

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

APPEAL SUIT No.840 OF 1997

JUDGMENT:

The unsuccessful plaintiff in O.S.No.56 of 1987 on the file of Subordinate Judge, Chittoor, preferred this appeal, challenging the decree and judgment dated 19-11-1996, whereby the suit filed by the plaintiff for partition of the schedule property and other consequential reliefs, was dismissed.

2. The ranks given to the parties before the trial Court will be adopted throughout the judgment for convenience of reference.

3. The plaintiff filed the suit for partition and for allotment of share of the plaintiff and other ancillary reliefs, alleging that defendants 1 and 5 and one Munuswamy Reddy are the sons of Subbareddy, defendants 2 and 3 are the sons of 1st defendant, plaintiff and defendants 6 and 7 are brothers and sons of Chinna Gantla Reddy. defendant No.8 is widow, defendant No.9 is daughter of Chinna Gantla Reddy and one Nagi Reddy is father of Chinna Gantla Reddy.

4. Nagi Reddy and Subba Reddy were members of undivided Hindu Joint Family being sons of brothers and joint family owned and possessed property at Akuladoddi and Garnipalle Villages. Nagi Reddy was residing at Akuladoddi village by cultivating the land whereas Subba Reddy was residing in Garnipalle village and cultivating the land in that village. After the death of Nagi Reddy, his son Chinna Gantla Reddy when he was young, lost his mother and was brought to Garnipalle by Subba Reddy. Since then, Chinna Gantla Reddy and Subba Reddy living together as members of joint family. The joint family property at Akuladoddi was subsequently disposed of and with the sale proceeds, several items of properties at Garnipalle were acquired.

5. Subba Reddy died about 50 years ago leaving behind him defendants 1 and 5 and Munuswamy Reddy. D4 is the son of Munuswamy Reddy. After the death of Subba Reddy, his sons continued to live with Chinna Gantla Reddy as members of Hindu Undivided Joint Family and acquired several items of property with the aid of joint family nucleus or income derived from the joint family property. Thus, the schedule property is the Hindu Undivided Joint Family. The A-Schedule property belongs to the joint family, B-Schedule is the house property and C-Schedule is the movables, belonging to joint family.

6. The Hindu Undivided Joint Family was in affluent conditions earning more than Rs.75,000/- p.a. as income from the joint family property and not indebted to anyone. The family also possessed liquid cash of Rs.3 lakhs, Subba Reddy was managing the joint family during his life time, after his death defendant No.4 was in management of the joint family till his death about two years ago.

7. During the life time of Munuswamy Reddy, an attempt for partition of joint family was made but in vain. After the death of Munuswamy Reddy, 1st defendant is in management of the family and Chinna Gantla Reddy was not worldly wise. Hence, defendants 1, 4 and 5 have started secreting the income of the joint family with a view to deny share to Chinna Gantla Reddy and his sons, which they are entitled, a false murder case was foisted against the plaintiff. Chinna Gantla Reddy and other members of family on account of murder case, left the village and shifted to K.G.F. Chinna Gantla Reddy called upon defendants 1, 4 and 5 by notice dated 26.02.1986 for division of properties but they did not cooperate for partition.

8. The plaintiff, defendants 6 and 7 are each entitled to $\frac{3}{20}$ th share in the suit schedule property, defendants 8 and 9 each entitled to $\frac{1}{40}$ th share and other defendants together entitled to remaining share. The defendants are also liable to render true and correct account of joint family property from January, 1985.

9. As the defendants did not cooperate for partition and to render true and correct account despite oral demand and notice dated 26.02.1986, the plaintiff filed the suit.

10. The 2nd defendant filed written statement and the same was adopted by defendants 1, 3 and 5 by filing a memo. The defendants denied the material allegations except admitting the relationship between the parties. The claim of the plaintiff was resisted by defendants, on the following grounds.

a) A.Nagi Reddy was originally resident of Akuludoddi village. He died leaving behind him, Gantla Reddy and Muni Reddy as sons and Akkamma and Kullakka as his daughters. When Nagi Reddy died, Gantla Reddy, who is also known as Chinna Gantla Reddy was young. The relatives of Chinna Gantla Reddy alone attended the obsequies of late Nagi Reddy due to sympathy towards the young children, decided to shift him to Subba Reddy house. Later Chinna Gantla Reddy was working in the family of Subba Reddy, resided with him for 15 years in the house of defendants and later left to Ernipalle Kotlaguru and Akuludoddi villages and resided there for 6 or 7 years and returned to the defendants house requesting to provide some work to sustain himself.

b) Subba Reddy again permitted him to stay in the house to look after cattle and the family. Thereafter performed the marriage. After marriage Chinna Gantla Reddy and his wife used to work in the family. Chinna Gantla Reddy sold his land at Akuludoddi for his marriage expenses. Thereafter, all the children of Gantla Reddy were also working in the family of defendants.

c) Partition that took place in 1940 between Obul Reddy, Munuswamy Reddy and Pedda Gantla Reddy, who are sons of late Subba Reddy. Later, there was a reunion and began to live as Hindu undivided joint family members. Even after reunion Chinna Gantla Reddy S/o Nagi Reddy continued to work in the family of the defendants. In 1975, when A.P.Land Reforms Act came into force, Obul Reddy, Munuswamy Reddy and Pedda Gantla Reddy

submitted their declarations to the Tribunal and the Tribunal declared them as non-surplus holders in view of the separate declarations submitted by them.

d) Lakshmamma, daughter of late Subba Reddy was married to one Muni Reddy, who was taken in illitom adoption was also submitted his declaration to the Land Ceiling Authority. There is evidence of partition by executing partition list dated 06.06.1995. Therefore, there was no joint family in existence by the date of alleged demand or filing the suit and thereby, A and B Schedule property is the separate property of the defendants and the plaintiff has no right to claim any share therein. Similarly, C-schedule properties were not available for partition and finally, prayed for dismissal of the suit.

11. The 9th defendant filed separate written statement adopted by defendants 6 to 8, wherein they admitted the suit claim reporting no objection to pass a preliminary decree.

12. On the basis of above pleadings, the trial Court framed the following issues and additional issues, they are extracted as follows:

1. Whether the plaintiff is entitled for partition and separate possession of 3/20th share in the plaint schedule properties?
2. Whether the 1st defendant is liable to render accounts as prayed for?
3. Whether the Court fee paid is not correct?
4. Whether the suit is bad for non-joinder of necessary parties?
5. To what relief?

Additional Issues:

1. Whether Nagi Reddy and Subba Reddy were the sons of brothers and if so, whether they were the members of Hindu joint family?
2. Whether Chinna Gantla Reddy was a member of the joint family consisting of Subba Reddy and his sons and Chinna Gantla Reddy and his branch?
3. To what relief?

13. During trial, on behalf of the plaintiff, PWs 1 to 6 were examined and marked Exs.A-1 to A-9 and on behalf of the defendants, DWs 1 to 6 were examined and marked Exs.B-1 to B-25. Exs.X1 to X3 were also marked.

14. Upon hearing argument of both the counsel, considering oral and documentary evidence on record, the trial Court disbelieved the existence of Joint Hindu Undivided Family consisting of plaintiff and defendants and declined to pass a preliminary decree for partition.

15. Aggrieved by the said decree and judgment, the plaintiff preferred this appeal raising several contentions. Mostly, the findings with regard to their living as members of the joint family while challenging the alleged partition evidenced by partition list and contended that the suit schedule property is still continuing as Hindu Undivided Joint Family and they are liable for partition. But the trial Court did not consider the specific pleadings with reference to evidence in proper perspective and erroneously dismissed the suit and finally prayed to allow the appeal setting aside the decree and judgment passed by the trial Court and pass a preliminary decree for partition and separate possession as claimed by the plaintiff.

16. During the course of argument, Sri R.Vijaynandan, learned counsel for the appellant contended that the trial Court failed to appreciate oral and documentary evidence in proper perspective and the trial Court overlooked various admissions both judicial and evidentiary admissions and committed an error in dismissing the suit.

Finally, prayed this Court to reappraise entire evidence and pass a preliminary decree in favour of the plaintiff for the reliefs as claimed.

17. Whereas Sri S.V.Muni Reddy, learned counsel for the respondents/defendants while supporting the findings of the trial Court, brought to the notice of this Court about the death of the 1st defendant that took place on 13.09.2005 and death of the 5th defendant about five years ago but no steps were taken to implead the legal representatives. This information was furnished by the learned counsel for the defendants on 09.07.2015. Again, appeal was adjourned for four times but finally after hearing the respondent, the appeal was reserved for judgment on 20.10.2015 since no steps were taken by the appellant to implead the legal heirs of the deceased 1st and 5th defendants/respondents. Similarly, the appeal against Ramachandra Reddy S/o Chinna Gantla Reddy, who is 6th defendant/respondent was dismissed by order dated 27.12.2001 and no steps were taken to get the orders set aside. The learned counsel appearing for the defendants/respondents only contended that in the absence of all the legal representatives of the deceased defendants/respondents 1 and 5 and in view of dismissal of appeal against the 6th defendant/respondent, the appeal is not maintainable and the suit for partition is liable to be dismissed on this ground alone.

18. Considering rival contentions, perusing the decree and judgment of the trial Court including oral and documentary evidence, the points that arise for consideration are as follows:

1. Whether the partition pleaded by the defendants under partition list dated 06.06.1995 is true, valid and binding on the plaintiff? If so, whether plaintiff is deemed to be a member of the joint family?
2. Whether the joint family own and possessed A, B and C-Schedule property?
3. Whether the appeal is maintainable without impleading the legal heirs of deceased defendants/respondents 1 and 5 and in the

absence of defendant/respondent No.6 against whom the suit was dismissed?

4. Whether the plaintiff is entitled to claim partition of A, B and C-Schedule property? If so, whether a preliminary decree be passed declaring that the plaintiff is owner of any share in A, B and C-Schedule property setting aside the decree and judgment of the trial Court?
5. To what relief?

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POINT NO.3:

19. Undisputedly, the suit was filed before the trial Court for partition and it was dismissed. The appeal was filed challenging the decree and judgment on various grounds. However, the appellant/plaintiff, though, arrayed all the defendants as 1 to 9 as parties to the appeal, the process fee was not paid for service of notice on defendant/respondent No.6 by name, Ramachandra Reddy. Therefore, the appeal against defendant/respondent No.6 was dismissed for default by order dated 27.12.2001. Ramachandra Reddy is the son of Chinna Gantla Reddy, who is entitled to equal share along with the plaintiff by name V.Jayarama Reddy, S/o Chinna Gantla Reddy. But without prosecuting the appeal against Ramachandra Reddy, defendant/respondent No.6, the appeal is not maintainable, as the suit for partition cannot be decided in the absence of co-sharer. Even according to the allegations made in the plaint, the plaintiff, defendants 6 and 7 are entitled to $\frac{3}{20}$ th share each. Therefore, Ramachandra Reddy, defendant/respondent No.6 is also entitled to claim $\frac{3}{20}$ th share according to the allegations made in the plaint. In his absence, the share of the plaintiff and defendants cannot be decided in a suit for partition. On this ground alone, the appeal is liable for dismissal.

20. During pendency of the appeal, the 1st defendant died on 13.09.2005 and 5th defendant died about five years ago. But the legal heirs of both the deceased defendants/respondents were not

brought on record, despite granting time by this Court from 07.09.2015 to 28.10.2015. The learned counsel for the respondents mainly contended that a suit for partition is on different footing than ordinary suits, where all the joint owners or coparceners have to be impleaded to the suit for partition otherwise the suit is not maintainable.

21. In view of the specific contention, it is the duty of this Court to decide about maintainability of the appeal, as it is a continuation of the suit for the defect of non-joinder of necessary parties. A similar question came up before this Court in **Jahangirji v. K.Kumar**, where this Court while considering a similar situation relied on various judgments of the Apex Court and other Courts and held that non-joinder of necessary parties is fatal in a suit for partition. In the facts of the above judgment, defendants/respondents 1 and 5 died during pendency of suit leaving behind their daughters to succeed their property but they were not impleaded as parties during pendency and the suit was dismissed. In view of the specific plea raised by the learned counsel for the respondents, a suit for partition is not maintainable without impleading the legal heirs of co-owners or joint owners or coparceners, even based on Section 99 of Code of Civil Procedure (for short 'C.P.C.') for non-joinder of necessary parties, decree can be set aside or reversed.

22. In **the State of Punjab v. Nathu Ram**, a similar question came up for consideration and the Apex Court held that there was no abatement of appeal against co-respondents of the deceased as Order XXII Rule 4 C.P.C. did not provide for the same but in certain circumstances, the appeal could not be proceeded against them and such a result depends on the nature of relief sought for in the appeal.

23. The Single Judge of this Court in **Balireddy Appalanarasiaah (died) and others v. Balireddy Saddhu** held that when the properties were joint family properties and all the sons of deceased were entitled to a share in the said property. When all the

sons, grandsons and granddaughters and daughter-in-laws were entitled for share, sisters and mother of plaintiffs and sisters and mother of defendants were also proper and necessary party to suit for partition. Thus, all persons to respective branches were proper and necessary parties to avoid multiplicity of proceedings. In their absence, the suit for partition cannot be decided.

24. In **Dhanalakshmi v. P.Mohan**, the Apex Court while considering the defect of non-joinder of necessary parties held that the co-sharers are necessary parties to the suit. However, the issue involved in the above suit is not directly connecting to non-joinder of necessary parties in a suit for partition but in the said suit, the property was purchased from co-sharers and filed suits without impleading the other co-sharers. Therefore, the co-sharers wanted to come on record to work out equity in their favour in a final decree proceedings and in such circumstances, the Apex court held that they are proper and necessary parties. Even in the present case also though the plaintiff admitted about the share of the 6th respondent/defendant and defendants 1 and 5, who died during pendency of the suit are entitled to claim share in the property. But the legal heirs of the deceased defendants 1 and 5 were not impleaded though they are necessary parties to the suit. In their absence the claim cannot be decided since the defendants were contending from the beginning that the property was already partitioned and the plaintiff is not entitled to claim any share. On this ground alone, the appeal is not maintainable.

25. The 6th defendant was entitled to 3/20th share according to the plaintiff, who is no other than the brother of the plaintiff. But the appeal was not prosecuted against him and allowed this Court to dismiss the appeal for non-prosecution. Even in his absence who is a co-owner or coparcener of the property, the suit for partition cannot be proceeded and decided as defendants 1, 5 and 6 are proper and necessary parties who are entitled to claim share in the property having right and interest even if the case of the plaintiff is accepted. Therefore, in the absence of defendants 1 and 5 the suit for partition

is not maintainable. Since the first appeal is continuation of the suit the legal representatives of the deceased/respondents 1 and 5 have to be brought on record and similarly the plaintiff has to take steps to get default order passed dismissed the appeal against the 6th defendant is to be set aside, otherwise, the appeal is not maintainable.

26. Despite, furnishing information by the learned counsel across the bar about death of defendants/respondents 1 and 5, the learned counsel for the plaintiff/appellant failed to take any steps to implead the legal representatives by following appropriate procedure under Order XXII C.P.C. Even otherwise the plaintiff and defendants are coparceners or co-owners and the death of co-owners or coparcener is supposed to be within the knowledge of the plaintiff/appellant. But simply, the plaintiff slept over for more than ten years without impleading the legal heirs of defendants 1 and 5. Hence, the appeal is not maintainable and liable to be dismissed on the ground of non-joinder of proper and necessary parties to a suit for partition by applying the principles laid down in the above judgments. Accordingly, the point is held in favour of the defendants/respondents and against the plaintiff/appellant.

POINTS 1, 2 AND 4:

27. As per my finding on point No.1, the first appeal being the continuation of suit, the same is not maintainable for non-joinder of proper and necessary parties to the suit who are having right in the schedule property despite denial of the right of the plaintiff to claim any share. Therefore, when the plaintiff is non-suited on the ground of non-joinder of proper and necessary parties, this Court need not record any finding since the finding on issue No.3 is sufficient to decide the appeal before this Court by applying Order XX Rule 5 C.P.C. hence, it is wholly unnecessary to record findings on other points.

POINT NO.5:

28. In view of my finding on Point No.3, this appeal is dismissed confirming the decree and judgment dated 19.11.1996 in O.S.No.56 of 1987 passed by the Subordinate Judge, Chittoor. No costs.

29. As a sequel, the miscellaneous applications pending, if any, shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:07.11.2015

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