

***HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ AS.No.1142 of 1998

% 19-12-2018

Poreddy Venkata Narisireddy (died) LRs.

... Appellants/

Vs.

\$ Mukkamala Venkata Narasamma (died) Lrs.

... Respondents

! Counsel for the appellants: Sri K.Suresh Reddy

! Counsel for the Respondents: Sri P.Vengala Reddy,
P.Nagendra Reddy and Sri M.V.S.Sai Kumar.

< Gist:

> Head Note:

? Cases referred:

¹ AIR 1999 SC 1441

² 2013 (4) ALT 24

³ 2004 (1) ALT 585

⁴ 2005 (2) SCC 217

⁵ AIR 1966 SC 292

⁶ AIR 2006 SC 2488

⁷ AIR 2002 Bombay 129

⁸ 2017 (4) HLT 246 (DB)

⁹ AIR 2003 SC 578



HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AS.No.1142 of 1998

J U D G M E N T:

This appeal is filed questioning the judgment and decree dated 16.03.1998 in OS.No.293 of 1989 by the Principal Senior Civil Judge, Narsaraopet.

The suit was filed by the plaintiff for partition of the suit schedule property into five equal shares, but subsequently amended to four equal shares and the allotment of one such share to the plaintiff. In addition, future mesne profits are also sought.

For the sake of convenience, the parties are referred to as they are arrayed in the suit only.

The plaintiff in the suit is one Smt.M.Venkata Narasamma. She has filed a very brief plaint. According to the plaint, the plaintiff, defendant Nos.3 and 4 are the daughters of defendant No.1. Defendant No.2 is the son of defendant No.1 and brother of the plaintiff and defendant Nos.3 and 4. They are all the children of P.Veerareddy and defendant No.1. Thus, defendant No.1 is the mother of the plaintiff and of defendant Nos.2 to 4. According to the plaint, P.Veera Reddy died on 03.02.1970. Therefore, the plaintiff and the defendants are entitled to a 1/5th share; subsequently amended to 1/4th share. The schedule property is the self acquired property of late P.Veerareddy. Therefore, the plaint is filed seeking partition.

Defendant No.1 filed a written statement. She clearly and categorically asserted in the written statement which is filed in Telugu that suit is hopelessly barred by time. It is mentioned by defendant No.1 that the suit schedule property belongs exclusively to defendant No.2. According to the written statement, the husband late P.Veerareddy gave away the property to defendant No.2 in the presence of certain people and defendant No.2 has been enjoying the same with absolute rights to the knowledge of everyone concerned. Defendant No.2 has declared the said property as his property in the land ceiling declaration, obtained a loan etc., and is thus exercising rights of ownership. Therefore, she prays that the suit should be dismissed. Defendant No.2 also filed a written statement stating that as he is the sole male heir, the entire properties were given to him as per a family arrangement prior to the death of P.Veerareddy itself with an obligation to discharge certain debts. He also asserts that he has filed land ceiling declaration, discharged debts that were availed by his father and mother; developed the properties etc. Therefore, he contends that the suit is not maintainable. Later, defendant No.1 died and the suit against her was abated. The plaintiff then sought an amendment and claimed 1/4th share in the property. Defendant No.2 then contended in reply by filing a written statement that defendant No.1 did not die intestate and that she executed a Will dated 14.03.1996 in favour of defendant No.2.

Basing on the pleadings, about 9 issues were framed by the Court below, which are as follows:

- (1) Whether Porddy Veerareddy gave his entire properties including the plaint schedule properties to the 2nd defendant?
- (2) It is a fact that the plaint schedule properties were entered in the name of the 1st defendant in all official revenue records and if so, what is its effect and validity?
- (3) Whether an amount of Rs.25,000/- was gifted to the 2nd defendant by his parents-in-law, if so is it valid and legal?
- (4) Is it is a fact that there were debts due by Veerareddy and whether the same were discharged with the gift of Rs.25,000/- to the defendant at the time of his marriage?
- (5) Whether the gift deed dated 12.12.1957 by the D1 to D2's father created exclusive rights to the D2?
- (6) Is the court fee paid correct?
- (7) Is the plaintiff not entitled to the partition of the plaint schedule property?
- (8) What are the future profits payable to the plaintiff?
- (9) To what relief?

The parties went to trial. On behalf of the plaintiff, PW.1 was examined and Exs.A.1 to A.7 were marked. For the defendants, DWs.1 to 8 were examined and Exs.B.1 to B.28

were marked. In addition, Exs.X.1 and X.2 were also marked to prove the discharge of the loan by defendant No.2. After trial, the lower Court granted a decree as prayed for and the said decree is now questioned in the appeal.

This Court has heard Sri K.Suresh Reddy, learned counsel for the appellant. Sri P.Vengala Reddy, Sri P.Nagendra Reddy and Sri M.V.S.Sai Kumar, learned counsel for the respondents.

At the outset, the first and foremost point that was urged by the learned counsel for the appellant is on the quality of evidence that is introduced and whether the case of the plaintiff is proved. In the case on hand, the only documents that are filed by the plaintiff are Ex. A.1-the General Power of Attorney dated 24.05.1990, Ex.A.2 which is copy of the registered lawyers notice, Exs.A.3 to A.6 which are the postal acknowledgments and Ex.A.7 is the reply to the notice. The only witness examined on behalf of the plaintiff is one Sri M.V.Narsireddy, who is the husband of the plaintiff.

Learned counsel for the appellant argued that on the basis of this evidence that the plaintiff did not prove her case. It is his contention that the plaintiff was not examined as a witness and that she did not prove her case and that PW.1 is not a competent witness. The counsel contends that the power of attorney which is marked as Ex.A.1 is subsequent to the date of the suit and that PW.1 is not competent to depose. It is his contention that as the plaintiff did not enter the

witness box and give evidence, the case of the plaintiff is not proved. He relies upon ***Vidhyadhar v. Manikrao***¹ for this proposition. It is also his contention that the power of attorney holder is bound to take permission from the Court before commencing his evidence or taking any steps. Rule 32 of the Civil Rules of Practice, which is to the following effect has not been followed according to the learned counsel.

“32. Party appearing by Agent:

(1) When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the Court, file in court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit, and that no other agent is expressly authorized to make or do such appearance, application, or act.

(2) The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or

¹ AIR 1999 SC 1441

act, of the agent shall be recognized by the Court.”

He argues that Rule 32 of the Civil Rules of Practice is mandatory and the failure of the general power of attorney holder to seek the permission of the Court before taking any steps in the proceedings is fatal. He relies upon a judgment of a learned single Judge of this Court in ***Natubhai Chotabhai Patel v. Smt.Patnam Shakuntala***² for this proposition.

In reply, learned counsel for the respondent relies upon ***Podelly Chinna Chinnanna vs. Bandari Pedda Bhumanna***³, which is a decision of the Division Bench of this Court which held that the husband of a party to the suit is a competent witness. It is also held in this case that the relevancy of the general power of attorney holder and his evidence can be considered in the facts and circumstances of each case. Therefore, it is his contention that the plaintiff has discharged burden cast upon her and that the husband is a competent witness. Section 120 of the Indian Evidence Act, 1872 makes the husband a competent witness. The Division Bench of this high Court in ***Podelly Chinna Chinnanna's*** case (3 supra) also clearly held to the said effect. In addition, the Division Bench in ***Natubhai Chotabhai Patel's*** case (2 supra) held that the permission under the Civil Rules of Practice is not a mandatory provision entailing the dismissal

² 2013 (4) ALT 24

³ 2004 (1) ALT 585

of the suit on failure. In fact in ***Natubhai Chotabhai Patel's case***, it was held that in cases where a power attorney holder is authorised to give evidence or to sign the pleadings, it is sufficient if the Court satisfied on the verification of the authorisation that he was duly authorised for the said purpose. In the case on hand, the power of attorney has been filed and has been marked as an exhibit also. No objection was raised for the marking of the document or that PW.1 did not take permission before deposing. Hence the mere fact that permission has not been expressly obtained will not disentitle the agent to appear particularly when the fact remains that he is also the husband of the plaintiff. Therefore, this Court holds that the objection raised by the learned counsel for the appellant that Rule 32 of the Civil Rules of Practice is not complied with is not really correct in the facts and circumstances of this case.

The larger issue that remains is the competency of the witness to depose and the extent of his personal knowledge. The power of attorney which is marked as Ex.A.1 is executed in May, 1990. The suit was filed on 05.10.1989. Therefore, this power of attorney is clearly executed after the case is filed. A reading of the power of attorney makes it clear that the agent was not authorised to give evidence. However, as he is the husband, as per Section 120 of the Evidence Act, he is competent to give evidence. The question however is, what is the extent of his knowledge. It is settled law that an agent cannot depose "in place" of the principal. He can only

depose about the facts which are in his personal knowledge and about the actions he has taken as a general power of attorney holder. The decision of the Hon'ble Supreme Court of India reported in **Janki Vashdeo Bhojwani v. Indusind Bank Ltd.**⁴ is relevant for this purpose. Therefore, this Court will have to examine the extent of the knowledge of PW.1 as this issue was highlighted by the learned counsel for the appellant. Learned counsel for the appellant pointed out that the witness started his cross-examination by stating clearly that he is giving evidence on behalf of the plaintiff as a power of attorney holder. He also stated categorically that plaintiff was not giving evidence in this case. He admitted that he did not file any affidavit into Court stating that he was appointed as a general power of attorney holder. Learned counsel also highlighted the cross-examination of this witness on 24.04.1995, wherein he deposed as follows:

“I left the family of the defendants 10 years prior to the death of my father.

....defendants 1 and 2 managed their family properties. I do not know whether my father in law gave all his properties to defendant No.2 before his death and delivered the possession of the same to defendant No.2. My father in law died in 1970.

.....defendant No.2 is enjoying the plaint schedule properties. After I left the

⁴ 2005 (2) SCC 217

family of the defendant, I did not see the plaint schedule properties. I learnt that about five acres out of the schedule properties is converted into the land. I came to know that in the revenue accounts the name of defendant No.2 is entered regarding the suit schedule properties. I do not enquire whether defendant No.2 mortgaged the plaint schedule properties to L.M.Bank and obtained loan. I do not know whether in the land ceiling proceedings the plaint schedule land is shown in the name of defendant No.2.”

Similarly, he also admits as follows:

“.....The 2nd defendant might have discharged the loans borrowed by my father in law.

.....I do not know whether the 2nd defendant mortgaged the plaint schedule property to primary Agrl.Co-operative society Munugodu and borrowed cash. Prior to the filing of this suit there are cordial terms in between me and D2, now we are not in cordial terms.”

In addition, DW.1 who is the mother-in-law of PW.1 and the mother of the plaintiff clearly deposed in her cross-examination as “PW.1 was an educated man. PW.1 did not look after our family affairs. He stayed with our family.”

This Court after reading the evidence and noticing the points highlighted by the learned counsel for the appellant notices that PW.1 admits in his chief-examination on 10.04.1995 that his father-in-law P.Veerareddy died about 25

years back. He also admits that his father-in-law died in the year 1970. In his cross-examination he states that his marriage took place in 1955 and that he lived with the family of the defendants for about 10 years prior to the death of his father-in-law. If the death of the father-in-law is in 1970, PW.1 left the family of the defendants 10 years prior to that i.e. by 1960. PW.1 was not living with the family of his father-in-law from 1960. In addition, the other statements in his cross-examination demonstrate that he does not know that his father-in-law gave all his properties to defendant No.2 and that after he left the family of the defendants, he did not see the plaintiff schedule properties; that does not know whether in the land ceiling proceedings the plaintiff schedule is shown in the name of defendant No.2 etc. All of this makes it clear that this witness does not have any personal knowledge of the affairs of the plaintiff which would entitle his evidence to be considered. Therefore, an adverse inference has to be drawn in line with the judgment of the Hon'ble Supreme Court in **Vidhyadhar's** case (1 supra). The Court also notices that the reasons for the non-examination of the plaintiff's are not at all given.

In view of the later development of law, the judgment in **Podelly Chinna Chinnanna's case** (3 supra) may not be very relevant, but even the Division Bench clearly held that the competency of the witness should be distinguished from his knowledge of the facts of the case. The Division Bench also held that the power of attorney holder and a spouse of a

party as per Section 120 of the Evidence Act are competent witness. However, the relevancy of the evidence has to be appreciated on the basis of the facts of each case. The extent of personal knowledge is a matter to be seen on a case to case basis. The fact, however, remains that a general power of attorney holder cannot give evidence “in place” of plaintiff. He can only depose of the facts which are within his knowledge and of his actions as a general power of attorney holder. A reading of the cross-examination reveals that he has no personal knowledge of what is asserted. Therefore, this Court holds that the plaintiff has not discharged the burden cast upon her to prove her case.

The next point for consideration is about the family arrangements that is pleaded and argued by the counsel for the appellant and strongly opposed by the counsel for the respondents. The counsel for the appellant argued that it is very clearly pleaded and proved that by virtue of an oral family arrangement, the entire property was given by P.Veerareddy (before his death itself) to defendant No.2 and since then he has been enjoying the property as the owner. In addition, learned counsel for the appellant also submits that as per the directions of the father, the debts payable were also discharged. Learned counsel for the appellant took pains to point out that the actions of defendant No.2 in mortgaging the property to a Bank and clearing the loans and declaring the property as his absolute property clearly show that there was a family arrangement that was acted upon and

that defendant No.2 was openly enjoying the property as the owner thereof. He points out that issue Nos.1 and 2 as framed by the trial Court are on these matters only. Learned counsel for the appellant relies upon ***Tek Bahadur Bhujil v. Debi Singh Bhujil***⁵, ***Hari Shankar Singhania v. Gaur Hari Singhania***⁶ and ***Smt. P.N.Wankudre v. C.S.Wankudre***⁷ to argue that (a) a family arrangement can be made orally also. (b) a family arrangement should be treated differently from a regular dispossession of the property and that (c) the Courts should lean towards the family arrangement. His last submission is even if there is no written document *per se* the actions of the parties would operate as an estoppel. He reiterates the grounds of appeal and points out that all of these are highlighted in the appeal grounds and that they are the essential points for decision.

In reply thereto, learned counsel for the respondents argues that there is no clear pleading and proof regarding the so-called arrangement or of the ouster. It is his case that the plaintiff and defendant No.2 are co-sharers. Therefore, it is his contention that there should be clear exclusion of the plaintiff and the knowledge of the exclusion should also be proved. Learned counsel relies upon ***A.Rama Krishna v. Akula Venkatamma***⁸. In addition, he also relies upon a

⁵ AIR 1966 SC 292

⁶ AIR 2006 SC 2488

⁷ AIR 2002 Bombay 129

⁸ 2017 (4) HLT 246 (DB)

judgment of the Hon'ble Supreme Court of India in Appeal (Civil).No.12450 of 1996 for arguing on the principle of ouster. He submits that the possession of co-sharers is the possession of all the co-sharers. Therefore, unless there is a clear pleading of ouster and proof, it cannot be implied that there was a family arrangement by which defendant No.2 was given all the properties and that it is in the knowledge of the plaintiff.

This Court after hearing both the learned counsels notices that in the written statement filed by defendant No.1 which is in Telugu, it is very clearly pleaded that the suit schedule property was given to the defendant No.2 about 30 years prior and that since then, the defendant No.2 as the sole male heir has been enjoying the property openly, peacefully, "without objection", singularly as the owner and with absolute rights. She pleads that he has invested substantial sum of money and improved the property. She reiterates that neither herself nor the plaintiff and the other defendants have ever raised any objection about the enjoyment and the rights of defendant No.2 over the property. They did not even ask for a share in the income. She reiterates that in all the official records, defendant No.2 is shown as the owner. She reiterates more than once that defendant No.2 alone is the owner of the property. She also raises a clear plea of limitation. In addition, defendant No.2 highlights that he has been put in possession of the property with absolute rights prior to the death of P.Veerareddy itself

with an obligation to discharge the debts. Since then, defendant No.2 is enjoying the property absolutely. In his written statement, he details the various acts of ownership including the discharge of debts. He reiterates his case.

DW.1, who is mother of defendant No.2 and of the plaintiff clearly states in her evidence that 6 months prior to the death of his husband (which is in 1970), he gave the entire property to defendant No.2 in the presence of the plaintiff, defendant Nos.3 and 4, and son-in-laws Rami Reddy and Buchi Reddy. She further states that plaintiff and defendant Nos.3 and 4 also agreed for the said arrangement and from that date, defendant No.2 is enjoying the property. This very clear and categorical assertion of DW.1 in his chief-examination is not at all touched in the cross-examination. Even a suggestion was not put to the witness that neither the plaintiff nor PW.1 were present at the time of the said arrangement. Therefore, this part of the cross-examination is virtually unchallenged. DW.2 again gave evidence to the same effect in his chief-examination. He states that a direction was given by his father to take over the property and clear the debts in his chief-examination. He asserts that when the direction was given, defendant No.1, plaintiff and other defendants were present. Apart from the family members, he names two other witnesses. He also gave evidence of the discharge of his debts. In the cross-examination, this Court notices that again nothing was focused on the so-called directions given by the father. Only a suggestion was made

that he was continuing to act as a manager of the family and nothing further is stated. Exs.B.1 to B.25 were marked and the cross-examination is also very limited on the contents of the documents. Guda Ramireddy, who is a witness to this direction was also examined as DW.3 and he stated that he was present when this direction was given.

In addition to this, this Court notices that Ex.B.4 is a certificate issued by the Secretary of the Village showing that defendant No.2 is in possession and enjoyment of the lands. Exs.B.5 to B.25 are the land tax receipts. Ex.B.23 is the land ceiling declaration given by defendant No.2 and Ex.B.25 is the order of the LRAT showing that defendant No.2 is in enjoyment of the property. In addition to all the above, the plaintiff has also marked Ex.X.1 and Ex.X.2. These documents were marked through DW.7. These documents show that the mortgage loan was initially in the name of P.Veerareddy and later, the name of Narisireddy is included after striking off of the name of Veerareddy in Ex.X.1. Ex.X.2 also shows that there is mortgage of the property created on 30.07.1965. This mortgage under Ex.X.2 has been discharged. In addition to this, the plaintiff has also filed the discharge promissory notes which are marked as Exs.B.3 and B.27. As mentioned earlier, despite the clear and categorical assertion in the chief-examination, virtually no concrete or pointed cross-examination is there on these aspects. As there is no cross-examination on these vital aspects this court holds that the appellant cannot raise any issue about the

same in the oral submissions. The defendants have clearly pleaded and proved that defendant No.2 has been enjoying the property as the owner thereof by virtue of a family arrangement by which the entire property was given to him along with an obligation to discharge the debts. They clearly state there has been no objection over the years. In fact, the failure of the plaintiff to cross-examine the witness on these crucial aspects leads this Court to a conclusion that the plaintiff did not really doubt the case set up by the defendants.

As noticed by the Hon'ble Supreme Court of India in ***Tek Bahadur Bhujil*** (4 supra), an oral family arrangement is also permissible. Its terms can be recorded. It can be prepared as a record of what had been agreed upon to prevent disputes in the future. The Hon'ble Supreme Court clearly held that if the document by itself creates the arrangement, it requires registration under Section 17 of the Registration Act.

The finding of the Apex Court in ***Tek Bahadur Bhujil*** (4 supra) is as follows:

“12. Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it

in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess.....”

In ***Hari Shankar Singhania’s case*** (5 supra) also the Hon’ble Supreme Court clearly held that family arrangement should be treated differently from ordinary commercial arrangements. Such settlements are generally entered into to ensure peace and good will among the family members. Such settlements meet with the approval of Courts and if the terms of such settlement are fair and bona fide, taking into account the well being of a family, such settlements are governed by a special equity. This finding of Hon’ble Supreme Court in para 48, which is reproduced below is squarely applicable to the present case:

48. In *Ram Charan Das v. Girijanadini Devi* (supra), this Court observed as follows:

“Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family.... The consideration for such a settlement will result in establishing or ensuring amity and good will amongst persons bearing relationship with one another.”

Similarly, in the succeeding paras of this judgment the Supreme Court reproduced earlier judgments which clearly held that Court should lean in favour of a family arrangement that would bring harmony in a family and prevent future disputes. Last but not the least, His Lordship Justice S.J.Vazifdar in **Smt. P.N.Wankudre's** case (7 supra) clearly held as follows:

"25. Further as stated above, the Appellant's husband through whom the Appellant claims, had acted upon the said documents and had derived benefit thereunder. The appellant herself also affirmed the agreements as stated above and further raised no objection in respect thereof for a number of years. In such circumstances even assuming that the documents were required to be registered, their conduct operated as an estoppel preventing them from resiling from the arrangements. In Kales case (supra) the Supreme Court held as under at page 823 :-

"38. Rebutting the arguments of the learned counsel for the appellant. Mr. Sharma for the respondents contended that no question of estoppel would arise in the instant case inasmuch as if the document was to be compulsorily registrable there can be estoppel against the statute

Assuming, however, that the said document was compulsorily registrable the Courts have generally held that a family arrangement being binding on the

parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council. In *Kanhai Lal v. Brij* AIR 1918 PC 70 the Privy Council applied the principle of estoppel to the facts of the case and observed as follows :

"Kanhai Lal was a party to that compromise. He was one of those whose claims to the family property, or to shares in it, Induced Ram Dei, against her daughter, Kirpa, and greatly to her own detriment, to alter her position by agreeing to the compromise, and under that compromise he obtained a substantial benefit, which he has hitherto enjoyed. In their Lordships opinion he is bound by it, and cannot now claim as a reversioner."

26. It is well established that the Courts generally lean in favour of family arrangements, take a very liberal and broad view of the validity of family arrangements and try to uphold and maintain them rather than strike them down on frivolous grounds. The principle is well settled and it is unnecessary to refer to all the decisions. If any authority is required in this regard, it is sufficient to refer to the Judgment of the Supreme Court in *Kales* case (supra)."

The Apex Court in the case of ***B.L.Sreedhar v. K.M.Munireddy***⁹ extended the rule and principles of

⁹ AIR 2003 SC 578

estoppel/acquiescence etc., to claims in immoveable properties etc., by holding as follows:

“25. Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. An estoppel, which enables a party as against another party to claim a right of property which in fact he does not possess is described as estoppel by negligence or by conduct or by representation or by holding out ostensible authority.

26. Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppel can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in cases affecting rights. Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. It would be useful to refer in this connection to the case of *Depuru Veeraraghava Reddi v. Depuru Kamalamma*, MANU/TN/0099/1951: AIR1951Mad403 where Vishwantha Sastri, J., observed:

"An estoppel though a branch of the law of evidence is also capable of being viewed as a substantive rule of law in so far as it helps to create or defeat rights which would not exist and be taken away but for that doctrine."

If the present case is viewed against the backdrop of this settled legal position, it is clear from the evidence of the plaintiff that the plaintiff was given Ac.3.00 of land at the time of her marriage and her husband PW.1 was given Ac.2 ½ of land through gift deeds. In addition, in his further cross-examination on 28.07.1995, the witness says that his sister executed a document in his favour conveying Ac.2.00 of land and Ac.3.00 of land in favour of his wife. DW.1 reiterates the same in his chief-examination. Thus, it is clear that the plaintiff and her husband were given about Ac. 5 ½ of land. In addition, PW.1 also deposes that defendant Nos.3 and 4 were given Ac.2 ½ each. The entire suit schedule property which is described in the plaint is about Ac.18.79 cents. A reading of the depositions and the other documents show that the plaintiff's sister was given Ac.3.00 of land and her husband was given Ac.2 ½ of land. The other two sisters defendant Nos.3 and 4 were given Ac.2 ½ each. Therefore, it is clear that almost Ac.10.00 was distributed among other family members and the suit schedule property measuring Ac.18.00 was left to the only son. There is nothing inequitable about this disposition particularly in the rural Andhra Pradesh scenario to which the parties belong.

This Court is of the opinion that the existence of a family arrangement is borne out by the record. There is a pleading about the directions given by the father and also proof that the son discharged his obligations. The presence of the plaintiff and her husband PW.1 is spoken of in the

evidence also. The suit is filed in 1989 when the arrangement was made prior to 1970. No protest was raised till the suit was filed. Defendant No.2 who was enjoying the property improved the same and also discharged the debts. It is clear that defendants have proved their case about the family arrangement and also the rule of estoppel. Even if there is no document *per se* evidencing such a disposition still as held by the Mumbai High Court in **Wankurde's** case (7 supra) and **B.L.Sreedhar's** case (9 supra), it will operate as an estoppel in view of the clear evidence on the record in this case.

The last point that survives for consideration is the submission of the learned counsel for the respondents that there is no clear pleading or proof about the ouster and that the possession of the co-owners is different from the position of others. The learned counsel relies upon **A.Rama Krishna's** case (8 supra) for this.

This Court however notices that in the case on hand, both defendant Nos.1 and 2 have pleaded that prior to the death of P.Veerareddy itself, defendant No.2 was given the properties in an oral arrangement. This is reiterated in the oral evidence. The fact that there is no objection is also highlighted. P.Veerareddy died in 1970. From 1970 till the filing of the suit, defendant No.2 was enjoying the property openly. He showed himself as the exclusive owner of the property in the land ceiling declaration. He was discharging the debts. The plaintiff as mentioned in the very outset was

not examined as a witness. Her husband has no knowledge of the manner in which the property was given or being enjoyed. He clearly states that he did not see the plaintiff schedule properties after he left the family in 1960. He admits that he does not know whether father-in-law gave all the properties to defendant No.2. He admits that he does not know whether in the land ceiling declaration, the property is shown in the name of defendant No.2. The defendants have very clearly stated in their pleadings that at no point of time the plaintiff raised any objection or demanded a share. In addition, in the chief-examination of DWs.1 and 2, it is asserted that this oral family arrangement was in the presence of the plaintiff and her husband. There is no cross-examination on these aspects. Therefore, it is clear that the plaintiff and her husband were aware of the fact that defendant No.2 is clearly making out a case of ouster. Defendant No.2 was openly enjoying the property to the knowledge of the plaintiff. The grounds of appeal also highlight this lack of protest for over 25 years.

Therefore, this Court is of the opinion that the plaintiff cannot rely upon the case of **A.Rama Krishna** (8 supra).

In view of all of this, this Court is of the opinion that the judgment and decree of the lower Court cannot be sustained. The same is therefore reversed.

This Court therefore holds as follows:

Issue No.1: Veerareddy gave his entire properties including plaint schedule properties to defendant No.2.

Issue No.2: It is a fact that the plaint schedule properties are entered in the name of defendant No.2

Issue Nos.3, 4, 5, 6 were not really argued. The evidence also shows that the debts of P.Veerareddy were discharged by defendant No.2.

Issue Nos.7 and 8 are negated and they do not also survive for consideration in view of the fact that this Court holds that PW.1 was not competent to depose on behalf of the plaintiff and that consequently the plaintiff did not prove her case. She is not entitled to a decree of partition or for other reliefs.

The appeal is, therefore, allowed. The impugned judgement and decree are set aside. The suit O.S.No.293 of 1989 is dismissed.

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

D.V.S.S.SOMAYAJULU, J

Date:19.12.2018

KLP

Note: L.R.copy be marked.