

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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A.S.No. 2003 OF 1995

JUDGMENT:

Defendant Nos. 5 and 7 in O.S.No. 47 of 1976 on the file of the Court of Subordinate Judge, Madanapalle (for short, 'the trial Court'), preferred this appeal challenging the decree and judgment dated 24-10-1986, whereunder the trial Court declared that the plaintiff is entitled to 4/16th share; defendant Nos. 1 and 2 together are entitled to 10/16th share and defendant Nos. 5 to 10 together are entitled to the remaining 2/16th share in item Nos. 1 to 6 and 9 to 11 of schedule property and all of them are entitled to be put in separate possession of their respective shares after carving out their plots while dismissing the suit in respect of item Nos. 7 and 8 of schedule property.

2. The appellants were defendant Nos. 5 and 7, the 1st respondent was the plaintiff and respondent Nos. 2 to 12 were defendant Nos. 1 to 4, 6 and 8 to 13 respectively before the trial Court. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this judgment.

3. During pendency of the appeal, the 5th defendant died and her legal-representatives are brought on record as appellant Nos. 3 and 4 and, since appellant Nos. 3 and 4 are minors, their mother Ratakonda Vani is appointed as guardian; the 2nd respondent died and his legal-heirs are brought on record as respondent Nos. 13 to 15; the 3rd respondent died and his legal-representatives are brought on record as respondent Nos. 16 to 19; and since the 1st respondent died, her legal-heirs are brought on record as respondent Nos. 20 to 22. During pendency of the appeal, the 3rd appellant and the 9th respondent attained majority and declared as majors.

4. The plaintiff filed the suit for partition and separate possession of schedule property alleging that schedule property is under Chinna Mallayya Kalva in Basinikonda Village. In schedule property, the plaintiff is entitled to 1/4th share and defendant Nos. 1 to 10 altogether are entitled to the remaining 3/4th share. The plaintiff and the defendants are in joint possession and enjoyment of schedule

property by paying land revenue thereon in proportion to their respective shares.

Schedule property originally belonged to Srinivasa Rao, Krishnamurthy Rao, Sethubayamma, Rangaswamy Naidu, Narappagari Gangaiah and Narayana. In schedule property, Srinivasa Rao is entitled to 0-4-0 share; Krishnamurthy Rao is entitled to 0-3-0 share; Sethubayamma is entitled to 0-4-6 share; Rangaswamy Naidu is entitled to 0-2-6 share; and Narappagari Gangaiah and Narayana together are entitled to 0-2-0 share and they are in joint possession and enjoyment of the same by paying land revenue to their respective shares. On 22-04-1964, Srinivasa Rao sold away his undivided 1/4th share in schedule property along with other property to the plaintiff for a sum of Rs.7,000/-, executed a registered sale deed in her favour and put her in possession of the same. 0-3-0 share of Krishnamurthy Rao and 0-4-6 share of Sethubayamma were sold to defendant Nos. 1 and 2. The share of Narappagari Gangaiah was purchased by the 4th defendant. Narayana gifted his share to the 3rd defendant. The share of Rangaswamy Naidu devolved upon defendant Nos. 5 to 10 after his death in 1973. Neither the plaintiff nor defendant Nos. 1 to 10 nor their predecessors in title have partitioned schedule property by metes and bounds but they have been enjoying schedule property in different plots for convenient cultivation.

Prior to execution of sale deed by Srinivasa Rao in favour of the plaintiff, Srinivasa Rao and Sethubayamma leased out their share in schedule property to Yerrajala Gangulappa for a period of 10 years under registered lease deed 27-07-1958. By the date of purchase by the plaintiff, the said Gangulappa was cultivating the share of Srinivasa Rao and Sethubayamma. After purchase, Gangulappa used to deliver due share to the plaintiff till 02-08-1967. On 02-08-1967, Gangulappa transferred his leasehold right to Kathi Chinna Ramu and Sanipayi Venkatramana under registered lease deed. The said Chinna Ramu and Sanipayi Venkatramana agreed to deliver share of produce to the plaintiff as per the original lease deed which expired on 30-06-1969.

After expiry of lease period, defendant Nos. 1 and 2, being co-owners, agreed to cultivate the plaintiff's share on Koru. The plaintiff also agreed for the same, leased out the land to defendant Nos. 1 and 2 and defendant Nos. 1 and 2, accordingly, paid the plaintiff's share of Koru for three years *i.e.* till 1973. Defendant Nos. 1 and 2, thereafter, denied their liability to pay Koru for the years 1973, 1974

and 1975. Thereupon, the plaintiff demanded the defendants for partition of schedule property and to deliver her 1/4th share but they did not co-operate. Finally, on 15-07-1976, the plaintiff demanded defendant Nos. 1 and 2 to account for mesne profits. As the plaintiff felt that it was not beneficial or convenient for her to continue in joint possession and enjoyment of schedule property with the defendants, she filed the suit for partition of her 1/4th share and to put her in separate possession while claiming mesne profits @ Rs.1,000/- per year towards her share and also claimed value of the trees cut and removed from schedule property by the defendants.

5. As the present appeal is filed by defendant Nos. 5 and 7 alone, the contentions of the other defendants are not necessary for deciding the issue. Therefore, the specific contentions raised by the other defendants need no consideration to decide the present controversy.

6. Defendant Nos. 5 to 10, as one set, resisted the claim of the plaintiff raising several contentions. Originally, Maluri Krishna Rao, Narappagari Narigadu @ Bantrothu Narigadu, Ramacharla Venkoba Rao, Durgaraju Venkatachalamappa, Seshappa and Chidambarappa were joint pattedars of schedule property and some other lands covered by S.No. 477 as per the First Survey and Settlement conducted in the year 1869. Maluri Krishna Rao had 0-6-0 joint share, Narappagari Narigadu @ Bantrothu Narigadu had 0-0-10 joint share, Ramacharla Venkoba Rao had 0-4-6 joint share and Durgaraju Venkatachalamappa and other members of his family had 0-4-8 joint share. All of them continued in joint possession and enjoyment of schedule property. On the death of Maluri Krishna Rao, his son Maluri Srinivasa Rao succeeded his share. On the death of Maluri Srinivasa Rao, his wife Lakshmibayamma succeeded his share who in turn gifted the same on 31-10-1920 to her fostered daughter Ambabayamma and her sons B.Srinivasa Rao and B.Krishnamurthy Rao. 0-0-10 share of Narappagari Narigadu @ Bantrothu Narigadu devolved upon his only son Ramudu and the said Ramudu also died leaving behind his five sons namely Venkatrayudu, Rajigadu, Gangaiah, Narayana, Lakshmanna. Each of them succeeded undivided share of 0-0-2. Venkatrayudu and Rajigadu were living as one unit. Gangaiah was the manager of the unit consisting of himself, Narayana and Lakshmanna. On the death of Rajigadu, his widow Garudakka and his brother Venkatrayudu sold their 0-0-4 share to the other three brothers who were living jointly under the management of Gangaiah. Thereby, Gangaiah, Narayana

and Lakshmanna together became entitled to 0-0-10 share. On the death of Lakshmanna, his heirs sold Lakshmanna's undivided share 0-0-3 $\frac{1}{3}$ share to B.Srinivasa Rao but it was wrongly recited as $\frac{1}{6}$ th share in sale deed. Therefore, B.Srinivasa Rao did not derive anything more than 0-0-3 $\frac{1}{3}$ share under sale deed. The remaining two brothers Gangaiah and Narayana were entitled to 0-0-3 $\frac{1}{3}$ share each. Gangaiah died leaving his sons. The sons of Gangaiah and Narayana entered into an agreement with B.Srinivasa Rao, B.Krishnamurthy Rao and Sethubayamma giving up their right in schedule property in exchange of their extents to land in other survey numbers in which B.Srinivasa Rao, B.Krishnamurthy Rao and Sethubayamma had share. In terms of the agreement, Srinivasa Rao and others lost their right in part of S.No. 469 and full extent in S.No. 477. Narayana gifted his share in village site (Palle Adugu) to the 3rd defendant, sold his $\frac{1}{3}$ rd right in Chinthamandla Adugu to Kathi Gopalu and gifted his remaining $\frac{1}{6}$ th right to his daughter. The three sons of Gangaiah sold their father's share in Palle Adugu and Chinthamandla Adugu to the plaintiff. Pedda Ramanna and Chinna Ramanna sold their respective shares in Village Site and Chinthamandla Adugu to defendant Nos. 1 and 4 respectively.

Ramacharla Venkoba Rao mortgaged his share in schedule property in favour of Kopparam Dasappa by way of usufructuray mortgage. In the year 1931, legal-heirs of Ramacharla Venkoba Rao filed suit O.S.No. 451 of 1931 on the file of the Court of District Munsif, Madanapalle, against Kopparam Dasappa and three others for redemption of mortgage and obtained decree. Later, legal-heirs of Ramacharla Venkoba Rao by name Sagaram Krishna Rao and others sold the property of Ramacharla Venkoba Rao to Sethubayamma in the year 1954. Instead of mentioning 0-4-6 share in sale deed, 0-6-0 share was mentioned. Sethubayamma in turn sold 0-7-0 share under the guise of sale deed executed by Krishna Rao and others as if she got 0-6-0 share and 0-1-0 share in partition agreement between her and Bantrothu people though she actually got 0-4-6 share by way of sale and 0-0-2 $\frac{2}{3}$ share by way of exchange. Thus, defendant Nos. 1 and 2 cannot derive more than what their predecessors in title possessed.

Durgaraju Seshappa and his family members are entitled to $\frac{7}{24}$ th share *i.e.* 0-4-8 share in schedule property and they sold their share to Peravali Subbarayappa under different sale deeds. Peravali Subbarayappa died leaving his son Peravali

Bala Ranga Reddy. The said Bala Ranga Reddy took Rangaswamy Naidu in adoption. As such, defendant Nos. 6 to 10, who are legal-heirs of Rangaswamy Naidu, are entitled to 0-4-8 share in schedule property. The plaintiff is not entitled to $1/4^{\text{th}}$ share but entitled to $31/144^{\text{th}}$ share (0-3-5- $1/3$) in schedule property. Therefore, the claim of the plaintiff is not correct on calculation. Srinivasa Rao and his brother Krishnamurthy Rao are entitled to $31/144^{\text{th}}$ share and $19/96^{\text{th}}$ share respectively in schedule property. Sethubayamma is entitled to $7/24^{\text{th}}$ (0-4-8), Narappagari Gangaiah and Narayana together are entitled to $5/144^{\text{th}}$ share. All of them are in joint possession and enjoyment of schedule property. Srinivasa Rao got 0-3-0 share under gift, acquired 0-0-3- $1/3$ share *i.e.* $5/288^{\text{th}}$ share by purchase from Narappagari Lakshmanna and got $1/96^{\text{th}}$ (0-0-2) share by allotment that took place between him, Krishnamurthy Rao and Narayana.

Defendant Nos. 5 to 10 denied entitlement of $1/16^{\text{th}}$ share by the 4th defendant while admitting that the 4th defendant is entitled to $1/9^{\text{th}}$ share in part of item No. 2, which is locally known as Palle Adugu, and $1/6^{\text{th}}$ share in Chinthamandla Adugu *i.e.* S.No. 469. Narayana had only $1/3^{\text{rd}}$ share in Palle Adugu site and half share in tamarind trees site. The said Narayana sold $2/6^{\text{th}}$ share of Chinthamandla Adugu to Gopalu in 1966. As such, the 3rd defendant could not get more than what her vendor had.

Defendant Nos. 5 to 10 inherited $7/24^{\text{th}}$ share from late Rangaswamy Naidu and they took only their share of timber in the trees. Therefore, the suit as framed is not in accordance with law.

The suit is bad for non-joinder of necessary parties and finally gave consent to pass preliminary decree for partition of schedule property as contended by them in the written statement.

7. On the strength of the above pleadings, the trial Court framed as many as 9 issues which are thus:

Issues:

1) *Whether the plaintiff purchased joint $1/4^{\text{th}}$ share of B.Sreenivasa Rao in the suit*

properties on 22-4-1964 and continued in joint possession as alleged by the plaintiff?

2) Whether the partition of the suit lands pleaded by the defendants 1 and 2 is true and whether there was separate enjoyment of the suit lands as alleged?

3) Whether the shares of the plaintiff and her brother Rangaswamy Naidu were decided and marked by the elders in December 1969 as pleaded by the defendants 1 and 2?

4) Whether the defendants 1 and 2 are liable to pay 'koru' to the plaintiff for the years 1973 to 1975 as claimed by her?

5) Whether the defendants 1, 2 and 5 have cut and carried away neem and other trees and whether they are liable to pay Rs.2,000/- or any amount to the plaintiff?

6) Whether the plaintiff's suit is false, frivolous and vexatious?

7) Whether the suit is bad for non-joinder of necessary parties i.e. other co-sharers as pleaded by 3 to 10 defendants?

8) To what share is the plaintiff entitled to in suit properties?

9) To what relief? (extracted).

8. When the suit was posted for trial, the plaintiff filed a petition on 23-07-1979 in I.A.No. 597 of 1979 under Order I Rule 10 of the Code of Civil Procedure to implead defendant Nos. 11 to 13 as they purchased part of schedule property and the same was allowed. The 12th defendant was set *ex parte*, defendant Nos. 11 and 13 did not file any written statement and, therefore, no additional issues were framed.

9. During the course of trial, separate trial was commenced both in O.S.No. 43 of 1976 and 47 of 1976. When the matter was posted for cross-examination of P.W.1 in the present suit, both parties filed a memo requesting to consolidate both the suits, conduct joint trial recording evidence in the present suit and treat the same as evidence in O.S.No. 43 of 1976. Accordingly, joint trial was held. During the course of joint trial, on behalf of the plaintiff, P.Ws.1 to 3 were examined and got marked Exs.A1 to A23. On behalf of the defendants, D.Ws.1 to 9 were examined and got marked Exs.B1 to B38, Exs.X1 to X5 and Exs.C1 to C4.

10. Upon hearing argument of both counsel and considering oral and documentary evidence on record, the trial Court, working out equities, at the end of para No. 57 of the judgment, held that Sethubayamma is entitled to 0-6-0 share. Thereby, the trial Court made an equitable allotment of the remaining property, which is not covered

by any document, to both sides proportionately. Accordingly, the trial Court allotted 0-0-6 share to defendant Nos. 1 and 2 and 0-0-2 share to defendant Nos. 5 to 10 on equity. Basing on the said equitable allotment, defendant Nos. 5 to 10 are entitled to 0-0-2 share besides 0-1-10 share covered by Exs.B25 to B27. Thus, in total, defendant Nos. 5 to 10 are entitled to 0-2-0 share. Similarly, defendant Nos. 1 and 2 got 0-0-6 share on working out equities and the final allotment is thus:

"In the result, these two issues are answered holding that the plaintiff is entitled to 0-4-0 share i.e. 4/16th share; defendant Nos. 1 and 2 together are entitled to 0-10-0 share i.e. 10/16th share and defendant Nos. 5 to 10 together are entitled to 0-2-0 share i.e. 2/16th share in schedule property."

11. Assailing the allotment of share to defendant Nos. 5 and 7 along with other defendant Nos. 6 and 8 to 10, the present appeal is preferred raising several contentions.

The main contention of defendant Nos. 5 and 7 is that the conclusion of the trial Court that the plaintiff is entitled to 0-4-0 share, defendant Nos. 1 and 2 together are entitled to 0-10-0 share and defendant Nos. 5 to 10 together are entitled to 0-2-0 share in schedule property is not based on any legal evidence but the trial Court, by its own working out equities, allotted the property not covered by any document in proportion to their share which is erroneous on the face of record.

It is further contended that in view of the specific contention of the plaintiff, defendant Nos. 1 and 2 are entitled to 0-3-0 share while defendant Nos. 5 to 10 contended that they are entitled to 0-0-10 share but the trial Court failed to take into consideration the evidence on record, erroneously relied on Exs.A18 and B2 to accept the contention of the plaintiff and the approach of the trial Court is erroneous. Finally, it is contended that defendant Nos. 5 to 10 are entitled to 0-4-8 share in schedule property in view of Exs.B28 to B33 and requested to re-appraise entire evidence and pass appropriate decree allotting 0-4-8 share in schedule property to defendant Nos. 5 to 10 allowing this appeal setting aside the preliminary decree passed in O.S.No. 47 of 1976 by the trial Court.

12. During the course of argument, Sri M.N.Narasimha Reddy, learned counsel for defendant Nos. 5 and 7, drawn attention of this Court to several observations on issue Nos. 1 and 8 which are relevant for deciding the present controversy while contending that when none of the parties claimed equities, question of making

equitable allotment to defendant Nos. 1 and 2 as one set and defendant Nos. 5 to 10 as another set is erroneous. The voluminous evidence, more particularly Exs.B28 to B33, clearly established the fact that defendant Nos. 5 to 10 are entitled to 0-4-8 share in schedule property but the trial Court did not consider the same in proper perspective and, believing various documents produced by the plaintiff without any legal basis, accepted the contention of the plaintiff and defendant Nos. 1 and 2. Hence, decree and judgment of the trial Court are erroneous on the face of record and finally prayed to set aside the decree and judgment and pass preliminary decree allotting 0-4-8 share in schedule property modifying the decree.

13. Though Sri N.Pramod, learned counsel, appeared for the plaintiff, but did not advance any argument.

14. In figures, the 1st digit indicates Rupee, the 2nd digit indicates Anna and the 3rd digit indicates Paisa or Pie. According to learned counsel, 1 Rupees is equal to 16 Annas, 1 Anna is equal to 12 Pies, 1 Rupee is equal to 192 Pies and, accordingly, both parties claimed their shares.

15. Considering the contentions of learned counsel for defendant Nos. 5 and 7 and perusing oral and documentary evidence including decree and judgment of the trial Court, the sole point that arises for consideration is

"Whether defendant Nos. 5 to 10 are entitled to claim 0-4-8 share in all items of schedule property, if not, decree and judgment of the trial Court be sustained?"

16. In Re. Point:

Though the appeal is preferred by defendant Nos. 5 and 7 as one set of sharers *i.e.* defendant Nos. 5 to 10, it is relevant to mention the few contentions raised by defendant Nos. 1 and 2 as one set for better appreciation of evidence on record. According to defendant Nos. 1 and 2, they together are entitled to 0-11-0 share, the plaintiff is entitled to 0-4-0 share and defendant Nos. 5 to 10 are entitled to 0-1-0 share. Defendant Nos. 1 and 2 are claiming 0-11-0 share in view of registered sale deeds dated 27-03-1966 executed by Krishnamurthy Rao and his brother in

their favour.

17. As seen from the rival contentions raised in pleadings both in plaint and written statements, there are three different contentions. According to the plaintiff, her vendor Srinivasa Rao P.W.3 is entitled to 0-3-0 share under Ex.A17 gift deed dated 31-07-1920 and 0-1-0 share under Ex.A18 registered sale deed dated 08-03-1957 executed by Bantrothu Venkataramana and others in his favour for Rs.300/-. Defendant Nos. 1 and 2 and 5 to 10 disputed acquisition of 0-1-0 share in schedule property by P.W.3 under Ex.A18. However, there is no dispute regarding acquiring 0-3-0 share in schedule property by P.W.3 under Ex.A17. According to defendant Nos. 1 and 2, the plaintiff's vendor P.W.3 purchased 0-1-0 share under Ex.A18 as joint family manager consisting of himself and his younger brother Krishnamurthy Rao. Thereby, the plaintiff's vendor got only 0-0-6 share but not 0-1-0 share. The defendants also relied on Ex.B2 partition deed dated 25-10-1960 among Bantrothu people and according to it, the plaintiff's vendor was allotted 0-4-0 share. In the evidence of D.Ws.1 and 2, they admitted allotment of 0-4-0 share to Bantrothu people which was purchased by the plaintiff under Ex.A1 dated 22-04-1964. Thus, the plaintiff acquired title to 0-4-0 share under Ex.A1 and 0-1-0 share under Ex.A18.

18. Defendant Nos. 5 to 10 objected the plaintiff's entitlement to claim $\frac{1}{4}$ th share contending that the plaintiff's vendor's vendor got no title to convey 0-1-0 share in favour of the plaintiff's vendor Srinivasa Rao under Ex.A18 since they had only 0-0-3 $\frac{1}{3}$ share. Thus, in all, the plaintiff is entitled to get 0-0-3 $\frac{1}{3}$ share only. Defendant Nos. 1 and 2 are claiming 0-11-0 share by virtue of Exs.B3, B4, B16 and B17 registered sale deeds dated 27-03-1966. Similarly, defendant Nos. 5 to 10 are claiming 0-4-8 share through Peravali Subbarayappa, father of Balaranga Reddy, who is the adoptive father of late Rangaswamy Naidu.

19. As the claims of the plaintiff as one set, defendant Nos. 1 and 2 as another set and defendant Nos. 5 to 10 as third set totally depend on documentary evidence, oral evidence has no much relevance for deciding the controversy between the parties except to deny shares in the documents. Therefore, I would like to advert to documentary evidence to decide the real controversy between the parties regarding entitlement of shares by each of the parties. The plaintiff produced Ex.A17 gift deed dated 31-07-1920, whereunder her vendor P.W.3 got 0-3-0 share and Ex.A18

registered sale deed dated 08-03-1957, whereunder P.W.3 purchased 0-1-0 share for Rs.300/- from Bantrothu Venkataramana. By virtue of Ex.A1 sale deed dated 22-04-1964 executed by P.W.3 in favour of the plaintiff, the plaintiff became owner of 0-4-0 share in schedule property as one set.

20 Coming to the case of defendant Nos. 1 and 2, though they are claiming 0-11-0 share by virtue of Exs.B3, B4, B16 and B17 registered sale deeds dated 27-03-1966, the same is not supported by those documents. Ex.B3 is original registered sale deed executed by Krishnamurthy Rao, brother of P.W.3, in favour of the 2nd defendant. Ex.B4 is registered sale deed executed by Sethubayamma, sister of P.W.3 and Krishnamurthy Rao, in favour of the 2nd defendant conveying her share in schedule property. Exs.B16 and B17 are registration extracts of sale deeds executed by P.W.3 and his brother Krishnamurthy Rao conveying 1/8th share in all the schedule property. Sethubayamma conveyed 7/32 share in favour of the 2nd defendant under Ex.B4 and 7/32 share in favour of the 1st defendant under the original of Ex.B17. Thus, Krishnamurthy Rao-D.W.2, younger brother of the plaintiff's vendor, conveyed 0-4-0 share to both defendant Nos. 1 and 2 equally. Sethubayamma, sister of D.W.2 and P.W.3, conveyed 0-7-0 share to both defendant Nos. 1 and 2. Therefore, they became entitled to 0-4-0 + 0-7-0 which comes to 0-11-0 share. Defendant Nos. 5 to 10 are challenging the claim of defendant Nos. 1 and 2 on the ground that Sethubayamma is incompetent to convey 0-7-0 share and Krishnamurthy Rao also had no right to convey 0-4-0 share. However, both the plaintiff and defendant Nos. 5 to 10 contended that under Ex.B18, Sethubayamma had only 0-4-6 share in schedule property. As such, Sethubayamma is entitled to convey 0-4-6 share under Ex.B18 but not 0-7-0 share. Defendant Nos. 5 to 10 further contended that Sethubayamma got 0-4-6 share under Ex.B18 and 0-0-2 2/3 share in partition under Ex.B2. Thereby, Sethubayamma had only 0-4-8 2/3 share. Therefore, defendant Nos. 1 and 2 became entitled to only 0-4-8 2/3 share under Exs.B16 and B17 from Sethubayamma.

21. Regarding the share acquired from Krishnamurthy Rao, according to the plaintiff, Krishnamurthy Rao had only 0-3-0 share *vide* Ex.A17 dated 31-10-1970 and he is competent to convey only 0-3-0 share whereas defendant Nos. 5 to 10 contended that Krishnamurthy Rao got only 0-3-0 share under Ex.A16 and 0-0-2 share under Ex.B2 partition. Therefore, in all, Krishnamurthy Rao is entitled to convey 0-3-2

share but not 0-4-0 share. Consequently, D.W.2, at best, is entitled to convey title in an extent of 0-3-2 but not 0-4-0. In view of Exs.B3, B4, B16 and B17 coupled with Exs.A16 and B18, defendant Nos. 1 and 2 as one set are entitled to 0-7-6 share. The trial Court, after considering entire evidence on record, held that the plaintiff is entitled to 0-4-0 share *i.e.* 4/16 share and defendant Nos. 1 and 2 together are entitled to 0-10-0 share *i.e.* 10/16 share. Though the trial Court allotted 0-4-0 share to the plaintiff, she did not file any cross-objections or cross-appeal questioning the said finding. Similarly, defendant Nos. 1 and 2, who claimed 0-11-0 share, were allotted 0-10-0 share but they did not challenge the finding recorded by the trial Court though those findings are against their interest and right claimed in schedule property. Therefore, it is wholly unnecessary to decide shares of the plaintiff and defendant Nos. 1 and 2 but decision on share of defendant Nos. 5 to 10 will have its own impact on shares of other parties.

22. Keeping in mind the impact of decision on shares of defendant Nos. 5 to 10, I would like to refer the specific case of defendant Nos. 5 to 10 before the trial Court with reference to evidence on record. Undisputedly, defendant Nos. 5 to 10 are claiming 0-4-8 share in schedule property contending that one Durgaraju family was the owner of 0-4-8 share and from the said Durgaraju family, one Peravali Subbarayappa purchased undivided share of Durgaraju family under Exs.B25 to B27 and other sale deeds. However, this contention was strongly disputed by the plaintiff and defendant Nos. 1 and 2. When defendant Nos. 5 to 10 set up specific plea that they are entitled to 0-4-8 share in the entire property, it is for them to establish their entitlement to claim such share by producing cogent and satisfactory evidence.

23. The trial Court, after elaborate discussion with regard to shares of the plaintiff and the defendants, in para Nos. 54 to 56 of the judgment recorded reasons for disbelieving the claim of defendant Nos. 5 to 10 in schedule property. Even on reappraisal of entire material available on record, defendant Nos. 5 to 10, though claimed 0-4-8 share in schedule property through their common ancestor Peravali Subbarayappa, who purchased the property from Durgaraju family under Exs.B25 to B27, did not produce any piece of paper to establish the share possessed by Durgaraju family. However, the documents produced by defendant Nos. 5 to 10 at best show that Ambubayamma had 0-6-0 share, Ramacharla Venkoba Rao had 0-4-6 share, Bantrothu family had 0-0-10 share and, therefore, the remaining share must

have belonged to Durgaraju family. In fact, the sale deeds produced by the defendants *i.e.* sale deeds obtained by Peravali Subbarayappa or any other ancestor would not disclose purchase of 0-4-8 share under the originals of Exs.B25 to B27.

24. The case of defendant Nos. 5 to 10 is totally based on Exs.B25 to B27. Ex.B25 is registered sale deed dated 22-12-1980 executed by Durgaraju Venkatachalamappa, son of Seshappa, in favour of Peravali Subbarayappa, grandfather of Rangaswamy Naidu. Under Ex.B25, the vendor of Peravali Subbarayappa conveyed right in 0-1-0 share. However, before the trial Court, learned counsel for defendant Nos. 5 to 10 contended that Peravali Subbarayappa is joint pattedar along with other members and placed reliance on Ex.B32 in support of his contention but the trial Court, perusing contents of Ex.B32, concluded that Subbarayappa is not joint pattedar. Even after glancing to Ex.B32, I find that the said Subbarayappa is not joint pattedar since his name was not found place as joint pattedar in Ex.B32. The trial Court rightly rejected the contention of defendant Nos. 5 to 10 that Peravali Subbarayappa possessed right as joint pattedar in schedule property by the date of Ex.B25. The finding of the trial Court is, therefore, free from any illegality. However, it is evident from the recitals of Ex.B25 that Subbarayappa purchased only 0-1-0 share. Coming to Ex.B26 sale deed dated 26-09-1983, it was executed by Durgaraju Vasantha Rao, grandson of Seshappa, in favour of Subbarayappa conveying 0-0-6 share in schedule property. Ex.B27 is sale deed dated 01-02-1900 executed by Durgaraju Seetamma, wife of Seshappa, in favour of Subbarayappa conveying 0-0-2 share. Thus, under Exs.B25 to B27, Peravali Subbarayappa acquired title to 0-1-10 share from Durgaraju family. Except these documents, no other material is brought on record to prove that Peravali Subbarayappa acquired title to 0-4-8 share as claimed by them.

25. Learned counsel for defendant Nos. 5 to 10 also placed strong reliance on Exs.B28 and B29. Ex.B28 is order passed by Land Reforms Primary Tribunal dated 27-10-1978, whereunder the Tribunal found that holding of defendant Nos. 5 to 10 was decided and included 0-4-0 share in the holding of defendant Nos. 5 to 10. Similarly, Ex.B29 is order passed by Land Reforms Appellate Tribunal confirming the order passed by the Primary Tribunal. Taking advantage of the orders marked as Exs.B28 and B29, defendant Nos. 5 to 10 claimed 0-4-8 share in the entire property. Declaration submitted before Land Reforms Tribunal was not placed on record so

also verification report to believe that defendant Nos. 5 to 10 disclosed undivided share of 0-4-8 in schedule property for computing their standard holding. Before Land Reforms Tribunal, neither the plaintiff nor defendant Nos. 1 and 2 or their predecessors in title were parties and it was unilateral disclosure of defendant Nos. 5 to 10 for computation of their standard holding. As the plaintiff and defendant Nos. 1 and 2 were not parties to those proceedings, the findings whatever recorded by the Tribunal, which came into effect in 1976, are not binding on other claimants in the suit. The Land Reforms Tribunal declared standard holding of defendant Nos. 5 to 10 having found that they were in possession of 0.1322 which is in excess of the standard holding and directed the defendants to surrender the same. Moreover, the trial Court accepted about surrender of 0.1322 due to inclusion of 0-4-0 share in schedule property but failed to produce any document in support of the claim of defendant Nos. 5 to 10 and surrender of excess holding by producing any cogent and satisfactory evidence. Therefore, the trial Court concluded that defendant Nos. 5 to 10 had more than 0-1-10 share but this was not substantiated by defendant Nos. 5 to 10 by producing any evidence. If defendant Nos. 5 to 10 were found eligible to claim 0-1-10 share covered by Exs.B25 to B27, their total share would come to 0-2-0 share in the property. The trial Court, applying equities, allotted excess share to all the parties in proportion to the extent they owned and possessed. It is curious to know that both parties to the appeal did claim share in excess of the extent supported by documents except defendant Nos. 5 to 10. Even defendant Nos. 5 to 10 failed to establish their claim by producing any documentary evidence. When excess land is found on ground than the claim supported by documents, the excess land would go to Government as escheat but the trial Court, working out equities, allotted the excess land available in proportion to their shares. Though the parties to the suit before the trial Court did not claim any equitable distribution of excess land, the trial Court adopted equities. The procedure adopted by the trial Court is without any basis in pleadings of both parties or evidence on record. Since no appeal is preferred by the plaintiff and other defendants, I myself refrain to interfere with the procedure adopted by the trial Court working equities. Therefore, the finding of the trial Court that the plaintiff is entitled to 0-4-0 share *i.e.* 4/16 share; defendant Nos. 1 and 2 together are entitled to 0-10-0 share *i.e.* 10/16 share and defendant Nos. 5 to 10 together are entitled to the remaining 0-2-0 share *i.e.* 2/16 share in schedule property needs no interference of this Court even after reappraisal of entire evidence.

26. In view of my foregoing discussion, I find that the trial Court did commit no error warranting interference of this Court even after reappraisal of entire evidence afresh. Hence, the finding of the trial Court is hereby confirmed holding this point in favour of the plaintiff and against defendant Nos. 5 and 7.

27. In view of my finding on the point, the appeal is devoid of merits and it deserves to be dismissed.

28. In the result, the appeal is dismissed confirming the decree and common judgment dated 24-10-1986 passed in O.S.No. 47 of 1976 on the file of the Court of Subordinate Judge, Madanapalle. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J.

Date: 07-10-2015.

JSK