

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

S.A. No.383 of 2003

Between:

Palaparthi Manikyam

..... Appellant

And

Palaparthi Venkata Satyanarayana

and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: **01.06.2016**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
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3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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Between:

Palaparthi Manikyam. Appellant

And

Palaparthi Venkata Satyanarayana
and others. Respondents

! Counsel for Appellant : Sri S.V.R.S.Subrahmanyam
^ Counsel for Respondent No.1 : Sri E.V.V.S.Ravi Kumar
^ Counsel for Respondent No.3 : Sri A.S.C.Bose
^ Counsel for Respondent No.4 : Sri T.Durga Prasad Rao

< Gist:
> Head Note:

? Cases referred:

- (1) AIR 1965 AP 318
- (2) 1960 (3) SCR 842
- (3) AIR 1978 SC 1791
- (4) 2000 (2) ALT 122
- (5) AIR 1952 SC 170
- (6) AIR 1959 SC 282

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
Second Appeal No.383 of 2003

JUDGMENT:

This Second Appeal is filed by the 3rd defendant in the Court below against the judgment and decree of the V Additional District Judge, (Fast Track Court) East Godavari, Rajahmundry in A.S.No.47 of 1998 dated 31.12.2002 wherein the learned Judge allowed

the appeal and set aside the judgment and decree dated 21.05.1997 passed by the Senior Civil Judge, Pithapuram in O.S.No.16 of 1994 filed by the plaintiff for partition of plaint schedule properties into three equal shares and put him in possession of one such share.

2) The brief facts of the case are thus:

a) The case of the plaintiff is that himself and defendant No.2 (D2) are the sons of 1st defendant (D1) and they constituted a Hindu joint family. The suit schedule properties are the ancestral properties. D1 is the manager of their joint family. Since D1 was addicted to all vices and creating documents to squander away the property and as the plaintiff did not want to remain joint with the D1, he issued notice dated 20.06.1992 (vide Ex.A1) calling upon D1 to divide the property into three equal share by metes and bound and allot on such share to him. The alienations if any effected subsequent to 20.06.1992 are not binding on him. The plaintiff came to know that defendant No.3 (D3) purchased items 1 and 2 of plaint A schedule property in Court auction, only on receiving summons in injunction suit—O.S.No.77 of 1994 on the file of District Munsif's Court, Pithapuram filed by D3. The plaintiff on enquiry came to know that D3 filed O.S.No.97 of 1992 on the file of Senior Civil Judge, Pithapuram against D1 on 30.12.1992 on the strength of pronote dated 10.01.1992. It was a collusive pronote suit wherein D1 remained ex-parte and hence ex-parte decree was passed in less than one month on 29.01.1993 and immediately D3 filed execution petition and brought items 1 and 2 of plaint A schedule in auction sale and purchased them. The entire suit and EP proceedings were out come of collision between D1 and D3 wherein the plaintiff was not a party. Hence, the suit for partition. After filing the suit D4 was added on the plea that he was proclaiming in the village that he filed O.S.No.61 of 1995 on the file of District Munsif, Pithapuram against defendants 1 and 2 for passing a decree for specific performance in respect of item 2 of B schedule.

b) D2 remained ex-parte.

c) D1 filed written statement denying that he was addicted to all vices and creating documents to squander away the properties as alleged. It is stated that he borrowed the amount from D3 to meet the family expenses and to that effect he executed a promissory note in favour of D3 to the knowledge of plaintiff and D2. After O.S.No.97 of 1992 filed by D3 was decreed, he requested the plaintiff and D2 to cooperate with him to discharge the decretal amount, but they have not cooperated. In those circumstances he was unable to get the execution proceedings stayed. It is further submitted that he constructed a house by investing huge amounts and allotted the same to the plaintiff. Therefore, the plaintiff is enjoying more valuable property than the ancestral properties.

d) D3 filed written statement contending that D1 never addicted to any vices as alleged and only to put some colour to the plaintiff's case the said allegation is made. The notice dated 20.06.1992 issued by the plaintiff is only to defraud the rights of the creditors who lent money to the joint family. It is denied that there is division of status between plaintiff, D1 and D2 from 20.06.1992. It is stated that D1 borrowed the amount from her on 10.01.1992 for the benefit of family and the plaintiff is aware of proceedings in suit—O.S.No.97 of 1992. D3 is a close relative of plaintiff's family and when she requested to discharge the debt, they postponed the payment by one pretext or other. Under those circumstances, D3 filed the suit, obtained decree and filed EP No.11/1993 and purchased items 1 and 2 of A schedule in auction. It is not correct that D3 carried the execution proceedings in O.S.No.97 of 1992 behind the back of plaintiff. On the other hand, plaintiff and D1 and D2 are all residing under the same roof. Therefore, the plaintiff is not entitled for any decree with regard to items 1 and 2 of pliant A schedule property.

e) D4 filed a written statement denying that D1 addicted to vices and creating the documents to squander the property. The notice dated 20.06.1992 is a collusive notice

between plaintiff and D1 and D2. Plaintiff and D1 and D2 not only divided in status but also partitioned their properties prior to 20.06.1992. As such alienation subsequent to 20.06.1992 is valid one. The plaintiff is fully aware of the suit filed him in O.S.No.61 of 1995. It is the case of D4 that plaintiff is aware of agreement dated 28.05.1992 executed by D1 in his favour and since the plaintiff is not a party to the said agreement, he was not added as defendant in O.S.No.61 of 1995. It is the further case of the D4 that item No.2 of plaint B schedule was sold to him by D1 and D2 under an agreement of sale dated 28.05.1992 and the said fact was confirmed by plaintiff at the time of agreement. Therefore, only to evade liability and to save D1 and D2, item No.2 of B schedule was shown as joint family property. He thus prayed to dismiss the suit in respect of item 2 of B schedule property.

f) Basing on the above pleadings, the trial Court framed the following issues.

- 1) *Whether the plaintiff is entitled for share in item 3 of Plaint A schedule and items 1 and 2 of plaint B schedule properties?*
- 2) *Whether the plaintiff is entitled for a share in items 1 and 2 of plaint A schedule properties?*
- 3) *To that relief?*

Subsequently on 14.10.1996 the following additional issue was framed.

Whether there is any partition deed prior to 20.06.1992?

g) Plaintiff himself was examined as PW1 and Exs.A1 to A9 were marked on his behalf. DWs.1 to 5 were examined and Exs.B1 to B10 were marked on behalf of defendants.

3a) The trial Court basing on the evidence on record held on additional issue that there was no partition between plaintiff and defendants 1 and 2 prior to 20.06.1992 and settled the issue in favour of plaintiff. On issue No.1 it was held that when there is no partition between plaintiff and D1 and D2, plaintiff is entitled to a share in item No.3 of plaint A schedule property and with regard to item 2 of B schedule property, it was held that the

agreement if any executed by D1 and D2 is binding only to the extent of their shares that too subject to the outcome of suit filed by D4 and it is not binding on the plaintiff and he is entitled to a share in items 1 and 2 of plaintiff B schedule property and accordingly decided the issue in favour of the plaintiff. With regard to issue No.2 the trial Court held that the statement of DW1 is not challenged and no evidence is placed before the Court to show that D1 did not spend the amount obtained from D3 for the construction of house and the evidence on record would show that D1 borrowed the amount for the joint family necessity. Thus it was held, the plaintiff was not entitled to any share in items 1 and 2 of plaintiff A schedule property.

b) Ultimately the trial Court held that plaintiff is entitled to 1/3rd share in item No.3 of plaintiff A schedule property and items 1 and 2 of B schedule property, while rejecting the claim in respect of items 1 and 2 of A schedule property.

c) Aggrieved by the judgment in not conferring share in items 1 and 2 of plaintiff A schedule, plaintiff preferred A.S.No.47 of 1998. D4 filed A.S.No.181 of 1997 before the V Additional District Judge, Rajahmundry.

c) In the aforesaid appeals, A.S.No.47 of 1998 is concerned, the learned Judge on considering the entire evidence on record held that plaintiff issued Ex.A1 notice on 20.06.1992 but D3 filed the suit—O.S.No.97 of 1992 subsequently and obtained decree against D1 alone in his individual capacity and not as the Manager of joint family and therefore, the decree obtained by D3 subsequent to Ex.A1 notice will not bind the share of D1 in the joint family properties even though the plaintiff could not establish that the debt covered by the decree in O.S.No.97 of 1992 was not for legal necessity. It was observed, even assuming that the debt contracted by D1 was neither illegal nor immoral, as the plaintiff is not a party to the suit, the decree in O.S.No.97 of 1992 will not bind the plaintiff and affect his share in items 1 and 2 of plaintiff A schedule which are found to be joint family

properties and accordingly held that plaintiff is entitled to a share in items 1 and 2 of plaintiff A schedule also.

d) A.S.No.181 of 1997 filed by D4 is concerned, while dismissing the appeal the appellate Court observed that if it is practical and feasible while working out equities the entire item 2 of plaintiff B schedule shall be allotted to the share of D1 and D2.

e) Hence, the Second appeal by D3. It may be noted that no Second Appeal is filed against the dismissal of A.S.No.181 of 1997.

4) The parties in the appeal are referred as they stood before the trial Court.

5) Heard arguments of Sri S.V.R.S.Subrahmanyam, learned counsel for appellant/3rd defendant; Sri E.V.V.S.Ravi Kumar for Sri V.L.N.G.Krishna Murthy, learned counsel for R1/plaintiff; R2 died; Sri A.S.C.Bose, learned counsel for R3; Sri T.Durga Prasad Rao for R4. Notice sent to R5 returned as “*refused*”.

6) Fulminating the judgment in A.S.No.47 of 1998, learned counsel for appellant/D3 argued that the appellate Court committed a grave error in understanding the concept of “*pious obligation*” and misplaced the burden of proof on the appellant/D3 instead of plaintiff to prove that the debt contracted by his father was *avyavaharika* debt i.e. immoral debt for his vices. He vehemently argued the burden of proof will be always on the plaintiff who assails his liability towards debt to establish that it was not for the benefit of the joint family and it was an immoral debt and thereby no pious obligation would sprout from it. To buttress his contention that burden of proof lies on the plaintiff, he relied upon the following decisions:

1) ***Sydulu v. Venkateshwarlu***^[1]

2) ***Luhar Amrit Lal Nagji v. Doshi Jayantilal Jethalal and others***^[2]

a) Learned counsel would further argue that the debt was incurred by D1 for the construction of the joint family house and hence it was very much for the benefit of joint family and except making a bald statement that the debt was immoral, plaintiff could not substantiate that allegation and hence the debt is binding not only on D1 but also on the entire joint family. Even assuming that Ex.A1—notice dated 20.06.1992 issued by plaintiff brought disruption in the joint status of D1's joint family, still by virtue of fact that the pronote was dated 10.01.1992 and the debt covered by it being a pre-partition debt for the benefit of joint family and not tainted with any immorality, binds all the coparceners and hence D3 can file a suit against D1 alone and recover the decretal amount by subjecting the properties of all the coparceners which they got in partition to auction without necessarily impleading them as parties because they are bound by pious obligation. On this aspect he relied upon the decision of the Apex Court in ***V.D.Deshpande v. Kusum Kulkarni***^[3]. He argued that the appellate Court erred in holding that in spite of existence of pious obligation the appellant/D3 cannot bind the shares of plaintiff and D2 without impleading them as parties or filing separate suits against them. He thus prayed to allow the appeal.

7) Per contra, learned counsel for respondent1/plaintiff argued that the pronote debt was an out come of collusion between D1 and D3 which is evident from the fact that on the very first hearing date D1 agreed for a consent decree and thereafter execution proceedings were initiated by D3 in quick succession and brought items 1 and 2 of A schedule to auction sale and purchased them in court auction and the entire suit and EP proceedings were completed within one year. He argued that plaintiff took a specific plea in the plaint and also deposed in his evidence that debt was a collusive, immoral and not for the joint family benefit and his evidence was not subjected to cross-examination and thereby it stood unrebutted. Thus he discharged his burden. He argued that when debt itself was a collusive and immoral one, no pious obligation can be attached to it.

a) Learned counsel alternatively argued that even assuming the debt was not an immoral one and it was for the joint family benefit and thereby it imposes pious obligation on the plaintiff and D2 as contended, still the plaintiff cannot bring the suit against D1 alone and execute the decree by subjecting the share of the plaintiff in items 1 and 2 of A schedule to the auction because Ex.A1—notice issued by the plaintiff to D1 and D2 fissioned the joint status among them and a division was effected and though the properties were not physically divided, still the severance of the joint status had taken place and in that view, D1 was no more legally empowered to represent the other coparceners as Karta in the suit or execution proceedings so as to bind their shares for the debt contracted by him. Equally, D3 was not entitled to bring the suit against D1 alone without adding plaintiff and D2 as parties to the suit so as to bind their shares because partition was already effect by the time D3 filed O.S.No.97 of 1992. But D3 filed the said suit against D1 alone, obtained decree and proceeded with execution also which is legally impermissible. Therefore, the appellate Court rightly set aside the judgment of the trial Court and decreed the plaintiff's suit by exempting his share in items 1 and 2 of plaint A schedule. He relied upon the decision of this Court in **A.Venkataratnam v. S.Sarveswara Rao** ^[4] on the point that disruption of joint family takes effect from the date of issuance of notice by a coparcener to the Karta. He thus prayed to dismiss the appeal.

8) In the light of above rival arguments, the following substantial questions are framed for consideration.

- 1) *Whether a Hindu son is not liable for a debt on promissory note executed by his father while he was joint?*
- 2) *Whether the debt borrowed by a Hindu father would not be binding on his son for the reason that he is not party to the debt?*
- 3) *Whether the lower appellate Court is justified in holding that even though the plaintiff could not establish that the debt covered by the decree in O.S.No.97 of 1992 was not for legal necessity, the share of the plaintiff in the joint family property will not bind?*

- 4) *Whether the burden of proof can be shifted as can done in case of onus of proof?*
- 5) *Whether general charge of immorality against the 2nd respondent by the 1st respondent is suffice and/or there need be a direct connection between the debt borrowed by the 2nd respondent and the immorality or illegality set up by the 1st respondent?*

9a) The suit under Second Appeal is a partition suit. The plaintiff claimed 1/3rd share in plaint A and B schedule properties. Item 2 of plaint B schedule is concerned, D4 claimed to have purchased the same from defendants 1 and 2 under an agreement to sell dated 28.05.1992 alleging that they got the same in a prior partition. He filed O.S.No.61 of 1995 for specific performance and contended plaintiff is not entitled to share therein. However, the trial Court held that there was no prior partition among plaintiff, D1 and D2 prior to 20.06.1992 and accordingly granted decree to plaintiff in items 1 and 2 of B schedule. In A.S.No.181 of 1997 filed by D4 the appellate Court gave a concurrent finding to the effect that there was no partition among the plaintiff, D1 and D2 prior to 20.06.1992 but however, it gave an equitable relief to D4. There is no appeal in respect of plaint B schedule and hence we are not concerned with it.

b) Items 1 and 2 of plaint A schedule are concerned, they are said to be purchased by D3 in a Court auction pursuant to money decree obtained by her against D1 in O.S.No.97 of 1992. The trial Court held that since the plaintiff failed to establish that debt contracted by D1 from D3 was not for joint family benefit, he is not entitled to a share in items 1 and 2 of plaint A schedule. However, the appellate Court reversed the said judgment with the observation that even assuming that debt contracted by D1 was neither illegal nor immoral, still Ex.A1—notice dated 20.06.1992 brought a division in joint family status and the coparcenery was dissolved and subsequently D3 filed the money suit against D1 alone without impleading the plaintiff and D2 as parties and therefore, the decree in O.S.No.97 of 1992 will not bind the plaintiff and affect his share in items 1 and 2 of plaint A

schedule. The appellate Court accordingly decreed the suit and granted a share in items 1 and 2 along with item 3 in plaint A schedule.

10) It is in this above back drop, the substantial questions are answered as follows:

11a) **Question No.1:** The first substantial question is concerned, we need elaboration of doctrine of *pious obligation*. The Mithkshara Sastric law imposed a pious duty on a son to pay off the dues of his father provided they are not tainted with immorality. It was considered by Smritis that the debt was not a mere legal obligation but its non-payment is a sin whose consequences are severe and follow in next birth also. The different dimensions of pious obligation and its applicability at different stages are delineated by the Full Bench of Honourable Apex Court in ***Pannalal and another v. Mst. Naraini and others***^[5]. Regarding its application in pre-partition stage, it was observed that the pious obligation principle gave a right to a father being a Karta of joint family to alienate joint family property to pay off antecedent debts even though not incurred for the family necessity or benefit provided it was not tainted with immorality. Thus the right of alienation of Karta of the joint family prior to partition was well recognized. It was held by Apex Court in the above judgment as follows:

“Thus it is open to the father, during his lifetime, to effect a transfer of any joint family property including the interest of his in the same to pay off an antecedent debt not incurred for family necessity or benefit, provided it is not tainted with immorality. It is equally open to the creditor to obtain a decree against the father and in execution of the same put up to sale not merely the father's but also the son's interest in the joint estate. The creditor can make the sons parties to such suit and obtain an adjudication from the court that the debt was a proper debt payable by the sons. But even if the sons are not made parties, they cannot resist the sale unless they succeed in establishing that the debts were contracted for immoral purposes. These propositions can be said to be well recognized and reasonably beyond the region of controversy”.

The above is the position with regard to antecedent debts and right of alienation of Karta and the right of the creditor when the family was joint and there was no partition.

b) Then comes the 2nd stage. The question is what is the position with regard to post-partition debts. This question was also answered by the Apex Court in the same judgment. With regard to post partition debt contracted by the father, the Apex Court observed thus:

“As regards debts contracted by the father after partition, there is no dispute that the sons are not liable for such debts. The share which the father receives on partition and which after his death comes to his sons, may certainly, at the hands of the latter, be available to the creditors of the father, but the shares allotted on partition to the sons can never be made liable for the post-partition debts of the father (Vide Mayne's Hindu Law, 11th Edition, 430).”

c) The 3rd stage is pre-partition debts enforced in post partition. The question is regarding the liability of the sons in respect of pre-partition unsecured debts contracted by father, for the realization of which the creditor filed suit and obtained decree after partition took place. This issue was also answered by the Apex Court taking majority view of the decisions. It was held:

“The reasoning in support of the other view which has been accepted in the majority of the decided cases is thus expressed by Waller J in his judgment in the Madras Full Bench case (Vide Subramanya v. Savapathi, 51 Mad. 361:

“On principle, I can see no reason why a partition should exempt a son's share from liability for a pre-partition debt for which it was liable before partition. The Creditor advances money to the father on the credit of the joint family property. Why should he be deprived of all but a fraction of his security by a transaction to which he was not a party and of which he was not aware? and what becomes of the son's pious obligation? It was binding as regards the particular debt before partition; does it cease to apply to that debt simply because there has been partition?”

The Apex Court ultimately held as follows:

“Thus, in our opinion, a son is liable, even after partition for the pre-partition debts of his father which are not immoral or illegal and for the payment of which no arrangement was made at the date of the partition.”

12) The substantial question No.1 co-relates with the above 3rd stage.

a) In the case on hand also D1 contracted debt from D3 and executed pronote on 10.01.1992 when the family was joint. The plaintiff issued Ex.A1—notice on 20.06.1992 to D1 and D2 seeking partition of joint family properties. With this notice the joint family status was legally disrupted as is held in **A.Venkataratnam's** case (4 supra). Subsequently D3 filed O.S.No.97 of 1992 on 30.12.1992 (vide Ex.A7) i.e. after severance of joint status.

b) So, with regard to substantial *question No.1* it can be said that under the doctrine of pious obligation the plaintiff will be liable even after partition for the pre-partition debt of D1 provided if the debt was not immoral or illegal and for the payment of which no arrangement was made at the date of partition.

13) Now, the next issue is the burden rests on whom to establish whether the debt is immoral or not and whether the said burden is properly discharged and the said issue is answered under substantial questions 4 and 5.

a) **Questions 4 and 5:** Substantial questions 4 and 5 are concerned, the law on burden of proof is no more *res integra* and it rests on the son who assails his liability in respect of pre-partition debt contracted by his father as Karta on the ground of its immorality or illegality. The Supreme Court in **Luhar Amrit Lal Nagji's** case (2 supra) held that if a Hindu son wanted to challenge an alienation made by his father to pay his antecedent debt it was necessary for him to prove not only that the said antecedent debt was immoral but also that the alienee had the notice of the immoral character of the said debt.

b) In **V.Sydulu's** case (1 supra) the Division Bench of AP High Court while reiterating the same principle held that to escape the liability on the basis of doctrine of *pious obligation*, the son should make out that the borrowing was utilized for immoral purposes. It is not sufficient to make a general charge of immorality against the father.

14) In the light of above precedents, there can be no demur that burden of proof in this case rests on the plaintiff to establish that debt contracted by D1 from D3 was for immoral purpose. The plaintiff no doubt has taken a plea in the plaint that D1 was the manager of

the joint family and he addicted to all vices and started creating documents to squander away the property, which necessitated him to issue Ex.A1—notice seeking partition. In his chief examination also he deposed as if his father was eating away entire property and hence he filed the suit for partition. Except this, the plaintiff has not made any strenuous efforts and examined witnesses to substantiate his plea of immoral conduct of his father. On the other hand, in cross-examination he admitted that D1 was managing the affairs of joint family and he used to secure loans for family necessities and repaying them. Further, in the chief examination itself he stated that when his father contracted debt for the purpose of agriculture and for family necessities, they sold Ac.0.60 cts. of land to Palaparthi Subrahmanyam under Ex.A6—sale deed and cleared debts. So, his evidence implies that the debt contracted by D1 from D3 may not be for immoral purpose as the plaintiff failed to establish this fact by cogent evidence. It may be noted that the plaintiff also took a plea that the debt itself is a collusive one as D1 suffered a consent decree and thereafter items 1 and 2 of A schedule were brought to auction sale in quick succession. By that ground alone it cannot be inferred that the debt is a collusive one particularly when the plaintiff failed to establish that fact by cogent evidence.

a) So, when the findings under substantial questions 1, 4 and 5 are summed up, we can conclude that under the doctrine of *pious obligation* the plaintiff will be liable for the pre-partition debt of D1 even after partition took place provided the debt was not for immoral or illegal purpose and the burden of proving the immorality rests on the plaintiff which he failed to establish. Therefore, D3 is entitled to impose pious obligation on plaintiff and D2 for realizing the debt secured by D1. Now, the crucial question is how he can enforce the pious obligation—whether by obtaining decree against D1 alone or by invariably impleading plaintiff and D2 along with D1 in the suit or bringing separate suit against plaintiff and D2. This aspect is dealt with under substantial questions 2 and 3.

15) **Questions 2 and 3:** Now, substantial questions 2 and 3 are concerned, since joint

status was disrupted prior to filing the money suit, the question is whether pious obligation could be enforced by obtaining a decree against D1 alone or whether sons are also to be added as parties to affect their shares. We will find the answer in Apex Court judgment in ***V.D.Deshpande's*** case

(3 supra) wherein facts are that the father as a joint family Karta incurred 'tagai' loan for digging wells in the joint family lands by offering some of the joint family lands as security. When the father failed to discharge the loan, proceedings were initiated under Revenue Recovery Act by the Government and since the properties offered as security were not sufficient to realize the loan, the suit land was also auctioned and the defendant therein purchased the same and he was put in possession on 20.05.1960. The plaintiff contested that prior to date of auction there was partition between joint family members on 06.07.1956 wherein the suit land fell to the share of plaintiff and hence father had no salable interest in the suit land and the suit land could not be sold at revenue auction for recovering the personal debt of the father.

a) In that contest, the Apex Court referred its earlier Full Bench cases in ***Pannalal's*** case (5 supra) and in ***S.M.Jakati v. S.M.Borkar***^[6] and by following the latter judgment held that the 'tagai' loan was borrowed by the father (karta) for the purpose of improving the joint family lands and the partition amongst the members of the family was effected while the debt was outstanding without making provision for the repayment of the debt and hence, the lands in the hands of the coparceners acquired on partition would also be liable for the debt despite partition. In such a case, the creditor (Govt. in this case) was not required to make the sons parties to the suit for recovery of the debt and could proceed against the properties in the hands of the coparceners and put the auction purchaser of such properties in possession of the same. As the loan was borrowed for the purpose of improving the joint family lands, the loan would *ipso facto* be for legal necessity and it would be joint family debt for which all the joint family property would be

liable. In such a case the only effect of partition was that after the disruption of joint family status by partition, the father had no right to deal with the property by sale or mortgage even to discharge an antecedent debt nor was the son under a legal obligation to discharge the post-partition debts of the father.

16a) In view of the decision in **V.D.Deshpande's** case (3 supra), it can be emphatically said that D3 can enforce the pious obligation against plaintiff and D2 even without making them as parties in the suit filed by him. Running the risk of pleonasm, the debt was a pre-partition debt and it was not tainted with any immorality and as such the share of the plaintiff shall also be liable to discharge the said debt. Substantial questions 2 and 3 are answered accordingly.

b) In view of the above findings, the judgment of the appellate Court in A.S.No.47 of 1998 insofar as its granting preliminary decree for partition in favour of plaintiff in respect of items 1 and 2 of plaint A schedule is liable to be set aside.

17) In the result, this Second Appeal is allowed by setting aside the decree and judgment in A.S.No.47 of 1998 passed by V Additional District Judge, East Godavari at Rajahmundry insofar as it granting preliminary decree for partition in favour of plaintiff for items 1 and 2 of plaint A schedule is concerned. It is held that plaintiff is entitled to a preliminary decree for 1/3rd share in respect of items 3 of plaint A schedule and items 1 and 2 of plaint B schedule properties. However, at the time of final partition, if it is feasible and practicable the trial Court while working out the equities, shall allot the entire items 2 of B schedule to the share of defendants 1 and 2. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 01.06.2016

Murthy

[\[1\]](#) AIR 1965 AP 318

[\[2\]](#) 1960 (3) SCR 842

[\[3\]](#) AIR 1978 SC 1791

[\[4\]](#) 2000 (2) ALT 122

[\[5\]](#) AIR 1952 SC 170

[\[6\]](#) AIR 1959 SC 282