THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

SECOND APPEAL No.835 of 2008

JUDGMENT:

This Second Appeal is filed against the Judgment and Decree dated 08.02.2008 in A.S.No.15 of 2005 passed by the learned Senior Civil Judge, Vikarabad, in which the Judgment and decree dated 11.08.2005 in O.S.No.21 of 1997 passed by the learned Junior Civil Judge, Chevella was confirmed.

2. Appellants/plaintiffs are daughters of respondent herein. They filed a suit in O.S.No.21 of 1997 against the respondent/defendant for partition and separate possession. The plaintiff No.1 examined herself as P.W.1 and also got examined P.Ws.2 and 3 on behalf of the plaintiffs and marked Exs.A1 to A3. The defendant examined himself as D.W.1 and also got examined D.W.2 on his behalf and marked Exs.B1 and B2. The trial Court after considering the entire evidence on record, dismissed the suit and the same was also confirmed by the first appellate Court. Aggrieved by the said Judgment, appellants/plaintiffs preferred the present second appeal.

3. Appellants/plaintiffs raised the following substantial questions of law:

> *"I. Whether the courts below has right in view of the admission of the mother of the plaintiffs during their minority their claim to share in the joint family property is lost as a coparcener as per the amendment Act 39/2005 read with State Amended Act of 1986.*
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> *II. Whether in view of the amendment to Section 6 of the Section 29 of the Hindu Succession Act, 1956 by Act 39/2005, the distinction of married and unmarried as per Hindu Succession (A.P Amendment) Act, 1986 stands impliedly repealed.*
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> *III. Whether the finding of court below rejecting the share to daughter inspite of existence of the joint family properties described in the plaint liable for partition at the instance of the daughter coparceners as per amended Act 39/2005 as the devolution of interest in the coparcener property is on the basis of the survivorship.*
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> *IV. Whether the admission by the P.W.1 mother of the plaintiffs that she received money for maintenance of daughter will invalidate the right for the partition properties as per the amendment Act 39/2005 as no partition has been pleaded by the respondent till the filing of the suit.*
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> *V. Whether the daughter/coparcener of Hindu mitakshara family shall be deemed to have share in the property that would be allotted to her on the basis of survivorship."*

4. The plaintiffs in the suit are the daughters of the defendant, but presently they are residing in their maternal uncle's house at Parveda village along with their mother. They stated that defendant necked out their mother from his house due to some family disputes. The defendant is having ancestral lands in Sy.Nos.21/U/E, 22/A, 40/A, 103/1A, 103/2/A/E and 48/A admeasuring Ac.0 – 29gts, Ac.0 – 07 gts, Ac.0 – 13 gts, Acs.2 – 02 gts, Ac.0 – 03 gts and Ac.0 – 20 gts respectively, totally admeasuring Acs.3 – 34 gts situated at Kesaram Village, Chevella Mandal, Ranga Reddy District. The defendant as

pattadar succeeded the suit property after the death of his father. Plaintiffs and defendant are having joint ownership over the ancestral properties. Due to family disputes, their mother T.Anasuya left the house of the defendant during their childhood and residing separately in their maternal uncle's home and they were brought up by their mother. Though the defendant was the natural father, he did not look after them. Plaintiffs along with their maternal uncle went to the defendant and requested him to help for the marriage of the plaintiff No.1, but he refused. Even their mother also requested him, but he abused them and warned them with dire consequences, as such they filed the suit for partition and separate possession and requested the Court to grant 1/3rd share to each of them.

5. In the written statement filed by the father of the plaintiffs, he denied all the material allegations and stated that after the birth of plaintiff No.2, the mother of the plaintiffs left his company and residing at her parent's house along with plaintiffs. He also requested her several times to join him, but she refused. Subsequently, a Panchayat was held and in the said Panchayat elders decided to give Rs.30,000/- to the mother of the plaintiffs towards their maintenance and total settlement regarding the properties and accordingly he paid the said

amount by disposing of some of the suit lands. After receiving the amount, the mother of the plaintiffs purchased lands in Sy.No.114/AA admeasuring four acres and in Sy.No.114/1 admeasuring Ac.1 – 37 gts, situated at Parveda chenchalama village of Shankerpally and she also constructed a house with the monetary assistance of the defendant and the plaintiffs along with their mother living in the said house and also getting income from the agricultural land. At the instigation of the maternal uncle of the plaintiffs, the mother of the plaintiffs filed a complaint before the Mahila Dakshitha Samithi stating that defendant harassed her for want of more dowry and the said case was referred to Police, Chevella and after enquiry they dropped further proceedings, as such the mother of the plaintiffs and the maternal uncle of plaintiffs falsely filed the suit against him and thus requested the Court to dismiss the same.

6. The parties herein are referred as plaintiffs and defendant as arrayed before the trial Court for the sake of convenience.

7. Plaintiff No.1 in her evidence stated that plaintiff No.2 is her younger sister and defendant is their father. They are living in Parveda village from her childhood i.e., for the past 20

years. About 6 to 7 years ago she along with her sister and mother approached the defendant for deciding about their future, but he became anger and stated that he is not responsible for their maintenance and marriages and he did not allow them to enter into his house. After going to the Parveda village, in consultation with the elders, she along with her sister filed the suit for partition as the suit lands are ancestral lands. As there are no male children to her father, she along with her sister are successors and coparceners of the joint family. She filed pahanies of the said land under Exs.A1 to A3. It was suggested to her that defendant paid Rs.30,000/- to their mother and she purchased the land in their name and also constructed a house, but she denied the same. She stated that presently she is residing at her maternal uncle's house.

8. In the Cross-examination she stated that she did not remember the suit Survey numbers as she has not seen the suit lands. The mother of her father died about 15 years prior to filing of the suit and her father was not married again. She along with her mother and sister went to the office of the M.R.O and obtained the documents, she did not know the boundaries of the suit lands and the names of the adjacent land owners. She did not know about the Panchayat conducted before the

elders and payment of Rs.30,000/- by his father to her mother towards permanent settlement. She admitted regarding filing of complaint before Mahila Dakshitha Samithi. She stated that her mother's name is Anasuyamma, her father's name is Mallaiah, her maternal surname is Yenkethala and maternal uncle's name is Anjaiah. She also stated that her mother was not having any employment and she has no source of income. She further stated that her maternal uncle Anjaiah purchased lands in Sy.No.114/1 admeasuring Ac.1 – 37 gts, Sy.No.114/AA admeasuring 4 acres in the name of her mother. She also stated that the name of her mother was wrongly written and the name of the wife of her maternal uncle Anjaiah is also Anasuya, but they had not get it rectified.

9. P.W.2 is the mother of P.W.1. She stated that about 11 or 12 years back, she left the company of the defendant and from then onwards she was residing in their parent's house at Parveda village along with her daughters by doing some Cooli work. She along with her daughters demanded the defendant for partition of the ancestral properties admeasuring 4 acres situated at Kesaram village, but the defendant refused and also trying to dispose of the same. She stated that defendant never paid Rs.30,000/- towards her maintenance and she has not

purchased any properties with the said amount. In the Cross-examination, she stated that her husband name is Mallaiah and her parent's surname is 'Enkathala'. She also stated that when she left her husband, plaintiff No.1 was aged about 3 years and plaintiff No.2 was aged about 1½ year. She clearly stated that no Panchayat was held before the elders. It was suggested to her that she purchased a land to an extent of Acs.5 – 37 gts, land in Sy.No.114/1 admeasuring Ac.1 – 37 gts, land in Sy.No.114/A admeasuring 4 acres, but she denied it. It was also suggested that the house in which she was living was also purchased by her, but she denied it. She further stated as follows:

> *"It is true after joining my parents, at no point of time I have come to defendant and that the defendant has requested me several times to join him and that on my failure to join, he held a panchayat and in the said panchayat myself and the children were given Rs.30,000/- by the defendant towards our share in the properties of the defendant and that out of the said money, I have purchased the lands and house."*

It was also suggested that she along with her daughter has no right to claim share in the properties of the defendant, as she has received Rs.30,000/-, but she denied it.

10. P.W.3 is the resident of Parveda village. He stated that plaintiffs and their mother are residing at Parveda village for the past 15 years and the defendant was residing at Kesaram village

and he is the father of the plaintiffs. He also stated that defendant never came to Parveda village to take back his wife and children and he has not given any money or land to his wife and daughters at any point of time. He further stated that he attended the marriage of the plaintiff No.2. In the Cross-examination, he stated that the house in which plaintiffs are residing was constructed by the mother of the plaintiffs. He also denied regarding receiving of Rs.30,000/- from the defendant and purchased the property with the said amount.

11. The defendant in his evidence admitted that plaintiffs are his daughters, plaintiff No.1 was residing with her husband at Danur village and plaintiff No.2 was residing with her mother at Parveda village. Since the birth of plaintiff No.2, his wife was residing in her parent's house at parveda village. He made his best efforts to bring her back to the marital home, but she refused to join him. He along with his wife attended before the elders in the Panchayat. They have decided and advised him to pay Rs.30,000/- towards permanent alimony and towards the share of plaintiff's property. Accordingly, he paid the said amount as per the decision of the Panchayat and with the said amount, she purchased land in Sy.No.114 admeasuring Acs.5 – 37 gts situated at Parveda village with the surname of

Yenkathala W/o.Mallaiah and also constructed a house with the said amount. Plaintiffs never resided with him after payment of Rs.30,000/-. Prior to filing of the suit, she filed a false complaint before Mahila Dakshitha Samithi, Hyderabad, but it was closed. He also filed Exs.B1 and B2 to show that his wife purchased the landed property in her name. In the Cross-examination, he admitted that the suit schedule property is the ancestral property and he did not know about the details of his daughters. He also stated that he has not filed any document to show that he paid Rs.30,000/- to his wife. He further stated that he paid sale consideration to one Dhanunjaya and he in turn paid to his wife, but he has not obtained any receipt and he has not attested any document. It was also suggested that his wife was residing in a rented house and did not construct any house, but he denied it.

12. D.W.2 was aged about 80 years as on the date of recording his evidence i.e., on 24.02.2005. He stated that he along with other elders acted as elders in the Panchayat. As per their decision, defendant paid Rs.30,000/- to the mother of the plaintiffs in the presence of one Kummari Balaiah, Sale Anjaiah, Goundla Beeraiah and also in his presence, but no paper was executed at that time. He also stated that he was a village elder

for all village Panchayats. When Mallaiah/defendant and Anasuya/P.W.2 approached him, Panchayat was held orally about 23 yrs back. He stated that the mother of the plaintiffs took Rs.30,000/- and left the place. The persons in whose presence the money was paid were no more. There was much value for Rs.30,000/- about 20 years back. They have not advised for any receipt after payment of amount to P.W.2. He also stated that Anasuya left the defendant voluntarily, but they never tried for settlement between them. It was suggested to him that Anasuya never received Rs.30,000/- and relinquished their right in the properties of defendant, but he denied it.

13. Now it is for this Court to see whether the trial Court and the first appellate Court decided the matter on proper appreciation of the facts or not.

14. The evidence of P.W.2 was misinterpreted by both the Courts though she stated that no Panchayat was conducted and no amount was paid to her. It was taken by both the Courts as an admission of P.W.2 regarding the receiving of Rs.30,000/- and purchase of properties under Exs.B1 and B2 with the said amount. No doubt, D.W.2 who was the elder of the Panchayat stated that Panchayat was conducted before the elders and

defendant paid Rs.30,000/- to P.W.2, it was an admitted fact that no document was executed regarding the payment of Rs.30,000/- by the defendant to P.W.2, but defendant stated that he paid the said amount towards maintenance and also towards the share of property. He further stated that with the said amount, she purchased properties under Exs.B1 and B2 and also constructed a house and presently she was residing in that house. No doubt, the sale deeds under Exs.B1 and B2 are in the name of P.W.2 with her surname i.e.,Yenkathala.

15. Now it is for this Court to see whether the said amount was paid towards permanent alimony or towards her share in the properties of the defendant. The learned Counsel for the appellants/plaintiffs argued that P.W.2 cannot relinquish the share of her minor daughters. Moreover, until and unless relinquishment deed was not registered, it was not acceptable. In this case, there was no document executed between the parties at the time of payment of Rs.30,000/- to P.W.2. Even if it is presumed that Rs.30,000/- was paid by the defendant to P.W.2, it can be presumed that the said amount was paid towards permanent alimony and she has no right to relinquish the shares of her daughters.

16. The defendant has not married again. He himself stated that he requested his wife to join him for several times. When she refused, he got conducted Panchayat in the presence of elders. Plaintiffs stated that the properties under Exs.B1 and B2 were purchased by her maternal uncle in the name of his wife T.Anasuya, but her mother's name was wrongly mentioned, but they could not get it rectified. Admittedly, plaintiffs have not examined their maternal uncle though he was accompanying them to the Court whenever there was an adjournment. In fact, the suit was also filed at his instance. The defendant in his Cross-examination specifically admitted that the suit property is the ancestral property, but the learned Counsel for the respondent/defendant argued that as the plaintiffs approached the Court for partition of property, it is for them to prove that it is the ancestral property, but admitted facts need not to be proved.

17. The learned Counsel for the appellants/plaintiffs contended that no persons other than Kartha can relinquish the right in the Hindu Undivided family property. Mother is not the coparcener and not Kartha, as such she cannot relinquish shares of her minor daughters. He relied upon the Judgment of the Hon'ble Apex Court in the case of ***Prasanta Kumar Sahoo***

and others Vs. Charulata Sahu and others,[1] in which it was held that *relinquishment or alienation of undivided coparcenary interest of a coparcener in favour of another coparcener without the consent of that coparcener or the other coparcener is null and void.* It was also emphasized by the learned Counsel for the appellant that under the Hindu Succession Act, oral relinquishment/partition is not recognized and relied upon the decision of the Hon'ble Apex Court in the case of ***Vineeta Sharma Vs.Rakesh Sharma and others,***[2] in which it was held that *a relinquishment or a partition or alienation of coparcener share in a Hindu Undivided Family property can only be done by way of the registered instrument and that any plea of oral partition/relinquishment is untenable and unacceptable. Unless a registered instrument has been executed and acted upon and the same has been proven in a Court of law through public documents no plea of relinquishment or partition can be set up to deny the share of a coparcener.* He further submitted that the said law has also been held by the Hon'ble High Court of Andhra Pradesh in ***Pasagadugula Narayana Rao Vs. Pasagadugula Rama Murthy,***[3] wherein the Court has categorically held that *any relinquishment or release of a*

[1] 2023 SCC Online SC 360
[2] 2020 (9) SCC 1
[3] 2015 SCC Online 346

coparcener share can only be by way of a written instrument and in the absence, thereof a plea of release or relinquishment of share cannot be entertained.

18. Both the Courts took a conclusion that the mother of the plaintiffs in her examination admitted to have conducted Panchayat, received Rs.30,000/- and relinquished the share of her daughters. In fact, perusal of Cross-examination clearly shows that there is no such admission and she expressly denied the said fact. Though the Panchayat elder was examined as D.W.2 and he stated regarding receiving of Rs.30,000/- by P.W.2, no document was executed by P.W.2 regarding the same. It cannot be presumed that the said amount was paid regarding the share of properties of the defendant and there is no other evidence to prove the oral relinquishment of the plaintiffs. Even if it is presumed that P.W.2 received Rs.30,000/- and purchased the properties under Exs.B1 and B2, it cannot be said that she received the said amount towards shares of plaintiffs and relinquished their right of partition. She cannot relinquish the right of minors without their consent or knowledge. The said amount might have received by her towards permanent alimony. Moreover, defendant has not

performed another marriage and he has no other legal heirs except the plaintiffs No.1 and 2.

19. There was an amendment to Section 6 of the Hindu Succession Act, 2005, in which it was clearly stated that daughters are also having equal rights along with son. The said amendment is proposed to remove discretion to give equal right to daughters in the coparcenary property along with sons. The Hon'ble Apex Court in ***Vineeta Sharma (supra)*** held as follows:

> ***"134.*** *The protection of rights of daughters as coparcener is envisaged in the substituted Section 6 of the 1956 Act recognises the partition brought about by a decree of a court or effected by a registered instrument. The partition so effected before 20-12-2004 is saved.*
>
> ***135.*** *A special definition of partition has been carved out in the Explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of Section 6, the intendment of the legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of Section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under*

the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act."

20. Admittedly, there is no dispute regarding the relationship between plaintiffs, defendant and P.W.2. No doubt, defendant was residing away from his wife and children from the past 20 years and as per his Cross-examination, he has no knowledge about the particulars of his children, he has not supported for the marriage of P.W.1 and he has not married again and has no other legal heirs. Plaintiffs filed suit for partition and as per the amendment to Section 6 of the Hindu Succession Act, daughters are also equally entitled for the share in the properties of father along with sons. In this case, as defendant

has no other sons, plaintiffs are equally entitled for share in the properties of their father. The contention of the defendant that he already paid Rs.30,000/- to P.W.2 towards maintenance and also towards share of the plaintiffs in his properties cannot be accepted. It can be presumed that he might have paid amount to P.W.2 towards permanent alimony. P.W.2 has no right to relinquish the share of her minor children. Until and unless there is registered relinquishment deed, it cannot be relied upon. In this case, no document was executed at the time of payment of Rs.30,000/- to P.W.2, as such the contention of the defendant that he paid the amount towards share of the plaintiffs cannot be believed and also his arguments that P.W.2 relinquished the share of her minor child is not acceptable, as such both the Courts misread the evidence of P.W.2. In the Cross-examination of P.W.2, though there was no admission on her part, they stated that she admitted regarding conducting of Panchayat, receiving of the amount and relinquishment of the shares of her minor children and dismissed the suit filed by the plaintiffs and thus the Judgments of both the Courts is patently erroneous and are liable to be set aside.

21. In the result, the second appeal is allowed, setting aside the Judgment of the first appellate Court dated 08.02.2008 in

A.S.No.15 of 2005 and also the Judgment of the trial Court dated 11.08.2005 in O.S.No.21 of 1997. Appellants/plaintiffs are entitled for 1/3rd share in the properties of respondent/defendant. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATE: 05.09.2023
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THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

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