

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE
STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

A.S.No. 1685 OF 1994

Between:

Pasagadugula Narayana Rao ... Appellant/Plaintiff

AND

Pasagadugula Rama Murty & others ... Respondents/Defendants

Date of Judgment Pronounced: 21-08-2015

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SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers
 may be allowed to see the judgment? Yes
2. Whether the copy of judgment may be
 marked to Law Reporters/Journals? Yes
3. Whether Their Lordship wish to see the
 fair copy of the judgment? Yes

* THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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+ A.S.No. 1685 OF 1994

% Dated 21-08-2015

#Pasagadugula Narayana Rao,

S/o Rama Murty, 36 years, R.T.C. Employee,

R/o Jagannaickpur, Kakinada. ... APPELLANT/PLAINTIFF

VERSUS

\$Pasagadugula Rama Murty,

S/o Rama Murty, 72 years, Business,

D.No. 4-3-118 A, Girigari Street, Pithapuram,

East Godavari District, & others. ...

RESPONDENTS/DEFENDANTS

! Counsel for Appellant : Sri V.L.N.G.K.Murthy.

^ Counsel for Respondents : Sri K.Vinaya Kumar.

< GIST:

> HEAD NOTE:

? Cases referred:

1. AIR 1973 SC 2609
2. AIR 1959 SC 24
3. (1976) 3 SCC 119
4. AIR 1955 SC 481
5. AIR 1966 SC 1836
6. AIR 1958 AP 147
7. 2008 (5) ALLMR 671
8. AIR 1967 SC 1395
9. AIR 1986 AP 42

10. AIR 1965 AP 177
11. AIR 2012 AP 129
12. AIR 2012 AP 1
13. 1993 (1) A.P.L.J. 79

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No. 1685 OF 1994

JUDGMENT:

The unsuccessful plaintiff in O.S.No. 50 of 1992 on the file of the Court of Subordinate Judge, Pithapuram (for short, 'the trial Court'), preferred this appeal challenging the decree and judgment dated 18-04-1994, whereby and whereunder the suit filed by the plaintiff for partition was dismissed.

2. The appellant was the plaintiff and the respondents were the defendants before the trial Court and, for convenience of reference, the ranks given to the parties in the suit before the trial Court will be adopted throughout this judgment.

3. The plaintiff filed the suit for partition of schedule property into 7 equal shares and to allot one such share to him with separate possession and for rendition of true and correct account of both past and future profits alleging that Ramachandra Rao, Satyanarayana, the plaintiff and defendant Nos. 2 to 5 are sons and 6th defendant is unmarried daughter of the 1st defendant. The plaintiff is the third son of the 1st defendant. The 1st defendant and his sons constituted as members of Hindu coparcenary/joint family and the 1st defendant was acting as manager of the family. The main avocation of the family members is agriculture and they hail from K.E.Chinnayapalem. The 1st defendant succeeded Ac. 10.00 cents of land in K.E.Chinnayapalem besides a thatched house and site from his father late Rama Murty as ancestral property. Subsequently, the 1st defendant acquired Ac. 2.00 cents

of land with the aid of ancestral nucleus. The eldest son of the 1st defendant by name Ramachandra Rao got divided from the family in the year 1971 after his marriage. Subsequently, Ramachandra Rao was given Ac. 2.00 cents of land situated in K.E.Chinnayapalem besides 3 ½ tulas of gold towards his share. Ever since, the said Ramachandra Rao is living separately cultivating his land being divided son of the 1st defendant. The second son Satyanarayana also got divided from the family in the year 1981 after his marriage in 1978. In lieu of his share in the family properties, Satyanarayana received cash and got divided from the family. Ever since, Satyanarayana is residing at Pithapuram in a rented house carrying on fancy business in the name and style of Chandamama Fancy Stores, Main Road, Pithapuram, and it is his exclusive business. Thus, Ramachandra Rao and Satyanarayana have nothing to do with the suit schedule property as they are divided members of the Hindu coparcenary.

The plaintiff studied B.Sc. in 1974 but could not secure any employment and used to attend cultivation of family land till 1977. In 1977, the plaintiff and Satyanarayana started fancy goods business in Pithapuram in the name and style of Devi Fancy Stores with the family income, obtained sales tax license R.C.No. 1819 by the plaintiff and, accordingly, the business was carried on. The plaintiff got married in 1980 and, thereafter also, he continued his business till 1981 i.e. till Satyanarayana got divided. Thereafter, the plaintiff continued the business up to April, 1985, along with defendant Nos. 1, 4 and 5 but the plaintiff was sent out from the house at Pithapuram in the month of April, 1985. Since then, the plaintiff has been living with his parents-in-law in Jagannaickpur, Kakinada. In the month of February, 1986, the plaintiff secured employment as conductor in R.T.C. and continuing to work in the same post. The accounts of the said business Devi Fancy Stores are with defendant Nos. 1, 4 and 5. After the plaintiff got appointment in R.T.C., the license got cancelled as he, being an employee,

cannot hold business license and obtained license in the name of defendant Nos. 4 and 5 but the business being carried on in the same name.

With the income derived from ancestral lands at K.E.Chinnayapalem and income from the business at Pithapuram, the defendants purchased an old tiled house in an extent of 650 square yards at Girigari Street, Pithapuram, but sale deed was obtained in the name of the 1st defendant. Thereby, the said tiled house is also part of joint family property. Thus, all the items of schedule property are joint family ancestral properties and the plaintiff and the defendants are entitled to claim equal share.

As the plaintiff was sent out and the defendants were enjoying income from joint family property, the plaintiff started demanding partition of schedule property but the 1st defendant was postponing the same on one pretext or the other. Ultimately, the 1st defendant asked the plaintiff to receive Rs.15,000/- in lieu of his share. Though the said amount is far less than the value of the plaintiff's share in the family property, the plaintiff agreed for the same out of regard for the 1st defendant and to avoid unpleasant situation which the defendants were creating at that time in the month of August, 1985. At the time of execution of document, the plaintiff was paid only Rs.500/- and obtained a letter of settlement, giving up his share, from the plaintiff in favour of the defendants. Though the defendants promised to pay the balance amount, they did not pay Rs.14,500/-. Thereupon, the plaintiff got issued registered notice dated 01-12-1988 through his counsel informing that, on account of non-payment of the amount within the time agreed, the plaintiff is not bound by the letter of settlement while calling upon the defendants to co-operate for partition of schedule property into 7 equal shares and to allot one such share to him. Thus, the plaintiff is not bound by the letter of settlement and, therefore, he is entitled to claim income from schedule property besides

his 1/7th share of property with separate possession and prayed to pass decree in his favour.

4. The 1st defendant filed his written statement and the same was duly adopted by defendant Nos. 3 to 6. The 1st defendant admitted about relationship between the parties while denying acquisition of any of items of the property with the aid of joint family nucleus. The 1st defendant contended that joint family owned and possessed only Ac. 10.00 cents of land and Ac. 2.00 cents of land is self acquired property of the 1st defendant.

The 1st defendant further contended that he incurred debts to educate the plaintiff, defendant Nos. 2 to 5 and the other son Ramachandra Rao and to perform marriages of his daughters. Thus, the 1st defendant heavily indebted to different persons. Thereby, income from ancestral property is not sufficient even to maintain the family. Hence, question of acquiring any property with the aid of joint family nucleus does not arise. He further contended that, at the time of dividing Satyanarayana and other sons, they were given their due share in the property either by cash or kind.

The business in the name and style of Devi Fancy Stores allegedly carried on by the defendants is not with the aid of joint family nucleus and it is his separate business. The tiled house in Girigari Street, Pithapuram, is the exclusive property of the 1st defendant. Either the plaintiff or defendant Nos. 2 to 6 have no manner of right in the property. After the plaintiff got separated himself from the family, a partnership firm was formed with regard to Devi Fancy Stores and defendant Nos. 1 to 5 are partners and the 4th defendant is the managing partner of the said firm. Thus, Devi Fancy Stores is a partnership firm in which the plaintiff is not a partner and the firm is not joint family property. Consequently, the plaintiff is not entitled to claim any share in the property or income therefrom and the defendants are not liable to

render true and correct account.

The main contention of the 1st defendant is that the plaintiff, who disputed with the defendants, agreed to receive Rs.15,000/- towards his share in joint family properties and further agreed not to claim any share in the properties in the year 1985 itself. In pursuance of the family settlement entered in the year 1985, the plaintiff received Rs.500/- and receipt of the same was acknowledged on the reverse of the letter of settlement. The defendants agreed to pay the balance of Rs.14,500/- at the time of registration of relinquishment deed in favour of defendant Nos. 1 to 5. The settlement letter dated 11-06-1985 was executed by the plaintiff in favour of defendant Nos. 1 to 5. Thus, the 1st defendant never agreed to pay balance of amount under letter of settlement before 1988 and it was specifically agreed that balance is to be paid at the time of registration of relinquishment deed. Thereby, the 1st defendant is always ready and willing to pay balance of amount at the time of registration of relinquishment deed but the plaintiff refused to execute registered document. Therefore, the plaintiff is not entitled to claim share in any of the items of schedule property. On this ground alone, the plaintiff is disentitled to claim any share in schedule property.

The 1st defendant further contended that out of item No. 1 of plaint A schedule property, an extent of Ac. 2.71 cents was sold to Giduturi Matabbai on 21-01-1986 for Rs.16,500/- and he is in possession and enjoyment of the same. An extent of Ac. 0.50 cents in item No. 1 of plaint A schedule was sold to Giduturi Lakshmi under registered sale deed dated 21-01-1986 for Rs.3,000/- and she is in possession and enjoyment of the same. Both the above registered sale deeds established that there was settlement between the plaintiff and the defendants and the plaintiff has no right to revoke the family settlement already entered into between them. Thereby, the suit is not maintainable and prayed for dismissal.

In item No. 2 of plaint A schedule, Ac. 0.50 cents was given to Giduturi Gangayamma, W/o Matayya, towards Pasupukunkuma. The said Gangayamma is in possession and enjoyment of the property and the defendants have no manner of right over Ac. 0.50 cents. Out of item No. 3 of plaint A schedule, an extent of Ac. 1.00 cents was given as Pasupukunkuma to Giduturi Lakshmi, W/o Ramamurthy, in the year 1974 and she is in possession and enjoyment of the same since 1974. The 1st defendant is only in possession and enjoyment of Ac. 4.11 cents in item No. 2 and Ac. 1.56 cents in item No. 3 of plaint schedule. Thereby, the plaintiff is not entitled to claim share in the property given to Gangayamma and Lakshmi.

Finally, it is contended that the plaintiff has no right to claim any share or interest in B schedule property in pursuance of the family settlement.

The plaintiff also claimed share in stock in trade worth Rs.50,000/- which is described in item No. 1 of plaint C schedule but there was no such property as on that day and the property described as C schedule was never in existence and not available for partition. The 1st defendant also denied receipt of notice dated 01-12-1988 got issued by the plaintiff through his counsel and finally prayed to dismiss the suit.

The 1st defendant finally contended that the Court fee paid is not correct as the plaintiff is out of possession. On this ground also, the suit is liable for dismissal.

5. The 2nd defendant remained *ex parte*.

6. During pendency of the suit, defendant Nos. 7 and 8 were impleaded *vide* order dated 03-11-1993 in I.A.No. 398 of 1993 but did not file any separate written statement.

7. Basing on the above pleadings, the trial Court framed the following

issues:

Issues:

1. *Whether the plaintiff is entitled for partition of the properties into seven equal shares and to allot one such share as prayed for?*
2. *Whether the plaintiff is entitled for rendition of account so far as the share of the plaintiff is concerned as prayed for?*
3. *Whether the plaintiff is entitled for future profits out of his share as prayed for?*
4. *Whether the family settlement in the year 1985 to receive Rs.15,000/- by the plaintiff is true?*
5. *Whether the plaintiff received Rs.500/- in pursuance of the family settlement as pleaded in the written statement?*
6. *Whether the suit is not maintainable under law?*
7. *Whether the valuation of the suit is not correct?*
8. *Whether there is no stock in trade worth Rs.15,000/- as pleaded in the written statement?*
9. *To what relief?*
(extracted).

8. During the course of trial, on behalf of the plaintiff, P.Ws.1 and 2 were examined and got marked Exs.A1 to A8. On behalf of the defendants, D.Ws.1 and 2 were examined and got marked Exs.B1 to B5.

9. Upon hearing argument of both counsel and considering oral and documentary evidence on record, the trial Court, believing Ex.B4 on the ground that the plaintiff settled his claim agreeing to receive Rs.15,000/-, dismissed the suit.

10. Aggrieved by the decree and judgment of the trial Court, the unsuccessful plaintiff preferred the present appeal on various grounds mainly questioning the validity of settlement letter dated 11-06-1985 marked as Ex.B4, which was withdrawn by issuing notice since the defendants did not

perform their part of obligation *i.e.* payment of balance of consideration agreed to be paid, but the trial Court, on erroneous appreciation, dismissed the suit.

It is further contended that the trial Court, placing reliance on Ex.B4 without any registered document of relinquishment, accepted the contention of the defendants erroneously and negated the claim of the plaintiff. Ex.B4 letter does not convey or extinguish any right or liability of the parties and, therefore, on the strength of Ex.B4, the plaintiff cannot be non-suited to claim share in schedule property. That apart, under Ex.B4, Rs.14,500/- is still due and, in the absence of payment of balance of amount agreed to be paid, the claim of the plaintiff cannot be thrown out. However, the trial Court, on erroneous appreciation of both fact and law, negated the relief of partition without assigning any legal reasoning and prayed to allow the appeal; setting aside the decree and judgment of the trial Court; passing preliminary decree for partition of schedule property into 7 equal shares, to allot one such share with separate possession of the property and render true and correct account of both past and future profits.

11. During the course of argument, learned counsel for the plaintiff totally concentrated his argument on the validity of Ex.B4 settlement letter and contended that, when the letter was withdrawn by issuing legal notice, relinquishment or release is no more valid but the trial Court, giving much credence to Ex.B4, accepted the contention of the defendants that the plaintiff released his share in joint family property agreeing to receive Rs.15,000/- as consideration which is an apparent error on the face of the record. It is further contended that Ex.B4 is not a settlement deed and, by executing the alleged deed, the plaintiff is required to execute a registered document. Till execution of registered document, the defendants would not get any title in the share of the plaintiff but the trial Court, without looking into the legal effect

of Ex.B4, denied relief of partition erroneously. Finally, it is contended that if Ex.B4 is excluded from consideration, certainly the plaintiff is entitled to partition of the property and, that apart, Ex.B4 is not admissible in evidence for two reasons *i.e.* non-payment of deficit stamp duty and penalty; and non-registration of the same under the provisions of the Registration Act, 1908 (for brevity, 'the Act of 1908'). On these grounds also, Ex.B4 cannot be looked into and finally prayed to allow the appeal setting aside the decree and judgment including Ex.B4.

12. Learned counsel for the defendants argued totally in support of the findings recorded by the trial Court while contending that Ex.B4 is only a release deed though it was contended before the trial Court that it was a settlement deed; the said release deed will never extinguish or create any right in immovable property and, therefore, not required to be registered. Thus, the trial Court rightly admitted Ex.B4 in evidence. If, for any reason, the plaintiff was not paid Rs.14,500/- after deducting Rs.500/- already paid out of the amount agreed to be paid under Ex.B4 by the defendants, his remedy is only to recover Rs.14,500/- and not entitled to claim any share in the property having given up his share in clear and unequivocal terms under Ex.B4. Though the document Ex.B4 is styled as family settlement letter, the defendants also pleaded that it is only a family settlement but the nomenclature whatever given to the document is not the deciding factor about nature of the document and, to decide nature of the document, the Court has to look into the contents of the document and intention of the parties. If the contents of Ex.B4 are looked into, it is only settlement deed but not relinquishment or family settlement. In such case, it is admissible in evidence and not required to be registered. Thereby, the plaintiff has to be non-suited on the sole ground that he released his share in the property. Therefore, the trial Court rightly dismissed the suit and the findings do not call for interference of this Court and prayed to dismiss the appeal confirming the

decree and judgment of the trial court.

13. Considering rival contentions, perusing oral and documentary evidence and the decree and judgment under challenge, the points that arise for consideration are as follows:

- (1) *Whether Ex.B4 dated 11-06-1985 is release deed or relinquishment deed or family settlement deed? If Ex.B4 is release deed, is it admissible in evidence?*
- (2) *Whether Ex.B4 is admissible in evidence and acted upon, if so, is the plaintiff entitled to claim partition of schedule property into 7 equal shares and for allotment of one such share to him?*
- (3) *Whether the property described in schedules is ancestral property?*
- (4) *Whether tiled house described as item No. 3 of plaint B schedule is separate property of the 1st defendant?*
- (5) *Whether Devi Fancy Stores is separate property of defendant Nos. 4 and 5?*
- (6) *Whether movables shown as item No. 2 of plaint C schedule are available for partition?*
- (7) *Whether the defendants are liable to render true and correct account of income from business and past and future profits from business?*

14. **In Re. Point Nos. 1 and 2:**

The core issue before this Court is about validity of Ex.B4 dated 11-06-1985 and the entire dispute revolves around Ex.B4 in view of the alleged execution of relinquishment deed or family settlement deed by the

plaintiff in favour of his father and brothers. Both learned counsel concentrated on Ex.B4 and advanced their argument about validity and invalidity of Ex.B4. It is an undisputed fact that the plaintiff and defendant Nos. 1 to 6 are coparceners of joint family and nature of the property is also not in dispute except the business by name Devi Fancy Stores, item No. 3 of B schedule property and availability of item No. 2 of C schedule property. The plaintiff filed the suit for partition of entire schedule property claiming 1/7th share for himself contending that the property is joint family property. However, the defendants raised a specific contention that the plaintiff released his undivided 1/7th share in the property by executing Ex.B4 and, therefore, the plaintiff is not entitled to claim any share as he got separated from Hindu undivided coparcenary. In fact, in the plaint itself, the plaintiff disclosed about execution of Ex.B4 receiving Rs.500/- in favour of his father and brothers, who are continuing as members of joint family, whereunder he agreed to receive Rs.15,000/- in lieu of his share. Though the defendants promised to pay balance of Rs.14,500/-, they did not pay the balance of consideration under Ex.B4. The plaintiff allegedly executed settlement deed marked as Ex.B4 but it is relinquishment deed according to the defendants. Therefore, execution of Ex.B4 is not in controversy. Even in the registered correspondence between the plaintiff and the defendants, the plaintiff himself admitted about execution of Ex.B4 but his specific contention as on the date of filing the suit was that he revoked Ex.B4. Therefore, the plaintiff is entitled to claim partition of schedule property and, on such partition, he is entitled to 1/7th share in the property.

15. The defendants resisted the claim of the plaintiff on the ground that the plaintiff has no right to revoke the family settlement entered into by executing Ex.B4 and, therefore, he is not entitled to claim partition of schedule property. In view of the undisputed execution of Ex.B4, the

controversy before this Court is only with regards to nature and admissibility of Ex.B4. Before deciding the various contentions with regard to admissibility and nature of document, I feel that it is appropriate to advert to the contents of Ex.B4 letter dated 11-06-1985 duly signed by the plaintiff and attested by two witnesses. The nomenclature of the documents is "Settlement Letter for Rs.15,000/-". The contents in Ex.B4 disclosed that the plaintiff, his father D1 and brothers D2 to D5 constituted as members of Hindu joint family and the plaintiff decided to separate from coparcenary receiving Rs.15,000/- while releasing his right in both movable and immovable property. On the reverse of Ex.B4, receipt of Rs.500/- towards consideration agreed to be paid under Ex.B4 was acknowledged by the plaintiff duly signing under the acknowledgement. From the contents of Ex.B4, it is only a release deed though it is styled as family settlement letter. It is elementary principle of law that nomenclature of a document is not decisive to determine the nature of transaction covered by it. The contents of the document have to be looked into to decide the nature of transaction. In ***Delhi Development Authority Vs. Durga Chand Kaushish***^[1], the Apex Court held that

"In construing document, one must have regard, not to the presumed intention of the parties, but to the meaning of the words they have used. If two interpretations of the document are possible, the one which would give effect and meaning to all its parts should be adopted and for the purpose, the words creating uncertainty in the document can be ignored."

In the above judgment, both sides have relied upon certain passages in Odgers' "Construction of Deeds and Statutes" (5th edition 1967). There (at pages 28-29), the First General Rule of Interpretation formulated is: "The meaning of the document or of a particular part of it is therefore to be sought for in the document itself." That is, undoubtedly, the primary rule of construction to which Sections 90 to 94 of the Indian Evidence Act, 1872 ('the Act of 1872' for brevity), give statutory recognition and effect, with certain exceptions contained in Sections 95 to 98 of the Act of 1872. Of course, "the

document" means "the document" read as a whole and not piecemeal. In the same judgment, the Apex Court relied on **Radha Sunder Dutta Vs. Mohd. Jahadur Rahim**^[2] to hold that

"If there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereat."

By applying the principle laid down in the above judgment, the Court has to look into entire contents of the document which is sought to be interpreted including nomenclature of the document. If that is done, the document before this Court i.e. Ex.B4 is not a family settlement and it is only either relinquishment or release deed.

16. Learned counsel for the defendants, contending that the document before this Court is a settlement deed, drawn attention of this Court to **Kale and others Vs. Deputy Director of Consolidation and others**^[3], wherein the Supreme Court ruled as follows:

- (a) *By virtue of a family settlement or arrangement, members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend;*
- (b) *The bona fides and propriety of a family arrangement has to be judged by the circumstances prevailing at the time when such settlement was made;*
- (c) *Allegations of fraud or undue influence must first clearly be pleaded and then proved by clear and cogent evidence; and*

(d) *Parties to the family arrangement who have benefited thereunder are precluded from assailing it.*

It appears from the law declared by the Apex Court that entering into family settlement will arise only to settle disputes between members of family but there were no subsisting disputes between the plaintiff and the defendants by the date of execution of Ex.B4.

In the above judgment, the Apex Court relied on **Sahu Madho Das Vs. Pandit Mukand Ram**^[4] to hold that

"Family arrangement can as a matter of law be inferred from a long course of dealings between the parties."

In the same judgment, the Apex Court also relied on **Maturi Pullaiah Vs. Maturi Narasimham**^[5] to further hold that

"Although conflict of legal claims in praesenti or future is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the Courts would more readily give assent to such an agreement than to avoid it."

Coming to the present facts of the case, Ex.B4 is neither family settlement nor family arrangement.

17. A Division Bench of this Court, while deciding whether family arrangement is a transfer or not, in **Yendapalli Venkataraju (died) and another Vs. Yendapalli Yedukondalu alias Venkateswarlu and others**^[6], held as follows:

"If an arrangement or a compromise is one under which a person having an absolute title to the property transfers his title in some of the items thereof to others, the formalities prescribed by law have to be complied with since the transferees derive their respective titles from the transferor. If, on the other

hand, the parties set up competing titles and the differences are solved by the compromise, there is no question of one deriving title from the other and therefore the arrangement does not fall within the mischief of Section 17 read with Section 49 of the Registration Act as no interest in property is created or declared by the document for the first time. Generally by such an arrangement, it is intended to set at rest competing claims amongst the various members of the family to secure peace and amity. The compromise is on the footing that there is an antecedent title of some sort in the parties and the settlement acknowledges and defines title of each of the parties. In such an event, the settlement need not be reduced to writing and even if it is embodied in a document, it need not be registered."

In the above judgment, this Court also discussed about requirements of family settlement and requirement of registration and stamp duty.

18. Learned counsel for the defendants also drawn attention of this Court to ***Mahadeo Tulsiram Pathade (dead) through L.Rs. Vs. Vatsalabai Shamrao Pathade***^[7], wherein it was held that

"Admissibility of document styled as family arrangement for non-registration and it is not required to be registered compulsorily under Section 17 (1) (b) of the Registration Act, 1908."

In view of the law declared by the Apex Court, this Court and Bombay High Court, it is clear that family arrangement or settlement will arise only when members of family intended to settle their disputes and to maintain peace and harmony in the family by such settlement and such settlement is not required to be registered under Section 17 of the Registration Act, 1908 (for short, 'the Act of 1908').

19. The present dispute is with regard to nature of document and its admissibility in evidence. Though Ex.B4 is styled as family settlement letter, it is neither family settlement deed nor family arrangement since there were no disputes by the date of execution of Ex.B4 amongst the members of family and not intended to maintain amity amongst the members of family by executing Ex.B4 but the intention of the plaintiff in execution of Ex.B4 is that

he wanted to live separately severing from the other members of Hindu undivided coparcenary by receiving Rs.15,000/- towards his share in lieu of giving up all his claims in the property. Therefore, Ex.B4 is neither family settlement deed nor deed of family arrangement.

20. Section 2 (24) of Indian Stamp Act, 1899 ('the Act of 1899' for brevity), defines the word 'settlement' as follows:

"Any non-testamentary disposition, in writing, of movable or immovable property [whether by way of declaration of trust or otherwise] made—

- (a) in consideration of marriage;
- (b) for the purposes of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or
- (c) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition.

21. The definition under Section 2 (b) of the Specific Relief Act, 1963 (for short, 'the Act of 1963'), is exhaustive and wider. According to it, settlement means

"An instrument (other than a will or codicil as defined by the Indian Succession Act, 1925) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of."

It is a document by which a property is transferred or agreed to be transferred *inter vivos* as such it may be either executory or executed and

takes effect during the life of the executor. The literal meaning connotes the idea to secure by gift or legal act or to create successive interests in use or income going to one person while the corpus of the property remains another's thus giving possession by legal sanction. Even if the definition of the word settlement either under Section 2 (24) of the Act of 1899 or under Section 2 (b) of the Act of 1963 is applied to the present facts of the case, it is difficult to hold that Ex.B4 is family settlement deed or deed of family arrangement. The trial Court, accepting the contention of the parties, held that Ex.B4 is settlement deed and not required to be registered and, therefore, admitted in evidence. A bare look at the contents of Ex.B4, it is only a release deed which is not defined either under the Act of 1899 or under the Act of 1963. As defined in West's Legal Thesaurus/Dictionary, release means:

"To set free; to discharge a claim that one has against another (the settlement released him from liability). Discharge, relinquish, liberate, clear, unburden, spare, acquit, dissolve, extricate, emancipate, exempt, relieve, disengage, unbind, undo, rescue, franchise, exonerate, redeem, unchain, remit, forgive, vindicate, unite.

To allow something to be communicated (release the information).

The giving up of a right, claim, or privilege (she signed the release). Relinquishment, discharge, concession, abandonment, waiver, liberation, dismissal, yielding, deliverance, acquittal, clearance, freedom, emancipation, exculpation, loosing, clearing, salvation, indemnity, pardon, exoneration, disengagement, amnesty, letting go, exemption, redemption, absolution, severance."

22. In ***Kuppuswami Chettiar Vs. A.S.P.A.Arumugam Chettiar and another***^[8], the Supreme Court, while drawing distinction between release deed and gift, held as follows:

"A release deed can only feed title but cannot transfer title. Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right. Renunciation does not vest in person a title where it did not exist. Now, it cannot be disputed that a release can be

usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate."

From the principle laid down in the above judgment, releasing right means a person, who had interest in property along with others, giving up his right in the property which enlarges the right of others who had same right in the property. If release in favour of a third person having no right in property, it cannot be said to be release and, at best, it may amount to gift as defined under the Transfer of Property Act, 1882 (for short, 'the Act of 1882').

23. A Special Bench of this Court in ***Kothuri Venkata Subba Rao and others Vs. District Registrar of Assurances, Guntur***^[9], held as follows:

"The word 'release' is not defined, but in view of Article 46 of Schedule 1-A (A.P.), a deed of release is an instrument by which one of the co-owners releases or renounces his interest in the specified property and the result of such release would be the enlargement of the share of the other co-owner. Thus, there is a clear and marked distinction between a deed of conveyance and a deed of release. A deed of release need not be gratuitous only. Even if it is supported by consideration, still it can be treated as a deed of release if the intention of the parties and the purpose of the transaction satisfy the requirements of a deed of release in a case of the property owned by the co-owners. The release to be effective and operative must be in favour of all the persons interested in the property. The well settled principle of relinquishment is the enlargement of the share or shares of the co-owners and that principle will be defeated if the relinquishment is made in favour of one or a few named co-owners from out of the several co-owners."

In view of the principle laid down in the decision referred *supra*, a deed of release means an instrument by which one of the co-owners releases or renounces his interest in the specified property which would enlarge the share of the other co-owners. In the present case, the plaintiff executed Ex.B4 renouncing or giving up his right in the property of Hindu undivided coparcenary agreeing to receive Rs.15,000/- as consideration.

24. In ***Katragadda China Anjaneyulu and another Vs. Katragadda***

China Ramayya and others^[10], a Full Bench of this Court held as follows:

"We feel that the relinquishment of a share by one of the co-parceners in favour of the other members does not alter the status of the joint family. The releaser alone separates himself from the family while others continue as members of an undivided family. Mitakshara treated the estate of co-parceners as held in entirety without recognition of share and defined partition as the adjustment of diverse rights regarding the whole by distributing them in particular portions of the aggregate. The relinquishment by a co-parcener does not require either the adjustment of diverse rights or the division of wealth in definite portions. It only results in the extinction of his rights in the family properties and his separation from the family. That being so, it cannot be predicated that a relinquishment of his interest by one of the co-parceners in the family estate is tantamount to a partition of the joint family wealth."

25. In **G.Dayanand, S/o Late Venkaiah, Vs. District Registrar, Hyderabad, and another**^[11]; and **Smt. G.Subbalakshmi Visweswara Rao Vs. Secretary to Government, Revenue Department and others**^[12], this Court held that when a coparcener or a member of joint family giving up his right, it amounts to release of his share or relinquishment of his right.

26. A Full Bench of this Court had an occasion to deal with a similar issue in **Maddula Girish Kumar and others Vs. The Commissioner of Survey, Settlements and Land Records and another**^[13], wherein it was held as follows:

"The recitals in the two documents executed by mother as guardian of her two minor children in favour of their father are identical. In the said documents, the two minor sons have agreed to receive cash, some gold and silver and relinquished their rights both in the movable and immovable property in favour of their father. The documents are styled as Release deeds. But the registering authorities treated them as sale deeds."

This Court, after considering entire law on this aspect, drawn distinction between conveyance and relinquishment and held that the documents are only release deeds but not conveyance. The above judgment

is almost identical to the present facts of the case as the plaintiff agreed to receive Rs.15,000/- in lieu of his share in joint family property giving up his right in favour of other coparceners who are continuing as members of Hindu undivided coparcenary. On Account of relinquishment of share by the plaintiff, the share of other co-parceners is increased. In view of the law declared in the decisions referred *supra*, it is clear that Ex.B4 executed by the plaintiff in favour of the defendants is release deed or relinquishment deed but not settlement deed as defined under Section 2 (24) of the Act of 1899 or under Section 2 (b) of the Act of 1963. The trial Court, therefore, rightly concluded that Ex.B4 is relinquishment deed which requires no registration. If Ex.B4 is treated as release deed, it is required to be duly stamped under Article 46 to Schedule I-A of the Act of 1899 (A.P. amendment) but Article 46 was introduced by amendment to Schedule I-A of the Act of 1899 by G.O.Ms.No. 2045 (Reg. I) dated 28-11-2005 with effect from 01-12-2005. Clause (A) to Article 46 was introduced by G.O.Ms.No. 1129, Rev. (Regn. I) Dept., dated 13-06-2005 but withdrawn by G.O.Ms.No. 1169, Rev. (Regn. I) Dept., dated 15-09-2010 to restore the original stamp duty of 3%. However, these two amendments to Schedule I-A of the Act of 1899, by introducing Article 46, have no application to the present facts of the case for the reason that Ex.B4 was executed long prior to these amendments. Moreover, the trial Court collected stamp duty and penalty and admitted the document in evidence. When once the document is admitted under the provisions of the Act of 1899, the same cannot be questioned at any subsequent stage in view of bar under Section 36 of the Act of 1899. In the present case, stamp duty payable on the document was decided by the trial Court and collected penalty and stamp duty. Therefore, question of inadmissibility of Ex.B4 in evidence on account of non-payment of stamp duty does not arise. As discussed above, the document of release would not create any independent right but it enlarges right in immovable property and, therefore, it is not

required to be registered under Section 17 of the Act of 1908 as held by the Apex Court.

27. One of the contentions of learned counsel for the plaintiff is that, as per the testimony of D.W.1, the plaintiff agreed to execute registered settlement deed; the 1st defendant agreed to pay balance of Rs.14,500/- on the date of execution of registered settlement deed and, therefore, it is only an agreement and, till a regular settlement deed is executed, the defendants are not entitled to claim exclusive right over the property. No doubt there are admissions in the evidence of D.W.1 about agreement to pay balance of Rs.14,500/- on the date of execution of registered settlement deed but the evidence of D.W.1 is not based on any documentary proof. Moreover, recitals of Ex.B4 did not indicate intention of any of the parties to execute registered relinquishment deed or settlement deed in favour of the defendants and, taking advantage of stray admissions in the evidence of D.W.1, learned counsel for the plaintiff invented a theory that Ex.B4 is only an agreement but this cannot be accepted in the absence of any recital that the plaintiff agreed to execute registered document in pursuance of Ex.B4.and, therefore, this contention is without any substance.

28. In view of the law declared by the Apex Court, Ex.B4 is only a release or relinquishment deed which does not require registration and it is admissible in evidence. Thereby, the trial Court rightly admitted Ex.B4 in evidence and, basing on Ex.B4 alone, therefore, the trial Court negated the relief of partition while directing the defendants to pay balance of consideration agreed to be paid under Ex.B4 with interest. It is brought to my notice during argument that, after passing decree, the defendants complied with the direction issued by the trial Court by depositing the amount. When the plaintiff released his right and interest in Hindu undivided coparcenary by executing Ex.B4, he is not entitled to claim partition of the property. At best,

the plaintiff is entitled to claim recovery of the amount agreed to be paid.

29. Learned counsel for the plaintiff would contend that the amount settled under Ex.B4 was long back but the present value of the property is increased to manifold and, in such case, question of payment of balance under Ex.B4 and claiming exclusive right in the property by the defendants is most inequitable. However, it is not even the case of the plaintiff that Ex.B4 was obtained by means of fraud, misrepresentation *etc.*, and it is evident from the material on record that the plaintiff voluntarily executed Ex.B4 in favour of the defendants relinquishing or giving up his right in Hindu undivided coparcenary. Therefore, the share of the defendants is increased. That apart, after execution of Ex.B4, the defendants enjoyed the property in their own right and also sold some of the items to third parties, more particularly Ac. 2.71 cents of land was sold to Giduturi Matabbai on 21-01-1986 for Rs.16,500/-; an extent of Ac. 0.50 cents in item No. 1 of A schedule was sold to Giduturi Lakshmi under registered sale deed dated 21-01-1986 for Rs.3,000/-; an extent of Ac. 0.50 cents in item No. 2 of A schedule was given to Giduturi Gangayamma, W/o Matayya, towards Pasupukunkuma; and an extent of Ac. 1.00 cents in item No. 3 of A schedule was given as Pasupukunkuma to Giduturi Lakshmi, W/o Ramamurthy, in the year 1974 and, since then, they are in continuous possession and enjoyment of the same. Thereby, the 1st defendant is only in possession and enjoyment of Ac. 4.11 cents in item No. 2 of A schedule and Ac. 1.56 cents in item No. 3 of A schedule. Thus, in pursuance of Ex.B4, the 1st defendant started dealing with the property as if it is his exclusive property, alienated part of it by executing conveyance and also by way of gift at the time of marriages of his daughters. The subsequent conduct of the parties, in treating the property, clearly established that Ex.B4 was acted upon. If the total attending circumstances are taken into consideration, it is evident that the plaintiff

relinquished or given up or released his undivided 1/7th share in Hindu undivided coparcenary in favour of the defendants and it was acted upon too. Consequently, the plaintiff is only entitled to recover the amount due under Ex.B4 *i.e.* Rs.14,500/- with interest if any. Thus, the trial Court, after appreciation of entire evidence on record, rightly concluded that Ex.B4 was executed by the plaintiff, acted upon and, therefore, the plaintiff is disentitled to claim any share in Hindu undivided coparcenary. On reappraisal of entire evidence with reference to the law laid down by the Apex Court and this Court, I find no legal infirmity warranting interference of this Court. Hence, the finding of the trial Court on Ex.B4 is hereby confirmed holding these two points in favour of the defendants and against the plaintiff.

30. **In Re. Point Nos. 3 & 4:**

One of the contentions of learned counsel for the defendants is that item No. 3 of B schedule property is separate property of the 1st defendant and the property described in the schedule is not ancestral property. Item No. 3 of B schedule is a tiled house in an extent of 650 square yards at Girigari Street, Pithapuram, and it was registered in the name of the 1st defendant. Taking advantage of registering the property in the name of the 1st defendant, the 1st defendant contended that it is his self acquired property. However, in the absence of proof that the said property was acquired with the aid of joint family nucleus, it is difficult to accept the contention of the plaintiff that it was acquired with the aid of joint family nucleus. Of course there is sufficient nucleus but mere possessing of sufficient nucleus by itself is not sufficient. Even otherwise, the plaintiff by executing Ex.B4 relinquished his rights in the property of Hindu undivided coparcenary. Therefore, the plaintiff is not entitled to claim any share even in item No. 3 of B schedule property. In view of my finding on point Nos. 1 and 2, discussion on point Nos. 3 and 4 needs no importance. Hence, I need not

record any specific finding about nature of the property in view of my finding on point Nos. 1 and 2. However, the plaintiff is not entitled to claim any share in item No. 3 of B schedule property irrespective of its nature of acquisition. Accordingly, the points are answered in favour of the defendants and against the plaintiff.

31. **In Re. Point No. 5:**

The plaintiff claimed share in Devi Fancy Stores contending that the business was commenced with the aid of joint family nucleus but the defendants denied right of the plaintiff in Devi Fancy Stores contending that the business was not commenced with joint family nucleus and it is their separate business. Admittedly, the plaintiff got appointment as conductor in A.P.S.R.T.C. After the plaintiff got separated himself by executing Ex.B4, partnership firm was formed to carry on fancy business under the name and style of Devi Fancy Stores, wherein defendant Nos. 1 to 5 were partners while the 4th defendant was acting as managing partner of the firm. Thus, Devi Fancy Stores is a partnership firm in which the plaintiff is not a partner and the firm is not the property of joint family. The plaintiff's contention from the beginning is that joint family is an agricultural family and not a trading family. If it is a trading family, though Devi Fancy Stores is a partnership firm consisting of joint family members, it can be inferred that it is the business of joint family but, when joint family is an agricultural family and not a trading family, it is difficult to conclude that Devi Fancy Stores is the business of joint family. Even assuming for a moment, without conceding, that Devi Fancy Stores is the business of joint family, in view of execution of Ex.B4, the plaintiff is disentitled to claim any right in the property. Hence, the plaintiff is not entitled to claim any share in Devi Fancy Stores since the firm was reconstituted where defendant Nos. 4 and 5 alone are partners. Accordingly, the point is answered in favour of the defendants and against the plaintiff.

32. **In Re. Point No. 6:**

The plaintiff also claimed share in item No. 2 of C schedule property but the trial Court concluded that it is not available. Even otherwise, in view of execution of Ex.B4, the plaintiff is not entitled to claim any share since he gave up his right both in movable and immovable property. Accordingly, the point is answered in favour of the defendants and against the plaintiff.

33. **In Re. Point No. 7:**

In view of my finding on point Nos. 1 to 6, the plaintiff is ceased to be a member of Hindu undivided coparcenary after execution of Ex.4 as he relinquished or given up his right in the property of Hindu undivided coparcenary. Consequently, question of rendering true and correct account of income from the property of joint family does not arise. Thereby, the defendants are not under obligation to render true and correct account of income. Accordingly, the point is answered in favour of the defendants and against the plaintiff.

34. In view of my foregoing discussion and findings on point Nos. 1 to 7, I find no ground warranting interference with the findings recorded by the trial Court and, consequently, the appeal deserves to be dismissed as it is devoid of merits.

35. In the result, the appeal is dismissed confirming the decree and judgment dated 18-04-1994 passed in O.S.No. 50 of 1992 on the file of the Court of Subordinate Judge, Pithapuram. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 21st August, 2015.

JSK

Note: L.R. Copy to be marked.

B/O

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- [\[1\]](#) AIR 1973 SC 2609
 - [\[2\]](#) AIR 1959 SC 24
 - [\[3\]](#) (1976) 3 SCC 119
 - [\[4\]](#) AIR 1955 SC 481
 - [\[5\]](#) AIR 1966 SC 1836
 - [\[6\]](#) AIR 1958 AP 147
 - [\[7\]](#) 2008 (5) ALLMR 671
 - [\[8\]](#) AIR 1967 SC 1395
 - [\[9\]](#) AIR 1986 AP 42
 - [\[10\]](#) AIR 1965 AP 177
 - [\[11\]](#) AIR 2012 AP 129
 - [\[12\]](#) AIR 2012 AP 1
 - [\[13\]](#) 1993 (1) A.P.L.J. 79