

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE S. RAVI KUMAR

LETTERS PATENT APPEAL No.213 of 2000

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Date: 16-11-2015

Between:

Kodey Satyavathi and others.

...Appellants.

And:

Kondey Madhava Rao

...Respondent.

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE S. RAVI KUMAR

LETTERS PATENT APPEAL No.213 of 2000

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JUDGMENT: (Per Hon'ble Sri Justice S. Ravi Kumar).

This Letters Patent Appeal is preferred challenging judgment of a learned Single Judge of this Court, dated 25-04-2000 in A.S.No.770/1988.

Respondent herein filed O.S.No.85/1984 claiming a share in the

plaint schedule properties, for partition of the same as adopted son of late Dr. Venkata Rao and Subordinate Judge (presently Senior Civil Judge), Tadepalligudem decreed the suit by its judgment dated 07-09-1987 and that judgment was confirmed by this Court in A.S.No.770/1988.

Appellants herein are defendants 1 to 3 and respondent herein is plaintiff in the above referred O.S.No.85/1984. This suit was originally filed before Subordinate Judge, Eluru, which was registered as O.S.No.62/1982, subsequently transferred to Tadepalligudem.

Plaint averments in brief are as follows:

“Plaintiff is third son of Kodey Naganna elder brother of late Dr. Venkata Rao garu. He was born on 09-10-1953. His natural mother Satyavathi died on 16-10-1953. Late Satyavathi and D1 are daughters of brothers. On the death of plaintiff's mother, Dr. Venkata Rao and his wife i.e., first defendant took him to their house and were bringing him up. Second defendant is daughter of first defendant and late Venkata Rao. On account of health of first defendant, Dr. Venkata Rao thought that there is no possibility of D1 begetting any more children, therefore, on the advise of his mother, Dr. Venkata Rao and D1 decided to adopt plaintiff and they in turn requested natural father of plaintiff (Naganna) to give plaintiff in adoption. Naganna and Appayamma gave plaintiff to Dr. Venkata Rao and first defendant who in turn received plaintiff. Adoption ceremony was performed on 1st May, 1958 in the presence of large number of friends and relatives. Since then, plaintiff was brought up and was educated as son of Dr. Venkata Rao and first defendant with all love and affection. While so Dr. Venkata Rao died on 06-09-1975 and plaintiff performed his obsequies. Thus plaintiff and Dr. Venkata Rao were members of Mithakshara Joint Hindu Family and Venkata Rao died leaving plaintiff as adopted son, second defendant being daughter and first defendant being wife. Late Dr. Venkata Rao and his brother divided their properties through registered partition deed dated 12-12-1945 and in the said partition, Dr. Venkata Rao got plaint ‘A’ and ‘A-1’ schedules. Dr. Venkata Rao, with the help of ancestral property, started his medical practice and was successful in his profession and with the income, both on ancestral property and profession, he acquired plaint ‘B to E’ schedule properties. Out of these properties, plaint-D & E schedules were purchased in the names of defendants 1 & 2 as benami. Dr. Venkata Rao got educated third defendant from 9th Class

and thereafter performed his marriage with the second defendant in or about 1967 and provided finance to third defendant to complete his MBBS. After the death of Venkata Rao, D3 has been carrying on the medical practice left over by Dr. Venkata Rao in the same building in which Dr. Venkata Rao was running a Nursing Home shown in plaint 'B' schedule. After death of Venkata Rao in or about 1976 on account of ill- treatment meted out to plaintiff, he was forced to leave the house and then he got issued a registered notice dated 26-06-1976 to D1 through an advocate for which D1 gave a reply through her advocate with false and untenable allegations. After exchange of these notices, persons interested intervened and on their pressure, plaintiff and defendants started living together and plaintiff performed first anniversary of late Venkata Rao in the family house. Plaintiff came to know that defendants 1 & 2 applied for succession certificate by filing O.P.No.4/1981 before District Munsiff (Presently Junior Civil Judge), Tadepalligudem for withdrawing a sum of Rs.16,600/-and interest of Rs.2,976/-. Plaintiff also came to know that first defendant executed a General Power of Attorney in favour of third defendant to sell land in Survey No.73/2002 as house sites, since defendants are converting immovable properties into movable properties to secret them, it is no longer safe to continue as joint, hence the suit for partition. Plaintiff prayed for partition of all the plaint schedule properties into three equal shares and to allot two such shares to him."

First defendant filed written statement disputing the plaint averments and brief contents of her written statement are as follows:-

"The plaintiff claims that he was adopted on 01-5-1958 on the ground that late Venkata Rao felt that there was no scope for begetting any more children. Late Venkata Rao garu would have been 37 years at that time and this defendant would be about 30 years of age. Both of them were in their prime of life and child begetting age. They were also healthy, therefore, the motive for adoption alleged in the plaint is unfounded and it is invented for the purpose of this plaint. The said allegation indicating the motive for adoption is clearly an after thought invented for the purpose of setting up a claim on properties. It is not true as alleged in Para 5 that at the instance of mother of Kodey Venkata Rao, he and this defendant decided to adopt the plaintiff. Allegation that Naganna garu and his second wife China Appayamma garu gave plaintiff, and that this defendant and her husband received the plaintiff as adopted son on 01-05-1958 and that

the ceremony of adoption took place in the presence of a large number of friends and relatives is not true and correct.. In the registered notice, there is a glaring omission about this allegation. In the notice, it is stated that plaintiff was adopted when plaintiff was six months old and by that date, Naganna garu did not marry China Appayamma. It is further stated there is variation between the date of adoption mentioned in the registered notice and the date mentioned in the plaint, therefore, the allegation of adoption ceremony by giving and taking on 01-05-1958 is false and an after thought. Except item No.10 of 'A' schedule, the rest of the properties in 'A' & 'A-1' schedules are situated at Tadepalligudem. This town was taken over by Government as Inam Estate in July 1961 under the provisions of Estates Abolition Act. Under Section 3 of the said Act, all pre-existing rights ceased and determined except those rights which have been recognized by the settlement officer under Section 11 or Section 15 of the said Act. Some of the lands were leasehold lands. Inamdar claimed a patta for those lands under Section 15 of the said Act. The claim of the tenants for permanent occupancy rights was disputed by Inamdar on the ground that the leases were short term leases reserving a right to resume for personal cultivation. The land holder Smt. T. Tirumala Bhagya Lakshamma set up a claim under Section 15 of the said Act that late Venkata Rao garu and his brothers have no right of occupancy. Though the settlement officer recognized the said tenancy rights, the Estates Abolition Tribunal, West Godavari has set aside the order of the settlement officer and recognized the right of Inamdar. The site in 'B' schedule was purchased by this defendant's husband and it was not the property that was allotted in the partition. The ancestral property got by Dr. Venkata Rao is very insignificant and did not constitute nucleus for acquiring other properties. This defendant was brought up by late Javvadi Narasimha Murthi garu of Penugonda as his foster daughter. In 1941, marriage of this defendant was performed with Venkata Rao and this defendant's foster father undertook to pay the expenses of higher education of Venkata Rao till completion of medical degree. In December 1948, this defendant's husband newly set up practice as a Doctor at Tadepalligudem and he was not having much practice in the early days, therefore, this defendant's foster father entertained the idea of getting a hospital building constructed for his son-in-law with all facilities so that Venkata Rao garu can thrive well in his practice. With that view, Narasimha Murthy garu bargained a

plot for Rs.4,750/- and purchased it through registered sale deed dated 24-04-1950. Thereafter, he financed to construct the hospital building, therefore, it is not a joint family property. Ancestral nucleus was insufficient to acquire the site or to construct the building thereon. Likewise 'C' schedule movable property was not acquired from out of the income of joint family property. Late Narasimha Murthy garu foster father of this defendant gave land, cash and valuable jewelry to this defendant as Pasupukumkuma at the time of marriage and the same was improved by her natural father and was utilized it in acquiring all the items of 'D' schedule properties. The total extent of item one of 'D' schedule is not 2000 square yards and it is only 471 1/9 square yards which was purchased on 21-01-1963 and 720 square yards was purchased on 03-10-1964. This defendant purchased the said property in the name of second defendant but not by her husband. These properties were purchased with the income realized on the lands that were given to this defendant as Pasupukunkuma. Plaintiff abused the benefits confirmed on him by this defendant and her husband and after the death of this defendant's husband instigated by his father and uncles and Sri Kodey Gangarao garu he went away from the house only with a view to set up a false claim and claim a share in the properties. The defendant gave a reply with all correct facts. Plaintiff has no cause of action to sue and not entitled for the reliefs prayed for."

Defendants 2 & 3 filed separate written statements reiterating the same contentions that were raised by first defendant and only addition is that the most of the movables mentioned in 'C' schedule are not existing and their values are exaggerated and they further contended that plaintiff is not entitled to any share in the suit schedule properties much less a 2/3rd share.

On these pleadings, trial Court framed the following issues for trial:

"1. Whether the alleged adoption of plaintiff by late Dr. Venkatarao and 1st defendant on 1.5.58 is true, valid and binding on defendants?

2. Whether the plaintiff was ever a member of joint family with late Dr. Venkatarao?

3. Whether all or any of the properties mentioned in A to E schedules are joint family properties of late Dr. Venkatarao and plaintiff and in which the plaintiff

can claim a share?

4. Whether all or any of the items in D Schedule were acquired by late Dr. Venkatarao benami in the name of first defendant?

5. Whether all or any of the items in F schedule were acquired by late Venkatarao benami in the name of the 2nd defendant?

6. (a) Whether the order of the Land Reforms Tribunal dt.13.10.76 including lands in D Schedule in the holding of first defendant operates as res-judicata in respect of plaintiff's claim thereto?

(b) Whether the plaintiff barred by constructive res-judicata by omitting to claim a share in the lands shown in the holding of late Dr. Venkatarao?

7. Whether the 3rd defendant is illatom son-in-law of late Dr. Venkatarao and first defendant and if so, to what rights is 3rd defendant is entitled to?

8. Whether the plaintiff is entitled to claim a share in the compensation paid or payable under the Land Acquisition Act?

9. Whether the order granting succession certificate in respect of out standings of late Dr. Venkatarao in favour of defendants 1 & 2 operates as res-judicata against plaintiff's claim as legal heir of late Dr. Venkatarao?

10. Whether the moveables in the C Schedule not found in inventory exist and whether all or any of the existing movables are joint family moveables of plaintiff and Dr. Late Venkatarao?

11. Whether the items of C Schedule claimed by defendants 1, 2 and 3 as per commissioner's report belong to them as their separate property respectively?

12. Whether the plaintiff's claim in respect of money and moveables without obtaining succession certificate is maintainable?

13. Whether the plaintiff is entitled to question the alienation made by 1st defendant in respect of items in A-1 Schedule?

14. Even in case the plaintiff's adoption is held to be true, and valid whether an adopted son can claim a share, as heir in class I of Hindu Succession Act?

15. Whether the claim to share merely as adopted son and as joint family member, in the properties of adoptive family in the absence of a separate agreement, during the life time of both the adoptive parents is maintainable in view of Sections 12 and 13 of Hindu Adoptions and maintenance Act?

16. Whether the debts as per list attached to the written statement of first defendant are true and binding on the plaintiff if the alleged adoption is held to be true and valid?

17. Whether the suit as framed is not maintainable?

18. Whether the suit is bad for champerty and maintenance?

19. Whether the properties mentioned in various schedules to the plaint were over valued?

20. Whether the valuation of this court claim is correct and whether proper court fee is paid?

21. To what relief?"

During trial, eight witnesses were examined and 38 documents are marked on behalf of plaintiff, whereas seven witnesses are examined and 40 documents are marked on behalf of defendants besides two documents through Advocate Commissioner. On a over all consideration of oral and documentary evidence, trial Court accepted the claim of plaintiff that he is the adopted son of late

Dr. Venkata Rao and decreed the suit for partition, only in respect of 'A' & 'A-1' schedules and dismissed plaintiff's claim in respect of other items. Aggrieved by decree of partition in respect of 'A' & 'A-1' schedules, D1 to D3 preferred A.S.No.770/1988 before this Court and aggrieved by the dismissal of claim in respect of 'B' to 'E' schedules, plaintiff preferred Cross-objections and a learned Single Judge of this Court dismissed both appeal and cross-objections confirming the trial Court's Judgment. Now only defendants 1 to 3 preferred this Letters Patent Appeal and there is no appeal by plaintiff

against dismissal of his cross-objections, therefore, plaintiff's claim is only in respect of 'A' & 'A-1' schedule of the plaint.

Learned advocate for appellants Ms.G.Sudha and learned advocate for respondent Sri K.S.Murthy, extensively argued both on facts and law.

Appellants herein are defendants 1 to 3 and respondent herein is sole plaintiff in O.S.No.85 of 1984 on the file of Subordinate Judge, Thadepalligudem and they are hereinafter referred to as plaintiff and defendants as arrayed in the suit.

From the submissions and pleadings, the main controversy between the parties is in respect of adoption pleaded by plaintiff and with regard to nature of plaint schedule properties and rights thereon.

From the submissions of both sides and examination of material papers, the following points would arise for our consideration, in this Letter Patent Appeal.

1. Whether plaintiff is adopted son of late Dr.Venkatarao and D.1?
2. Whether plaintiff is entitled to any share in plaint schedule properties, if so, to what share?
3. Whether there are any grounds to interfere with findings of the trial court and appellate court?
4. To what relief?

POINT No.1:

According to plaintiff, late Dr.K.Venkata Rao and first defendant at the instance of mother of Dr.Venkatarao decided to adopt him, consequent to such decision, they requested natural father of plaintiff (P.W.2) and his wife China Appayamma to give plaintiff in adoption, accordingly, a regular ceremony of adoption was performed on 1-5-1958 in the presence of friends and relatives, on which date, there was a 'Gruhapravesam' function. According to defendants, plaintiff is not the adopted son, he was only brought up by late Dr.Venkata Rao and that there was no adoption ceremony on 1-5-1958, it is only a creation to knock away the properties of Dr.late Venkata Rao.

Learned advocate for appellants/defendants would contend that there is no specific pleading about adoption and only during trial, plaintiff has improved his case through evidence and the same is not permissible under law. She would contend that necessary ingredients required for an adoption were not pleaded in the plaint, except

vaguely saying that there was an adoption ceremony on 1-5-1958. She submitted that there are suspicious circumstances about the adoption ceremony and plaintiff failed in removing those suspicious circumstances. She submitted that there is a contradictory statement as to the age of plaintiff as on the date of alleged adoption. She submitted that in Ex.A.21 notice, age of plaintiff as on the date of alleged adoption was mentioned as six months but as per the pleadings and evidence plaintiff was about four and half years old as on the date of alleged adoption, this is a very strong suspicious circumstance to disbelieve adoption. She further submitted that plaintiff is completely silent about the persons present at the time of alleged adoption ceremony but witnesses are examined to show as if they were present. She submitted that witnesses examined on plaintiff's side deposed the tutored version, and their testimonies are not at all convincing. She further submitted that the time as spoken to by the witnesses for the alleged adoption ceremony was during inauspicious time, i.e., during 'varjam' period and no auspicious function like adoption would be performed during 'varjam' (inauspicious time). She submitted that this is another important suspicious circumstances to discard the adoption. She further contended that plaintiff specifically contended that on the date of 'Gruhapravesam' this adoption ceremony was performed but there was invitation card for 'Gruhapravesam', whereas there was no such card for the alleged adoption and this is another circumstance to doubt adoption. She further submitted that those who observe 'homam' for 'upanayanam', would also observe 'homam' for adoption and the community to which the parties belong do observe homam for 'upanayanam', and it is evident from the depositions of witnesses that there was no 'homam' for alleged adoption and it is another suspicious circumstance to disbelieve adoption. She further submitted that prior to 1976, as per the provisions of Act prevailing at that time, a deed is necessary for any adoption and though plaintiff contend that adoption took place in the year 1958, no such deed is executed. She further contended that D.1 who is examined as D.W.2 assertively stated that no such adoption ceremony took place but both trial court and appellate court have not at all considered the evidence of D.W.2. She further contended that simply because plaintiff performed funeral rights of Dr.Venkatarao, he cannot claim as a son. She further submitted that as per Section 7 of the Hindu Maintenance and Adoption Act, consent of D.1 is a must, but from the evidence of D.W.2, it is crystal clear that she is not a consenting party, therefore, alleged adoption is not valid. She also submitted that plaintiff produced school records to support his plea that he was admitted as son of late Dr.Venkata Rao but those documents cannot be looked into for two reasons, firstly, that there was no reference about these documents in the plaint, secondly, they are not proved

as required under law. She further submitted, according to plaintiff his step mother participated in the adoption ceremony for giving and taking but a step mother cannot step into the shoes of natural mother, therefore, participation of second wife of P.W.2 renders adoption, if any, invalid. She further contended that gaps in the pleading cannot be filled through evidence.

On the other hand, advocate for respondent/plaintiff submitted that for an adoption, giving and taking is the most important event and that is clearly established through evidence of P.Ws.1 to 8. He further submitted that factum of adoption is supported and corroborated with documents like school records in which Dr.late K.Venkatarao signed as father of plaintiff. He submitted that all the original school certificates are filed and marked during evidence, defendants have not questioned the genuineness and correctness to these documents and therefore, objection of appellants with regard to these documents is not at all tenable. He further submitted that both the courts have considered the evidence of D.1 who is examined as D.W.2 and only on the basis of her evidence, claim of plaintiff in respect of other items of properties was refused, therefore, objection that evidence of D.W.2 is not considered by trial court and appellate court has no force. He further submitted that plaintiff got marked bank records wherein there is a clear admission from defendants that plaintiff is adopted son of late Dr.Venkatarao and both trial court and appellate court considering such admission accepted adoption and that there are no grounds to interfere with concurrent findings. He further submitted that plaintiff duly established giving and taking, which is main requirement to prove adoption. He further submitted that other circumstance like performing funeral rights of late Dr.Venkata Rao conducting yearly ceremony of late Dr.Venkatarao, taking care of adoptive mother (D.1,) when she was unwell by taking her to hospitals at Visakhapatnam and Chennai, School records including admission application which bears the signature of late Dr.K.Venakta Rao wherein plaintiff was referred as son of late Dr.Venkatarao and the bank records wherein defendants admitted and recognized plaintiff as son of late Venkatarao would establish that plaintiff is adoptive son of late Dr.Venkata Rao and D.1, therefore, objection of appellants regarding adoption is not tenable.

The main dispute is in respect of adoption as pleaded by plaintiff. Having pleaded it, initial burden is on the plaintiff to prove adoption. Plaintiff relied on the oral evidence of P.Ws.1 to 8 and documents Exs.A.1 to A.5, A.14, A.15, A.17 to A.28 and A.32 and A.33. P.W.1 is plaintiff himself, P.W.2 is natural father of plaintiff and elder brother of late Dr.Venkata Rao, (Adoptive father) P.W.3 is younger brother of

both P.W.2 and late Dr.Venkata Rao, P.W.6 is sister of late Dr.Venkata Rao, P.W.2, P.W.3, and mother of D.3, P.Ws.5, 7 and 8 are third parties. P.W.4 is the cousin of late Dr.Venkata Rao. As against this oral evidence, defendants relied on the evidence of D.Ws.1 to 7, D.W.1 is D.3 (son-in-law of D.1 and late Dr.Venkata Rao), D.W.2 is D.1 (wife of late Dr.Venkata Rao), D.W.3 is a resident of Penugonda, D.Ws.4 to 6 are third parties and D.W.7 is an astrologer.

Plaintiff specifically contended that there was a customary ceremony on 1-5-1958 in which he was taken in adoption by late Dr.Venkata Rao and his wife i.e., D.1. P.W.1 in his evidence deposed about the relationship between parties and also to the plaint averments. He deposed in his evidence that he studied upto 6th standard in Municipal Primary School and to prove the same, he got marked ex.A.1 which is Study Certificate. He deposed that in the school admission application, late Dr.Venkata Rao signed the application as father. He also deposed that he studied upto 10th class in Zilla Parishad High School and to prove the same he got marked Record Sheet dated 17-6-1963 as Ex.A.2. He also got marked admission application as Ex.A.3 which bears the signature of late Dr.Venkata Rao, as father. He also got marked Transfer Certificate issued by High School as Ex.A.4. P.W.1 deposed that he studied intermediate in C.R.R.College, Eluru and to prove the same, he got marked admission application form as Ex.A.5 in which also late Dr.Venkata Rao signed as father of P.W.1. He also deposed that late Dr.Venkata Rao along with brothers executed a sale deed in favour of Ch.Apparao on 14-10-1960 in which plaintiff was described as Venkata Rao's adopted son. He deposed that his natural father executed some documents and his name was not referred in those documents as he was given in adoption by that date. He further deposed that he was referred as voter in the voters list of Tadepalligudem Municipality of 1981 as son of late Dr.Venkata Rao and Ex.A.12 is the voters list. He also deposed that in 1982 voters list also, he was referred as son of late Dr.Venkata Rao and Ex.A.13 is relevant entry in voters list of 1982. He deposed that his adoptive father died on 6-9-1975 and he performed obsequies and the same was stated in news papers and Ex.A.14 is a news item in Andhra Jyothi Daily dated 23-9-1975 and Ex.A.15 is publication in Ratna garba a local daily news paper dated 24-9-1995. He further deposed that late Dr.Venkata Rao had a current account in Indian Bank, Tadepalligudem and after his death, he and D.2 gave authorization letter to Indian Bank authorities, for repayment of said amount, and bank after enquiry released that amount and Ex.A.7 is the Enquiry Report of the Bank dated 30-12-1975. He further deposed that D.3 also gave a statement to the Indian Bank during enquiry accepting

plaintiff as son of late Dr.Venkata Rao and that Ex.A.32 is the statement of D.3. He also deposed that he performed first annual ceremony of late Dr.Venkata Rao. He deposed that after the death of late Dr.Venkata Rao, disputes arose between himself and defendants and he came to know that first defendant filed a Succession O.P. before Principal District Munsif, Tadepalligdem and obtained a succession certificate, without impleading him as a party and in pursuance of Succession Certificate, D.2 has withdrawn a sum of Rs.14,000/- and D.1 has withdrawn a sum of Rs.18,600/-.

Natural father of plaintiff who is examined as P.W.2 deposed that late Dr.Venkata Rao and Appa Rao are his brothers and they partitioned their properties in the year 1935. He deposed that his first wife died within a short period of birth of plaintiff and that D.1 brought up plaintiff, almost since his birth and on 1-5-1958, plaintiff was taken in adoption both by D.1 and her husband around 6 A.M. He deposed that in that ceremony, he, his second wife, D.1 and her husband took part and sat on the sacred planks and the boy was given while purohits chanted vedic mantras. He deposed that he gave plaintiff, to D.1 and her husband who in turn took him. He deposed that plaintiff was named as Baburao but at the time of adoption, his name was changed as Madhavarao. He deposed that on the previous day i.e., 30-4-1958 there was a 'Gruhapravesam' ceremony for newly constructed house of late Dr.Venkata Rao and all the relatives and friends were invited for 'Gruhapravesam' function both from the town and from nearby villages. He deposed that his mother suggested late Dr.Venkata Rao, to complete the ceremony of adoption also as many relatives were present, for which late Dr.Venkata Rao agreed and in the process, adoption ceremony took place on 1-5-1958. He further deposed that late Dr.Venkata Rao, admitted plaintiff in the school by filling application in his own handwriting and that the original application form is Ex.A.25. He also deposed that original record sheet issued by the school is Ex.A.26 and Transfer Certificate issued by Parishad High School is Ex.A.28. He deposed that in the partition between himself and his brothers late Dr.Venkata Rao, got Ac.22.00. He deposed that no adoption deed was executed nor there was any execution of "Dattata Sweekaram Patrika". He deposed that one K.Suryanarayana was the purohit for the adoption ceremony.

Another brother of late Dr.Venkata Rao, is examined as P.W.3, and he deposed that plaintiff's mother died when plaintiff was seven days old. He deposed that plaintiff was brought up by D.1 after the death of his mother and he was adopted on 1-5-1958 and there was adoption ceremony at about 6 A.M., in the newly constructed house of late Dr.Venkata Rao. He deposed that in the said function, P.W.2, his second wife, gave plaintiff to late Dr.Venkata Rao and D.1, while purohit chanted mantras. He deposed that 'Gruhapravesam' function

was in the early hours and several relatives and friends attended for 'Gruhapravesam' function. He deposed that on 30-4-1958, a decision was taken to adopt plaintiff and accordingly, muhurtham was fixed at 6 A.M., on 1.5.1958, there was no lagnapatrika for the adoption ceremony, but purohit, after verifying panchangam fixed the muhurtham. He asserted that P.W.2 and his wife gave plaintiff to D.1 and his wife on 1-5-1958 while mantras being chanted. He deposed except that, no other formalities have been performed.

P.W.4 cousin brother of late Dr.Venkata Rao deposed that there was adoption ceremony at 6 A.M., on 1-5-1958 at the newly constructed house of late Dr.Venkata Rao. He deposed that Kuchi Suryanarayana and his sons were purohits for the adoption ceremony who performed 'punyavachanam' and "Vigneswara puja". He deposed that late Dr.Venkata Rao and his wife received plaintiff in adoption function while P.W.2 gave plaintiff to late Dr.Venkata Rao and D.1. He deposed that the said giving and taking was done while mantrans were chanted.

P.W.5 is a resident of the locality and he deposed that there was a 'Gruhapravesam' function in the house of late Dr.Venkata Rao at about 3 A.M., in the year 1958 and on the same day, at about 6 or 6.30 A.M., there was adoption function and in that ceremony, P.W.2 gave plaintiff to late Dr.Venkata Rao and his wife while mantras being chanted.

P.W.6, sister of late Dr.Venkata Rao deposed that there was an adoption ceremony on the date of 'Gruhapravesam' function and that she was present and that late Dr.Venkata Rao adopted plaintiff and that the said function was around 6 A.M.,

P.Ws.7 and 8 who are residents of the locality deposed that after 'Gruhapravesam', there was an adoption ceremony in which P.W.2 has given plaintiff to late Dr.Venkata Rao and his wife, who received plaintiff and accepted him as their son.

As against the above evidence on plaintiff side, son-in-law of late Dr.Venkata Rao who is D.3 in the suit is examined as D.W.1 who deposed that there was no such adoption.

D.1 is examined as D.W.2 who deposed that there was no such adoption on any day much less on 1-5-1958.

D.W.2 has not deposed anything with regard to presence of P.Ws.6 to 8 at the time of adoption ceremony. She only reiterated in so many words that there was no adoption ceremony at all and only 'Gruhapravesam' and Satyanarayana Vratam, were the only

functions that were performed on the intervening night of 30-4-1958 and 1-5-1958.

D.W.3 is a resident of Penugonda, he stated about his presence at the time of marriage of D.1 with late Dr.Venkata Rao and presentation of Ac.8-00 cents of land by adoptive father of D.1 at the time of marriage. He deposed that he attended 'Gruhapravesam' ceremony of the new house that was constructed by late Dr.Venkata Rao and D.1 and that he was sent by Narasimha Murthy adoptive father of D.1 as Narasimha Murthy was bed ridden at that time and he deposed P.W.6 has not attended 'Gruhapravesam' function as she lost her husband recently by then. He deposed that after 'Gruhapravesam' 'Satyanarayana vratham' was performed at about 11 A.M., and in between, no function did take place and that about one thousand people attended 'Gruhapravesam' ceremony.

D.Ws.4, 5 and 6 have also deposed in similar manner stating that no function of any kind did take place between 'Gruhapravesam' and 'Satyanarayana Vratham'.

All the witnesses D.W.3 to D.W.6 denied the suggestion about adoption ceremony. All these witnesses stated in their cross examination that they left the venue in the early hours after 'Gruhapravesam' ceremony and only came back to the venue around 11 A.M., when 'Satyanarayana Vratham' commenced and stayed there for lunch. They deposed that they are not aware of the kind of pujas or ceremonies that were performed in the newly constructed house of late Dr.Venkata Rao in between 3 A.M., and 11 A.M.

D.W.7 is a resident of Mudunurupadu who is an astrologer by profession. He deposed that there was varjam on 1-5-1958 between 10-24 A.M., and 11-40 A.M., according to Guptha's panchangam. He deposed according Ungirala panchangam varjam commenced at 7.57 A.M., and according to Thangirala panchangam, karkata was started at 11 AM., on 1.5.1958. He deposed that there was no muhurtam at any time on 1-5-1958 for adoption. He deposed that muhartham will be fixed in correlation to birth star of adoptive father and birth star of child in case of adoption. He also deposed that generally no two panchangams would agree for any Muhurtham timings.

Learned advocate for appellants vehemently contended that it is highly improbable to accept the alleged adoption at about 6 A.M., on 1.5.1958 as it was inauspicious time which is evident from deposition of D.W.7. She also vehemently contended that consent of D.1 as wife of late Dr.Venkata Rao is a must for adoption and as there was no such consent, adoption pleaded by plaintiff cannot be accepted.

Learned advocate for appellants contended that D.W.2 (D.1) has categorically stated that there was no adoption, and nothing could be elicited from her during cross-examination, but both the trial court and learned single judge have not at all considered the evidence of this D.W.2 and from the evidence on record, it can be safely concluded that there was no adoption and if for any reason, adoption process spoken to by P.Ws.1 to 8 is accepted, it has to be held that there was no valid adoption. Learned counsel has drawn our attention to judgments of Supreme Court and some of the High Courts. *LAL MAN Vs. DY.DIRECTOR OF CONSOLIDATION AND OTHERS ()*, *CHAIRMAN, BIHAR RAJYA VIDYUT BOARD Vs. CHHATHU RAM AND OTHERS ()* and *SMT. DHANNO wd/o BALBIR SINGH AND OTHERS v. TUHI RAM (DIED) SON OF PURAN SON OF RAJE AND OTHERS ()*. In all these decisions, it was held that in view of Section 16 of Hindu Adoption and Maintenance Act, 1956, a presumption has to be drawn where there is adoption deed in compliance of Section 16 of the Act and that presumption can be rebutted by producing necessary evidence. In our case, admittedly, there was no deed of adoption therefore, the question of drawing any presumption under Section 16 of Hindu Adoption and Maintenance Act does not arise, therefore, these decisions have no application to the facts of this case.

In *VULSA LAXMINARAYANA Vs. VULSA BHOODAMMA AND ANOTHER ()*, it is held that no inference can be drawn that a person is a adopted son of the deceased simply because that person performed funeral rites. Factum of adoption has to be established by evidence.

In *NILIMA MUKHERJEE VS. KANTA BHUSAN GHOSH ()*, court held that mere having a joint account is not proof of adoption in the absence of any other cogent evidence.

In these two decisions, parties therein relied on a solitary instance like performing funeral rites in one case and having joint account in the other case, for which the Courts have held that such solitary instances are not sufficient to prove the factum of adoption and that has to be established with cogent and convincing evidence. In our case, plaintiff has not solely relied on the instances like performing funeral rites, documents relating to Bank enquiries in connection of payment of amount lying into the account of deceased, those instances were in addition to the other material evidence. Therefore, these two decisions are also not helpful to the appellant.

In *BRAJENDRA SINGHI Vs. STATE OF MADHYA PRADESH AND ANOTHER ()*, the issue before Supreme Court was in respect of disqualification for taking adoption and in our case, there is no such disqualification aspect therefore, this decision is not helpful to

appellants.

In *STATE OF CHHATTISGARH AND OTHERS Vs. DHIRJO KUMAR SENGAR* (), presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956 cannot be drawn in case of unregistered deed, is the purport of that decision. But in our case, there is no adoption deed at all therefore, that principle is also not applicable to the case on hand.

In *HARNEK SINGH Vs. PRITAM SINGH AND OTHERS* (), it is held that as per Section 11 of the Hindu Adoption and Maintenance Act, a child to be adopted must be actually given and taken in adoption by parents or guardian concerned or under their authority with the intent to transfer the child from the family of its birth. A child who is abandoned or whose parentage is not known may also be taken in adoption provided, giving and taking ceremony is done from the place of family where it has been brought up to the family of its adoption.

Here in our case, there is ample evidence to show that there was giving and taking, therefore, this decision is also not helpful to the appellants.

One of the contention of the appellants is that no details are given in the plaint concerning adoption ceremony and there is not even a reference about Muhurtham and when the plaint is bereft of essential details, evidence produced in respect of such adoption is to be discarded. To support her argument, she relied on *PENTAKOTA 'SATYANARAYANA AND OTHERS Vs. PENTAKOTA SEETHARATNAM AND OTHERS* ().

In that case, no date of adoption is given in the plaint so also venue of ceremony was not given in the plaint and no specific custom is pleaded including giving coconut as part of ceremony, but fact of giving coconut was spoken to by witnesses, in those circumstances, Supreme Court observed that plaint is bereft of details essential in proof of adoption.

In our case, date is specifically pleaded in the plaint and also pleaded details like; that on account of the health of first defendant late Dr.Venkata Rao felt that there is no possibility of D.1 begetting any more children, at the instance of his mother, late Dr.Venkata Rao and D.1 decided to adopt plaintiff and requested natural father of plaintiff Naganna Garu to give plaintiff in adoption and late Dr.Venkata Rao and first defendant received plaintiff in the ceremony of adoption that was performed on 1-5-1958 in the presence of large number of friends and relatives, therefore, simply because Muhurtam time is not referred, it cannot be said that the plaint is bereft of details of

adoption.

In *S.T.KRISHNAPPA Vs. SHIVAKUMAR AND OTHERS* (), there was a deed of adoption evidencing adoption that took place on 15-2-1945. The said deed did not contain any stipulation that the adoption was in “DVIYAMUSHYAYANA” or any other form. But pleading and evidence before courts was contrary to the stipulations made in the adoption deed dated 15-4-1945, on such facts, the Supreme Court held that no presumption can be drawn. This decision is also not applicable to the facts of our case as there is no deed of adoption in this case.

One of the arguments advanced on behalf of appellant is that in the absence of consent of D.1., the alleged adoption is invalid being hit by Section 7 of the Hindu Adoption and Maintenance Act, 1956. According to advocate for appellant, as D.W.2 (D.1) assertively stated that there is no adoption, which means that there is no consent from her therefore, even if the alleged adoption is true, it is invalid. To support her argument, she relied on a decision of Supreme Court in **GHISALAL vs. DHAPUBAI (DEAD) BY LRs AND OTHERS** ()

As seen from the evidence, P.Ws.2, 3 , 4 and 6 who are no other than the relatives of both parties, they deposed in one voice that D.1 also sat by the side of late Dr.Venkata Rao on the sacred plank and received plaintiff from P.W.2. When such an assertive statement is made by these persons, which is supported and corroborated by third parties P.Ws.5,7 and 8, nothing is whispered by D.w.2 in her chief examination disputing this fact namely; she sitting by the side of late Dr.Venkata Rao on 1-5-1958 and receiving plaintiff from the hands of P.W.2. In her entire chief-examination except saying that no such adoption ceremony took place on 1-5-1958, she has not rebutted the statements of witnesses P.Ws.2 to 8 as to events that are spoken to by them concerning adoption ceremony on 1-5-1958.

Participation of D.W.2, in the adoption ceremony dated 1-5-1958 is clearly established through the evidence of P.Ws.2 to 8.

In the above referred decision, the Supreme Court observed that consent should be either in writing or by affirmative act that was done by wife of the individual who took a child in adoption and here it is clear from the evidence that D.1 participated and received plaintiff from P.W.2, which is an affirmative act, and therefore, that decision has no application and objection with regard to consent as required under Section 7 of the Act is not at all tenable.

Oral and documentary evidence relied on by both parties concerning adoption can be divided into two parts. First part is prior to

the death of late Dr.Venkata Rao i.e., 6-9-1975 and second part as to the evidence after the death of late Dr.Venkata Rao.P.Ws.3 to 8 mainly deposed about adoption ceremony that took place on 1-5-1958. It is not in dispute that on the intervening night of 30-4-1958/1.5.1958, there was a 'Gruhapravesam' function in the house of late Dr.Venkata Rao. Plaintiff contended that at the same venue, this adoption ceremony took place. According to plaintiff, plaintiff was four and half years old when adoption ceremony took place. It is also not in dispute that plaintiff was brought up in the house of late Dr.Venkata Rao and his welfare was looked after both by late Dr.Venkata Rao and his wife D.1. According to defendants, plaintiff was not adopted, he was only a fostered son and the plea of adoption was put forth only to knock away the properties of late Dr.Venkata Rao. Out of oral evidence placed on behalf of both sides, third party witness examined on behalf of defendant admitted in their cross-examination that they left the venue immediately after 'Gruhapravesam' and came back to venue for lunch or for "Satyanarayana Vratam" which was only after 11 A.M., As per the evidence of P.Ws.2 to 8, this adoption ceremony was in between 6 A.M., and 6.30 A.M., So from their own admission, D.Ws.4 to 6 were not available at the venue after the 'Gruhapravesam' ceremony which was concluded around 3 A.M. It is not in dispute that plaintiff studied only upto intermediate. From Ex.A.1 Study Certificate, it is clear that plaintiff studied in Municipal Upper Primary School, Tadepalligudem during the years 1962 to 1964 from 4th Class to 5th class and he was referred as son of late Dr.Venkata Rao. Ex.A.2 is the copy of Record Sheet issued by Head Master, Parishad High School, Tadepalligudem, original of which is marked as Ex.A.26. This document would support the contents referred to in the Study Certificate. In this Record Sheet also, father's name of plaintiff is recorded as Kode Venkata Rao. Ex.A.3 is copy of application form for admission into Parishad Higher Secondary School, Tadepalligudem dated 19-6-1964 which was admittedly filled up by late Dr.Venkata Rao and original of it is marked as Ex.A.25. D.Ws.1 and 2 admitted during their evidence that this document is in the hand writing of late Dr.Venkata Rao. In this application also, plaintiff was referred as son of late Dr.Venkata Rao and late Dr.Venkata Rao signed this application in the capacity of parent and not in the capacity of guardian. Ex.A.4 is copy of Transfer Certificate issued by Parishad High School, Tadepalligudem. According to the plaintiff, he studied 6th class in that school during 1964-65 and took away Transfer Certificate and original of it is marked as Ex.A.28. In this Transfer Certificate also, father's name is recorded as Venkata Rao. Ex.A.5 is a copy of, application for admission into C.E.C. Group in SIR C. Ramalingareddy College, Eluru, dated 19-7-1972 and the original of it is marked as Ex.A.27 which would reveal that late Dr.Venkata Rao signed this application as father of plaintiff. Ex.A.6 is

the copy of registration extract of sale deed dated 14-6-1960 which was executed by late Dr.Venkata Rao along with his brothers in which reference was made that plaintiff is the adopted son of late Dr.Venkata Rao and that document is executed by late Dr.Venkata Rao on behalf of plaintiff also being minor. A portion of this document which is a recital with reference to status of plaintiff is marked as Ex.A.30 through D.W.1 during his cross- examination. These are the important documents which would amply support and corroborate the version of plaintiff with regard to his status as adopted son. If these documents are read together with the evidence of P.Ws.2 to 8, irresistible conclusion that has to be reached is that there was adoption ceremony on 1-5-1958 in which both late Dr.Venkata Rao and D.1 received plaintiff from the hands of P.W.2 and thereby the requirements of giving and taking is duly established. Though it is contended that these documents are not duly proved that objection is not tenable because all these documents are public documents being school and college records. Plaintiff got the originals summoned and marked both originals and copies and defendants admitted some of them during cross-examination. In view of supporting documentary evidence to the oral evidence of P.Ws.2 to 8, the version of D.Ws.2 to 6 denying the adoption ceremony cannot be accepted particularly when there is no documentary evidence supporting their version.

Now coming to the evidence subsequent to the death of late Dr.Venkata Rao, D.W.1 categorically stated in her evidence that plaintiff took her to hospitals at Visakhapatnam and Chennai in connection with her treatment and that plaintiff alone stayed at these two places during her treatment. It is admitted case of both parties that late Dr.Venkata Rao had current account with Indian Bank, Tadepalligudem. As seen from Exs.A.31 which is equivalent to Ex.A.17, there was an enquiry by the Bank authorities for payment of money lying to the current account to the legal heirs of late Dr.Venkata Rao. D.3 under Ex.A.32 letter which is equivalent to Ex.A.21 informed the Bank Manager, Indian Bank, Tadepalligudem about the surviving legal heirs of late Dr.Venkata Rao and in that letter, he referred plaintiff as son of late Dr.Venkata Rao. Even on the report Ex.A.31, both D.1 and D.2 signed along with plaintiff as claimants of late Dr.Venkata Rao and this document was attested by D.3 as a witness. If really, plaintiff is not the adopted son of late Dr.Venkata Rao, there is no necessity for D.3 to refer plaintiff as one of the legal heirs i.e., son of late Dr.Venkata Rao in his letter dated 30-12-1975 and there is no necessity for D.1 and D.2 to allow plaintiff also to sign as claimants for the amount lying in the current account of late Dr.Venkata Rao. In fact, plaintiff and D.2 gave separate letters under Ex.A.18 and A.19 to the Bank Manager expressing their no objection for payment of amount due to late Dr.Venkata Rao to their

mother Kode Satyavathi i.e., D.1. So, these documents would also establish the status of plaintiff as adopted son of late Dr.Venkata Rao even after the death of late Dr.Venkata Rao.

Further, the voters list of the Tadepalligudem Municipality for the years 1981-82 which are marked as Exs.A.12 and A.13 would show plaintiff as son of late Dr.Venkata Rao and he was shown along with D.1 to D.3 in seriatum residing at the same door number.

It is not in dispute that late Dr.Venkata Rao was popular in the town and his death was consoled by every one and the local leaders have decided to install statue of late Dr.Venkata Rao at one important place of town and also to put his name to one of the parks. Advocate for appellant contended that in the local Daily news paper Ratna Garbha dated 11-9-1975, it was recorded that late Dr.Venkata Rao died with heart attack leaving wife and daughter and there was no reference about the son. For this advocate for respondent contended that the very same paper in its edition dated 23-9-1975 while reporting the decision taken for installation of statue of late Dr.Venkata Rao clearly mentioned that obsequies of late Dr.Venkata Rao were performed by the adopted son i.e., plaintiff. These news papers are marked as Exs.B.28 and A.15, respectively. No doubt, in Ex.B.28, it was published that late Dr.Venkata Rao died of heart attack leaving wife and a daughter whereas in Ex.A.15, it is published that obsequies of late Dr.Venkata Rao were performed by his adopted son. It is clear from the evidence on record including D.W.2 that funeral rites and obsequies of late Dr.Venkata Rao were performed by plaintiff alone. According to D.W.2, these ceremonies were performed by plaintiff in the capacity of fostered son but not in the capacity of adopted son.

In view of the clinching evidence referred to above, the contention of appellant that the plaintiff performed funeral rites and obsequies only as a fostered son cannot be accepted. When the oral and documentary evidence produced on behalf of plaintiff would show that plaintiff was adopted son of late Dr.Venkata Rao, a news item published in Ex.B.28, cannot be accepted, particularly when very same paper published two inconsistent versions.

One of the contention of the appellant is that alleged adoption ceremony on 1-5-1958 is highly improbable as the time spoken to by witness of plaintiff is inauspicious and no Hindu would perform such important sacred function during inauspicious time. For this, the appellant mainly relied on the evidence of D.W.7. No doubt, D.W.7 deposed that there was 'varjam' around 6 A.M., on 1.5.1958 according to some 'panchangams' but very same person stated that according to "Guptha Panchangam", 'varjam' on that day was only between 10.24 A.M., to 11.40 A.M. Even according to the own case

of defendant 'Satyanarayana vratham' was not immediately conducted because of inauspicious time and it only commenced at 11 A.M., at which time even according to D.W.7, there was still 'varjam' as per "Guptha Panchangam". So this inauspicious time is not such an important aspect to draw inference, particularly, when there is clinching evidence about the adoption ceremony supported by documentary evidence. Even this aspect was considered by the trial court and negated the objection, we do not find any incorrectness in the findings of trial court on the point of inauspicious time.

One of the contention is in Ex.A.21 age of plaintiff was referred as 6 months as on the date of alleged adoption and the same is factually incorrect therefore, entire version concerning adoption has to be thrown out. This aspect was raised before trial Court and also before 1st appellate court and both courts having considered the entire evidence held that it is only a minor discrepancy and it has no bearing. On a scrutiny of entire material, we do not find any wrong in the findings of the trial court and appellate court in respect of discrepancy of age mentioned in Ex.A.21 notice. If we read the facts and evidence as a whole that discrepancy is very minor and would no way effect the claim of plaintiff. Therefore, this objection is also not tenable.

As seen from the entire evidence, the relationship of plaintiff with the family of late Dr.Venkata Rao was very cordial during the life time of late Dr.Venkata Rao and differences arose only sometime after the death of late Dr.Venkata Rao and those differences enlarged after D.1 obtained Succession Certificate by filing O.P.No.4 of 1981 excluding plaintiff. Oral evidence of P.Ws.2 to 8 which is fully supported and corroborated with documents, particularly, Exs.A.1 to A.6, A.17 to A.21, A.25 to A.28 and A.30 to A.33, which remained unrebutted would establish the fact that plaintiff was adopted on 1-5-1958. Therefore, the evidence and circumstances referred to above would clearly establish that the plaintiff was adopted on 1-5-1958 and the objection of the appellant as to adoption is not at all tenable. Both trial court and learned single judge of this court have rightly appreciated evidence on record and correctly held that adoption pleaded by plaintiff is true and valid. The contention that both the courts have not at all considered the evidence of D.W.2 (D.1) cannot be accepted because, she only concentrated on the properties issue and she not even assertively denied the factum of her participation in the adoption ceremony, particularly, when close relatives of late Dr.Venkata Rao including mother of D.3 (P.W.6) asserted that fact. For all these reasons, we are of the considered view that both trial

court and learned single Judge were right in holding that plaintiff is the adopted son of late Dr.Venkata Rao and that there are no grounds to interfere with such findings. The point is accordingly answered.

POINT No.2:

This point is in respect of claim of plaintiff in the plaint schedule properties. Plaint consists of seven schedules. 'A' schedule is in respect of 10 items out of which nine items are agricultural lands and one item is a house site with a thatched shed. A-1 Schedule consists of seven items which are agriculture lands. Plaint 'B' Schedule is a house with appurtenant site in which late Venkata Rao was running a Nursing home. Plaint 'C' Schedule are the movables, including hospital equipments and household articles. C-1 Schedule is the liquid cash and bank fixed Deposit encashed by the defendants. Plaint 'D' Schedule consists of 13 items of agriculture lands and house sites and 'E' Schedule is a house site with a thatched house and agriculture land. According to plaint averments, items in Plaint 'A' Schedule are the ancestral properties that were fell to the share of late Venkata Rao in the partition with his brothers. Plaint A-1 Schedule are the ancestral properties of late Venkata Rao that were sold away by D.1 and D.3 subsequent to the death of Venkata Rao. Plaint 'B' Schedule properties are the properties standing in the name of late Venkata Rao. 'D' Schedule properties are standing in the name of D.1 and 'E' Schedule properties are standing in the name of D.2 which were acquired by late Venkata Rao. According to plaintiff, 'B,D and E' Schedule properties were purchased with the income derived from 'A' schedule lands but according to defendants, some of these properties were purchased by the adoptive father of D.1 and some were acquired by late Venkata Rao personally with the income on hospital. Trial Court ordered partition of 'A' Schedule properties into three equal shares and allotted two such shares to plaintiff and the remaining $\frac{1}{3}^{\text{rd}}$ share to D.1 and D.2. Trial court also held that plaintiff is entitled to $\frac{2}{3}^{\text{rd}}$ share in 'A-1' schedule. Trial court allotted $\frac{1}{3}^{\text{rd}}$ share in 'B' schedule properties. Trial court also allotted $\frac{1}{3}^{\text{rd}}$ share in respect of 'C' schedule properties except in respect of cash of Rs.21,576/- in which $\frac{2}{3}^{\text{rd}}$ share is allotted. Trial court has not granted any share in 'D and E' schedule properties holding that they are not available for partition.

Advocate for appellant contended that plaintiff is not entitled for two shares since daughter is also entitled for a share as co-parcener as per provisions of Hindu Succession (Amendment) Act, 2005 (hereinafter referred to as Act 39 of 2005) According to advocate for appellant, D.2 is also a co-parcener being daughter and she is also equally entitled for a share along with plaintiff in the ancestral

properties of late Venkata Rao and only 1/3rd share of late Venkata Rao has to be divided among plaintiff, D.1 and D.2 but not in the way trial court divided. She further submitted that trial court recognized plaintiff alone as co-parcener therefore, all the ancestral properties were divided into two shares first, one share was allotted to late Venkata Rao and one share was allotted to plaintiff and again the share of late Venkata Rao was divided into three parts and plaintiff, D.1 and D.2 were equally given that half share, thereby plaintiff has got major share. She further submitted that ancestral properties have to be divided into three parts, plaintiff should be given one part, D.2 should be given one part and the other part should be allotted to late Venkata Rao and share of Venkata Rao has to be divided among plaintiff, D.1 and D.2. She submitted as per the language employed in Section 6 of Amended Act, D.2 by birth has become a co-parcener in the joint family. She further submitted that as per the language used in the Section and interpretation given by the High Courts and Supreme Court, amended provision will have retro-active effect. She further submitted that as per the amended provision, a daughter cannot claim a right, only in cases where partition was already affected by a registered partition deed or through a decree of court and in this case as there was no partition either by registered partition deed or through decree of a court, therefore D.2 has to be recognized as one of the co-parcener and she is entitled for share equally with plaintiff.

On the other hand, learned counsel appearing for the plaintiff submitted that the amended provisions of Section 6 have to be applied prospectively and on the date of death of Venkata Rao, this provision was not in force and therefore, the contention of the counsel for the appellant cannot be accepted. He further contended that the decisions relied on by appellant counsel would apply in case late Venkata Rao was alive, the day on which the amended provision came into force and principles of retro-active would only apply to such cases but here late Venkata Rao died in the year 1975 long prior to the amendment of Section 6 either by State Amendment or by Central enactment. He further submitted that on the death of Venkata Rao succession was opened and notional partition has to be effected immediately after the death of late Venkata Rao and shares have to be allotted to the co-parcener existing as on the date of death of Venkata Rao, in this case plaintiff alone is the co-parcener available as per law as on that day therefore, trial court rightly distributed the properties and there is no wrong in the approach of the trial court.

As Legal issue like application of Section 6 of Act, 39 of 2005 is involved, we thought it fit to hear another counsel as *Amicus Curiae* to enable the Court in arriving at correct legal proposition. We requested Sri VL.N.G.K. Murthy to assist the court as *Amicus Curiae*

who has obliged to our request and enlightened us on the legal issue with reference to some case law. No doubt Parliament through Act, 39 of 2005 made daughters also as co-parceners declaring them to be entitled, for a share in the joint family properties. As per sub-section 5 of Section 6 of Amended provision, section 6 shall not apply to a partition which has been effected before 20th December, 2004. An explanation was given defining partition, according to which only partition made by execution of a deed of partition duly registered under registration Act or partition effected by decree of a court. So only in cases where there was a registered partition or partition effected by a decree of a court prior to 20th December, 2004, this amended provision is not applicable.

In our case, admittedly, there is neither registered partition nor partition effected by a decree of a court to discard the application of amended provision. Now what has to be seen is whether this provision is prospective in nature or has retro-active effect as contended by appellant counsel in which case, there will be change of shares, otherwise the shares as decided by the trial court which are in accordance with the law existing as on the date of trial court judgment have to be upheld. There is no dispute with regard to co-parcenary rights among male and female members in joint family on and from

9-9-2005 the date on which Act, 39 of 2005 came into force. As per Section 6, daughter of a co-parcener becomes a co-parcener by birth in her own right. So far as liability is concerned daughter has the same liability as that of a son having attained the status of co-parcener. It may be useful to read Section 6 of amended provision to appreciate contentions of both parties.

Section 6 reads as follows:

“6. Devolution of interest in coparcenary property:- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall—

- a. *by birth become a coparcener in her own right in the same manner as the son;*
- b. *have the same rights in the coparcenary property as she would have had if she had been a son;*
- c. *be subject to the same liabilities in respect of the said coparcenary property as that of a son,*

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

2. *Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.*

3. *Where a Hindu dies after the commencement of the*

Hindu Succession (Amendment) Act, 2005, his interest in the property of a joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and--

- a. *the daughter is allotted the same share as is allotted to a son;*

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation:- For the purposes of this sub-section, the interest of the Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge

any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

- a. *the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or*
- b. *any alienation made in respect of or in satisfaction of, any such debt and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.*

Explanation:- For the purposes of clause (a), the expression 'son', 'grandson' or 'great-grandson' shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation:- For the purposes of this section 'partition' means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court."

From a plain reading of the above provision, on and from 9-9-2005, a daughter is entitled to a share in the ancestral property and she is a co-parcener as if she had been a son. Proviso under Clause 5 has to be treated as an exception to the main section which restricts reopening of partition which was already effected. Admittedly, when trial court decided the suit or the first appellate court decided the appeal, this amendment Act 39 of 2005 was not on the statute book and it has come into force only during pendency of this L.P.A. Therefore, we have to examine whether the above provision can be applied to this case to decide the claim of D.2 as co-parcener.

Advocates of both parties and Sri VL.N.G.K.Murthy who was requested to assist us drawn our attention to the following decisions.

BURUGUPALLI SESHARATNAM v. SIRIGINA RAMALAKSHMI (),

DAMALANKA GANGARAJU AND OTHERS v. NANDIPATI VIJAYA LAKSHMI AND OTHERS (), *GANDURI KOTESHWARAMMA AND ANOTHER V. CHAKIRI YANADI AND ANOTHER.* (), *K.M. THANGAVEL AND OTHERS Vs.K.T.UDAYAKUMAR AND ANOTHER* (), *SHRI BADRINARAYAN SHANKAR BHANDARI AND OTHERS Vs.OMPRAKASH SHANKAR BHANDARI AND OTHERS* () , *M.SUJATHA v. M.SURENDER REDDY & OITHERS*(), *DHANALAKSHMI & OTHERS Vs. JANAKI AMMAL & OTHERS* (), *SRI KRISHNA KUMAR V. SHAH AND ANOTHER v. SMT. ANILA J. S H A H* () , *B.CHANDRAKALA AND A.ANURADHA CROSS-OBJECTIONS (SR) No.3879 of 2005 AND CROSS-OBJECTIONS (SR) No.13681 of 2005 IN CCCA No.338 of 2004 and + CCCA No.338 of 2004 DATED 31-12-2014.*)

On a perusal of the above decisions, it is clear that different views were taken as to the application of Amended Act 39 of 2005. One view is that this provision is only prospective in nature and the other view is that this amendment has retro-active effect and thereby, it would have the force of retrospective nature. In *SHEELA DEVI AND OTHERS v. LAL CHAND AND ANOTHER* (), the Supreme Court held that the Amended Act 2005 has no application where succession had opened prior to the amended Act of 2005.

Advocate for appellant mainly contended that amendment is a social legislation to remove discrimination against women, therefore, it should be extended to the benefit of women and for that reason, the amended provision has to be given retrospective effect.

On the other hand, advocate for respondent contended that on the death of Dr.Venkata Rao, succession was opened, and on the date of death of Dr.Venkata Rao, this amended provision was not in the statute books, therefore, this amended provision has no application.

Sri VL.N.G.K.Murthy submitted that there are decisions to support both the views but decision in *SHEELA DEVI AND OTHERS v. LAL CHAND AND ANOTHER* (20th cited) has to be applied and examine whether co-parcener from whom the property is claimed was alive or not as on the date of amendment to extend the benefits of amended provision.

Now this controversy is resolved by Honourable Supreme Court in *PRAKASH & ORS. V.PHULAVATI & ORS.*(.). In this decision, Honourable Supreme Court after examining all the previous decisions on the subject and after examining views of different High Courts clarified and held that on the date of amendment, father from whom the property is claimed should be alive and further held that amended provisions are only prospective in nature. In view of this

decision of the Honourable Supreme Court, there is no necessity to examine all the above referred decisions in detail as most of these decisions were considered by Supreme Court in *PRAKASH & ORS. V. PHULAVATI & ORS. (CIVIL APPEAL No.7217 of 2013)*. Admittedly, in our case, late Venkata Rao died long prior to 9-9-2005, the date on which, amended provision has come into force.

In view of the decision of Honourable Supreme Court referred to above, the claim of D.2 as co-parcener is not tenable and the amended provision i.e. Act 39 of 2005 cannot be extended to the benefit of D.2. Learned trial Judge has rightly applied the law as existing then and the appellate court has rightly confirmed the findings of the trial court, therefore, the shares allotted to the parties are in accordance with law and no interference is required. Point No.2 is accordingly held against appellant.

POINT No.3:

On a scrutiny of the material, we are of the considered view that trial court and appellate court have not committed any error in deciding the issues involved in the suit and that there are no grounds to interfere with the findings of trial court as confirmed by learned Single Judge. This point is accordingly answered against the appellant.

Sri V.L.N.G.K.Murthy, learned *Amicus Curiae*, has placed before us a dispassionate view of the scope of Section 6 of the Hindu Succession Act, as amended by Act 39/2005. We acknowledge the valuable assistance rendered by him.

POINT No.4:

In view of our findings and observations on points 1 to 3, this Letter Patent Appeal is dismissed without costs as devoid of merits.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE RAMESH RANGANATHAN

JUSTICE S.RAVI KUMAR

Date: 16.11.2015

Dvs/mrb

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SRI JUSTICE S. RAVI KUMAR

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LETTERS PATENT APPEAL No.213 of 2000

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Date: 16-11-2015

