

HON'BLE SMT JUSTICE ANIS
SECOND APPEAL No.1423 of 2010
and
CROSS OBJECTIONS (S.R).No.27810 of 2011

C O M M O N - J U D G M E N T:

This Second Appeal No.1423 of 2010 and Cross Objections (S.R).No.27810 of 2011 are directed against the judgment and decree dated 14.07.2010, passed in A.S.No.67 of 2008, by the VI Additional District Judge, Siddipet, whereby and whereunder the learned Additional District Judge has allowed the appeal setting aside the judgment and decree dated 29.08.2008, passed in O.S.No.95 of 2004, by the Senior Civil Judge, Siddipet.

The appellants herein are defendant Nos.7, 8, 10, 11 & 12, respondent No.1 herein is the plaintiff and respondent Nos.2 to 12 herein are defendant Nos.1 to 6, 9 & 13 to 16 in O.S.No.95 of 2004. Further, the cross-objectors in the cross-objections are defendant Nos.14 to 16.

The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

Initially, plaintiff filed the suit O.S.No.95 of 2004 against defendant Nos.1 to 12 for partition of schedule 'A' and 'B' properties and for allotment of one share to him. Later, defendant Nos.13 to 16 were got impleaded in the suit vide orders in I.A.No.174 of 2006 dated 06.12.2007.

The brief facts of the case are that one late Panyala Mutyam Reddy was the common ancestor to the plaintiff and defendant Nos.1 to 12. The said Mutyam Reddy died intestate leaving behind his only son Panyala Bhoopathi Reddy, who is the father of the plaintiff and defendant Nos.2 to 12. Defendant No.1 is the wife of the said Panyala Bhoopathi Reddy, who died intestate on 05.08.2003, leaving behind the plaintiff and defendant Nos.1 to 12. Defendant Nos.2 to 6 are the brothers and defendant Nos.7 to 12 are the sisters of the plaintiff. According to the plaintiff, the marriage of defendant Nos.7 to 12 i.e., his sisters were performed by his father during his lifetime prior to 1985. Late Bhoopathi Reddy during his lifetime owned and possessed the suit schedule 'A' and 'B' properties. After his death, defendant Nos.2 to 12 jointly inherited the suit schedule properties along with the plaintiff. Plaintiff and defendant Nos.2 to 6 are entitled for 1/7th share each and got it. They also got 1/91th share each from the share of Panyala Bhoopathi Reddy as he died intestate. According to the plaintiff, his father during his lifetime sold the joint family properties in Suvey Nos.1367, 1369 and other lands. Out of the sale proceeds, he purchased the lands in Survey Nos.263, 274, 285 and 291 in the name of Defendant Nos.2 to 6. During the life time of Bhoopathi Reddy, he filed O.S.No.82 of 202 along with defendant No.1 for maintenance against the plaintiff and defendant Nos.2 to 6 on the file of the Junior Civil Judge,

Siddipet, and the said Court ordered maintenance. In the said suit, defendant No.1 and Bhoopathi Reddy jointly pleaded that the suit schedule properties are the joint family properties, and plaintiff and defendant Nos.2 to 6 are the joint family members. Plaintiff and defendant Nos.2 to 6 filed the written statement in that suit. There was a dispute between plaintiff and defendant Nos.2 to 6 for effecting the partition. As the demand for partition was not materialized, plaintiff finally demanded defendant Nos.2 to 6 on 15.05.2004 for effecting the partition of the suit schedule properties and defendant Nos.2 to 6 bluntly refused to effect the partition. Hence, the plaintiff filed the suit for partition and separate possession of his share in the joint family properties.

Defendant No.2 filed the written statement and stated that late Bhoopathi Reddy sold the lands during his lifetime for the purpose of marriage of his daughters and he purchased Item No.5 of the land admeasuring Ac.0.23Gts and Item No.10 of 'A' schedule land admeasuring Ac.1.11Gts, and his name was mutated in the revenue records. The pattadar passbooks and title deeds were issued to him. According to him, only an extent of Ac.20.00Gts is available for partition, but not Ac.48.28Gts. Defendant No.2 also stated that his father during his lifetime obtained the loan of Rs.54,000/- from the Cooperative Bank, Ponnal. With interest it became Rs.65,000/- and the said amount has to be repaid jointly to the bank. Plaintiff is never in joint possession of the suit

schedule properties at any time. Therefore, plaintiff is not entitled to pay the fixed court fee. Plaintiff and defendant Nos.2 to 6 are alone entitled to share Ac.20.00Gts of land and defendant No.1 and defendant Nos.7 to 12 are not entitled for any share. According to defendant No.2, himself and defendant No.6 spent entire medical expenses for defendant No.1, who underwent open heart surgery, and they have spent Rs.2,00,000/- and medical expenses and the said amount has to be adjusted from the joint family properties. According to defendant No.2, plaintiff intentionally impleaded his sisters and mother to the suit though they are not entitled for any share. Defendant Nos.7 to 12 got married prior to 1985 and the plaintiff filed the suit only to harass defendant Nos.2 to 6, and as such the suit is liable to be dismissed.

Defendant No.3 filed the written statement and the same was adopted by defendant No.4. According to these defendants, during the lifetime of their father, partition was effected between their father and sons on 30.05.2003. As per the said partition, plaintiff was allotted Ac.1.29Gts in Survey No.1366 of Siddipet and their father got Ac.4.37Gts in Survey No.576, 577, 580 and 581 of Ensanpally village. The land to an extent of Ac.1.26Gts in Survey No.263 was allotted to defendant No.3. The land to an extent of Ac.0.24Gts in Survey No.274 and Ac.0.12Gts in Survey No.285 was allotted to defendant No.4. Defendant No.5 was allotted Ac.0.32Gts in Survey No.291, defendant No.6 was allotted Ac.0.17Gts in

Survey No.291 and accordingly the mutation was effected in the revenue records. Defendant No.3 stated that his father filed the suit for maintenance against defendant Nos.2 to 6 and the plaintiff. At the time of filing of the maintenance suit, the plaintiff and defendant Nos.2 to 6 were the members of the joint family. According to defendant Nos.3 & 4, their father sold the land to an extent of Ac.2.00Gts in Survey No.1366 to K. Srinivas through a registered sale deed dated 06.04.2001, Ac.2.00Gts in Survey No.1361 to Etla Durgaiah under a registered sale deed dated 11.03.1997 and Ac.2.00Gts in Survey No.1366 of Siddipet to Akkamma Ellaiah and Akkamma Srinivas through a registered sale deed dated 09.03.1998. Defendant Nos.3 & 4 stated that the suit is bad for non-joinder of necessary parties and the suit is liable to be dismissed on this ground. It is also contended that their father took a loan to a tune of Rs.1,08,845/- from the Primary Agricultural Cooperative Society, Siddipet, and the said amount has to be repaid by the plaintiff and defendant Nos.2 to 6 under pious obligation equally. Likewise, the due of Rs.15,568/- to Electricity Department is also to be paid by the plaintiff and defendant Nos.2 to 6 and they are also liable to pay Rs.25,000/- to the Venkateswara Medical Hall from where the medicines were purchased by their father. The plaintiff is liable to pay maintenance to defendant No.1 to a tune of Rs.39,000/- as per the decree passed in O.S.No.82 of 2002, likewise medical expenses incurred by

defendant Nos.2 & 4 for defendant No.1 amounting to Rs.2,00,000/-. Plaintiff and defendant Nos.2 to 6 have to share the said amount equally. An agreement to that effect was effected on 15.05.2004 and the plaintiff is evading the said payment. Thus, they prayed the Court to dismiss the suit.

Defendant No.10 filed the written statement and additional written statement. According to defendant No.10, plaintiff has not approached the Court with clean hands and suppressed the material facts and he filed the suit in collusion with some defendants to harass her. According to defendant No.10, her father gifted the land to an extent of Ac.11.34Gts through a registered gift deed dated 26.08.1996. The plaintiff, defendant Nos.2, 4, 5 and husband of defendant No.8 attested the said gift deed. The revenue authorities mutated her name in the revenue records, and pattadar passbooks and title deeds were issued in her name. According to defendant No.10, during the lifetime of her father, partition had taken place and no properties were left for partition. Plaintiff had no cause of action to file the present suit. Since the date of gift she has been in exclusive possession and enjoyment of the lands with the knowledge of all the defendants. No objection has been raised at any time. Therefore, all the parties to the suit had acquiesced their interests in the suit lands and they are estopped from claiming the said properties. According to defendant No.10,

excluding the gifted lands, she is entitled to 1/72th share in the remaining landed properties. The plaintiff deliberately omitted the cattle shed worth Rs.15,000/- and suppressed the same and the plaintiff filed the suit in collusion with some of the defendants to knock away the properties of this defendant.

Defendant No.13 filed the written statement contending that himself and his two brothers purchased the land to an extent of Ac.2.00Gts in Survey No.1366 situated at Prasanthnagar, Siddipet Mandal, through a registered sale deed in the year 2001 for a valid sale consideration of Rs.2,00,000/- from the father of the plaintiff. Thereafter, they sold the said land to defendant Nos.5 & 6 under a registered sale deed dated 17.03.2005. Therefore, defendant No.13 and his two brothers are no way concerned with the suit properties and as on the date of filing of the suit they are not the owners of the property.

Defendant Nos.14 to 16 filed their written statement contending that defendant No.14 purchased the land to an extent of Ac.2.00Gts in Survey No.1361 from late Bhooopathi Reddy through a registered sale deed dated 11.03.1997. Since the date of purchase, he is in possession of the said land. Plaintiff signed the sale deed as attester No.1 and he never raised any objection at the time of sale of the land. Likewise, defendant Nos.15 & 16 has jointly purchased the

land of Ac.2.00Gts in survey No.1366 from Bhoopathi Reddy through a registered sale deed dated 09.03.1998. In the sale deed also, plaintiff has attested as witness No.1. After purchase defendant Nos.15 & 16 are in peaceful possession and enjoyment of the said land.

Basing on the pleadings, the trial Court framed seven issues and to prove these issues plaintiff himself examined as PW1 and got examined another witness as PW.2. Exs.A1 to A6 were marked on his behalf. To prove the case of defendants, Defendant No.10 herself examined as DW.1 and got marked Exs.B1 to B3.

The trial Court after considering the evidence on record held that the plaintiff failed to prove that the suit schedule properties are available for partition and plaintiff has no cause of action to file the suit and the suit is bad for non-joinder of parties. As such, the plaintiff is not entitled for partition of the 'A' and 'B' schedule properties and dismissed the suit.

Aggrieved by the decree and judgment of the trial Court, the plaintiff filed the appeal in A.S.No.67 of 2008 before the VI Additional District Judge, Siddipet. On 14.07.2010, the first appellate Court allowed the appeal by setting aside the judgment of the trial Court in O.S.No.95 of 2004 dated 29.08.2008 and passed the preliminary decree for partition with the following terms:

1. The plaintiff and Defendant No.2 to 6 are entitled to 14/91 share each in A and B suit schedule properties.
2. Defendant No.1 and defendant No.7 to 12 are entitled to 1/91 share each in A and B suit schedule properties.
3. The parties in the suit are entitled for engrossing final decree in terms of the preliminary decree.
4. The plaintiff is entitled for *mesne* profits from the date of suit and the same shall be determined in the final decree petition.
5. Equities if any shall be determined in the final decree petition.

Aggrieved by the judgment and decree passed by the first appellate Court, defendant Nos.7, 8, 10, 11 & 12 filed the present second appeal and this Court on 21.01.2011 admitted the appeal on the following substantial questions of law:

1. The lower appellate Court failed to look into the gift made by a coparcener to another coparcener Under Section 121 and 122 of Transfer of Property Act.
2. A father can make a gift of Immovable property within the reasonable limits keeping in view the total extent of property held by the family in favour of his daughter at the time of her marriage or even long after her marriage.
3. Whether gift under Ex.B1 is within reasonable limits are not has to be judged according to the status of family at the time of making of gift, the extent of immovable property owned by the family and also extent of property gifted. No hard and fast tool prescribing quantities limits of such gifts can be laid down.
4. The lower appellate Court failed to consider Under Section 14(1) and (2) of Hindu Succession Act which confers absolute rights to defendant No.10 under Ex.B1.

5. The lower appellate Court has failed to give reasoning that any particular property is Joint Family Property is upon the person who claims it as Coparcenary property and that there is no presumption that because one member of the family separated himself, there has been separation with regard to all.
6. The lower Court has failed to give reason with regard to other contesting defendants who has not given any evidence in the suit.
7. It is settled law that each one of the shares had an antecedent title and therefore no conveyance is involved in the process has the conferment of a new title is not necessary.

The learned counsel for the appellants argued that the first appellate Court allowed the appeal setting aside the judgment of the trial Court on assumptions and presumptions and gave erroneous findings. It is also argued that the first appellate Court failed to consider that there was an earlier partition effected during the lifetime of the father of the parties on 26.11.1995, and in the said partition, plaintiff and other sons were allotted properties from out of the suit schedule properties. It is also argued that father of the plaintiff gifted an extent of Ac.11.34Gts in favour of defendant No.10 under a registered gift deed and the plaintiff suppressed this fact and further he is one of the witnesses to the gift deed. Likewise, the plaintiff also suppressed the fact that his father sold certain lands to defendant Nos.9 to 12 under registered sale deeds and same was attested by the plaintiff as one of the witness along with his brothers.

Therefore, the plaintiff has not approached the Court with clean hands. On this ground itself, the suit filed by the plaintiff for partition is liable to be dismissed. It is also argued by the appellants' counsel that Hindu Law has no application to the present case. Gift deed was executed by the father of the plaintiff in favour of defendant No.10. Brothers and sisters attested the said document. Further, they have not filed the suit for cancellation of the gift deed till this day. There is no undivided interest in the suit schedule properties. Further, coparcenary does not exist. Father of the plaintiff was kartha and manager of the properties and during his lifetime he made family arrangements of the properties and some of the properties were given to the sons. Plaintiff, who attested the gift deed, is estopped from claiming partition and separate possession of the suit schedule properties. Similarly, defendant Nos.14, 15 & 16 purchased the properties under a registered sale deed on 11.03.1997 and plaintiff has knowledge about the execution of the said sale deeds and he admitted in the evidence that he attested the said sale deeds and the first appellate Court failed to consider the evidence of DW.1 and erroneously allowed the appeal and set aside the judgment of the trial Court and finally prayed the Court to allow the appeal. The learned counsel for the appellants relied on ***Renikuntla Rajamma (D) by LRs. V. K.***

Sarwanamma¹, wherein the Hon[”]ble Apex Court held as follows:

“15. The matter can be viewed from yet another angle. Section 123 of the T.P. Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. Insofar as the gifts of immovable property are concerned, Section 123 makes transfer by a registered instrument mandatory. This is evident from the use of word "transfer must be effected" used by Parliament in so far as immovable property is concerned. In contradiction to that requirement the second part of Section 123 dealing with gifts of movable property, simply requires that gift of movable property may be effected either by a registered instrument signed as aforesaid or "by delivery". The difference in the two provisions lies in the fact that in so far as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. Absence of any such requirement can only lead us to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property.

18. The above decision clearly rests on the facts of that case. If the gift was conditional and there was no acceptance of the donee it could not operate as a gift. Absolute transfer of ownership in the gifted property in favour of the donee was absent in that case which led this Court to hold that the gift was conditional and had to become operative only after the death of the donee. The judgment is in that view clearly distinguishable and cannot be read to be an authority for the proposition that delivery of possession is an essential requirement for making a valid gift.

19. In the case at hand as already noticed by us, the execution of registered gift deed and its attestation by two witnesses is not in dispute. It has also been concurrently held by all the three courts below that the donee had accepted the gift. The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the lifetime of the donor which does not in any way affect the transfer of ownership in favour of the donee by the donor.”

¹ 2014 (5) ALD 173 (SC)

On the other and, the learned counsel for respondent No.1 argued that originally P. Muthyam Reddy was the common ancestor and father of the plaintiff and defendant Nos.2 to 12, and he was the Kartha of the family. The suit schedule properties are joint family properties. Therefore, father of the plaintiff has no right to gift the property in favour of defendant No.10. Therefore, the gift deed is not valid. The father of the plaintiff had 12 children and if at all he wants to gift the property to defendant No.10, 1/4th should be given to defendant No.10 and no reasons were given why he gave Ac.11.34Gts to defendant No.10. Further, it is not for any pious purposes. There is no evidence about the earlier partition and other sharers were not examined to prove earlier partition. Therefore, the first appellate Court rightly set aside the judgment passed in O.S.No.95 of 2004 and the said findings of the first appellate Court needs no interference. Therefore, prayed the Court to dismiss the second appeal. The learned counsel for respondent No.1 relied on (1) **Thimmaiah and others v. Ningamma and another**², wherein the Hon'ble Apex Court held as follows:

"17. The Karta is competent or has the power to dispose of coparcenary property only if (a) the disposition is of a reasonable portion of the coparcenary property and (b) the disposition is for a recognised "pious purpose". The High Court has not come to any conclusion as to whether the gift of items 3 to 6 by Hiri to the respondent No. 2 was within reasonable limits or in fulfillment of an antenuptial promise made on the occasion of the settlement of the terms of the respondent No.2's marriage. It must be taken, therefore, that the findings of the lower Courts on both counts were accepted. That being so, Hiri could not have donated items 3 to 6 to respondent No. 2 and the deed of gift dated 9.6.71

² (2000) 7 SCC 409

was impermissible under Hindu Law. The question is - could such an alienation be made with the consent of the appellant No.1?

19. This Court in *Guramma v. Mallappa* [1964] 4 SCR 497 has envisaged three situations of voidable transactions. It was held that a managing member may alienate joint family property in three situations namely: (i) legal necessity, or (ii) benefit of the estate or (iii) with the consent of all the coparceners of the family. Where the alienation is not with the consent of all the coparceners, it is voidable at the instance of the coparcener whose consent has not been obtained. Needless to say where there is only a sole surviving coparcener and no other member of the family who has a joint interest in the property, there are no fetters on the alienation of the property. Assuming that the principle enunciated in *Guramma v. Mallappa* (supra) would apply to void alienations of joint family property, the question of consent of all interested parties would still remain.”

(2) ***P. Kuppayee and another v. Raja Gounder***³,

wherein it is held as follows:

“12. Coming to the second point the trial court held that since the property was ancestral in nature, the respondent had no authority/power to make a gift of a portion of the ancestral property in favour of his daughters. In appeal the First Appellate Court accepted that the father could give away a small portion of the ancestral property to his daughters out of the total holding of the family property but since in this case the total extent of property owned by the family had not been proved it could not be held that the property gifted by the father was of a reasonable portion of the total holding of the family. The High Court affirmed the finding recorded by the First Appellate Court.

13. The High Court of Madras in a series of judgments has taken the view that father could make a gift within reasonable limits of ancestral immovable property to his daughter as apart of his moral obligation at the time of her marriage or even thereafter.”

and (3) ***Agina Chandra Mouli (died) by LRs. V. Agina***

Varamma and another⁴, wherein it is held as follows:

“71. Thus, only if the consent of the other coparceners is taken, a gift of undivided interest in the coparcenary property by a coparcener, either to another coparcener or to a stranger, is valid. Admittedly, consent of the 1st defendant was not obtained by Late Ramalingam before executing the Gift Deeds in favour of the 2nd defendant. Therefore, the said Gift Deeds are void.

³ (2004) 1 SCC 295

⁴ 2014 (6) ALD 430

76. In the present case not only were the gifts made without the consent of the 1st defendant, they were gifts of specific items of joint family property by Late Ramalingam in favour of 2nd defendant. The interest of Ramalingam, at the time of execution of gift deeds, was an undivided interest in respect of all the properties of the family. Until there is a partition valid in law, the right of each co-sharer extends over the entire property to the extent of his share. Ramalingam therefore had no right to treat any specific property as his exclusive property or divide, by metes and bounds, his undivided share in the properties and bequeath a specific item to 2nd defendant."

No arguments were advanced on behalf of the cross-objectors/defendant Nos.14 to 16 in the Cross Objections.

Now the point that arise for consideration in this appeal is whether there are any substantial questions of law involved in this appeal to set aside the judgment dated 14.07.2010 passed in A.S.No.67 of 2008 on the file of VI Additional District Judge, Siddipet or not?

P O I N T: As per the material available on record, plaintiff filed the suit seeking partition of the schedule 'A' & 'B' schedule properties and allotment of one share to him. Plaintiff claims that his father P. Bhoopathi Reddy died on 05.08.2003 leaving behind the plaintiff and defendant Nos.2 to 12 as his children and defendant No.1 as his wife. Plaintiff is claiming Ac.48.28Gts mentioned in 'A' schedule properties situated in Ensanpally village, Siddipet Mandal, and 'B' schedule property consisting of house bearing No.1-36 admeasuring 300 Sq.yards situated in the same village as joint family properties and after the death of his father he is entitled to a share in the said properties. Plaintiff also contended that he along with defendant Nos.2 to 12 are in

joint possession of the suit schedule properties, and along with him, other brothers and sisters are also entitled for a share in the said properties. A perusal of the evidence shows that there is no dispute that father of the plaintiff late Bhoopathi Reddy is the son of one Muthyam Reddy. It is an admitted fact that plaintiff suppressed the important facts in the plaint regarding his father gifting Ac.11.34Gts through a registered gift deed dated 26.08.1996 in favour of defendant No.10 and he also suppressed that his father sold Ac.2.00 of land in Survey No.1366, Ac.2.00Gts of land in Survey No.1361 and Ac.2.00Gts of land in Survey No.1366 of Siddipet to K. Srinivas E. Durgaiah, Akkamma Ellaiah and Akkamma Srinivas under registered sale deeds dated 06.04.2001, 11.03.1997 and 09.03.1998 respectively. It is also suppressed by the plaintiff that he is one of the attesor to the registered gift deed in favour of defendant No.10 and also attesor to the sale deeds executed in favour of defendant Nos.13 to 16. It is also an admitted fact that father of the plaintiff late Bhoopathi Reddy performed marriage of plaintiff and his brothers and sisters before 1985. As per his own admission, nearly an extent of Ac.17.34Gts is not available for partition as defendant Nos.10 & 13 to 16 are the owners of the said properties. Therefore, the plaintiff is a person who was not entitled to any relief at the hands of the Court. Admittedly, the gift in favour of defendant No.10 is dated 26.08.1996 and the registered sale deeds in favour of

defendant Nos.14 to 16 are dated 11.03.1997 and 09.03.1998. After having knowledge about the above transactions, the plaintiff chose to keep quiet for 8 years and came up with a suit for partition only in the year 2004. Therefore, the plaintiff by his own pleadings and by his own evidence appears to have been ousted.

As per the contentions raised in the written statement filed by defendant No.16, it is evident that the father of the plaintiff late Panyala Bhoopathi Reddy sold Ac.2.00Gts of land in Survey No.1366 in the year 2001. Later on, the said property was sold by them to the brothers of the plaintiff i.e., defendant Nos.5 & 6 under a registered sale deed on 17.03.2005. Plaintiff in his cross-examination admitted about the execution of the sale deeds in favour of defendant Nos.14 to 16, as such the properties gifted to defendant No.10 and lands sold to defendant Nos.14 to 16 total admeasuring nearly Ac.17.34Gts are not available for partition. It is within the knowledge of the plaintiff about the execution of the gift deed in favour of defendant No.10 and execution of sale deeds in favour of defendant Nos.13 to 16 by late Panyala Bhoopathi Reddy. The learned counsel for the appellant argued that in the year 1995 itself partition was effected and all the sharers including the plaintiff got the properties. Further, the first appellate Court failed to consider that gift is valid under Sections 122 & 123 of the Transfer of Property Act, 1982. As per Ex.B1 gift deed, transfer was effected by a registered

instrument signed by the donor and attested by atleast two witnesses.

The case law relied upon by respondent No.1 in ***Agina Chandra Mouli's case*** (fourth cited supra) helps to the appellants' case as plaintiff and his brother signed on the gift deed Ex.B1 and it is proved that consent was taken. Therefore, the gift is valid and plaintiff now cannot challenge the said gift deed Ex.B1 in favour of appellant/defendant No.10.

The contention of the respondent No.1 is that Ex.B1 was not entitled for pious obligation. In this regard, plaintiff failed to elicit the said fact in the cross-examination of DW.1. No suggestion was also given. Therefore, the ***P. Kuppayee's case*** (third cited supra) and ***Thimmaiah's case*** (second cited supra) relied upon by respondent No.1 has no relevancy to the facts of the present case. DW.1 in his cross-examination admitted that she extended all help to her father and her father gifted the land under Ex.B1. Her father acquired lands personally. DW.1 also stated that in 1997 or 1998 there was a partition effected and she was present and denied the suggestion that Ex.B1 was not acted upon.

In the present case, plaintiff's father was the donor who signed Ex.B1 and it is a registered document and plaintiff is one of the attesor. Plaintiff has not challenged the gift deed by way of cancellation or revocation. Ex.B1 gift deed reached

finality. After the gift was executed, the said property was mutated in the name of defendant No.10 and Pahanis were issued. Apart from that, the plaintiff, defendant Nos.2, 4, 5 and husband of defendant No.8 attested the gift deed. As on the date of filing of the suit, suit schedule properties are not in joint possession of the plaintiff and plaintiff miserably failed to prove that suit schedule properties are the joint family properties and he is entitled for a share in the said properties. Further, the plaintiff intentionally suppressed the fact about the alienation of more than Ac.17.34Gts of the suit schedule properties to Defendant Nos.10 and 13 to 16. Therefore, those properties are not available for partition. The plaintiff has not challenged the gift deed and also the sale deeds as void. But, by suppressing the real facts, he filed a simple suit for partition and for separate possession. Even defendant No.3, who is one of the brother of the plaintiff, also pleaded that there was a partition effected for the agricultural lands among their father and sons. Defendant No.2 also stated in the written statement that their father sold the self acquired property and only Ac.20.00Gts is available for partition. Thus, the plaintiff, who is respondent No.1, failed to prove that 'A' & 'B' schedule properties are available for partition. Further, the plaintiff also not proved that he is in joint possession of the suit schedule properties along with other sharers. Thus, the trial Court rightly dismissed the suit filed by the plaintiff In O.S.No.95 of 2004 on 29.08.2008 and

further, the first appellate Court erroneously without considering the evidence on record, allowed the appeal and set aside the judgment of the trial Court without giving proper reasons.

The cross objections (S.R) No.27810 of 2011 is filed by defendant Nos.14 to 16 praying this Court to allow the second appeal and to dismiss the judgment dated 14.07.2010 of the first appellate Court in A.S.No.67 of 2008 on the ground that the father of the plaintiff during his lifetime sold the said property to the cross-objectors under the registered sale deeds and plaintiff is one of the attesor having knowledge about the sale deeds executed by his father. Merely the sale deeds were not filed into the Court does not mean that defendant Nos.14 to 16 are not the purchasers of the property in S.Nos.1361 & 1366 admeasuring total Ac.04.00Gts under the registered sale deeds dated 11.03.1997 and 09.03.1998. It is also contended that PW.1-plaintiff in the cross-examination admitted that he is one of the attesor to those sale deeds.

A perusal of the evidence on record shows that the plaintiff in his evidence admitted about the execution of the sale deeds in favour of defendant Nos.14 to 16 by his late father during his life time and he is one of the attesor to the registered sale deeds. The plaintiff as discussed above has not approached the Court with clean hands and he is not in joint

possession of the said Ac.04.00Gts of land in favour of defendant Nos.14 to 16. He claimed that he is in joint possession of that land also. Therefore, on this count also the plaintiff is not entitled for partition to the above suit property belonging to cross-objectors.

Thus, the second appeal and cross objections (S.R) are allowed setting aside the judgment dated 14.07.2010 passed in A.S.No.67 of 2008 on the file of VI Additional District Judge, Siddipet and confirming the judgment dated 29.08.2008 in O.S.No.95 of 2004 on the file of the Senior Civil Judge, Siddipet. No order as to costs.

Miscellaneous Petitions, if any, pending in this second appeal and cross objections (S.R) shall stand closed.

Date: 23.09.2016
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ANIS, J