

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No. 557 OF 1997

JUDGMENT:

The unsuccessful plaintiff in O.S.No. 49 of 1988 on the file of the Court of Subordinate Judge, Tadepalligudem (for short, 'the trial Court'), preferred this appeal challenging the decree and judgment dated 14-10-1996, whereby the suit filed for partition is dismissed.

2. The appellant was the plaintiff and the respondents were the defendants before the trial Court and, for convenience of reference, the ranks given to the parties in the suit before the trial Court will be adopted throughout this judgment.

3. The plaintiff filed the suit for partition of schedule site and building into two equal shares, to allot one such share to the plaintiff and put the plaintiff in separate possession alleging that defendants 1 and 2 are father and mother of the plaintiff. The 3rd defendant, claiming to be the owner under void sale deed obtained from the 2nd defendant for the building, is in unlawful possession and enjoyment of the building. Schedule property is joint family property of the plaintiff and the 1st defendant. The plaintiff was born on 15-04-1972 and he is a member of Hindu undivided coparcenary.

The property originally belongs to the 1st defendant and his younger brother Bulli Venkata Reddy and they divided the property under registered partition deed dated 01-09-1969. In the said partition, agricultural wet land of an extent of Ac. 4.53 cents, a thatched house in an extent of 408 square yards in Pentapadu Village and site of the present building were allotted to the share of the 1st defendant and the said Bulli Venkata Reddy was allotted a pucca tiled house and was paid Rs.4,000/- overty for constructing the tiled house.

The 1st defendant addicted to vices and became a drunkard. In 1971, the 1st defendant, proposing to construct a terraced building in the site, which was allotted to him, *i.e.* schedule property, removed the thatched house. In view of the vices of the 1st defendant, elders of the family advised to keep the site and building intact for family residence without power of alienation. The 1st defendant, on the advice of elders, executed registered settlement deed dated 03-01-1972 in favour of the 2nd defendant with absolute rights. By the date of settlement deed, the plaintiff was not even born. On 18-11-1972, the 1st defendant executed another settlement deed in respect of agricultural lands in favour of the 2nd defendant reserving his life interest.

While the matter stood thus, the 1st defendant executed registered relinquishment deed dated 20-08-1981 receiving Rs.12,000/- in favour of the plaintiff and the 2nd defendant relinquishing his right in respect of all agricultural lands but the 3rd defendant obtained sale deed from the 2nd defendant for Rs.1,24,000/- fraudulently. Therefore, the sale is not valid and schedule property is Hindu undivided coparcenary and prayed to grant decree for the aforesaid reliefs.

4. The 1st defendant filed written statement supporting the contentions of the plaintiff and prayed to pass a decree in his favour.

5. The 3rd defendant filed written statement resisting the claim of the plaintiff raising several contentions and one among them is that the suit for partial partition is not maintainable. The 3rd defendant also raised several contentions about validity of sale deed and gift deeds but they are not necessary for deciding the real controversy in this appeal.

6. Basing on the above pleadings, the trial Court framed the following

issues:

Issues:

1. *Whether the plaint schedule property is the joint family property of the plaintiff and first defendant?*
2. *Whether the plaintiff is entitled to the partition, if so to what share and for what properties?*
3. *Whether the partition is for the benefit of the minors?*
4. *Whether the registered settlement deeds dated 03-01-1972 and 18-11-1972 are nominal and that second defendant is not acquired any title over that properties?*
5. *Whether the first defendant constructed a terraced building with his own income on the joint family land nominally standing in the name of second defendant?*
6. *Whether third defendant obtained sale deed dated 04-02-1988 from 2nd defendant in respect of terraced building by fraud?*
7. *Whether the plaintiff is entitled to profits, if so to what amount?*
8. *To what relief?*

7. During the course of trial, on behalf of the plaintiff, P.Ws.1 to 5 were examined and got marked Exs.A1 to A12. On behalf of the defendants, D.Ws.1 to 8 were examined and got marked Exs.B1 to B18.

8. Upon hearing argument of both counsel and considering oral and documentary evidence on record, the trial Court, in para No. 29, relied on ***Vemavarapur Mallikarjuna Rao Vs. Chaturvedula Siva Sankara Prasad and others***^[1] to hold that suit for partial partition is not maintainable and dismissed the suit.

9. The plaintiff, being unsuccessful, preferred the present appeal challenging the decree and judgment raising several contentions mostly touching the merits of the case on other aspects while contending that dismissal of suit for partial partition without any specific issue is illegal and

prayed to allow the appeal setting aside the decree and judgment of the trial Court.

10. During the course of argument, learned counsel for the plaintiff reiterated the contention that dismissal of suit without framing an issue regarding maintainability of the suit for partial partition is illegal and challenged the present decree and judgment on this sole ground.

11. Considering the contentions and perusing oral and documentary evidence available on record including the decree and judgment under challenge, the sole point that arises for consideration is thus:

"Whether dismissal of suit on the ground that suit for partial partition is not maintainable be sustained?"

12. **In Re. Point:**

As per pleadings in the plaint, the property originally belongs to the 1st defendant and his younger brother Bulli Venkata Reddy, which devolved upon them from their ancestors, and they divided the property under registered partition deed dated 01-09-1969. In the said partition, agricultural wet land of an extent of Ac. 4.53 cents, a thatched house in an extent of 408 square yards in Pentapadu Village and site under the present building were allotted to the share of the 1st defendant and the said Bulli Venkata Reddy was allotted a pucca tiled house and was paid Rs.4,000/- overty for constructing the tiled house. Thus, the undisputed facts are that three items were allotted to the share of the 1st defendant in the partition. Since the 1st defendant addicted to vices and squandering the property for his vices, elders advised him to execute settlement deed in favour of the 2nd defendant and, accordingly, he executed Exs.A4 and A5 registered settlement deeds on 03-01-1972 and 18-11-1972 respectively reserving life interest for himself creating vested remainder in favour of the 2nd defendant. Later, the 1st

defendant relinquished his right receiving Rs.12,000/- in all the properties of joint family but the 3rd defendant obtained sale deed from the 2nd defendant for Rs.1,24,000/- fraudulently. Later, there was correspondence between the parties by exchange of legal notices and claimed partition. The 1st defendant supported the case of the plaintiff in all respects but the 3rd defendant raised a specific plea that suit for partial partition is not maintainable. Therefore, the trial Court held that suit for partial partition is not maintainable.

13. Even when I advert to the pleadings in the plaint, it is an undisputed fact that the 1st defendant was allotted Ac. 4.53 cents of land, a thatched house in an extent of 408 square yards at Pentapadu Village and schedule property under Ex.A1 registered partition deed dated 01-09-1969 but the present suit is filed only for partition of schedule property without claiming partition of Ac. 4.53 cents of land and the thatched house in an extent of 408 square yards. It appears from the claim that to denude rights of the 3rd defendant, who purchased the property under Ex.B7, the present suit was filed. Thus, it is evidently a suit for partial partition.

14. It is settled principle of law that suit for partition must embrace all properties of joint family, otherwise suit for partial partition is not maintainable. In **Kenchegowda (since deceased) by L.Rs. Vs. Siddegowda @ Motegowda**^[2], the Apex Court held that

"Suit for partial partition is not maintainable."

In view of the law declared by the Apex Court and this Court, suit for partial partition is not maintainable and the same is liable to be dismissed.

15. After re-appraisal of the admissions made in the plaint, more particularly regarding allotment of Ac. 4.53 cents of wet land and a thatched

house in an extent of 408 square yards which were not included in the suit claim for partition, the suit itself is not maintainable. On this sole ground, the trial Court dismissed the suit and, even after reappraisal of contentions of both parties, I have no slightest hesitation to concur with the finding of the trial Court. Thereby, I find no legal infirmity in the decree and judgment of the trial Court warranting interference of this Court. Therefore, the finding of the trial Court is hereby confirmed holding this point in favour of the defendants and against the plaintiff.

16. In view of my finding on the above point, the appeal deserves to be dismissed as it is devoid of merits.

17. In the result, the appeal is dismissed confirming the decree and judgment dated 14-10-1996 passed in O.S.No. 49 of 1988 on the file of the Court of Subordinate Judge, Tadepalligudem. Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 21st August, 2015.

JSK

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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[\[1\]](#) AIR 1981 AP 84
[\[2\]](#) 1994 (4) SCC 294