

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND**

THE HON'BLE MRS. JUSTICE ANIS

A.S. No. 1912 OF 2003

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Appeal is preferred by Defendants 1, 2 and 3 in O.S. No. 91 of 1999 on the file of the I Additional District Judge, Ranga Reddy District. Respondents 1 and 2 herein, who were minors at the time of instituting this Appeal and who have since attained the majority and have been declared as majors during the pendency of this Appeal, brought the suit for partition of the suit schedule properties. The 2nd appellant/defendant is the father of the plaintiffs. For some reason, the parents of the plaintiffs have separated from each other and they are living separately now. In view of the consensus that has emerged at the Bar, we are not adverting, in great detail, to the pleadings set up by the parties and as to how they are resolved by the trial Court, except referring to the most essential feature of the case.

It is true that the 1st defendant, who is the father of the 2nd defendant, and thus the paternal grand-father of the plaintiffs, has pleaded that the suit schedule immovable properties, which are agricultural lands, are his self-acquired properties and are not amenable for partition at the hands of the plaintiffs, but however, after considering the evidence that is led in by the plaintiffs, the trial Court has recorded a finding that Ex.A16 would clearly disprove the assertion of the defendants that the suit schedule properties are self-acquired properties of the 1st defendant and on the other hand, it establishes the claim of the plaintiffs that they are ancestral properties. In that view of the finding of fact, the Court ordered the properties to be divided into six shares and allotment of one-sixth share each to plaintiffs 1 and 2 and one-sixth share to the 2nd defendant, the father of the plaintiffs, and the remaining three-sixth share to the 1st defendant.

This distribution has proceeded on the premise that Defendants 1 and 2, the father and the son, are entitled to a half share equally and again, the half share of the 2nd defendant has to be apportioned by him with the two plaintiffs and thus, each of the two plaintiffs and the 2nd defendant would get one-sixth share. However, to this extent of apportionment, the decree passed by the trial Court is not sustainable, for, there was an amendment, which was brought-forth from September 9th 2005 by amending Section 6 of the Hindu Succession Act, 1956, provisions of which enactment regulate the succession amongst the parties herein. By virtue of this amendment, the earlier principle of devolution of interest in coparcenary property has been modified by making a daughter a coparcener. To the present suit, defendants 4 and 5, who are daughters of the 1st defendant, were also impleaded. However, the trial Court, which has passed the preliminary decree, by its judgment dated 11.07.2003, had failed to notice the effect of the amendment locally brought about to Section 6 of the State Legislature much earlier. In fact, the earlier amendment brought about to Section 6 locally is slightly different from the comprehensive amendment now made by the Parliament.

It will also be appropriate right, at this stage, to notice the principle enunciated by the Supreme Court in ***Ganduri Koteshwaramma v. Chakiri Yanadi***^[1]. In paragraphs 14 and 15 of the said judgment, the principle has been brought out in the following words:

“ 14. The new Section 6 provides for parity of rights in the coparcenary property among male and female members of a joint Hindu family on and from September 9, 2005. The Legislature has now conferred substantive right in favour of the daughters. According to the new Section 6, the daughter of a coparcener becomes a coparcener by birth in her own rights and liabilities in the same manner as the son. The declaration in Section 6 that the daughter of the coparcener shall have same rights and liabilities in the coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, on and

from September 9, 2005, the daughter is entitled to a share in the ancestral property and is a coparcener as if she had been a son.

15. The right accrued to a daughter in the property of a joint Hindu family governed by the Mitakshara Law, by virtue of the 2005 Amendment Act, is absolute, except in the circumstances provided in the proviso appended to sub-section (1) of Section 6. The excepted categories to which new Section 6 of the 1956 Act is not applicable are two, namely (i) where the disposition or alienation including any partition has taken place before December 20, 2004; and (ii) where testamentary disposition of property has been made before December 20, 2004. Sub-section (5) of Section 6 leaves no room for doubt as it provides that this Section shall not apply to the partition which has been effected before December 20, 2004. For the purposes of new Section 6 it is explained that 'partition' means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of a court. In light of a clear provision contained in the Explanation appended to sub-section (5) of Section 6, for determining the non-applicability of the Section, what is relevant is to find out whether the partition has been effected before December 20, 2004 by deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. In the backdrop of the above legal position with reference to Section 6 brought in the 1956 Act by the 2005 Amendment Act, the question that we have to answer is as to whether the preliminary decree passed by the trial Court on March 19, 1999 and amended on September 27, 2003 deprives the appellants of the benefits of 2005 Amendment Act although final decree for partition has not yet been passed."

Therefore, the preliminary decree passed by the trial Court in the suit requires to be modified, providing for a share to defendants 4 and 5 in the suit schedule properties.

However, Sri Pradeep Reddy, learned counsel for Respondents 1 and 2 would submit that since defendants 4 and 5 are satisfied with the preliminary decree and they have not preferred any Appeal, it is not necessary that the decree passed by the trial Court needs to be amended providing for a share (right) in the suit schedule properties for the respondents/defendants 4 and 5. We feel, such an objection is not liable to be sustained, in view of the provision contained under Order 41 Rule 33 of the Code of Civil Procedure. It is

the duty of the Court, which has to render justice to all the parties concerned. An Appeal preferred to this Court under Section 96 of the Code is, in fact, an extension of the suit itself. Further, in a suit for partition, the preliminary decree is liable to be amended at any time to bring it in accordance with law. Therefore, the objection raised by the learned counsel is overruled and the preliminary decree passed by the trial Court is modified rendering defendants 1, 2, 4 and 5 each as entitled to a share of one-fourth and the 2nd defendant's share of one-fourth is again liable to be partitioned amongst the 2nd defendant and the two plaintiffs in equal proportion, namely one-third of the one-fourth of the total share in the suit schedule properties. Thus, the two plaintiffs and the 2nd defendant each one of them became entitled to one-twelfth share in the suit schedule properties.

Learned counsel for Respondents 1 and 2 has pointed out that pursuant to an order passed by a Division Bench of this Court in C.M.A.No. 408 of 2001 on 13.10.2001, recording the undertaking furnished to this Court that land of an extent of Acs.6.16 guntas lying in Survey No. 82 at Nagole Village, Uppal Mandal, Ranga Reddy District will not be disposed till the disposal of the suit, the order of injunction granted by the trial Court against alienations has been modified.

Today, Sri B. Vijaysen Reddy, learned counsel for the appellants has placed before us the sworn affidavit of Sri A. Janga Reddy, S/o Late A. Chenna Reddy, the 1st defendant/1st appellant herein, disclosing as to the extent of land, which he has disposed of after this Court has decided C.M.A.No. 408 of 2001. In paragraph 3 of the affidavit filed today, which is taken on record, a tabulated statement containing the survey number and the extent of land that has been disposed of is furnished. However, the learned counsel for Respondents 1 and 2 has pointed out a minor discrepancy with regard to Serial Number 3 thereof. The survey number against that serial number was described as 76/AA and the extent was indicated as

Acs.5.36 guntas, whereas in the preliminary decree, we found the survey number recorded therein as 78 and the extent was noted as Acs.5.38 guntas. Excepting this minor discrepancy with regard to the survey number and the extent of Ac.0.02 guntas, rest of it is tallying.

It is also now brought to our notice that the State Government has acquired Acs.10.00 of land belonging to the family and forming part of the suit schedule, situate in Survey Nos. 82 and 86 of Nagole Village for a public purpose, namely construction of a Sewerage Treatment Plant (STP). However, in view of the pending disputes amongst the claimants, the compensation amount of approximately Rs.2.5 crores has been deposited before the civil Court, which is now lying in an interest-bearing account. Therefore, the undertaking furnished by the 1st defendant/appellant to this Court, when this Court was considering C.M.A.No. 408 of 2001, has virtually been neutralized by the action of the State in acquiring the entire extent of Acs.6.10 guntas lying in Survey No. 82 of Nagole Village. Therefore, to a certain extent, the interests of the two plaintiffs have received some impact, but however, when the State has got the power to acquire land for accomplishing a public purpose, even if the said land has fallen exclusively to the share of the plaintiffs, they could not have objected to or avoided any such acquisition. Therefore, with a view to render complete justice to the parties and also with a view to ensure that the interests of the two young plaintiffs, who, we are informed, are pursuing higher education, are adequately safeguarded and protected, we add the following condition to the preliminary decree:

The two plaintiffs together are entitled to withdraw a sum of Rs.1.5 crore lying in the civil Court, representing the market value for the land acquired by the State for construction of STP. In other words, each of the plaintiffs is entitled to withdraw a sum of Rs.75 lacs, while the balance money can be withdrawn by the defendants either jointly or severally as per the proportionate entitlement. But however, withdrawal of this money by the respective parties would abide by the

inquiry that has to be carried out into the mesne profits and would be made part of the final decree proceedings. This arrangement has been made so as to ensure that the progress of the education of the two plaintiffs is no way hampered due to the pendency of the civil litigation over a long period of time.

It is needless for us to add a word of caution that the parties shall not treat that the present arrangement of withdrawal of Rs.1.5 crores (i.e. Rs. 75 lacs each by the two plaintiffs) and the balance amount by the defendants jointly or severally, is not upon any determination of their right to such component. It is only an adjustment arranged for the present as the money deposited by the State represents the value of a couple of items of the suit schedule and it will abide by the final result in the mesne profits inquiry and either party, in case of necessity, will have to refund the excessive amount, which they have withdrawn.

This Appeal stands dismissed excepting to the extent of modification of the preliminary decree passed by the trial Court with regard to apportionment of shares amongst the parties, as indicated by us supra, and to the extent of withdrawal of the compensation amount deposited by the State, pursuant to acquisition of Acs.10.00 of land of the family forming part of the suit schedule for construction of STP at Nagole, in view of the finding of fact recorded by the trial Court that the suit schedule properties are not self-acquired properties of the 1st defendant, but they are ancestral properties, which is based upon proper appreciation of the evidence on record, which, we have not found in any way deficient or perverse for us to take a different view. No costs.

The criticism of the learned counsel for Respondents 1 and 2 that the mode of disposal of the immovable properties, the amount accrued on such disposal and the details of the reinvestment in building commercial complex(es) have not been disclosed by the 1st defendant/appellant in the affidavit filed in this Court today, is only

needed for us to be recorded for the purpose of enabling the trial Court to bear this aspect in mind while drawing the final decree proceedings.

We place on record our sincere appreciation for the efforts put in by Sri B. Vijaysen Reddy, learned counsel for the appellants and Sri Pradeep Reddy, learned counsel for Respondents 1 and 2 by securing a very easy way out for deciding this otherwise contentious Appeal.

NOOTY RAMAMOHANA RAO, J

ANIS, J

04th January 2016

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[\[1\]](#) AIR 2012 Supreme Court 169