

THE HON'BLE SRI JUSTICE M.SATYANARAYANA
MURTHY A.S.No. 2907 OF 1996 JUDGMENT: The unsuccessful plaintiffs in O.S.No. 12 of 1988 on the file of the Court of Subordinate Judge, Sompeta (for short, 'the trial Court'), preferred this appeal against the decree and judgment dismissing the suit on 05-07-1996. 2. During pendency of the suit, the 1st plaintiff died and plaintiff Nos. 2 to 6 were brought on record as legal-heirs of the deceased 1st plaintiff vide orders in I.A.No. 482 of 1994 dated 18-08-1994. Similarly, the 6th defendant died and his legal-heirs were brought on record as defendant Nos. 5, 7 to 10 and 22 vide orders dated 29-04-1993 in I.A.No. 220 of 1992 and I.A.No. 482 of 1994 dated 18-08-1994. Defendant Nos. 23 to 26 were impleaded subsequently as per the orders in I.A.No. 305 of 1995 dated 29-09-1995. 3. For convenience of reference, the ranks given to the parties before the trial Court will be adopted throughout this judgment. 4. The plaintiffs filed the suit for partition of suit schedule property against the defendants alleging that suit schedule property originally belongs to the ancestors of the 1st plaintiff and the 1st defendant. The 1st plaintiff is sister of the 1st defendant. The 2nd defendant is son of the 1st defendant. Defendant Nos. 3 and 4 are unmarried daughters of the 1st defendant. The 1st plaintiff and the 1st defendant are children of Konchada Adinarayana and Venkataratnamma. Konchada Adinarayana had three brothers, who were undivided, by name Narasimhulu, Krishna Murthy and Apparao. Among them, Narasimhulu was the eldest son and they constituted as members of Hindu Undivided Joint Family owning and possessing extensive movable and immovable properties. All the four brothers died prior to 1956 while they were joint. In the month of October, 1956, legal-heirs of Narasimhulu, Krishna Murthy, Apparao and Adinarayana partitioned the properties under registered partition deed No. 1408 of 1950. In the said partition, ABCD suit schedule property was allotted to the share of the 1st defendant and his mother Venkataratnamma. Venkataratnamma and the 1st defendant were also allotted 650 tulas of silver and other articles including share capital of Rs.75,468/- in gold business shown as item Nos. 1 to 3 of B schedule. Venkataratnamma also possessed gold ornaments which are more fully described as item Nos. 4 to 6 of plaintiff C schedule. In the partition among legal-heirs of Konchada Adinarayana, Narasimhulu, Krishna Murthy and Apparao, land in Golla Kanchili, now in Kanchili Mandal, which is described in F schedule was kept joint. Thus, in F schedule property, legal-heirs of all the branches are having equal right. Land at Kolluru Village, now in Kanchili Mandal, which is described in G schedule and house site in Kanchili which is described in H schedule were kept joint between the branches of Adinarayana and Narasimhulu. The 1st defendant and Venkataratnamma, mother of the 1st plaintiff and the 1st defendant, represented the branch of Konchada Adinarayana in the said partition. The 5th defendant-Ammayamma, W/o Narasimhulu, and her son Ramarao-the 6th defendant represent the branch of Narasimhulu. The widow of Krishna Murthy by name Vajramma (died) adopted the 11th defendant. The widow of Apparao by name Bangaramma-the 15th defendant adopted the 16th defendant during her lifetime. Defendant Nos. 7 to 10 are sons of the 6th defendant and the 6th defendant also had a married daughter. Therefore, legal-heirs of all the branches are entitled to claim share in FGH schedules and the 1st defendant and the 1st plaintiff are entitled to half share each in ABCDEE1 schedules. While the matter stood thus, the 19th defendant purchased the share of Narasimhulu in G schedule and he is also the tenant of Adinarayana's branch in D schedule at Kolluru. Though life interest is created in favour of mother of the 1st plaintiff and the 1st defendant, after advent of Hindu Succession Act, 1956 (for brevity, 'the Act of 1956'), she became absolute owner of half share of entire property shown as ABCD schedules and EE1 schedules are exclusive property of Venkataratnamma. With the capital allotted to the share of the 1st defendant and Venkataratnamma and profits accrued on bullion business, he started liquor business and involved in a criminal case for assaulting excise officials. Thereupon, his gold business license was cancelled. The 1st defendant started liquor business in the name and style of Andhra Wines at Sompeta, after closing bullion business, and earned huge profit. The mother of the 1st plaintiff and the 1st defendant is also entitled to half share in the liquor business and, even after her death, the 1st defendant continued his liquor business. The 1st plaintiff did not possess any independent source of income and only acquired huge properties with the income from the business. Thus, the properties acquired by the 1st defendant are the properties acquired with the aid of joint family nucleus. Thereby, the 1st plaintiff is also entitled to claim share in the said property. Out of love and affection, Venkataratnamma, during her lifetime, in sound disposing state of mind, executed a will bequeathing her undivided share in suit schedule property in favour of the 1st plaintiff but the will was cancelled subsequently and Venkataratnamma executed relinquishment deed due to tricks played by the 1st defendant and others. The relinquishment deed executed in favour of the 1st defendant is not legal and valid and it was obtained by playing fraud. If the relinquishment deed is ignored canceling the will, the 1st plaintiff is entitled to claim entire share of Venkataratnamma and, if, for any reason, the will is disbelieved and ignored the relinquishment deed, the 1st plaintiff is entitled to 1/4th share in A to D schedules; half share in E and E1 schedules and 1/16th share in other properties and prayed to pass a preliminary decree for partition of schedule property. 5. The 1st defendant filed written statement, which was duly adopted by defendant Nos. 2 to 4, denying material allegations of the plaintiff while admitting devolving of certain property from his father and partition of the property in the year 1956 after the death of Adinarayana, Narasimhulu, Krishna Murthy and Apparao by the legal-heirs of all the branches but denied allotment of E and E1 schedule property to the share of Venkataratnamma. The 1st defendant carried on partnership business in the name and style of Konchada Rajayya and sons and the firm was taken along with goodwill by the 16th defendant who is a gold and silver trader under license. Therefore, no gold business is available for partition. The 1st defendant admitted about carrying on liquor business but contended that it is his separate business. The 1st defendant mainly denied the claim of the 1st plaintiff on the ground that the will was obtained by playing fraud, when Venkataratnamma visited house of the 1st plaintiff, with the connivance of attesters and scribe and, on her return to his house, she informed about obtaining will by undue influence, coercion or fraud etc., and, thereupon, cancelled the will. On receipt of Rs.20,000/- towards her share in the property, Venkataratnamma executed relinquishment deed relinquishing her right in schedule property. Therefore, the 1st defendant became absolute owner of ABCD schedule property and entitled to share in other items of the property. The main contention of the 1st defendant is that when the 1st plaintiff was never in joint possession and enjoyment of the property, the Court fee paid on the plaint is not in accordance with law. The 1st defendant also perfected his title by adverse possession. Thereby, the claim of the 1st plaintiff is barred by limitation and prayed to dismiss the suit. 6. Defendant Nos. 5 to 26 were set ex parte. 7. On the strength of the above pleadings, the trial Court framed as many as 11 issues which are extracted hereunder: Issues: 1) Whether the plaintiff is a joint family member with defendants and entitled to any share in the joint family properties? 2) Whether the suit schedules are correct? 3) Whether the plaintiff is in joint possession of the suit properties along with defendants of all the suit properties and whether the court fee paid is correct? 4) Whether the adoption of defendants 11 and 16 is true, valid and binding on defendants 1 to 4? 5) Whether the relinquishment deed dated 08-12-1975 executed by the 1st defendant's mother in favour of the 1st defendant is true, valid and binding on the plaintiff? 6) Whether the plaintiff has a right of suit? 7) Whether the suit is barred by time? 8) Whether the plaintiff and her daughters were given gold by the 1st defendant and his mother as pleaded in para 20 of the statement? 9) Whether the suit is maintainable under law? 10) Whether the suit is maintainable under law? 11) To what relief? 8. During the course of trial, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and got marked Exs.A1 and A2. On behalf of the defendants, D.Ws.1 to 3 were examined and got marked Exs.B1 and B2. 9. Upon hearing argument of both counsel and considering oral and documentary evidence on record, the trial Court dismissed the suit declining to pass preliminary decree for partition of schedule property. 10. Feeling aggrieved by the decree and judgment of the trial Court, the plaintiffs preferred the present appeal on various grounds. 11. The main contention urged in the grounds is that the trial Court committed an error in disbelieving the evidence of the plaintiffs having failed to record any finding on issue No. 8. It is further contended that the finding on issue Nos. 1, 3, 5 and 6 is erroneous since the 1st defendant did not adduce any evidence to rebut the evidence let in by the plaintiffs and, consequently, the finding of the trial Court on the above issues is liable to be set aside. The trial Court erroneously believed Ex.B1 and denied the claim of the plaintiffs though there is evidence on record to conclude that Ex.B1 was obtained by playing fraud on Venkataratnamma. If Ex.B1 was excluded, the plaintiffs are entitled to half share in A to E1 schedule property. If for any reason the will Ex.A1 is disbelieved, the plaintiffs are entitled to claim 1/4th share in A to E1 schedules and 1/16th share in other schedules but the trial Court miserably failed to appreciate the evidence in proper perspective and concluded that the mother of the 1st plaintiff relinquished her right and, thereby, the 1st defendant became owner of the property. It is further contended that execution of Ex.B1 receiving paltry amount of Rs.20,000/- itself indicates the fraud played by the 1st defendant in obtaining Ex.B1. Therefore, the plaintiffs are entitled to preliminary decree for partition and prayed to

set aside the decree and judgment under challenge and pass preliminary decree in favour of the plaintiffs allowing this appeal. 12. During the course of argument, learned counsel for the plaintiffs would contend that the trial Court did not appreciate the evidence in proper perspective and failed to consider the voluminous oral evidence adduced to prove execution of Ex.A1 will and examination of P.W.2 to prove the will as required under the special rules of evidence under Section 68 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'), but the trial Court failed to appreciate the oral evidence adduced by the plaintiffs to prove execution of Ex.A1. It is further contended that after the advent of the Act of 1956, though Venkataratnamma, mother of the 1st plaintiff and the 1st defendant, became absolute owner of the property under Section 14 of the Act of 1956 but the trial Court did not appreciate this contention in proper perspective and committed an error. Finally, it is contended that the oral evidence on record established that Ex.B1 was obtained by playing fraud paying paltry sum of Rs.20,000/- to relinquish right of Venkataratnamma in valuable property. This itself indicates the misdeeds of the 1st defendant in obtaining Ex.B1 and finally prayed to allow the appeal setting aside the decree and judgment of the trial Court under challenge and pass preliminary decree in favour of the plaintiffs. 13. Per contra, learned counsel for the defendants would contend that the business is separate property of the 1st defendant; after his death, his legal-heirs became absolute owners of the business and there is no presumption that business carried on by a member of joint family is business of the joint family. Apart from that, when Venkataratnamma relinquished her right in schedule property, she lost her testamentary capacity. Hence, will under Ex.A1 will was executed earlier to Ex.B1 and, by executing Ex.B1, the will was cancelled. Therefore, the will is no more in existence. Thereby, question of the 1st plaintiff's entitlement to half share under will does not arise. Added to that, when Venkataratnamma relinquished her right in the entire property, she ceased to be joint owner of schedule property. Consequently, the plaintiffs are disentitled to claim even 1/4th share in A to D schedule property and half share in E and E1 schedule property and, in support of his contentions, placed reliance on K.L.S.V.E.Annamalai Chetty Vs. K.L.S.V.E.Subramanian Chetty and others; Bhuru Mal Vs. Jagannath and others; Mst. Rukhmabai Vs. Lala Laxminarayan and others; D.S.Lakshmaiah and another Vs. L.Balasubramanyam and another; Smt. Kamala Devi and another Vs. Bachulal Gupta and others; Munni Lal Vs. Mt. Phula and others; and Debi Mangal Prasad Singh Vs. Mahadeo Prasad Singh and others. 14. Considering rival contentions and perusing the material available on record including the decree and judgment under challenge, the points that arise for consideration are as follows: (1) Whether Venkataratnamma, mother of the 1st plaintiff and the 1st defendant, executed Ex.A1 will dated 01-12-1975 in sound disposing state of mind bequeathing her undivided share of the property? (2) Whether Ex.B1 registered relinquishment deed dated 08-12-1975 executed by Venkataratnamma in favour of the 1st defendant is vitiated by fraud, if not, whether the 1st defendant became absolute owner of the property allotted to the share of the 1st defendant and his mother Venkataratnamma under Ex.A2 partition deed dated 15-06-1959? (3) Whether the 1st plaintiff is entitled to claim any share in schedule property, if so, whether preliminary decree be passed for partition of schedule property? 15. In Re. Point No. 1: It is an undisputed fact that Venkataratnamma, mother of the 1st plaintiff and the 1st defendant, and her son the 1st defendant were allotted property in partition under Ex.A2 dated 15-06-1959 when the legal-heirs of all the branches partitioned the property and execution of Ex.A1 will dated 01-12-1975 is also not equally in dispute. However, the will is required to be proved as per the special rules of evidence under Section 68 of the Act of 1872. In the present case, the propounder of the will i.e. the 1st plaintiff was not examined but got examined her son Krishnarao as P.W.1 to prove execution of Ex.A1 on 2012-1994. The 1st plaintiff died during pendency of the suit and plaintiff Nos. 2 to 6 were brought on record as legal-heirs vide orders in I.A.No. 482 of 1994 dated 18-08-1994. Thus, examination of the 2nd plaintiff as P.W.1 is subsequent to death of the 1st plaintiff, the propounder of the will. Even otherwise, the evidence of P.W.1 is not based on his knowledge but based on information what he received from others. By the date of his examination, he was aged 50 years i.e. on 20-12-1994. If 50 years age is calculated backwards, he might have born in the year 1944. In cross-examination, P.W.1 admitted that he was born in the month of November, 1943. Therefore, it is an undisputed fact that, by the date of partition of the property, he was aged more than 16 years and by the date of execution of Ex.A1 will in 1975, he might be 32 years. His examination in chief goes to show that his grandmother bequeathed her half share in lands, house and half share in gold and silver articles to his mother but did not testify anything about mental condition of testatrix Venkataratnamma at the time of execution of Ex.A1. P.W.1 further testified that his grandmother had no intention to cancel Ex.A1 will due to amicable relationship between his grandmother and mother. P.W.1 also denied validity of cancellation of will and relinquishment of share of Venkataratnamma receiving Rs.20,000/- from the 1st defendant under Ex.B1. In cross-examination, P.W.1 admitted that there was no partition between the 1st plaintiff and the 1st defendant but he came to know that the 1st defendant obtained another document from his grandmother and got the will cancelled. In further cross-examination, P.W.1 admitted that his mother told him in 1977 itself about execution of will by her mother which was a registered will. In view of this specific admission, it is clear that he had no personal knowledge about execution of Ex.A1 by Venkataratnamma in favour of the 1st plaintiff and his evidence is based on the information he received from his mother two years after alleged execution of Ex.A1 will i.e. in the year 1977 and it is a registered will. A suggestion was put to P.W.1 that the will was not executed out of free volition of Venkataratnamma but same was denied by him. In further examination in chief, after recalling on 30-01-1996, P.W.1 admitted that during the lifetime of his mother, Ex.A1 was in her custody and after her death, he found Ex.A1 in box and filed in the suit. According to the will, Gudla Narasimha Swamy of Narasannapet is one of the attesters, aged 95 years and unable to move. The other attesters of Ex.A1 Korada Vasudevarao and K.Ch.Nagamani are no more and the scribe of Ex.A1 Raghumahanthi Krishnarao is resident of Srikakulam whose whereabouts are not known to him. Another attester of Ex.A1 Chindiri Gumpa Swamy attended the court when P.W.1 was examined as witness. Finally, at the end of further examination in chief, P.W.1 admitted that he came to know about execution of cancellation deed canceling the will and relinquishment deed executed by his grandmother. Therefore, on analysis of entire evidence of P.W.1, he was not present at the time of execution of Ex.A1 will and did not state anything about the mental condition of Venkataratnamma, testatrix of Ex.A1, but cancellation of will and relinquishing her share in the property are within the knowledge of P.W.2. In fact, there is a specific allegation in the plaint that the will was cancelled by executing Ex.B1 relinquishment deed. In further cross-examination, a suggestion was put to P.W.1 that his grandmother Venkataratnamma was forcibly taken to Srikakulam and got written Ex.A1 with the help of Ex.A2. However, P.W.1 admitted that he does not know about execution of Ex.A1 till death of his mother and also he does not know anything about reference of Ex.A1 in the notice got issued by his mother and that the document was registered at the house of the 1st plaintiff by registrar. 16. The plaintiffs also got examined one Gumpa Swamy who had acquaintance with the testatrix Venkataratnamma, the 1st plaintiff and the 1st defendant. According to his evidence, Venkataratnamma executed a registered will bequeathing her undivided half share in the landed property, house, gold and silver to her daughter i.e. the 1st plaintiff. On the instructions of testatrix Venkataratnamma, the scribe prepared the will, contents of the will were read over to her and admitted by her to be true and correct and, thereafter, she affixed her thumb mark on the will in his presence and, later, P.W.2 and other attesters signed on it. In cross-examination, P.W.2 admitted his relationship with the plaintiffs but expressed his inability to disclose location of the house of Narasimhaswamy in Narasannapet. Korada Vasudeva belonged to Dandulakshmipuram near Narasannapet. Ex.A1 was written and executed in the compound of office of sub-registrar in Srikakulam and explained the reason for his presence and attesting Ex.A1 at the instance of testatrix Venkataratnamma. In cross-examination, several suggestions were put to him that Ex.A1 was not executed out of volition and also suggested that Venkataratnamma was taken forcibly and got prepared Ex.A1 will with the help of Ex.A2 and the same were denied by him. 17. It is not the case of the defendants that Venkataratnamma never executed any will. The pleadings of both the parties disclosed that Venkataratnamma executed Ex.A1 will and, later, cancelled by executing Ex.B1. Therefore, execution of will is not in controversy but cancellation of the will and execution of relinquishment deed under Ex.B1 are only in dispute. Though defendant Nos. 1 to 4 contended that Ex.A1 was obtained forcibly taking away Venkataratnamma to Srikakulam but nothing was elicited in the cross-examination of P.Ws.1 and 2 to substantiate the contention of the defendants. In the evidence of D.W.1, except disclosing that Venkataratnamma was confined in a room not allowing D.W.1 to see Venkataratnamma testatrix. Nothing was elicited to establish alleged fraud in obtaining Ex.A1. However, on her return to the house of the 1st defendant, Venkataratnamma cancelled the will by executing Ex.B1. Therefore, execution of Ex.A1 is proved and it was executed in sound disposing state of mind by Venkataratnamma. Moreover, execution of Ex.B1 under duress, undue influence, fraud etc., is not proved. Therefore, on close analysis of entire evidence on record including contents of Ex.A1, it is clear that Venkataratnamma executed Ex.A1 bequeathing her undivided share in the property in favour of the 1st plaintiff and it is her last will. 18. The trial Court, without deciding the issue pertaining to Ex.A1 independently, decided issue Nos. 1, 3, 5 and 6 by common discussion and did not record any specific finding about execution of Ex.A1 by Venkataratnamma. In any view of the matter, the evidence on record established that Venkataratnamma executed Ex.A1 will in sound disposing state of mind.

Accordingly, the point is held in favour of the plaintiffs and against the defendants. 19. In Re. Point No. 2 & 3: One of the contentions of the plaintiffs in the plaint is that Ex.A1 was cancelled by executing Ex.B1 relinquishment deed fraudulently. At the same time, defendant Nos. 1 to 4 contended that Ex.A1 will be obtained fraudulently and, in view of the fraud played on Venkataratnamma, she cancelled the will and executed Ex.B1 relinquishment deed receiving Rs.20,000/-. Thereby, the 1st defendant became owner of the property. Execution of Ex.A1 and Ex.B1 are not in dispute. The dispute is only with regard to fraud allegedly played by the 1st defendant in obtaining Ex.B1. 20. When the defendants asserted that Venkataratnamma executed Ex.B1 relinquishing her joint right in the property receiving Rs.20,000/-, the initial onus of proof is on the defendants to substantiate the same by adducing cogent and satisfactory evidence. If the defendants are able to establish execution of Ex.B1, the burden of proof will shift on to the plaintiffs to disprove execution of Ex.B1 and fraud played by the 1st defendant in obtaining Ex.B1. To substantiate the contentions of the defendants, the 1st defendant himself was examined as D.W.1 and testified about the alleged fraud played by the 1st plaintiff in obtaining Ex.A1, informing the same to the 1st defendant by his mother Venkataratnamma after her return and execution of Ex.B1 canceling the will. In cross-examination of D.W.1, nothing was elicited to discredit the testimony of D.W.1 regarding due execution of Ex.B1 in sound disposing state of mind. In cross-examination, D.W.1 admitted that there was no partition between himself and his mother Venkataratnamma and they enjoyed the property jointly. D.W.1 further admitted that no property was given to the 1st plaintiff either during the lifetime of Venkataratnamma or after her death and D.W.1 admitted that Venkataratnamma, his mother, executed registered will bequeathing her half share in favour of mother of P.W.1 but, after one week from the date of execution, the will was cancelled on the ground that it was obtained by playing fraud. Venkataratnamma executed both cancellation deed and relinquishment deed on the same day and he also accompanied to registrar's office at the time of execution of Ex.B1. No suggestion was put to D.W.1 that Ex.B1 was obtained by playing fraud or undue influence etc., except suggesting that Ex.B1 was not executed by Venkataratnamma and got denial of it. 21. The 1st defendant also got examined Devu Chittibabu who had acquaintance with the 1st defendant and his mother. D.W.2 attested the relinquishment deed Ex.B1. At best, his evidence is helpful to prove execution of Ex.B1 by Venkataratnamma by affixing her thumb impression in his presence after the contents were read over to Venkataratnamma. Ex.B1 was executed at the house of D.W.1 and registered the same at the house of D.W.1 and that Ex.B1 was not obtained by using any force or undue influence and that Ex.B1 was executed voluntarily. In cross-examination of D.W.2, nothing was elicited to discredit the testimony of D.W.1 except suggesting that Venkataratnamma never executed Ex.B1 and it is a fabricated and forged document but the same was denied by D.W.2. 22. Similarly, Tummid Mohanarao was examined as D.W.3 to prove execution of Ex.B1 relinquishment deed by Venkataratnamma. D.W.2 is the second attester of Ex.B1 and his evidence is almost in the lines of D.W.2, the other attester. In addition to that, D.W.3 testified about receipt of Rs.20,000/- by Venkataratnamma. In the entire cross-examination, nothing was elicited to rebut the testimony of D.W.3. On the other hand, a bald suggestion was put to him that Venkataratnamma never executed Ex.B1 and that the same was introduced by the defendants but the suggestion was denied by him. 23. On close analysis of evidence of D.Ws.1 to 3, Venkataratnamma executed Ex.B1 relinquishing her right in the undivided property allotted to her and her son the 1st defendant under Ex.A2 partition deed. Even the basis for execution of Ex.A1 is partition deed Ex.A2. However, Venkataratnamma, testatrix, reserved her right to revoke the will during her lifetime. In exercise of the power of revocation reserved on Venkataratnamma, she executed Ex.B1 relinquishment deed dated 08-12-1975. The contents of Ex.B1 disclosed that she relinquished her undivided share in the property receiving Rs.20,000/-. Even as per Ex.A1 registered will and Ex.B2 certified copy of the will, the testatrix, Venkataratnamma, bequeathed her share in favour of the 1st plaintiff and the will comes into effect only after death of Venkataratnamma but, during the lifetime of Venkataratnamma, she relinquished her right and ceased to be the owner of undivided half share bequeathed to the 1st plaintiff. Execution of Ex.B1 by Venkataratnamma, receiving Rs.20,000/- towards consideration for relinquishing her right in the undivided property, conferred absolute right on the 1st defendant. Thereby, the 1st defendant became absolute owner of the property. Though the plaintiffs contended that Ex.B1 was created for the purpose of denying the claim of the plaintiffs but the same was not substantiated by any evidence. On the other hand, the defendants proved execution of Ex.B1 by Venkataratnamma. When a party disputed validity of any document on the ground of fraud, coercion, undue influence, duress, mistake etc., in obtaining the document, it is incumbent upon such party to disclose particulars in detail as per Order VI Rule 4 of the Code of Civil Procedure. In Afsar Sheikh and another Vs. Soleman Bibi and others, the Apex Court ruled that "Undue influence, fraud, misrepresentation are cognate vices and may, in part, overlap in some cases, they are in law distinct categories, and are in view of Order 6, Rule 4, read with Order 6, Rule 2 of the CPC, required to be separately pleaded, with specificity, particularity and precision." The Apex Court reiterated the same principle in Smt. Sukhdei (dead) by L.Rs. Vs. Bairo (dead) and others. In view of the law declared by Apex Court, details of fraud, undue influence etc., need be pleaded and proved by both the plaintiffs and the 1st defendant in obtaining either Ex.A1 or Ex.B1 but both the parties failed to disclose in detail particulars of fraud, undue influence etc., both in pleadings and evidence. In those circumstances, it is difficult to hold that either Ex.A1 or Ex.B1 was obtained by fraud, undue influence etc., to vitiate the same. Therefore, by virtue of Ex.B1, the 1st defendant became owner of entire property allotted to the 1st defendant and his mother Venkataratnamma under Ex.A2 partition deed. 24. One of the contentions of the plaintiffs is that after the advent of the Act of 1956, the property allotted to the share of Venkataratnamma became her absolute property by virtue of Section 14 (2) of the Act of 1956. However, joint ownership of Venkataratnamma is not in controversy. Therefore, it is wholly unnecessary to decide ownership of Venkataratnamma in the half share of the property allotted to the 1st defendant and Venkataratnamma in the partition under Ex.A2. 25. Learned counsel for the plaintiffs drawn attention of this Court to Mulla Principles of Hindu Law, 28th Edition by S.A.Desai, Volume – I, Page Nos. 122 to 130, contending that share obtained by a widow on partition of joint family property, the same cannot be treated as stridhana property under Mitakshara Law as held in Debi Mangal Prasad Singh Vs. Mahadeo Prasad Singh and others (7th supra). In Smt. Kamala Devi and another Vs. Bachulal Gupta and others (5th supra), the Apex Court is of the view that "It does not therefore pass on her death to her stridhana heirs, but reverts on her to the next heirs of her husband in the absence of an express agreement amongst the co-sharers to the contrary." However, these principles are not in quarrel and not at all relevant for deciding the present controversy. Even the principles relating to features of stridhana in the above text, a Hindu female may acquire property from various sources. She may acquire it by gift, or by inheritance, or on partition. She may also acquire it by her own labour and skill. However, all property acquired by her is not stridhana. Whether a particular kind of property is stridhana or not, depends on: the source from which the property was acquired; her status at the time of acquisition i.e. whether she acquired it during maidenhood, covertures, or widowhood; and lastly; the school to which she belongs. While considering whether property acquired by a widow or a woman is stridhana or not, the Court has to keep in mind the above three principles. Even if these principles are applied to the present facts of the case, schedule property is not stridhana property of Venkataratnamma. However, it is not the case of the plaintiffs that schedule property was stridhana property of Venkataratnamma. It is the specific case of the plaintiffs that it was the property of Venkataratnamma allotted to her share in the partition. Therefore, the principles applicable to stridhana property cannot be applied to the present facts of the case. 26. Refuting the contentions of learned counsel for the plaintiffs, learned counsel for the defendants, in support of the judgment of the trial Court, drawn attention of this Court to K.L.S.V.E.Annamalai Chetty Vs. K.L.S.V.E.Subramanian Chetty and others (1st supra). In the said judgment, the Privy Council, while dealing with a suit for partition, held that "The burden of proving in an action for partition of joint family property that any particular item of property is joint, primarily rests upon the plaintiff. Circumstances no doubt may readily cause the onus to be discharged, but where this has not been done and in the face of direct evidence accepted by the High Court, Privy Council is not at liberty to speculate as to alternative possibilities." The principle laid down in the above judgment may at best be helpful to compel the plaintiffs to discharge their initial onus of proof regarding nature of property but, for deciding the present issue regarding woman's estate, it is not relevant. 27. Learned counsel for the defendants further drawn attention of this Court to Bhagwantrao Jairam and another Vs. Punjaram Sadashiv and others, wherein Nagpur High Court had an occasion to deal with woman's estate and held that "The property which a widow acquires under Mitakshara law on a partition among sons cannot be treated as property given to her in lieu of her maintenance but should be treated as property in the same category as one inherited from the husband." 28. In D.S.Lakshmaiah and another Vs. L.Balasubramanyam and another (4th supra), the Apex Court, while discussing about burden of proof, laid down certain principles similar to the principles laid down by Privy Council in the decision referred supra. Learned counsel for the defendants further contended that when a member of joint family carrying on business cannot be presumed to be the business of the joint family. In support of this contention, learned counsel for the defendants drawn attention of this Court to Bhuru Mal Vs. Jagannath and others (2nd supra), wherein 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

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