THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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A.S.No.66 of 2010

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JUDGMENT: *(Per Hon'ble Sri Justice M. Seetharama Murti)*

This first appeal under Section 96 of the Code of Civil Procedure by the unsuccessful plaintiff is directed against the Decree and Judgment dated 04.11.2009 in O.S.No.103 of 2008 filed for partition of - (i) 2952 square yards in Patta No.1053 situated by the side of D.No.4/2 with service station/Petrol Bunk and constructions thereon; and (ii) 884 square yards in patta No.1053 situated by the side of D.No.4/2 with structures thereon, which are more fully described in item nos. (1) and (2) of the schedule annexed to the plaint.

2. We have heard the submissions of the learned counsel for the appellant/plaintiff and the learned Senior Counsel appearing for the 1st respondent/1st defendant and the learned counsel for the respondents 26 to 29. We have perused the material record. The parties in this first appeal suit shall hereinafter be referred to as the plaintiff and the defendants as arrayed in the original suit for convenience and clarity.

3. This Court of first appeal being a last court of fact, it is necessary to refer to the pleadings of the parties and also the facts leading to the filing of this first appeal.

4. The relationship of the parties, which is admitted, is as under.

Late Pothireddipalli Venkata Krishnaiah ('P.V. Krishnaiah' for brevity) is the husband of Laksmibayamma, who is his first wife. P.V. Krishnaiah gave birth to P.V.Rama Sastry and R. Subbamma through his said first wife. The said P.V.Rama Sastry who is the only son of his father had died intestate in the year 1998 leaving behind his wife Chenchulakshmi (Defendant No.11) and children Prameela, Lalitha, Indira and Sridhar, who are the defendants 19, 20, 22 and 21 respectively. P.V.Rama Sastry's sister Subbamma had died leaving behind her Gadepally Lakshmi Prasanna, Ramadugu Subrahmanya Sarma, Ramadugu Yagna Narayana Murthy, Telikepally Bhavani, Jannabhatla Sujata, Chaturvedala Padmavathi and Mylavarapu Durgamba, who are the defendants 12, 13, 14, 15, 16, 17 and 18 respectively. And Sugunavathi, who is the plaintiff, is the 2nd wife of the said P.V.Krishnaiah. He had married Sugunavathi/the plaintiff after the death of his first wife. The said P.V.Krishnaiah through the plaintiff gave birth to one daughter by name Raja Rajeswari, i.e., the 23rd defendant. One Vangala Venkata Rama Sastry ('V.V.Rama Sastry', for brevity) is the father of Chenchulakshmi (D11). The said Chenchulakshmi is no other than the wife of late P.V.Rama Sastry. The said V.V.Rama Sastry had two sons, Venkataramabrahma Sastry (since died) and Markandeya Sastry (the 1st defendant). Late Rama Brahma Sastry had left behind him his wife Krishna Veni (the Defendant no.2), Leela Subrahmanya Satry, Jaganmohana Sastry, Prabhakara Sastry, Sasidhar, Godugula Siva Kameswari, Vangala Padmasri, Bhuvanagiri Vijaya Kameswari and Tadepalli Usha Rani, who are the defendants 3, 4, 5, 6, 7, 8 and 9 respectively. The defendants 24 and 25 are the holders of the lease of the plaint schedule property, i.e., item no.1, being Burma Shell Oil and Storage Distributing Company Limited ('Burma Shell', for short) which is presently a Government undertaking with the new name Bharath Petroleum Corporation Limited represented by its General Manager ('the BPCL', for short).

5 (a) The plaint averments, in brief, are as follows:

The husband of the plaintiff P.V.Krishnaiah and his son (P.V. Rama Sastry) through his first wife had formed a partnership firm under the name and style 'P.V.Krishnaiah

& Co.' and during their heydays; they had maintained two petrol pumps. They had other businesses like distribution of Fertilizers and Tyres etcetera. One Petrol pump with the above trade name was the authorised/licensed dealer for Burma Shell for over ten years prior to 1964, which is presently known as 'BPCL'. This said petrol pump is situated at Door No. 25-16-31, G.T Road, R. Agraharam i.e., in the schedule property. P.V.Krishnaiah was a self made man and all the earnings and assets were self acquired through his earnings from job as highest paid Manager of ILTD Company. After his retirement, he had built a business empire with the above trade name by utilising his entire retirement benefits and the money that was realised after disposing his other petrol bunk, a palatial bungalow at Kovvur and his car. He had thus focused on the business in the schedule property investing several lakhs of rupees. Even the plaintiff has got a building standing in her own name at a posh locality. The same was mortgaged jointly through her husband-P.V.Krishnaiah and step son-P.V. Rama Sastry for pumping investment into the prestigious family business of petrol pump. Contrary to the well established and highly reputed official status of his father, the plaintiff's step son late P.V. Rama Sastry was not having any formal education or skills or a gainful avocation and he was simply spending his time by expending the monies, which were being arranged by his father. P.V. Rama Sastry has got the item 1 of the plaint schedule property for a value of Rs.5,000/- through registered partition deed dated 11.06.1951 bearing Document No.2526 of 1951. The land acquired by him was agricultural land full of pits and was water logged. His father P.V.Krishnaiah had spent thousands of rupees for levelling it to the level of the road and in getting a respectable shape to the said land. He had also invested lakhs of rupees for getting licenses and other furniture items and also on business propagation to give a decent status to his only son-P.V. Rama Sastry in the society. Though P.V. Rama Sastry had blended the property worth Rs.5,000/-, the father had spent lakhs of rupees as investment for development and other activities so as to provide a good and decent income to his said son-P.V. Rama Sastry and to his family and to give a respectable status to his son in the family. P.V.Rama Sastry was known only as "Buyer's Son" and business and the Bunk are known as 'Buyer gari Bunk'. The business had prospered well; and, roaring sales were done only through the high connections and personal contacts of P.V. Krishnaiah. P.V. Rama Sastry had led a luxurious life under his father's shadow during the life time of his father. After the death of his father, P.V. Rama Sastry had lived in a most miserable condition. Item No.1 of the schedule property was initially a separate property and it was voluntarily thrown into common stock by P.V. Rama Sastry and it became a joint family property of P.V.Krishnaiah and his son P.V.Rama Sastry, who is a coparcener. This HUF property was leased to Burma Shell up to 30.04.1980 with renewal option of additional 20 years up to 29.04.2000 and had remained in their possession till today by virtue of two registered lease deeds executed by P.V. Rama Sastry. Item no.2 of the schedule property was low lying water logged land acquired on 27.5.1954, 11.08.1956, 22.05.1963 and 01.09.1963 by way of purchase through family property income from petrol pump for the exclusive use of parking and roads of petrol pump as mentioned in the documents. Thus the nucleus has come from joint income and thereby item no.2 of the schedule properties is joint family property and the land was later developed with HUF money and was brought into proper use after levelling etcetera. P.V. Rama Sastry was not at all taking care of the business of P.V.Krishnaiah & Co., and he was in the habit of spending monies from out of the business. In spite of advices from his father, who had become old and sick, P.V. Rama Sastry was not paying proper attention and was not taking interest in the family business and had neglected such business which is prosperous. Taking undue advantage of the situation, his father-in-law V.V.Rama Sastry had stepped into the business under the guise of a family well wisher and under the pretext of rescuing his son-in-law i.e., P.V. Rama Sastry from the then situation. He had shifted his entire family to Guntur in 1964 and had started living with his son-in-law, i.e., P.V.Rama Sastry in the ancestral house at R.Agraharam till the death of P.V.Krishnaiah. The plaintiff's husband, i.e., P.V.Krishnaiah had died on 03.06.1968 after a prolonged sickness and mental worries caused by his only son P.V.Rama Sastry. Thereafter, P.V.Rama Sastry, the son of the plaintiff, as Karta of the HUF was looking after the business. P.V.Rama Sastry had informed her that his father-in-law V.V.Rama Sastry had taken up the dealership along with his wife-Chenchulakshmi (D11) as partner temporarily till he gets rid of the financial worries. The plaintiff's son-P.V.Rama Sastry had also informed the plaintiff that his wife was taking care of HUF interest being partner in V.V. Rama Sastry's business. The plaintiff was also informed that the lease rentals are being collected on behalf of HUF by the 1st defendant, who is son of V.V.Rama Sastry and that some payments are being made towards Municipal Taxes and some dues of P.V.Rama Sastry. However, P.V.Rama Sastry had expired in 1998. During the life time of her husband-P.V.Krishnaiah and her son-P.V.Rama Sastry, the plaintiff like a Hindu Family House wife had never involved herself in HUF business as females are never coparceners in HUF.

Further, she was away from Guntur for 30 years till 2003. This apart, defendants 1 to 10 are close relatives of Chenchulakshmi, the plaintiff's daughter-in-law, who is also a partner. The plaintiff had returned to Guntur in May 2003 at the instance of Chenchulakshmi, her daughter-in-law, who had ceased to be a partner in the firm of V.V.Rama Sastry and who had ceased to have any talking terms with any of her brothers. Then, the plaintiff had met Markandeya Sastry (D1) who is no other than the own brother of Chenchulakshmi to discuss about the lease particulars. He (D1) had informed that some court proceedings are going on and the lease is likely to continue up to the year 2020 and that BPCL has stopped paying the rent to him due to court proceedings. The plaintiff had never pressed for knowing the details about the said court proceedings, as he (D1) himself had expressed several worries and that he was in financial distress and had resorted to outside borrowings of several lakhs of rupees. In the month of December 2007, the plaintiff came to know that the defendants from the clan of V.V.Rama Sastry, had colluded together and had brought a fraudulent suit in O.S.No.133 of 1999 on the file of the District Court, Guntur among them and were said to have obtained a collusive and fraudulent decree and judgment for the relief of partition and separate possession of the plaint schedule properties by making false and baseless contentions that her step son, i.e., P.V.Rama Sastry was the sole Proprietor and that the creditors had filed suits for recovery against the said P.V.Rama Sastry and that his father-in-law V.V.Rama Sastry had purchased the plaint schedule properties in court auction. The partition suit was filed nearly 25 years after their first partition and some months immediately after the death of the plaintiff's son (P.V.Rama Sastry) i.e., after the death of the Karta of the HUF. Agitated by this, the plaintiff has got a registered notice issued on 11.03.2008 through her Advocate with a view to know the truth of such court auction etcetera. The defendants had brought several new things to the knowledge of the plaintiff, which the plaintiff was not aware before giving the legal notice. The 1st defendant had sent a reply to the plaintiff that item no.1 was self acquired property of P.V.Rama Sastry and that he had executed an agreement of sale and that as per the court decree in O.S.No.54 of 1968 V.V.Rama Sastry had acquired the property; except this he has not disputed the existence of HUF/Firm. Chenchulakshmi (D11) who was none other than the wife of P.V.Rama Sastry and the daughter-in-law of the plaintiff lamented for ignorance of the plaintiff and had replied that the property was sold 44 years back and she has no claim now on that and had denied the existence of HUF/firm status of her husband. She was very much silent as to why her husband who has entered into agreement in 1964 has not registered a sale deed and had remained *ex parte* in 1968 finally bringing the court into picture for the registration of the sale deed in 1971 in her father's name. She has forgotten that she had herself sent the plaintiff to demand for the rent for HUF property from her brother and that the plaintiff was subjected to insult by him for involving on her behalf. Defendant No.11 had further attributed ulterior motives to the plaintiff for the plaintiff's legal struggle, at the age of 82, for HUF benefits which are due to them through her husband. Defendant no.11 had remained silent as to why such important information of sale of HUF property, if at all true, was never intimated for 44 years to the plaintiff, who is none else but her mother-in-law. The plaintiff had felt that her daughter-in-law taken the side of her own enemy as she gets the immediate share through document in O.S.No.133 of 1999 without ever fighting a legal battle as in the case of HUF. Prabhakara Sastry (D4) who is the grandson of V.V.Rama Sastry had accepted that the contention of acquiring property through court auction was true and had also informed that property was acquired through enforcement of specific performance deed and had repeated unbelievable story of the other defendants. Many things were said which are not only baseless and false but irrelevant to the subject matter. None of the defendants had stated as to why a false and baseless claim was made in O.S.No.133 of 1999 that their ancestor has purchased property in court auction thereby, deposing false evidence. In a most surprising manner, the persons, who were never born when P.V.Rama Sastry has acquired the property, had started explaining as to how the property was acquired by him, that too, to his mother. After getting a careful scrutiny done through her advocate, the plaintiff had come to know that a fraudulent and collusive partition suit in O.S.No.133 of 1999 was filed in the District Court just few months of her step son's death and that too after 35 years of their alleged acquisition. The plaintiff had written and had secured confirmation from BPCL that the lease entered into by her son late P.V.Rama Sastry is still in force. She had also obtained information from Municipal Corporation, which confirmed the same. BPCL and the present dealer-1st defendant had admitted that the scheduled property was never taken possession by any of their family members and that item no.1 of the plaint schedule property was and is always in possession of BPCL from the date of establishment of the bunk till the filing of the suit, pursuant to the registered lease agreement entered by P.V.Rama Sastry, the step son of the plaintiff. The plaintiff and the legal heirs of P.V.Krishnaiah have great respect and regard to BPCL (old Burma Shell) as the company has given them name and fame. However, as there is a lease in favour of BPCL; the plaintiff is constrained to include them as parties to the suit as she had no other alternative. V.V. Rama Sastry, the father-in-law of the plaintiff's son had deliberately dragged BPCL into the matter by using their name. The 1st defendant having followed the foot steps of his father, V.V.Rama Sastry, had misled the BPCL. The plaintiff is constrained to implead BPCL as a party to the suit as their evidence is essential as to the truth of the following matters viz., the legal necessity in regard to the dues of Rs.52,000/-, threats of civil and criminal actions against the plaintiff's son, lump sum advance payment of 15 years rent at one go, insistence on signatures of V.V.Rama Sastry and his sons on Demand Promissory Note (DPN), the demand and acceptance as security the remote agricultural properties of nominal value in lieu of leased land documents of valuable urban property already in their possession, entering into agreement with a co-obligant without the knowledge of the promisors and allowing him to repay Rs.1,200/-, the information as to lease agreement with V.V.Rama Sastry, the rent payments from 1964 to April 2008 etcetera. Since she was not interested in involving BPCL, she has issued several registered/legal notices to them to know the claims of late V.V.Rama Sastry and had even deputed her agent to their Mumbai Head Office. However, there is no favourable response from them. Hence, they have been included as defendants 24 and 25 as their evidence is instrumental in brining out the fraud. The plaintiff has got the case particulars of O.S.No.54 of 1968 from Sub Court, Guntur and had studied and found absurd, unbelievable, false, fraudulent exercises of some individuals connected with the case. The plaintiff's family firm P.V.Krishnaiah & Co., owed meagre Rs.22,000/- to the then Burma Shell. The father-in-law of plaintiff's son by name V.V.Rama Sastry had joined in the execution of DPN dated 23.10.1964 and had executed DPN along with the plaintiff's husband and son. For mere undertaking to repay the debt of Rs.22,000/- the very next day, without the knowledge of the father, who was the karta and the managing partner, the plaintiff's step son has executed an agreement to sell in favour of his father-in-law-V.V.Rama Sastry in respect of schedule property worth lakhs of rupees without any consideration and that later, V.V.Rama Sastry on the very next day had entered into an arrangement to pay Rs.22,000/- to Burma Shell in monthly instalments of Rs.1,200/- till full dues are repaid and thus accordingly Rs.22,000/- was said to have been repaid. Later, residing in the house of his own son-in-law V.V.Rama Sastry by mentioning a wrong address had filed the suit for specific performance against his own son-in-law in March 1968 and had obtained an *ex parte* decree in June 1968.

And, after three years i.e., in 1971 he had got the schedule property registered in his name through court with several additional conditions and clauses, which were not mentioned either in the plaint or agreement to sell, by illegally adding the same in the final registered sale deed. The news was shocking to the plaintiff as her step son has never revealed this either to her or to his father, the Karta, at any time and the defendant no.11, who is the own daughter-in-law of the plaintiff had also never informed this truth. Other legal heirs who are parties to the suit O.S.No.133 of 1999 who are close relatives of the plaintiff managed to keep this as a secret for 44 years. Some of the defendants had not only suppressed this fraudulent transaction but had also canvassed and deposed in courts that their ancestor V.V.Rama Sastry had acquired the plaint schedule property in court auction from his son-in-law, who was a sole Proprietor. During the sickness of plaintiff's husband, the said V.V.Rama Sastry having entertained evil designs to clutch at the property from the true legal heirs of P.V.Krishnaiah might have coerced his son-in-law to execute an ante-dated nominal agreement of sale in respect of item 1 & 2 of plaint schedule properties. Plaintiff's son having blindly believed the representations of V.V.Rama Sastry might have heeded his request without knowing the consequences; or he might not have been truly aware of the happenings; or he might have blindly trusted or might have executed as a charge/security not to worry himself in future and at his old age in the eventuality of any litigation. These are not just presumptions but are facts highly probable on account of close relationship. The death of P.V.Krishnaiah, the plaintiff's husband on 03.06.1968 had given more opportunity to V.V.Rama Sastry to execute the coup in clutching at the plaint schedule property.'

5. (b) The further averments in the plaint are reproduced verbatim here under in view of the complexity of the claim and for emphasis:

> *"Plaintiff humbly submits that cheating and fraud through forgery has been deliberately perpetuated on scheduled HUF property when the case is seen with the following glaring commissions/Omissions.*
>
> *For a normal sale agreement the purchaser takes care of only the title of the seller. In this case, as V.Venkatarama Sastry was one of the witnesses to the schedule I property document,*

hence there is no further need for him to verify title in General agreement to sell minute purpose of seller and further point to point utilization by seller rarely finds a mention, but only in HUF transactions these form essential requirement. Thus, it is clear from the plaint, that P.V.Rama Sastry was just a co parcener and that the schedule property in fact belongs to HUF and amounts to indirect admission of HUF existence fact. Though a purchaser who has made bonafide enquiries is not bound to see the utilization of money even in HUF, yet if he makes a case in the plaint that he knew that the sale was for a specific purpose and that the money was utilized for that purpose, it is incumbent upon him to prove his allegations. Sri Vangala Venkataramasastry has just stated necessity but never made any attempts to submit any evidence before Sub Court in OS NO.54/68 other than DPN and agreement to sell. The burden of proof is on his legal heirs to submit the necessary evidences like immediate pressures/threats of Burma Shell through notices, any evidence supporting that there were dues of Rs.52,000/-, payment of Rs.30,000/- 15 years lump sum advance by them in a single go, arrangements made with Burma Shell for repayment, copies of registered notices issued to defendant in the case, acknowledgments of payments of Rs.1,200/- pm repaid by him. Except mentioning that Burma Shell is just to about to initiate civil and criminal proceedings, he has not established or adduced any evidence to support this and if the contention is true the other two partners including Karta has be more worried and plaintiff is bound to have knowledge of such serious situation. Contrary to his contention Burma Shell showed magnanimity by paying 15 years rent advance in one lump sum and even accepted the request of P.V.Krishnaiah firm for giving dealership to V.Venkatarama Sastry, which he could never dream of. The alleged dues of Burma Shell was finalized on 18th Oct, 68, partners executed promissory note after five days on 23rd Oct, 1968 and there can not be a threat of immediate civil and criminal action the very next day on 24th Oct, 1968 and it appears this was devised by a clever man to overcome any legal hurdles to obtain agreement to sale. Further when V.V.Ramasastry has undertaken to repay and when Burma Shell imposed more trust on him than P.V.Krishnaiah & Co. there might have been no necessity for the partners to execute a DPN at all. The recitals in plaint of Os.54/68 disclose deliberate attempt to establish an incorrect legal necessity itself confirms that he is aware of HUF status of the property.

No consideration was passed and infact the alleged agreement to sell was executed immediately on a mere undertaking to pay alleged debt of a partnership firm, in which P.Venkataramasastry was just a partner with other two partners.

The existence of a necessary purpose is not as the same as legal necessity. When there are large resources of income generation through their other assets in the possession of HUF at that time, there cannot be any legal necessity for entering into agreement for sale of a family prestige icon and regular income yielding asset without immediate consideration. The two plots in item 2 were purchased for their immediate necessity just during 1963, months before alienation. It was also on record that the documents pertaining to plaint scheduled items 1 & 2 were already with Burma Shell in their possession.

Plaintiff's son P.V.Ramasastry was a partner in his father's firm and just a co-parcener in HUF and as such he has no right, power or authority for alienation of regular income yielding family scheduled property to his own father in law without the consent of Karta. Further in an admitted HUF, when father, Karta, and managing partner was living till 3-6-68, without his knowledge and consent entering into agreement for sale on 23-10-64 was void ab initio. Added to this, the plaintiff has deliberately suppressed mentioning P.V.Krishnaiah's name in plaint and just said that P.V.Ramasastry and two others were trading and he has also not made the Karta or other partners as parties to the suit and proceeded only on his son in law alone, though he was said to be interested in the welfare of his son in law's family.

In this case both plaintiff's family and defendant were residing in the same house, defendant suffered a voluntary decree without any actual dues and immediately on getting the registration done, and defendant's wife was taken as a partner by plaintiff and later sent out on threat that she has to share loss and debts incurred by her father before admitting her into partnership.

There were several illegal and unauthorized additions in Registration Deed which were not mentioned anywhere in plaint like inclusion of lease to Burma Shell, the fact the scheduled property was already under mortgage, inclusion of repayments to Guttala Subbarao, addition of Karta's name as a sudden only in Registration document and importantly a direction/order/instruction that P.V.Ramasastry has to dispose the property standing in the name of plaintiff and release mortgage on plaint schedule property and these makes the document illegal and void.

In support of her contentions, plaintiff wishes to submit that the written family partition deed entered among late V.Venkataramasastry's legal heirs, several years after the *scheduled property acquisition never mentions even the existence of such property. Plaintiff has also found from the contents of O.S.No.133/99 that V.Venkatarama Sastry's wife and first son always considered the land as asset of business and assumed that they are one and the same. It also appears that they are not aware that they are separate and any relinquishment needs registration. With ignorance of law, they have relinquished their shares in favour of late P.V.Ramasastry's wife Def.11 and never claimed anything from the petrol pump during their life time. V.V.Ramasastry has neither entered into any separate lease agreement with Burma Shell nor got mutation in Corporation records for 9 years during his life time. All the witnesses deposed in case in OS NO.133/99 deposed that the scheduled property was acquired through court auction and they have deliberately avoided mentioning name of Burma Shell and referred that the dues paid by VV Ramasastry are to other creditors, and always mentioned the status of the trading firm as P.V.Ramasastry, sole proprietor. Plaintiff believes that all this conspiracy was devised to ease her and her minor daughter from schedule property for exclusive enjoyment of plaintiff's daughter in law only."*

5 . (c) Having so pleaded, the plaintiff sought partition of the plaint schedule properties into four equal and equitable shares by metes and bounds and for allotment of one such separated share to her by granting a preliminary decree along with other reliefs.

6 . (a) The 1st defendant had filed a written statement denying all the material allegations in the plaint and *inter alia* contending as follows:

P.V.Rama Sastry, son of P.V.Krishnaiah had acquired the scheduled property under a partition deed dated 11.06.1951 executed with Pulpula Satyanarayana and under registered sale deeds dated 27.5.1954, 11.08.1956, 22.05.1963 and 19.09.1963. The said P.V.Rama Sastry and his father and others had dealership from Burma Shell Company up to 18.10.1964 only. The Burma Shell company issued a fresh dealership on 24.10.1964 in favour of V.V.Rama Sastry, the late father of this defendant. The said V.V.Rama Sastry was the sole proprietor of the said dealership concern. P.V.Rama Sastry owed Rs.52,000/- to Burma Shell Company. On behalf of P.V.Rama Sastry, V.V.Rama Sastry paid Rs.22,000/- to Burma Shell company. Hence, P.V.Rama Sastry had executed an agreement of sale dated 24.10.1964 in respect of schedule property in favour of V.V.Rama Sastry. V.V.Rama Sastry had filed the suit O.S.54 of 1968 on the file of Subordinate Judge Court, Guntur. The said suit for specific performance was decreed by that court. On failure of P.V.Rama Sastry to execute the sale deed, the Court itself had executed the sale deed dated 12.7.1971 and got it registered as document no.3208 in favour of V.V.Rama Sastry. Thus, P.V.Rama Sastry sold his self acquired property to V.V.Rama Sastry. It is not the HUF property. P.V.Krishnaiah has no right, title or interest or possession to the said property acquired by P.V.Rama Sastry. Hence, the plaintiff, the second wife of P.V.Krishnaiah has no right, title or share or possession in the said property. The plaintiff is no way concerned with the said property and therefore, has no right to claim any share in the said property by way of partition suit. Hence, the suit itself is liable to be dismissed with costs. P.V.Krishnaiah, a retired Manager of ILTD Company used to get pension. After his death, the plaintiff has been getting the pension and is therefore, not a pauper. P.V.Rama Sastry worked in Madras as an employee. His father brought him and made him to enter into the business. They could not do business properly and had incurred debts payable to the Burma Shell Co., and private individuals. At that stage, they took the help of V.V.Rama Sastry to tide over their difficulties and debts. V.V.Rama Sastry has celebrated the marriage of his eldest daughter Chenchulakshmi (D11) with P.V.Rama Sastry. V.V.Rama Sastry was maintaining the family of P.V.Rama Sastry. Thus, V.V. Rama Sastry has never committed any fraud nor obtained any false documents. The agreement of sale was executed by P.V.Rama Sastry voluntarily with his free Will and consent and in the interests of his business and due to losses in his business. P.V.Krishnaiah had spent luxurious life utilising the money in the petrol pump and had incurred debts leaving the business to winds. The plaintiff is not entitled to question the decrees in O.S.133 of 1999 and O.S.54 of 1968. The plaint is full of repetitions and is argumentative. The suit is frivolous one and is liable to be dismissed.

6. (b) The defendant no.4 had also filed a written statement resisting the suit of the plaintiff more or less on the same lines as pleaded in the written statement of the 1st defendant. In the said written statement, the defendant no.4 had further contended that neither the husband of the plaintiff who was alive till 1968 nor P.V.Rama Sastry who was alive till 1998 ever challenged or questioned the validity of the decree in O.S.No.54 of 1968 or the validity of the sale deed executed by the court in pursuance of the decree and that, therefore, the plaintiff cannot question the validity of the said decree. It is also contended in the written statement of the 4th defendant that P.V.Rama Sastry sold the property to V.V.Rama Sastry and that V.V.Rama Sastry had leased out the property to Burma Shell and he was in management and control of the property and subsequently, the legal heirs of V.V.Rama Sastry had filed a suit O.S.No.133 of 1999 for partition of the properties of V.V.Rama Sastry amongst themselves. In the said written statement of defendant no.4 all the material allegations in the plaint and the allegation that the plaintiff came to know about the alleged facts just before issuance of the notice by her are denied.

6. (c) The said written statement of the 4th defendant was adopted by defendants 5, 8, 9 and 10.

6. (d) The defendants 6 and 7 had filed a written statement on the same lines as stated in the written statement of D1 and D4. In the said written statement of the defendants 6 and 7, it is further contended as follows: 'The plaintiff issued a registered notice after lapse of 44 years showing her ignorance in regard to transactions that had taken place in the year 1964 and by falsely submitting that she is in still joint possession. Immediately after receipt of the notice, this defendant had issued a reply informing her about the true facts. The plaintiff had never raised any objection or had filed any suit for setting aside the decree passed in O.S.No.54 of 1968 on the file of the Sub court, Guntur. She had never filed any application questioning the partition of the plaint schedule property in O.S.No.133 of 1999 on the file of the Principal District Court, Guntur. The plaintiff had kept silent all these years and had filed the suit only after passing of the decree in the said partition suit O.S.No.133 of 1999. The husband of the plaintiff was alive up to 1968 and her step son P.V.Rama Sastry was alive up to 1998 and they had never challenged the decree passed in O.S.No.54 of 1968. She has no manner of right, title or possession over the plaint schedule property; she is not entitled to file a suit for partition of plaint schedule property. The plaintiff had paid the court fee of Rs.500/- only U/s. 34(1) of the A.P. Court Fees and Suit Valuation Act claiming that the property is in joint possession and enjoyment. The plaintiff ought to have paid advolorem court fee as she is out of possession. These defendants have got 1/9th share each in the share allotted to the 2nd defendant in the suit for partition.

6. (e) The defendant no.11 had also field a written statement more or less on the same lines.

6. (f) The 16th defendant had filed a written statement resisting the suit and stating that the defendant's mother was the only daughter to late P.V.Krishnaiah through his first wife-late Lakshmibayamma. She had claimed that the item no.1 of the plaint schedule property is stridhana property of the 1st wife of P.V.Krishnaiah and therefore, the same is liable for partition between D12 to D18 including her and that item no.2 of the plaint schedule property is also liable for partition amongst the children of Lakhmibayamma, i.e., the 1st wife of P.V.Krishnaiah and the members of Pothireddy family and that she is entitled to 1/7th share in item no.1 and 1/7 of 1/4th share in item no.2 of the plaint schedule property.

6. (g) Defendants 19 to 21 had adopted the written statement filed by defendant No.11.

6. (h) The defendant no.22, who is the daughter of P.V.Rama Sastry, had filed a written statement supporting the case of the plaintiff.

6. (i) The 23rd defendant, the daughter of the plaintiff, had filed written statement supporting the case of the plaintiff in all respects.

6. (j) The defendants 12, 13, 14, 15, 17, 18 and 24 had remained *ex parte*.

6. (k) The 25th defendant, i.e., BPCL had filed a written statement stating that they have nothing to do with the internal disputes between the parties and they are in possession of the property as lessees.

7. Based on the above pleadings of the parties, the trial Court had framed the following issues:

1. Whether the plaintiff is entitled for partition?

2. Whether the sale by son of plaintiff is valid, not binding on the plaintiff?

3. To what relief?

8. At trial, the plaintiff was examined as PW1 and exhibits A1 to A23 were marked. On the side of the contesting defendants, the 1st defendant was examined as DW1 and exhibits B1 to B10 were marked.

9. On merits, the trial Court had dismissed the suit of the plaintiff. Hence, the aggrieved plaintiff is before this Court.

10. Before proceeding further, it is pertinent to note that the appellant/plaintiff had filed A.S.M.P.No.2497 of 2014 under Order XLI Rule 27 read with Section 151 of the Code requesting to grant leave to the plaintiff to file a document, viz., copy of note bearing No. M.0960/MD.0961 in regard to payment of rent, and treat it as an exhibit on the side of the plaintiff. The law is well settled that such an application for receiving additional evidence has to be heard and decided along with the main appeal and not ahead of the first appeal. According to the plaintiff, the respondents 24 and 25 who are the officers of the BPCL have suppressed the said document and that therefore, the plaintiff is constrained to obtain this document by having resort to the provisions of the Right to Information Act and that the said document, which is now being sought to be filed as additional evidence, establishes the fraud perpetuated in respect of the property, which is leased out to defendants 24 and 25, and that the said document would lay bare that as per books of financier/lessee a paltry amount due as on 26.10.1968 which was Rs.881.11 being split interest was only to be ultimately recovered from the hefty security deposit of plaintiff’s step son, P.V.Rama Sastry, as final adjustment as per dealership agreement and that therefore, there were never any dues from P.V.Rama Sastry to Burma Shell as per the books of accounts/records of the defendants 25 and 26 and in fact, he has to receive surplus/additional sum from Burma Shell in a sum of Rs.8,000/- as machinery sold to financier and Rs.2,000/- which was the then current rent and that therefore, there were never any dues as on 26.10.1964 to Burma Shell from P.V.Rama Sastry, the stepson of the plaintiff, and hence, it is absurd to say that V.V.Rama Sastry, the father-in-law of P.V.Rama Sastry had undertaken repayment of the alleged amount due to Burma Shell by way of equal monthly installments and that therefore; there was no adequate consideration for entering into the agreement of sale as alleged in O.S.No.54 of 1968. In this application for receiving additional evidence, no counter is filed though the application is orally resisted. Having regard to the peculiar facts and the circumstances and as the document is stated to be in possession of D24 and 25 and as the document was obtained from them by having resort to the provisions of the RTI Act and as reasons for the plaintiff's inability to file the said document during the course of trial is explained, the said petition stands allowed and the said document is received on file and is permitted to be exhibited as exhibit A24, however, subject to the provisions of Indian Evidence Act regarding its proof and relevancy.

11. The learned counsel for the appellant/plaintiff while reiterating the grounds of objection had further contended as follows:

The trial court ought not to have dismissed the suit holding that the plaintiff has to seek declaration of title and pay advolorem court fee on the valuation of the properties, which are subject matter of this suit for partition. When the suit is filed for partition on the ground that it is joint family property and when the plaintiff is a member of the joint family and as perpetration of fraud was pleaded and was established by adducing necessary evidence, the trial court had erred in holding that the plaintiff is not entitled to claim joint status. The trial court ought to have seen that it is the specific case of the plaintiff that the schedule property was acquired by her husband P.V.Krishnaiah in the name of his son P.V.Rama Sastry and therefore, the property continues to be joint property of the members of the family and hence, the subsequent alienation effected by the plaintiff's step son-P.V.Rama Sastry is illegal, invalid and not binding on her. The trial Court ought to have seen that the plaintiff had filed 23 documents. The trial Court had erred in proceeding on the presumption that the property is in the hands of defendants 1 to 10 and the same has to be treated as their joint family property. The judgment of the trial court is based on presumptions and surmises and is not based on facts and the evidence adduced. The trial Court ought to have seen that the defendants 1 to 10 never got possession of the property at any point of time even after exhibit A11-sale deed and that Petrol Pump was started as a partnership business by plaintiff's husband and her step son P.V.Rama Sastry and that even as on today, the lease is still standing in the name of BPCL, pursuant to the lease deed executed by P.V.Rama Sastry. The trial Court ought to have seen that though the suit filed for specific performance by the father-in-law of the plaintiff's step-son was decreed in the year 1968, the sale deed was not obtained till 1971 and that till 1980, P.V.Rama Sastry was collecting the rentals. The trial Court ought to have seen that P.V.Rama Sastry had authorised one of the defendants, i.e., one of the members of the family of V.V.Rama Sastry to collect rents on his behalf and DW1 in his evidence has specifically admitted that late P.V.Rama Sastry was receiving the rents all through. The trial court ought to have seen that no separate lease deed has been executed by V.V.Rama Sastry or his heirs after 1971 and no mutation was effected in the revenue records and therefore, the alleged sale deed is only sham and nominal and therefore, the possession cannot be treated as the possession of the defendants 1 to 10 and the possession must be treated as joint possession of all the sharers. The learned judge of the trial court ought to have seen that as per the evidence of DW1, in the partition effected among the members of the family after disposal of O.S.54 of 1968, the property was not shown as one of the items for partition clearly shows that the defendants 1 to 10 never treated the plaint schedule property as their joint family property. The trial Court ought to have seen that the suit in O.S.No.133 of 1999 was filed for partition among the defendants 1 to 10 and they have also sought the relief of cancellation of lease deed and recovery of possession of the property. Contrary to their pleadings, the learned Judge had held that the defendants 1 to 10 are in possession of the plaint schedule property. As long as the property is not divided by metes and bounds, it continues to be joint irrespective of any sharer claiming any income or not, unless, the other sharer pleads and proves ouster. When once the property is joint family property, any alienation effected by the members of the joint family will not bind the other co-owner and his/her right to seek partition is not defeated. The trial court did not give importance to the pleadings that the property was blended by P.V.Rama Sastry into joint family property. The trial court ought to have seen that the plaintiff is of 82 years of age and is an old lady and she has no male assistance and that therefore, ought to have considered her status, predicament and position in appreciating the facts and the evidence. The sale deed-exhibit A11 was never intended to be acted upon and it is nominal. Both the father-in-law and the son-in-law are residing under the same roof for ten years till the filing of the suit for specific performance. The plaintiff was aware that the business carried on by P.V.Rama Sastry was a partnership business in which P.V.Krishnaiah was the Managing Partner and the managing partner was not impleaded as a party by the plaintiff in the suit for specific performance. Consideration for purchase of the property was that the plaintiff in the suit for specific performance had paid Rs.22,000/- to Burma Shell. However, for the said passing of consideration, no evidence was adduced. DW1 had denied the promissory note, which is one of the documents on which reliance was placed in the suit for specific performance. The said decree was an *ex parte* decree. No possession was delivered subsequent to the decree. The defendant in the suit for specific performance himself was enjoying the profits from the said property. The value of the property in the year 1956 when it was purchased works out to Rs.67-71 paise per square yard. Therefore, the total value comes to Rs.2,60,000/- as seen from exhibit B1. The property was claimed to have been purchased for a throw away price of Rs.22,000/-, that too, after 8 years, which works out to Rs.5-67 paise per square yard. Therefore, all these circumstances show that exhibit A11 sale deed is a sham and nominal document and was never intended to be acted upon and that the same is brought into existence only to defeat the right of the plaintiff, who is a helpless lady. In exhibits A17 and A18 mortgage deeds executed by P.V.Krishnaiah and his son P.V.Rama Sastry, it is clearly mentioned that P.V.Rama Sastry was his undivided son and it is their joint family property. The judgment of the court below is perverse, illegal and unsustainable. There is specific pleading in regard to fraud, coercion and collusion in the plaint. There was no denial of the said pleadings in the written statements filed by the contesting defendants. Therefore, the pleadings of the plaintiff shall be deemed to have been admitted. The plaintiff is admittedly, the 2nd wife of the P.V.Krishnaiah and therefore, she is a class I heir under the Hindu Succession Act, even if the property is to be treated as a joint family property of P.V.Rama Sastry. The plaintiff being the step-mother of P.V.Rama Sastry is his mother; and a step mother is entitled to a share as class I heir under the Hindu Succession Act. The provisions of the Hindu Succession Act are applicable to the facts of the case and any decisions rendered prior to coming into force of the said Act have no application to the facts of the case. Hence, the appeal may be allowed and the suit may be decreed as prayed for.

12. On the other hand, the learned senior counsel for the 1st respondent would contend as follows:

In the plaint, it is admitted that the property is a separate property of P.V.Rama Sastry. In the plaint, it is specifically pleaded that the plaint schedule property was acquired by P.V.Rama Sastry by virtue of a partition deed dated 11.06.1951 and the sale deeds dated 27.5.1954, 11.08.1956, 22.05.1963 and 01.09.1963. It is also stated in the plaint that item no.1 was initially separate property and the same was voluntarily thrown into common stock by P.V.Rama Sastry and it became a joint family property of P.V.Rama Sastry and his father P.V.Krishnaiah and that they are coparceners. Insofar as item no.2 of the plaint schedule property, it was pleaded in the plaint that the nucleus has come from joint income and thereby item no.2 of schedule property is joint family property. For any property to be thrown into common stock one of the three conditions required is an existing nucleus or coparcenary property. In this case, it was not shown that there was coparcenary property or nucleus. Therefore, the question of blending item no.1 of the plaint schedule property with any property does not arise. The plaint schedule properties are the exclusive properties of P.V.Rama Sastry. He had executed an agreement of sale dated 24.10.1964 in favour of his own father-in-law, V.V.Rama Sastry. The said V.V.Rama Sastry had filed against his son-in-law, P.V.Rama Sastry, a suit for specific performance in O.S.54 of 1968 on the file of the Subordinate Judge, Guntur. The said suit was decreed, *ex parte*. The certified copy of the judgment in the said suit is exhibit A1. Subsequently, civil court had executed a registered sale deed in favour of V.V.Rama Sastry, pursuant to the decree for specific performance, and the copy of the sale deed dated 12.07.1971 is exhibit A11. Thus, V.V.Rama Sastry has become absolute owner of the plaint schedule property even by the year 1971. It cannot be believed that the plaintiff is not aware of all these transactions for several decades. V.V.Rama Sastry had two sons and one daughter Chenchulakshmi, who is no other than the wife of P.V.Rama Sastry, the original owner of the property who had sold the property to his father-in-law. V.V.Rama Sastry died in the year 1973. His eldest son-Rama Brahma Sastry had also died. Therefore, a suit for partition in O.S.No.133 of 1999 was filed for partition of the plaint schedule properties among the legal heirs of V.V.Rama Sastry. That suit was decreed on 03rd October 2007 and a preliminary decree for partition was passed by the learned District Judge, Guntur. The certified copy of the judgment in the said suit O.S.No.133 of 1999 on the file of the District Court, Guntur is exhibited as exhibit A2. Thus, by virtue of a decree of the court and a sale deed executed by the court, V.V.Rama Sastry has become absolute owner of the plaint schedule property even by the year 1971. Subsequently, there was a suit for partition among the legal heirs of V.V.Rama Sastry and that suit for partition was decreed and a preliminary decree was passed in that partition suit. The present suit of the plaintiff is not maintainable without seeking cancellation of the judgment and decree in O.S.No.54 of 1968. The suit is also not maintainable without seeking cancellation of the registered sale deed dated 12.07.1971 in respect of the plaint schedule property executed in favour of V.V.Rama Sastry by the civil court on behalf of P.V.Rama Sastry. The plaintiff is only a step mother of P.V.Rama Sastry being the 2nd wife of P.V.Krishnaiah. As per the provision of Section 8 of the Hindu Succession Act and the schedule to the Act, only a mother is one of the heirs in Class – I. A step-mother is not a Class – I heir of her step-son/the propositus. The legal heirs on whom the property of a male Hindu dying intestate devolves according to Hindu Succession Act include a mother, but not a step mother. Under entry (vi) of Class–II of the schedule of the Hindu Succession Act, 'Father's widow' is mentioned. Therefore, step-mother being 'father's widow' is a class-II heir and, hence, the plaintiff being a Class–II heir is not entitled to succeed to the properties of P.V.Rama Sastry in any view of the matter. Therefore, the suit for partition is liable to be dismissed. The present suit for partition filed after several decades questioning a decree in O.S.No.54 of 1968 without seeking cancellation of the said decree and the sale deed executed by the court pursuant to the decree for specific performance in the said suit is not maintainable and is liable to be dismissed. The trial court had rightly dismissed the suit. The appeal is liable to be dismissed being devoid of merit.

13. **(a)** The learned counsel for the appellant/plaintiff relied upon the following decisions: **(i) Sarasa Applakonda and others v. Pulamarasetti Somunaidu and another; (ii) Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade; (iii) K.Adivi Naidu v. E.Duruvasulu Naidu; (iv) Manohar Lal v. Dewan Chand and others; and (v) Kakumani Subba Rao v. Kakumani Venkateswarlu (died)**

13. **(b)** The learned Senior Counsel for the 1st respondent had relied upon the following decisions: (i) **Mohammad Husain Khan v. Babu Kishva Nandan Sahai; (ii) Sellamani Ammal v. Thillai Ammal and another; (iii) State of Punjab and others v. Gurdev Singh, Ashok Kumar; (iv) Mudigowda Gowdappa Sankh v. Ramchandra Revgowda Sankh (dead) by his legal representatives and another; (v) Mallesappa Bandeppa Desai v. Desai Mallappa @ Mallesappa and another,** and **(vi) Punga Seethai Ammal v. Punga Nachiyar Ammal**.

14. We have gone through the pleadings in entirety and the evidence on record carefully. We have given earnest consideration to the facts, the submissions, the evidence, the relevant provisions of law of the Hindu Succession Act and the cited decisions.

15. Now, the points that arise for determination in this appeal are:

1. **Whether the plaintiff is entitled to a preliminary decree for partition of the plaint schedule properties into 4 equal and equitable shares by metes and bounds and allotment of one such separated share to her in the said properties?**

2. **Whether the plaintiff's suit is liable to be dismissed as the plaintiff had failed to seek declarations that the decree and the judgment in the suit O.S.No.54 of 1968 for specific performance and the sale deed under exhibit A1 are not valid and binding on her?**

3. **Whether the decree and judgment of the trial court are unsustainable and are liable to be set aside in the facts and circumstances urged by the appellant/plaintiff?**

4. **To what relief?**

16. **<u>POINTS 1 & 2</u>**:

16.1 There is no dispute with the relationship of the parties, which is stated in paragraph (4) supra of this judgment. The plaintiff is the second wife of P.V.Krishnaiah. P.V.Rama Sastry is the son of said P.V.Krishnaiah and his first wife-Lakshmibayamma. One Chenchulakshmi (D11) is the wife of P.V.Rama Sastry. One Rajeswari (D23) is the daughter of the plaintiff. Now, the plaintiff is seeking partition of the plaint schedule properties by *inter alia* contending that they are the HUF/joint family/coparcenary properties of her late husband and step-son-P.V.Rama Sastry. The plaintiff's husband died on 03.06.1968 and her step-son died in the year 1998. In this backdrop, the legal burden, which never shifts, and the initial onus of proof, which are very heavy, are on the plaintiff in this partition suit, which was filed in the year 2008. Therefore, it is for the plaintiff to discharge the legal burden by adducing necessary evidence in order to succeed in the suit for partition.

16.2 Coming to the first aspect as to the nature of the plaint schedule properties**,** be it first noted that though it was sought to be contended that the properties were acquired by P.V.Krishnaiah in the name of his son-P.V.Rama Sastry, i.e., the step-son of the plaintiff, the pleading in the plaint does not support the said contention now sought to be raised before this Court. In the plaint, the plaintiff had pleaded as under: ***'Item No.1 of the schedule property was initially a separate property and it was voluntarily thrown into common stock by P.V. Rama Sastry and it became a joint family property of P.V.Krishnaiah and his son P.V.Rama Sastry, who is a coparcener. This HUF property was leased to Burma Shell up to 30.04.1980 with renewal option of additional 20 years up to 29.04.2000 and had remained in their possession till today by virtue of two registered lease deeds executed by P.V. Rama Sastry. Item no.2 of the schedule property was low lying water logged land acquired on 27.5.1954, 11.08.1956, 22.05.1963 and 01.09.1963 by way of purchase through family property income from petrol pump for the exclusive use of parking and roads of petrol pump as mentioned in the documents. Thus the nucleus has come from joint income and thereby item no.2 of the schedule properties is joint family property and the land was later developed with HUF money and was brought into proper use after levelling etcetera.'*** Per contra, the case of the contesting defendants is that the properties are the separate and individual properties of late P.V.Rama Sastry and he had sold it away to V.V.Rama Sastry, his own father-in-law.

16.3 Coming now to item no.1 of the plaint schedule properties, it is not in dispute that P.V.Rama Sastry, the step-son of the plaintiff, had got this property by virtue of a partition deed dated 11.06.1951. The said document was exhibited as exhibit A14. A plain reading of the said document would show that under the said document, the properties covered by the said document were partitioned between the said P.V.Rama Sastry and one Pulpula Satyanarayana, the adopted son of Venkataramaiah, and that the properties covered by the said deed of partition were acquired by the ancestors of the said two parties to the deed and that, therefore, a share is being given to P.V.Rama Sastry as he is the grandson of Venkatasubbaiah and as his mother Lakshmibayamma is the only daughter of the said Venkatasubbaiah. Therefore, P.V.Rama Sastry had got item no.1 of the plaint schedule property being the son of Lakshmibayamma, who is the only daughter of his maternal grandfather-Venkatasubbaiah. Therefore, from the recitals in the document it is clear that item no.1 of the plaint schedule property is the separate exclusive property of P.V.Rama Sastry. The law is well settled that when a property is inherited by a person from the side of the mother, that property becomes the separate property of that person. Thus, item no.1 of the plaint schedule property, which is the property of maternal grandfather and which P.V.Rama Sastry had got under the deed of partition cannot be treated as ancestral or joint family property as the said property under law becomes his separate and exclusive property. This view of this court finds support from the ratio in **Mohammad Husain Khan** case (4 supra) and also from the decision in **Sellamani Ammal** case (7 supra). In the decision **Mohammad Husain Khan** (6 supra), the learned judges of the Privy Council had held that the estate, which is inherited by the father from the maternal grandfather, cannot be held to be ancestral property in which his son has an interest jointly with him. In the decision in **Sellamani Ammal** (7 supra), the learned Judges of the Privy Council had held that the property which descended from the mother was not the ancestral or the joint family property of the testator therein. Even according to the case pleaded in the plaint, the item no.1 of the plaint schedule property is the separate property of P.V.Rama Sastry, the step-son of the plaintiff. However, it was further pleaded in the plaint that it was voluntarily thrown into common stock by him and therefore, it became a joint family property. Therefore, the question is as to whether item no.1 of the plaint schedule property, which was originally the separate property of P.V.Rama Sastry, had remained as his separate property or it became the joint family property in the circumstances urged by the plaintiff. The plaintiff could not plead and show that there was any pre-existing joint family/coparcenary property or nucleus, which constituted common stock. Unless there existed a nucleus, the question of P.V.Rama Sastry throwing his separate property into the common stock or blending it does not arise for consideration. In the decision in **Mudigowda's** case (9 supra), the settled legal position is laid down as follows: **'There is no presumption that a Hindu family merely because it is joint, possess any joint property. The burden of proving that any particular property is joint family property, is therefore, in the first instance upon the person who claims it as coparcenary property. But, if the possession of a nucleus of a joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self acquisition to affirmatively make out that the property was acquired without any aid from the family estate.'** In the decision in **Mallesappa** (10 supra), it is held that there can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property and that a mere intention to benefit the members of the family by allowing the use of the income coming from the said property may not necessarily be enough to justify an inference of blending; but the basis of the doctrine is the existence of coparcenary and the coparcenary property as well as the existence of the separate property of a coparcener. Therefore, the basis for doctrine of blending is also the existence of coparcenary property; but in the case on hand, the plaintiff did not plead and prove that by the year 1951 or so the joint family of P.V. Krishnaiah and P.V.Rama Sastry had a nucleus or coparcenary property other than item no.1 of the plaint schedule property. Therefore, in the absence of any evidence, much less evidence of reliable character to hold that there was a pre-existing coparcenary property or nucleus suggesting the possibility to blend the item no.1 of the plaint schedule property with common stock, and in the light of the evidence that

P.V.Rama Sastry had got the item no.1 of the plaint schedule property from his maternal grandfather by virtue of the partition deed under exhibit A14 dated 24.10.1964, it must be held that it is his separate and exclusive property.

16.4 As regards item no.2 of the schedule properties, the case of the plaintiff is that Item no.2 of the schedule property was low lying water logged land acquired on 27.5.1954, 11.08.1956, 22.05.1963 and 01.09.1963 by way of purchase through family property income from petrol pump for the exclusive use of parking and roads of petrol pump as mentioned in the documents and thus the nucleus has come from joint income and thereby item no.2 of the schedule properties is joint family property and the land was later developed with HUF money and was brought into proper use after levelling etcetera. However, the plaintiff could not plead and show that there is any joint family property other than the properties which are subject matter of the *lis*. Though P.V.Krishnaiah did business in Petrol Bunks under the name and style ‘P.V.Krishnaiah & Co.’, the plaintiff could not plead and prove that from the income from the said business, the item no.2 of the plaint schedule properties was acquired under the above said sale deeds, which admittedly stand in the name of P.V. Rama Sastry only. There is no explanation as to why the sale deeds were obtained in the name of P.V. Rama Sastry only and not in the name of the Karta-P.V.Krishnaiah or in the joint names of P.V.Krishnaiah and his son-P.V.Rama Sastry. There is no pleading and evidence as to when the Petrol Bunks business was started as P.V. Krishnaiah was admittedly was in service before starting the business. It is not pleaded and established that P.V.Krishnaiah had inherited any ancestral property. On the other hand, the plaint averments show that P.V.Krishnaiah is a self made man. As already noted, the plaintiff had failed to prove that there was a pre-existing coparcenary property or nucleus for blending item no.1 of the plaint schedule property with the same. It is pertinent to note that P.V.Rama Sastry has acquired item no.2 of the plaint schedule property under registered sale deeds dated 25.07.1954, 11.08.1956, 22.05.1963 and 01.09.1963 respectively. Therefore, there is no evidence much less credible evidence to hold that item no.2 of the plaint schedule property is a joint family/coparcenary property.

16.5 Be that as it may, a careful perusal of the affidavit of PW1 filed in lieu of examination-in-chief, would show that nowhere in the entire affidavit, the plaintiff had stated that item no.1 of the plaint schedule property was thrown into common stock and that it became a joint family property. The plaintiff also did not state in her said affidavit about the manner of acquisition of item no.2 of the plaint schedule property as stated in the plaint. Thus, the pleading in the plaint is not translated into evidence and had remained a pleading. It is well settled that pleading is not evidence. Therefore, on this ground alone, the plaintiff can be non-suited.

16.6 In the light of the discussion coupled with reasons supra, there is no need to go into any other aspects. Be that as it may. The further case of the plaintiff is this: The father and son, i.e., P.V.Krishnaiah and P.V.Rama Sastry together leased out items 1 and 2 of the plaint schedule property to the then Burma Shell company and they used to run a Petrol Bunk in the schedule property under the name and style of ‘P.V.Krishnaiah and Co.,’ and that in that firm, both the father and son were partners and that in that business, P.V.Krishnaiah, who had retired as Lead Manager of ILTD, Guntur had invested all his retirement benefits and life long earnings and that the said firm was the authorised dealer for Burma Shell and also a distributor of fertilizers and tyres of highly reputed companies and that the said businesses were supervised by the father P.V.Krishnaiah and that Burma Shell has given dealership to the firm after taking the plaint schedule property on lease up to 2000 and that P.V.Krishnaiah and P.V.Rama Sastry (the father and the son) received rents till 1980 and that later, the rents were received by the brother-in-law (D1) of P.V.Rama Sastry on behalf of the family, in accordance with the authorisation given by P.V.Rama Sastry, and that later that dealership was transferred in the name of the farther-in-law and the wife of P.V.Rama Sastry, but, P.V.Rama Sastry used to attend the day-to-day business in the Petrol Bunk till his death and that all these circumstances would show that the property is the joint family property of P.V.Krishnaiah and P.V.Rama Sastry. The above contentions are of no avail to the plaintiff when the very foundation in the pleadings in regard to the nature of the property was not asserted in the evidence by her and was given a go bye. Mere father and son leasing the property to a lessee together does not make a difference and does not advance the case of the plaintiff any further. It is an admitted fact that on 17.06.1963, P.V.Krishnaiah and his son P.V.Rama Sastry together mortgaged the properties under exhibit A18 in favour of one G.Subba Rao. A reading of this document would show that both the father and the son had mortgaged the property for the benefit of the family and for improvement of their businesses, viz., Petrol Bunk, Fertilizers and tyres etcetera by borrowing Rs.15,000/-. In this document, it is clearly recited that P.V.Rama Sastry got the property under the partition deed dated 11.06.1951 to his share and that part of the property was purchased under registered deed dated 02.03.1953 by P.V.Rama Sastry. Therefore, during his life time, P.V.Krishnaiah had stated in the said document that the property is of his son P.V.Rama Sastry. There is no recital in the mortgage deed jointly executed by the father and the son that the property is joint family property. On the other hand, there is a recital that the property is that of the son-P.V.Rama Sastry. So, this circumstance would also belie the contention that the property is joint family property and the same was treated as joint family property by P.V.Krishnaiah and P.V.Rama Sastry.

16.7 For all these reasons, we hold that the plaint schedule property is not the joint family property of P.V.Krishnaiah and P.V.Rama Sastry and that the properties were separate and exclusive properties of P.V.Rama Sastry and they continued to be so till he had executed an agreement to sell in favour of his own father-in-law-V.V.Rama Sastry.

16.8 Coming to the aforementioned aspect in regard to agreement of sell executed by P.V.Rama Sastry in favour of V.V.Rama Sastry, the case of the plaintiff is that her step-son might have executed the agreement to sell dated 24.10.1964 in respect of the properties in favour of his father-in-law having blindly believed the representations of V.V.Rama Sastry, or that her step-son might have heeded the request of his father-in-law for executing the agreement to sell without knowing the consequences; or that he might not have been truly aware of the happenings; or he might have blindly trusted or might have executed as a charge/security not to worry himself in future and at his old age in the eventuality of any litigation and that all these contentions of her are not just presumptions but, are facts highly probable on account of close relationship and that the death of P.V.Krishnaiah, the plaintiff's husband on 03.06.1968, had given more opportunity to V.V.Rama Sastry to execute the coup in clutching at the plaint schedule property. Her further case on this aspect is that the said agreement to sell is not supported by sufficient consideration. Thus, the execution of the agreement to sell dated 24.10.1964 by the step-son of the plaintiff in respect of the plaint schedule property in favour of his own father-in-law-V.V.Rama Sastry is not in dispute but the plaintiff disputes the truth, validity and binding nature of the said agreement on her step-son and also relies upon the inadequacy of consideration in support of her case that the said agreement of sale is to be ignored and is to be held as not binding. However, Subsequent to the execution of the agreement to sell, the father-in-law-V.V.Rama Sastry had filed against P.V.Rama Sastry, his son-in-law, a suit in O.S.No.54 of 1968 on the file of Senior Civil Judge Court, Guntur for specific performance of the above agreement of sale dated 24.10.1964. The said suit was decreed *ex parte.* The certified copy of the decree/judgment dated 24.06.1968 in the said suit is exhibit A1. Subsequently, V.V.Rama Sastry had filed an execution petition for execution of the decree in the said suit for specific performance against his own son-in-law P.V.Rama Sastry and had obtained a sale deed pursuant to the decree for specific performance. The copy of the sale deed executed by the civil court in favour of V.V.Rama Sastry dated 12.07.1971 is exhibit A11. Thus, even by the year 1968, a competent civil court had granted a decree for specific performance in favour of V.V.Rama Sastry pursuant to the agreement of sale dated 24.10.1964 executed by P.V.Rama Sastry and subsequently, pursuant to the decree for specific performance, a sale deed under exhibit A11 was also executed by the court in favour of V.V.Rama Sastry. During his life time, P.V.Rama Sastry had never questioned either the agreement to sell or the decree for specific performance or the sale deed executed by the court in the year 1971 though he had admittedly died in the year 1998. It is difficult to believe that neither P.V.Rama Sastry nor his wife Chenchulakshmi, who is no other than the daughter of V.V.Rama Sastry had no knowledge of the decree for specific performance and the sale deed executed by the civil court. The plaintiff had also not questioned the same till the instant suit is filed in the year 2008. In this regard, the plaintiff had stated in the plaint that she was away from Guntur for 30 years till 2003 and that the plaintiff had returned to Guntur in May 2003 at the instance of Chenchulakshmi, her daughter-in-law, who had ceased to be a partner in the firm of V.V.Rama Sastry and who had ceased to have any talking terms with any of her brothers and that at that time the plaintiff had met Markandeya Sastry (D1) who is no other than the own brother of Chenchulakshmi to discuss about the lease particulars. Thus, even according to the plaintiff, she was away from Guntur for 30 years and she had returned to Guntur in the year 2003 at the behest of Chenchulakshmi to question the lease particulars. According to her, when she had questioned the 1st defendant, he gave some explanation and therefore, she had kept quiet. Even according to the plaintiff, her stepson received rents only up to the year 1980. He died in the year 1998. Even her daughter-in-law did not support her and state that subsequent to the death of her husband-P.V.Rama Sastry, she (Chenchulakshmi) (D11) had received rents and enjoyed the property jointly as a sharer. Even according to the plaint averments, Chenchulakshmi (D11) had expressed her unwillingness to join the plaintiff in the suit for partition as several decades of time had elapsed since the date of decree in the suit for specific performance. It is not the case of the plaintiff that she had received rents at any time or after 1980 or after the death of her stepson in the year 1998. She was away from Guntur for thirty years. The Petrol Bunk dealership was changed in the name of V.V.Rama Sastry, the purchaser. Therefore, from the averments in the plaint and her evidence, it is clear that she is not in joint possession of the plaint schedule properties. However, she having claimed that she is in joint possession had paid fixed court fee under Section 34(1) of the A.P. Court Fee and Suits Valuation Act and had thus failed to pay advolorem court fee on the value of the properties as per Section 34(2) of the said Act. Therefore, in this view of the matter also, the plaintiff is to be non-suited. None of the supporting defendants had given evidence to corroborate the version of the plaintiff on any aspect. DW1 had maintained his stand in his evidence. Neither D11-the wife of P.V. Rama Sastry nor the defendants who had filed written statements supporting the case of the plaintiff had supported the plaintiff on any aspect. Now, in this suit filed in the year 2008, the plaintiff submits that the said agreement of sale of the year 1964 executed by P.V.Rama Sastry in favour of his own father-in-law is not true and is not supported by adequate consideration and that the sale agreement was obtained by perpetration of fraud and that therefore, the decree of the civil court granting specific performance and the sale deed executed by the civil court under the original of exhibit A11 are not valid and binding on the plaintiff and that the plaintiff can ignore the same. On this aspect, the relevant submissions in the affidavit of PW1 filed in lieu of examination-in-chief are as follows:

> **"I have issued a legal notice to Def.1 to Def.11, prior to filing of this suit and was informed by the defendants 1 to 11 that the said VV Rama Sastry has acquired the same through a specific performance suit O.S.54/68 in**

Subordinate Court and they replied with several misrepresentations and false allegations. The dues to Burma Shell mentioned in O.S.54/68 by my son or by my husband was never true. The firm had more receivables, machinery, furniture and other assets, and were also having building properties both at Laxmipuram in my name, and ancestral house at Agaraharam and agricultural land and even if there were any dues really, my husband had the capacity to raise any amount through his influence for protecting the plaint schedule property, which reflects our family honour. There is no necessity for my son to execute agreement to sell the plaint scheduled property nor to a person like V.V Rama Sastry to undertake the repayment on behalf of my son. My husband who was living then, and myself were not parties to the suit and even not aware of such proceedings. The decree obtained on fraudulent documents as said in detail in plaint averments were null, void *ab initio* and *non est* in the eye of law hence I have not asked Hon. Court to set them aside." (reproduced verbatim)

This is all her evidence, on the relevant aspect. We have also gone through the entire deposition of PW1 and also the evidence of DW1 and also the exhibits A1 to A23 and B1 to B10 and also exhibit A24, now received as additional evidence in this appeal. Mere marking the documents in exhibit 'A' series and the documents confronted to DW1 in 'B' series is of no avail to the plaintiff in view of her own pleaded case and evidence, which is not in line with her pleadings. What is pleaded is not translated into evidence and what is stated by way of improvement in the evidence does not find support from the pleadings. The points stated in the evidence for the first time are not fully supported by pleadings. Though it is stated in the plaint that the officers of BPCL are being added as co-defendants under compulsion as their evidence is necessary to support her case, she did not choose to examine any officer of the BPCL to support her contentions that the amounts due to BPCL at the relevant time are bare minimal and that therefore, the agreement to sell was not supported by adequate consideration. Nowhere in her evidence, she had stated that fraud was played upon her by V.V.Rama Sastry and it is only stated in her evidence affidavit that necessary submissions are stated in the plaint. Such a statement in the evidence does not satisfy the requirement of law as the allegations of fraud, mischief etcetera, which are pleaded in the plaint, have to be necessarily asserted in the evidence by referring to various details. But, such evidence is lacking in this case. Therefore, mere making such statements in evidence and marking some documents and not proving the same by examining anybody concerned is of no avail. Moreover, the sale agreement is of the year 1964 and the suit for specific performance was filed in the year 1968 and was decreed and a sale deed was also executed by the Court in the year 1971. During their life times, neither P.V.Krishnaiah nor P.V.Rama Sastry had questioned either the agreement to sell or the decree in the suit for specific performance. P.V.Rama Sastry had not questioned the sale deed executed by the Court in the year 1971 though he had lived up to the year 1998. On the self-serving statement of PW1, more particularly, when the executant and the beneficiary of the agreement were no more, this Court cannot record a finding that the agreement of the year 1964 is not supported by consideration or that fraud was perpetrated in obtaining the said agreement and also the decree in O.S.No.54 of 1968. Moreover, after the death of V.V.Rama Sastry, who had purchased the property from his own son-in-law, a suit in O.S.No.133 of 1999 was filed by some of the legal heirs of V.V.Rama Sastry against his other legal heirs and the said suit for partition was preliminarily decreed on 03rd October 2007. The copy of the judgment in the said partition suit is exhibit A2. Therefore, the sale deed that was executed by the Court in the year 1971 was acted upon without anybody questioning the same and the suit for partition amongst the family members of V.V.Rama Sastry, the purchaser under exhibit A11-sale deed was also decreed by a competent civil court. In the circumstances, the plaintiff ought to have sought a relief that the decree and judgment in O.S.No.54 of 1968 are not valid and binding upon her in the light of the contentions pleaded by her. She did not do so. It is not a case where simply a sale deed was executed by P.V.Rama Sastry in favour of his father-in-law V.V.Rama Sastry, without the intervention of the court. In the instant facts of the case, it is not in dispute that in the first place, the son-in-law had executed an agreement of sale in favour of the father-in-law and that later, the father-in-law had obtained a decree for specific performance and that later the civil court had executed the registered sale deed in favour of the father-in-law on behalf of the son-in-law. Therefore, the regular registered sale deed was executed in favour of the father-in-law of P.V.Rama Sastry pursuant to a decree and judgment of a civil court. On the aspect that the suit for partition filed by the plaintiff without seeking a declaration is not maintainable, the learned counsel for the 1st defendant had relied upon a decision in **State of Punjab and others v. Gurdev Singh, Ashok Kumar** (8 supra). The facts of the cited case are as follows: 'A suit for declaration was filed by a dismissed employee claiming that he continues to be in service since his dismissal was void and inoperative. The High Court has observed that if the dismissal of the employee is illegal, void or inoperative being in contravention of the mandatory provisions of any rules or conditions of service, there is no limitation to bring a suit of the above nature. In paragraph (6) of this cited decision, it is held as follows:

> **"6. But none the less the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or Court. In Smith v. East Elloe Rural District Council, (1956) AC 736 at P.769 Lord Redcliffe observed:**
>
> **"An order even if not made in good faith is still an act capable of legal consequences, it bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."**

In the cited case, it was further held as follows:

> 7. Appropos to this principle, Prof. Wade states: the principle must be equally true even where the 'brand of invalidity' is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the Court (see: Administrative Law 6th Ed. P. 352). Prof. Wade sumps up these principles:
>
> "The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is in reality valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another".
>
> 8. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for."

In our well considered view, firstly, the plaintiff is not able to establish that the decree and judgment in the suit for specific performance are vitiated by fraud and are a nullity. Secondly, we hold that mere suit for partition ignoring a decree of a competent civil court without seeking to set aside the said decree is not maintainable. Therefore, we hold that the suit for partition is not maintainable without seeking a declaration that the decree and judgment in the suit for specific performance in O.S.No.54 of 1968 are not valid and not binding on the plaintiff.

16.9 In the summary of the submissions filed by the learned counsel for the plaintiff/appellant several contentions were raised, which are neither supported by pleading in the plaint nor the evidence of PW1. There is no pleading and proof in support of the contention that P.V.Krishnaiah as Karta and Manager had acquired the schedule properties with his earnings. The contention that the plaintiff is an 83 year old illiterate widow and that she was not in a position to interpret five title deeds and two mortgage deeds, which are more than thirty years old, and that therefore, the said documents along with several other documents were prepared with an ulterior motive at various points of time cannot be countenanced in the facts and circumstances of the case. The documents, which are thirty year old have to be given their due weight in view of the provisions in Section 90 of the Indian Evidence Act, which lays down that any document purporting or proved to be thirty years old, when produced from any custody which the court in particular case considers proper, the court may presume that the signature and every other part of such a document, which purports to be in the handwriting of any particular person is in that persons handwriting, and in the case of a document executed or attested, that it was duly executed and attested by persons by whom it purports to be executed and attested. The mere continuation of the lessees (BPCL) in one of the properties and enjoyment of the income/rental income, if any, by the joint family is not going to make a difference as a mere intention to benefit the members of the family by allowing them the use of the income coming from a separate property may not necessarily be enough to justify an inference of blending as held by the Supreme Court in **Mallesappa**'s case (10 supra). By mere transfer of property by the owner to a purchaser, the lease of a lessee will not come to an end, and the tenancy gets attonred and the transferee becomes the landlord and the tenancy continues. Therefore, none of the exhibits like, exhibit A8-the confirmation letter of lease from

BPCL, exhibit A9-the letter from GMC, exhibit A12-the letter from the employer of the husband of the plaintiff, exhibit A9-the letter of Municipal Corporation on mutation or any other documents do not advance the case of the plaintiff when the pleading on which the case was founded was given a go-bye and no evidence much less credible evidence was adduced to show that the properties are the joint family properties and not exclusive properties of P.V.Rama Sastry. The contention that mortgage deeds exhibits A17 and A18 show that P.V.Rama Sastry is the undivided son of his father is of no avail. This court had already referred to the contents of exhibit A18-mortgage deed and had also held that mere existence of a joint family does not lead to a presumption that any property is a joint family property. The contention that the partition deed of the year 1951 is a sale deed and that a sale deed is styled as partition deed is also a contention which does not find support from the pleadings and evidence and at this distance of time, such contention without any basis cannot be countenanced. Coming to the plea of perpetration of fraud, what is to be noted is that at this distance of time merely on plaint averments and the repetition of the averments to some extent in the evidence of PW1, it is not possible to hold that the agreement to sell dated 24.10.1964 and the decree in the suit for specific performance in O.S.No.54 of 1968 are results of either fraud or misrepresentation. The said sale agreement cannot now be examined to find out whether the consideration pleaded therein was true and adequate when the issue regarding the truth and validity of the agreement to sell has become final in the suit for specific performance. Much reliance was placed on a fact that some of the defendants stated in the earlier suit for partition in O.S.No.133 of 1999 that V.V.Rama Sastry purchased the property in a court auction and it was sought to be contended that it is a ground for accepting the plea that the agreement to sell of the year 1964 is not true. But the fact remains that based on the agreement to sell, a competent court granted a decree for specific performance and had also executed a regular sale deed in the year 1971 itself. At one breath, it was contended that exhibit A11 sale deed is sham and nominal but even in support of this contention, thee is no acceptable evidence. Even this contention cannot be accepted for the reasons assigned supra and for the reason mentioned infra. When the truth and validity of the agreement was upheld and the suit for specific performance was decreed by a competent civil court and that decree resulted in execution of a regular registered sale deed by the civil court in the year 1971, a finding in this partition suit contrary to the findings in the suit for specific performance is impermissible in the light of the fact that such a decree granted way back in 1968 cannot be permitted to be ignored by the plaintiff as contended by her, more particularly, when the plaintiff had failed to seek a declaration that the said decree is null and void. Therefore, the following decisions (i) **T.Vijendradas v. M.Subramanian** (at page 763); (ii) **S.P.Chengalvaraya Naidu (Dead) By L.Rs v. Jagannath (Dead) By L.Rs**; (iii) **Ram Chandra Singh v. Savitri Devi ;** (iv) **Tulsi v. Chandrika Prasad;** and (v) **A.V.Papayya Sastry v. Govt. of A.P** mentioned in paragraphs (17) and (18) of the plaint, which are also referred to in the written submissions, have no application to the facts of the present case as on the facts and evidence available on record, it is not possible to hold that the decree in the suit for specific performance is one obtained by fraud and misrepresentation; therefore, it is also not possible to hold that the subsequent decree in the suit for partition was also one obtained by fraud and collusion. Merely because the suit for specific performance was filed on 30.03.1968 and was decreed on 24.06.1968 and that sale deed was executed on 12.07.1971 by the court, i.e., after the death of P.V.Krishnaiah on 03.06.1968, the same cannot be taken as a ground in favour of the plaintiff and on that ground the plaintiff cannot be permitted to ignore the decree in the suit for specific performance without seeking declaration, as already held supra. The father-in-law and son-in-law lived under one roof and the other grounds like incorrect address of V.V.Rama Sastry was furnished in the suit for specific performance is again no ground to hold in favour of the plaintiff. The contention that the consideration under the agreement to sell of the year 1964 is a pittance and is not adequate and that there were no pressing debts of great volume to sell away the valuable property in the year 1964 again cannot be countenanced as in this partition suit it is impermissible for the plaintiff to challenge the agreement of sale of the year 1964 and the decree in the specific performance suit, for the reasons already assigned supra. This court now cannot scrutinise the evidence in the earlier suits and reach different conclusions than that were reached by competent civil courts in the former suits. The contention that the Kata-P.V.Krishnaiah was not made a party to the suit for specific performance is also a contention without merit as the sale agreement was executed by P.V.Rama Sastry in respect of a property, which this court considered as his separate and exclusive property. It is pertinent to note that the dealership of the Petrol Bunk was changed in favour of V.V.Rama Sastry as dealer long time back. There is nothing strange or against the law in the fact that the descendants of V.V.Rama Sastry while partitioning some of the properties had kept some other properties joint and that later, a suit for partition in O.S.No.133 of 1999 for partition of the remaining properties left behind by V.V.Rama Sastry was filed and the same was decreed. Even V.V.Rama Sastry, the father-in-law of P.V.Rama Sastry had expired way back in September 1973. Now, the plaintiff complains and comes to court stating that the said V.V.Rama Sastry had played fraud on his son-in-law in obtaining an agreement to sell in the year 1964 and in obtaining a decree for specific performance in the year 1968 and a sale deed in the year 1971 through court. Mutation or non-mutation in public records does not either confer or take away existing title; and, when the sale deed of the year 1971 was obtained in execution proceedings filed pursuant to the decree in specific performance suit, the non-mutation of the property in municipal records cannot be a ground at this distance of time to hold that such sale deed is sham and nominal. Admissions of parties do not confer or take away title in immovable property. There is no consistency at all in the case of the plaintiff. Suffice if it is said that we have bestowed our attention to all the contentions in the summary of submissions, whether referred to specifically or not in this paragraph and on such consideration, we are of the view that none of the contentions deserve consideration for the selfsame reasons assigned in support of the findings so far recorded under points 1 and 2; therefore, there is no need to separately give any further reasons for rejecting the contentions in the summary of submissions filed on behalf of the plaintiff/appellant.

16.10 In fact, there is no need to go into the next following aspect in the light of the finding of this court supra that the plaintiff had failed to establish that the plaint schedule properties are joint family coparcenary properties liable for partition and also in view of the finding that her suit is not maintainable for not seeking a declaratory relief that the decree and the judgment in the suit for specific performance in O.S.No.54 of 1968 are not valid and binding upon her. Nonetheless, the next alternate aspect, which is also of vital importance in this case, is as to whether the step mother is a legal heir of her stepson and is entitled to a share in the properties of her step-son, who is the propositus. In the decision in **Punga Seethai Ammal** (11 supra), a Division Bench of the Madras High Court had held that under Mitakshara school of law, a step-mother is not in the line of heirs at all and that she is neither a gotraja sapinda nor a bandhu. Though this decision was rendered prior to coming into force of the Hindu Succession Act, it would appear, from the provisions of the Act and the list of relatives specified in Class-I and in Class-II of schedule to the Act, that the very same legal position continues to hold the field. Reverting to the facts of the case, admittedly, P.V.Krishnaiah, the late husband of the plaintiff, and P.V.Rama Sastry, the step-son of the plaintiff had died in the years 1968 and 1998 respectively, i.e., after coming into force of the Hindu Succession Act. Now, the plaintiff being the step mother of P.V.Rama Sastry is not a coparcener. As per the provision of Section 8 of the Hindu Succession Act and the schedule annexed to the Act, only a 'mother' is one of the heirs in Class – I. A step-mother is not a Class – I heir. The legal heirs on whom the property of a male Hindu dying intestate devolves include a mother, but not a step mother. 'Father's widow' is mentioned under entry (vi) of Class–II of the schedule of the Hindu Succession Act. P.V. Rama Sastry had left behind him his wife (D11) and children D19 to D21. Section 8 of the Hindu Succession Act lays down that the property of a male Hindu dying intestate shall devolve firstly upon the heirs being the relatives specified in Class-I of the schedule; and secondly, if there is no heir of Class-I then, upon the heirs being the relatives specified in Class-II of the schedule. Therefore, the plaintiff who is a step-mother and being 'father's widow' and being a Class–II heir, is not entitled to succeed to the properties of P.V.Rama Sastry, in any view of the matter and in the presence of the Class I legal heirs.

16.11 Having regard to the reasons assigned, we answer the points against the plaintiff holding that the plaintiff is not entitled to a preliminary decree for partition as prayed for and that the suit is liable to be dismissed as the plaintiff had failed to seek a declaratory relief that the decree and judgment dated 24.06.1968 in O.S.No.54 of 1968 are not valid and binding upon her.

16.12 Before taking up the next point, it is necessary to refer to the decisions relied upon by the learned counsel for the plaintiff/appellant. **Sarasa Applakonda and others v. Pulamarsetti Somunaidu and another** (1 supra). In this 1st cited decision, the facts are as follows: 'The plaint schedule property was claimed as a joint family property and that the said contention was opposed stating that the grandfather of the plaintiff got the property from sources other than paternal side. However, it was also contended and evidence was placed before the court to show that property was treated as family property only and that therefore, the mere fact that the grandfather of the plaintiff got the property from a source other than paternal side has not altered the nature of the property, which was treated by the father of the plaintiff subsequently as family property.' In that factual milieu of this cited case, this court did not disturb the concurrent findings of the courts below. Thus, the decision in the cited case was rendered on the facts peculiar to that case. In the decision in **Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade** (2 supra)**,** the proposition of law laid down by the Supreme Court is as follows:

> **"Therefore, on survey of the aforesaid decisions what emerges is that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence."**

There is no dispute with this proposition. Suffice, it is said that the decision in the instant case is rendered on the facts peculiar to this present case, which are discussed supra. The decision in **K.Adivi Naidu v. E.Duruvasulu Naidu** (3 supra) was relied upon in support of the proposition that the sale of undivided share in joint family property by a coparcener would not bind the other coparceners. In the decision in **Manohar Lal v. Dewan Chand and others** (4 supra)**,** the following question was referred to a Full Bench of the Punjab and Haryana High Court: "Whether the sale of coparcenary property, if found to be neither for legal necessity nor for the benefit of the estate would be binding to the extent of the share of the vendor?" The Full Bench of the Punjab and Haryana High Court had finally answered the said question in the negative. In the case on hand, this court had held that the properties are separate and exclusive properties of P.V.Rama Sastry and that plaintiff had failed to prove that the properties are coparcenary properties. The decision in **Kakumani Subba Rao v. Kakumani Venkateswarlu (died)** (5 supra) is relied upon in support of the contention that merely because the joint family possessed debts, a presumption cannot be drawn that the joint family did not have any income. No such presumption is drawn in this case on hand. Therefore, the decisions relied upon by the learned counsel for the appellant do not advance the case of the appellant/plaintiff any further.

17. **POINT No.3**:

We have carefully gone through the decree and judgment of the trial court. For the reasons assigned in the judgment of the trial court and for the reasons now assigned by us in this judgment and the findings recorded under points 1 and 2 supra, we find no infirmity in the findings of the trial court calling for interference. Accordingly, we hold that the decree and judgment of the trial court are sustainable, both under facts and in law. The point is accordingly answered against the plaintiff/appellant.

18. **POINT No.4**:

In the result, and in view of the findings on points 1 to 3, the appeal suit is dismissed with costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

:: **APPENDIX OF EVIDENCE**::

Witnesses examined

For Appellants For respondents

---Nil---

Documents Marked

For Appellants:

Exhibit: A24: Copy of note bearing No. M.0960/MD.0961

For Respondents: Nil.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

22nd April 2015

RAR