

**THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO**

**APPEAL SUIT Nos.941 and 1992 of 2002**

**COMMON JUDGMENT:**

Both the appeals arise out of a common judgment in O.S.No.8 of 2000 on the file of the Senior Civil Judge, Siddipet. The suit was one filed for partition of the schedule properties.

The 1<sup>st</sup> defendant is the younger brother, the defendants 2 and 3 are the sisters and the 4<sup>th</sup> defendant is the mother of the plaintiff. His father died about 14 years back. When the father of the plaintiff was alive, he acquired a house to an extent of 303 sq. yards with his own earnings, which was consisting of several shops shown in the schedule and the plaintiff and defendants have succeeded to 1/5<sup>th</sup> share each. When the plaintiff demanded for partition of the properties, the defendants did not cooperate and hence, the suit.

The 4<sup>th</sup> defendant filed a written statement admitting the claim of the plaintiff.

Subsequently, the defendants 5 to 7, who are the children of the plaintiff, came on record and filed a written statement contending that the plaintiff and his father Agaiah acquired the properties jointly and they are not the absolute properties of the father of the plaintiff. According to them, the father of the plaintiff Agaiah went to Bombay for eking out livelihood and returned in the year 1960 and started a pan shop and maintained it till his death. The plaintiff has been running a cycle taxi and both the plaintiff and his father purchased and developed the property. The marriage of the plaintiff was performed by his father in the year 1971 and there were some disputes between the wife of the plaintiff and the defendant No.4 and the plaintiff has separated only in mess and living in a part of the property. Agaiah

died in the year 1985 and the plaintiff has become the kartha of the family after his father's death and performed the marriages of the defendants 2 and 3 and thereafter the marriage of defendant No.1. After the marriage, there was a partition between 1<sup>st</sup> defendant and the plaintiff in the presence of the other defendants and a memorandum of partition was executed on 20.11.1998. The plaintiffs and the defendants 1 to 4 have relinquished their rights in the schedule properties. The plaintiff started living away from defendants 5 to 7 by quarrelling with them. Therefore, it is pleaded that there is collusion between the plaintiff and the defendants 1 to 4 to deprive the rights of the defendants 5 to 7 and it was further pleaded that the defendants 1 to 4 have no rights in the schedule property as they have relinquished.

Thereafter, additional written statement was filed by the defendants 2 and 3 contending that Agaiah purchased the open site on 16.04.1961 and constructed the suit shops and residential portions in 1963. After the death of Agaiah in December, 1985, the plaintiff came into management of the property and was running the cycle taxi and pan shop and collecting the rents from the tenants. In the year 1993, the plaintiff with the rents realised from the said property purchased 418 sq. yards of site situated adjacent to the suit property on eastern side from one Peka Durgaiah and plaintiff and defendants 1 to 4 have been in possession and enjoyment of the said site and they are also entitled for 1/5<sup>th</sup> share. There is collusion between the plaintiff and the defendants 5 to 7.

Thereafter, the plaintiff filed rejoinder contending that 418 sq. yards of site was purchased by selling the gold ornaments of his wife, which was presented by his in-laws and also cash of Rs.50,000/- given by them. The said property is the self-acquired property of the plaintiff. The defendants 1 to 4 have no rights in the said property.

The defendants 1 to 4 adopted the additional written statement

filed by the defendants 2 and 3.

On the basis of the above pleadings, the following issues were framed for trial:

1. Whether plaintiff schedule is self acquired property of his father and he died intestate?
2. Whether the plaintiff is entitled for 1/5<sup>th</sup> share?
3. To what relief?

After the defendants 5 to 7 added, the following additional issue was settled:

Whether the site of 418 sq. yards adjoining to the plaintiff schedule is also liable for partition?

On behalf of the plaintiff, P.Ws.1 and 2 were examined and no documents were marked. On behalf of the defendants, D.Ws.1 to 7 were examined and marked Exs.B-1 to B-7.

After considering the material and the evidence on record, the lower Court has not accepted the plea of defendants 5 to 7 about the earlier partition and also granted a decree with regard to 418 sq. yards said to have been purchased under Ex.B-2 sale deed. Aggrieved by the said judgment and decree dated 28.03.2002, Appeal Suit No.941 of 2002 was filed by the defendants 5 to 7 and the Appeal Suit No.1992 of 2002 was filed by the plaintiff.

Pending the appeal, A.S.M.P.Nos.423 and 424 of 2007 are filed by the defendants 5 to 7 to receive the original memorandum of partition deed and also the sketch attached to it as additional evidence.

The points that arise for consideration are:

1. Whether the earlier settlement pleaded by defendants 5 to 7 is true?
2. Whether the 418 sq. yards of property purchased

under Ex.B-2 is liable for partition?

3. Whether there are sufficient grounds to receive the additional evidence?
4. Whether there are any grounds to interfere with the judgment and decree of the lower Court?

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**POINTS 1 to 4:**

The relationship between the parties is not very much disputed. It is to be noted, at the outset, that the evidence of P.W.1, who is the plaintiff, is a complete goby to the allegations made by him in his plaint and almost supporting the case of the defendants 5 to 7, who came on record subsequently. The plaint was filed on the premise that the properties are joint family properties and they are undivided and the property was succeeded from Agaiah, who is the owner of the property. If really, a partition or family arrangement has taken place conferring the benefit on the plaintiff and his family, no person would have come to the Court suppressing that fact and pleading for partition when that person gets advantage. Furthermore, even if he has got disputes with his family members, defendants 5 to 7, he would not have resorted to the necessity of suppressing an earlier partition.

There was a dispute between the parties as to whether the properties were acquired by Agaiah himself with his own labour or whether the claim of the plaintiff in his evidence that he has also contributed for the acquisition is true or not. As can be seen from the material on record, the plaintiff has not filed even a single document to support any of the contentions. The site is said to have been purchased in the year 1961 under Ex.B-4 and permission for construction of the mulgies is said to have been taken in 1963 under Ex.B-6 by which date, P.W.1, the plaintiff was hardly aged about 6 years, since he himself claims that he was born in the year 1955 and

his father married in 1950. Therefore, the claim of the plaintiff that after 1961 when his father returned from Bombay, he also helped him in acquiring the properties is a falsity and cannot be accepted. Furthermore, it is not the case of the plaintiff or anybody that Agaiah has got any ancestral nucleus to acquire the properties. On the other hand, D.W.4, the mother of the plaintiff clearly says that they went to Bombay for eking out livelihood. Therefore, it is quite clear that the properties shown in the plaint schedule were left behind by Agaiah as his self-acquired properties and the question of them being joint family ancestral properties giving shares independently to the plaintiff, defendant No.1 and Agaiah, does not arise at all. It is to be held that the plaintiff and defendants 1 to 4 have succeeded to the self-acquired property of Agaiah after his death in the year 1985 and each of them are entitled for 1/5<sup>th</sup> share.

So far as the question of family arrangement is concerned, the learned counsel for the defendants 5 to 7 pleads that a document of partition or family arrangement has been executed between the members of the family and it is proved by the evidence of D.Ws.1 to 3 and the said document was not received earlier on the ground that stamp duty and penalty was not imposed and leaving apart the question of registration after the disposal of the suit and pending appeal the document has been impounded and, therefore, the said document may be received and even if there is no registration, collateral evidence can be adduced and matter may be remanded to the lower Court by giving fresh opportunity.

This application is opposed by the learned counsel for the plaintiff saying that in spite of the objection taken during the trial, it was not impounded and in fact the admissibility of the said document was a subject matter even during the trial and ultimately against the order of the lower Court, C.R.P.No.3738 of 2001 was filed and in that also this Court has held that the document is a partition deed and requires to be

stamped as a deed of partition. The question as to whether it required registration or not, has to be decided at a later stage. But, however, as the document was not impounded, it was not received and question of admissibility for want of registration did not arise.

The learned counsel for the appellants-defendants 5 to 7 relies on a decision reported in the case of **Muthyalareddy v. Venkatareddy**<sup>[1]</sup> and contends that though the unregistered partition deed cannot be looked into as to the terms of the partition, it can be looked into for the purpose of establishing severance in status. He also relied on a decision reported in **Network Inc., Hyderabad v. K.R.Mohan Reddy**<sup>[2]</sup>, wherein it is held by this Court that the circumstances under which an additional evidence can be received.

As against this contention, the learned counsel for the respondent-plaintiff relied on a decision reported in **Avinash Kumar Chauhan v. Vijay Krishna Mishra**<sup>[3]</sup>, in which it was held that if the purposes for which a document is sought to be brought in evidence are excluded, there is no reason as to how the document would be admissible for collateral purpose.

As already stated, the plaintiff though generous in admitting the entire case of the defendants 5 to 7 about the alleged family arrangement, did not plead the same and not only that there is no willingness or compliance with the conditions of the said arrangement made by the elders. Evidently, as per the said document a sum of Rs.80,000/- is to be paid to the mother and it should be kept in deposit. If this fact is proved, then an inference of the understanding under the family arrangement or partition deed can be taken into consideration. Evidently, P.W.1 has not deposited the said amount. The evidence of D.Ws.1 to 3, which is sought to be relied on by the defendants is of no avail when there is no proof of any consequential action taken by the plaintiff. Mere fact that D.W.1, who is an old lady,

has admitted her signature is also now no use to presume that the family arrangement is true and acted upon. From the particular nature of the circumstances as to how the defendants 5 to 7 were set up and as to how the plaintiff deviating from his own pleading, tries to support the claim of the defendants 5 to 7 and the said family settlement clearly goes to show that it is a belated effort to somehow deny the genuine share of the defendants 1 to 4.

Further more, when the appeal is pending the document is said to have been impounded without any notice to the parties on record. The lower Court has rightly rejected the said document as being not proved and there are no grounds to receive the additional evidence or allow the petitions and consequently held that the claim of the defendants 5 to 7 is not true and the documents cannot be received in evidence.

The other contention, which the plaintiff agitates in his appeal is that an extent of 418 sq. yards, which was purchased under the sale deed Ex.B-2 exclusively belongs to him and that it was purchased with his earnings and the money given by his father-in-law P.W.2. It is an admitted fact that the property under Ex.B-2 was purchased for a consideration of nearly Rs.1,00,000/- by the date when the said purchase is said to have been made and that too in the year 1993. It is a valid amount and there is no source of employment of the P.W.1 except his claim of running a cycle taxi. He was, evidently, in the management of the entire property, which fetches rents and he also claimed to have performed the marriages of his sisters while in the management of the said properties and the division has taken place according to the defendants 5 to 7 in the year 1998 and, therefore, by the date of purchase of this document the plaintiff and the defendants 1 to 4 are joint. The plaintiff has not filed even a single document to show his resources or keeping of said huge amount in 1993 in any bank or with any other person known to him. The vendors were not examined and the evidence of D.W.4, the mother, clearly goes to show

that sufficient rents are being realized from the shops and the plaintiff is collecting the rents. The property was purchased from Rekha Ambaiah and the plaintiff has settled the same for consideration of Rs.1,00,000/- and according to her, she asked him to get the document in the name of the plaintiff as he is the elder member of the family. The evidence of P.W.2, who is the father-in-law of the plaintiff from whom the plaintiff is said to have got the resources for purchasing of the property, is of no help. According to him, he presented 20 tulas of gold to his daughter at the time of marriage in 1971 and when the plaintiff has sold away the gold ornaments and approached him for cash and he sold some gold and assisted him financially for purchasing of 400 and odd square yards of land. This is the simple chief examination of P.W.2. His evidence does not show as to in which year the plaintiff approached him for the help and where from he got the money and what was the money he has given to the plaintiff and what was the money he has realised by the sale of the gold ornaments. Apart from it, it is clear from his evidence that he has got sons also. He also admits that the father of the plaintiff gave 6 (six) tulas of gold to his daughter as per Ex.B-1 endorsement. He claims to have worked as a clerk in a cloth shop at Husnabad. His evidence does not show that he has got any agricultural properties or other income. That being so, the claim of the plaintiff that his father-in-law has helped him in purchasing the property and gave Rs.50,000/- is totally a falsity and it is not proved. Therefore, if this resource of the plaintiff is not established then the alternate is only the evidence of D.W.4 and the factum of management of the properties by him and realizing the rents. Merely because the plaintiff, his mother and brother are having separate base though in part of the premises, it does not mean that there was a factual division of the properties. Therefore, for all the above reasons, I find that the judgment and decree passed by the lower Court is based on appreciation of evidence and there are no grounds to allow the applications filed by the defendants 5 to 7 to



receive the documents as additional evidence and to interfere with the judgment and decree of the lower Court. Accordingly, the points are answered.

Accordingly, the Appeal Suits are dismissed. The petitions in A.S.M.P.Nos.423 and 424 of 2007 are also dismissed. No costs.

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**N.R.L.NAGESWARA RAO, J**

27-09-2011

MR



**THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO**

**APPEAL SUIT Nos.941 and 1992 of 2002**

Date: 27-09-2011

MR

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[\[1\]](#) AIR 1969 AP 242

[\[2\]](#) 2007(1) ALD 304(DB)

[\[3\]](#) (2009) 2 Supreme Court Cases 532