

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**A.S.No.2921 of 1992 and A.S.No.87 of 1993**

**COMMON JUDGMENT:**

Both the plaintiff and defendants in O.S.No.112 of 1987 have challenged the judgment dated 20.04.1992 passed by the Subordinate Judge, Ramachandrapuram whereby the trial Court granted preliminary decree for 1/4<sup>th</sup> share in sub-items 1 to 3 of Item No.I and a sum of Rs.1,000/- towards value of Item No.II of plaint B-schedule properties while dismissing the rest of the claim of the plaintiff in plaint A and C schedule properties.

Aggrieved, plaintiff filed A.S.No.2921 of 1992 and defendants filed A.S.No.87 of 1993. Since both the appeals arise out of same judgment they are disposed of by this common judgment.

2) The factual matrix of the case is thus:

a) Plaintiff's case is that she was the daughter-in-law of defendants 1 and 2 and they were residents of Paningipalli village. The marriage between herself and defendants' son viz. Ramakrishna took place at Annavaram Temple on 13.03.1986 and it was consummated. At the time of marriage, her parents presented C-schedule movable properties as *sare samans* and she was sent to her in-laws' in the last week of March, 1986. From that day onwards the mother-in-law began to tease her even for petty issues and finally she

was sent back to her parents' house. Her father tried to settle the matter but failed in his attempt.

b) It was her further case that in June, 1987 her husband fell from the bullock-cart and injured and he was taken to Rajahmundry for treatment, but the said fact was not informed by defendants to her or her parents. Her husband died on 01.07.1987 and his body was brought to Paningipalli on 02.07.1987 and cremated, but the said fact was also not intimated to her. She claims that her husband died under suspicious circumstances and body was cremated immediately without any intimation to her.

c) The further case of the plaintiff was that plaintiff A-schedule properties are the absolute properties of her late husband—Ramakrishna in which she got half share and plaintiff B-schedule properties are joint family properties and she is entitled 1/4<sup>th</sup> share therein. Accordingly, she issued Ex.A5—legal notice on 26.07.1987 demanding partition for which the defendants issued Ex.A6—reply notice on 09.08.1987 with false and frivolous allegations. She denied the allegation in the notice that her late husband—Ramakrishna executed Ex.B2—Will dated 27.06.1987. She claimed the Will was a rank forgery.

Hence the suit.

d) D2 filed written statement and adopted by D1. While denying plaintiff averments, it is pleaded that consummation of the marriage took

place on 15.03.1986 in the house of plaintiff's parents at Paningipalli and their son stayed there for three days and later the plaintiff was brought to their house. It is stated that plaintiff's parents have only two daughters and the elder sister of the plaintiff was married and she has been living with her husband at Rajahmundry. Therefore, the plaintiff started nagging her husband to go as an illatam son-in-law but he did not accede to the said request as he was the only son to his parents. Since then, the plaintiff developed hostile attitude and apathy towards her husband and began to neglect him but he never changed his mind. Therefore, the plaintiff left the defendants' house. Subsequently when her husband came to plaintiff's parents house, neither the plaintiff nor her parents gave proper treatment. The plaintiff's husband with a fond hope that she would change her mind, used to visit her parents' house but her conduct remained in tact. Ultimately in December, 1986, the deceased disclosed the plaintiff's conduct to his brother-in-law—Anaparthi Venkata Pattabhiramaiah, who appraised plaintiff's parents and advised them to admonish the plaintiff and correct her behaviour and send her to in-laws' but there was no response from them. Thereafter, D1 and his elder brother—Surya Rao made several attempts to convince the plaintiff but their attempts proved futile. Since January, 1987 there was no conjugal relation between the plaintiff and her husband.

e) D2 further stated that in June, 1987 when his son was tightening the rope to palmyrah leaves staked on a Cart, the rope snapped and he

fell and received severe injuries on his nape resulting in paralysation of legs and hands. Immediately he was shifted to Arbindam Orthopedics and Physiotherapy Centre, Rajahmundry for treatment. While undergoing treatment, he succumbed to injuries on 01.07.1987. In the hospital, his son—Ramakrishna executed a Will dated 27.06.1987 bequeathing all his movable and immovable properties with absolute rights in favour of his mother. The Will was registered in the hospital itself. Hence, plaintiff cannot claim any right in plaint A-schedule properties.

f) With regard to B-schedule properties, the case of the defendants is that sub-item 1 of Item No.I belonged to D2's brother—Surya Rao which he purchased under Ex.B5—sale deed from his another brother—Balusu Veerayya and later gifted to the daughter of D2 under Ex.A6—gift deed. Sub-item 2 of Item No.I also belonged Surya Rao and which he exchanged for another land of Ac.0.51cts belonging to Balusu Appa Rao. Sub-item No.3 of Item No.I belonged to the mother of D2 which she purchased from Parvathaneni Doraiah in 1941 and by way of registered gift deed she settled the said property in favour of D2 and his two brothers and so, D2 got only 1/3<sup>rd</sup> share in sub-item 3 which is his self-acquired property and thus, plaintiff has no right in sub-items 1 to 3 of Item No.I. Item No.II is concerned, the defendants pleaded that except she-bullock and calf there were no bullock-cart and cattle.

g) D2 further stated that plaintiff did not care to come to hospital to see her husband and she did not visit their house even after the dead body was brought to the house. Defendants denied that plaintiff came with *sare samans* worth Rs.10,000/- mentioned in plaint C-schedule.

h) Basing on the above pleadings, the following issues were framed for trial:

- 1) *Whether the plaintiff is entitled to for declaration over plaint schedule properties?*
- 2) *Whether the plaintiff is entitled for future profits?*
- 3) *Whether the will dated 27.06.1987 is true, valid and binding on the plaintiff?*
- 4) *To what relief?*

The following additional issues were framed on 17.09.1991.

- 1) *Whether the plaintiff is entitled to partition and separate possession?*
- 2) *Which of the plaint schedule properties are liable for partition if the plaintiff is entitled to the relief of partition?*
- 3) *Whether the plaintiff is entitled to recover plaint C-schedule properties or their value?*

i) The trial Court considering the evidence, observed that defendants could establish that Will dated 27.06.1987 executed by their son—Ramakrishna was true, valid and binding on the plaintiff and so plaintiff was not entitled to a share in plaint A-schedule properties. The trial Court further observed that plaintiff could not

establish the existence of C-schedule properties by taking out an advocate-commissioner for making inventory and hence, she was not entitled to plaint C-schedule properties. Sofaras B-schedule properties are concerned, the trial Court disbelieved the version of defendants and held that Item-I properties are joint family properties and granted 1/4<sup>th</sup> share to plaintiff. In Item-II, trial Court granted Rs.1,000/- in lieu of her share and accordingly passed a preliminary decree.

Hence the two appeals by both parties.

3 a) Pending appeals, the sole plaintiff died. As per orders dated 21.08.2000 in C.M.P.No.10444 of 1993 in A.S.No.2921 of 1992, her father—V.Suryanarayana Murthy came on record as 2<sup>nd</sup> plaintiff claiming as legatee under Will dated 29.01.1988 (Ex.A13) said to be executed by the 1<sup>st</sup> plaintiff. However, in A.S.No.87 of 1993 wherein the plaintiff was the sole respondent, the appellants who are her parents-in-law claimed as her LR's. and got recorded as such as per orders in C.M.P.No.669 of 1998 dated 10.02.1998.

b) Since in A.S.No.2921 of 1992 plaintiff's father came on record as 2<sup>nd</sup> appellant on the strength of Will dated 29.01.1988, this Court in its order dated 24.01.2013 having observed that his right can only be considered if the alleged Will is true, directed the trial Court to conduct an enquiry and give a finding on the genuineness of the Will. Accordingly, the trial Court conducted enquiry, during which PWs.3 and 4 were examined and Ex.A13 was marked on behalf of plaintiff

and DW1 was examined on behalf of defendants. The trial Court in its order dated 09.07.2014 gave a finding that Ex.A13—Will dated 29.01.1988 was not a genuine document and it was brought into existence under suspicious circumstances.

4) Pending the above enquiry, 1<sup>st</sup> defendant died and her LR's were brought on record as defendants 3 and 4 as per orders in I.A.No.1023 of 2013 dated 18.12.2013.

5) The parties in the appeals are referred as they stood before the trial Court.

6) Heard arguments of Sri G.Krishna Murthy, learned counsel for appellant in A.S.No.2921 of 1992 and respondents in A.S.No.87 of 1993 and Sri N.Siva Reddy, learned counsel for appellants in A.S.No.87 of 1993 and respondent in A.S.No.2921 of 1992.

7) Learned counsel for plaintiff while supporting the judgment insofar as granting decree in respect of plaint B-schedule properties, however, severely criticised the judgment in dismissing the suit in respect of plaint A and C schedule properties.

a) Learned counsel would argue that A-schedule properties are the self-acquisitions of late Ramakrishna, the husband of plaintiff and on his death, naturally, the plaintiff would succeed and knowing this the defendants fabricated Ex.B2—Will to extinguish her rights in plaint A-schedule properties. It is highly unbelievable that Ramakrishna who

admittedly fell down from a bullock-cart and critically injured and got paralysed his upper and lower limbs and admitted in hospital would, even remotely think of executing any Will in an immobilised condition. He was in unconscious stage and not in a sound and disposing state of mind and as such, his executing Ex.B2—Will is nothing but concoction. That the plaintiff was unceremoniously excluded from the legacy is itself a clear indication of Will being fabricated to see somehow that she was deprived of the properties of her husband. Learned counsel argued that even assuming that Ramakrishna indeed executed a Will, there were no reasons, much less compelling reasons to exclude the plaintiff. Mere minor disputes in the early stage of the marriage, which is natural in the case of any couple, cannot be a ground altogether to exclude the plaintiff. Unfortunately, the trial Court has not considered this aspect in a proper perspective. He thus prayed to set aside Ex.B2—Will and grant decree in respect of A-schedule properties also.

b) Plaint C-schedule is concerned, he would argue that it is customary in every family that a new bride would take paraphernalia (i.e. *sare samans*) with her after marriage to her in-laws' and so did by the plaintiff, but the trial Court refused to grant decree in respect of C-schedule movables on the sole ground that the plaintiff did not take out an advocate-commissioner for preparing inventory. Even in the absence of inventory, the evidence of PWs.1 to 3 would clearly show that C-schedule movables were presented at the time of marriage.

Hence, the trial Court ought to have granted a decree in respect of C-schedule property also.

c) Arguing on Ex.A13—Will learned counsel would submit that trial Court committed a grave error in disbelieving Ex.A13—Will on the grounds that the plaintiff did not inform her father in advance about her executing Will and that the Will was not registered. He would argue that since she apprehended threat to her life in the hands of defendants, she thought it fit to execute a Will and there were no suspicious circumstances surrounding the said Will as it was not intended to nullify the rights of anybody unlike Ex.B2. He thus argued that the trial Court ought to have believed Ex.B13—Will. Regarding expert's opinion which went against plaintiffs, learned counsel argued that under Section 45 of Evidence Act, the report of expert is only an opinion and therefore, the Court need not place implicit reliance on it when other reliable evidence is available before it. Hence in the instant case, merely because the expert opined that the questioned signatures of the executant on Ex.A13—Will were not tallied with admitted signatures, trial Court ought not to have held the Will as not a genuine document because, the other evidence available on record would clearly show that 1<sup>st</sup> plaintiff executed the Will apprehending threat to her life and there were no suspicious circumstances behind such execution. To buttress his argument that Court need not rely upon the expert opinion when other reliable evidence is available, he relied on the following judgments.

**1. *Bommidala Poornaish vs. The Union of India***<sup>1</sup>

**2. *Lagadapati Dhanalakshmi and others vs. Lagadapati Anjaneyulu***<sup>2</sup>

He further argued, in this case, expert's opinion cannot be considered for any purpose because neither party examined the expert and in the absence of ocular evidence, his report will not have any probative value. In this context, he relied on the judgment in ***Balaji Traders Chirala vs. Ponnuri Lakshmaiah***<sup>3</sup>. He thus prayed to allow A.S.No.2921 of 1992 and grant decree as prayed for in favour of 2<sup>nd</sup> plaintiff.

8a) Per contra, learned counsel for defendants while supporting the judgment dismissing the suit in respect of plaint-A and C-schedule properties, however, fulminated it for granting decree for B-schedule properties. Regarding A-schedule, he would argue that A-schedule properties are self-acquired properties of late Ramakrishna as he obtained them by way of gifts under Exs.A1 to A4 from his parents and he bequeathed those properties to his mother under Ex.B2—Will. He would submit that in view of termagant nature of plaintiff constantly nagging him to go as illatam son-in-law and not leading conjugal life with him ever since the marriage, Ramakrishna developed aversion towards her and executed the Will in favour of his mother. He would submit DWs.1 to 7 have clinchingly stated that the Will was scribed, executed, attested and registered in the hospital of DW7 and

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<sup>1</sup> AIR 1967 AP 338

<sup>2</sup> 2009 (5) ALD 542

<sup>3</sup> 2002 (2) ALD 147

considering their unimpeachable evidence the trial Court rightly believed Ex.B2—Will and held that plaintiff cannot lay claim in plaint A-schedule properties. Learned counsel would alternatively argue that even assuming that Ex.B2 was a spurious Will as contended by 1<sup>st</sup> plaintiff, still in view of subsequent events, the 2<sup>nd</sup> plaintiff cannot claim any share therein. In expatiation, he submitted that in the absence of Ex.B2, the 1<sup>st</sup> plaintiff and 1<sup>st</sup> defendant being the class-I heirs of late Ramakrishna would succeed A-schedule properties in equal moieties. However, since the 1<sup>st</sup> plaintiff died pending appeal and as Ex.A13—Will was disbelieved by the trial Court, 1<sup>st</sup> plaintiff shall be deemed to have died intestate and thereby, her share in plaint A-schedule property which was inherited by her from her husband, would devolve upon the heirs of the husband i.e. defendants as per Section 15 (2) (b) of Hindu Succession Act, 1956 (for short “Succession Act”).

b) B-schedule is concerned, learned counsel vehemently argued that sub-item 1 of Item No.I originally belonged to Surya Rao—the brother of D2, who gifted the same to daughter of D2. Similarly, sub-item 2 of Item No.I was also belonged to Surya Rao which he exchanged for another land of Ac.0.51 cts. belonged to Balusu Appa Rao and so sub-items 1 and 2 are not joint family properties. Whereas, sub-item 3 of Item No.I is the property of mother of D2 and she gifted the same in favour of her three sons and D2 got only 1/3<sup>rd</sup> share which is his self-acquired property. The trial Court ought not to have

regarded the aforesaid properties as joint family properties, merely because D2's name is recorded in cultivation Adangals. Learned counsel argued that because D2 was cultivating those lands, his name was mentioned in the Adangal and that is not a deciding factor to hold that properties are joint family properties. Thus on facts, the trial Court ought to have dismissed the claim of plaintiff in respect of B-schedule properties. He alternatively argued that even assuming that B-schedule properties are joint family properties as held by the trial Court, still in view of death of 1<sup>st</sup> plaintiff pending appeal and by operation of law in terms of Section 15(2) (b) of Succession Act, her share will devolve on the defendants.

c) Next, he would argue that the trial Court rightly rejected Ex.A13—Will finding that the cause projected for execution of Will that there was danger to the life of 1<sup>st</sup> plaintiff in the hands of her father-in-law was unrealistic and also in view of other suspicious circumstances. He thus prayed to dismiss the appeal filed by the plaintiff and allow the appeal filed by the defendants.

9) In the light of above rival arguments, the points that arise for determination are:

1. *Whether Ex.A13—Will is a genuine document and whether 2<sup>nd</sup> plaintiff can claim as legatee under Ex.A-13?*
2. *Whether Ex.B2—Will is a genuine one and if so, the 1<sup>st</sup> plaintiff is entitled to a share in plaint A-schedule properties?*

3. *Whether the finding of the trial Court that plaint B-schedule properties are joint family properties is sustainable?*
4. *Whether plaintiffs could establish presentation of plaint C-schedule movables to defendants?*
5. *To what relief?*

10) **POINT No.1:** Pending appeal sole plaintiff died and her father came on record as 2<sup>nd</sup> plaintiff by virtue of Ex.A13—Will. As per the order of this Court dated 24.01.2013, the trial Court conducted enquiry and gave its finding dated 09.07.2014 to the effect that Ex.A13 was not a genuine document and it was brought into existence in suspicious circumstances. The said finding again falls for scrutiny in these appeals.

a) Learned counsel for appellants/plaintiffs vehemently opposed the above finding on the ground that due to threat perception the 1<sup>st</sup> plaintiff executed Will and there were no suspicious circumstances behind the Will and in view of cogent evidence establishing the genuineness of the Will the Trial Court need not rely on expert's opinion which went against the plaintiffs and further since neither party examined the expert, his report cannot be considered at all.

b) In this context, a perusal of Ex.A13—Will would show, the said Will was allegedly executed by 1<sup>st</sup> plaintiff on 29.01.1988 bequeathing the properties given by her parents as Pasupu Kumkuma and also her share in the suit properties in favour of 2<sup>nd</sup> plaintiff. The reasons for executing the Will as per the recitals were that after filing the suit her

father-in-law (2<sup>nd</sup> defendant) developed hatred towards her and making efforts to murder her. That apart, she was apprehending that she may die suddenly. Then, on a perusal of order dated 09.07.2014, the trial Court discarded the Will having found certain suspicious circumstances but it did not take into consideration the expert's opinion to come to a conclusion. Hence, the argument of appellants/plaintiffs that the Court should not have considered expert's opinion since he was not examined has no relevancy and so also the decision in *Balaji Traders*'s case (3 *supra*) has no application. The other decisions are also of no avail. It has now to be seen whether the finding of trial Court is sustainable.

c) PWs.3 and 4 were examined to prove Ex.A13. PW3 is the father of 1<sup>st</sup> plaintiff. In chief examination he did not depose about the reason for execution of Will but in the cross-examination he stated that after the death of her husband, 1<sup>st</sup> plaintiff resided at Rajahmundry along with her sister and brother-in-law and studied Metric and also pursued B.A. degree privately and she died in the year 1993 in a hospital at Rajahmundry due to tumour in the stomach and his daughter executed Will in his favour suspecting future danger from her in-laws and also suspecting accidental death. He found the Will in the year 1989 (sic 1999) while perusing her books and so he could not enquire her about the Will. His another daughter and son-in-law also came to know about the execution of the Will through him only. He stated that he

was not going to send the Will to handwriting expert. He denied the suggestion that he fabricated the Will for wrongful gain.

d) PW.4 is stated to be the second attesor and he deposed that he and one Sri K.Rammohan Rao attested the Will and one Sri K.V.Narasimha Rao was the scribe. He stated that the attestors witnessed executant signing on the Will and so also the executant saw them attesting the Will. In the cross-examination he stated that he has acquaintance with the sister and brother-in-law of executant as they were his neighbours for about 3 years and the sister of executant asked him to be the attesor of Ex.A13. He further stated that on 29.01.1988 in the morning hours Ex.A13 was executed in the premises of Sub-Registrar Office, Rajahmundry and when he went there at about 11.30 AM the executant, her sister—Lalitha and scribe were present. He admitted that in his presence nobody gave instructions to the scribe to draft the document. He did not notice any conversation between the scribe and two sisters. He admitted that he did not go through the recitals after execution and he also did not observe whether the recitals were read over by the scribe. He stated that by the time of Ex.A13 the executant was 20 to 25 years and she informed him that she got some problem with her mother-in-law and that was why she executed the Will.

e) So, a perusal of the above evidence of PWs.3 and 4 would show that admittedly the deceased was aged in between 20 and 25 years and

pursuing her BA degree by staying in her sister's house at Rajahmundry at the time of alleged execution of the Will. Naturally a doubt would arise as to what compelled such a young lady to execute a Will. The reasons projected in the Will and as stated by the witnesses are that firstly, she was apprehending danger to her life in the hands of her father-in-law and secondly, she was apprehending accidental death. I find both the reasons very flimsy and concocted. We will find PW3 admitted that the husband and father-in-law of his daughter never harassed her. Hence, it is difficult to believe that her father-in-law developed hatredness towards her and tried to kill her that too when she was pursuing her degree at a different place in Rajahmundry by staying with her elder sister. Admittedly, no police report was given complaining against her in-laws. Therefore, the said reason is quite unrealistic one. The other reason is also unbelievable because no person would execute the Will on the apprehension that one day he may die in an accident. It is not her case that she was always moving on a vehicle so accidental death was lurking. So, the reasons projected for execution of the Will are quite absurd and unbelievable and the evidence of PW.3 and PW.4 cannot be believed.

f) Nextly, when a young girl was executing a Will and it was known to her elder sister certainly she would inform to her father about the intention of executant. That was not done in this case. Above all, the Will was not registered. Though registration is only an optional one, still in the above circumstances non-registration of the

Will also creates a doubt about its genuineness. The trial Court rightly disbelieved Ex.A13—Will and I find no reason to differ with the said finding

This point is answered accordingly.

11) **POINT No.2:** Admittedly, plaintiff A-schedule properties are self-acquisitions of late Ramakrishna inasmuch as he obtained them from his parents under Exs.A1 to A4—gift deeds. The 1<sup>st</sup> plaintiff claimed half share therein being his Class-I heir along with 1<sup>st</sup> defendant, while the defendants denied her claim on the plea that Ramakrishna executed Ex.B2—Will and bequeathed all his properties in favour of his mother. Naturally, the 1<sup>st</sup> plaintiff traversed the Will on the allegation that during the relevant period Ramakrishna was critically injured and paralysed by both upper and lower limbs and he was in unconscious stage and not in a sound and disposing state of mind to execute any Will and Ex.B2—Will was fabricated by the defendants to deny her legitimate share in A-schedule properties. However, the trial Court having regard to the evidence of DWs.1 to 7, accepted the genuineness of Will and the said finding is under the scrutiny in these appeals.

12) A perusal of Ex.B2—Will shows that it was executed on 27.06.1987 in Arbindam Orthopedics Hospital, Rajahmundry of DW7. The endorsement of the Sub-Registrar on the Will shows that it was registered in the above hospital on 27.06.1987.

13a) DW1's evidence would reveal that his son met with an accident 21.06.1987 and died 11 days thereafter; he was admitted in Room No.11 of DW7's hospital at Rajahmundry and four days prior to his death, on the instructions of his son he brought the scribe (DW4) to the hospital and on the instructions given by his son, DW4 scribed Ex.B2—Will; he was in a sound and disposing state of mind and his hands and legs alone were paralysed at that time and as such, he affixed his thumb mark on the Will as he could not hold the pen; DWs.2, 3 and 7 were the attestors and DW6 and one N.Atchutarama Rao were the identifying witnesses. We will also find in his evidence that DW1 brought the Sub-Registrar to the Hospital and the registration of the Will took place at about 4.45 PM in the presence of defendants, attestors, identifying witnesses etc. He denied the suggestion in the cross-examination that the deceased was not admitted in the hospital but kept in a rented house and he was not in a conscious stage and not in a sound and disposing state of mind and the Will was fabricated. The above is the evidence relating to the execution of the Will.

b) Then, we have the evidence of DWs.2, 3 and 7 who are the attestors. DW2 stated that on 27.06.1987 himself and DW3 who are known persons to the deceased, went to the hospital to see him and they found the deceased in a fit state of mind and talking and at that time DW1 brought scribe at 2.30 PM and Ramakrishna gave instructions to the scribe, who drafted the Will and thereafter read

over the contents of the Will and then Ramakrishna put his left thumb mark (LTM) on the Will in the presence of this witness and DW3 and DW7 and then they attested the Will which was seen by Ramakrishna. He stated that Ramakrishna could not sign, as his hands were not functioning. The Sub-Registrar was brought to the hospital and this witness was present at the time of registration and one Eegala Nagender Rao (DW6) and N.Atchutarama Rao signed as identifying witnesses. He denied the suggestions that all of them colluded together and created Ex.B2 and obtained LTM of Ramakrishna on it while he was in unconscious stage and Sub-Registrar did not come to the hospital and the registration took place only at the Registrar's office and the deceased was in a private house and not in the hospital.

c) DW3 also deposed in similar fashion to the effect that on 27.06.1987 Ramakrishna executed Will in Arbindam Orthopaedic Centre in a sound and disposing state of mind and this witness, DW2 and DW7 attested the Will and as the hands of the deceased were not functioning he put his LTM on the Will; they saw while testator affixing LTM and testator also saw the attestors attesting the Will and the Will was registered in the hospital; one N.Atchutarama Rao and DW6 acted as identifying witnesses. In the cross-examination he clearly deposed that Ramakrishna gave instructions to the scribe and he informed the scribe that he had no liking towards his wife and he was intending to gift his properties to his mother. He stated that DW1, DW5 lifted Ramakrishna and the scribe obtained his LTM on Ex.B12

with the aid of stamp pad. He also stated that Registrar came at 4 PM. He denied the suggestion that they colluded and fabricated the Will.

d) Then DW4 the scribe deposed that he scribed the Will on the instructions of Ramakrishna and he was in a sound and disposing state of mind at the time of execution of Will. He further stated attestors saw when the testator subscribed his LTM on the Will, in turn, testator saw while attestors putting their signatures on the Will. In the cross-examination he stated he scribed the Will in the room of the patient. He denied the suggestion that he did not scribe the Will in the presence of attestors and he scribed the Will in his house and gave it to DW1.

e) Then, DW6 who is the cousin of Ramakrishna deposed that on 27.06.1987 he went to hospital at 2.45 PM to see him and at that time the Will was registered in the hospital in his presence. He and Atchutarama Rao signed as identifying witnesses. In the cross he stated that he went only to see the deceased and he did not know that Will would be executed.

f) DW7 stated that deceased—Ramakrishna was admitted in Room No.11 of his hospital on 21.06.1987 for treatment of neck fracture and took treatment and he died on the night of 01.07.1987 at about 11.30 PM; his hands and legs were paralysed; he and DWs.2 and 3 attested Ex.B2—Will executed by Ramakrishna in his hospital; all the attestors saw Ramakrishna affixing his thumb impression on

the Will and executant also saw while they were signing on the Will; Ramakrishna was in a sound and disposing state of mind and he gave instructions to the scribe. In the cross-examination he stated that the condition of Ramakrishna was very good till few hours prior to his death and Ramakrishna did not put his LTM in his presence.

14) A close scrutiny of the evidence of above witnesses would show that (i) Ex.B2—Will was executed and registered in the afternoon of 27.06.1987 in the hospital of DW7 where Ramakrishna was treated as inpatient (ii) except paralysation of upper and lower limbs, Ramakrishna's health was good and he was in a sound and disposing state of mind (iii) he himself gave instructions to the scribe and after drafting of Will, his thumb impression was obtained on the Will in the presence of attestors—DWs.2 and 3 while DW7 went for rounds (iv) the executant saw the attestors signing on the Will (v) the Sub-Registrar came to the hospital and after ascertaining the contents of the Will from Ramakrishna, he registered the Will.

15) It must be said that despite extensive cross-examination of concerned witnesses, their evidence relating to above salient facts touching the execution of the Will could not be shattered. As already stated supra, the *bona fides* of the Will were challenged firstly on the ground that Ramakrishna was in an unconscious state after falling from the cart till his death and therefore, he was not in a fit condition to execute the Will and the Will was fabricated by obtaining his thumb

impression. This argument holds no much force for the reason that DW7 who treated the deceased in his hospital categorically deposed that till few hours prior to the death the condition of the deceased was very good and the doctor did not expect that he would die. Further, all the witnesses stated that except paralyzation of both limbs the deceased was otherwise in a fit condition to execute the Will. Further, on the reverse side of Ex.B2 the Sub-Registrar made an endorsement that Will was executed at the hospital and Ramakrishna affixed his LTM. If really the executant was unconscious and not in a fit condition to execute the Will, the Sub-Registrar would not allow him to execute the Will and register the same.

16) The next suspicion raised against the Will was of course the omission of wife from the legacy. In the normal circumstances, this would be a strong ground against the genuinity of Will. However, the evidence on record reveals that ever since the marriage there were no cordial terms between the deceased and 1<sup>st</sup> plaintiff and there was no conjugal relation either. Each party throws blame on other—while according to the plaintiff 1<sup>st</sup> defendant ill-treated her and driven her away from the house, the defendants would contend that 1<sup>st</sup> plaintiff nagged and pestered the deceased to become illatum son-in-law which he refused and thereby she unduly left his society. Whatever be the truth for the couple to fall out, Ramakrishna might felt justified in excluding her from legacy. More vividly, if the 1<sup>st</sup> plaintiff persisted him to go as illatum son-in-law and refused to cohabit with him on

account of his refusal and not even bothered to visit the hospital to see her ailing husband, that would be a good ground to exclude her from the Will. Even if 1<sup>st</sup> plaintiff went away on account of disputes with his mother, still it could be a ground for him not to confer any property to her as she did not visit him while he was hospitalised. So, in this backdrop non-conferring of any property to 1<sup>st</sup> plaintiff in the Will cannot be treated as a suspicious circumstance. Therefore, Ex.B2—Will is held to be a genuine one and so did by the trial Court. Hence plaintiff cannot get a share in plaint A-schedule property.

17) Even assuming that Ex.B2 is a fabricated Will, still 2<sup>nd</sup> plaintiff cannot get any share in plaint A-schedule properties for the reason that in point No.1 supra, it was held that Ex.A13—Will was not a genuine one. Therefore, 1<sup>st</sup> plaintiff shall be deemed to have died intestate and her half share in plaint A-schedule properties which she inherited from her husband shall devolve, on the defendants as per Section 15(2) of Succession Act.

Section 15 of Succession Act reads thus:

*15. General rules of succession in the case of female Hindus.—*

*(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,—*

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
- (b) secondly, upon the heirs of the husband;*
- (c) thirdly, upon the mother and father;*
- (d) fourthly, upon the heirs of the father; and*
- (e) lastly, upon the heirs of the mother.*

*(2) Notwithstanding anything contained in sub-section (1),—*

*(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and*

*(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.*

Section 15 deals with the succession in respect of the property of a female Hindu died intestate. While Section 15(1) deals with the succession in respect of self-acquired property of a female Hindu; sub-section (2) carves out an exception. Sub-section (2)(b) lays down that when any property was inherited by a female Hindu from her husband or from her father-in-law, the same shall devolve on her dying intestate in the absence of her children, upon the heirs of the husband. In the light of Ex.A13—Will being disbelieved, the half share of 1<sup>st</sup> plaintiff in plaint A-schedule will again devolve on the defendants but not on the 2<sup>nd</sup> plaintiff.

This point is answered accordingly.

18) **POINT No.3:** B-schedule comprises of Items I and II of which Item I consists of 3 sub-items whereas Item II consists of movables like bullock-cart and cattle.

a) Coming to sub-item 1 of Item No.1, the contention of defendants is that the said land of Ac.0.49 cts. in R.S.No.49/7 is in an extent of Ac.0.50 cts. out of full extent of Ac.2.02 cts. which fell to the share of his brother Balusu Veeraiah and from him his another brother Balusu Surya Rao purchased under Ex.B5—sale deed dated 18.05.1957 and subsequently he gifted the same to their daughter under Ex.B6—gift deed and hence it is not a joint family property. The trial Court disbelieved the said contention on the ground that in Ex.A10 and A11—Adangals the 2<sup>nd</sup> defendant is recorded as cultivator and under Ex.A12, he mortgaged the said land to Primary Agricultural Cooperative Credit Society (PACCS), Paningipalli. On perusal of record this finding cannot be accepted. Ex.B5—sale deed clearly refers the land covered by Sy.No.49/7 in an extent of Ac.0.50 cts. and the said land was purchased on 18.05.1957 i.e. long prior to the present suit. Hence, in my view the said land belongs to Surya Rao. Since the 2<sup>nd</sup> defendant was cultivating the said land, his name was recorded in Exs.A10 and A11 and as the said land belongs to his brother the 2<sup>nd</sup> defendant might have mortgaged it to the Society. Merely because the said land was gifted in favour of the daughter of 2<sup>nd</sup> defendant subsequent to the filing of the suit, it cannot be said that only to deprive the plaintiff a share therein, Ex.B6 was brought forth. Thus, sub-item 1 is held not a joint family property.

b) As regards sub-item 2 of Item No.I, the contention of the defendants is that it originally belonged to Surya Rao and he

exchanged the same for another land of Ac.0.51 cts. of Balusu Appa Rao in the year 1961 and therefore, it is not a joint family property. However, as rightly observed by the trial Court, the defendants have neither examined Surya Rao and B.Appa Rao nor produced the exchange deed into Court without which alleged exchange cannot be believed. On the contrary, in Exs.A10 and A11—Adangal extracts, D2 is shown as in possession and enjoyment. Further, under Ex.A12, the 2<sup>nd</sup> defendant created a charge in respect of sub-items 1 to 3 of Item No.I in favour of PACCS, Paningipalli. Hence, the trial Court rightly held that sub-item 2 of Item No.I is a joint family property.

c) Sub-item 3 of Item No.I is concerned, the contention of defendants is that the said land of Ac.0.80 cts. was in fact covered by Sy.No.50/3 which belonged to his mother—Veeramma and she settled the said property in favour of D2 and his two brothers under Ex.B7—settlement deed dated 01.05.1949 and his brothers sold away their shares to Vontipalli Sudha Rani under Ex.B9—sale deed and the remaining extent is the self-acquired property of the 2<sup>nd</sup> defendant and plaintiff cannot lay any claim therein. The trial Court did not accept this contention for the reason that in Exs.A10 and A11—Adangals Sy.No.50/4 was clearly recorded in the name of 2<sup>nd</sup> defendant and he mortgaged the said property along with sub-items 1 and 2 in favour of PACCS Paningipalli under Ex.A12. In that view Ex.B7 and B9 can be said to relate to a different property in Sy.No.50/3 but not sub-item

3 in Sy.No.50/4 and therefore, plaintiff had 1/4<sup>th</sup> share therein. On perusal of record, I find no reason to disagree with the said finding.

d) Item No.II of B-schedule is concerned, since the plaintiff has not taken Advocate-commissioner to note the inventory of cart and cattle and as the 2<sup>nd</sup> defendant admitted about the existence of only one she-buffalo, the trial Court rightly held plaintiff was entitled to Rs.1,000/- in respect of her 1/4<sup>th</sup> share therein.

Thus, in essence, plaint B-schedule is concerned, the 1<sup>st</sup> plaintiff is entitled to 1/4<sup>th</sup> share in sub-items 2 and 3 of Item No.I and Rs.1,000/- in lieu of her 1/4<sup>th</sup> share in Item No.II. However, the above finding is only of academic importance. Since 1<sup>st</sup> plaintiff died pending appeal and as it was held in point No.1 supra that she died intestate, her share in B-schedule properties which she inherited from her husband and father-in-law will again devolve on defendants in view of Section 15(2) (b) of Succession Act.

This point is answered accordingly.

19) **POINT No.4:** According to plaintiffs, Sare Samans worth Rs.10,000/- were presented at the time of marriage. PW2 who is a distinct relation deposed about such presentation. However, in the cross-examination he admitted that he cannot say the details of *Sare Samans* though he saw them. Therefore, his sole evidence will not help establish the presentation of *Sare Samans*. That apart, as observed by the trial Court, the plaintiff has not taken out any

advocate-commissioner to prepare inventory in the house of defendants. Hence, plaintiff's claim cannot be accepted.

This point is answered accordingly.

20) **POINT No.5:** In the result, in view of the above findings in points 1 to 4, A.S.No.2921 of 1992 filed by the plaintiff is dismissed and A.S.No.87 of 1993 filed by the defendants is allowed and consequently, O.S.No.112 of 1987 on the file of Subordinate Judge, Ramachandrapuram is dismissed. No costs.

As a sequel, miscellaneous petitions pending, if any, in both the appeals, shall stand closed.

Date: 29.12.2016  
Murthy

**U.DURGA PRASAD RAO, J**

