THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Second Appeal No.306 of 2017

JUDGMENT:

The unsuccessful appellants/plaintiffs filed this Second Appeal, under Section 100 of the Code of Civil Procedure, 1908, assailing the decree and judgment, dated 29.11.2016, of the learned IX Additional District Judge, Wanaparthy, passed in A.S.No.4 of 2015. By the said impugned decree and judgment, the learned Additional District Judge confirmed the decree and judgment, dated 16.12.2014, passed in O.S.No.36 of 2009 on the file of the Court of the learned Senior Civil Judge, Wanaparthy.

2. I have heard the submissions of *Sri P.Mallesh*, learned counsel appearing for the plaintiffs/appellants, at the stage of admission. I have perused the material record.

3. The matter is coming up for consideration on the limited aspect as to whether the substantial questions of law raised in the grounds of appeal or any other substantial questions of law are involved in this second appeal; and, if so, whether the second appeal deserves to be admitted. The parties in this second appeal shall hereinafter be referred to as the plaintiffs and the defendants as arrayed in the suit for convenience and clarity.

4. To begin with, it is to be noted that the plaintiffs/appellants herein brought the above said suit O.S.No.36 of 2009 on the file of the Court of the learned Senior Civil Judge, Wanaparthy, for partition of the plaint schedule properties and for allotment of a $1/4^{th}$ separated share to the plaintiffs. The defendants/respondents herein resisted the said suit. After full-fledged trial, the trial Court dismissed the suit. Aggrieved thereof, the plaintiffs preferred an appeal in A.S.No.4 of 2015 on the file of the Court of the learned IX

Additional District Judge, Wanaparthy. By judgment and decree impugned in this second appeal, the learned Additional District Judge dismissed the said appeal and confirmed the decree and judgment of the trial Court. Therefore, the aggrieved plaintiffs are before this Court.

5. The case of the plaintiffs and the submissions of the learned counsel for the plaintiffs, in brief, are as follows:

The 1st plaintiff is the wife of late Mekala Ramudu. Plaintiffs 2 to 4 are sons of late Mekala Ramudu. The defendants 1 to 3 are junior paternal uncles of the plaintiffs 2 to 4. Defendants 4 to 6 are wives of the defendants 1 to 3. Late Mekala Ramudu and the defendants 1 to 3 are own brothers and are sons of late Chinna Mashanna. Chinna Mashanna, the grand father of the plaintiffs 2 to 4 died several long years ago. Late Mekala Ramudu also died on 28th of October, 2003. The Genealogical Tree of the family is as under:

Mekala Chinna Mashanna

(1)	(2)	(3)	(4)
Mekala Ramudu (died)	Mekala Narayana	Mekala Sheshanna (D2)	Jaya Babu

(1) Lakshmi devamma(Plaintiff no.1)
(2) Mekala Anjaneyulu(Plaintiff no.2)
(3) Mekala Eswaraiah (Plaintiff no.3)
(4) Mekala Venkateswarlu (Plaintiff no.4)

The suit 'A' schedule property is a house bearing Nos.1-82, 1-83 and 1-84/A with one basement and it is an open place in a total extent of 540 square yards in Sy.No.197/2 situated in the limits of Govardhanagiri village of Weepanagandla Mandal. The suit 'B' schedule properties are dry lands in Sy.Nos.250, 251, 252, 253 and 201 and are of the extents of Ac.13.23 guntas, Ac.8.38 guntas, Ac.2.07 guntas, Ac.5.10 guntas and Ac.0.30 guntas respectively and are situated in the limits of Goverdhanagiri village of Weepanagandla Mandal. The said suit 'A' and 'B' schedule properties are ancestral properties, which accrued from late Chinna Mashanna. The said late Chinna Mashanna was the original pattedar and absolute owner of the suit schedule properties. After demise of Chinna Mashanna, the suit 'A' and 'B' schedule properties are not partitioned by metes and bounds amongst his Sons viz., late Mekala Ramudu and the defendants 1 to 3. After the demise of Chinna Mashanna, late Ramudu and the defendants 1 to 3 started living separately. Late Mekala Ramudu and the defendants 1 to 3 had developed the 'B' schedule properties and made the constructions jointly in the 'A' schedule property and also got dug up two Wells and got drilled two bores. After the demise of Ramudu, the plaintiffs and the defendants have been jointly developing Mango and Battai (Orange) gardens in the 'B' schedule properties. The plaintiffs are having joint possession of the suit schedule properties. After the demise of Ramudu, the defendants, without allotting the shares of the plaintiffs, tried to occupy the properties to deprive the plaintiffs of their rights over the suit 'A' and 'B' schedule properties. The plaintiffs, several times, requested the defendants 1 to 3 for allotting the share of late Ramudu after separation of the properties by metes and bounds. But the defendants 1 to 3 postponed the issue. The evil intention of the defendants is to not to give the share of Ramudu to the plaintiffs. On 22.12.2008, the plaintiffs 2 to 4 got issued a legal notice to the defendants demanding for partition of the suit 'A' and 'B' schedule properties. However, the defendants got issued a reply notice, dated 28.12.2008, with false contents. As a matter of fact, the suit 'A' and 'B' schedule properties were not partitioned by metes and bounds and separated shares are not allotted to the sharers according to good and bad qualities. The plaintiffs and the defendants have raised the fruit gardens. Finally, on 15.06.2009, the plaintiffs, with the help of elders, demanded for partition and allotment of the share of Mekala Ramudu. But, the defendants have bluntly refused the request of the plaintiffs. The plaintiffs filed before the trial Court, the CC of ROR, office copy of legal notice, reply notice and two sale deeds. The defendants are trying to alienate the suit 'A' and 'B' schedule properties without allotting the 1/4th share of late Mekala Ramudu to the plaintiffs and without the consent of the plaintiffs. The defendants 4 to 6 are impleaded during the pendency of the suit. Hence, the suit is filed for partition and allotment of the share of the plaintiffs.

6. The defendants 1 to 6 filed a written statement contending, *inter alia*, as follows:

The relationship of the parties is not disputed. The date of death of Mekala Ramudu is also not disputed. Chinna Mashanna died on 26.01.2001. The genealogical tree mentioned in the plaint is not disputed. It is a fact that late Chinna Mashanna was the original pattedar and owner of the said properties. But, it is false to say that the suit schedule properties are not partitioned by metes and bounds amongst Mekala Ramudu and the defendants 1 to 3. It is also false to say that after demise of Chinna Mashanna, late Ramudu and defendants 1 to 3 are living separately. Prior to the death of Chinna Mashanna, only the joint family and ancestral properties of the parties are partitioned. Since 1985, the parties are living separately, but partition was affected between late Ramudu and defendants 1 to 3 during the year 1997 in the presence of their father Chinna Mashanna. It is false to say that late Ramudu and defendants 1 to 3 have jointly developed the 'B' schedule properties and made the constructions jointly in the 'A' schedule property and also got dug up two Wells and got drilled two bores. It is also false to say that after demise of Ramudu, the parties have developed the Mango and battai (Orange) garden in the 'B' schedule properties jointly and that the plaintiffs are having joint possession in 'A' and 'B' schedule properties. The father of the plaintiffs, late Ramudu, and the defendants 1 to 3 have partitioned their entire joint family and ancestral properties including suit 'A' and 'B' schedule properties and took 1/4th share each. The CC of the ROR filed by the plaintiffs itself shows the division of the properties and also the patta in the name of the individuals. The plaintiffs have not valued the suit properly. There is Mango and battai (Orange) garden in an extent of 18-00 acres of the suit land. The value of the fruit garden is @ Rs.10 lakhs per acre. As such, the value of the suit 'B' schedule land comes to Rs.2 crores. The value of the house property is also more than Rs.50 lakhs. Thus, the total value of the property comes to Rs.2,50,00,000/-. The value of the plaintiffs 1/4th share comes to Rs.62,50,000/-. As such, the trial Court has no jurisdiction to entertain the suit and hence, the jurisdiction issue has to be taken up as a preliminary issue. The plaintiffs have to pay the court fee on Rs.62,50,000/- under Section 34(1) of A.P. Court Fee & Suit Valuation Act, 1956. The plaintiffs have under valued the suit and the court fee paid is not sufficient. The real facts are that during the life time of Chinna Mashanna in the year 1997, the defendants 1 to 3 and their brother, late Ramudu, have partitioned the entire joint family and ancestral properties and took 1/4th share each. In the said partition, the lands, viz., Ac.0.36 guntas in Sy.no.250/A, Ac.0.05 guntas in Sy.no.251/A, Ac.1.30 guntas in Sy.no.252/AA, Ac.3.26 guntas in Sy.no.253/E, and Ac.0.15 guntas in Sy.no.124 fell to the share of late Ramudu. The hayrick yard bearing Sy.no.201 in an extent of 0.07 ½ guntas also fell to the share of late Ramudu. There used to be five houses; and, out of them, two houses fell to the share of late Ramudu and remaining three houses, i.e., the schedule 'A' property fell to the share of defendants 1 to 3. Out of two Wells, one Well with in-well bore, three current motors and one independent bore Well fell to the share of late Ramudu. Similarly, defendant no.1, Mekala Narayana, got the land in an extent of Ac.0-15 guntas in Sy.no.124, Ac.3.22 guntas in Sy.no.250/E, Ac.2.00

in Sy.no.251/A, Ac.2.12 guntas in Sy.no.251/AA, Ac.0.05 guntas in Sy.no.252/AA2, Ac.0.02 ½ guntas in Sy.no.201/AA and Ac.0.05 guntas in Sy.no.201/AA2, besides land admeasuring Ac.0.07 ½ guntas [hayrick yard] and 1/3rd share in one Well and one bore Well and also 1/3rd share in three current motors. He has also got towards his share, the house bearing Door no.1-84/A with open site, which is in Sy.no.197. He has constructed basements in the open site under 'Indiramma housing' scheme. Similarly, the 2nd defendant, by name Sheshamma, has got the lands viz., Ac.0.15 guntas in S.no.124, Ac.4.17 guntas in Sy.no.250/EE, Ac.3.17 guntas in Sy.no.251/A3, Ac.0.06 guntas in Sy.no.252/A and an extent Ac.0.07 ½ guntas (hayrick yard) in Sy. no. 201/AA2 and 1/3rd share in one Well and one bore well and also 1/3rd share in three current motors. He has also got the house bearing door no.1-83 with open site towards his share; it is in Sy.no.197. He has also constructed basements under 'Indiramma Housing scheme'. Similarly, 3rd defendant got Ac.0.15 guntas in Sy.no.124, Ac.4.29 guntas in Sy.no.250/U, Ac.3.04 guntas in Sy.no.251/A, Ac.0.06 guntas in Sy.no. 252/A4, Ac.0.07 ½ guntas [hayrick yard] in Sy.no.201/A2, and 1/3rd share in three current motors. He has also got the house bearing door no.1-82 with open site towards his share, it is in Sy.no.197. Though the partition was affected during the year 1997, the parties have applied for mutation in the revenue records during the year 2005. Since their father died, the plaintiffs herein have applied for mutation in their respective names. The plaintiffs have partitioned 1/4th share of their father among themselves and took 1/3rd share each during the year 2004. As such, 1/4th share of late Ramudu has been mutated in the name of the plaintiffs separately. The title deed and pattedar passbooks are issued to the plaintiffs separately to the extent of their shares. Likewise, the defendants 1 to 3 got mutated their shares in their names and also part of their shares of land in the names of their wives, i.e., defendants 4 to 6 herein. The Tahasildar, after enquiry, and after taking consent from all the parties, mutated the patta of the respective lands in the names of the respective parties and issued title deed and pattedar pass books to the plaintiffs and the defendants. After mutation, the 2nd plaintiff-Anjaneyulu has obtained loan from Indian Overseas Bank, Weepangandla, for doing horticulture under Government scheme and raised sapota garden about four years ago in an extent of Ac.2.00 acres. He has also availed Government subsidy for raising the said fruit garden. Every year, he is also obtaining the crop loan from Indian Overseas Bank, Weepanagandla, by hypothecation of the crops in the lands that fell to his share. He has also mortgaged his share of land with the above said bank. Similarly, the plaintiff no.3-Eeshwaraiah has also raised Mango garden in his share of land in an extent of 2.00 acres about four years ago by mortgaging his share of land with the same bank and also availed the Government subsidy and the crop loans etcetera and thus developed his land under Government scheme. Similarly, plaintiff no.4- Venkateshwarlu availed loan from the above said Bank by mortgaging his share of land, as well as crop loans. He has developed his land under Government scheme and raised the bunds. The plaintiff no.3 has dismantled the house that fell to his share and constructed a new house during the year 2008. The plaintiff no.4 is residing in the house bearing G. P.no.1-42 that fell to his share. The plaintiff no.2 has constructed a new house in his share. The plaintiffs got issued the legal notice stating that the land that fell to the share of their father-Ramudu is submerged with the water of the distributory channel no.23 of Jurala Project and that it is an un-cultivable land and asked for fresh partition. They have also mentioned in the notice that late Ramudu was an innocent person and as such, he was exploited by the defendants 1 to 3. But, in fact, the said Ramudu himself was managing the affairs of the family. Further, the defendants 1 and 4 have mortgaged their share of land with the Indian Overseas Bank, Weepanagandla, and raised Mango garden in Ac.4.00 of land by obtaining loan. They are also availing crop loans every year. They have developed the land under Government scheme. Likewise, the defendants 2 to 5 have mortgaged lands with the Indian Overseas Bank, Weepangandla, and raised Mango garden in Ac.4.00 guntas of land by obtaining loan. They are also availing crop loans every year. They developed their land under Government scheme. The defendants no.3 to 6 have mortgaged their share of land with the Indian Overseas Bank, Weepangandla, and raised Mango and Battai (Orange) gardens in Ac.6.00 of land by obtaining loan. They are also availing crop loans every year. They developed their land under Government scheme. Thus, all the parties have acted upon the oral partition affected in the year 1997 and got implemented the patta in their favour according to the partition. The plaintiffs no.2 to 4, in turn, partitioned their father's share and got implemented patta in their individual names and they have also availed loan facilities. Thus, every sharer/party is in possession of the lands that fell to his/her respective share. The plaintiff no.1 did not take any share from her sons. Therefore, the plaintiffs now cannot ask for a fresh partition or for re-partition. The plaintiffs are estopped from claiming partition of the suit schedule properties. The parties have also partitioned the open sites and nothing is left over for partition. The plaintiffs have not shown the land in Sy.no.124 and two houses with open sites in the suit schedule. Therefore, the suit of the plaintiffs is liable to be dismissed with costs.

7. At trial, PWs 1 to 4 were examined and exhibits A1 to A20 were marked on the side of the plaintiffs; DWs 1 to 3 were examined and exhibits B1 to B30 were marked on the side of the defendants. I have gone through the material record including copies of depositions and the notices exchanged, which are part of the material record. Exhibit A1 is the CC of ROR, dated 15.02.2009, issued by the Tahasildar, Weepangandla; exhibit A2 is the office copy of legal notice, dated 22.12.2008; exhibit A3 is the reply notice, dated 28.12.2008;

exhibit A4 is the colour photo with CD; exhibit A5 is the original sale deed bearing no.1445/2000, dated 13.9.2000; exhibit A6 is the original sale deed bearing no.1357/2005, dated 25.6.2005, exhibit A7 is the CC of sale deed no.1152/85, dated 22.06.1985 issued by Sub Registrar, Kollapur; exhibit A8 is the original receipt, dated 22.01.1991 issued by S.Narayana S/o Chinnaiah; exhibit A9 is the simple deed, dated 03.06.2002 executed by defendants 1 to 3 in favour of late Ramudu; exhibit A10 is the original simple deed, dated 24.3.2007, executed by defendants 1 to 3; exhibit A11 is the possession certificate, dated 08.07.2008, of Easwaraiah; exhibit A12 is possession certificate, dated 8.7.2008, of Venkateswarlu; exhibits A13 to A16 are four valuation certificates; exhibits A17 to A20 are the original valuation certificates, dated 29.12.2010, issued by the Agriculture Officer, Kollapur. Exhibits B1 to B6 are the pattedar passbooks of defendants 1 to 6 respectively; exhibits B7 to B12 are the Form no.1 of ROR respectively of defendants 1 to 6, dated 18.11.2009; exhibits B13 to B18 are the certified copies of pahanies of defendants 1 to 6 respectively; exhibit B19 is the office copy of legal notice, dated 22.12.2008, and exhibit B20 is the reply notice, dated 28.12.2008.

8. Learned counsel for the plaintiffs while reiterating the case of the plaintiffs further contended as follows:

The Court below erred in appreciating the oral and documentary evidence adduced on behalf of the plaintiffs and also in appreciating the contents of exhibit A2, legal notice, and erroneously dismissed the suit of the plaintiffs, by judgment, dated 16.12.2004, on assumptions and presumptions. The aggrieved plaintiffs filed the appeal in A.S.No.4 of 2015 on the file of the learned IX Additional District Judge, Wanaparthy. The appellate Court, without properly appreciating the evidence available on record and without examining the legal issues involved, confirmed the judgment of the trial Court mainly relying upon exhibits A2, A9 and A10. The decrees and judgments of the

Courts below are contrary to law, weight of evidence and probabilities of the case. The Courts below failed to appreciate the fact that the suit schedule properties are joint family properties of plaintiffs and defendants 1 to 3. The Courts below ought to have decreed the suit since the suit property is the self acquired property of the grandfather of plaintiffs 2 to 4 and as late Ramudu, got 1/4th share in it. Both the Courts below failed to appreciate the fact that the suit properties have not been partitioned by way of registered instrument and that the plea of prior partition has not been proved by the defendants. The Courts below failed to consider the oral evidence of the defendants. The plaintiffs could elicit in the cross-examinations of the defendants, the fact that there was no prior partition. However, the Courts below erroneously came to a conclusion that there was a prior partition. The said conclusion was arrived at on the ground that there is an averment about prior partition in the notice given by the counsel for the plaintiffs. The Courts below failed to read the said notice of the plaintiffs in its entirety. A keen observation of the notice given by the plaintiffs under exhibit A2 never indicates that there is an admission on the part of the plaintiffs about prior partition. Both the Courts below failed to see that mere transfer of property between the co-sharers will not give rise to a presumption that there was an earlier partition.

9. Based on the aforesaid contentions, the learned counsel urged that the following substantial questions of law are involved in this second appeal.

a. Whether the Courts below are justified in holding that the sale by a co-sharer suggests prior partition?

b. Whether the Courts below are justified in relying on the averments in Ex.A2 notice as a proof of prior partition especially when the said notice is consisting of a demand for partition?

c. Whether the Courts below are justified in not placing the burden for proving with regard to prior partition on the defendants?

d. Whether the lower appellate Court is justified in confining its findings to exhibit A2-notice and in appreciating the evidence only with reference to exhibit-A2?

10. The trial Court, having regard to the pleadings of the parties, framed the following issues for trial:

1) Whether the plaintiffs and defendant No.1 to 3 together constitute joint family and such family has got suit properties?

2) Whether the plaintiffs did not show land in Sy.No.124 and two houses with open sites as contended in the Written Statement?

3) Whether there was oral partition among father of plaintiff No.1 to 4 namely Mekala Chinna Masanna and D-1 to D-3 in 1997 and in turn there was also partition of properties till to late M.C.Mashanna among the plaintiffs No.1 to 4?

4) Whether the valuation of suit properties furnished by the plaintiffs in plaint is correct of the valuation furnished by defendants in Written Statement is correct?

5) Whether the plaintiffs are liable to pay Court fee on Rs.62,50,000/- under Section 34(1) of A.P.C.F and S.V.Act?

6) Whether the Court has no pecuniary jurisdiction to entertain the suit?

7) Whether the plaintiffs are entitled for partition and separate possession of $1/4^{th}$ share in suit properties as prayed for?

8) To what relief?

11. While dealing with the issue no.3 with regard to the prior partition amongst late Mekala Ramudu and the defendants 1 to 3, who are all the Sons of late Chinna Mashanna, the trial Court took note of the fact that the main

contention of the defendants is that there was already an oral partition affected in the presence of DWs 2 to 4 and others. The trial Court then considered the evidence brought on record to the effect that there was already a partition during the year 1997, that is, during the life time of late Chinna Mashanna, and that he died in the year 2001, and that after partition, during the year 2005, the sharers applied for mutation of the properties in their names and that the plaintiffs 2 to 4 also applied for mutation of the properties that fell to the share of their father. The trial Court further noted the contents of the documents in exhibit 'B' series like exhibits B1 to B6-pattedar passbooks of defendants 1 to 6, B13 to B18 & B23 to B30-certified copies of pahanies filed by defendants 1 to 6, exhibit B21-copy of registered mortgage deed, and, exhibit B22-copy of ROR. The Courts below also considered the averments in the notice got issued by the plaintiffs prior to filing of the suit, which are to the following effect: '.... .... The said properties were not partitioned till the death of the father of my clients (plaintiffs) and that after the death of father of my clients, they approached you (the defendants) and asked for partition of the above joint family and ancestral properties, and then you have shown the lands submerged in water of the distributory channel no.23 of Jurala Project, which are uncultivable and filled with water, as the property that fell to the share of the father of my clients and that it shows that the partition, if any, that had taken place amongst the father of my clients and you nos. 1 to 3 was not fair and since the father of my clients was an innocent person, you nos. 1 to 3 exploited him.' In fact, the trial Court observed that at the time of the mutation of the properties in the names of the respective sharers, some of the properties of the sharers were mutated in the names of the wives of the sharers and that the Tahasildar issued pattedar passbooks and title deed books and that the 2nd plaintiff availed loans for Horticulture and raised Sapota garden and availed subsidy and that he also availed loans every year by hypothecation of crops raised in his share of lands and that he also mortgaged his land to a Bank and developed his land under a Government scheme and that the 1st plaintiff also raised mango garden in two acres of land by mortgaging his said land and by availing loan, subsidy and crop loan etcetera and that he developed his land under Government scheme and that the 4th defendant also availed loans by mortgaging his lands with a Bank and that the 3rd defendant dismantled the house that fell to his share and constructed a new house in the year 2008 and that the 4th defendant is residing in the house that fell to his share and that the 2nd plaintiff constructed a new house in the site that fell to his share. The trial Court also held that the notice got issued by the plaintiffs evidences the fact that there was a prior partition and that the said notice was issued demanding fresh partition as the land that fell to the share of the father of the plaintiffs 2 to 4 got submerged in Jurala Project waters. Further, while discussing the evidence, the trial Court also noted that defendants 1 to 4 mortgaged the lands that fell to their shares with Banks and raised mango garden by availing loans and that they are also availing crop loans every year and that they developed their respective lands under Government scheme and that defendants 5 and 6 also developed their lands by availing loans under Government scheme. From the evidence brought on record, it is evident that the said prior partition was acted upon and that the sharers obtained mutation of properties that fell to their shares, either in their names or in the names of their family members, and developed their respective lands under Government schemes and also by availing crop loans and by mortgaging the lands with the Banks and are enjoying their respective properties. Insofar as house properties also, the evidence brought on record discloses that some sharers are living in the houses allotted to their respective shares while some other sharers constructed new houses in the place of existing houses or in the sites that fell to their respective shares. The trial Court also held that the evidence does not support the contention of the plaintiffs that since the father of the plaintiffs 2 to 4 is an innocent person, he was exploited. Thus, the trial Court having considered the oral and documentary evidence in juxtaposition and having appreciated the facts correctly and the evidence in proper perspective, recorded a finding that the evidence including the averments in the exhibit A2-legal notice, clearly make it manifest that there was a prior partition as contended by the defendants. The Court below noted in the impugned judgment that the 3rd plaintiff (PW1) admitted in his cross-examination that he and defendants 2 and 4 purchased a house site from the defendants 1 to 3 by way of an unregistered sale deed, dated 24.03.2007, and that the recital in the said document discloses that the site that was sold fell to the share of defendants 1 to 3 in the partition and that the plaintiffs suppressed the fact of earlier partition in the plaint and that PW1 has also admitted that he purchased land in Sy.No.124 from the defendants 1 to 3 and Chinna Mashanna under an unregistered sale deed. It is also borne out by the record that the said land covered by Sy.no.124 is not included in the schedule of the present suit for partition. The Court below further rightly observed that the purchases of properties made by the defendants from the other family members make it evident that there was a prior partition between the parties. It is to be noted that the present suit is not one brought for re-partition on the ground that the earlier partition is not fair and equitable. The Court below also noted that the plaintiffs are not in joint possession of the properties along with the defendants and that the Court fee payable is advalorem Court fee and not fixed Court fee.

12. On the above analysis, this Court finds that both the Courts below, having considered the pleadings and the evidence (both oral and documentary) from proper standpoint, recorded concurrent findings of fact that there was a prior partition as contended by the defendants and that the plaintiffs

suppressed the said fact and filed the present suit seeking fresh partition. The Court below finally held that the plaintiffs' suit is liable for dismissal and accordingly, dismissed the suit of the plaintiffs and confirmed the decree and judgment of the trial Court. When once there is a prior partition and it was acted upon by the sharers and the members of the families of the sharers and when some of the properties changed hands after the prior partition, the present suit of the plaintiffs filed for partition by suppression of the fact of prior partition is misconceived and is liable for dismissal, as rightly and concurrently held by the Courts below.

13. On a careful reading of the questions of law in the light of the above analysis by this Court, it appears that the questions raised are not pure questions of law but are only mixed questions of fact and law and pure questions of fact and that no substantial questions of law are involved in the second appeal. The law is well settled that a second appeal shall not be admitted if no substantial question of law arises for consideration and when no substantial question of law is involved. The view of this Court is reinforced by the ratio in the decision in Gurudev Kaur v. Kaki (AIR 2006 SC 1975). On a careful examination of the pleadings, evidence and contentions, this Court finds that no substantial question of law is involved and that there is no substance in the questions sought to be raised, and, hence, this second appeal is liable for dismissal at the stage of admission in view of the narrow compass of Section 100 of the Code of Civil Procedure, 1908.

14. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

21.06.2017
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