmi, who is the appellant herein, and his mother Chokkakula Narayanamma. As stated supra, both Madhavarao and Tammi Naidu died intestate.

55. Learned counsel for the appellant would contend that in view of the relinquishment deed said to have been executed by Narayanamma in favour of Tammi Naidu, the appellant alone is entitled to the total plaint 'A' schedule property and both the suits filed by the plaintiffs may be dismissed. As stated supra, Sattemma, who was the absolute owner of plaint 'A' schedule property, executed a settlement deed in favour of Tammi Naidu, Madhavarao and their male progeny, who were born subsequent to Ex.A-1 settlement deed are entitled to plaint 'A' schedule property, and the life interest was also given to Narayanamma without giving any power of alienation. Sattemma died long back and the life estate holder, who was not having the absolute rights,

executed a relinquishment deed during her lifetime relinquishing her share in favour of Tammi Naidu. The law is well settled that since Narayanamma was not having absolute rights and only having a limited right of enjoyment, she is not having any rights to execute a relinquishment deed. Moreover, in view of the recitals of Ex.A-1 settlement deed, by the date of Ex.A-1 settlement, Madhavarao and Tammi Naidu were born and they got vested rights, but not contingent rights. It is undisputed that Madhavarao and Tammi Naidu predeceased Narayanamma, upon the death of the vested right holders, their rights could not be defeated by their death before they obtained possession, and their widows being the legal representatives of Madhavarao and Tammi Naidu, and the son of Madhavarao, are entitled to the vested rights of Madhavarao and Tammi Naidu respectively, their enjoyment is only postponed till the death of Narayanamma. As stated supra, Narayanamma was not having any right to execute a relinquishment deed. Therefore, the recitals in Ex.A-5 relinquishment deed cannot be taken into consideration.

56. In In view of my aforesaid findings, Madhavarao and Tammi Naidu will get equal rights in plaint 'A' schedule property. Since Tammi Naidu died intestate by leaving Class-I heirs i.e. his wife/appellant and his mother-Narayanamma, they will get equal shares in the share of Tammi Naidu. In the remaining half share belonging to Madhavarao, his wife Varalakshmi, his son Hanumanta Rao and the mother of Madhavarao by name Narayanamma will get equal shares i.e. 1/3rd each in the share of Madhavarao, since Madhavarao died intestate. As stated supra,

Narayanamma has no power to execute a relinquishment deed in favour of Tammi Naidu, because she was not having absolute rights and she was having only limited rights of enjoyment without any power of alienation. Since Narayanamma was no more and died intestate, the plaintiff No.2 in O.S.No.18 of 1986, who is claiming rights in the share of Narayanamma, by name Marrapu Seethamma, will get absolute rights in the shares of property of Narayanamma by virtue of Ex.B-1 Will.

57. For the aforesaid reasons, I do not find any illegality in the decree and common judgment passed by the trial Court. Therefore, there is no need to interfere with the findings given by the trial Court in its judgment.

58. In the result, A.S.Nos.804 and 820 of 2002 are dismissed. Considering the facts and circumstances of the case, each party do bear their own costs in the appeals.

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

V.GOPALA KRISHNA RAO, J

Date: 24.02.2026
SRT