



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

[3397]

THURSDAY, THE TWELFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

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

A.S.M.P.No.1138 of 2017 & I.A.No.1 of 2025

In/And

APPEAL SUIT No.1911 of 2003

Between:

Y.v.purushotham Naidu and Others

...APPELLANT(S)

AND

Y R Saraswathi and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1.P HEMACHANDRA

Counsel for the Respondent(S):

1.P PADMAVATHI

2.P SUDHEER REDDY

3.P V VIDYASAGAR

The Court made the following:

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

A.S.M.P.No.1138 of 2017 & I.A.No.1 of 2025

In/And

APPEAL SUIT No.1911 of 2003

JUDGMENT:

This Appeal, under Section 96 of the Code of Civil Procedure [for short '**the C.P.C.**'], is filed by the Appellant/defendant No.1 challenging the Decree and Judgment, dated 04.04.2003, in O.S.No.34 of 1999 passed by the learned V Additional District Judge, Tirupati [for short '**the trial Court**']. The Respondents herein are the plaintiffs and defendant Nos.2 and 3 in the said Suit.

2. The appellant herein is the defendant No.1 in O.S.No.34 of 1999, on the file of the V Additional District Judge, Tirupati. Originally, a suit in O.S.No.664 of 1994 was filed on the file of the I Additional District Munsiff Court at Tirupati and the same was transferred to the Additional Senior Civil Judge Court at Tirupati and numbered as O.S.No.46 of 1996. Later, the said suit was transferred to the V Additional District Judge, Tirupati, and numbered as O.S.No.34 of 1999. The respondent Nos.1 to 3 are the plaintiffs, and the respondent Nos.4 and 5 are the defendant Nos.2 and 3 in O.S.No.34 of 1999.

3. Originally, the respondent Nos.1 to 3/plaintiffs herein filed the suit in O.S.No.34 of 1999 against her parents-in-law and brother-in-law of the plaintiff No.1 for partition of plaint 'A' Schedule property into three equal shares and to allot one such share to them and also for permanent injunction restraining the

defendants therein from in any way interfering with the peaceful possession and enjoyment of the plaint 'B' schedule property, which is part and parcel of plaint 'A' schedule property or in the alternative to direct the defendant No.1 to pay maintenance at Rs.1,000/- per month each to the plaintiffs and also to provide sufficient accommodation in the plaint 'A' schedule house for their living preferably plaint 'B' schedule property.

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

5. The case of the respondent No.1/plaintiff (daughter-in-law) in brief, is as follows:

The plaintiff pleaded that the plaint 'A' schedule property was originally acquired by her father-in-law and that he constructed the plaint 'A' schedule house therein. She further pleaded that though her father-in-law acquired the plaint 'A' schedule property, he threw it in the common hotchpot even prior to celebrating the marriage of his eldest son with the plaintiff No.1, and that the plaint schedule property became the joint family property long back, and the said property is being enjoyed by all the joint family members consisting of the plaintiff's father-in-law and his two sons, namely, her husband Vijayarama Naidu and Vijaya Bhaskar, who is the defendant No.3. The plaintiff further pleaded that her husband, along with other family members, have been living in plaint 'B' schedule property, and ever since the date of her marriage with Vijayarama Naidu, her father-in-law used to collect rent of Rs.900/- from the

tenant of the northern portion of the plaint 'A' schedule property till the plaintiff's father-in-law retired as DCTO.

The plaintiff No.1 further pleaded that after the retirement, her father-in-law got the tenant vacated from the northern portion of the plaint 'A' schedule property on 01.06.1993, and occupied the same; since then, he has been residing in the northern portion. The plaintiff further pleaded that her husband, who is the eldest son of her father-in-law, has been living in the southern portion of the plaint 'A' schedule house as of right, and even after the death of her husband in July 1994, the plaintiff and her minor children, being the legal heirs of her husband Vijayarama Naidu, who was having 1/3rd right in the plaint 'A' schedule property, have been residing in the plaint 'B' schedule house. The plaintiff further pleaded that her father-in-law himself stated before the bank authorities that his eldest son Vijayarama Naidu got 50% share in the plaint 'A' schedule property, and that her father-in-law executed Ex.B-2, original of security bond, in favour of United Finance Corporation, Bombay, and to the effect that Vijayarama Naidu got 50% share in the plaint 'A' schedule property, and thus the defendant No.1 had never treated the property as his self-acquisition, and immediately after acquiring the same, the defendant No.1 had thrown it in the common hotchpot of the joint family consisting of her husband, parents-in-law, and brother-in-law, and hence, her husband got 1/3rd share in the plaint 'A' schedule property. The plaintiff further pleaded that after the death of her husband, the plaintiff No.1 and her

two minor children together are entitled to 1/3rd share in the plaint schedule property. Hence, the suit.

6. The case of the appellant/defendant No.1 (father-in-law) in brief, is as follows:

The appellant was allotted house Plot No.230 in Srinivasa Nagar Colony, KT Road, Tirupati, by the Chittoor dt., NGO Co-operative House Building Society, and that he laid the foundation in the year 1968 in the said plot, and the said society executed a registered sale deed in favour of the defendant No.1 on 14.10.1971, and thereafter he constructed the plaint 'A' Schedule house in the year 1972, by availing a loan from A.P. Co-operative Housing Society Federation, Hyderabad, wherein the plaint schedule house property was allotted D.No.1130 by the Tirupati Municipality, and the defendant No.1 has been paying the house tax regularly. The defendant No.1 pleaded that the suit 'A' schedule house is standing in his name in the Municipal Records, and he also mortgaged the plaint 'A' schedule house in favour of Tirupati Co-operative Bank and obtained the said mortgage at a later date, and for which Exs.A-1 to A-30 were the proofs for stating that the plaint 'A' schedule property is the self-acquired property of the defendant No.1/father-in-law, and that it is not joint family property.

The defendant No.1 further pleaded that he got two (02) sons and three (03) daughters by the date of construction of the house, and the age of his eldest son, who is none other than the husband of the plaintiff, was 12 or 13

years, and that there was no possibility for his eldest son to contribute anything for the construction of the house. The defendant No.1 further pleaded that prior to celebrating the marriage of his eldest son, he financed his eldest son to start an automobile shop, in which his eldest son sustained loss and closed the said business; thereafter, the defendant No.1 celebrated the marriage of his eldest son with the plaintiff No.1 in O.S.No.34 of 1999 in the year 1985, and thereafter, his son did another business in provisions and closed it due to loss, and again started a brick business, and in the said business also his eldest son sustained loss. The defendant No.1 further pleaded that ever since the date of marriage, he permitted his eldest son and daughter-in-law/plaintiff No.1 to live in the southern portion of the plaint 'A' schedule property and permitted his eldest son to utilize the rents derived from the northern portion of the plaint 'A' schedule house and to utilize the same for his family necessities, since his eldest son was unemployed and had no source of income.

The defendant No.1 pleaded that he was in government service, working as Commercial Tax Officer and was living at the place where he was posted, and the plaint 'A' schedule property was being enjoyed by his eldest son and daughter-in-law, and after his retirement as DCTO in the year 1993, he settled down at Tirupati and got vacated the tenant from the northern portion of the plaint 'A' schedule property and has been living in the plaint schedule property ever since the date of retirement. The defendant No.1 further pleaded that his eldest son died in the year 1994 in a road accident,

and thereafter, he requested his daughter-in-law/plaintiff to join with them, but she refused to do so and filed the suit against the defendant No.1 seeking partition and separate possession of the suit schedule property. The defendant No.1 further pleaded that he got issued a legal notice dated 16.11.1994, directing the plaintiff to vacate the southern portion and deliver vacant possession of the same to him, wherein the plaintiff had failed to do so, and hence, he filed a suit in O.S.No.35 of 1999 seeking declaration of his title and for possession of the plaint 'B' schedule property. Therefore, the defendants prayed to dismiss the suit with costs.

7. Based on the above pleadings, the trial Court framed the following issues in O.S.No.34 of 1999:

- 1) *Whether the plaintiffs are entitled for the relief of partition of plaint 'A' schedule property into three equal shares and to allot one such share to the plaintiffs and for delivery of possession of the same?*
- 2) *Whether the plaintiffs are entitled to obtain permanent injunction restraining the defendants their men etc., from in any way dispossessing the plaintiffs from the plaint 'B' schedule property?*
- 3) *To what relief?*

On 23.09.1999, the following additional issue was framed by the trial Court:

- 1) *Whether the plaintiff should pay court fee on the alternative relief for maintenance?*

On 25.11.1999, the following additional issue was framed by the trial Court:

2) *Whether this Court has got jurisdiction?*

8. During the course of trial in the trial Court, on behalf of the plaintiff, P.W.1 was examined and Ex.A-1 to Ex.A-32 were marked. On behalf of the defendants, D.W.1 was examined and Ex.B-1 and Ex.B-2 were marked.

9. After completion of the trial and on hearing the arguments of both sides, the trial Court decreed the suit in O.S.No.34 of 1999 *vide* its judgment, dated 04.04.2003, against which the present appeal is preferred by the appellant/defendant No.1 in the suit, questioning the decree and judgment passed by the trial Court.

10. The applications in A.S.M.P.No.1138 of 2017 and I.A.No.1 of 2025 are filed by the petitioner/appellant No.2 with a prayer to receive certain documents as additional evidence in A.S.No.1911 of 2003.

11. Heard Sri O.Manohar Reddy, learned Senior Counsel on behalf of Sri P.Hemachandra, learned counsel for the appellant/defendant No.1 and Sri P.V.Vidya Sagar, learned Counsel for the respondent No.1/plaintiff.

12. Originally, the plaintiff in O.S.No.35 of 1999 (father-in-law) filed the suit against the daughter-in-law and her parents seeking the relief of declaration of title in plaint 'A' schedule house property and for possession of the plaint 'B' schedule property, which is a part of the plaint 'A' schedule property.

Whereas, the daughter-in-law on her behalf and on behalf of her children filed a suit against the parents-in-law and their another son, by name Vijay Bhaskar, for seeking the relief of partition of plaint 'A' schedule property into three equal shares and to allot one such share to the plaintiffs, i.e., daughter-in-law and her children, alternatively directing the father-in-law to pay maintenance of Rs.1,000/- per month to each of the plaintiffs. Both the suits in O.S.No.34 of 1999 and O.S.No.35 of 1999 were clubbed, and common evidence was recorded in O.S.No.35 of 1999, and the trial Court pronounced a common judgment in both the suits vide its judgment dated 04.04.2003. The suit filed by the father-in-law against the daughter-in-law vide O.S.No.35 of 1999 was dismissed by the trial Court, holding that the plaint 'A' schedule property is not an absolute property of the father-in-law and that he is not having absolute rights in the plaint 'A' schedule property, and therefore, he is not entitled to recovery of possession of plaint 'B' schedule property, which is a part and parcel of the plaint 'A' schedule property. The said suit in O.S.No.35 of 1999 was dismissed by the trial Court, against which no appeal has been preferred by the father-in-law, by name Y.V. Purushotham Naidu. Therefore, the findings arrived at in O.S.No.35 of 1999 reached their finality. The suit filed by the daughter-in-law vide O.S.No.34 of 1999 was decreed for partition of plaint 'A' schedule property into three equal shares and to allot one such share to the plaintiffs (daughter-in-law and grandchildren of the appellant).

13. Learned Senior Counsel appearing on behalf of the appellant would contend that the judgment and decree passed by the trial Court in O.S.No.34 of 1999 are contrary to law, weight of evidence and probabilities of the case. He would further contend that though the schedule properties are the self acquired properties of the appellant, the trial Court erroneously came to a conclusion that the said properties are joint family properties and not self acquired absolute properties of the appellant. He would further contend that the trial Court ought to have dismissed the suit on simple premise that the daughters of the appellant who got married subsequent to the introduction of Section 29-A of the Hindu Succession Act, being the coparceners are necessary parties and have not impleaded as parties, in the event of believing the case of the plaintiffs in a suit for partition. He would further contend that the appeal may be allowed by setting aside the judgment and decree passed in O.S.No.34 of 1999 by the learned V Additional District Judge, Tirupati.

14. Per contra, Sri P.V. Vidya Sagar, learned Counsel on behalf of the respondent No.1/plaintiff, would contend that the suit filed by the appellant (father-in-law) in O.S.No.35 of 1999 and the suit filed by the respondent No.1 (daughter-in-law) in O.S.No.34 of 1999 were clubbed, and common evidence was recorded in O.S.No.35 of 1999. He would further contend that the suit filed by the father-in-law in O.S.No.35 of 1999 for seeking the relief of declaration of title in the plaint 'A' schedule property and recovery of possession of plaint 'B' schedule property was dismissed, and no appeal has been filed by the appellant, therefore, the findings arrived at in O.S.No.35 of

1999 reached their finality, as no appeal was preferred against the dismissal of O.S.No.35 of 1999, the present appeal is barred by the principles of res judicata, and the present appeal may be dismissed.

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

- 1) Whether the plaint 'A' schedule property is an absolute property or a joint family property of the appellant?**
- 2) Whether the present appeal is barred by the principles of res-judicata?**
- 3) Whether the respondent Nos.1 to 3/plaintiffs in O.S.No.34 of 1999 (daughter-in-law) are entitled to 1/3rd share in the plaint 'A' schedule house property as granted by the trial Court?**
- 4) Whether the decree and judgment passed in O.S.No.34 of 1999 needs any interference?**

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

Whether the plaint 'A' schedule property is an absolute property or a joint family property of the appellant?

Whether the present appeal is barred by the principles of res-judicata?

Learned Senior Counsel for the appellant would contend that the suit schedule property is a self-acquired property of the appellant and he is having absolute right over the plaint schedule property, and it is not a joint family

property. The appellant is examined as P.W.1, and he admits that he has got two sons and three daughters. The appellant is having one unmarried daughter and an unemployed son by the date of filing of the suit and the same is admitted by the respondent No.1/D.W.1. It is admitted by P.W.1 that his eldest son married respondent No.1, and his eldest son died on 18.07.1994 in a road accident, leaving behind the respondent Nos.1 to 3 as legal representatives, and the family of the eldest son with D.W.1 is staying in the southern side portion of the plaint 'A' schedule property, i.e., the plaint 'B' schedule property. P.W.1 further admits the filing of the suit by his daughter-in-law in the year 1994 for partition of the properties. P.W.1 admits in his evidence in cross-examination that his son Vijayarama Naidu did cement business, automobile spare parts business, and also provision business. He further admits that his eldest son was indebted in his business even from his young age, i.e., from 1983, and in the N.G.O. Colony he started commencing construction in the year 1967 and completed the construction in the year 1978. He further admits that he performed the marriage of his eldest son in the year 1985 with D.W.1, and he came to Tirupati after his retirement on 01.06.1993.

17. The respondent No.1/plaintiff relied on her self-testimony as D.W.1. She deposed in her evidence that prior to her marriage, her husband was doing business in automobile spare parts at Tirupati, and her marriage was celebrated in the month of November 1985, and after their marriage, they lived in the suit schedule house, i.e., on the southern side of the house, and her

husband stayed in the said house prior to 1985 in the southern portion. She further deposed that her father-in-law was residing away from Tirupati, by virtue of his appointment as the Deputy Commercial Tax Officer. She further deposed that the plaint schedule property is a joint family property, which is consisting of a house with two portions, which are being enjoyed by all of them jointly, and even her father-in-law used to treat the property as a joint family property, and he never treated it as a self-acquired property. She further deposed that her father-in-law executed a bond in Ex.B-2 in favour of the United Finance Corporation, Bombay, in which he admitted that her husband got half share in the suit schedule house. She also further admits that after his retirement, her father-in-law is residing in the northern side portion of the plaint 'A' schedule house, and by the date of retirement, her father-in-law was having an unmarried daughter and an unemployed son.

18. It is relevant to say that the appellant himself approached the civil Court and filed a suit in O.S.No.35 of 1999, for seeking the relief of declaration of title in the total plaint 'A' schedule house property, and the respondent/plaintiff filed O.S.No.34 of 1999, for partition of the plaint 'A' schedule house property on the pretext that the plaint 'A' schedule house property is a joint family property. The trial Court clubbed both the aforesaid suits O.S.No.34 of 1999 and O.S.No.35 of 1999, and a common judgment was pronounced vide its judgment dated 04.04.2003, and the suit filed by the plaintiff in O.S.No.35 of 1999 was dismissed by holding that the plaint 'A' schedule property is a joint family property and it is not an absolute self-acquired property of the

appellant. For the reasons best known to the appellant, the appellant did not even challenge the decree and judgment passed by the trial Court in O.S.No.35 of 1999. The trial Court held in its judgment that the appellant, after acquiring the plaint 'A' schedule house, threw it into the common hotchpot of the joint family, and hence, it became the joint family property, and the trial Court came to a conclusion that the plaint 'A' schedule house property is a joint family property, and the appellant herein is not having any absolute right and title in the plaint 'A' schedule property, and dismissed the suit filed by the appellant vide O.S.No.35 of 1999, and the same has reached its finality. Admittedly no appeal was preferred by the appellant herein against the decree and judgment passed by the trial Court in O.S.No.35 of 1999.

19. In a case of ***Rajanikanta Pal vs Jagamohan Pal***¹, the Privy Council held that "*where a member of a joint Hindu family blends his self acquired property with property of the joint family property, either by bringing his self acquired property into joint family account, or by bringing joint family property into his separate account, the effect is that all the properties so blended becomes a joint family property*".

20. Learned counsel for the appellant placed a case law in ***Mudda Rama Jaya Narasimha Phani Kumar and another Vs. Mudda Kameswara Somayajulu and others***², the composite High Court of Andhra Pradesh, held as follows:

¹ Manu/PR/0005/1923

² 1999 (6) ALD 564

“The basis of the doctrine of blending is the existence of a coparcenary and a coparcenary property as well as existence of the separate property of a co-parcener. This doctrine cannot be applied unless the conduct and intention of the parties unequivocally declares his intention to throw the property into the common hotch pot waiving his personal right”.

In the case at hand, the appellant herein filed a suit in O.S.No.35 of 1999, for seeking the relief of declaration of title in the plaint ‘A’ schedule house property, and the respondent/plaintiffs in O.S.No.34 of 1999 filed another suit for seeking partition of the plaint ‘A’ schedule property, and the trial Court pronounced a common judgment in both the suits by holding that the plaint ‘A’ schedule property is a joint family property and it is not the absolute property of the appellant and dismissed the suit in O.S.No.35 of 1999 filed by the appellant, the appellant herein did not challenge the said decree and judgment before the appellate Court; therefore, the said finding reached its finality. Therefore, now the appellant cannot argue that the plaint ‘A’ schedule property is his absolute property, but not the joint family property.

21. Learned counsel for the appellant placed a case law in ***Jupudi Venkata Vijayabhaskar Vs. Jupudi Keshava Rao (died) and Others***³, the composite High Court of Andhra Pradesh, held as follows:

“The legal position as it now stands is that i) A sole surviving coparcener can dispose of the coparcenary property as if it were his separate property as long as he remains the sole surviving coparcener but not thereafter; and ii) any alienations made before a son is born to or adopted by him remain unaffected and the same cannot be objected to or challenged by the new coparcener.”

In the case at hand, the alienation of the northern side portion of the house property was made in favour of his younger daughter during the

³ 1994 (1) A.P.L.J. 287 (HC)

pendency of the partition suit filed by the daughter-in-law and grandchildren of the appellant. Therefore, the facts and circumstances in the aforesaid case law are different from the instant case.

22. Learned counsel for the appellant placed a case law in ***Kanakarathanammal Vs. V.S.Loganatha Mudaliar and another***⁴.

The facts and circumstances in the aforesaid case law are different to the instant case.

23. Learned counsel for the appellant placed a case law in ***Rachakonda Ramakoteswara Rao and others Vs. Manohar Fuel Centre, Nereducherla, Khammam and another***⁵.

In the case at hand, Ex.B-2 Security Bond is marked through the appellant before the trial Court, wherein the appellant admitted that his son i.e. the husband of D.W.1 being the first son has got full rights and got 50% share in his house. Therefore, the facts and circumstances in the aforesaid case law are different to the instant case.

24. For the aforesaid reasons, it is evident that though the declaration suit filed by the appellant vide O.S.No.35 of 1999 was dismissed by the trial Court, by passing a common judgment in both the suits with a specific observation that the plaint 'A' schedule house property is not an absolute property of the appellant and it is a joint family property. For the reasons best known to the appellant, no appeal was filed by the plaintiffs in O.S.No.35 of 1999 to

⁴ AIR 1965 SUPREME COURT 271

⁵ 2003 (2) ALD 638

challenge the decree and judgment passed in O.S.No.35 of 1999. Therefore, the said finding reached its finality. Having accepted the said finding by the appellant, now he cannot agitate in the appeal filed against the decree and judgment passed in another suit in O.S.No.34 of 1999. As stated *supra*, since the plaintiff in O.S.No.35 of 1999 accepted the said finding, now, he cannot agitate in the present appeal that the plaint 'A' schedule house property is his absolute property and his daughter-in-law and grandchildren are not having any rights in the said property. During the pendency of the appeal before this Court, the sole-appellant died, and one of his daughters was brought on record as appellant No.2. It is the specific case of the appellant No.2 that her father executed a registered sale deed in her favour in the year 1996, during the pendency of the partition suit for northern partition of the plaint 'A' schedule house. It is not the case of the appellant No.2 that her father executed a Will during his lifetime in respect of the plaint 'A' schedule house property. During the pendency of the appeal, appellant No.2 contended that appellant No.1 alienated the northern portion of the house property to appellant No.2 herein on 29.03.1996 i.e., during the pendency of the partition suit, as stated *supra*, a suit for partition was filed by the daughter-in-law along with her children in the year 1994. Therefore, the said sale deed is hit by the 'doctrine of lis pendens.'

25. It was contended by the learned counsel for the respondents/plaintiffs that the present appeal is barred by the 'principles of res judicata'. The

learned counsel for the respondents placed a case law in ***Badri Naryan Singh Vs. Kamdeo Prasad Singh and Anr.***,⁶

The facts in the aforesaid case law relate to the election disputes. Therefore, the ratio laid down in the aforesaid case law is not applicable to the facts in the present case.

26. The learned counsel for the appellants placed a case law in ***Deva Ram and another Vs. Iswar chand and another***,⁷.

The learned counsel for the respondents placed a case law in ***Premier Tyres Limited Vs. Kerala State Road Transport Corporation***⁸, wherein the Apex Court held as follows:

“4.where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non filing of appeal against a judgment or decree is that it become final. This finality can be taken away only in accordance with law. Same consequences follows when a judgment or decree in a connected suit is not appealed from.”

27. The learned counsel for the respondents placed a case law in ***Pala Narayana & Another Vs. M.Veera Samaiah and Another***⁹.

The learned counsel for the respondents/plaintiffs placed a case law in ***Peddamatam Siddamma and 2 others Vs. M.Veeraiah***¹⁰.

⁶ 1962 AIR SC 338

⁷ 1965 (6) SCC 733

⁸ 1993 KLT SC 2 130

⁹ 1990 APLJ 2 465

“In the light of the view expressed by the Division Bench of this Court in Pala Narayana’s Case, when a common Judgment had been delivered, common findings had been recorded and only one of the Decrees had been challenged and the other findings in the other suit had been left unchallenged by non-preferring of an appeal, such appeal cannot be maintained since the findings recorded in the other suit having attained finality operate as res judicata.

In the case at hand, the appellant herein filed a suit for seeking declaration of title in respect of plaint ‘A’ schedule house property and recovery of possession of the plaint ‘B’ schedule property vide O.S.No.35 of 1999 and the respondent/plaintiff filed O.S.No.34 of 1999 for seeking relief of partition of plaint ‘A’ schedule property. The nature of relief sought in both the suits is different. Therefore, there is no subsistence in the contention of the learned counsel for the respondent that the present appeal is not at all maintainable. For the aforementioned reasons, I am of the considered view that in view of the finding of the trial court in O.S.No.35 of 1999 that the plaint ‘A’ schedule property is a joint family property, but not an absolute property of the appellant, now, the appellant cannot contend before the First Appellate Court that the plaint ‘A’ schedule property is his absolute property. Accordingly, the point Nos.1 and 2 are answered against the appellant.

28. **Point Nos.3 and 4:-**

Whether the respondent Nos.1 to 3/plaintiffs in O.S.No.34 of 1999 (daughter-in-law) are entitled to 1/3rd share in the plaint ‘A’ schedule house property as granted by the trial Court?

Whether the decree and judgment passed in O.S.No.34 of 1999 needs any interference?

The relationship between both the parties is undisputed. The appellant admitted in his evidence as P.W.1 that he has three daughters and two sons, and his eldest son, married to D.W.1, died in the year 1994 in a road accident. The appellant further admitted that he had three daughters and one son, and his eldest son died, leaving plaintiff Nos.1 to 3 in O.S.No.34 of 1999. In the cross-examination, nothing was suggested to P.W.1 by the learned counsel for the respondents that P.W.1 did not have three daughters. Furthermore, the daughter-in-law/D.W.1 admitted in her evidence that by the date of her marriage with the eldest son of P.W.1, P.W.1 had an unmarried daughter and a dependent unemployed son.

29. Admittedly, in the case at hand, no registered partition had happened between Purushotham Naidu and his children. He had three daughters and one son, and another son died in the year 1994, leaving his wife and two children i.e. the plaintiffs in O.S.No.34 of 1999. The said Purushotham Naidu died intestate during the pendency of the appeal before this Court. Learned counsel for the appellant contended that Purushotham Naidu alienated the northern portion of the plaint 'A' schedule house property to his third daughter on 29.03.1996. As stated supra, the suit for partition was filed by the daughter-in-law and her children in 1994. It was subsequently transferred to the Additional Senior Civil Judge, Tirupati, and then to the V Additional District Judge, Tirupati, numbered as O.S.No.34 of 1999. Therefore, the said sale

transaction done by the appellant in favor of the third daughter is hit by the 'doctrine of lis pendens'.

30. As stated *supra*, the appellant as P.W.1 brought to the notice of the trial Court that he is having three daughters, the trial court did not assign any reasons for not awarding any share to the daughters. The appellant deposed in his evidence that he has two sons and three daughters, which is undisputed by the respondent. It is an admitted fact of both parties that the eldest son of the appellant, by name Vijayarama Naidu, married respondent No.1 in the year 1985 and died on 18.07.1994 in a road accident. R.W.1, i.e., the plaintiff who filed the suit for partition, admitted in her evidence in cross-examination that by the date of retirement of her father-in-law in 1993, he had one unmarried daughter and an unemployed son. Having knowledge by the plaintiff No.1, the appellant is having three daughters, the said three daughters are not added as parties to the suit for partition.

31. In the grounds of appeal itself, the appellant contended that the daughters of the appellant, who got married subsequent to the introduction of Section 29-A of the Hindu Succession Act, being the coparceners, are necessary parties and have not been impleaded as parties before the trial court in a suit for partition. Learned counsel for the respondent contended that no defence was put forth by the appellant in the written statement that the suit for partition is bad for non-joinder of necessary parties, i.e., his daughters. No doubt, the appellant has not taken any plea in the written statement that the suit is bad for non-joinder of necessary parties. Once a crucial facet is brought

to the notice of the trial court that Purushotham Naidu had three daughters and two sons, and his eldest son died leaving his wife and children i.e. the plaintiffs in O.S.No.34 of 1999, the trial court ought to have allot a share of $1/6^{\text{th}}$ only to the plaintiffs. As per Section 6-A of the Hindu Succession Act, a daughter by birth becomes a coparcener in her own right in the same manner as a son and therefore entitled to an equal share. Therefore, the daughters are also entitled to an equal share by birth on par with the sons. The plaintiff failed to add the daughters of the appellant as parties to the suit for partition. As stated supra, the trial court dismissed the suit filed by the appellant/Purushotham Naidu with a specific finding that the plaint schedule property is not an absolute property of Purushotham Naidu and it is joint family property. Therefore, the trial court ought to have allot $1/6^{\text{th}}$ share to the plaintiffs instead of $1/3^{\text{rd}}$ share.

32. The plaintiffs who approached the trial court for seeking relief of partition of the plaint schedule property failed to join the daughters of Purushotham Naidu as parties to the suit. ***“A suit for partition can be maintained against the persons who are not parties to the suit. Even if there is any share likely to be allotted to any of the sharers, it can be done at any stage of the proceedings, and the rights of all the sharers can be worked out in a final decree.*** Therefore, the non-joinder of any of the parties to the suit for partition is not fatal to the maintainability of the suit.

33. In the case of **Vineeta Sharma v. Rakesh Sharma**¹¹, a Full Bench of the Apex Court held as follows:

“129.

(i) *The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.*

(ii) *The rights can be claimed by the daughter born earlier with effect from 9.9.2006 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.*

(iii) *Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2006.*

(iv) *The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.*

34. For the aforesaid reasons, the plaintiffs in O.S.No.34 of 1999, being the legal representatives of one of the sons of Purushotham Naidu, by name Vijayarama Naidu, are entitled to 1/6th share in the plaint ‘A’ schedule house, and the daughters of Purushotham Naidu will get 1/6th share each. The appellant No.2 during the pendency of this appeal contend that her father during his lifetime alienated total northern portion of plaint ‘A’ schedule house property to her under a registered sale deed in the year 1996, while the suit for partition is pending before the trial Court. At best, the father can alienate

¹¹ AIR 2020 SC 3717

his share in the property to the daughter, but not the entire northern portion of the house property. Accordingly, the point No.3 is answered holding that the plaintiffs in O.S.No.34 of 1999 are entitled to 1/6th share instead of 1/3rd share in the plaint 'A' schedule property.

Accordingly, the decree and judgment dated 04.04.2003, passed by the learned V Additional District Judge, Tirupati in O.S.No.34 of 1999, is modified.

A.S.M.P.No.1138 of 2017 :

35. The application under A.S.M.P.No.1138 of 2017 is filed by the petitioner/appellant No.2 under Order XLI Rule 27 and under Section 151 of the Code of Civil Procedure, with a prayer to permit the petitioner/appellant No.2 to receive additional evidence as prayed in the affidavit of the petitioner. The case of the petitioner is that her father was a member of the District Non-Gazetted Officers Cooperative Society, and the said society allotted Plot No.230 to her father under a registered sale deed dated 14.10.1971 and inducted him into lawful possession of the same. She further pleaded that on the date of filing of the suit in O.S.No.664 of 1994 by the respondent No.1, she was unmarried, and the marriages of her sisters were performed after 05.09.1985, and she was residing in the northern portion of the house property along with her parents and her younger brother, to the knowledge of the respondent No.1. As on the date of filing of the suit, she intentionally omitted to implead them in the said suit. She further pleaded that her father died on 27.01.2012, i.e., after the Hindu Succession Act, 2005 came into

force, and she and her sisters by birth are entitled to 1/6th share along with her father and brothers in their own right even if the property is assumed to be the joint family property.

36. She further pleaded that under a registered sale deed dated 29.03.1996, her father sold the northern portion of the house property to her and inducted her into the possession of the same. She further pleaded that from the date of her purchase she is in the possession of the said property and also got her name mutated in the Municipal records. She further pleaded that she also filed a suit in O.S.No.124 of 2012, on the file of Additional Senior Civil Judge, Tirupati seeking declaration of title and permanent injunction in respect of the northern portion and she also filed another suit in O.S.No.56 of 2012, on the file of the Additional Senior Civil Judge, Tirupati, seeking partition of the southern portion of the building and later she had withdrawn the suit in O.S.No.124 of 2012. She further pleaded that in view of the events that happened subsequent to the disposal of the suit and during the pendency of the appeal an opportunity may be given to her to receive the documents as additional evidence.

37. The respondents filed a counter stating that the issue involved in the suit which gave rise to the appeal is whether the suit schedule property is self-acquired property of the deceased appellant or not? The suit in O.S.No.124 of 2012 is filed by the petitioner for declaration of title and permanent injunction in respect of the northern portion of the plaint 'A' schedule property was dismissed as withdrawn and the other suit filed by the appellant No.2 is for

seeking partition of the properties and it is pending for trial and there are no merits in the interlocutory application vide A.S.M.P.No.1138 of 2017 filed by the petitioner/appellant No.2 and the same may be dismissed.

I.A.No.1 of 2025:

38. The petitioner, who is the appellant No.2, pleaded that even if it is assumed that the subject property is a joint family property, she along with her sisters being the daughters are having 1/6th share in the said property in their own right and therefore, the suit in O.S.No.34 of 1999 is bad for non-joinder of necessary and proper parties and the decree passed therein is not binding on them and the trial Court awarded 1/3rd share instead of awarding 1/6th share to the plaintiffs in the suit. She further pleaded that her father died on 27.01.2012, i.e., after the Hindu Succession Act, 2005 came into force, and she and her sisters by birth are entitled to 1/6th share along with her father and brothers in their own right even if the property is assumed to be the joint family property.

39. She further pleaded that under a registered sale deed dated 29.03.1996, her father sold the northern portion of the house property to her and inducted her into the possession of the same, and from the date of her purchase, she is in the possession of the said property and also got her name mutated in the Municipal records. She further pleaded that her younger brother, elder sister and her mother jointly executed a registered settlement deed No.972 of 2016 and settled their share in the entire property to her and

that she prayed to receive the documents viz., the registration extract of the sale deed and settlement deed bearing Nos.1438 of 1996 and 972 of 2016, property tax receipts and electricity bills as additional evidence.

40. The respondents filed a counter affidavit by denying the material allegations leveled in the affidavit of the petitioner and they prayed to dismiss the interlocutory application vide I.A.No.1 of 2025, filed by the petitioner.

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

27. Production of additional evidence in Appellate Court.-

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

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

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

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

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

The general principle is that the appellate Court should not travel outside the record of the trial Court and cannot take any evidence in appeal. However, as an exception under Order XLI Rule 27 of Civil Procedure Code,

enable the appellate Court to take evidence in exceptional circumstances only. The proviso under Order XLI Rule 27 C.P.C. permits the party to produce additional evidence before the appellate Court provided it has to be come under the ambit of Order XLI Rule 27 of Civil Procedure Code.

42. The suit for partition is filed in the year 1994, and the documents to be received as additional evidence relates to subsequent to the institution and disposal of the suit by the trial Court and during the pendency of the present appeal before this Court; therefore, the documents proposed to be received as additional evidence are in no way helpful to decide the issue in the appeal proceedings. It is well settled that “in the absence of the pleading, evidence, if any, produced by the parties cannot be considered,” and it is also equally well settled that “no party should be permitted to travel beyond its pleadings and that all necessary and material facts shall be pleaded by a party in support of the case set up by it.” Therefore, there are no grounds to allow the interlocutory applications vide A.S.M.P.No.1138 of 2017 and I.A.No.1 of 2025, filed by the petitioner/appellant No.2. Hence, the present interlocutory applications are dismissed.

43. In the result, A.S.M.P.No.1138 of 2017 and I.A.No.1 of 2025 in A.S.No.1911 of 2003 are **dismissed**, and A.S.No.1911 of 2003 is **partly allowed** by modifying the decree and judgment dated 04.04.2003, passed in O.S.No.34 of 1999, by the learned V Additional District Judge, Tirupati, as “*the suit in O.S.No.34 of 1999, on the file of the V Additional District Judge Court, Tirupati, is preliminarily decreed by holding that the plaint ‘A’ schedule*

property shall be divided into six (06) equal shares and to allot one such share to the plaintiffs in O.S.No.34 of 1999”.

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: 12.02.2026

SRT