HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 2445 OF 1996

JUDGMENT:

The unsuccessful plaintiff in Original Suit No.115 of 1987 on the file of the Court of Principal Subordinate Judge, Ongole, Prakasam District (for short the 'trial Court') preferred this Appeal challenging the decree and judgment dated 24.07.1996; whereby the suit filed by the plaintiff, for partition of the plaint schedule property into three equal shares and to allot one such share to him with separate possession and future profits with respect to Item 2 of plaint schedule property, was dismissed.

2. For convenience of reference, the ranks given to the parties in O.S. No.115 of 1987, before the trial Court, will be adopted throughout this judgment.

3. The plaintiff, 2nd defendant are sons, defendants 3 and 4 are the daughters of 1st defendant, who constituted as members of joint Hindu family, were natives of Addanki. In or about 1950, the 1st defendant along with his brothers sold their ancestral property at Addanki, came down to Ongole and settled there; later, the 1st defendant got divided from his brothers and with the money that he got by sale of ancestral property at Addanki, started business of oil crushing at Ongole and in the course of time with the earnings from the business of oil crushing, which is the family business, the 1st defendant purchased Item 1 of the suit schedule property. The 1st defendant being the Manager purchased a house in his name.

While the matter stood thus, in 1972, the 1st defendant discontinued his oil crushing business and started flour mill business, wherein the plaintiff used to assist the 1st defendant. At about 10 years ago, the plaintiff got married and the amount he received as dowry of Rs.60,000/- was utilized by 1st defendant; including a portion of dowry amount was used for performing marriage of his two daughters *i.e.,* defendants 3 and 4. About 7 years ago, 1st defendant along with 2nd defendant went to Santhanuthalapadu and with the earnings of joint family and also with the joint family gold and cash given to the plaintiff at the time of his marriage, purchased and constructed a rice mill. Thus, defendants 1 and 2 are managing the rice mill, while the plaintiff is managing the flour mill and 1st defendant was taking the savings from the flour mill and the flour mill is shown as Item 1 and the rice mill as Item 2 of the plaint schedule property. The plaintiff became sick, thereby he was forced to spend amount for his treatment, from the savings of the flour mill the plaintiff effected repairs to item 1 *i.e.,* flour mill while things goes on well. Subsequently, the 1st defendant has been demanding the plaintiff to go to Santhanuthalapadu, leaving Item 1 to his management but the plaintiff did not oblige to his demand because he is a sickly man and required constant medical treatment, however, 1st defendant continued his attempt to take forcible possession of Item 1 of the plaint schedule property. Thereupon, the plaintiff gave report to the police. In view of the bickering between the plaintiff and 1st defendant, the plaintiff thought that it is no more safe to continue as member of the family, hence, he filed a suit for partition of the schedule property into three equal shares and allot one such share to him with future profits.

4. The 1st defendant filed written statement denying material allegations of the plaint *inter-alia* contending that the 1st defendant and his three other brothers by name Ranganayakulu, Lakshminarayana and Koteswara Rao left Addanki 45 years ago, after death of their father. The mother of this defendant used to look after the family but

did not possess any property worth fetching income. At that time, the 1st defendant and his brothers started manual work. The 1st defendant worked as driver in Oil mill at Ongole; as the income for the family was not sufficient, the 1st defendant and his brother Koteswara Rao left for Cumbum to eke out their livelihood by selling oil machines and working in paddy hullers in the year 1962. The said Koteswara Rao and this defendant partitioned their movable properties *i.e.,* hullers and oil machines. This defendant was allotted 'yeddu ganuga' (oil crusher run with the aid of bullocks) and some gold to his share. Even before 1962, the other brothers of 1st defendant Ranganayakulu, and Lakshminarayana got divided from the family but none of them got any ancestral property. The common property pooled by the self exertions was alone partitioned. In 1962, movable properties were partitioned under a later dated 01.10.1962. The joint family of the defendant and his brothers own and possess only Ac.1.17 cents of dry land and the same was a vacant site and a old tiled house. All the brothers sold their ancestral property for Rs.1,500/- to Budati Guravaiah, who is the junior paternal uncle of this defendant. This defendant and his brothers out of the sale consideration of Rs.1,500/-, paid Rs.1,200/- to one Chittemsetty Kotaiah, who was a resident of Ongole and who is maternal uncle of this defendant, as he was poor. Out of the balance amount of Rs.300/- this defendant was given Rs.75/- towards his share by virtue of sale deed dated 03.02.1965. The family of the defendant was originally an agricultural family; after the death of the father of 1st defendant there was no body to look after the cultivation and the income from Ac.1.17 cents was not even sufficient to the family of the 1st defendant. During those days the maktha was Rs.25 to Rs.30/- *p.a.* for the entire Ac.1.17 cents.

The defendant's family was consisting of 4 other persons including sisters and mother but the income from Ac.1.17 cents was not sufficient to eke out their livelihood, they were forced to do their traditional family work *i.e.,* oil extracting, running oil business and allied works. This defendant earned property by his hard labour and not with the aid of any joint family nucleus.

In the year 1963, the 1st defendant and his brother Lakshminarayana purchased a dilapidated house from Chakka Yetirajam and Venkateswarlu for Rs.4,000/- and this defendant got the house repaired and started living therein. The other brother Lakshminarayana relinquished his share on 02.06.1972 in favour of this defendant. Thereupon, this defendant applied for installation of flour mill and oil rotary. After obtaining necessary permission from the concerned authorities, this defendant started oil rotary in the same house, constructed a house around the mill, the mill is being managed by him as single unit. Item 1 of the plaint schedule is the self acquired property of this defendant as it was purchased for Rs.1,700/- under a registered sale deed dated 28.02.1979. Subsequently, this defendant constructed a rice mill in Item 1. The defendant borrowed amount from Andhra Bank, Ongole to a tune of Rs.25,000/- and constructed a mill therein. Thus, Items 1 and 2 of the schedule property is the self acquired property of the 1st defendant and the plaintiff has nothing to do with the property since it was not acquired with the aid of joint family nucleus. This defendant denied the alleged appropriation of Rs.60,000/- paid to the plaintiff as dowry at the time of his marriage and also utilizing gold cash *etc.,* for performance of the marriage of his 2 daughters and contended that not even a paisa of the plaintiff was invested in the business or to perform the marriages of his daughters. Therefore, the plaintiff is not entitled to claim the relief of partition.

The defendant denied affecting repairs to the oil mill at Ongole and management of the same by the plaintiff. The plaintiff and 2nd defendant are working under the directions of the 1st defendant and the plaintiff is not a sickly person. The 1st defendant never demanded the plaintiff to go to Santhanuthalapadu after evicting from Item 1 of the schedule property. Though the plaintiff agreed to vacate the building in the presence of Chittemsetty Hanumantha Rao and Dasari Kesavulu, but he did not do so. At the instance of plaintiff's wife's sister's husband Siddaiah the plaintiff got issued a reply notice with false allegations. In view of the above facts the plaintiff is not entitled to claim partition of schedule property and future profits and finally prayed to dismiss the suit.

5. The 2nd defendant filed a memo adopting the written statement filed by the 1st defendant. The other defendants did not contest the matter.

6. On the basis of the above pleadings, the trial Court framed the following issues:

1) Whether the plaint schedule properties are the self acquired properties of defendant No.1?
2) Whether the plaintiff is entitled to seek partition of the plaint schedule properties into three equal shares and separate possession of one such share?
3) Is the plaintiff in constructive possession of the suit schedule properties and whether Court fee paid by him is correct?
4) To what relief the plaintiff is entitled?

7. After framing of the above issues, as per orders in I.A. No.1982 of 1993 dated 04.02.1994 and I.A. No.1382 of 1994 dated 01.03.1995, defendants 3 and 4 were added as parties to the suit respectively. Thereafter, the 3rd defendant filed written statement denying material allegations made in the plaint, more particularly, regarding performance of their marriages with the dowry amount of plaintiff and cash and gold presented to him at the time of marriage of the plaintiff.

The plaintiff is getting nearly Rs.300/- to Rs.500/- per day and not accounting the same to the 1st defendant. The plaintiff also purchased properties outside the jurisdiction of the Court in the benami names and earned not less than 7 to 8 lakhs without rendering account of the income from oil mill to 1st defendant, under whom the plaintiff is working. Defendants 3 and 4 are also entitled to equal shares along with the plaintiff. In such case, the plaintiff is entitled to 1/5th share, if the Court finds that it is a Hindu undivided joint family property, and finally prayed to dismiss the suit with costs.

8. 4th defendant filed memo adopting the written statement filed by 3rd defendant.

9. On the strength of the written statement filed by 3rd defendant and adopted the same by 4th defendant, the following additional issue was framed:

> Whether the defendants 3 and 4 are having shares as pleaded in Paragraphs 4 and 5 of the written statement of D-3?

10. During course of trial, on behalf of the plaintiff, PWs.1 and 2 were examined and Exs.A-1 to A-175 were marked. On behalf of the defendants, DWs.1 to 3 were examined and Exs.B-1 to B-3 were marked.

11. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court dismissed the suit declining to grant the relief of partition and future profits.

12. The plaintiff being unsuccessful before the trial Court preferred the present Appeal raising various contentions. The main contentions raised in the grounds of Appeal are:

a) The business carried on by the 1st defendant is the traditional family business *i.e.,* oil extraction and with the income from the said business, only Item 1 of the schedule property was acquired *vide* Ex.A-2. Similarly, by sale of the family property at Addanki *vide* Ex.A-4, they started business but the trial Court did not consider the evidentiary admissions including the judicial admissions in the written statement filed by 1st defendant and erroneously held that the property was not acquired with the aid of joint family nucleus;

b) The trial Court also failed to consider Ex.A-5 as it was purchased by 1st defendant, having no other independent source of income to acquire the same under Ex.A-5 but the trial Court on erroneous appreciation disbelieved the contention that Item 2 of the schedule property was not ancestral property;

c) If the evidence on record is appreciated in proper perspective including both judicial and evidentiary admissions, the trial Court would have granted a decree in favour of the plaintiff but on wrong appreciation of facts and law dismissed the suit erroneously though the 1st defendant failed to prove that he has got independent source of income to acquire Items 1 and 2 of schedule property and committed an error and finally prayed to allow the Appeal setting-aside the decree and judgment of the trial Court.

13. During course of argument, Sri V.L.N.G.K. Murthy, learned counsel for the plaintiff-appellant, would contend that payment of Rs.1,200/-, to maternal uncle of the 1st defendant after sale of the property at Addanki, out of Rs.1,500/- is unbelievable as the 1st

defendant and his family members were eking out livelihood by doing coolie work, the alleged payment is improbable to the natural circumstances. However, Rs.1,500/- during those days was a substantial amount and with the said amount only 1st defendant started business and earned huge income from the business, acquired Items 1 and 2 of the schedule property with the aid of joint family nucleus but the trial Court on erroneous appreciation of facts and law dismissed the suit. It is further contended that defendants 4 and 5 are not entitled to claim any share because they are not entitled to claim benefit of A.P. amendment to Section 6 of the Hindu Succession Act, 1956 or Section 29-A of the Hindu Succession Act; thereby, they are not entitled to claim 1/5th share as contended by defendants 3 and 4 and prayed to pass a decree in favour of the plaintiff setting-aside the decree and judgment under challenge.

14. *Per contra*, Sri M. Venugopala Rao, learned counsel for the defendants-respondents, argued totally in support of the finding recorded by the trial Court and prayed to dismiss the Appeal confirming the decree and judgment under challenge.

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

1) Whether Items 1 and 2 of the plaint schedule property was acquired with the joint family nucleus?

2) Whether the plaintiff is entitled to claim partition of Items 1 and 2 of schedule property? If so, what is his share?

16. **POINT No.1**: The basis for claiming that the schedule property was acquired with the aid of joint family nucleus *i.e.,* by sale of ancestral property by the 1st defendant and his brothers under

registered sale deed marked as Exs.A-1 and A-4 dated 22.04.1953 and 03.02.1965 respectively. Undisputedly, the property covered by Exs.A-1 and A-4 was the Hindu coparcenary property and the property was sold to B. Guravaiah. Ex.A-1 was executed for Rs.1,500/-. The main contention of defendants 1 and 2 is that the schedule property is the self acquired property and not acquired with the aid of joint family nucleus. The family did not possess any joint family nucleus muchless sufficient nucleus to acquire the schedule property. Therefore, Items 1 and 2 of the schedule property is the separate property of 1st defendant acquired with his self exertions. Undisputedly, sale deeds for Items 1 and 2 of the schedule property were obtained by 1st defendant, marked as Exs.A-2, A-3 and A-6, obtained necessary permission for running oil rotary and for construction of rice mill under Ex.A-5. Therefore, it is separate property of 1st defendant and contended that it is not liable for partition between the plaintiff and defendants.

17. When the plaintiff is asserting that the schedule property was acquired with the joint family nucleus, the initial onus of proof is on the plaintiff to prove that the joint family possessed sufficient nucleus to acquire the schedule property. To discharge the initial onus of proof, the plaintiff himself was examined as PW.1 and, as usual, he reiterated what he pleaded in his examination-in-chief; however, in the cross-examination he admitted that he studied up to Intermediate and produced his S.S.C. certificate. According to it, by the date of alleged partition, he was only a minor not in a position to participate in any business or at least to assist the 1st defendant in the business. The trial Court disbelieved the plaintiff's extending assistance in the business of 1st defendant by the date of purchase of the schedule property *i.e.,* Items 1 and 2. Even after reappraisal of entire evidence, it is evident that the plaintiff was only a boy less than 18 years, prosecuted his studies up to Intermediate but did not complete his

Intermediate education. For completion of Intermediate, any student is required to complete the minimum age of 17 years, unless he was permitted by the concerned Board to appear for examination before attaining 15 years of age for S.S.C. examination. In the absence of any such proof, he might not have appeared for the S.S.C examination before attaining 15 years of age, it can safely be concluded that he was aged 15 years by the date of his appearance for the S.S.C. examination and, thereafter, prosecuted his studies up to two years for Intermediate though not completed. Hence, the reasoning given by the trial Court regarding his physical capacity to participate in the business and assist the 1st defendant, so also time available for him to extend assistance to the 1st defendant is probable to the natural circumstances.

18. One of the contentions of defendants is that the dry agricultural land of Ac.1.17 cents at Addanki was sold for Rs.1,500/- under Ex.A-1 in the year 1953, as it was not fetching any income and it was only fit for raising dry crops not sufficient to meet the expenses for the family maintenance but out of such amount, Rs.1,200/- was paid to the maternal uncle of the 1st defendant the balance was only Rs.300/- and the same was divided among three brothers and each brother got Rs.75/-, the trial Court accepted the same but during argument learned counsel for the plaintiff-appellant demonstrated as to the falsity of the contention of the 1st defendant mainly drawing the attention of this Court to certain admissions in the evidence of DW.1. In the evidence of DW.1 and in the pleadings in the written statement, he contended that a poor family totally depending on agriculture, consists of more than 5 members including three brothers, two sisters and mother and the income being fetched by the dry agricultural land of Ac.1.17 cents was not sufficient to meet the necessities during those days in the year 1953. In such circumstances, the 1st defendant and his brothers sold

the property and started attending to labour work of their traditional caste profession of oil extraction and sale. If that is the case, when the 1st defendant and his brothers were in such a miserable financial destitution, not able to maintain their family with the income from the agriculture, question of payment of Rs.1,200/- to their maternal uncle out of sale proceeds of Rs.1,500/- is improbable to the natural conduct of any prudent man. Undoubtedly, when the 1st defendant and his family members are starving due to paucity of funds, as the income from the agricultural land is not sufficient to meet the family necessities, payment of Rs.1,200/- out of sale consideration of Rs.1,500/- to their maternal uncle is unbelievable. In such case, the contention of the learned counsel for the plaintiff-appellant is to be accepted but if it is divided among the family members, each member may get less than Rs.500/- during 1953 but whereas the property under Exs.A-1 and A-2 was purchased from one Chokka Yethiraja and others by 1st defendant and his brother Lakshminarayana but Lakshminarayana relinquished his share in Item 1 of the schedule property purchased under Ex.A-2 by executing original of Ex.A-3. Ex.A-2 was obtained on 27.03.1963 whereas the sale of Ac.1.17 cents of agricultural land took place in the year 1953, the plaintiff did not explain as to how the amount was acquired for purchasing the property and whether the property under Ex.A-2 was purchased with the joint family aid or not. In fact, the plaintiff was aged 30 years by 1987 and he might have born in the year 1957. If the age mentioned in cause title is accepted *i.e.,* almost 4 years after execution of Ex.A-1, conveying agricultural land of Ac.1.17 cents in favour others. The plaintiff when examined before the trial Court testified that his father and his brothers sold their family properties and partitioned the sale proceeds among themselves and his father started oil crushing business and that the business is joint family business of his father and with the income from the business, his father purchased Item 1 of the schedule property in his name and, after some time, he discontinued oil crushing business and started flour mill in Item 1 of the schedule property. Thus, the consistent evidence of PW.1 is that the property was acquired with the aid of joint family nucleus and produced documentary evidence, Exs.A-1 to A-4. Ex.A-1 is the registration extract of sale deed dated 22.04.1950, which shows that Budati Sangaiah, Ranganayakulu, Venkateswara Rao and others executed sale deed for Rs.500/- in favour of 3rd party and the purpose of sale mentioned therein was to acquire landed property at some other place but it is not known whether they acquired any property with the sale proceeds obtained under Ex.A-1 and no evidence brought on record by the plaintiff to establish that with the sale proceeds of Rs.500/- covered by Ex.A-1, the grand father of the plaintiff purchased any property. Ex.A-2 is the sale deed obtained by 1st defendant and his brother on 27.03.1963 for Rs.4,000/-. Taking advantage of this document, the plaintiff contended that by sale of the land under Ex.A-1 1st defendant and his brother acquired the property covered by Ex.A-2. If that is the case, the sale deed Ex.A-1 was executed in 1950 for Rs.500/- whereas property covered by Ex.A-2 was purchased in the year 1963 there is a long gap of 13 years and in the absence of any evidence to establish that with the sale proceeds of Ex.A-1 they carried on any business jointly and with the aid of the income from such joint family business, the property covered by Ex.A-2 was acquired, it is difficult for this Court to accept the contention of the plaintiff. Similarly, Ex.A-4 was executed subsequent to Ex.A-2 *i.e.,* on 03.02.1965. Therefore, the question of acquiring property covered by Ex.A-2 with the aid of sale proceeds covered by Ex.A-4 cannot be accepted. Viewed from any angle, the evidence of PW.1 regarding acquisition of property with the joint family nucleus is not consistent, in view of clear admissions about his age and other surrounding circumstances. In the cross-examination first few lines, PW.1 admitted that he studied up to Intermediate during the academic year 1980-82 by the time he was aged 21 years or 22 years and later he admitted that he was born in 1957. If that is the case, the question of his participation in the business by the date of acquiring the property when he was prosecuting his studies even in the year 1980-82 is improbable to the natural circumstances and on the strength of such improbable evidence, it is highly doubtful for any one to uphold the contention of the plaintiff. Curiously PW.1 admitted in the middle of the cross-examination at Page 4 that their family did not possess any other property except the property covered by Ex.A-1 at Addanki. If the property covered by Ex.A-1 alone was the joint family property by the date of sale, he was not even born and thereby question of testifying about investing the amount realized under Ex.A-1 by sale of property in the business is not believable. The consistent evidence of PW.1 is that in 1957 Item 1 of the schedule property was purchased and he does not know the source of sale consideration but the sale consideration received under Ex.A-1 was utilized by Ranganayakulu, his senior maternal uncle and he does not know the age of his father and brothers by the date of Ex.A-1 transaction and they were living by doing agriculture; if this piece of evidence is accepted, the plaintiff is unaware of anything about investing the sale proceeds covered by Ex.A-1 in any business and acquiring the property. Similarly, in the cross-examination dated 07.03.1996, at page No.5, PW.1 further admitted that by the date of Ex.A-2 he was aged 5 or 6 years and he was residing at his maternal uncle's house. Therefore, the plaintiff's knowledge regarding source of income to acquire the property covered by Ex.A-2 cannot be accepted for the simple reason that he was a boy of 5 or 6 years age. Similarly, he further testified about acquisition of property under Ex.A-3 with the joint family nucleus but in the cross-examination at Page No.6, PW.1 made an unequivocal admission that by the date of Ex.A-3 he was too young to know anything about the family affairs and transactions. Therefore, his knowledge about the source of income to acquire the property covered by Exs.A-2 and A-3 is totally improbable. He further admitted that the transaction covered by Ex.A-1 does not relate to his family property at Addanki and that except Ex.A-1 there is no other documentary evidence for him to prove that he has got right in the suit schedule property, as admitted by him at Page No.2. The property covered by Ex.A-6 *i.e.,* Item 2 of the schedule property was registered in the name of his father and that his father in 1980 borrowed amount from Andhra Bank and constructed rice mill. Undisputedly, the property covered by Exs.A-2 to A-4 and A-6 was registered in the name of 1st defendant and his brothers and his brother relinquished his right in Item 2 of the property by executing a relinquishment deed and the evidence of PW.1 further establishes that the plaintiff's father obtained loan from Andhra Bank and constructed rice mill in Item 2 of the schedule property.

19. The plaintiff got examined PW.2, Parchuri Venkata Ranga Rao, and according to his evidence, defendants 1 and 2 were running the flour mill before shifting to Santhanuthalapadu and from the beginning, father of PW.1 was looking after the flour mill. This piece of evidence is of no use to establish that the various items of the schedule property belong to joint family or acquired with the aid of joint family nucleus.

20. On behalf of the defendants, B. Venkateswarlu, the 1st defendant in the suit and father of the plaintiff was examined as DW.1, though he testified in the examination-in-chief that out of Rs.1,500/- realised by sale of the property, Rs.1,200/- was paid to his maternal uncle and Rs.300/- was divided among the brothers, this cannot be accepted for the reason that when the 1st defendant and his brothers were in financial crunch at the time of sale of the property, the question of payment of any amount to 3rd party does not arise. Even otherwise, the consistent evidence of DW.1 goes to show that he joined as worker in oil rotary, which is their caste profession and later carried on business of sale of oil and carried on other business also with the

income he earned from his hard labour working in oil rotary and purchased various items of the schedule property and not with the income from the joint family or with the aid of sale proceeds covered by Ex.A-1.

21. In the cross-examination, DW.1 admitted that his caste profession is oil extracting by rotary and migrated to Ongole at his 16th year of age. The property covered by Ex.A-2 was purchased by 1st defendant and his brother and his brother executed only Ex.A-3 relinquishing his share in the property covered by Ex.A-2 and testified that he constructed a small rice mill at Cumbum with zinc sheet roofing spending Rs.5,000/-. DW.1 and his elder brother by name Ranganayakulu carried on business at Cumbum for two or three years and he gave away the said rice mill to Ranganayakulu and came down to Ongole but no documentary evidence is available to establish the said fact. However, he further testified that he brought an amount of Rs.5,000/- from Cumbum and with the said amount he acquired the property; whereas the plaintiff and 2nd defendant worked under him as workers, they used to give some amount out of the collections by utilizing some amount for their personal use and denied about assisting the plaintiff in the business and consistently testified that the property is the separate property of 1st defendant.

22. DW.2 is N. Mahalakshmi, who is a nearest relative of both the plaintiff and defendants and attended the marriage of the plaintiff. According to her, at the time of marriage of plaintiff, 1st defendant presented 4 bangles to his daughter-in-law. One Dasari Varadaiah is the father-in-law of the plaintiff and the said Varadaiah did not present any gold to his daughter at the time of marriage as he had no properties. In the cross-examination, learned counsel for the plaintiff could elicit that DW.2 had acquaintance with the father-in-law of the plaintiff as he is related to her. Father-in-law of the plaintiff had no

specific avocation but wandering for work. In the entire cross-examination, nothing could be elicited by him except suggesting that father-in-law of PW.1 presented cash of Rs.50,000/- as dowry and presented 20 tulas of gold to wife of PW.1 and got denial of it. This suggestion is of no use for the reason that in the cross-examination of DW.1 nothing was elicited to believe that the alleged dowry paid to PW.1 by his father-in-law was utilized by 1st defendant in the business and by selling the gold presented to the wife of PW.I, DW.1 utilized the said amount. In the absence of any suggestion to DW.1 that he appropriated the dowry amount and gold of the plaintiff for performing marriages of his daughters, the same cannot be believed in the absence of any substantial proof.

23. G. Seethamma, who is the 4th defendant and sister of 3rd defendant, was examined as DW.3. She totally supported the defendants in all respects and in her cross-examination also nothing was elicited. In the entire oral evidence except asserting that various items of schedule property was acquired with the joint family property or with the aid of joint family nucleus, there was nothing to substantiate the said contention by producing any amount of reliable evidence. It is settled law that the person who is asserting that the property is the joint family property has to prove *prima-facie* that the property is the joint family property or acquired with the joint family nucleus.

24. In ***Appasaheb Peerappa Chandgade Vs. Devendra Peerappa Chandgade***[1], the Apex Court relying on its earlier judgments, held as follows:

> "When the defendants in the suit failed to establish from their evidence that they had sufficient means and out of which such property could be purchased. The purchase of the property by the defendants is not believable. Thus, it means the burden is upon the defendant to prove that defendant has got sufficient means to acquire the property."

25. If this principle is applied to the present facts of the case, the burden is upon the defendants to establish that various items of the schedule property were purchased with self exertions otherwise a presumption shall be drawn that the schedule property is the joint family property. However, in ***Mallipudi Narasimhamurthy Vs. Mallipudi Nagabhushanam***[2], this Court held as follows:

> "Hence, the burden of proof to show that the property, which was acquired by a member of a joint Hindu family in his name belongs to the joint family, is upon the person who sets up that plea. But if there are admissions made by the member, then the onus is shifted on to prove that what he admitted is not true."

26. Similarly, in ***D. S. Lakshmaiah and another Vs. L. Balasubramanyam and another***[3], the Apex Court held as follows:

> "There is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

27. In ***Baikuntha Nath Paramanik (dead) by LRs and heirs Vs. Sashi Bhusan Pramanik (Dead) by his LRs and others***[4], the Apex Court held as follows:

> "When a joint family is found to be in possession of nucleus sufficient to make the impugned acquisitions then a presumption arises that the acquisitions standing in the names of the persons who were in the management of the family properties are family acquisitions."

28. In ***Surendra Kumar Vs. Phoolchand (dead) through LRs***

and another[5], the Apex Court in Para 6 of the judgment held as follows:

> "It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. Both the courts below have scrutinized the evidence bearing in mind the aforesaid legal position and have rightly come to the conclusion that the property in question is the joint family property. The appreciation of evidence has been rightly made bearing in mind the correct legal position. The appellant thus has utterly failed to establish that the consideration money for the property was paid out of his personal funds. Consequently, there is no justification for Supreme Court's interference with the said concurrent findings of the two courts below."

29. Similar view was expressed by this Court in ***Vakati Venkatasubba Reddi Vs. Pelleti Pitchamma and others***[6]. In another judgment of this Court in ***Kolluru Sambasiva Rao Vs. Kolluru Nagabhushanam Alias Nageswara Rao***[7], a Division Bench of this Court had an occasion to deal with similar question and expressed the same view. In ***Ms. Rukhmabai Vs. Lala Laxminarayan and others***[8], the Full Bench of the Apex Court held as follows:

> "5. There is presumption in the Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds".

A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-a-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by an process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether movable or immovable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property.

An unregistered document can effect separation in status.

Held on considering the evidence that the rewash no severance in the joint family and that the brothers continued to be joint, doing joint business, that all of them conclusively brought into existence documents, including the relinquishment deeds, to tide over the financial difficulties in which they were involved."

30. In ***Srinivasa Krishnarao Kango Vs. Narayan Devji Kango and others***[9], the Full Bench of the Apex Court held as follows:

"Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition."

31. From the law declared by the Apex Court and this Court in the

decisions referred *supra*, the consistent view is that it is for the plaintiff, who is asserting that the property was acquired with the joint family nucleus, to establish that the family possessed sufficient nucleus to acquire the schedule property. If the plaintiff succeeds in establishing that the joint family possessed sufficient nucleus then the onus of proof shifts on to the defendants who are asserting that it is the self acquired property of the 1st defendant. The presumption that the property being joint would arise when the plaintiff discharged his initial onus of proof that the joint family possessed sufficient nucleus and such presumption can be rebutted by adducing evidence by the defendants. Here, the alleged source of income to acquire various items of the schedule property is the sale proceeds covered by Ex.A-1 with Rs.500/- in 1950. However, various items were acquired from 1963 onwards after a long gap of 13 years and during the said period the family consists of more than 5 members and they were initially dependent on agricultural as admitted by PW.1 in his evidence. Out of those family members, the joint family consists of 2 un-married sisters, whose marriages were performed subsequent to sale of property under Ex.A-1, besides meeting maintenance expenses. It is not the case of the plaintiff at any stage that the plaintiff started any business with the sale proceeds of Ex.A-1 during the long gap of 13 years between Exs.A-1 and A-2. On the other hand, the consistent plea and evidence of DW.1 is that DW.1 and his brother Ranganayakulu started working in a oil rotary for extraction of oil and later with the savings from their hard labour, they acquired property covered by Ex.A-2 jointly; thereafter, started different businesses including oil rotary, sale of motors *etc.,* and thus they became financially viable and acquired various items of the schedule property. Merely because the joint family possessed property worth Rs.500/- long prior to acquiring the property that itself is not sufficient to draw a presumption that the schedule properties were acquired with the joint family nucleus. In any view of the matter, in view of the law declared by the Apex Court and this

Court, it is for the plaintiff to establish that the joint family possessed sufficient nucleus, as discussed by me in the earlier paragraphs by the date of Ex.A-1, he was not even born and was prosecuting intermediate during the academic year 1980-82 till then he and no occasion to participate in the family affairs including the business. In such a case, whatever he testified based on Ex.A-1 cannot be accepted and it is not sufficient to accept that the joint family possessed sufficient nucleus to acquire various items of the schedule property, thereby question of drawing presumption does not arise.

32. The presumption of joint family cannot be extended to a separate business of any member of the joint family. In ***Bhuru Mal Vs. Jagannath and others***[10]*, the Privy Council held as follows:*

> "Though a business, if it belongs to a Hindu joint family, is an item of joint family property, special considerations apply to the question whether or not a business belongs to the family or to the individual member who carries it on. If it be a joint family business, then all the members of the family are liable for its debts upon the terms and to the extent laid down by the Hindu law. Whether or not it can be said that if a joint family is possessed of some joint property, there is a presumption that any property in the hands of an individual member is not his separate individual property but joint property, no such presumption can be applied to a business. A member of a joint undivided family can make separate acquisition of property for his own benefit and, unless it can be shown that the business grew from joint family property or that the earnings were blended with joint family estate, they remain free and separate."

33. If the principle laid down by the Privy Council is applied to the present facts of the case, the business carried on by one of the members of joint family cannot be termed as joint family business unless it is proved that it is blended with the joint family or carried on with the nucleus of the joint family. In the present case, there is absolutely no evidence to establish the said fact. The plaintiff produced as many as 175 documents out of them Exs.A-1 to A-4 are the registered extracts of sale deeds and relinquishment deed *etc.,* and

Ex.A-5 is the blue print plan for construction of flour mill and oil rotary and other documents are only electricity bills, property tax receipts *etc.,* At best all the electricity bills, property tax receipts may establish that the electricity consumption charges were paid by B. Venkateswarlu *i.e.,* 1st defendant. Even assuming for a moment that any one of the receipts were issued in the name of the plaintiff that those documents would not change the nature of property as joint family property.

34. On over all consideration of entire material available on record, there is absolutely no reliable evidence to draw presumption that various items of the schedule property are joint family property or to accept the contention of the plaintiff that those items are acquired with the aid of joint family nucleus. Thus, the plaintiff miserably failed to discharge the initial onus of proof which rests on him to establish that the joint family possessed sufficient nucleus to acquire the schedule property. On the other hand the defendants succeeded in establishing that various items of the schedule property were acquired by them with their self exertions. In the absence of any evidence that the 1st defendant appropriated the amount, which the plaintiff received as dowry from his father-in-law *etc.,* it is difficult to hold that any of the items of schedule property was acquired with the amount the plaintiff allegedly given to 1st defendant. Thus, the clinching evidence on record produced by the defendants established that various items of the schedule property are the separate properties of the 1st defendant during his life time, the plaintiff is disentitled to claim any share in the schedule property. Hence, I hold that the schedule property is not the Hindu Undivided coparcenary or a joint family property. Accordingly, the point is answered

35. **POINT No.2**:In view of my finding on Point No.1, various items of the schedule property sought to be partitioned are the separate property of 1st defendant and consequently the plaintiff is not entitled

to claim any share in the property by way of partition; this point is held in favour of the defendants-respondents and against the plaintiff-appellant.

36. According to Order XX Rule 5 of C.P.C., it is the duty of the Court to record finding on each and every issue but, if a finding on one issue is sufficient for decision in any Suit or Appeal, the Court need not record separate finding on the other issues. Hence, in view of the same, detailed and elaborate examination of question as to entitlement is unwarranted; thereby no finding need be recorded.

In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 24.07.1996, passed in Original Suit No.115 of 1987 by the learned Principal Subordinate Judge, Ongole.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 09-07-2015.
Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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[1] AIR 2007 SC 218

[2] AIR 1956 AP 255

[3] 2003 (10) SCC 310

[4] AIR 1972 SC 2531

[5] 1996 (2) SCC 491

[6] 1960 ALT 383

[7] 1993 (3) ALT 256

[8] AIR 1960 SC 335

[9] AIR 1954 (SC) 379 (1)

[10] AIR (29) 1942 PC 13