

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

A.S. NO.636 OF 2005

J U D G E M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)

This first appeal arises out of the judgment and decree dated 31.07.2002 passed by the learned II Additional Senior Civil Judge, Kakinada, in O.S.No.299 of 1995. The appellant is the plaintiff in the said suit, filed by him as an indigent person, seeking declaration of his title in relation to the plaint B schedule property and for recovery of vacant possession thereof after removal of constructions. By the judgment and decree under appeal, the trial Court disallowed his claim and dismissed the suit.

The present appeal was also permitted to be filed by the appellant/plaintiff *in forma pauperis*. By order dated 27.01.2010, this Court directed *status quo* existing as on that day to be maintained for two weeks. The order of *status quo* was extended thereafter until further orders on 15.03.2010.

Heard Sri V.L.N.G.K.Murthy, learned senior counsel representing Sri A.Krishnam Raju, learned counsel for the appellant/plaintiff, and Sri M.V.S.Suresh Kumar, learned senior counsel representing Sri M.R.S.Srinivas, learned counsel for respondents 8, 9 and 10/defendants 8, 9 and 10. Sri A.K.Kishore Reddy, learned counsel, entered appearance for Vakalapudi Gram Panchayat, respondent 11/defendant 11. Despite service of notice, the other respondents/defendants did not choose to enter appearance before this Court. During the pendency of the appeal,

respondent 7/defendant 7 expired and her legal representative was brought on record as respondent 14.

Parties shall be referred to hereinafter as arrayed before the trial Court.

The plaint averments were to the following effect:

Kamaraju, the father of the plaintiff, had two brothers, Gangayya and Ramanna. The three brothers partitioned their family properties under registered partition deed dated 22.08.1929. Defendant 1 is the daughter of Gangayya while defendants 2 and 3 are her children. Defendant 4 is the daughter of Ramanna and defendant 5 is her son. Under the partition deed dated 22.08.1929, Kamaraju, the plaintiff's father, got the plaint A schedule properties towards his share. He sold away Item No.3 of the plaint A schedule properties about 40 years earlier. After the death of Kamaraju, the plaintiff, being his legal heir, came into possession of the remaining properties and continued in possession and enjoyment of the same. The plaintiff himself sold away an extent of Ac.0.54 cents out of Ac.3.22 cents in Item No.1 of the plaint A schedule properties about 8 to 9 years earlier. The rest of the properties remained in his possession and were separately shown as the plaint B schedule properties. After his marriage in 1979-80, the plaintiff shifted to Sontivari Pakalu, a hamlet of Kondevaram, Pithapuram Mandal, East Godavari District, where his father-in-law resided. Taking advantage of his absence, defendants 1 to 5 trespassed into his properties in the year 1981 and alienated the same to defendants 6 to 10. When he came back from Kondevaram, the plaintiff found that buildings had been constructed in his properties, and raised a dispute but the defendants refused to give details of the alienations made and also

vacate his properties. Defendants 12 and 13 were added as parties to the suit subsequently as they were in possession of some of the suit properties. The plaintiff sought the relief of declaration of his title as regards the said Plaint B schedule properties and for recovery of vacant possession thereof.

The plaint A schedule comprised three items. Item No.1 was an extent of Ac.3.22 cents in Survey Nos.51 and 52 of Vakalapudi Village, Kakinada Mandal, East Godavari District. Item No.2 was an extent of Ac.1.58 cents in Survey No.62 of Vakalapudi Village. Item No.3 was an extent of Ac.1.48 cents in Survey Nos.53 and 55 of Vakalapudi Village. The plaint B schedule comprised three items. Item No.1 was an extent of Ac.0.80 cents situated in Survey Nos.51 and 52 of Vakalapudi Village, Kakinada Mandal, East Godavari District. Item No.2 was an extent of Ac.1.88 cents in Survey Nos.51 and 52 of Vakalapudi Village. It may be noted that these two items along with the extent of Ac.0.54 cents stated to have been sold by the plaintiff himself in these survey numbers were shown as Item No.1 in the plaint A schedule properties. Item No.3 of the plaint B schedule was an extent of Ac.1.58 cents in Survey No.62 of Vakalapudi Village and tallies with Item No.2 of the plaint A schedule properties.

Defendants 1 to 6 and 11 were set *ex parte* in the trial Court. They did not file their written statements. Defendants 7 to 9 filed a written statement jointly, wherein they denied the right, title, possession and enjoyment of the plaintiff over the suit schedule properties. They asserted that the properties which they had purchased and in which they had constructed houses did not belong to the plaintiff. They pointed out that defendant 8 was not a necessary party to the suit as it was his wife, Bharathi Devi, who had

purchased a vacant site in Survey No.52/4 from defendant 4 under a registered sale deed for consideration. The plaintiff was also put to strict proof of his relationship with Kamaraju. They further stated that the plaintiff had to localize the properties which he was claiming. They pointed out that the plaintiff had never objected while they were constructing their houses and that he had set up a false story to grab their properties. They reiterated that he could not localize the properties claimed by him and that he had not come to Court with clean hands as he could not even identify the lands claimed by him. Details were furnished of the purchases made by defendant 7 and defendant 9 from defendant 4 under registered sale deeds. The defendants therefore prayed for dismissal of the suit with costs. Subsequently, Bharathi Devi was added as defendant 12.

Defendant 10 filed a separate written statement, wherein he denied the plaint averments and asserted that he was in no way concerned with the plaint A and B schedule properties and had been unnecessarily added as a party. He stated that his wife, Lalithamma, was the owner of the land admeasuring Ac.0.25 cents in Survey No.53/1 of Vakalapudi Village and an extent of Ac.0.11 cents in Survey No.52/1 of Vakalapudi Village. It may be noted that the 1st item mentioned *supra* relates to Item No.3 of the plaint A schedule properties, which is not the subject matter of this litigation, while the 2nd item forms part of Items 1 and 2 of the plaint A schedule properties. He gave details of the transactions under which his wife claimed right and title over the aforestated lands. He further stated that his wife had been in possession and enjoyment of the said lands through her tenants and that the plaintiff, being well aware of the same, never raised any objection. He alleged that the plaintiff had

filed the suit on speculative grounds with a view to harass the defendants and extort money from them. He concluded by stating that the suit was bad for non-joinder of necessary parties and prayed for dismissed thereof. Subsequently, his wife, Lalithamma, was added as defendant 13.

Defendant 12 also filed a separate written statement pointing out that her husband had been impleaded as defendant 8 in the suit unnecessarily. She contended that the suit was bad for misjoinder of parties. She confirmed that she purchased a vacant site admeasuring Ac.0.3½ cents in Survey No.52/4 under a registered sale deed in June, 1984, from defendant 4 and obtained possession. She asserted that she lawfully constructed a house in the said vacant site and was paying taxes to Vakalapudi Gram Panchayat. She denied that her property had anything to do with the suit schedule properties. She denied the plaintiff's allegation that she had trespassed into the suit schedule properties. She adopted the contents of the written statement filed by defendants 7 to 9 and contended that the suit was barred by limitation as the plaintiff had knowledge about her purchase, right, title and possession since five years. She therefore prayed for dismissal of the suit.

The trial Court framed the following issues and additional issues for consideration:

- (1) Whether the plaintiff is entitled to the relief of declaration and possession as prayed for?
- (2) Whether the suit is bad for non-joinder of parties and also misjoinder of parties?
- (3) To what relief?

Additional Issues:

- (1) Whether the plaintiff is the owner of 'B' schedule property?

- (2) Whether the sale deed dated 25-6-1984 in favour of Pepakayala Bharathi Devi is true, valid and binding on the plaintiff?
- (3) Whether the sale deed dated 18-5-1984 in favour of 7th defendant is true, valid and binding on the plaintiff?
- (4) Whether the sale deed in favour of 9th defendant is true, valid and binding on the plaintiff?
- (5) Whether the sale deeds dated 2-7-76 and 27-10-76 in favour of Ronanki Annapurna are true, valid and binding on the plaintiff?
- (6) Whether the sale deed dated 25-5-83 in favour of Kopuri Sanjeevamma is true, valid and binding on the plaintiff?
- (7) Whether Mannam Lalithamma, the wife of D-10 is the owner for the written statement schedule property and whether she and her predecessors-in-title acquired title to the W.S.schedule property by adverse possession?
- (8) Whether the suit is barred by limitation?

The plaintiff examined himself as P.W.1 and one Chebrolu Narayana Rao as P.W.2. Four witnesses were examined on behalf of the defendants. D.Ws.1 to 3 and 4 were defendants 9, 7, 8 and 10 in the suit respectively. Exs.A1 to A7 were marked by the plaintiff while Exs.B1 to B11 were marked by the defendants.

Ex.A1 was the registration extract of the partition deed dated 22.08.1929. Ex.A2 was the office copy of the notice gotten issued by the plaintiff to the defendants. Exs.A3 to A6 were the postal acknowledgements in relation to receipt of the said notice by defendants 1, 2, 3 and 11. Ex.A7 was a set of returned postal envelopes. Ex.B1 was the registration extract of the sale deed dated 18.05.1984 in favour of Tadi Satya Prasanna and others. Exs.B2 and B5 were house tax receipts. Ex.B3 was the registration extract of the Will dated 13.07.1973 executed in favour of defendant 4. Ex.B4 was the registration extract of the sale deed in favour of defendant 7. Ex.B6 was the Will executed by K.Sanjeevamma. Exs.B7 to B9 were

the registered sale deeds executed by Annapurnamma and Appayamma respectively. Ex.B10 was the registration extract of the sale deed in favour of defendant 12. K.Sanjeevamma was the mother of defendant 13 and she purchased an extent of Ac.0.25 cents in Survey No.53/1 and an extent of Ac.0.11 cents in Survey No.52/1 of Vakalapudi Village under a registered sale deed from Annapurnamma who, in turn, had purchased the said land from Appayamma, the daughter of Gangayya, under registered sale deeds. Ex. B 11 is a set of house tax receipts.

The trial Court took note of the fact that the plaintiff was claiming that he was the absolute owner of the properties shown in the plaint B schedule but had not filed any document in evidence of his father, and thereafter himself, having ever been in possession and enjoyment of these properties. The trial Court also took note of the fact that the plaintiff stated in his evidence that after the death of his father, he paid taxes in relation to the plaint B schedule properties but did not choose to file any such documents. The plaintiff's admission that he did not even know the survey numbers of the lands that fell to his father's share also weighed with the trial Court.

In the light of the aforestated documentary evidence and the glaring lack of evidence in proof of the plaintiff's claim of title and possession prior to 1984, the trial Court held in favour of the defendants on almost all the issues. Issue No.2, with regard to the suit being bad for non-joinder and misjoinder, was held in favour of the plaintiff as defendants 12 and 13 were added subsequently. The trial Court also held in favour of the plaintiff on Additional Issue No.8 with regard to the suit being barred by limitation. In the result, the trial Court dismissed the suit without costs.

Sri V.L.N.G.K.Murthy, learned senior counsel, would contend that while the plaintiff claimed through the registered partition deed dating back to the year 1929 and produced a copy of the registration extract thereof (Ex.A1), the claim of defendants 7, 9 and 12, through defendant 4, rested upon a Will (Ex.B3). He would contend that this Will was not proved in accordance with law as no witnesses were examined as mandated by Section 68 of the Indian Evidence Act, 1872 (for brevity, 'the Act of 1872') read with Section 63(c) of the Indian Succession Act, 1925 . Learned senior counsel would point out that in the event no witness was available, steps should have been taken to take recourse to Section 69 of the Act of 1872. He would therefore contend that in the absence of this Will being proved in accordance with law, the same cannot be accepted. As regards the partition deed of 1929, learned senior counsel would assert that Item No.3 of the plaint A schedule properties was admittedly sold during the lifetime of the plaintiff's father and that the said item of property does not remain in the picture. Learned senior counsel would further assert that the allegation of the defendants before the trial Court, which found favour, to the effect that the plaintiff could not identify the lands claimed by him is incorrect as the plaint B schedule sets out the details of the three items of property claimed by the plaintiff with specific boundaries. He would point out that in the written statement filed jointly, defendants 7 to 9 stated as under: 'These defendants are not in possession of the plaint schedule property at any time' and assert that this admission on their part disentitles them to claim any part of the plaint B schedule properties. He would assert that P.W.2's evidence to the effect that the plaintiff's father had sold Ac.2.00 cents after the partition without any evidence of such

sale, cannot be taken note of and that the plaintiff's title in relation to the lands which fell to his father's share in the partition and remained, after the admitted alienations, cannot be doubted. He would further contend that even if the sales in favour of defendants 7, 9, 12 and 13 were accepted, the suit could not be dismissed in toto as the other defendants had remained *ex parte*.

On the other hand, Sri M.V.S.Suresh Kumar, learned senior counsel, would contend that the plaintiff has to succeed on the strength of his own case. He would contend that the plaintiff was liable to be non-suited as he had not filed the sale documents relating to Ramanna and Nagappa. This, *per* the learned senior counsel, is a substantial lapse warranting dismissal of the suit on this ground. Learned senior counsel would state that the plaintiff's suppression of the sale of Ac.1.00 cents by his father to Nagappa, spoken to by P.W.2, was another ground warranting dismissal of the suit. Learned senior counsel would assert that in the light of the admission of the plaintiff during his deposition that he did not know the survey numbers in which the lands that fell to his father's share in the partition were situated, it was essential for the plaintiff to localize the lands claimed by him and in the absence thereof, his entire claim was rendered illusory and speculative. Learned senior counsel would also point out that the plaintiff could not even prove his alleged possession over the claimed properties after the death of his father in spite of his assertion that he retained such possession till 1979-80. He would contend that the plaintiff had no land left in Vakalapudi Village and having shifted to Sontivari Pakalu where his father-in-law lived, he filed this speculative suit on the strength of a partition deed dating back to the year 1929, which was not even

produced in original and only a registration extract thereof was marked. Learned senior counsel would state that the original ought to have been produced along with the plaint in terms of Order 7 Rule 14 CPC and that no foundational pleadings were put forth to permit filing of secondary evidence. Learned counsel would further contend that the entire case of the plaintiff was founded solely upon Ex.A1 partition deed of 1929 and no explanation was forthcoming as to why the plaintiff took no action for 61 long years as he filed the suit only in April, 1990. In the alternative, the learned senior counsel would point out that as per the plaint averments, the plaintiff claimed to have been in possession of the suit properties till 1981 but no proof whatsoever had been produced in evidence thereof. He would contend that when the plaintiff's claim as to the extent that remained out of the share that fell to his father's in the partition stood demolished by P.W.2's evidence that it was not Ac.1.00 cents but Ac.2.00 cents that had been sold by the plaintiff's father, the suit would have to fail on that ground also. He would assert that the plaintiff had not even a cent of land left out of the lands claimed by him and that was the reason why he shifted to Sontivari Pakalu where his father-in-law resided. He would further point out that no document had been produced in relation to the sale of Item No.3 of the plaint A schedule properties and that this was also an act of suppression warranting dismissal of the suit. Learned senior counsel therefore asserted that no interference was warranted with the well reasoned and cogent judgment rendered by the trial Court.

In reply, Sri V.L.N.G.K.Murthy, learned senior counsel, pointed out that no objection had been raised at the time of marking of Ex.A1, the registration extract of the partition deed of 1929, and

asserted that it was therefore too late in the day for the defendants to raise this issue. Learned senior counsel would further point out that the alienations made, whereunder defendants 7, 9, 10, 12 and 13 now claimed right and title, took place only in the year 1984 and therefore, the suit was not filed with 61 years delay as claimed by the defendants. Learned senior counsel would point out that though these defendants had gone to the extent of doubting the relationship of the plaintiff with his father, Kamaraju, there was no denial of their relationship by defendants 1 to 5. He would reiterate that Ex.B3 will deed, under which defendant 4 claimed title, was not even proved in accordance with law and that the original thereof was not produced. Learned senior counsel would further point out that even as per this registration extract, what was bequeathed by Ramanna to defendant 4 was self-acquired property and therefore, even if it was to be accepted, it could not be related to the properties which fell to the share of Ramanna in the partition, as the same would not be self-acquired properties. Learned senior counsel would assert that as long as the title of the plaintiff's father under the registered partition deed of 1929 did not get divested, it would devolve upon the plaintiff and that he would be entitled to relief.

Case law was relied upon by both the learned senior counsel.

In ***S.P.CHENGALVARAYA NAIDU (DEAD) BY LRS. V/s. JAGANNATH (DEAD) BY LRS. AND OTHERS***¹, the Supreme Court dealt with a suit for partition where the plaintiff had purchased a property in a Court auction on behalf of another and executed a release deed in his favour but claimed in the said partition suit that he had purchased the property for himself and not on behalf of the

¹ (1994) 1 SCC 1

other. He significantly did not even mention the factum of the release deed executed by him. This, *per* the Supreme Court, would tantamount to playing fraud on the Court disentitling him to relief. The Supreme Court observed that a litigant who approaches the Court is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the Court as well as on the opposite party. This judgment is cited in the context of the plaintiff failing to produce the sale deeds executed in favour of Ramanna and Nagappa by Kamaraju and also the sale deed allegedly executed by him in relation to Ac.0.54 cents in Item 1 of the Plaint B schedule properties.

In ***H.SIDDIQUI V/s. A.RAMALINGAM***², the Supreme Court observed that the Court is under an obligation to decide the question of admissibility of a document in secondary evidence before making an endorsement thereon. This observation was made relying upon several earlier decisions. This judgment is relied upon in the context of marking of Ex.A1 registration extract of the partition deed dated 22.08.1929.

Per contra, reliance was placed by Sri V.L.N.G.K.Murthy, learned senior counsel, on ***DAYAMATHI BAI (SMT) V/s. K.M.SHAFFI***³ wherein the Supreme Court observed that an objection as to the mode of proof falls within procedural law and therefore, such objections could be waived. Such objections, *per* the Supreme Court, had to be taken before the document was marked as an exhibit and admitted to the record. The Supreme Court further observed that had such objection been taken at the trial stage, the plaintiff could have

² AIR 2011 SC 1492

³ (2004) 7 SCC 107

met it by calling for the original document but once such objection is not raised and the document is admitted to the record without objection, it cannot be raised at the appellate stage.

The points that arise for determination in this appeal:

1. Whether the plaintiff established his title and possession over the Plaint B schedule properties till 1981 and consequentially, his entitlement to a declaration as prayed for by him?
2. Whether Ex.A1 and Ex.B.3 were inadmissible in evidence?
3. Whether the transactions under which the defendants claim are liable to be set aside?
4. Whether the judgment of the trial Court warrants interference on facts or in law?

The claim of the plaintiff was essentially founded on the partition said to have taken place amongst Kamaraju, his father, and his two brothers, Gangayya and Ramanna, in the year 1929. P.W.2 was stated to have witnessed this partition. P.W.2 deposed that the plaint B schedule properties belonged to the plaintiff and that others had no right over them. D.W.1 (defendant 9) stated that he and his brother purchased a site from defendant 4 under registered sale deed dated 18.05.1984 (Ex.B1). Ex.B2 was the house tax receipt under which they paid house tax to the Gram Panchayat. This site was situated in Survey No.52/4 of Vakalapudi. Defendant 4 was stated to have succeeded to this property under the Will dated 13.07.1973 executed by her father (Ex.B3). Defendant 7, speaking as D.W.2, stated that she purchased Ac.0.10 cents from defendant 4 under sale deed dated 18.05.1984 (Ex.B4). This land is situated in Survey No.52/4 of Vakalapudi. She thereafter constructed a house in the said site and Ex.B5 is the house tax receipt evidencing payment of tax to the panchayat. Defendant 8, speaking as D.W.3, stated that

he had not purchased the plaint schedule property and was not concerned with the suit. He denied the suggestion that he had purchased an extent of Ac.0.3½ cents from defendant 4 in the name of his wife, Bharathi Devi (defendant 12). D.W.4 was defendant 10 in the suit and stated that his wife, Lalitha (defendant 13), was the owner of the property admeasuring Ac.0.25 cents in Survey No.53/1 and Ac.0.11 cents in Survey No.52/1 of Vakalapudi and that her title to the said property arose out of the transactions under Exs.B6 to B9. He pointed out that despite his stating so in his written statement, his wife was not added as a party and asserted that the plaintiff had no right, title or possession over his wife's property.

As per Ex.A1 partition deed, Ramanna got an extent of Ac.3.22 cents in Survey Nos.51 and 52 and another extent of Ac.1.58 cents in Survey No.62 and an extent of Ac.1.00 cents in Survey Nos.53 and 55 of Vakalapudi Village. Under Ex.B3 registered Will dated 13.07.1973 executed by him, Ramanna bequeathed upon his daughter, defendant 4, an extent of Ac.1.50 cents. Defendants 7, 9 and 12 claim through defendant 4. Defendant 13 claims through Appayamma, daughter of Gangayya, the other brother of Kamaraju. As per Ex.A1 partition deed, Gangayya got an extent of Ac.3.22 cents in Survey Nos.51 and 52, Ac.1.58 cents in Survey No.62 and Ac.1.00 cents in Survey Nos.53 and 55.

Interestingly, the plaintiff, speaking as P.W.1, stated that his father sold away Ac.1.00 cents out of the total extent of Ac.5.80 cents which fell to his share, to his brother, Ramanna. However, P.W.2 stated that he knew of the sale of Ac.1.00 cents by the plaintiff's father to one S.Naganna and Ac.1.00 cents to his brother, Ramanna, from out of the land that fell to his share. This is not the version of

the plaintiff but his own witness asserted so. There is no explanation forthcoming as to this discrepancy even at this stage. This aspect cannot however be brushed aside as it was the plaintiff's own witness who spoke of the second alienation by the plaintiff's father.

It may be noticed that both sides seek to attack the registration extracts of the documents relied on by the other side. Ex.A1 registration extract of the partition deed dated 22.08.1929 is sought to be attacked by the defendants, while Ex.B3 registration extract of the Will dated 13.07.1973 is sought to be attacked by the plaintiff on the ground that it was not proved in accordance with law. It is no doubt true that Ex.B3, being a Will, had to be proved in accordance with Section 68 of the Act of 1872. However, the lapse, if any, in proving this document would relate to the defendants' case and it is a settled legal position that in a suit for declaration of title, the plaintiff has to succeed on the strength of his own case and cannot rely upon the weaknesses and defects, if any, in the case of the defendants.

(MORAN MAR BASSELIOS CHATHOLICOS AND ANOTHER V/s. MOST REV. MAR POULOSE ATHANASIOS AND OTHERS⁴). This was reiterated by the Supreme Court in **UNION OF INDIA AND OTHERS V/s. VASAVI COOPERATIVE HOUSING SOCIETY LIMITED AND OTHERS⁵**, wherein it was again spelt out that in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. Therefore, the plaintiff must first establish his case and only in the event he does so, examination of the defendants' case may arise. Stray sentences and so called

⁴ AIR 1954 SC 526

⁵ (2014) 2 SCC 269

admissions in the oral evidence of the defendants cannot be the basis for seeking such declaratory relief.

The decision of the Supreme Court in **BABU SINGH AND OTHERS V/s. RAM SAHAI ALIAS RAM SINGH**⁶ and that of this Court in **MRS. MURIAL HYDEN V/s. MRS.DULCIE M.ROBB AND OTHERS**⁷ were cited in the context of Ex.B3 Will but it is for the plaintiff to first prove his own case before turning the focus of this Court upon the defendants' case.

As regards the attack against Ex.A1 registration extract of the partition deed dated 22.08.1929, this Court is of the opinion that having failed to raise an objection as to the marking of this document before the trial Court, the defendants cannot now be permitted to raise this issue. That apart, Section 90 of the Act of 1872 would come to the rescue of the plaintiff in so far as this document is concerned as a presumption would attach to it as it is over 30 years antiquity and has been produced from the custody of the registration department of the State, which this Court considers proper. It is also to be noticed that Ex.B3 Will deed, allegedly executed by Ramanna, also speaks of the partition amongst the three brothers. The partition under Ex.A1 cannot therefore be doubted.

That having been said, this Court finds that there is no consistency in the case of the plaintiff thereafter. On the one hand, he stated that his father had sold an extent of Ac.1.00 cents out of the land that fell to his share in the said partition to his brother, Ramanna, while P.W.2 spoke of the plaintiff's father selling Ac.1.00 cents to his brother, Ramanna, and Ac.1.00 cents to Nagappa. Significant to note, at the time of his examination on 12.10.2001,

⁶ (2008) 14 SCC 754

⁷ 1991 (1) ALT 5

P.W.2 stated that his age was 60 years but, surprisingly, he claimed that he was present at the time of the partition which took place in 1929. Even if it is taken that he was 80 years as on the date of his examination, he would have been only 9 years of age at the time of the partition. His presence at the said partition is therefore rendered extremely doubtful. Further, if his evidence is taken into account, the position that emerges is that the plaintiff's father sold away Ac.2.00 cents out of the land that fell to his share in the partition. Significantly, Ac.1.00 cents out of these Ac.2.00 cents was sold to none other than Ramanna, his brother. This is an admitted position even according to the plaintiff. If this is to be considered in the context of Ex.B3 Will executed by Ramanna, whereby he bequeathed Ac.1.50 cents of his self-acquired property in favour of his daughter, defendant 4, it is very much possible that part of the Ac.1.00 cents of land sold to him by Kamaraju, the plaintiff's father, was bequeathed to defendant 4, as it would assume the status of self-acquired property. If that is so, the plaintiff can have no claim against the said land. No evidence was let in by the plaintiff to prove to the contrary.

Further, given the admission of the plaintiff that he did not even know the survey numbers of the lands that fell to his father's share in the partition and as no steps were taken by him to localize the actual extents of land which were claimed by him, this Court has to necessarily hold against him on this aspect also. Though Sri V.L.N.G.K.Murthy, learned senior counsel, would contend that the details of the boundaries in the Plaint P schedule would be sufficient to identify the lands, this Court is not persuaded to agree as there appear to have been sub-divisions of the survey numbers thereafter and there is no correlation of the lands as mentioned in Ex.A1

partition deed with the present situation in so far as the sub-divided survey numbers are concerned. More fatal to the plaintiff's case is the fact that he does not even have a single document in proof of either his father's possession or his own after the partition in the year 1929. According to the plaintiff, he remained in possession of the said partitioned properties till 1981. Despite this claim, not an iota of proof, in the form of documentary evidence, was placed on record by him to support his plea of possession. He also does not explain as to why he left these landed properties and quietly shifted to his father-in-law's village, Sontivari Pakalu, without making any arrangements as to their upkeep.

Though it is true that in terms of Article 65 of the Limitation Act, 1963, the plaintiff could maintain the suit without proving that he was in possession within 12 years preceding the filing of the suit, the totality of the circumstances in the present case indicate that there is no evidence worth the name of the plaintiff having exercised any right in furtherance of his claim of title and possession in respect of the lands which fell to his father's share in the partition of 1929. That apart, the discrepancies as to the extent of lands sold by his father as brought out by his own witness, P.W.2, further dilute his case. Further, once the plaintiff failed to establish subsisting title over the plaint B schedule properties the question of granting him part declaratory relief over some of the items of property in Plaint B schedule does not arise. In consequence, no grounds are made out to interfere with the transactions under which the defendants claim right, title and interest. In the absence of any evidence whatsoever to support his claim of subsisting title and previous possession of the plaint B schedule properties, the plaintiff failed to make out a case

for declaration of his title in relation thereto and for recovery of possession. The judgment of the trial Court holding to this effect therefore brooks no interference.

The appeal is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

SANJAY KUMAR, J

ANIS, J

14TH NOVEMBER, 2016

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