

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

**HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

HONOURABLE MS. JUSTICE J. UMA DEVI

A.S.No.1987 of 2004 and ASMP.No.988 of 2016

Between:

M. Ram Reddy, S/o late M. Ramachandra Reddy,
Aged 56 years, Occ: Agriculture, Cheepuntala
Village, Talakondapally Mandal, Mahaboobnagar
District and 3 others

... Appellants

Vs.

M. Parvathamma, W/o late M. Mohan Reddy, aged
about 77 years, Occ: Agriculture, resident of
Cheepuntala village, Tadakondapally Mandal,
Mahaboobnagar, District and 7 others

... Respondents

Counsel for the Appellant : Mr. Ashok Anand Kumar

Counsel for Respondents : Mr. M.V.S. Suresh Kumar,
Mr. K. Vasanth Rao,
Mr. Chavali Ramanand

**HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE MS. JUSTICE J. UMA DEVI**

A.S.No.1987 of 2004

JUDGMENT: *(per V. Ramasubramanian, J)*

This appeal filed under Section 54 of the Land Acquisition Act, 1894, arises out of the judgment of the Reference Court under Section 30 of the Land Acquisition Act, 1894.

2. We have heard Mr, Ashok Anand Kumar, learned counsel for the appellant, Mr. M.V.S. Suresh Kumar, learned counsel for the 2nd respondent and Mr. K. Vasanth Rao, learned counsel for the respondent No.6 to 8.

3. A notification for the acquisition of a land of an extent of 51.12 guntas in Survey Nos.48 to 53 and 61 of Cheepuntala village of Talakondapalli Mandal was issued on 12-12-1997 under Section 4 (1) of the Land Acquisition Act, 1894. The acquisition was for the restoration of a water body. The declaration under Section 6 was issued on 21-12-1997.

4. During the award enquiry, the pattedars of the lands gave consent for the market value as fixed by the Land Acquisition Officer. However, disputes were raised about the apportionment of compensation in respect of the lands in Survey Nos.48 and 51, measuring an extent of Ac.33.27 guntas. Therefore, a reference was made under Section 30 of the Land Acquisition Act, 1894.

5. It appears that the lands originally belonged to one Ramachandraiah @ Ramachandra Reddy. Ramachandra Reddy died leaving behind eight sons. Two of those sons by name Mohan Reddy and Anantha Reddy died. Mohan Reddy's wife was the first claimant. Anantha Reddy's son was the second claimant. The other six sons of Ramachandra Reddy were claimants 3 to 8.

6. It was claimed by Parvathamma, who was the first claimant and who was the wife of late Mohan Reddy (son of Ramachandra Reddy) that a vast extent of land measuring about Ac.155.25 guntas was owned by an undivided joint Hindu family and that the properties were never partitioned. Therefore, the first claimant claimed 1/8th share in the compensation, which devolved upon her late husband.

7. But four out of eight sons of Ramachandra Reddy (who were the claimants 5 to 8) claimed that there was a prior partition. Two out of the eight sons of Ramachandra Reddy, who were claimants 3 and 4 remained exparte. The case of the first claimant (wife of one pre-deceased son) was supported by the second claimant (son of another predeceased son).

8. In the written statement filed before the reference Court, the claimants 5 to 8 (four sons of the original owner Ramachandra Reddy) claimed that their father Ramachandra Reddy died in the year 1960; that their eldest brother Mohan Reddy (husband of the first claimant) died in the year 1962, leaving behind his wife and a daughter; that when the first claimant demanded partition, Mohan

Reddy's share was divided and given to her; that the first claimant was allotted land of an extent of Ac.13.10 guntas along with a house purchased by them; that this arrangement was reduced into writing on a white paper on 08-08-1973; that ever since then the first claimant has been living separately; that this partition was also reflected in the revenue records, pahanies, voters list etc; that the first claimant sold an extent of Ac.3.00 guntas to one Pentaiah, from out of the land allotted to her; that thereafter Anantha Reddy, the second son of Ramachandra Reddy also died; that thereafter Anantha Reddy's son (second claimant) also demanded partition and accordingly, the second claimant and his mother were allotted the lands in several survey numbers totaling to Ac.28.88 guntas; that this partition is also reflected in the revenue records; that like wise claimant Nos.3 and 4 also got their shares separated; and that the acquired lands were in joint and exclusive possession of claimants 5 to 8 and that it is also reflected in the revenue records.

9. Before the Reference Court, claimant No.5 examined himself as PW.1, Claimant No.3 examined himself as PW.2, Claimant No.4 examined himself as PW.7 and the first and second claimants examined themselves as PWs.8 and 9. The purchasers of the other properties were examined as PWs.3 to 6. The Pahanies for the years 1977-78 to 1996-97 were marked as Exs.A.1 to A.20. The voters list for 1999 was filed as Ex.A.21. The partition list was filed as Ex.A.22.

10. Therefore, in the light of the pleadings and the evidence, the main issue that arose for consideration before the reference Court was as to whether there was prior partition, disentitling the claimants 1 to 4 to make any claim. But this question was split into two portions by the reference Court in paragraph 15 of its judgment.

11. Since claimants 5 to 8 were setting up prior partition, as a defence to the claim of the claimants 1 and 2, the onus of proving prior partition was on claimants 5 to 8. For proving prior partition, the claimants 5 to 8 relied upon (1) a partition list marked as Ex.A.22 and (2) a set of pahanies for the years 1977-78 to 1996-97.

12. After a careful analysis of the pahanies filed as Exs.A.1 to A.20, the reference Court came to the conclusion that the alleged partition was not reflected in the revenue records as no mutation had taken place as per the partition, if we go by Exs.A.1 to A.20. In particular, the findings given by the reference Court in paragraph 18 of its judgment point out how different pictures emerged out of pahanies.

13. The reference Court rejected Ex.A.22 also, on the ground that the second claimant's father who was one of the sons of Ramachandra Reddy, was not a party to the same, though he was alive on that date. The document also contained lot of discrepancies. The first claimant denied being a party to it. Though the scribe of Ex.A.22 was examined, the trial Court did not believe it. Eventually, the reference Court held that there was no prior partition and that therefore, each of the claimants was entitled to 1/8th share.

Accordingly, a decree was passed. Challenging the said judgment and decree, the claimants 5 to 8, who set up the defence of prior partition, have come up with the above regular appeal under Section 54 of the Land Acquisition Act.

14. The contention of Mr. Ashok Anand Kumar, learned counsel for the appellant is that the reference Court was in error in disbelieving Ex.A.22 especially when the scribe of the document was examined as PW.6. Exs.A.22 was more than 30 years old and hence, the learned counsel claimed that there was a presumption under Section 90 of the Evidence Act, 1872. The learned counsel also contended that when the Village Officer, who prepared the pahanies testified to the entries, the trial Court ought not to have rejected the pahanies.

15. We have carefully considered the above submissions.

16. As we have stated earlier, the only question on which the entire dispute hinges is as to whether there was actually a partition under Ex.A.22, by which the share of Mohan Reddy (husband of the first claimant) was separated. This is actually the point arising for determination in the above appeal.

17. Before proceeding to answer the above point arising for determination, we should bring on record one development that had taken place during the pendency of the appeal. Actually, the appellants came up with a Miscellaneous Petition in ASMP.No.988 of 2016 under Order XLI Rule 27 of the Code of Civil Procedure, for taking on record a deed of partition dated 08-09-2014 entered into

between all the claimants. But instead of stipulating as to how the compensation amount could be shared among all of them, the deed of partition entered into by the claimants, seeks to divide all the joint family properties in specified shares among themselves. Therefore, the deed of partition may not really help us to resolve the controversy in the above appeal and hence, may not be a relevant document for the purpose of adjudication of the dispute in the appeal.

18. We know from the deed of partition now sought to be filed as additional document that the lands in Survey Nos.48 and 51 are said to have been allotted to the appellants herein. Probably, the appellants want to contend that the compensation should be paid to them in entirety.

19. But the difficulty is that the land acquired in Sy.Nos.48 and 51 is said to be of an extent of Ac.33.27 guntas. But in the deed of partition now sought to be marked as additional evidence, the extent totals to Ac.37.65 guntas. They do not tally. Therefore, we cannot now go by inferences and presumptions.

20. If the appellants really wanted to settle their disputes amicably, they should have provided in the deed of partition itself as to how they want to apportion the compensation among themselves. They have not said anything about it. Therefore, we are left with no alternative except to test the correctness of the judgment of the reference Court.

21. However, we are allowing the application under Order XLI Rule 27 CPC, since the parties can avoid future disputes. Hence, ASMP.No.988 of 2016 is allowed and the partition deed dated 08-09-2014 is marked as Ex.A.28.

21. Coming to the core issue, it is seen that Ex.A.22 is an unstamped and unregistered document. Admittedly, Ex.A.22 did not contain the signature of Anantha Reddy, the second son of Ramachandra Reddy though he was alive.

22. To prove Ex.A.22, a statement made by the claimants 2 and 4 marked as Ex.A.23 was relied upon. But the reference Court rightly pointed out that if the partition had been acted upon, he could not have claimed 1/8th share in the property. Therefore, the reference Court rightly rejected Ex.A.22. The reasons contained in paragraph 25 of the judgment of the reference Court in this regard are very cogent, clear and unassailable.

23. Coming to the pahanies relied upon by the appellants for proving the partition, the reference Court pointed out in paragraph 19 as to how there were inherent contradictions. Exs.A.1 to A.12, the pahanies for the years 1977-78 to 1988-89 showed that the patta in respect of all lands were shown as standing in the names of all claimants. But possession alone was said to be exclusively with claimants 1 and 2. This was one discrepancy. Many more were pointed out in paragraph 19 of the judgment of the reference Court.

24. Therefore, the point arising for determination has to be answered against the appellants, as prior partition was not proved by them.

25. Reliance was placed by the learned counsel for the appellant on the judgment of the Supreme Court in **Munna Lal v. Suraj Bhan and others**¹, to drive home the point that whenever a partition takes place in the presence of elders or a respectable Arbitrator (Punch), it is immaterial even if one of the parties had not signed the deed of partition.

26. But in the case on hand, the very additional document now filed through ASMP.No.988 of 2016 shows that the partition took place only during the pendency of the appeal and not otherwise. Therefore, the said decision is of no assistance to the appellants.

27. In **Narendra Kante v. Anuradha Kante**² relied upon by the learned counsel for the appellant, it was held that though a family arrangement to which one of the co-sharers was not a party, cannot be relied upon, the subsequent conduct of that co-sharer, who did not sign the family arrangement, in dealing with the allotted properties, can be a pointer to confirm the family arrangement.

28. But in the case on hand, the first claimant denied her left thumb impression in the partition. The second son was alive, but was not a party to the partition. The additional document now filed shows that only now the first claimant was allotted a share.

¹ (1975) 1 SCC 556

² (2010) 2 SCC 77

Therefore, the said decision will not be of any assistance to the appellants.

In view of the above, we find no merits in the appeal. Hence, it is dismissed. However, there will be no order as to costs.

As a sequel thereto, miscellaneous petitions, except A.S.M.P. No. 988 of 2016 shall stand closed. But A.S.M.P. No. 988 of 2016 will stand allowed.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Additional document marked as per orders in ASMP.
No.988 of 2016

Ex.A.28 : A deed of partition dated 08-09-2014

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 31-12-2018

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