THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

A.S.NO.1317 OF 1997

JUDGMENT

Plaintiffs who are two in number, filed the suit in O.S.No.24 of 1989 in the court of Subordinate Judge, Sompet for partition of plaint A schedule property into three equal shares and put the plaintiffs 1 and 2 and D-1 (defendants 4 to 11 are his legal representatives) in separate possession of one such share and for costs of the suit.

2. During pendency of suit, the 1st defendant died and his legal representatives were brought on record as defendants 4 to 11.

3. The suit schedule consists of plaint A and B properties. Plaint 'A' schedule is as under:

> Vacant dry land situated in Srirampuram village in Siddigam Gram Panchayat in Mandasa Revenue Mandal, measuring about Acs.21-61 cents (Hc.9-152), covered under patta No.164 in S.No.1/1 and ½, bound by:
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> East: Water channel,
> South: Srirampuram tank and Government poramboke.
> West: Hill
> North: Plaint 'B' Schedule lands"

Plaint 'B' schedule is as under:

> Dry land with cashew-nut and mango trees in Srirampuram village within Siddigam Gram Panchayat in Mandasa Revenue Mandal, covered under patta No.164, S.No.1/2, measuring about Acs.13-04 cents (HC 5.271), bound by:
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> East: Water channel.
> West: Plaint 'A' schedule lands.
> West: Bellupati road.
> North: Seela Bhagiradhi and others.

4. By judgment and decree dated 03-09-1996, the trial court decreed the suit. The decree reads as under:

> (i) that the plaint A and B Schedule properties be divided into equal shares;
> (ii) that the plaintiffs 1 and 2 and defendant No.2 be put in possession of one such share each;
> (iii) that the defendant No.2 is totally hereby entitled to get two equal shares, as one Gokarla Appanna already relinquished his share of Acs.13.00 of land and odd to D-2.
> (iv) That the claim against the L.Rs. of defendant No.1 (deceased) i.e., D-3 and D-4 to D-11 be and the same is hereby dismissed; and

(v) That the defendant Nos.3, 4 to 11 do pay a sum of Rs.2,845/- to the plaintiffs 1 and 2 and do also pay a sum of Rs.2,014-00 to the defendant No.2, towards costs of this suit.

5. Aggrieved by the above judgment and decree of the trial court, defendants 4 to 11, who are the legal representatives of 1st defendant, filed the present appeal.

6. The plaintiffs filed the suit for partition of plaint A schedule properties into three equal shares and put the plaintiffs 1 and 2 and D-1 (defendants 4 to 11 are his legal heirs) in separate possession of one such share and for costs. But the trial court decreed the suit even in respect of plaint B schedule properties. This discrepancy is required to be considered in the course of judgment.

7. The appellants 1 to 8 herein are defendants 4 to 11, and respondents 1 to 4 are plaintiffs 1 and 2 and defendants 2 and 3 in the suit. During the pendency of first appeal, the 1st respondent / 1st plaintiff died and his legal representative was brought on record as respondent No.6. The 2nd respondent / 2nd plaintiff also died and his legal representative was brought on record as 5th respondent in the appeal.

8. For the sake of convenience, the parties will be referred to as per their array in the original suit.

9. The case of the plaintiffs is that the suit schedule property originally belongs to one Malla Appalaswamy. He obtained loan from Co-operative Land Mortgage Bank, Ltd., No. M.302, Sompeta (for short 'the Bank') by hypothecating the suit schedule property. As he failed to discharge the debt, Bank initiated proceedings before the Deputy Registrar of Co-operative Societies and thereby suit schedule property was brought to sale. In the public auction conducted by the Bank, plaintiffs 1 and 2, defendant Nos.1, 2 and one Gokarla Appanna, jointly purchased the land for a sum of Rs.8,400/-, each contributing 1/5th share in the sale consideration. The 1st defendant was authorized on their behalf to submit quotation in the auction. The sale was knocked down in favor of 1st defendant.

That the plaintiffs 1 and 2, defendants 1 and 2 and one Gokarla Appanna purchased the suit schedule property by contributing 1/5th share each and all of them have equal shares. The land was then a shrub jungle and all the above said parties obtained possession of the property under registered deed and sale consideration was deposited by the parties in two installments. One of the purchasers of the suit schedule property, Gokarla Appanna, conveyed his 1/5th share to 2nd defendant and put her in possession thereof. Thus the plaintiffs 1 and 2 and defendant No.1 got 3/5th share and defendant No.2 got 2/5th share in the suit schedule property. Subsequently, in or about 1971, the 2nd defendant demanded her 2/5th share in the suit schedule property. So, the plaintiffs and defendant No.1 agreed and put her in separate possession of her 2/5th share, which is the plaint B schedule property. The 2nd respondent raised cashew and mango gardens in the share fell to her share and has been in possession and enjoyment. The remaining land, which is plaint A schedule property, is in joint possession of plaintiffs and defendant No.1. Plaintiffs also demanded defendant No.1, for division of plaint A schedule property. The 1st defendant did not pay heed to their request and was postponing the request on one pretext or the other. While so, the 1st defendant filed a declaration before the Additional Revenue Divisional Officer, Land Reforms Tribunal, Tekkali, stating that he has got only 1/5th share in the plaint A and B schedule lands and the remaining 4/5th share belongs to the plaintiffs and 2nd defendant. The plaintiffs reliable learnt that the 1st defendant is trying to create sham and nominal documents in favour of third parties to defeat the interest of the plaintiffs and that he also made certain attempts to create encumbrances upon the suit schedule property. Therefore, the plaintiffs raised dispute before the elders for partition of plaint 'A' schedule property. The 1st defendant admitted before the elders that plaintiffs have got 1/3rd share each in the plaint A schedule property. Apprehending that the 1st defendant may defeat their interest in the plaint A schedule property, plaintiffs filed the present suit for partition and separate possession of plaint A schedule property.

10. The 1st defendant filed written statement and reiterating the averments with regard to bringing of the suit land for sale by the Bank for default on the part of the loanee – Malla Appala Swamy, in payment of loan, stated that in the public auction for sale of suit schedule property, 1st defendant participated and became the highest bidder. He paid the amount in installments under various receipts to the Bank. On 20.1.1971, the then President of the Bank one late Dunna Yerraiah Varma, executed a sale deed in his favour after receipt of entire sale consideration and 1st plaintiff attested the said document. Under the sale deed, the possession was delivered on the same day and ever since, he has been in possession and enjoyment, paying the cist to the Government regularly with the knowledge of all, including the plaintiffs 1 and 2 and defendant No.2. Thus he has perfected the title not only virtue of sale deed dated 20.01.1971, but also by adverse possession with the knowledge of all, including the plaintiffs. Neither the plaintiffs, nor anybody got title, possession and enjoyment over the plaint schedule property at any point of time. He reclaimed the land and removed bushes and planted cashew garden with great difficulty and it has become eye-sore to the plaintiffs.

11. It is further stated that one Agguna Dalibandu of Bellupati village, who is the husband of 2nd defendant, advised him to insert some names in the declaration forms before Additional Revenue Divisional Officer, Land Reforms Tribunal, Tekkali, keeping him under threat that his land would be taken away by the Government under Land Ceiling Act. Accordingly, the 1st defendant gave the names of the 2nd defendant, plaintiffs 1 and 2. It is stated that the 2nd plaintiff is the sister of one Basava Satyanarayana of Baruva, who is his prominent friend. He (D-1), Basava Satyanarayana, plaintiff No.1 and Agguna Dalibanda - the husband of 2nd defendant, are closely associated and sailed in one political party for long time. They pretended to be very cordial to him and got the names of their men inserted in the land ceiling declaration forms. However, the Tribunal, Land Reforms, Tekkali, did not believe the declaration and the lands were

confirmed in favour of 1st defendant. Taking undue advantage of the innocence of the 1st defendant, they wanted to grab the lands from him at a nominal price for which, he did not agree to alienate. As the 1st defendant has been suffering from financial crises due to big family, he wanted to alienate some portion of the land to meet his financial difficulties. Plaintiff No.1, Agguna Dalibandu (husband of 2nd defendant), the brother of the 2nd plaintiff (Basava Satyanarayana), colluded and hatched a plan. As a result of which, present suit was born on the file of the court and another suit was filed by the 2nd defendant in respect of suit schedule property, against Vandrapu Sreeramulu and others in O.S.No.57 of 1989 on the file of the District Munsif's Court, Sompeta.

12. It is stated that 1st defendant purchased the land with his own money. Either the plaintiffs 1 and 2, or the 2nd defendant did join in the auction conducted by the Bank and gave any amount to purchase the same. Plaintiffs 1 and 2, nor the 2nd defendant, were never in possession and enjoyment of the plaint schedule land. The plaintiffs intentionally suppressed all the facts and mislead the court ostensibly with a view to get some equitable relief in their favour and with an intention to put the 1st defendant not only to financial troubles, but also cause irreparable loss and injury. The plaint is filed without any reasonable cause or any right. The plaint is bad and vague. The schedule mentioned in the plaint, is not correct and plaintiffs have no right in the property.

13. In the written statement filed by 1st defendant, it is further stated that the loan application was rejected by the land mortgage Bank, Sompeta at the instance of Ramamurthy Naidu - 1st plaintiff, Basava Satyanarayana - brother of the 2nd plaintiff, Agguna Dalibandu - husband of the 2nd defendant, who were the then Bank directors, who played mischief and got his loan application returned with active assistance of the bank authorities. They also got filed a suit by the Secretary of the Bank for cancellation of the sale deed dated 20-1-1971 on the file of the District Munsif Court, Sompeta against this defendant in O.S.No.19 of 1977. Ultimately, the said suit was dismissed with costs. The trial court also

confirmed the sale deed in favour of the 1st defendant. With these averments in the written statement, the 1st defendant sought to dismiss the suit.

14. The 2nd defendant filed written statement sailing with the plaintiffs.

15. Defendant No.3 filed written statement and while denying the averments of the plaintiffs that the land was jointly purchased by the plaintiffs, D-2 and one Gokarla Appanna along with D-1 for a sum of Rs.8,400/- each contributing 1/5th share in the sale consideration and that the 1st defendant was authorized on behalf of the plaintiffs and 2nd defendant and Gokarla Appanna, to submit quotation; stated that the said property was purchased by the 1st defendant in the auction conducted by the Bank for an amount of Rs.8,400/- and the sale deed was executed on 23.01.1971 and since then he has been in possession as absolute owner. Later, the 1st defendant executed a possessory agreement on 10-04-1989 in favour of the father-in-law of the 3rd defendant and delivered possession of the said lands. Since the date of agreement, this defendant's family is in possession and enjoyment of the lands. Later, the 1st defendant sold an extent of Acs.20-00 in the suit schedule property in patta No.164 in Survey No.1/2 on 28-12-1991 to this defendant, and an extent of Acs.12-60 cents in patta No.164 in Sy.No.1/2 on 6-4-1992 to Vandara Sarada Devi, Vandara Venimadhavi and Vandara Ranji Babu. Since the date of registration of sale deeds, this defendant and above stated persons, are in possession and enjoyment of plaint A and B schedule properties with absolute rights. The sale deed was executed for legal necessities and supported by consideration and the same is binding on the plaintiffs and the 2nd defendant. The plaintiffs and the 2nd defendant have no documents or title, nor possession. This defendant has also filed a suit in O.S.No.43 of 1992 on the file of District Munsif Court, Sompeta, against the 2nd defendant. With these averments, the suit was sought to be dismissed.

16. 4th defendant is the wife of 1st defendant and 5th defendant is their son. Defendants 6 to11 are the sisters of 5th defendant. This defendant also field written statement reiterating the averments made in the written statement filed by his father.

17. Based on the above pleadings, the trial court framed the following issues for trial:

(i) whether the suit is bad for non-joinder of necessary parties?
(ii) Whether the plaintiffs are entitled for partition and separate possession as prayed for?
(iii) To what relief?

18. On behalf of plaintiffs, P.Ws.1 to 11 were examined and no document was marked. On behalf of the defendants, D.Ws.1 to 12 were examined and Exs.B-1 to B-21 were marked. Exs.X-1 to X-6 were marked with consent.

19. Appreciating the entire evidence, both oral and documentary, the trial court believing the evidence of P.Ws.1 to 11 and documentary evidence, held that plaintiffs 1 and 2, defendant No.2 and one Gokarla Appanna have share in the suit schedule property along with 1st defendant. The above four persons contributed consideration amount along with 1st defendant, and purchased the suit schedule property in the court auction. With these findings, the trial court answered the issue No.2 in favour of the plaintiffs 1 and 2 and defendant No.2 and against the 1st defendant. Since the counsel appearing for the parties before the court below failed to advance any arguments with regard to 1st issue of non-joinder of necessary parties, the trial court did not deal with the said issue. Eventually, the trial court decreed the suit with costs and passed preliminary decree in plaint A and B schedule properties in equal shares. Assailing the said judgment and decree of trial court, defendant Nos.4 to 11, who are the legal representatives of 1st defendant, filed the present appeal.

20. The learned counsel appearing for the appellants while reiterating the pleas taken in the written statement of 1st defendant, submits that suit for partition

is not maintainable, as there is no pre-existing right for the plaintiffs in the plaint schedule property. Assuming for the sake for argument, even if at all, the plaintiffs have right over the suit schedule property, they have to file a suit for declaration and not for partition.

21. The learned counsel submits that D-1 purchased suit schedule property under Ex.B-16 in the auction conducted by the Bank and thus he acquired the title and as such, the court below erred in decreeing the suit for partition and granting relief, quite contrary to Ex.B-16. He states that by virtue of Ex.B-16, D-1 is the absolute owner of the suit schedule property. In the said document, there is no recital to the effect that the land was purchased jointly by all the parties and hence under Ex.B-16, the plaintiffs have no right. Ex.B-16 is admitted by both the parties and plaintiffs have based their claim on this document. Therefore, any amount of oral evidence contrary to the contents in Ex.B-16, cannot be accepted, in view of bar under Sections 91 and 92 of the Indian Evidence Act, 1872.

22. The learned counsel further submits that on the threat given by the husband of 2nd defendant to the 1st defendant that land in excess of Acs.10-00, would be taken by the Government under Land Ceiling legislation, 1st defendant mentioned their names in the declaration in Ex.X-2, but however, the Tribunal, under Ex.B-14 order in C.C.No.1/75, has not accepted the said declaration and the entire land was held to be the holding of 1st defendant.

23. He also submits that the Bank filed suit against 1st defendant, in O.S.No.19/1977, for cancellation of the sale deed under Ex.B-16 and the same was dismissed. In the said suit, the Bank has not impleaded the plaintiffs. This shows that Bank also accepted the title of 1st defendant under Ex.B-16. In these circumstances, the oral evidence of P.Ws.4 and 10, who were the earlier Directors of the Bank, to the effect that plaintiffs 1 and 2, D-1 and D-2 and one Gokarla Appanna together purchased the land by asking the 1st defendant to

participate in the auction and that after the execution of sale deed, land was delivered jointly to all of them, cannot be accepted.

24. The learned counsel further submits that 1st defendant acquired the title under Ex.B-16 sale deed and the plaintiff No.1 is also attestor to the said document. Title of 1st defendant under registered document, cannot be divested from him except by executing document in accordance with law. Relying on the judgment of the High Court of Nagpur in ***DATTATRAYA GOVIND v. NARAYAN GANGARAM***[1], the learned counsel contended that a title once vested can be divested only by a recognized conveyance or one of the other means allowed by law and it cannot pass by admission, relinquishment, or disclaimer when the law requires a deed.

25. With the above averments, the leaned counsel for the appellants sought to set aside the impugned judgment and decree of the trial court and to allow the appeal.

26. On the other hand, learned counsel for respondents 5 and 6, who are the legal representatives of respondents 1 and 2/ plaintiffs 1 and 2, submits that in Ex.B-16 sale deed it is mentioned that B.Satyanarayana (P.W.2), paid an amount of Rs.3,200/- and P.Jaganadham (P.W.11), paid an amount of Rs.400/-. This payment is on behalf of plaintiffs, D-2 and Gokarla Appanna. P.Ws.2 and 11, who were examined before the court also deposed to this effect.

27. He further submits that under Ex.X-2, 1st defendant himself made declaration before the Land Ceiling Tribunal that plaintiffs have also share in the plaint schedule property. He also submits that 1st defendant has filed the said declaration on his own and the allegation that it was on the treat given by the husband of D-2, is not based on evidence, hence, cannot be accepted. He submits that in the declaration under Ex.B-14, D-1 has shown the suit schedule land as held by the plaintiffs, D-1, D-2 and Gokarla Appanna, under partnership.

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[1] AIR 1936 Nagpur 186

Though Tribunal has not accepted this declaration, the fact remains that 1st defendant himself declared that he held the suit schedule property in partnership.

28. The learned counsel would further submit that the revenue records under Exs.X-3 and X-4 and pahanies and other documents goes to show that the plaintiffs are also in possession of the suit schedule property along with D-1 jointly and this is testified by P.W.7, the then Tahsildar and also by D.W.2, who surveyed the land and demarked and separated the road and earmarked Acs.13-00 and odd to the 2nd defendant.

29. The learned counsel submits that based on evidence, the trial court decreed the suit and in view of the above facts and circumstances, the same does not warrant any interference.

30. Based on the above rival contentions, the points that arise for my consideration in this appeal are:

a. whether suit schedule property is purchased jointly by plaintiffs and D-1 and if so, plaintiffs are entitled for share along with defendants?

b. Whether the impugned judgment and decree warrant any interference, and if so, to what extent?

31. In order to appreciate the above contentions, it is necessary to briefly note the evidence, oral and documentary, adduced by the parties.

32. To prove the case of the plaintiffs P.W1 to 11 were examined.

33. P.W.1 is the 1st plaintiff. In the chief examination he reiterated the averments made in the plaint.

34. P.W.2 is the brother of 2nd plaintiff. He deposed that suit schedule property was purchased by five sharers namely the 1st plaintiff, 2nd plaintiff, D-1, D-2 and Gokarla Appanna. All the five sharers obtained the registered sale deed for the suit land in the name of the 1st defendant. The sale deed was registered in 1971. For the share of 1st plaintiff and 2nd plaintiff, and on their behalf, he

deposited Rs.3,200/- in L.M. Bank, towards part of sale consideration. In the registered sale deed it was got mentioned that he made payment of Rs.3,200/- on behalf of plaintiffs 1 and 2. Total extent of the land is Acs.34-65 cts. All the five sharers got equal shares in the said extent. Gokarla Appanna relinquished his share in favour of D-2 and thus D-2 was put in possession of Acs.12-00 of land in 1976. On behalf of 2nd plaintiff, he demanded D-1 for partition of share of the 2nd plaintiff. The 1st defendant while giving land ceiling declaration got mentioned the entire extent of suit land as belonging to five sharers. In the revenue records also, the entire extent of suit land stood in the names of five sharers.

35. P.W.3, is the resident of village and a retired teacher. He deposed that in 1975 or 1976, D-1 delivered Acs.12-00 cts. of land to D-2 representing her share and the share of Gokarla Appanna, out of total extent of Acs.34-00 cts., on the northern side. He used to go to the house of D-1 and he got good intimacy with him. At the time of giving land to D-2, he was told that plaintiffs 1 and 2, D-1 and D-2 got shares in the total extent of land.

36. P.W.4, worked as Director of the Bank Sompeta from 1970 to 1973 and during his tenure, sale deed was executed in the year 1970. He deposed that he knew the suit schedule lands; that the suit land was sold by the Bank in public auction and registered sale deed was executed in 1970; that the total extent of suit land is Acs.34.00; that plaintiffs 1 and 2, D-1, D-2 and one Gokarla Appanna together purchased the lands by asking 1st defendant to participate in the auction on their behalf and bid was knocked down in favour of D-1 and registered sale deed was executed in favour of D-1 by Bank and; that after the sale deed, the suit lands were delivered to all the five persons by the Secretary – D.Umamaheswara Rao on behalf of the Bank and that by the date of delivery of the suit land, the suit lands were full of shrubs, plants and bushes. He further deposed that in 1975 all the above five persons removed the shrubs and bushes and brought the suit land fit for cultivation. In 1975 an extent of Acs.12.00 of land

in the suit land representing the share of Gokarla Appanna and D-2, was delivered to D-2 separately.

37. P.Ws.5 and 8 who are sarpanchs of the village at that time deposed supporting the claim of the plaintiffs.

38. P.W.6 is a retired Tahsildar. He deposed that he worked as Deputy Tahsildar in Taluk Office, Sompeta from 1971 to 1974 as Head Quarters Deputy Tahsildar and in 1975 he worked as arrack Depot Manager. While he was working as Arrack Depot Manager, District Collector deputed him to record statements relating to the land ceiling declarations of Tallabhadra village and others villages in Mandasa area. He recorded the statement of D-1 – B.Padmanabham. Ex.X-2 is the statement dated 25.10.1975 recorded by him from D-1 – B. Padmanabham. D-1 signed in Ex.X-2 in his presence. He recorded Ex.X-2 as stated by 1st defendant only. After explaining Ex.X-2 to D-1, and after he admitted the contents, he signed on Ex.X-2, in token of his recording the statement.

39. P.W.7 was working as Superintendent, M.R.O. Office, Mandasa on the date of giving evidence. He brought No.2 Adangal for fasal 1393, falsi 1394, fasali 1398 and fasalies 1399 to 1401 and No.2 Adangal, corresponding to No.3 Adangal, which is cultivation account. In survey No. 1/ 2 of Sreerampuram village, the total extent is Acs.32-60 cents. He deposed that in all the cultivation accounts brought on that day, the names of the following persons are found for the respective extents, as persons in cultivation:

Agguna Damayanthi (D-2) -- Acs.12.80 cents dry
Bendalam Ramamurthy (P.W.1) -- Acs.6.40 cents dry
Mungeti Vajram (P.W.2) -- Acs.6-40 cetns dry
Binnala Padmanabham (D.W.1) -- Acs.6-40 cents. Dry

The total extent in their possession is Acs.32-00 covered by S.No. 1 / 2 under patta No.164 of Sreerampuram village, hamlet of Siddigam. Ex.X-3 is the

relevant entry in the cultivation account of fasli 1389 at serial No.2 for survey No. 1 /2 (1st and 2nd sheet and the relevant entry at serial No.2). Ex.X-4 is the relevant entry in the cultivation account for faslies 1399 to 1400 and 1401 at Serial No.2 for S.No. 1/ 2(1st sheet and the relevant entry at serial No.2).

40. P.W.9, the son of younger brother of D-1, deposed that schedule land was purchased when his father and D-1 were joint, as members of joint family. The schedule land was purchased by five sharers i.e., plaintiffs, D-1, D-2 and Gokarla Apppanna. Out of the said extent, Acs.6.40 cents only, is being treated as joint family property of his father and D-1.

41. P.W.10, who was one of the directors of the Bank during the years 1961 to 1965, deposed supporting the claim of the plaintiffs as that of P.W.4, who was also one of the directors of the bank during the years 1970 to 1973.

42. P.W.11 is the person who is said to have paid an amount of Rs.400/- to the Bank in the year 1965 on behalf of P.W.1.

43. On behalf of defendants D.Ws.1 to 13 were examined.

44. D.W.1 is the husband of the 2nd defendant. He deposed as per the plaint averments and her written statement supporting case of plaintiffs.

45. D.W.2 was the retired Deputy Inspector of Survey, while supporting the case of plaintiffs, deposed that from 1965 to 1985 he worked as Surveyor attached to Tahsildar Sompeta and subsequently as M.R.O. Sompeta; at the request of both the parties, he had gone to Sreerampuram and surveyed the suit schedule lands and marked the boundary for the entire extent; the boundary line was fixed by him and both parties accepted the measurements; on the 2nd occasion, when he visited the lands, he demarcated and separated the road and earmarked Acs.13.00 and odd representing two shares out of five shares in the total extent; the said extent in two shares was allotted to the share of D-2 with

boundaries and that; he measured and earmarked the extent with the consent of both parties and with the assistance of FMB.

46. D.W.3 who claims to know plaintiffs, defendants 1 and 2, deposed in favour of the plaintiffs, as per the plaint averments.

47. D.W.4 who is 5th defendant in the suit and son of D-1, who died during the pendency of the suit, deposed as per the averments made in the written statement filed by D-1; that he knew plaintiffs and D-2; his father purchased the schedule land in the auction held by the Bank Sompeta on 20-01-1971 and registered sale deed was obtained in the name of the 1st defendant; when suit land was purchased in 1971, he was aged 16 years and that he knew the transaction; with the amounts realized by sale of gold ornaments belonging to his mother, D-1 purchased the suit land in auction and Bank officials delivered the suit land to 1st defendant and since then they were in possession and enjoyment and; that at the time of filing land ceiling declaration, P.W.1 and husband of 2nd plaintiff and D.W.1 informed his father that he has to surrender land to Government in excess of Acs.10-00 cents of land and asked his father to include their names in the land ceiling declaration and due to political intimacy, his father got mentioned their names. In his evidence, he got marked Ex.B-14 original order of Land Reforms Tribunal, Tekkali Division dated 31.01.1976 relating to 1st defendant in C.C.No.1/70 of Sompeta; Ex.B-15 suit register extract in O.S.No.19/77 on the file of D.M.C. Sompeta along with C.C. of schedule. He deposed that since the date of purchased from D-1, D-3 and other purchasers are in possession and enjoyment of suit lands and that the plaintiffs are not entitled for any relief.

48. D.W.5, 6, 7 and 8 who are the residents of the village, deposed stating that 1st defendant purchased the suit land in the public auction and has been in possession of the suit land.

49. D.W.9 is the husband of D-3 and he deposed that his wife purchased the suit schedule property in an extent of Acs.20-00 cents from D-1 under registered sale deed 27.12.1991 for a sum of Rs.1,40,000/- and since the date of purchase he has been in possession over the said land.

50. D.Ws.10 to 12 also deposed that D-3 purchased the suit land from D-1 and since the date of purchase, she has been in possession and that they supplied labour for leveling the suit land.

51. D.W.13 was working as Village Administrative Officer in Saradapuram. He is one of the attestors of the sale deed executed by D-1 in favour of D-3. He deposed that D-1 delivered possession of the suit schedule land to D-3.

52. From the analysis of above evidence adduced by parties, the admitted case is that sale deed i.e., Ex.B-16 was executed and registered by the Bank in respect of suit schedule property in favour of D-1.

53. The recitals in Ex.B-16 are to the effect that one B.Satyanarayana (P.W.2) and P.Jagannadham (P.W.11) also paid amounts along with D-1. P.Ws.2 and 11, who were examined, deposed that they paid the amount on behalf of plaintiffs, defendant No.2 and Gokarla Appanna.

54. The contention of the learned counsel for the appellants is that since execution of Ex.B-16 sale deed is admitted by both the parties, any amount of oral evidence contrary to the contents in the said document is hit by Sections 91 and 92 of Indian Evidence Act, 1872.

55. In order to appreciate the above contention, it is necessary to note the said provisions as under:

> **91. Evidence of terms of contract, grants and other dispositions of property reduced to form of document:**
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> When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any

matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception1. – When a public officer is required by law to be appointed in writing and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2. – Wills admitted to probate in India may be proved by the probate.

Explanation 1.—This section applies equally to cases in which the contracts grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.-- The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact

92. Exclusion of evidence of oral agreement.-- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to by such instrument or their representatives in interest, for purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement, constituting a condition precedent to the attaching any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

56. As per Section 91 of the Act it is clear that when the terms of a contract, or of a grant or of any other disposition of property have been reduced to the form of a document and in all such cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be allowed except the

document itself or secondary evidence of its contents in cases in which it is admissible under the rules governing the admissibility of secondary evidence.

57. Under Section 92, where the document as referred to under Section 91 has been proved either by the production of the original document or by secondary evidence, no evidence of any oral agreement shall be admitted to contradict, vary, add or to subtract from its terms.

58. As per second proviso to Section 92, oral evidence 'may' be adduced of any separate oral agreement between the parties as to any matter on which the written document is silent and that oral evidence of separate agreement is admissible only if the document is silent as to the matter and the agreement sought to be proved is not inconsistent with the terms of the document. Under the sixth proviso to Section 92, any fact may be proved which shows in what manner the language of a document is related to existing facts.

59. A Division Bench of the High Court of Calcutta in ***AMARENDRA NATH GHOSAL v. BRIJ MOHAN AGARWAL***[2] considering Sections 91 and 92, held as under:

> "3. . . . Ordinarily under Sections 91 and 92 of the Indian Evidence Act, 1897, a written document is a sole repository of the transaction between the parties. Section 91 is based on the best evidence rule. The best evidence about the contents of a document is the document itself and it is the production of the document that is required under Section 91 in proof of its contents. Section 92 only excludes parol evidence as between the parties or their representatives to the instrument. The normal rule is that the contents of the document must be proved by primary evidence, which is the document itself in original. Oral evidence may guide the Court in unraveling the true intention of the parties and tendering all extrinsic evidence as to acts, conducts and surrounding circumstances to enable the Court to assume the real intention of the parties. However, when the intention of the parties to the document are express and clear from the terms of the document, oral evidence cannot be taken into consideration to find out the nature of the transaction."

60. A reading of the contents in Ex.B-16 sale deed, which are in Telugu, goes to show that vide receipt No.296, the defendant No.1 has paid an amount of Rs.1,680/-. Vide receipt No.769 dated 20.03.1965; Sri P.Jaganadham, paid to the bank an amount of Rs.400/- and; vide receipt No.900 dated 10-04-1964,

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[2] (2011) 5 CHN 179 (Cal) (DB)

B.Satyanarayana paid an amount of Rs.3,220/- to the bank. Thereafter, the 1st defendant himself vide receipt No.915 dated 14.04.1965 paid an amount of Rs.3,100/-. Thus the Bank admitting that the 1st defendant paid the total sale consideration of Rs.8,400/- in installments, executed the sale deed in favour of D-1 and delivered possession.

61. In the sale deed, there is no recitals to the effect that all the persons named by the plaintiffs contributed the sale consideration at the rate of 1/5th share each. However, the facts remains that in the sale deed it is categorically noted that P.Jaganadham and B.Satyanarayana paid the amounts on behalf of the 1st defendant.

62. The categorical case of the 1st defendant is that he alone paid the entire sale consideration and Ex.B-16 was executed in his favour. He has not come up with any explanation why the other two persons also paid the amount. It is also not his case, that they paid the amount on his behalf. At the cost of repetition, his case is that he alone paid the amount and the 5th defendant who was examined as D.W.4 deposed that by selling the gold ornaments of his mother, his father paid the sale consideration.

63. B.Satyanarayana, (P.W.2), deposed that for the share of 1st and 2nd plaintiffs he deposited Rs.3,200/- into the Bank. P.W.11 deposed that on behalf of P.W.1, he paid an amount of Rs.400/- in the year 1965 to L.M. Bank, Sompeta; that the said amount of Rs.400/- is concerned only with regard to transaction of Siddigam lands, which were purchased by P.W.1, 2nd plaintiff, defendant No.2 and brother of D-1 namely Lakshminarayana and one Gokarla Apopanna by way of filing tenders in the L.M. Bank and all the above said persons filed the tenders before the Bank in the name of D-1 in the year 1965.

64. In view of these circumstances the judgment cited above has no application to the facts of the case and in view of second and sixth provisos to

Section 92, the oral evidence lead by the plaintiffs in this regard, cannot be said to be inadmissible.

65. P.W.6 was the Tahsildar at the relevant time, and recorded the statement of D-1, when he made declarations under Land Reforms (Ceiling on Agricultural Holdings) Act 1 of 1973. The said statement, which is in Telugu, is marked as Ex.X-2. A reading of Ex.X-2 goes to show that the 1st defendant purchased the suit schedule property under registered document dated 22-01-1971 and that he has partitioned the said property with his four share holders viz., Aggina Damayanthi, Bedalam Ram Murthy Naidu, Gokarla Appanna, Malla Peddi Vajramma and that out of the suit schedule property of Acs.34.66 cents, after partition, he got only Acs. 6.93 cents, towards his share.

66. P.W.9 is the elder brother's son of 1st defendant. He also support the case of the plaintiffs. He deposed that the suit land was purchased when his father and 1st defendant were joint as members of joint family; that the schedule land was purchased by five sharers i.e., plaintiffs 1 and 2, D-1, D-2 and Gokarla Appanna; out of the said extent Acs.6.40 cents only is being treated as joint family property of his father and D-1.

67. Further, the 1st defendant filed declaration under Section 6(1) of the Act 1 of 1973 on 17.02.1975 in C.C.No.1/75. In the said declaration, he stated that he purchased the present suit schedule property in an extent of Acs.34.65 cents from the Bank, in partnership with four persons. However, by proceedings dated 31.01.1976 in C.C.No.1/75, the Tribunal did not accept the same, on the ground that the sale deed No.49 dated 22.01.1971 does not indicate the names of the partners and that the declarent had exclusively purchased it.

68. From Ex.B-14, which is C.C.No.1/1975 dated 31.01.1976, it could be seen that D-1 has categorically admitted that he purchased the suit schedule property along with his partners, who as per Ex.X-2 declaration, are plaintiffs 1

and 2, D-2 and Gokarla Appanna, as such his oral evidence that he alone purchased the suit schedule property cannot be accepted.

69. The further case of the plaintiffs is that after purchase, each of them got 1/5th share in the suit schedule property and Gokarla Appanna relinquished his share in favour of D-2 and thus D-2 became entitled to 2/5th share and she was put in possession of her share in plaint B schedule property in or around 1975, was supported by the evidence of D.W.2.

70. D.W.2 was the retired Deputy Inspector of survey and from 1965 to 1985 he worked as Surveyor attached to Tahsildar Sompeta and Subsequently as M.R.O. Sompeta. He deposed that at the request of both the parties, he surveyed the suit land and fixed boundaries, which was accepted by both the parties and he demarcated and separated the road and earmarked Acs.13.00 and odd representing the two shares out of five shares in the total extent and allotted the same to D-2 with boundaries. He deposed that he measured and earmarked the extent with the consent of both the parties with the assistance of FMB.

71. P.W.7 was working as Superintendent in MRO Office, Mandasa as on the date of giving evidence. As per his evidence, which is already noted above, he produced revenue records pertaining to the suit schedule land. As per Exs.X.3 and X-4 revenue records pertaining to cultivation accounts, the names of plaintiffs, D-1 and D-2 were shown as the persons cultivating the said extents of land.

72. The claim of the 3rd defendant is that the 1st defendant entered into agreement on 6.4.1992 and executed sale deed on 27.12.1991 and in favour of others on 6.4.1992. In the present case, the suit was filed on 21.04.1989 and decreed on 3.9.1996. The fact as to entering into agreement with the 3rd defendant was not stated by the 1st defendant in the written statement and the sales deeds in question were effected during the pendency of suit, which was

also deposed to by P.W.1 in his evidence. Therefore, they are bound by principle of *lis pendence* under Section 52 of the Transfer of Property Act, 1882.

73. Having regard to the above evidence adduced on behalf of the plaintiffs, the oral evidence of 5th defendant, who was sixteen years at the time of Ex.B-16 transaction and other witnesses, cannot be considered and the evidence, oral and documentary, adduced by the plaintiffs overwhelmingly prove their case

74. To sum up, the above evidence clearly shows that plaintiffs, D-2 and one Gokarla Appanna contributed the sale consideration along with D-1, and D-1 purchased the property along with them as partners, which is evident from the evidence of P.W.6, the then Tahsildar, who recorded the land ceiling declaration of D-1 under Ex.X-2 and in this document, D-1 has declared that he purchased the land in partnership with plaintiffs 1 and 2, D-2 and one Gokarla Appanna and that D-1 got only Acs.6-00 and odd, out of the entire suit schedule property. Though the Land Reforms Tribunal did not accept the declaration made by D-1, but in the statement, D-1 stated that he purchased the suit schedule property along with plaintiffs, D-2 and Gokala Appanna, and refers them as partners. After purchase, each of them were put in possession and this fact is proved by the evidence of P.W.7, Tahsildar, who based on Exs.X-3 and X-4 revenue records, deposed that the parties are in possession of their respective shares as cultivators. The evidence of D.W.2, Tahsildar who surveyed and demarcated the land with their consent and put D-2 in possession, also supported this fact.

75. In view of these circumstances, the contention of the counsel for the appellants that D-1 cannot be divested of his title without any valid mode of transfer, cannot be accepted, since by the subsequent acts of D-1, noted above, after purchase under Ex.B-16, he acquiesced the title of the plaintiffs, D-2 and one Gokarla Appanna. Accordingly both the points are answered.

76. Considering the above circumstances, the court below rightly believing the version of the plaintiffs, passed preliminary decree.

77. It is to be noticed that plaintiff sought for partition and possession of only plaint 'A' schedule property and their claim is that plaint 'B' schedule property is in possession of D-2. In view of these circumstances, the trial court ought to have decreed the suit as prayed for and it cannot pass decree in respect of relief, which was not sought for.

78. For the foregoing reasons, the impugned decree of the trial court is confined only to plaint 'A' schedule property, and the same is confirmed. The issue is accordingly answered. With this modification, the appeal is disposed of.

79. Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:05—02—2018
AVS