

THE HONOURABLE DR.JUSTICE G.RADHA RANI

I.A.No.2 of 2024

In

A.S.Nos.107, 109, 270, 274, 319, 320, 325 & 331 of 2022

COMMON ORDER:

This application is filed by the petitioner - respondent - defendant No.62 to recall and set aside the common judgment dated 17.08.2023 passed in A.S.No.109 of 2022 and batch and to hear the same by giving notice to all the other respondents in the appeals, who were defendants in the suit.

2. Heard Sri P.Raghuram, learned Senior Counsel representing Sri T.Ashok, learned counsel for the petitioner on record and Sri E.Madan Mohan Rao, learned Senior Counsel representing Sri Surendra Desai, learned counsel for the contesting respondents on record.

3. Learned Senior Counsel for the petitioner submitted that O.S.No.182 of 2006 was filed for partition of the suit schedule properties comprising of items 1 to 11 admeasuring Ac.174-22 guntas in Survey Nos.121, 122, 135, 136, 137 and 147 situated at Mankhal Village, Maheswaram Mandal, Rangareddy District within the limits of Tukkuguda Municipality and items 12 to 16 admeasuring Ac.60-36

guntas in Survey Nos.443, 446, 449, 490 and 491 situated at Timmajiguda, H/o.Mankhal Village, Maheswaram Mandal, Rangareddy District on the file of the X Additional District Judge (Fast Track Court), Rangareddy District. The suit was filed by the son of one of the four (04) joint owners of the suit schedule property. The sole plaintiff died and his legal representatives i.e. his wife and two sons were brought on record as plaintiffs 2 to 4. As per the plaint averments, the father of the original plaintiff namely Fakhruddin Khan and his three brothers late Mohd.Moinuddin Khan, late Mohd.Sharfuddin Khan and late Ahmed Mohiuddin Khan used to live jointly. They owned and possessed the suit schedule property jointly. The plaintiff and the defendants were joint owners, pattadars and possessors of all that agricultural land admeasuring Ac.235-18 guntas of Mankhal Village, Maheswaram Mandal, Rangareddy District and sought for partition of the said properties and to allot 28.57% (Ac.16-32 guntas) out of one-fourth share of the total suit schedule property by dividing the suit schedule property into four (04) equal shares, the plaintiff and defendants 2 to 14 be allotted one-fourth share, the defendant No.1 be allotted one-fourth share, the defendants 14 to 19 be allotted one-fourth share and the defendants 20 to 26 be allotted one-fourth share out of the suit schedule property.

3.1. He further submitted that out of the several defendants, only defendants 1, 3 and 27 filed their written statements and the other defendants adopted the said written statements. The 1st and 27th defendants, who were children of one of the four joint owners namely Mohd.Moinuddin Khan admitted in their written statement that items 1 to 11 of the suit schedule property were the joint properties of four brothers and liable to be partitioned among their legal heirs i.e. the plaintiffs and defendants in the suit. The defendant No.1 also stated that he and his brother had filed declarations under AP Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 in C.C.No.4183/1/75 and C.C.No.4182/1/75 declaring one-fourth share in items 1 to 11 of the suit schedule property and the entire extent of items 12 to 16 of the suit schedule property as their holdings and the said declarations were accepted and accordingly their holdings were determined by the Land Reforms Tribunal, Hyderabad South Division vide order dated 10.09.1976. The said defendants also admitted in their written statement that all the parties to the suit had jointly disposed of about 60 acres of land in the joint property and shared the consideration amount according to their shares. The said defendants also prayed to pass a preliminary decree for items 1 to 11 of the suit schedule property. However, they disputed the claim for partition of items 12 to 16 of the suit schedule property alleging that the same were self-acquired property of their ancestors and they were not liable to be partitioned. The defendant No.3 in his

written statement admitted the entire suit claim and prayed for decreeing the suit as filed for all the items of the suit schedule property.

3.2. Learned Senior Counsel for the petitioner further submitted that as all the parties to the suit have admitted that items 1 to 11 of the suit schedule property were joint property of four brothers, the trial court ought to have passed a preliminary decree for the admitted items 1 to 11 of the suit schedule property. But, unfortunately no such preliminary decree was passed for more than 16 years. During the period of 16 years, all the parties to the suit were acting as joint owners of the suit schedule property and some of them had disposed of their respective shares of land in the suit schedule property by executing registered sale deeds in favor of third parties. The defendants 1 and 27 expired after filing written statements. As such, their legal representatives were brought on record. The LR's of defendant No.1 were brought on record as defendants 52 to 59 and the LR's of defendant No.27 were brought on record as defendants 41 to 47. The LR's of defendants 1 and 27 had also not disputed or denied the admissions made by their predecessors that items 1 to 11 of the suit schedule property were the joint properties of four brothers and the same were liable to be partitioned among the parties to the suit. Infact, they did not file any additional written statement. On the other hand, the LR's of defendant No.27 filed a memo stating that they had adopted

the written statement of defendant No.27. The defendants 28 to 32 also filed a memo stating that they had adopted the written statement filed by defendant No.27.

3.3. Learned Senior Counsel for the petitioner further stated that after lapse of more than 16 years, the LRs of defendant No.27 i.e. the defendants 41, 43 to 47 along with defendants 28 to 32, who adopted the written statement of defendant No.27 filed I.A.No.218 of 2021 for rejection of plaint under Order VII Rule 11 of CPC. In the same manner, the LRs of defendant No.1 i.e. the defendants 52 to 59 also filed I.A.No.534 of 2021 for rejection of plaint under Order VII Rule 11 of CPC in O.S.No.182 of 2006. In the said I.A.s. they had impleaded only the plaintiffs as respondents by making an endorsement that other defendants in the suit were not necessary parties to the said I.As. The said I.A.s. were filed with allegations and averments contrary to the admissions made by their predecessors stating that all the items of suit schedule property including items 1 to 11 were the self-acquired properties of their predecessors and the other parties to the suit were not entitled for partition of the same and there was no concept of joint family in Mohammedan Law, as such, the plaintiffs had no cause of action and the suit was barred by law. The trial court numbered the said I.A.s. without raising any objection as to their maintainability for not impleading the other defendants in the suit as respondents in the said I.As. Thus, the trial court after hearing only the

plaintiffs allowed both the I.As by separate orders dated 15.02.2022 and rejected the plaint holding that there was no cause of action for filing the suit and the suit was barred by law. The said orders were passed without referring to the plaint averments, but entirely basing on the allegations and averments made in the said two I.A.s. The suit and I.A.s were posted to different dates. The suit was posted on 04.03.2022, whereas the I.A.s. were allowed on 15.02.2022. Therefore, the trial court *suo-moto* advanced (preponed) the hearing date of the suit to 15.02.2022 from 04.03.2022 and passed the order terminating the suit proceedings as per the orders passed in I.A.Nos.218 and 534 of 2021. Thus, the trial court rejected the plaint and terminated the suit proceedings without giving notice or opportunity of hearing to the other defendants in the suit, inspite of the fact, that the suit being a partition suit, all the parties have the status of plaintiffs. In the said circumstances, the plaintiffs and some of the defendants who came to know about the said order filed the first appeals questioning the orders passed in the two I.A.s. In the batch of appeals, all the defendants in the suit including the petitioner herein were arrayed as respondents. All the appellants filed interlocutory applications in their appeal for grant of interim orders. At that stage, this Court heard all the first appeals by treating them as part-heard and dismissed all the first appeals by common judgment dated 17.08.2023 confirming the orders passed by the trial court, even before service of notice to the other respondents including the petitioner herein.

3.4. Learned Senior Counsel for the petitioner further submitted that the petitioner filed the present I.A for recalling the said common judgment dated 17.08.2023, as it was passed without serving him any notice in the first appeals, as required under Order XLI Rule 14 of CPC. The other ground on which it was filed was violation of principles of natural justice by this Court in passing the above-mentioned common judgment dated 17.08.2023.

4. Learned Senior Counsel for the respondent on the other hand submitted that the petitioners in the two I.As.218 and 534 of 2021 (hereinafter called as contesting respondents) opposed the recall petition filed by the petitioner stating that the same was not maintainable. The trial court after considering the plaint pleadings rejected the plaint holding that the suit was barred by law, as there was no joint family concept under Mohammedan Law. Aggrieved by the said rejection of the plaint orders, the plaintiffs had filed A.S.No.107 of 2022 against I.A.No.218 of 2021 and A.S.No.109 of 2022 against I.A.No.534 of 2021. Few other defendants who were also not parties to the rejection of the plaint, feeling aggrieved, filed A.S.Nos.270, 274, 319, 320, 325 and 331 of 2022 against the orders passed in I.A.Nos.218 and 534 of 2021, wherein the plaint was rejected. The plaintiffs filed A.S.No.107 and 109 of 2022 on merits contending that the order passed rejecting the plaint was unsustainable in law. The defendants filed the appeal suits not only

on merits but also on the ground that no notice was served on them in rejection of the plaint. The Court answered both the grounds on merits and procedural issue of notice to defendants and dismissed all the eight (08) appeal suits filed by the plaintiffs and defendants. The issue of notice to defendants was answered by the single Judge of this Court in the common judgment. If any party was aggrieved with such finding of the learned single Judge, they could raise the issue before the Hon'ble Apex Court, but not before the very same Court. The defendants of a suit would be treated on par with the plaintiffs and would be given notice in any proceeding only when the suit was maintainable in law. But the suit filed vide O.S.No.182 of 2006 was not maintainable in law, as being barred under Mohammedan Law for having no cause of action. The recall petitioner could not demand notice to be given to him in a suit, which was not maintainable under law. The petitioner was not precluded to file a separate partition suit if he had a sustainable share in the property. The recall petitioner who was defendant No.62 was not having a sustainable grievance. The petitioner filed the same recall petition in all the eight (08) appeal suits. The recall petition was filed to unsettle the settled case. As the Appeal Suit was finally settled through the final judgment on merits, now the petitioner was trying to get the same recalled to have some bargain with the contesting respondents for withdrawing the same. The recall petitioner was contending that he was not given notice in the I.A filed for rejection

of plaint and also in the Appeal Suit. Without challenging the rejection of the plaint order, the recall petitioner could not challenge the consequential Appeal Suit judgment passed in A.S.No.325 of 2022. It was fundamentally wrong and unsustainable in law. The recall of an order was permissible only when the order was obtained by a party by playing fraud on the Court. If any fraud was played on the party, the party has to invoke the provisions of law to get justice for him. But, that was not the case herein. No fraud was played by contesting respondents in obtaining the impugned judgment in the Appeal Suit. The said order was passed by the Court on merits only after hearing the prolonged submissions of both the contesting parties. When there was no allegation of fraud on Court, the recall petition was not maintainable. He further contended that the recall petition was filed under Section 151 of CPC. When there was an alternative remedy, Section 151 of CPC could not be invoked. The recall petitioner had the remedy of challenging the rejection of plaint or if he was aggrieved with the judgment of A.S.No.325 of 2022, the recall petitioner had a remedy of filing SLP before the Hon'ble Apex Court. In the above circumstances, the recall petition was not maintainable in law. As such, there was no need to look into the facts of the original suit. Even the original suit was not maintainable for lack of joint family concept under Mohammedan Law. He further submitted that the plaintiff in O.S.No.182 of 2006 filed SLP before the Hon'ble Apex Court of India vide

SLP.No.18659 of 2024 against the common judgment in A.S.No.107 of 2022 and batch. The Hon'ble Apex Court dismissed the said SLP on 17.08.2023 and prayed to dismiss the recall petitions.

5. On a perusal of record, I.A.No.218 of 2021 was filed by defendants 1, 27 to 32, 41 and 43 to 47 seeking rejection of plaint showing the plaintiffs 1 to 4 as respondents and the other defendants as not necessary parties. I.A.No.534 of 2021 was filed by defendants 52 to 59 seeking rejection of plaint Order VII Rule 11 under Sub-clauses (1), (4) and (8) of CPC showing the plaintiffs 1 to 4 as respondents 1 to 4 and showing the other defendants as not necessary parties to the said I.A. A.S.Nos.107 and 109 of 2022 are filed by the plaintiffs 1 to 4 against the orders in I.A.Nos.218 and 534 of 2021 only against the defendants who filed the said I.A.s, showing the other defendants as not necessary parties stating that as the defendants 1 to 26, 33 to 40, 42, 48, 50 to 59 and 60 to 63 are shown as not necessary parties to the impugned order in I.A.No.218 of 2021, hence they are also not necessary parties to the above appeal. In A.S.No.109 of 2022, the plaintiffs had stated that the respondents / defendants 1 to 51 and 60 to 69 are not necessary parties to the impugned order in I.A.No.534 of 2021, hence, they are also not necessary parties to the appeal. A.S.Nos.270 and 274 of 2022 were filed by defendants 10 and 11 and in the said appeals also it was stated that respondents 17

to 71 / defendants 1 to 26, 33 to 40, 42 and 48 to 69 are not made as parties to the impugned order in I.A., hence, they are also not necessary parties to the appeal and I.A. A.S.No.319 of 2022 is filed by the defendant No.4 against the order in I.A.No.534 of 2021, wherein the defendants 60 to 69 were added as per the orders in I.A.No.94 of 2020 dated 06.04.2021. A.S.No.320 of 2022 is filed by defendant No.4 against the order in I.A.No.218 of 2021, wherein also the defendants 60 to 69 were added as per the orders in I.A.No.94 of 2020 dated 06.04.2021. The present petitioner was shown as defendant No.65 in both the above appeals. A.S.No.325 of 2022 is filed by defendants 39 and 40 against the order passed in I.A.No.534 of 2021, wherein the present petitioner was shown as defendant No.64. A.S.No.331 of 2022 is filed by the defendants 39 and 40 against the order passed in I.A.No.218 of 2021, wherein the present petitioner was shown as defendant No.65.

6. Thus, the petitioner was impleaded as a party by some of the defendants and was not added by the plaintiffs and some other defendants, who preferred the above appeals. The contention of the learned Senior Counsel for the petitioners was that without showing the petitioner as a necessary party, the I.A.s were filed by some of the defendants, who were the legal heirs of one of the joint owners and the said I.A.s were allowed rejecting the plaint and the suit was also dismissed without giving any opportunity to the present petitioner herein to contest the matter.

No notice was given to the petitioner even in the cases wherein he was added as a party respondent, the appeals were decided by this Court, even before issuing any notice to the respondents, which was a procedural lapse as well as violation of principles of natural justice, as such, the common judgment passed by this Court in the batch appeals is liable to be recalled by setting aside the same and need to be heard after giving notice to all the respondents in the appeals, who were defendants in the suit. Hefurther contended that the suit was filed for partition and in a partition suit, all the parties should be deemed to be the plaintiffs. All the defendants were also aggrieved by the orders of rejection of plaint and therefore they were also necessary parties to the appeals. But this Court heard and disposed of the appeals without issuing notice to all those affected parties including the petitioner and relied upon the judgments of the Hon'ble Apex Court in **Pharez Johan Abraham (Dead) by Legal representatives v. Arul Jothi Sivasubramaniam.K& Others**¹, wherein it was held that:

“In a suit for partition, every co-sharer would have a right to claim the share/partition. Therefore, when the suit for partition was dismissed, original defendant nos. 3 to 5 can be said to be aggrieved by the judgment and decree passed by the learned trial court dismissing the suit for partition”

¹(2020) 13 SCC 711

7. Learned Senior Counsel for the petitioner also relied upon the judgment of the Hon'ble Apex Court in **Azgar Barid (Dead) by LRs. v. Mazambi @ Pyarembi²**, wherein while considering the objection of the appellant that since plaintiffs 4 to 8, whose claim was denied by the trial court and who had not challenged the same by way of filing appeal, were held to be not entitled to relief in the second appeal, the Hon'ble Apex Court while referring to its earlier judgment in **Bhagwan Swaroop & Others v. Mool Chand and Others** [(1983) 2 SCC 132] and **Dr.P.NallaThampy Thera v. B.L.Shanker& Others** [(1984) Supplementary SCC 631] held that in a suit for partition, the position of the plaintiff and the defendant can be interchangeable. Each party adopts the same position with the other parties. So long as the suit is pending, a defendant can ask the Court to transpose him as a plaintiff and a plaintiff can ask for being transposed as a defendant.

8. While passing the order in the common judgment, this Court while answering the contention about not adding all the defendants to the appeal as respondents, held that:

“Some of the defendants were not made as parties to the application could not be entertained because all the contesting parties were represented by their

²(2022) 5 SCC 334

counsels. While the suit was pending, the application for rejection was filed by some of the defendants. Such applications were long pending and during the interregnum period of filing and disposal, there were many adjournments. If the concerned defendants were really interested in opposing the said applications, they could have resisted the applications by taking appropriate steps. Further, they have also approached this Court with C.R.P.Nos.1050, 1051, 1675 and 1676 of 2022 and such petitions were dismissed by this Court holding that they have failed to file applications as interveners. In spite of such orders, they did not choose to intervene and invited orders. Now, they cannot challenge the impugned orders passing on the same ground that they were not made parties. Therefore, such contention cannot be sustained.”

9. The contention of the learned Senior Counsel for the petitioner was that the reasoning given by this Court was improper, as the parties or their counsel were not expected to maintain constant whistle and watch over the proceedings which were continued for more than a decade particularly when all the parties admitted the suit claim for partition for items 1 to 11 of the suit schedule properties. The reasoning given for not showing the other defendants as necessary parties was deplorable, if this reasoning was accepted, no notice need to be given in any I.A. to any other defendants in the suit. The petitioner was not a party to the CRP or to

the orders passed therein, which were mentioned in the above para, as such, the same were not applicable or binding upon him. He further contended that the said CRPs were dismissed not on merits, but on the ground of availability of an alternate remedy of appeal. The contention of the learned Senior Counsel for the contesting respondents that, if any party was aggrieved by the finding of the learned Single Judge, they could raise the issue only before the Hon'ble Apex Court and not before this Court, is misconceived, as the First Appeals were decided without giving the petitioner notice or opportunity of hearing. As it was a settled law, that all the parties in a partition suit shall be deemed to be the plaintiffs, the disposal of the First Appeals without issuing notice to all the defendants including the petitioner herein and without giving an opportunity of hearing to all the parties, was an error apparent on the face of the common judgment and therefore the same was liable to be recalled for being passed without hearing the affected parties. The contention of the learned Senior Counsel for the contesting respondents that the defendants would be given notice of the proceedings only when the suit was maintainable in law, was misconceived, as the suit is maintainable or not has to be decided after hearing all the affected parties i.e. all the parties to the appeals including the petitioner herein by giving them notice.

10. Learned Senior Counsel for the petitioner further contended that the contention of the learned Senior Counsel for the contesting respondents that the petitioner was not precluded from filing a separate partition suit under Order VII Rule 13 of CPC if he had a sustainable share in the property amounts to approbate and reprobate. On the one hand, the contesting respondents were contending that the suit was not maintainable in law as barred under Mohammedan Law and on the other hand stating that the petitioner was not precluded from filing a separate partition suit was contradictory.

11. As per Rule 58 of Civil Rules of Practice, notice of an interlocutory application shall be given to the other parties to the suit or their advocate not less than three (03) days before the day appointed for hearing of the application. Therefore, the contesting respondents ought to have given notice of I.A.Nos.218 and 534 of 2021 to all the defendants in the suit. They have no right to make an endorsement that other defendants are not necessary parties to the said I.A.s. unless the trial court orders otherwise. The contesting respondents ought to have obtained orders from the trial court for excluding the defendants in the suit as respondents in the said I.A.s, but they cannot on their own take such decision and make an endorsement to the said I.A.s that the other defendants are not necessary parties to the I.A.s.

12. This Court also dismissed the First Appeals without serving notice to all the respondents as required under Order XLI Rule 14 of CPC. The contention of the learned Senior Counsel for the contesting respondents that recall petition was not maintainable under Section 151 of CPC is misconceived, as the common judgment was passed without giving notice and an opportunity of hearing to the affected parties. The only remedy available to the petitioner is filing of a petition under Section 151 of CPC.

13. The Hon'ble Apex Court in **Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Limited and Another**³, held that:

“19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the

³(2005) 13 SCC 777

Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In **Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and**

others [1980 (Supplementary) SCC 420], it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.

14. Passing an order without giving notice or opportunity of hearing to the effecting parties is not only in violation of Order XLI Rule 14 of CPC, but also in violation of principles of natural justice and fair play. For the said reason also, the same is liable to be recalled.

15. In **Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others**⁴, the Hon'ble Apex Court held that:

“Furthermore, different considerations arise on review. The expression 'review' is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in **Narshi Thakershi's** case [AIR 1970 SC 1273] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the

⁴1980 (Supplementary) SCC 420

inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

16. In **DodlaChinnabbai Reddy v. Dodla Kumara Swami Reddy and others**⁵, the Division Bench of the High Court of Andhra Pradesh while considering the rights of a party, who remained ex-parte in the suit, held that:

“Another important aspect to be noted is, whether simply because a party remained ex parte in the suit, could it be said that all his rights and claims in the suit are wiped of. Further the concept of setting a party to the suit ex parte is unknown to CPC. The expression "setting ex parte" only denotes that all further proceedings by the Court shall proceed ex parte. It is also an established principle that the party to the suit who was set ex parte can always participate in subsequent proceedings in the suit at any time including the appeal which is consequential or continuation of the suit proceedings. In other words, if a party remains ex parte, it does not mean that all his rights and claims are totally erased or all the doors for him are totally shut once for all.

The plaintiff has himself impleaded defendants 4 and 5 in the appeal, and no doubt they remained ex parte. But as discussed above, that will not disentitle

⁵2002 (6) ALD 415 (DB)

them to participate in future proceedings that is to say in an appeal, which is a continuation of the suit. If the final decision is given without their presence and if subsequently they come and agitate the issue in separate proceedings, taking the ground that they were not impleaded in the appeal and that they have no notice, then that would result in giving divergent decisions, which the Supreme Court had deprecated.

After the amendment of 1976, it is not open to the appellate Court to dispense with the notice so far as hearing of the main appeal is concerned, in respect of the defendants who remained ex parte in the trial Court. Incidental proceedings i.e., interlocutory applications are obviously exempted from the above rule.

The very basis for the claim of the plaintiff was that there was a partition and consequent upon the same, the defendants 4 and 5 relinquished their right. This implies that defendants 4 and 5 admittedly had some substantive interest in the suit schedule property but was allegedly relinquished. If there was any such relinquishment, it further implies that the partition of the property could have been in a different way other than the way presented by the parties to the suit. Therefore, admittedly defendants 4 and 5 are necessary parties. It has to be further noted that defendants 4 and 5 had denied the above plaint averment that they relinquished their right in the property. However as already noticed earlier

they did not contest the suit and remained ex parte. Therefore from the very plaint pleadings and the written statements filed by defendants 4 and 5, it is clear that they are necessary parties.

That being the case, what are the rights of such defendants having denied the plaint averments and remained ex parte in the further proceedings in the suit and in the appeal as well, which is a continuation of suit has already been discussed above. The rights of the parties to the suit are already carved out under Order 41, Rules, 14, 22 and 33 of C.P.C. Therefore, the only irresistible conclusion that can be arrived at is that defendants 4 and 5 in the suit are absolutely necessary parties in the appeal. In other words, in a case like partition or rights of the partners in a suit for dissolution of partnership and for rendition of accounts or like nature, are to be decided in the presence of or after due notice to all the necessary parties.”

17. In **Johra and others v. State of Haryana and Others**⁶, the Hon’ble Apex Court held that:

“The principles of natural justice demand that party to proceedings must be heard before passing any order. No Court can pass order against party without hearing and giving such party opportunity of hearing. Party to any proceeding has legitimate

⁶(2019) 2 SCC 324

right to raise objection. He should be at least heard and his views / stand taken into consideration. Hence, order passed by the High Court set aside. Without deciding merits, matter remanded to the High Court for reconsideration with direction to dispose of matter within six months.”

18. In **Gagan Banga and another v. The State of West Bengal and Others**⁷, the Hon’ble Apex Court, held that:

“It is a settled principle that no adverse order should be passed against a party without hearing it. This is the fundamental principle of natural justice and it is a basic cannon of jurisprudence (see **Asit Kumar Kar v. State of Bengal and Others** [2009) 2 SCC 703])”

19. The contention of the learned Senior Counsel for the contesting respondents was that the petitioner was having knowledge about the order passed by the trial court as well as the common judgment passed by this Court, as such, he could not complain about non-service of notice *sans* merit, because in civil proceedings knowledge of the party cannot be a ground for dispensing with service of notice to the said party.

⁷Writ Petition (Criminal) No.166 of 2023, dated 23.09.2024

20. The Hon'ble Apex Court in **Chintapalli Agency Taluk Arrack Sales Cooperative Society Limited and Others v. Secretary (Food and Agriculture), Government of Andhra Pradesh and Others**⁸, held that:

“Minimum requirement of the principles of natural justice requires that the party affected should have a written notice of the proceedings preferably by furnishing a copy of the petition and the said minimal requirement can on no account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to the said party.

21. Therefore, the contention of the learned Senior Counsel for the contesting respondents that the petitioner was having knowledge of the order, as such no notice was required to be served in the appeals, is totally unsustainable and incorrect.

22. The contention of the learned Senior Counsel for the contesting respondents that no fraud has been played by the contesting respondents in obtaining the orders passed in the I.A.s and the common judgment passed by this Court is also incorrect, as the contesting respondents made an endorsement in the I.A.s that the other defendants are not necessary parties to the said I.A.s.

⁸(1977) 4 SCC 337

23. Learned Senior Counsel for the petitioner contended that the action of the contesting respondents in turning around after availing benefit of declaring 1/4th share in items 1 to 11 of the suit schedule properties as their holdings in the declarations filed by them under AP Land Reforms (Ceiling on Agriculture Holdings) Act, 1973 and now claiming the entire land as their own land would amount to fraud on Public Administration. He also further submitted that the contesting respondents induced third parties to purchase the lands in items 1 to 11 of the suit schedule properties by representing that the same were joint properties of four (04) brothers, in which the legal heirs of each brother's branch was having 1/4th share and as such they were entitled to sell the land in their respective 1/4th share amounts to playing fraud not only on the parties to the suit but also on various innocent third parties and Public Administration. Having accepted in the written statement filed in O.S.No.182 of 2006 that items 1 to 11 of the suit schedule properties are the joint properties of four brothers and their legal representatives are entitled to 1/4th share each in the said land and a preliminary decree should be passed to that extent, filing I.A.s.218 and 534 of 2021 contending that the entire land is the self-acquired property of defendant No.1 and his brother not only would amount to playing fraud, but were also estopped from filing the said I.As. As such, the allegation that the recall petitions were not maintainable, as there was no allegation of fraud, was incorrect.

24. Considering merit in the contentions of the learned counsel for the petitioner about the procedural irregularity in disposing of the batch appeals without issuing notice to all the respondents which goes to the root of the matter, as the petitioner is also an effected party, it is considered fit to allow the petition.

25. The plaintiffs in O.S.No.182 of 2006 filing SLP before the Hon'ble Apex Court and the dismissal of SLP by the Hon'ble Apex Court on 17.08.2023 would not preclude filing of the review petition by the petitioner herein, as the SLP was filed by the plaintiffs, but not by the petitioner herein. It was also settled by the Hon'ble Apex Court in **Kunhayammed and Others v. State of Kerala and another**⁹ that the dismissal of SLP does not amount to confirmation of order passed by the High Court. A recall / review petition is still maintainable in the High Court even after the dismissal of the SLP.

26. For all the aforesaid reasons, it is considered fit to allow the recall petitions filed by the petitioner by recalling and setting aside the common judgment passed in A.S.No.109 of 2022 & batch dated 17.08.2023 and to hear the said appeals afresh.

⁹ (2000) 6 SCC 359

27. In the result, I.A.No.2 of 2024 in all these appeals is allowed recalling and setting aside the common judgment dated 17.08.2023 passed in A.S.No.109 of 2022 and batch.

Dr. G.RADHA RANI, J

Date: 07th November, 2024
Nsk.