

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

AS No.2575 of 2000

Between:

Bendapudi Parvathamma and others

.. Appellants

And

Ketaraju Nagabhushana Rao and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 10.07.2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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

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! Counsel for Appellants : Sri E.V.V.S.Ravi Kumar

^ Counsel for Respondent No.1 : Sri P.Vidya Sagar

< Gist:

> Head Note:

? Cases referred:

¹ AIR 1954 Supreme Court 526(1)

² AIR 1973 Andhra Pradesh 149 (V 60 C 43)

³ 2002(1) ALT 466 (D.B.)

⁴ (2014) 2 Supreme Court Cases 269

⁵ (2006) 9 Supreme Court Cases 235

⁶ 2004 (4) ALT 286

⁷ (2014) 2 Supreme Court Cases 269

⁸ (2006) 9 Supreme Court Cases 235

⁹ 2004 (4) ALT 286

¹⁰ (1970) 1 SCC 33

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Appeal Suit No.2575 of 2000

JUDGMENT:

Aggrieved by the dismissal of plaintiff's suit in O.S.No.81 of 1992 by the Senior Civil Judge, Bapatla in his judgment dated 29.04.2000, the instant appeal is preferred.

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

3) The factual matrix of the case is thus:

a) The suit—O.S.No.81 of 1992 was filed by plaintiff for declaration of title and consequential possession of plaint A schedule properties and other reliefs. Her case is that item No.1 of the plaint A schedule property i.e, wet land admeasuring Ac.1-61 cents covered by Sy.No.428/2 of Kondamudi village and item No.2 of the plaint A schedule property i.e, house bearing Door Nos.417 to 420 (corresponding to earlier Door No.362 in Railpet), 5th block of Ponnur Municipality admeasuring Ac.0-17 cents originally belonged to her maternal grandfather i.e, Anumarlapudi Nagabhushana Rao. The plaintiff's grandfather had only one issue by name Seetharavamma, who is the mother of plaintiff and 1st defendant. The said Nagabhushana Rao executed a will dated 11.08.1919, during his lifetime in a sound and disposing state of mind bequeathing the plaint A schedule property in favour of his only daughter i.e, plaintiff's mother towards her pasupu kunkuma and thereafter he died. The plaintiff's mother came into possession of the

plaint schedule property and enjoyed it till her death in 1938 as Stridhana property by which time the plaintiff was 3 years old and D.1 was 1 year old.

b) The further case of plaintiff is that as per the Hindu Law of Succession prevailing during 1938, the plaintiff alone succeeded to the plaint A schedule property which is the Stridhana property of her mother as her only heir. They were brought up under the care and guardianship of their father Ketharaju Narasimha Rao and their father re-married again and they were all living in Item No.2 of plaint A schedule house and their father was managing that property on behalf of plaintiff by collecting rents and paying taxes and was utilizing the rent amounts, for which plaintiff did not mind.

c) The plaintiff got married to one Bendapudi Satyanarayana Rao, who was resident of Upputur village and sometime thereafter the plaintiff's father gave the copy of will dated 11.08.1919. Later, plaintiff shifted from Upputur to Bapatla and D.1 also lived with her. Plaintiff and D.1 used to visit their father who was at Nidubrolu and some time thereafter D.1 started collecting rents etc., on behalf of his father and pay taxes. Plaintiff contends that D.1 had no right or title over plaint A schedule property and he was never in possession of it. D.1 got married and started living separately by doing his own business and he never cared his ailing father.

d) The plaintiff further submits that on 05.12.1989, her father executed a hand letter on a stamp paper admitting and confirming her

rights on plaint schedule property and few days thereafter i.e, on 07.12.1989, he executed a will reiterating the plaintiff's title and possession to plaint A schedule properties apprehending the earlier letter dt.05.12.1989 may not be sufficient to protect the rights of plaintiff. On coming to know about the execution of the above two documents, D.1 took his father on 08.12.1989 from Nidubrolu to Bapatla on the pretext of his father's medical checkup and brought back him on 11.12.1989. Later their father died on 14.12.1989 and sometime thereafter, D.1 clandestinely took away all the papers including the will dt.11.08.1919. Plaintiff contended that all of a sudden she received a registered notice dt.08.01.1990 from D.1 with false averments as if the plaint A schedule property belongs to him and he was in possession and enjoyment of the same; the D.2 was managing the item No.1 of the plaint schedule property; their father Narasimha Rao executed an agreement on 10.12.1989 in his favour. The plaintiff issued a reply notice to D.1. The plaintiff further contended that D.1 with the assistance of his supporters forcibly took away the crop from item No.1 of plaint A schedule property, which is a fertile land yielding two crops and the income was about Rs.5000/- p.a and that the item No.2 of A schedule properties fetches rents of Rs.3000/- p.a.

Hence the suit.

- e) Defendants 3 to 9 remained *ex parte*.
- f) D.1 filed written statement and adopted by D2. While denying plaint averments, it is pleaded that the suit schedule property is not the

Stridhana property of Seetharavamma and her father Anamarlapudi Nagabhushana Rao never executed the alleged will dated 11.08.1919. It is contended that the plaintiff was never in possession and enjoyment of suit property and it was managed by their father for D.1 and after D.1 attaining majority, he took possession of the property and enjoying the same. The documents said to have been executed by their father on 05.12.1989 and 07.12.1989 were fabricated and they were not binding on D.1. D.1 further contended that he being the only male descendant of entire family, he acquired right and title to the plaint A schedule property and that he was in exclusive possession of both the items of plaint A schedule properties. He thus prayed to dismiss the suit.

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

- 1) *Whether the suit 'A' schedule properties are the Stridhana properties of Late K.Sitharavamma, the mother of plaintiff and 1st defendant?*
- 2) *Whether late Anamarlapudi Nagabhushana Rao, father of late K.Seetharavamma executed a will dated 11.08.1919 if so is it binding on the 1st defendant?*
- 3) *Whether late Ketharaju Narasimha Rao, father of plaintiff and 1st defendant executed a letter on a stamped paper on 05.12.1989 admitting the title and possession of the plaintiff in the suit A schedule properties?*
- 4) *Whether late Ketharaju Narasimha Rao has executed will dt.07.12.1989 confirming the title and possession of plaintiff in the plaint A schedule properties? If so is it binding on the 1st defendant?*

- 5) *Whether late Ketharaju Narasimha Rao, executed a document dated 11.12.1989 accepting the title and possession in plaint A schedule properties in the 1st defendant? If so is it binding on the plaintiff?*
 - 6) *Whether the plaintiff is entitled for the declaration of her title in the plaint A schedule properties and for possession?*
 - 7) *Whether the plaintiff is entitled for the past profits of Rs.5,000/- for 1989-90 on item No.1 of plaint A schedule property from D.1?*
 - 8) *Whether the plaintiff is entitled to past rents of Rs.1250/- from D.3 to D.9 on plaint A schedule Item 2?*
 - 9) *Whether the plaintiff is entitled to future profits on plaint A schedule properties? If so what amount?*
 - 10) *To what amount?*
- h) During trial, PWs.1 to 6 were examined and Exs.A.1 to A.22 were marked on behalf of plaintiff. DWs.1 to 4 were examined and Exs.B.1 to B.84 were marked on behalf of defendants.
- i) The trial Court dismissed the plaintiff's suit on the observation that the plaintiff failed to prove that her maternal grandfather executed a will dated 11.08.1919 and that the plaint A schedule properties are the Stridhana properties of her mother late Seetharavamma. The trial Court further observed the defendant too failed to prove the execution of Ex.B80 by his father and therefore, Ex.B.80 is not binding on the plaintiff and Exs.A.5 and A.6 are not binding on D.1.

Hence the appeal by plaintiff/appellant.

4) Pending appeal, the sole plaintiff and 1st respondent died. Appellants 2 and 3 were brought on record as LR's of the deceased sole appellant as per orders of this Court dated 01.07.2013 in A.S.M.P.No.1356 of 2013 and respondents 10 to 14 were brought on record as LR's of 1st respondent as per orders of this Court dated 07.03.2014 in A.S.M.P. No.121 of 2014.

5) Heard arguments of Sri E.V.V.S.Ravi Kumar, learned counsel for appellants and Sri P.V.Vidya Sagar, learned counsel for respondents.

6) Impugning the judgment, learned counsel for appellant/plaintiff would firstly argue that the trial Court wholly misunderstood the facts and implication of the oral and documentary evidence placed in support of the pleadings of the plaintiff and dismissed the suit on the misconception that Exs.A.5 and A.6 were fabricated by plaintiff though in fact they were only secondary documents, inasmuch as, they were produced only to show that they contain a reference about the will dated 11.08.1919 executed by plaintiff's maternal grandfather in favour of her mother-Seetharavamma. He vehemently argued that irrespective of the controversy as to whether Exs.A.5 and A.6 are genuine or fabricated, still the plaintiff could by other cogent oral and documentary evidence establish that the suit schedule property was the Stridhana property of her late mother and she inherited the same.

In expatiation of his argument, he would submit, the suit schedule property originally belonged to the maternal grandfather of plaintiff namely A.Nagabhushana Rao and plaintiff's mother—Seetharavamma

was his sole issue and he bequeathed the suit properties in her favour by way of a will dated 11.08.1919. Learned counsel emphasized, even in the absence of the will dated 11.08.1919, Seetharavamma being the sole heir of Nagabhushana Rao, would have succeeded the suit properties. She was married to Narasimha Rao and he was managing the suit properties on her behalf by leasing out the same to third parties which is evident from Ex.A.3. While-so, she died in the year 1938 leaving behind the plaintiff and D.1, who were infants by then. Plaintiff's father continued to manage the suit properties. In Item No.2 himself, plaintiff and D.1 were residing. After the death of her mother in 1938, plaintiff being the daughter succeeded to the suit properties in exclusion of her brother i.e, D.1 as per the law of succession in vogue by then. Therefore, the plaintiff is the absolute owner of the suit properties. The original will dated 11.08.1919 executed by Nagabhushana Rao was with the plaintiff's father and he gave only a copy of the said will to her. The original will was snatched away by D.1. Plaintiff could not produce the original will or its copy into the Court. However, he argued, non-production of the will dated 11.08.1919 would not adversely effect plaintiff's case because as stated earlier, Seetharavamma was the sole issue of Nagabhushana Rao and thereby she succeeded her father's property and from her, the plaintiff succeeded. He thus vehemently argued, the non-fling of the will dated 11.08.1919 and doubt about the veracity of Exs.A.5 and A.6 are inconsequential to decide plaintiff's right. The other documents like Exs.A.1 to A.4, A.9, A.12 to A.22 will prove her case, he argued. Unfortunately, the trial Court gave much

emphasis on the non-filing of the will and the controversy surrounding Exs.A.5 and A.6 and dismissed the suit. He further submitted that the defendant except claiming title, could not explain how he got the suit property. The trial Court ought to have considered that aspect also and held the property belonged to plaintiff's mother. He thus prayed to set aside the judgment of the trial Court and allow the appeal.

7) Nextly, he would alternatively argue that if for any reason, this Court come to conclusion that the plaintiff failed to establish that the suit property was the Stridhana property of her mother, still by virtue of the fact that suit property is the joint family property, a partition decree may be granted in her favour for half share in the suit property. He would submit that when compared to the declaratory relief for entire property, relief of partition for half share is a lesser relief and therefore, the Court having regard to the facts and circumstances of the case and in the interest of justice, can afford such an alternative relief to plaintiff without the necessity of driving her LRs (as she died pending appeal) to institute a separate suit for partition at this length of time. He placed reliance on the following decisions to buttress his argument that the Court can grant partition relief in the present suit under appeal:

i) *Singaravel vs. Murugesu Udayar (died) & others*¹

ii) *Pendyala Narasimham vs. Pendyala Venkata Narasimha Rao*²

iii) *Hasmath Bee and another vs. Mrs. Khatija and others*³.

¹ 2014-1-L.W. 926 (Madras)

² 1962 An.W.R. Pg.282

³ 1997 (6) ALD 450

8) Per contra, while supporting the judgment learned counsel for respondents Sri P.V.Vidya Sagar, would argue that the plaintiff utterly failed to establish the suit property to be the Stridhana property of her mother as she did not produce the original or copy of the alleged will dated 11.08.1919 to show that her maternal grandfather bequeathed the suit properties to her mother. That would indicate there was no such will in existence. She made a vain attempt by fabricating Exs.A.5 and A.6 and made a reference therein about the non-existing will. Evidently she played a lead role in procuring Exs.A.5 and A.6 and therefore, while answering Issues 3 and 4, the trial Court categorically held that the plaintiff failed to prove the execution of Exs.A.5 and A.6 and therefore, those documents were not binding on D.1. Even for arguments sake, it is admitted that the suit property is the Stridhana property of the mother, both plaintiff and D.1 being her children would equally entitle but plaintiff cannot claim preference over D.1. Hence, plaintiff's suit for declaration and possession for the entire suit property is legally untenable as the frame of the suit itself is defective.

a) He would further argue that it is the case of D.1 that he is the owner of the suit properties and during his minority, his father managed them on his behalf and after attaining majority, the defendant himself managing and enjoying. To prove this aspect he adduced cogent oral and documentary evidence. Assuming that there was defect in his title, still plaintiff cannot get decree on that count. The plaintiff being the suitor seeking declaratory and possessory reliefs, it is trite law that she has to

establish her legal title without depending on the weakness if any in defendant's case. On this point he relied on the following decisions:

- 1) *Moran Mar Basselios Chatholicos and another vs. Most Rev. Mar Poulse Athanasius and others*⁴
- 2) *Chakicherla Audilakshmamma vs. Atmakuru Ramarao and others*⁵
- 3) *Sajana Granites, Madras and another vs. Manduva Srinivasa Rao and others*⁶
- 4) *Union of India and others vs. Vasavi Cooperative Housing Society Limited and others*⁷.

9) Nextly, commenting on the alternative relief sought by the plaintiff, learned counsel would vehemently argue that the said relief is quite different and distinct from the original relief of declaration. Same cannot be granted as it altogether changes the nature of the suit. Further, the plaintiff has not taken any steps till now to amend the plaint to include such an inconsistent alternative relief. Hence, such a prayer cannot be acceded to by the Court. He relied on the following decisions on the aspect that a party is bound by its pleadings and cannot put-forth a new case contrary to his pleadings:

- 1) *Venkatappa alias Moode (dead) by LRs. Vs. M.Abdul Jabbar and others*⁸
- 2) *Prakash vs. Pushpa Vani*⁹.

He thus prayed to dismiss the appeal.

⁴ AIR 1954 Supreme Court 526(1)

⁵ AIR 1973 Andhra Pradesh 149 (V 60 C 43)

⁶ 2002(1) ALT 466 (D.B.)

⁷ (2014) 2 Supreme Court Cases 269

⁸ (2006) 9 Supreme Court Cases 235

⁹ 2004 (4) ALT 286

10) In the light of above rival arguments, the points for determination are:

- i) *Whether the suit properties are the Stridhana properties of the mother of plaintiff and D.1 and if so whether plaintiff succeeds them in preference to D.1?*
- ii) *If the point No.1 is held in negative, whether the plaintiff can be granted an alternative relief of partition for half share in suit properties treating them as the joint family properties?*
- iii) *To what relief?*

11) **POINT No.1:** The concept 'Stridhana' is interesting and intriguing too for, we have to mostly depend on Smrithis and Commentaries of Sages of yore reproduced in authoritative texts of noted writers like Mulla, Raghavachariar, Mayne's Hindu Law etc.

a) The concept of 'Stridhana' is explained by Mulla (Mulla's Hindu Law 20th edition Volume-I in Para-112 at Page No.226). It is noted the word 'Stridhana' is derived from 'Stri' i.e. women and 'Dhana' i.e. property which means literally women's property.

In Para-113 at Page No.226, it is observed thus:

113. STRIDHANA ACCORDING TO THE SMRITIS— THE SACRED WRITINGS OF RISHIS OR SAGES OF ANTIQUITY

Manu enumerates six kinds of Stridhana.

(1) gifts made before the nuptial fire, explained by Katyayanna to mean gifts made at the time of marriage before the fire, which is the witness of the nuptial (adhyagni)

(2) *gifts made at the bridal procession, that is, says Katyana, while the bride is being led from the residence of her parents to that of her husband (adhyabahanika)*

(3) *gifts made in token of love, that is, says Katyayanna, those made through affection by her father-in-law and mother-in-law (pritidata), and those made at the time of her making obeisance at the feet of the elders (padavandaika);*

(4) *gifts made by the father;*

(5) *gifts made by the mother; and*

(6) *Gifts made by the brother (Manu,IX, 194)*

All the commentators have agreed that the above list is not an exhaustive enumeration of Stridhana.

To the above list, Vishnu adds:

(1) *gifts made by a husband to his wife on supersession, that is, on the occasion of his taking another wife (adhivedanika);*

(2) *gifts, subsequent, that is, says Katyayanna, those made after marriage by her husband's relations or her parent's relations (anwadheyaka);*

(3) *sulka, or marriage-fee, a term which is used in different senses in different schools (see §§ 147, 150, 152-54);*

(4) *gifts from sons and relations."*

Thus, the above is relation to the concept of Stridhana.

12) Succession of a woman's estate subsequent to the advent of Hindu Succession Act, 1956 w.e.f 17.06.1956 does not pose any problem as the said aspect is covered by Sec.15 and 16 of the aforesaid Act. However, succession to a Stridhana or woman's estate prior to Hindu Succession Act wholly depended again on Smrithis and Commentaries. It should be noted that in the instant case, as per Ex.A.1, Seetharavamma died on 13.07.1938. So we have to refer the old texts.

13) Regarding succession, Mulla observed in Para 147 at Page 251 as follows:

147. SUCCESSION TO STRIDHANA ACCORDING TO MITAKSHARA

For the purpose of succession, Mitakshara divides Stridhana (Para 115) into two classes, namely:

- (1) shulka, which is defined as gratuity for which a girl is given in marriage; and*
- (2) other kinds of stridhana.*

(1) Shulka

Shulka devolves in the order mentioned in para 146, sub-para (1)

(2) Other kinds of Stridhana

Stridhana other than shulka, passes in the following order:

- (i) unmarried daughter; she takes before a married daughter. The rule applies to Jains in the absence of a special custom.*
- (ii) married daughter who is unprovided for;*
- (iii) married daughter who is provided for;*
- (iv) daughter's daughter;*
- (v) daughter's son;*
- (vi) son;*
- (vii) son's son.*

If there be none of these, in other words, if the woman dies without leaving any issue, her Stridhana, if she was married in an approved form, goes to her husband, and, after him, to the husband's heirs in order of their succession to him; on failure of the husband's heirs, it goes to her blood relations in preference to the government. However, if she was married in an unapproved form, it goes to her mother, then to her father, and then to the father's heirs, and then to the husband's heirs in preference to the government."

So, in the above order of succession, the heirs in one entry will precede over and exclude the heirs in the other entries.

a) It is to be noted that the Apex Court in *Shamlal vs. Amarnath*¹⁰ has approved the above 7 classes of successors and held thus:

“Para-7 These passages have received interpretation at the hands of the Judicial Committee as well as the High Courts in India and the law is now settled as to the mode of succession to Stridhana under Mitakshara until we reach son's son. The controversy now is as to who should succeed to such an estate if none of the heirs mentioned in item Nos.1 to 7 in paragraph 147 of Mulla's Hindu Law is in existence at the time of the death of the woman concerned.”

14) The above being the law on Stridhana and its succession, Seetharavamma admittedly being the sole issue to her parents would inherit the properties of her parents, whether or not her father—Anamarlapudi Nagabhushana Rao executed the Will dated 11.08.1919. Hence, the aforesaid Will has no relevancy in this case. Then, succession to the property of Seetharavamma is concerned, admittedly, Seetharavamma died in the year 1938 and plaintiff and 1st defendant are her children. However, the plaintiff being the daughter and placed in the earlier entries in the order of succession, she would take precedence and exclude 1st defendant in the matter of succession.

Now, the crucial aspect is whether suit properties are Stridhana properties of late Seetharavamma.

¹⁰ (1970) 1 SCC 33

15) Needless to emphasise that the burden rests on the plaintiff to establish this fact. As rightly contended by the 1st defendant and as held in catena of decisions placed on record by his counsel, the plaintiff by cogent evidence has to establish that the suit properties are Stridhana properties of her mother. In this regard, she cannot take advantage of the weakness in D1's case.

16) To establish her case, the plaintiff relied upon

- 1) The will dated 11.08.1919 said to be executed by her maternal grandfather late Nagabhushana Rao in favour of her mother and copy of the said will said to be given to her by her father.
 - 2) Ex.A.5—letter dated 05.12.1989 and Ex.A.6—unregistered will dated 07.12.1989 executed by her father confirming her right in respect of plaint schedule properties and also making a mention about the will dated 11.08.1919 in Ex.A.6.
 - 3) Besides, the plaintiff also relied upon Exs.A.2 and A.3—resettlement adangal register and register of holdings and other documents.
- a) Will dated 11.08.1919 is concerned, though plaintiff stated that her father kept the original with him and gave a copy to her, however, she failed to produce either the original or its copy for whatever be the reason. Exs.A5 and A6 are concerned, the trial Court on an elaborate discussion in issues 3 and 4, has held that those two documents were doubtful as some suspicious circumstances were surrounding those documents. Like, plaintiff took a lead role in execution of the alleged

documents, she herself secured the attesters and scribe and further, her father was in an ill-health condition. The trial Court in para-29 of the judgment observed plaintiff failed to prove that Exs.A5 and A6 were executed by her father. The findings on issues 3 and 4 are concerned, this Court finds no reason to differ with the trial Court.

b) Thus, in essence, the plaintiff failed to produce the Will dated 11.08.1919 and the Exs.A5 and A6 are held to be suspicious. However, in the considered view of this Court, these defects will not adversely affect her case. As already observed supra, Seetharavamma would succeed her father's properties despite the absence of the Will and therefore, non-production of the will dated 11.08.1919 is of no consequence. Even assuming Exs.A5 and A6 are genuine documents, they have no much legal significance. Ex.A.5—letter said to be written by plaintiff's father is only a reiteration that the suit properties are the Stridhana properties of plaintiff's mother and except her, D.1 has no right. Similarly, Ex.A.6 is purportedly a will said to be executed by plaintiff's father wherein he referred the will dated 11.08.1919 executed by Anamarlapudi Nagabhushana Rao in favour of plaintiff's mother. Under Ex.A.6, plaintiff's father reiterated that the suit properties belonged to plaintiff and none of his other children have any right. Thus in essence, the plaintiff through these documents sought to establish that her grandfather conferred suit properties on her mother by way of will dated 11.08.1919 and plaintiff alone succeeded them after the death of her mother. Since plaintiff failed to produce original or copy of the will dated 11.08.1919 and Exs.A.5 and A.6 were held to be not genuine, it

can be said plaintiff failed to establish the existence of will dated 11.08.1919. However, as already observed, if she can otherwise establish that the suit properties belonged to her maternal grandfather and her mother being the sole issue succeeded them, Exs.A.5 and A.6 pale into insignificance. If the suit properties are the Stridhana of her mother, her father would have no right to execute Ex.A.6—will and would have no necessity to reiterate that fact through Ex.A.5—letter. Hence, irrespective of the doubt shrouded around Exs.A.5 and A.6, they have no legal significance. Hence, what is left for consideration is, whether plaintiff could establish by other evidence that the suit properties are the Stridhana of her mother.

17) Ex.A.2 is the copy of resettlement adangal of the village Nidabrolu filed by plaintiff which shows that the plaintiff's maternal grandfather Anamarlapudi Nagabhushana Rao was the inamdar of the land bearing Inam Patta No.826. His name was struck-off and in his place, the name of Anamarlapudi Seetharavamma, minor represented by her grandfather Bendapudi Sudarshanam is mentioned. The plaint 'A' schedule land is covered by Sy.No.428/2 in an extent of Ac.1-61 cents and it is not known whether Ex.A.2 relates to this land or not. The trial Court too did not place reliance on Ex.A.2.

a) Coming to Ex.A.3, it is an extract of Register of Holdings of Kondamudi village. This document shows the particulars of ownership and encumbrances if any in respect of the plaint schedule land covered by Sy.No.428/2 in an extent of Ac.1-61 cents. In column no.1, the

ownership of the land is mentioned as Anamarlapudi Seetharavamma, minor represented by Guardian Bendapudi Sudarshan. In encumbrance column, it is mentioned that under two registered lease deeds, encumbrances were created over Sy.No.428/2 in an extent of Ac.1-61 cents. The first encumbrance was created in the year 1944 by plaintiff's father Kethiraj Narasimha Rao by leasing out the land to one Yelavarthy Nagaiah for a period of 10 years on certain terms of lease. Again Narasimha Rao executed another registered lease deed in the year 1952 in favour of Garikapati Venkata Swamy for 5 years. The aforesaid two registered leases were clearly mentioned under the encumbrance column. Since Seetharavamma died by then, naturally her husband Narasimha Rao was mentioned as lessor of the land. However, the original ownership is mentioned in the name of Seetharavamma. This document was issued by the Sub-Registrar of Ponnur on 11.04.1990 when applied for an extract. Though the document was obtained on the eve of filing the suit, still since the encumbrances were created under registered lease deeds long prior to the filing of suit, the authenticity of Ex.A.3 can be believed. It shows, the plaintiff's mother was the owner of the suit land and after her death, her husband managed the same on behalf of the plaintiff by leasing. Unfortunately, the trial Court did not appreciate this crucial document in right perspective. It entertained a doubt as to when Seetharavamma was married to Narasimha Rao, still why she was referred as minor represented by her Guardian Bendapudi Sudarshan Rao. This doubt, it must be said, is logically incorrect. By the time the original ownership vested in Seetharavamma, she was a minor and hence

basing on the records, she was referred as minor represented by her Guardian. Merely such reference is there, that will not debilitate the authenticity of Ex.A.3. This document clearly shows suit property is Stridhana of plaintiff's mother.

b) Then Ex.A.4 is concerned, it is a 10(1) account relating to inam patta no.826 standing in the name of plaintiff. As already noted earlier, it is not known whether the aforesaid inam patta land and suit land are one and the same or not. Hence Ex.A.4 cannot be said relied upon.

c) Then Ex.A.9 is the non-agricultural tax receipt dated 17.01.1990 issued in favour of the plaintiff much prior to the suit. Exs.A.12 and A.13 are the two agricultural tax receipts dated 24.02.1990 obtained by the plaintiff for the suit land and these two receipts were prior to the filing of the suit. Whereas Exs.A.14 to A.18 are also the agricultural tax receipts for the suit land obtained by plaintiff subsequent to the filing of the suit. It must be noted that by virtue of Ex.A.3 when it is accepted that the suit land is the Stridhana of her mother and succeeded by the plaintiff, the tax receipts obtained by plaintiff in her name can also be believed. Exs.A.19 and A.20 are the house tax receipts issued in the name of plaintiff's father. Ex.A.21 is the electricity passbook.

18) Then coming to the documents of defendant, no doubt he produced Ex.B.1—pattadar passbook, Ex.B.2—10(1) account, Ex.B.3—adangal for fasli 1398-99, Exs.B.4 to B.21—cist receipts, Ex.B.22 to B.61—house tax receipts, Exs.B.62—title deed, Ex.B.63—pattadar pass book; Exs.B.64 to B.68—L.R receipts, Exs.B.69 to B.78—house tax

receipts and Exs.B.81 to B.84—adangal extracts, besides Ex.B.80—agreement said to have been executed by his father. Therefore, he produced aforesaid documents to show that he is the owner of suit properties. This Court gave anxious consideration to these documents. It must be said that they do not have evidentiary value for the reason that it is the categorical admission of DW.1 that his paternal grandfather and his father have no properties and he does not know how the suit property stood in his name. This shows that suit properties were not acquired by the paternal grand father and father of D.1 and D.1 himself. This admission would further show that D.1 got managed the authorities and obtained above documents in his name. Hence those documents will not confer any title in him. Further, the above admission strengthens Ex.A.3 to hold that the suit properties are the Stridhana of their mother Seetharavamma. The other oral evidence placed by defendant will not advance his cause.

19) So, on a conspectus of the facts and evidence, it is held that the suit properties are the Stridhana properties of mother of plaintiff and D.1 and since she died prior to Hindu Succession Act, 1956 came into force, the plaintiff being her daughter, succeeded her properties in exclusion of D.1. This point is answered in favour of plaintiff.

20) **POINT No.2:** Since point no.1 is held in affirmative, the discussion on point no.2 is not necessary.

21) **POINT No.3:** In the result, this appeal is allowed by setting aside the judgment and decree dated 29.04.2000 in O.S.No.81 of 1992 passed

by the Senior Civil Judge, Bapatla and the said suit is decreed in favour of appellants herein by:

- a) declaring the title of the appellants in plaint 'A' schedule property;
- b) directing the respondents to deliver vacant possession of plaint 'A' schedule property to the appellants within one(1) month from the date of this decree;
- c) mesne profits shall be determined by the trial Court on filing of a separate application by the appellants
- d) No costs in the appeal
- e) The office shall prepare decree only after the appellants depositing the requisite Court fee on plaint and appeal within 20 days from the date of this judgment.

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

Date: 10.07.2017
scs/Murthy

U. DURGA PRASAD RAO, J