

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.1609 OF 2001

JUDGMENT:

The present regular Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908, is directed against the judgment and decree, dated 04.04.2001, passed in Original Suit No.15 of 1999 by the learned Senior Civil Judge, Pithapuram, whereby and where-under, the suit of the plaintiff for partitioning of item Nos.1 and 2 of the plaint schedule was decreed, directing to divide item No.1 into three equal shares and to allot one such share to the plaintiff and item No.2 into two equal shares and to allot one such share to the plaintiff, and to ascertain the mesne profits by an independent application.

2. The appellant herein is the defendant in the aforesaid suit, while respondent is the plaintiff.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the aforesaid suit.

4. Heard Sri V.L.N.G.K. Murthy, learned counsel for the appellant - defendant, and Sri T.S. Anand, learned counsel for respondent - plaintiff.

5. The submissions made by them respectively, would be adverted to later after referring to the case of the plaintiff and the defence set out by the defendant.

6. The relevant facts for the purpose of adjudicating upon the controversy in the present appeal, briefly stated, are thus:

i) The plaintiff and the defendant are sister and brother. Their father was Nama Peddi Raju of Chebrolu village and he is nephew of one Challa Brahma Raju belonging to the same village. Challa Satyam is the wife of Challa Brahma Raju.

ii) She claims that she was taken in adoption while she was a child and being treated as daughter of Challa Brahma Raju and Challa Satyam as they were issueless.

iii) She also sets out her case that their adoptive parents taken her brother - defendant also in adoption and treated as such by her adoptive parents. She would come out stating that no document of adoption was executed either in her case or the defendant as required under law by the adoptive parents. They performed her marriage with one Kurre Suryanarayana on 17.03.1976 and just prior thereto, her adoptive parents along with the defendant settled an extent of Acs.3.00 in Survey No.120/1, situated at Ramannapalem and another extent of Acs.2.00 in survey No.126 of Ramannapalam and, thus, a total extent of Acs.5.00 was settled by way of registered gift deed on 05.03.1976 as 'PASUPU KUMKUMA' and gave possession thereof, and she was described as the daughter of Challa Brahma Raju and Satyam.

iv) She was admitted in the School at Vajrakootam of Sankhavaram Mandal by her adoptive father by showing her as his daughter and School Register's entries and Study Certificate, dated 04.12.1998 issued by the Head Master of the said school proves the said fact. Since she sold away the suit schedule property in favour of Kundrapu Venkata Ramakrishna S/o Appala Naidu on 27.06.1995 and even handed over the original gift deed, she has filed the registration extract of the gift settlement deed.

v) According to her, her adoptive father died intestate on 04.02.1989 and after her marriage, she joined her husband and started living at Visakhapatnam. Taking advantage of the said situation, the defendant soon after the death of their adoptive father, without even informing her contents of certain documents at the advice of his father-in-law, he executed series of documents, both by Challa Satyam, their adoptive mother and their natural mother and brother and sister by misrepresenting and by playing fraud upon them.

vi) Since their adoptive father died intestate, his property devolved on them in equal shares, and in spite of repeated demands, since the defendant did not cooperate for effecting partition, she got issued a legal notice on 10.02.1999, which was received by the defendant on 13.02.1999 and replied on 24.02.1999 with all incorrect allegations. Hence, the suit for the relief of partition and allotment of one share in item Nos.1 and 2 of the plaint schedule property.

7. Controverting the allegations, the defendant filed his written statement, contending that the plaintiff was never taken in adoption and Challa Brahma Raju and Satyam never took the plaintiff in adoption and never treated her as their adoptive daughter. He sets out the case that Challa Brahma Raju and his wife, Satyam, since had no daughters, fostered the plaintiff as their fostered daughter and brought up and got her educated. Thus, his stand is that the plaintiff was fostered daughter but not adopted daughter.

i) He also states that the plaintiff has not given the date, month and year of her alleged adoption. He denied the school certificate produced by the plaintiff. On the other hand, he states that in the school certificate, she was described as daughter of Nama Peddi Raju, and he has submitted a Photostat copy of the certificate, dated 19.02.1999 issued by the very same Head Master, who has issued certificate in favour of the plaintiff.

ii) Concerning the Gift Settlement Deed, dated 05.03.1976, he admits that Challa Brahma Raju and Satyam gifted an extent of Acs.5.00 of land on her name but states that she was loosely described in the document as daughter of Challa Brahma Raju, and it only denotes that she was the foster daughter of Challa Brahma Raju, but not adopted daughter of Challa Brahma Raju. He would state that he was also added as third executant, but he was only a minor by then and at the instance of Challa Brahma Raju, he has also joined in the

document as co-executant and, therefore, the said deed is not at all valid to the extent of his rights. He claims that the plaintiff subsequently sold away the suit property and described in the sale deed as a daughter of Peddi Raju, but not as the daughter of Challa Brahma Raju. Thus, he claims that he was the only adopted son of Challa Brahma Raju and Satyam and various documents obtained from 1963 onwards under which properties were purchased during his minority by Challa Brahma Raju and later sold by him including his school records would show that he is the adoptive son of Challa Brahma Raju and the plaintiff is not the adoptive daughter of Challa Brahma Raju.

iii) He would also state that while they were jointly living, Challa Brahma Raju died possessed of certain properties leaving behind him, himself and his widow - Satyam. Thus, the undivided half interest in the plaint schedule properties of Challa Brahma Raju devolved upon him and Challa Brahma Raju's widow in equal shares and, thus, he got $3/4^{\text{th}}$ towards his own right and in view of the registered relinquishment deed, dated 25.03.1989 executed by the wife of Challa Brahma Raju, Satyam, in his favour, he became the owner of the entire property and, therefore, the plaintiff is not entitled to any share in item No.1 of the plaint schedule property. He would state that even according to the plaintiff's contention she is entitled to $1/4^{\text{th}}$ share, but not a half share.

iv) Concerning item No.2 of the plaint schedule property, a residential house, he would claim that Challa Brahma Raju, his adoptive father, transferred the said house in his name in the panchayat records, and during the life time of Challa Brahma Raju, himself, Challa Brahma Raju and Challa Brahma Raju's wife were living therein, and after the demise of Challa Brahma Raju, he continued to live therein and, therefore, Challa Brahma Raju did not die possessed of item No.2 as he has already got transferred his house in his name and even otherwise, he alone is entitled to item No.2.

v) In paragraph No.6 of his written statement, he would admit that the plaintiff got issued a registered notice dated 10.02.1999, but according to him, the contents therein were incorrect and he got issued a reply, dated 24.02.1999 with all true and correct facts and, therefore, sought to dismiss the suit.

8. On the basis of the aforesaid pleadings, the learned Senior Civil Judge settled the following three issues:

“

1. Whether the plaintiff was adopted by late Challa Brahma Raju?
2. Whether the plaintiff is entitled for partition and future profits?
3. To what relief?”

9. To substantiate her case, the plaintiff besides examining herself as PW.1, has examined one Kurre Ayyaraju as PW.2 and her natural mother, Nama Laxmi, as PW.3 and marked Exs.A-1 to A-6. On the other hand, the defendant examined himself as DW.1, besides

examining one Yedida Santha Kumar Babu, as DW.2 and exhibited Exs.B-1 to B-14.

10. The Court below initially taken issue No.1 for discussion and referred to the ruling relied on by the learned counsel for the defendant in **Sanagavarapu Venkata Subbaiah Ahra v. Karuthota Galib Saheb and others**¹, wherein it was held that a valid adoption can be proved by oral evidence establishing the factum of giving the child and taking the child in adoption with free consent of both the natural parents and adoptive parents and execution of adoption deed and its registration are not compulsory. The Court below then analyzed the evidence on record let in by the plaintiff through PWs.1 to 3 and the recitals in Ex.A-2 - registration extract of the gift deed executed by Challa Brahma Raju, his wife Satyam and the defendant together on 05.03.1976 in favour of the plaintiff. The relevant recital extracted by the Court below in vernacular language reads thus:

‘చల్లా బ్రహ్మ రాజు గారి కుమార్తె సుభద్రకు
చల్లా నాగన్న గారి కుమారుడు (1) బ్రహ్మరాజు ఇతని భార్య
సుమంగళి (2) సత్యం వీరి కుమారుడు (3) రామ విష్ణు వెంకట
రెడ్డి గార్లు జనం ముగ్గురు ఏకస్థులై వ్రాయించి యిచ్చినది.
.....నీవు మాలో 1-2 వారలకు కుమార్తెవు, 2వ వార్కి
తోబుట్టువు అయి వున్నావు. నిన్ను శంఖవరం గ్రామకాపుర
స్తుడు కుర్రె అయ్యరాజు గారి కుమారుడు సూర్యనారాయణ
కిచ్చి ది.17.3.76వ తేదీన బుధవారం రాత్రి గం. 5.41 ని॥
లకు సుభముహూర్తములో వివాహం నిశ్చయించియున్నాము”

Thereafter, examined the stand of the defendant thereon that the said recital is loosely worded giving indication that the plaintiff was fostered by Challa Brahma Raju and his wife Satyam but not as their

¹. 1997 (4) ALT 274

adopted daughter, and incidentally, he has also set up the stand that since he was minor by then at the instance of Challa Brahma Raju, his adoptive father he joined in execution as the third executant and, in fact, to the extent of his share in the suit property and his rights cannot be affected or the said document cannot affect his rights as it does not bind him as he was minor by then. But, the Court below declined to agree with the stand of the defendant that the description of the plaintiff in the said recital is loosely used and on the other hand, the Court below tendered a categorical finding that even the defendant is also not described as the adopted son of Challa Brahma Raju and his wife Satyam under the original of Ex.A-2 and, therefore, no other proof is required to hold that the plaintiff is adopted daughter of Challa Brahma Raju and his wife.

i) The Court below then examined the controversy about the school record as Ex.A-1 was filed by the plaintiff, whereas Ex.B-4 was filed by the defendant issued by one and the same Head Master examined as DW.2 as defendant summoned him along with the admission Register. The Court below then referring to the recitals in Ex.A-1 and the contents of Ex.B-4 and the evidence of DW.2, finding in the second column of the original register brought by DW.2 the word “Challa” as the surname of the plaintiff and though, the fourth column indicates ‘Peddiraju’s’ name, and fifth column indicates ‘Brahma Raju’s’ name, but in the third column the word “Challa” is

shown but not “Nama” which is intended to show the natural parent, held that in case she was admitted by Peddi Raju, the plaintiff’s surname would have been shown as ‘Nama’ but not ‘Challa’ and, thus, it clearly indicates that Challa Brahma Raju admitted her into the school as his daughter and the name of Peddi Raju was noted as natural father. Then, the Court below has referred to Exs.B-13 and B-14, which are certified copies of Admission Register and the relevant entry. In view of the condition of the admission register which was in torn condition and the pagination was not in seriatim and DW.2 also admitting that pages in admission register were torn away and observing that the best piece of evidence would have been the applications for admission submitted at the time of admission of the plaintiff which were available in the school, but not filed before the Court, but, however, opined the very fact that in the description of the plaintiff, her name was not shown as ‘Nama Subhadramma’ but she was described as ‘Challa Subhadramma’ and the same would suffice to hold that Peddi Raju was only shown as natural father and Challa Brahma Raju’s name is occurring and unless he is the adoptive father, his name would not have occurred. Thus, coupled with the recitals in registered gift deed under Ex.A-2 and the recitals in Ex.A-1, certified copy of study certificate, tendered finding that the plaintiff is the adopted daughter of Challa Brahma Raju and his wife Satyam and the plaintiff proved through the evidence of her natural mother as PW.3 and a close relation as PW.2, by discarding the submission

made by the learned counsel for the defendant that PWs.2 and 3 are interested witnesses, more particularly, keeping in view, the answer given by the defendant in his cross-examination that there are no differences between himself and PWs.2 and 3, in which case, there was no occasion for PWs.2 and 3 to swear falsehood in favour of the plaintiff and against the defendant.

ii) Concerning other documents, where the name of the father of the plaintiff is shown as Peddi Raju, more particularly, Ex.B-1, registration extract of sale deed, where she is shown that as daughter of Peddi Raju, she got some properties from him, the Court below referred to the preamble of Ex.B-1 and found that the husband's name was noted in the body, and it is not the case of the parties that Peddi Raju did own any properties at all and thereby the sinister motive on the part of the defendant was discussed by the Court below in paragraph Nos.12 and 13, observing that in the plaint itself the plaintiff stated that the defendant obtained certain documents by playing fraud and even in her cross-examination she stated that her brother got scribed sale deed in 1995 and she put her signatures in the sale deed, dated 27.06.1995 in favour of Kundrapu Venkata Ramakrishna and she does not know whether it was mentioned in the sale deed that she inherited Acs.2.52 cents after the death of her natural father, Peddi Raju, and she volunteered that it is the defendant, who got the document executed by her and received consideration and

she does not know about the total consideration and also how much amount was taken by the defendant. The Court below also found support from PW.3's evidence in that regard and having examined Exs.B-1 and B-3 found that the stamps for execution of the documents were purchased by the defendant though, he was not an executant, nor a vendee and observed that there was absolutely no necessity for him to purchase stamps in his name and even he put his signatures as an attestor and identifying witness and, therefore, found that it cannot be ruled out that DW.1 got scribed and obtained the signatures of the plaintiff and other parties and, thus, arrived at the finding that the cumulative effect of all these circumstances would clearly show that the defendant is responsible in preparing the document in such a fashion and even if the contents of Ex.B-1 are considered, they do not go against the plaintiff's case.

iii) Similar observations have been made in regard to Exs.B-11 and B-12, which are enumeration applications holding that Ex.B-11 which relates to the plaintiff does not contain the signature or thumb impression of the person in the column 'Manager of the family', whereas Ex.B-12 contains the thumb impression of 'Nama Laxmi' and the same was sufficient to discard Ex.B-11 as DW.1 was unable to explain as to why a tick mark was made in Ex.B-11 against the name of the plaintiff though, the same was absent originally and further observed that filing of the corresponding voters list would

have resolved the controversy, but they were not filed by the defendant. Therefore, Exs.B-11 and B-12 are of no use to prove the stand of the defendant.

11. On issue No.2, the Court below refers to the reliance placed by the defendant on Exs.A-4, B-1, B-2, B-6, B-7 and B-8 as the plaintiff has taken the stand that the defendant is not the adoptive son of Challa Brahma Raju and his wife and he is only a foster son. In fact, the controversy has arisen in view of the fact that the defendant in his cross-examination came up with an answer that he did not file the adoption deed, dated 22.08.1984 and stuck to the stand that his adoption took place on 13.06.1981. In fact, the submission made by the learned counsel for the plaintiff before the Court below was that the defendant also did not mention the date, month or the year of the adoption and, in fact, the adoption deed was deliberately withheld as it would prove that by the date of adoption deed i.e., 22.08.1984, the defendant must be aged 25 or 26 years and his adoption becomes invalid. The Court below then referring to the plaint averments that the plaintiff did, in fact, state that the defendant was also adopted by the said Challa Brahma Raju and his wife, Satyam, and even in the legal notice got issued by the plaintiff, she got mentioned the defendant as also the adopted son of Challa Brahma Raju and his wife Satyam, now cannot turn round to invalidate the adoption of the defendant and, thus, made an observation there-for as such, and in

view of the finding recorded on issue No.1 and rejecting the contention canvassed on behalf of the defendant by his learned counsel that even the adoption of the plaintiff is invalid for the reason that the Assent of the Hindu Adoption and Maintenance Act, 1956 was given by the President on 21.12.1956 and the adoption of the plaintiff was taken at the age of 2½ years as stated by her, her adoption would be somewhere in the month of August, 1956, indicating that the adoption was held prior to commencement of the Act, but the Court below held that it is too technical to accede to such a view when there is no clinching evidence on record and, therefore, did not give any weight to the said submission and in view of the finding tendered on issue No.1, held that the plaintiff is entitled to 1/3rd share in item No.1 of the plaint schedule and half share in item No.2, and directed that the mesne profits can be ascertained by way of an independent application.

12. In the grounds of appeal, the appellant - defendant would contend that the respondent - plaintiff was born on 01.02.1954 and the adoption was said to have taken place when she was two years old and, as such, the alleged adoption must have taken place in or about February, 1956 before the Hindu Adoption and Maintenance Act, 1956 came into force and even if the adoption is true, it is illegal and untenable as per the law then in vogue, which the Court below failed to take note of. He would also state that the respondent - plaintiff

never claimed about her adoption and never made any claim of her rights for several decades though, the death of Challa Brahma Raju took place in the year 1989 and she made the claim only in 1999, which silence is sufficient to falsify her case, which is totally ignored by the Court below, more particularly, when no particulars of adoption were pleaded or proved, and further-more, the essential ingredients of adoption of 'give and take' have not been established and as such, the relevant issue ought to have held against the respondent - plaintiff. The appellant - defendant further states that the evidence of PWs.1 to 3 is highly interested, self-serving, discrepant and full of inconsistencies and, as such, the Court below ought to have rejected it, and the Court below has not given proper consideration and due weight to the other facts and circumstances, which are narrated in paragraph No.11 thus:

“ (a) In Ex.B.1 dated 27-6-1995 the plaintiff who is the executant described herself as the daughter of Nama Peddaraju who is her natural father and that she inherited the properties of natural father etc. and this clinches the question and the plaintiff's case of adoption has to be rejected.

(b) The plaintiff as P.W.1 has not been able to explain her conduct and the binding nature of her own admission in Ex.B1 or in her pleadings and as such Ex.B1 cannot be brushed aside on any ground and observations in this regard by the lower court are unsustainable.

(c) The admission made by P.W.1 in her evidence that there was no adoption and no function and no feast took place on admitted by PW.1, 2 and 3.

(d) Even in Ex.A2, the plaintiff was not described as adopted daughter but merely as foster daughter and no reference was made to the alleged adoption.

(e) The school record Ex.B.13 and B.14 show that Brahmaraju is the guardian and her father is shown as Nama Peddaraju who is her natural father.”

i) The appellant further agitates that the Court below has not appreciated Ex.B-1 and also Ex.B-7 in proper perspective and the Court below has not given proper finding on issue No.2 on the question of shares and ought to have dismissed the suit.

13. The submissions made by the learned counsel for the appellant were on the lines of the grounds agitated in the appeal and, therefore, it is unnecessary to once again to refer to. The submissions made by the learned counsel for the respondent - plaintiff have been in the direction of supporting the findings recorded by the Court below.

14. In the backdrop of the pleadings of the parties, the findings rendered by the Court below on the issues settled for trial and the arguments advanced by either counsel, the following points would emerge for determination:

i) Whether the plea of adoption put forth by the respondent - plaintiff is proved?

- ii) Whether the respondent - plaintiff is entitled to partition of the plaint schedule properties and if so, to what share in case point No.1 is held in favour of the respondent - plaintiff and the finding recorded by the Court below on issue No.1?
- iii) Whether the judgment and decree under challenge are liable to be set aside?
- iv) To what further relief, if any, to which the appellant is entitled?

Point No.(i):

15. The entire burden rests on the plaintiff to prove the factum of adoption set out by her. Simultaneously, the stand taken by the defendant as appellant herein is that even if the adoption is held to be true, it is illegal since as per the evidence on record as the factum of adoption can be put at somewhere in 1956, by which time, the Hindu Adoption and Maintenance Act, 1956 was not in force as it got the Assent on 21.12.1956, on which alone the provisions deemed to have come in force.

i) In evaluating the evidence on record, Ex.A-2 is the crucial document. Of course, the plaintiff has given reason as to why she could not place the original of Ex. A-2. Even otherwise, there is no challenge by way of raising objection while Ex.A-2 was exhibited, which is the registration extract of the gift settlement deed executed by Challa Brahma Raju, his wife and the defendant herein as third executant, a total extent of Acs.5.00 of land being gifted to her

towards '*Pasupu Kumkuma*' as could be seen from the recitals therein. What is significantly important to note from the contents of Ex.A-2 is, it describes the plaintiff as the daughter of Challa Brahma Raju and Satyam, who are the executant Nos.1 and 2 and also describes that she is the natural sister of third executant, the defendant herein. The attack of the defendant on the said recital in Ex.A-2 is that she is described loosely as the daughter of Challa Brahma Raju for the reason, she is not shown as adopted daughter of Challa Brahma Raju and his wife Satyam and, therefore, no importance can be attached to the said recital as the documents under which certain transactions have taken place subsequent thereto, clearly indicate that she is the daughter of Nama Peddi Raju and PW.3. But, one-thing conspicuous from Ex.A-2 recitals is that even when the defendant as third executant was described he was also described as son of Challa Brahma Raju and his wife Satyam and not as their adopted son.

ii) A perusal of Ex.A-2 would clearly bring out that the plaintiff was described as daughter of Challa Brahma Raju and his wife Satyam and the defendant as their son joining in execution of Ex.A-2. There is a specific recital therein that she is the daughter of executant Nos.1 and 2 and sister of third executant. Even in the fourth page of Ex.A-2, she is described as daughter of Challa Brahma Raju and the said extent of land was given to her towards '*Pasupu Kumkuma*'. Yet another significant aspect that can be culled out from

the contents of Ex.A-2 is, that giving the immovable property towards '*Pasupu Kumkuma*' is invariably done by either the parents or the natural brothers, but not by either strangers or relations. Thus, the very fact that the said extent was given towards '*Pasupu Kumkuma*', that too at the time of marriage of the plaintiff a couple of weeks prior to the actual wedding is sufficient to give rise to an inescapable inference that unless the plaintiff was really adopted by Challa Brahma Raju and his wife Satyam, there was no occasion for them to gift the property by describing her as their daughter and sister of third executant, the defendant herein, and that the gift was made towards '*pasupu kumkuma*' on the occasion of her marriage. Therefore, it completely demolishes the stand taken by the defendant that the description of the plaintiff in Ex.A-2 is loosely either worded or used as his description also stands on the same footing as that of the plaintiff.

iii) The defendant is not disputing Ex.A-2's original in favour of the plaintiff. He is not an attesor and he is one of the executants. He intended to wriggle himself out of the binding nature of Ex.A-2 and the prominence of Ex.A-2 having vital effect on the stand taken by him by inventing the stand that he was a minor by the date of Ex.A-2 and at the instance of Challa Brahma Raju and Satyam, he joined as co-executant, merely signing on Ex.A-2's original. This is certainly an after-thought only with a view to get over the importance of the

recitals therein on the controversy herein and, therefore, the entire defence set out by him in an attempt to get over Ex.A-2's original gets belied or falsified. The subsequent documents which were referred to in the judgment including Ex.B-1 executed by the plaintiff and Ex.B-1 showing that the stamps were purchased by him though, he was neither a Vendor nor Vendee, made a definite observation that there is substance in the stand taken by the plaintiff that the defendant has played fraud and misrepresenting her obtained her signatures in certain documents and that, that was the reason he purchased the stamps as no explanation is forthcoming from him as to why he was required to purchase the stamps of original Ex.B-1. This circumstance, certainly, gives rise to an inference that the defendant has been taking an active part and plaintiff only signed in those documents reposing confidence in defendant, as by then there was no dispute in regard to any properties between them, nor there were any differences in relation to any other family affairs and that the plaintiff would have never contemplated filing of present suit by then. Thus, when no explanation is offered by the defendant as to why he purchased the stamps, on which the original of Ex.B-1 was written, it has to be viewed that they were in fact got executed by him through the plaintiff. Therefore, there was occasion for the defendant to get the plaintiff described as daughter of Peddi Raju to over come the effect of original of Ex.A-1 and sinister motive attributed to him even in the notice got issued by the plaintiff cannot lightly be brushed

aside. Thus, in the presence of Ex.A-2's recitals as discussed herein before, alone are sufficient to tender a definite finding on point No.1 without even entering into the arena of oral evidence on record. Even otherwise, the evidence of PWs.2 and 3 also requires consideration for the reason that the defendant has come up with the stand that Ex.A-2 is not legal and not valid as the evidence of PWs.2 and 3 would show that she was adopted at the age of two years by which it can be viewed that the adoption relates to the month of August, 1956, which was prior to coming into force the Act, 1956 and the law then in vogue did not permit adoption of a female child.

iv) Turning to the evidence of PWs.2 and 3, it is no doubt true, PW.2 stated that adoption of PW.1 must have taken place when she was one and half years or two years and PW.3 has stated in her chief-examination that the adoption must have taken place when PW.1 was two years, and the date of birth of PW.1 was recorded in the school certificate filed by her as 01.02.1954, but, however, the question is, whether PWs.2 and 3 were really able to recollect the age of PW.1 at the time of adoption. PW.2's age is shown as 89 years on the date of deposition before the Court below, whereas the age of PW.3 is shown as 65 years, and the age of PW.1 was shown as 45 years as on 19.12.2000 when she deposed in Court. It can be viewed that it would be difficult for PWs.2 and 3 to precisely put PW.1's age, on which date they deposed at such a distance of time.

v) Now, turning to the certificates issued by DW.2, in fact, in the certificate filed by the plaintiff, against second column, where the surname of the pupil is required to be mentioned, it is shown as 'Challa' but not as 'Nama'. It is no doubt true, Name Peddi Raju name is occurring against column No.4, but that by itself it cannot be said that the surname 'Challa' occurring therein' gets erased without any significance. But, when DW.2 admits the surname occurring in Ex.A-1, that itself is sufficient to cut the stand taken by the defendant at its root. Even otherwise, it supports the stand taken by the plaintiff in proving the factum of adoption pleaded by the plaintiff. Further, the application for admission submitted by the parties would have been the best documentary evidence, when the admission register is not intact and certain leaves thereof were torn away. However, in the presence of recitals in Ex.A-2 and also in view of the surname of plaintiff being described as 'Challa' in Ex.A-1, it cannot be said that they do not have effect of proving the factum of adoption pleaded by her.

vi) Turning to the enumeration applications, which are marked as Exs.B-11 and B-12 relating to plaintiff and defendant respectively, the findings recorded by the Court below that Ex.B-11 does not contain the signature or thumb impression of the person in the column 'Manager of the Family', whereas Ex.B-12 contains the thumb impression of Nama Laxmi is sufficient to discard Ex.B-11, more

particularly, when DW.1 expressed ignorance as to why there was tick mark occurring against the name of the plaintiff in Ex.B-11 do not suffer from any infirmity. In fact, the stand taken by the plaintiff in regard to Ex.B-11 is that they are fabricated by the plaintiff for the purpose of the case. The very fact that the voters list has not been filed to resolve the controversy as observed by the Court below would set the effect of Exs.B-11 and B-12 at naught.

vii) Now, turning to the observation of the formalities in relation to the adoption ceremony, the evidence of PWs.2 and 3 is very clinching to show that one Kolluri Seetha Ramamurthy was the priest, who officiated the adoption ceremony, that there was a sacred fire, that PW.3 and her husband sat on one side and Challa Brahma Raju and his wife Satyam sat on the other side on the plank, that the priest chanted mantras and herself and her husband handed over the plaintiff to Challa Brahma Raju and his wife Satyam saying that they were giving the plaintiff in adoption to them, who in turn accepted the adoption and treated the plaintiff as their daughter from that day onwards cannot be brushed aside as nothing is finding place in the cross-examination to disbelieve the said assertion. The evidence of PW.2 is also on the same lines. When, in fact, PW.2 is inter-related, the evidence of PW.2 also would become relevant to show that the adoption ceremony had taken place during 'Karthika Masam'. When PW.2 was pursued in her cross-examination, she, in fact, answered

that Seetha Ramamurthy was the family *purohit* to Challa Brahma Raju and he is no more; that her co-brother attended the function, besides Challa Subba Rayudu, Seetharam, Gavvar Raju, and she expressed that she does not remember the name of outsiders, who attended the function. Of course, PWs.2 and 3 would state that no feast was arranged in that connection, but '*prasadam*' was given. Merely because no feast was arranged, it is no ground to disbelieve the factum of adoption and performance of due sacred formalities, but however, the very fact that *prasadam* was distributed is sufficient to hold that all attributes of valid adoption ceremony had been followed.

viii) It is no doubt true, one of the grounds taken by the defendant is that there is no proof by a written document as to the plea of adoption set out by the plaintiff, but so also is the case if viewed from the evidence of defendant as DW.1 for the reason he comes out with the adoption deed of 1984 while setting up his adoption ceremony as having taken place in 1981. If the adoption deed which was registered in 1984 is taken into consideration, certainly, the defendant must be aged 25 or 26 years in which case his adoption itself becomes invalid. But, for the admission made by the plaintiff while giving the notice under Ex.A-4 and pleading in the plaint that the defendant was also adopted by her adoptive parents, there would not have any case for the defendant to substantiate his stand that he was validly adopted by Challa Brahma Raju and his wife, Satyam, as

nothing is forthcoming in regard to adoption ceremony as to the observation of due formalities in the year 1981. Thus, when weighed the case, the position of the defendant is still worse compared to the case of the plaintiff. However, since Ex.A-2 cannot be excluded and there is nothing to condemn Ex.A-2 from the side of the defendant and the only defence set up by him is that the recitals therein are loosely knitted which again stood unsubstantiated in view of the discussion made herein before, nothing more is required to hold that the respondent - plaintiff proved the plea of adoption set up by her and her adoption was valid and, accordingly, this point is held in favour of the respondent - plaintiff and against the appellant - defendant.

ix) So far as whether the oral adoption is valid or not is concerned, the very ruling referred to by the Court below in **Sanagavarapu Venkata Subbaiah Ahra¹**, and relied on by it would answer the issue.

Point No.(ii):

16. When finding on point No.1 is held in favour of the respondent - plaintiff, it is needless to mention that the respondent is entitled to partition of the plaint schedule properties. It is no doubt true, a relinquishment deed is placed before the Court below by the defendant stating that Satyam, his adoptive mother, relinquished her share in favour of the defendant after demise of Challa Brahma Raju, but there is evidence on record to show that she was attacked by

paralysis even prior to the demise of Challa Brahma Raju and the very fact that he got relinquishment deed within a month or 45 days after the demise of Challa Brahma Raju executed by Satyam, just before her death is sufficient, to view the very conduct of the appellant - defendant with suspicion in getting the said relinquishment deed. Further, the original relinquishment deed is not filed, and none of the attestors thereto were examined. As the very executant is no more to prove the contents therein, it is to be observed that the stand taken by the defendant that he has become absolute owner of the entire extent of item No.1 of the plaint schedule property cannot be accepted as it stood unsubstantiated by virtue of non-examination of the attestors or at least the scribe of the relinquishment deed, in case the attestors are no more or any further evidence in the direction of proving the contents therein as per the evidentiary rule. It is not in dispute that the relinquishment deed does not refer to item No.2 of the plaint schedule property. Even otherwise, the finding recorded by the Court below to divide item No.1 equally and to allot one such share to the plaintiff cannot be faulted.

i) Concerning item No.2 since it was excluded in relinquishment deed as per the finding recorded by the Court below ordering division of item No.2 and allotting one such share also cannot be faulted. The further direction to ascertain mesne profits by way of independent application given by the Court below also cannot

be upset. Hence, this point is held against the appellant and in favour of the respondent.

Point No.(iii):

17. In view of the findings recorded on point Nos.(i) and (ii) as in the above, the findings recorded by the Court below and the conclusion arrived at basing on the said findings do not suffer from any legal infirmity and, therefore, the judgment and decree passed by the Court below cannot be upset.

Point No.(iv):

18. There are no merits in the present appeal, and the same is dismissed confirming the judgment and decree passed by the Court below. Both the parties are directed to bear their own costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal, stand closed.

A. SHANKAR NARAYANA, J

January 22, 2018.
Mgr