

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

A.S.No.1425 of 1997

JUDGMENT:

This appeal is filed questioning the judgment and decree passed in OS.No.79 of 1984 on 31.07.1997 by the II Additional Subordinate Judge, Warangal.

For the sake of convenience as this is a first appeal, the parties are referred to as plaintiff and defendants as in the lower Court only.

The brief facts of the case are that:

The suit OS.No.79 of 1984 was filed for a declaration that the plaintiff is the adopted son of defendant No.1 and for partition of the 'A' schedule property into two equal shares; to allot one share to him for possession of B, D and E schedules and lastly to dispossess the defendants from 'C' schedule property and to put the plaintiff in possession of the same and a relief of mesne profits.

Defendant Nos.1 and 2 are own brothers. The plaintiff was born to defendant No.2. As defendant No.1 had no children, he took the plaintiff in adoption when he was aged about six months. Defendant No.2 gave the plaintiff to defendant No.1 and his wife in the presence of the village elders, caste-men and other relatives. One late Krishna Murthy performed the rituals of adoption. Since the time of

adoption, the plaintiff was brought up by defendant No.1 and his wife.

The ancestral properties of defendant Nos.1 and 2 were not partitioned. They suggested that the plaintiff and his natural brothers namely defendant Nos.4 to 6 should divide the properties equally disregarding the adoption of the plaintiff by adoption of defendant No.1. Defendant No.1 also threatened the plaintiff to alienate the properties as he was not acceptable for the said proposals. As the plaintiff did not accept for the same, his natural parents turned hostile to him and at their instigation, defendant No.1 filed a suit against the plaintiff in OS.No.324 of 1981 for permanent injunction restraining him from interfering with the possession over the plaint 'C' schedule properties herein. He also obtained a temporary injunction against the plaintiff herein. As the plaintiff apprehended that defendant No.1 might alienate the property, he filed a suit OS.No.725 of 1981 against defendant No.1 and his wife for declaration of adoption and for permanent injunction in respect of the said lands. Subsequently, the plaintiff realized that he did not seek all reliefs that he should have been sought and as such by filing IA.No.308 of 1981 he withdrew the suit with a permission to file a fresh comprehensive suit. The said petition was allowed with the result the plaintiff filed the suit.

The plaint 'A' schedule properties are the ancestral properties of defendant Nos.1 and 2. The plaint 'B' schedule properties are the acquisitions made by defendant No.1 from the income he was getting from 'A' schedule properties and as such, it is also ancestral property in relation to defendant No.1 and the plaintiff. The plaint 'C' schedule properties originally belong to one G.Venkata Krishna Reddy, the elder brother of defendant No.1's wife and he gave the lands to his sister who is adoptive mother of the plaintiff. Defendant No.1 holds the said properties as a trustee for the benefit of his wife Venkatamma. The said Venkatamma died on 04.05.1983. Defendant No.1, being the trustee of 'C' schedule properties, on behalf of his wife, is bound to deliver the said lands to the plaintiff, who is the class-I heir of Venkatamma.

Originally plaintiff claimed $\frac{1}{2}$ share in the 'A' schedule property and $\frac{1}{2}$ share in 'B' schedule property. As defendant No.1/adoptive father died during the pendency of the suit and as the plaintiff is the sole successor of defendant No.1 (and as by then the wife of defendant No.1 also died), the plaintiff amended the plaint claiming $\frac{1}{2}$ share in the 'A' schedule properties and absolute rights over 'B' to 'E' schedule properties. It appears that defendant No.1 executed gift deeds in favour of defendant Nos.3 to 7 in respect of 'C' schedule properties. The plaintiff claims that defendant No.1 had no such right as they are the exclusive

properties of his wife Venkatamma and that the plaintiff is entitled to inherit the same on the death of Venkatamma and as such he claimed recovery of possession of 'C' schedule property. Hence, the suit.

Defendant No.1 filed a written statement contending that the description of the plaintiff itself is incorrect and he is the son of Ram Chandra Reddy but not Narasimha Reddy/defendant No.1. Defendant No.1 never adopted the plaintiff. The plaintiff was not brought up by defendant No.1 nor did he perform his marriage. The fact that both the defendants suggested the plaintiff and defendant Nos.4 to 6 to equally share the properties is not incorrect. However, it is stated that the plaintiff herein took different stands in OS.No.324 of 1981 and OS.No.725 of 1981. It is correct that 'A' schedule properties are the ancestral properties of defendant Nos.1 and 2, but is not correct that plaint 'B' schedule properties are the exclusive acquisitions of defendant No.1 from the benefits he accrued from 'A' schedule properties joint family properties. 'B' schedule property is also the joint family property of defendant Nos.1 and 2 and it is also liable to be equally partitioned among them. As regards the 'C' schedule properties, defendant No.1 states that G.Venkata Krishna Reddy gifted the said properties to him long back and that he is in possession of the same as absolute owner till he gifted the major portion of the same in favour of defendant No.4. Plaint 'D' schedule

properties are the exclusive properties of defendant No.1. The plaint 'E' schedule properties are not at all in existence. Defendant Nos.1 and 2 gifted the lands in Sy.No.150, 152, 194/B and 195/B measuring Ac.2.32 guntas in favour of Talla Rangamma (defendant No.3) and put her in possession of the same. Defendant No.1 also gifted the portions of plaint 'C' schedule properties to defendant Nos.5 and 6.

Defendant No.2 filed a memo adopting the written statement. After the plaint was amended consequent to the death of defendant No.1, defendant No.2 filed a written statement and also lodged counter-claim for partition of Items No.3 to 9 of 'A' schedule property and item No.2 of 'B' schedule property and Sy.No.1919 of Wardhannapet Village. He states that he did not give the plaintiff in adoption to defendant No.1. After the death of defendant No.1, defendant No.2 became the sole surviving coparcener and as such he is entitled to joint family properties which includes item No.3 to 9 of 'A' schedule property. As the plaint 'C' schedule property and item No.1 of 'D' schedule properties are the exclusive properties of defendant No.1 and as he alienated the same during his life time, the plaintiff cannot claim any interest in the said properties. The plaintiff is not entitled to share in 'A' schedule property nor any part of 'C' schedule of 'D' schedule properties.

Defendant No.4 filed a written statement supporting the alienations made by defendant No.1. defendant No.4 also denied the adoption set up by the plaintiff and consequently the claim set forth by the plaintiff to the item No.2 of the plaint 'A' schedule which is in possession of the plaintiff is also liable to be partitioned.

The plaintiff submitted a re-joinder to the counter-claim submitted by defendant No.1 contending that there was no jointness nor joint family relationship between defendant Nos.1 and 2 and as such defendant No.2 and his sons defendant Nos.4 to 6 have no right to partition of the share of defendant No.1. The gift made by defendant No.1 in favour of Kishore, son of plaintiff is valid.

On the basis of the pleadings, following issues were framed:

- (1) Whether the plaintiff is the adoptive son of defendant No.1?
- (2) Whether defendant No.1 is a trustee in respect of plaint 'C' schedule lands and is bound to deliver possession of the same to the plaintiff?
- (3) Whether plaint B, D and E schedule properties are the self acquisitions of defendant No.1 as the Kartha of his branch of his family?
- (4) Whether plaint 'E' schedule properties do not exist?
- (5) Whether the suit is not properly valued for the purpose of Court fee?

- (6) Whether the gifts allegedly made by defendant Nos.1 and 2 as stated in para 11 of the written statement are true and binding on the plaintiff?
- (7) Whether the suit is bad for non-joinder of necessary parties?
- (8) Whether the suit is not maintainable for want of particulars necessary to be given in a suit or partition.
- (9) To what relief?

For the plaintiff, PWs.1 to 5 were examined and Exs.A.1 to A.11 were marked. For the defendants, DWs.1 to 4 were examined and Exs.B.1 to B.24 were marked. In addition, Exs.C.1 and C.2 were marked by the Court. After trial and the examination of the witnesses mentioned above, the lower Court decreed the suit. The 'E' schedule property was not decreed as the existence of the same was not proved. The counter claim made by defendant No.2 was also dismissed. A declaration of adoption and the partition was granted. Questioning the same, the present appeal is filed by defendant Nos.2, 4, and 6.

This Court has heard Sri Bankatlal Mandhani, learned counsel for the appellants and Sri B.Narayana Reddy, Smt. SAV Ratnam, Sri B.Sudhakar Reddy and Neeraja Reddy, learned counsel for the respondents.

Both the counsels have also filed written synopsis to support their oral arguments.

Although, nine (9) issues were framed in the lower Court, the argument was essentially concentrated by both the learned counsels on the following points:

- (a) Whether the plaintiff is the adopted son of defendant No.1 and if in the circumstances, the adoption is proved?
- (b) Whether the plaintiff is entitled to a relief in respect of A, B, C, D schedule properties and if so, to what relief?

As the claim against 'E' schedule property was dismissed, the same was not really argued and similarly, the valuation of the suit-Issue No.5, gift deeds-Issue No.6, Non-joinder of the parties-issue Nos.7 and 8-description of the suit schedule properties etc., are not at all argued.

The first essential point that falls for decision and which was rightly argued by both the learned counsels is about the adoption out of the decision of this issue flow, the other point that arise for consideration. Points (a) and (b) mentioned above are the crux of the matter.

The plaintiff's essential case is that he is adopted son of defendant No.1 by name R.Narsimha Reddy. Defendant No.2 is the natural father of defendant No.1. Thus, defendant No.2 is uncle of the plaintiff.

As defendant No.1-R.Narsimha Reddy did not have any children, the case of the plaintiff is that he was adopted by

the said Narsimha Reddy when the plaintiff was a young infant.

Both defendant Nos.1 and 2 in this case namely adoptive father and the natural father filed written statements denying the adoption. In addition, the mother of the plaintiff who gave evidence as DW.2 also denied the adoption. In the peculiar facts and circumstances of the case when both the natural and adoptive parents have denied the factum of adoption, the plaintiff had to rely upon contemporaneous documents and other evidence over a period of time to prove his adoption. Even the lower Court proceeded to examine the 'other evidence' available to decide about the adoption.

Sri Mandhani, learned counsel for the appellant argued that there is absolutely no proof filed that an adoption did in fact taken place. He also pointed out that the essential ceremonies of giving and taking a child in adoption are not proved. He highlighted the fact that the natural mother of the plaintiff/DW.2 denied the adoption. In addition, he argued that the plea of declaration of adoption is barred by time and that the evidence in the case also indicates at a certain place that the mother alone gave the adoption. The learned counsel argued that a mother cannot give a child in adoption. These are the sum and

substance of the submission of the learned counsel for the appellant on the issue of adoption.

In reply thereto, learned counsel for the respondents on the other hand pointed out that in the peculiar facts and circumstances, when the natural and adoptive parents denied the adoption for their own reason, the only option left to the plaintiff was to rely upon contemporaneous documents and the behaviour of the connected parties over a period of time. His conclusion is that the documents filed in this case are enough to support the prayer for declaration of adoption.

As far as limitation is concerned, counsel argued that there is no pleading about the bar of limitation. It is his contention relying upon **Ramesh B.Desai v. Bipin Vadilal Mehta**¹ that the bar of limitation should be clearly pleaded and proved unless such a plea is raised; it is his contention that the case is not barred by time. In addition, he also pleads in the alternative, the time spent on earlier suit for declaration (which was withdrawn) is also to be computed/excluded. Therefore, he argues that the suit is not barred by time.

This Court notices the judgment of the Hon'ble Supreme Court of India in the case of **Banwari Lal v.**

¹ 2006 (5) SCC 638

Trilok Chand². This case was relied upon by the appellants themselves. In this case, the Hon'ble Supreme Court of India in para 5 held as follows:

“.....The finding in relation to the adoption is a finding of fact which we see no reason to interfere with in the circumstances of the case. The adoption is alleged to have taken place within about a decade immediately preceding the suit between the parties so that evidence of witnesses who were present at the actual adoption and had seen the 'giving and taking' would normally have been available. However, no attempt was made to produce any such witness nor to explain why no such witness was forthcoming. Different considerations may have prevailed if proof of adoption was required to be submitted to court after a very long period of its having taken place, which is not the case here.”
(Emphasis supplied)

In the case on hand, if the facts are examined, the suit is filed in 1984 by the plaintiff who was aged 34 years in 1984. He sets up adoption that occurred more than three decades prior to the filing of the suit. Therefore, in the light of this judgment of the Hon'ble Supreme Court of India, which is relied by the appellants themselves, this Court has to look into the circumstances and the available evidence as direct proof of the adoption is not available.

² AIR 1980 SC 419

The documents filed by the appellants and which have been highlighted in this Court are EXs.A.1 to A.6 and Ex.C.1 which is the additional written statement proposed to be filed by defendant No.2. Ex.A.1 is Board of Secondary Education Certificate issued on 25.06.1970 bearing No.8587, wherein it was mentioned that Madhav Reddy/plaintiff is the son of defendant No.1/adopted father. If this certificate shows that he passed the Higher Secondary Education in November, 1969. Therefore, the information reflected in the document must have been given earlier. Ex.A.2 is a wedding invitation card for the marriage of the plaintiff dated 19.05.1971. It clearly shows that he is the adopted son of Narsimha Reddy/defendant No.1. These two documents are long prior to the filing of the suit. Ex.A.3 is "Lagna Pathrika" of 1971, which is purportedly written by a priest in the home of the in-laws of the plaintiff. This also shows that Madhav Reddy is the adopted son of Narsimha Reddy/defendant No.1 and that the marriage is to be performed. Ex.A.4 is a voters list of the constituency of Wardhannapet Assembly, to which the parties belong to. Sl.No.524 is the relevant entry wherein Madhav Reddy is shown as the son of Narsimha Reddy. Ex.A.5 is the Gram Panchayat voters list of the year 1980. In this also, Madhav Reddy is shown as the son of Narsimha Reddy at Sl.No.873. Next important document relied upon is the land ceiling declaration filed by Narsimha Reddy/defendant No.1,

wherein he clearly shows that Madhav Reddy/the plaintiff is his son. The adoptive father himself filed a declaration before the land ceiling authorities showing the plaintiff as his son. Learned counsel for the respondents points out that this declaration-Ex.A.6 is filed on 15.07.1981 which is after Ex.A.8 reply notice dated 16.04.1981, wherein the factum of adoption has been denied. In addition, Ex.C.1 additional written statement that was proposed to be filed by defendant No.1 is also highlighted. In this additional written statement, defendant No.1 agrees to the adoption and resiles from his earlier stand. This document has been marked as Ex.C.1 through PW.1 in his further examination on 01.12.1995.

In the light of these documents, learned counsel for the respondents argued that the adoption is proved.

On the other hand, Sri Mandhani, learned counsel for the appellants, argued that a mother cannot give a child in adoption and relied on ***Muthuswami Thevar v. Chidambara Thevar***³. He also relied upon ***Thimmakku v. Bandlu Rangappa***⁴ to argue that entries in Birth Register and School Registers are not conclusive proof of the facts. To a similar effect, ***Banwari Lal's*** case (2 supra), also relied upon by the learned counsel. Counsel also relied upon

³ AIR 1949 PC 18

⁴ AIR 1977 Karnataka 115

Guntuka Rama Rao v. Vadaga Atcheyamma⁵ to argue that the legal requirement for an adoption is the giving and taking of a child in adoption. He also relied upon **M.T.W.Tenzing Namgyal v. Motilal Lakhotia**⁶ and **Ramchandra Sakharam Mahajan v. Damodar Trimbak Tanksale**⁷ to argue that the burden of proof is on the plaintiff in a case of this nature. Lastly, he relied upon **State of Bihar vs. Radha Krishna Singh**⁸ to argue that Ex.C.1 is a document prepared *Post litem motam* i.,e. after filing of the suit to argue that Ex.C.1 cannot be received in evidence as it is prepared after the suit is filed.

This Court after examining the factual and legal submissions made by both the learned counsels and particularly, the submissions on the documents filed by the learned counsel for the appellant; is of the opinion that there is no much substance in the submissions made. Even **Radha Krishna Singh's** case (8 supra) deals with statements, declarations or depositions made after the suit and the statements made before the suit. The Hon'ble Supreme Court clearly held that statements, declarations or depositions made after the litigation will not be admissible, because the element of bias and concoction cannot be

⁵ 1971 (2) AWR 60

⁶ (2003) 5 SCC 1

⁷ (2007) 6 SCC 737

⁸ (1983) 3 SCC 118

eliminated. Statements or declarations made before the litigation are considered reasonable under certain circumstances particularly where they relate to ancient rights of a public or general nature. The Hon'ble Supreme Court of India, however, held that admissibility of such declaration would be weakened, if they pertain to purely private rights.

In the case on hand, Ex.C.1 is a certificate issued by the Board of Secondary Education. Ex.A.4 is a voters list for the constituency and Ex.A.5 is the voters list for the Gram Panchayat. Name of Narsimha Reddy and the plaintiff/Madhav Reddy are clearly mentioned therein. All these documents are based upon declarations given to persons who are competent to receive the same namely, the Board of School Education or to the Officials of the Census Department/local body etc., who enrol the voters. At that point of time, particularly, Ex.A.1 of June, 1970 and Ex.A.4 January, 1970 there was no acrimony or love lost between the parties. There is no conceivable reason why a wrong entry or wrong data could have been provided. The voters list of 1980 for the Gram Panchayat again is of July, 1980 which supports the case of the plaintiff. Last but not the least is the declaration given by defendant No.1/R.Narsimha Reddy in Ex.A.6 dated 15.07.1981. In this declaration, he clearly states that the plaintiff is his son. This is a declaration that is given after the exchange of the lawyers

notices namely Exs.A.7 and Ex.A.8. Therefore, this Court finds no reason to totally disbelieve all these documents.

In the peculiar facts and circumstances of the case, when there is no direct evidence available to prove the adoption that took place more than three decades prior to the filing of the suit itself, the other documents have to be relied upon.

Defendant No.1 initially filed a written statement stating that the plaintiff was to given in adoption to him. Defendant No.2/natural father filed a written statement stating that the plaintiff was adopted by defendant No.1 and that the natural father/defendant No.2 did not give the child in adoption.

Ex.C.1 is an additional written statement dated 16.09.1985 which was proposed to be filed by defendant No.2/the natural father. He also filed an interlocutory application IA.No.1353 of 1985 to receive the additional statement. However, it transpires that he expired/died before the application was taken up for hearing. In the additional written statement, defendant No.1 admits that the plaintiff is his adopted son. He clearly states that as the plaintiff was not heeding his request, he started relying upon the defendant No.2. He also states that the written statements were filed at the behest of defendant No.2 and later the attitude of defendant Nos.1 to 6 underwent a

change. According to this Ex.C.1, after obtaining certain documents, the attitude of defendant No.1 and his sons began to change. Therefore, in view of this betrayal, as per Ex.C.1, the true facts are brought to the notice of this Court through the additional written statement (Ex.C.1).

This Court also notices that Ex.C.1 was marked in the chief-examination of PW.1 on 01.12.1995. Thereafter, the witness was cross-examined on a couple of occasions, but there is absolutely no cross-examination on the contents of Ex.C.1. No suggestion was also put about the contents of Ex.C.1. It was not even suggested to the witness that Ex.C.1 is prepared for the purpose of this suit; that it is created or that it does not bear the signature of defendant No.1 etc. In the absence of any cross-examination about the contents of Ex.C.1, this Court is of the opinion that no comment can be made about the said document. Similarly, there is no effective cross-examination about Ex.A.1 either. If the case of the appellant is that these documents are not trustworthy and cannot be relied upon, they should have cross-examined the witness about the contents of the documents. Even the case laws cited by the learned counsel for the appellant namely, **Thimmakku's** case (4 supra), there was a dispute about the legitimacy and paternity of the parties to the suit. In those circumstances, the Division Bench of Karnataka High court held that a mere entry in a school register cannot be accepted as proof of paternity and legitimacy.

In the case on hand, there is no such dispute. The question is whether after the passage of so much of time, this document can be taken as proof of the fact that Narsimha Reddy treated the plaintiff as his son. In addition to this, Ex.A.6 Land Ceiling declaration is also another document that very clearly supports the case of the plaintiff. This is a declaration filed before the competent statutory authorities. Therefore, this Court sees no reason to disbelieve these documents. Even the Hon'ble Supreme Court of India in a judgment reported in ***Kamla Rani v. Ram Lalit Rai @ Lalak Rai (Dead) through LRs.***⁹ held as follows:

“6. We cannot lose sight of the principle that though the factum of adoption and its validity has to be duly proved and formal ceremony of giving and taking is an essential ingredient for a valid adoption, long duration of time during which a person is treated as adopted cannot be ignored and by itself may in the circumstances carry a presumption in favour adoption.”

A cumulative reading of all these documents makes it clear that the peculiar facts and circumstances of the case and in line with ***Banwari Lal's*** case (2 supra), (relevant para of which extracted earlier), expecting direct evidence of the actual giving and taking in adoption etc., is not correct

⁹ (2018) 9 SCC 663

in view of the long period of time that is elapsed. Therefore, without placing exclusive relevance on any single document and by relying on a cumulative reading of all the documents put together, namely, Exs.A.1, A.2, A.4 to A.6 and Ex.C.1, this Court is of the opinion that the plaintiff has discharged the burden cast upon him of proving that he was adopted by defendant No.1-Narsimha Reddy. The adoption is borne out by a cumulative reading of these documents which are from the year 1970 onwards.

The other point raised on the question of the declaration regarding adoption is the plea of limitation. The present suit OS.No.79 of 1984 is barred by time according to the learned counsel, as the legal notice which gives rise to cause of action is Ex.A.8 dated 16.04.1981. The present suit according to Mr.Mandhani, is filed on 25.04.1984. Therefore, it is his contention that the suit is barred by time. Learned counsel points out that there was an earlier suit OS.No.725 of 1981 which was filed for certain reliefs and the same was withdrawn with a permission to file a fresh suit. Mr.Mandhani draws the attention of this Court to Order XXIII, Rule 2 of CPC., which is to the following effect:

“2. Limitation law not affected by first suit: - In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the

same manner as if the first suit had not been instituted.”

He therefore, argues that this suit barred by time.

On the other hand, learned counsel for the respondents argues that the time spent in prosecuting the earlier suit should be excluded. He relies upon Section 14(3) of the Limitation Act, 1963 and points out that as the first suit was likely to fail, he sought the permission of the Court below and withdrew the suit. OS.No.725 of 1981 is the earlier suit which was filed seeking a declaration that the plaintiff is an adopted son and seeking an injunction restraining defendant No.1 from interfering with his possession of the properties. After the matter was pending for some time, the plaintiff withdrew the suit by filing an application. The Court permitted the withdrawal of the suit by its order dated 27.03.1984 in IA.No.24 of 1984. As there was another suit OS.No.324 of 1981 filed by defendant No.1 herein, the plaintiff in this suit sought permission of the Court to withdraw OS.No.725 of 1981 since he wanted to file a comprehensive suit for a declaration and for consequential reliefs.

The Court below under Order XXIII of CPC., felt that sufficient grounds are there in seeking the leave of the Court to withdraw the suit. The Court granted the permission on 27.03.1984 and this suit was presented on 25.04.1984. The order seeking withdrawal of the suit has become final and no

revision etc., has been filed against the same. Therefore, this Court holds that the permission granted by the Court below to withdraw OS.No.725 of 1984 inures to the benefit of the respondents. Time spent in prosecuting the earlier suit has to be excluded. Therefore, this Court is of the opinion that the suit is not barred by time.

The finding of the Court below on the issue of adoption is therefore, confirmed by this Court. A reading of the entire evidence makes this Court to concur with the finding of the Court below on the question of adoption. The plaintiff has discharged his burden.

The other issue that survives for consideration is about the properties/division of the properties.

The learned counsel for the appellants without prejudice to his earlier submissions basing on the statements made by the witness argued that 'B' and 'D' schedules are not available for partition. According to him, the plaintiff admitted that the property shown in 'B' schedule and the 'D' schedule are the self acquisitions of defendant No.1. He drew the attention of the Court to the deposition of PW.1 on 09.07.1993.

In response thereto, learned counsel for the respondents stated that a reading of the entire evidence is necessary and that the so-called admissions are not absolute. He points out that in the plaint a specific prayer

has made for partition of the 'B' and 'D' schedule properties also. He also points out that immediately after the so-called admission about 'B' and 'D' schedule property, the witness further deposed that he is entitled to a half share in the 'A' schedule property and the entire items mentioned in schedules 'B' to 'D'. According to the learned counsel, after the death of his adopted father, the plaintiff amended the plaint schedules seeking half share in 'A' schedule and the entire 'B' to 'D' schedules. He also points out that in his cross-examination on 01.12.1995, the witness again deposed that 'B' schedule properties are acquired out of the income derived from 'A' and 'C' schedule properties.

This Court, therefore, finds sufficient strength in the submission made by the learned counsel that a reading of the entire deposition, the plaint as initially filed and the amended plaint makes it clear that the case of the plaintiff is that he is entitled to a share in 'B' and 'D' schedule properties also.

As far as the 'C' schedule property is concerned, the objection of the learned counsel for the appellant is that Ex.A.11 dated 16.04.1953 cannot be treated as a valid document as it is not registered in line with the Hon'ble Full Bench of this Court in **Gandevalla Jayaram Reddy v. Mekkala Padmavathamma**¹⁰. In the said document itself

¹⁰ 2001 (5) ALD 402 (FB)

it is written that after the death of defendant No.1, the property should be given to the adopted son Madhav Reddy. Venkatamma to whom the property was given for some time died in 1983. The Full Bench of this Court held that a document if it is a 'Pasupu Kumkuma' gift, requires registration it purports to declare whether in present or future, any right, title or interest in movable property. If the transaction of Pasupu Kumkuma is reduced to writing, the Full Bench held that it requires registration.

In the case on hand, Ex.A.11 records the facts that at the time of marriage of Venkatamma it was decided to give her some property as Pasupu Kumkuma. It is also recited that Venkatamma was already put in possession of the property. It also records the fact that Narsimha Reddy/defendant No.1, should handover the crop to her during her life time and that after the death of Venkatamma the property should be given to Madhav Reddy/the plaintiff. It is in essence a document that records an earlier transaction and so it does not require registration.

This Court notices that in para 21, Issue No.2 was discussed at length. The Court below noticed that even if Ex.A.11 is not taken into consideration, there is other evidence to show that 'C' schedule property came to the family of defendant No.1 from his in-laws. The Court relied

upon the written statement of defendant No.1 to come to this conclusion and also the oral evidence of PW.3.

In the light of this evidence and as the only argument advanced was about the lack of registration, this Court is of the opinion that even if Ex.A.11 was excluded from consideration, still the other evidence shows that the property was enjoyed by Venkatamma and after her death, the plaintiff was entitled to a share in the same.

Issue Nos.6, 7 and 8 are not argued or substantiated in the lower Court. Nothing was submitted about the same in this Court also. Therefore, this Court is not entering into that area of controversy.

This Court concurs with the findings of the lower Court on all the issues and consequently, the findings in para 35 on issue No.9 are reiterated by this Court once again.

Issue No.9:

(i) The plaintiff is declared as adopted son of defendant No.1. He is entitled to the entire share of defendant No.1.

(ii) Items 3 to 9 of 'A' schedule properties and all the properties of 'B' schedule and 'D' schedule properties are available for partition among defendant Nos.1 and 2. The plaintiff being the adopted son of the deceased defendant No.1 is entitled to a half share in the said properties.

(iii) the gift of item No.1 of 'D' schedule property by defendant No.1 in favour of defendant No.4 under Ex.B.5 is declared as void.

(iv) the properties shown in 'C' schedule are the stridhana properties of the adoptive mother of the plaintiff who pre-deceased defendant No.1 and the gifts of the said properties made by defendant No.1 in favour of defendant Nos.4 to 6 under Ex.B.1 are not valid and binding on the plaintiff and the said properties are to be shared equally by the plaintiff and defendant No.1 by reason of Section 15(1) (a) of Hindu Succession Act. As defendant No.1 died intestate during the pendency of the suit, this undivided share in the 'C' schedule properties will devolve on the plaintiff. The plaintiff is entitled to recover possession of 'C' schedule property from defendant Nos.4 to 6.

There are no arguments strictly about items 1 and 2 of 'A' schedule properties which are held to be not available for partition. Item 'E' schedule properties are also not proved to be in existence. Similarly, the counter claim was also dismissed. Therefore, this Court concurs with the finding of the Court below in para 36 as follows:

“The suit of the plaintiff is decreed and the plaintiff is declared as the adopted son of defendant No.1 and a preliminary decree for partition is passed allotting half share to the plaintiff, 1/8th share each to defendant Nos.2, 4, 5 and 6 in items 3 to 9 of 'A' schedule. In all the items of 'B' and 'D' schedules properties and a decree for recovery of possession in respect of 'C' schedule property is passed with a direction to defendant Nos.4 to 6 to put the plaintiff in possession thereof within three months from today. The prayer for partition of items 1 and 2 of 'a' schedule and 'E' schedule properties is dismissed.”

In the result, the appeal is dismissed. No order as to costs.

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

D.V.S.S.SOMAYAJULU, J

Date: 26.11.2018

KLP

