

HON'BLE SRI JUSTICE M.S.K.JAISWAL

A.S.Nos.2323 and 2359 of 1993

Dt. 31st January, 2014

Between:-

A.S.No.2323 of 1993

- Ganni Patabhiramayya
And another .. Appellants

And

Ganni Suryanarayananamurthy (died)
And others .. Respondents

-

A.S.No.2359 of 1993

Nagavolu Naga Venkata Anantha Bala
Surya Mahalakshmi .. Appellant

And

Ganni Venkataramanamma (died)
And others .. Respondents

HON'BLE SRI JUSTICE M.S.K.JAISWAL

A.S.Nos.2323 and 2359 of 1993

COMMON JUDGMENT:-

These two appeals are being disposed of by this common Judgment, since the subject matter of the dispute, the parties and the nature of controversy involved in both the appeals are one and the same.

2. A.S.No.2323 of 1993 is filed against the Judgment and Decree in O.S.No.37 of 1987 on the file of the Subordinate Judge, Ramachandrapuram, dated 25-06-1993. That suit was filed for partition of plaint 'A' and 'B' schedule properties into two equal shares and allotting one share to the plaintiff and another half share to the 1st defendant therein. The plaintiff therein also sought for recovery of

Rs.10,000/- from the 1st defendant towards the value of the bricks and other material of the demolished house taken away by the 1st defendant with interest at 12.5%; for recovery of Rs.2,000/- from the 3rd defendant being the plaintiff's half share of rent on the plaint 'A' schedule lands. The plaintiff further sought for declaration that the sale deed, dated 2-4-1981, said to have been executed by late Ganni Venkata Ramanamma in favour of the 2nd defendant in respect of the plaint 'A' schedule property is a void document and not binding on the plaintiff. By the impugned Judgment and Decree, the learned Subordinate Judge decreed the suit granting the reliefs to the plaintiffs, aggrieved by which D.1 and D.2 in that suit, preferred A.S.No.2323 of 1993.

3. During the pendency of that suit, the sole plaintiff died and his wife has been impleaded as the 2nd plaintiff, vide orders in I.A.No.1243 of 1990, dated 18-4-1991. During the pendency of the appeal, the 1st appellant-D.1 also died and his legal representatives are impleaded as appellants 3, 4 and 5 vide orders, dated 3-11-2011, in A.S.M.P.No.685 of 2011.

4. A.S.No.2359 of 1993 is filed against the Judgment and Decree, dated 25-6-1993, in O.S.No.50 of 1985 on the file of the Subordinate Judge, Ramachandrapuram. That suit was filed seeking possession of the plaint schedule lands by ejecting the defendants there from and for recovery of Rs.23,199/- being the amount of principal and interest on Rs.19,800/- towards the value of damages for use and occupation of the plaint schedule property and to award future profits. By the impugned Judgment and Decree, the learned Subordinate Judge has dismissed the suit and aggrieved by it, the sole plaintiff preferred A.S.No.2359 of 1993.

5. In O.S.No.37 of 1987, which was filed on 1-6-1987, the property involved has been described as plaint 'A' and 'B' schedules. Plaintiff 'A' schedule comprises of the agricultural lands, admeasuring Ac.2-05 1/3

cents situated in R.S.No.139/10 and 121/2 in Gangavaram village, Ramachandrapuram Mandal, East Godavari District. Plaintiff 'B' schedule comprises of a site consisting of four items together with a tiled house, situated at Kotipalli village, Ramachandrapuram Mandal, East Godavari District. Plaintiff 'A' schedule property of O.S.No.37 of 1987 is the schedule property in O.S.No.50 of 1985.

6. The sole plaintiff in O.S.No.50 of 1985 is the 2nd defendant in O.S.No.37 of 1987. The father of D.2 is the 1st defendant. The 2nd plaintiff in O.S.No.37 of 1987, who came on record after the death of her husband, the 1st plaintiff, has been impleaded as 5th defendant in O.S.No.50 of 1985. The common ancestor Ganni Venkata Ramanamma is arrayed as 1st defendant in O.S.No.50 of 1985, which was filed in the Court on 12-8-1985, who died on 21-10-1985.

7. Having perused the voluminous material on record in both the suits, for the sake of convenience and clarity, I feel that the facts and the material record in A.S.No.2323 of 1993 corresponding to O.S.No.37 of 1987 with reference to the parties as they are arrayed therein are comprehensive and they will also cover the points in controversy in A.S.No.2359 of 1993, corresponding to O.S.No.50 of 1985.

8. The pleadings of the parties in O.S.No.37 of 1987 are as follows:-

The 1st plaintiff and the 1st defendant are the own brothers. The 2nd defendant is the daughter of the 1st defendant. It is stated that the mother of 1st plaintiff i.e., late Ganni Venkata Ramanamma settled her rights to an extent of Ac.2-05 1/3 cents in R.S.Nos.139/10 and 121/2 of Gangavaram village (plaint 'A' schedule property), in favour of both of her sons i.e., the 1st plaintiff and the 1st defendant, reserving life interest for herself and for her husband and accordingly executed the registered settlement deed, dated 2-4-1947, which was accepted and acted upon. Their father i.e., Ganni Atchutaramayya died in 1951 and

mother i.e., Ganni Venkata Ramanamma died on 21-10-1985. Thus, the 1st plaintiff and the 1st defendant became absolutely entitled to plaintiff schedule properties in equal shares. The 1st plaintiff demanded the 1st defendant for partition of the suit schedule property into two equal shares and for separate possession of one such share and accordingly issued notice, dated 4-2-1986, which was evaded by the 1st defendant. Meanwhile, in the year 1986, the 1st plaintiff learnt that the 1st defendant got a sale deed executed by late Venkata Ramanamma in favour of his daughter i.e., the 2nd defendant on 2-4-1981 in respect of an extent of Ac.2-05 1/3 cents, the plaintiff 'A' schedule property, with an intention to grab the said property. The said sale deed is not binding on the 1st plaintiff, which cannot *jeopardize* his rights and titles to his half-share in plaintiff schedule properties and to seek partition and the 2nd defendant did not acquire any right, title or interest over the same. It is further averred that the plaintiff 'A' schedule property was leased out by late Venkata Ramanamma during her life time to the 3rd defendant, who is no other than her grandson i.e., the son of her eldest son Satyanarayana Murthy, who went in adoption. Thus, the 3rd defendant was continuing as a tenant of the 'A' schedule property. The plaintiffs are entitled to future profits on his share in the 'A' schedule landed property which the 3rd defendant is not paying. It is also stated that besides the item No.1 of the 'B' schedule property, which was a tiled house, the remaining portion of the house consists of the portions belonging to the 2nd plaintiff, which was purchased by her under the registered sale deed, dated 20-2-1967, from one Venturi Subba Raju and two others, and the portions belonging to one Meka Pedda Raju and Mulakala Rama Rao. Apart from that there are joint sites and manduvas for both the plaintiffs, 1st defendant and the above referred Pedda Raju and Rama Rao, which cannot be partitioned. The plaintiffs are residing in

the portion purchased by the 2nd plaintiff, which consisted a house and three vacant sites surrounded by walls. The 1st defendant removed the western side wall of one side and the southern side wall and began to threaten to dismantle or demolish the western wall of the portion consisting of three rooms and also the site surrounded by walls with two sheds and a bathroom, which absolutely belong to the 2nd plaintiff. Therefore, the 2nd plaintiff was constrained to file a suit – O.S.No.223 of 1986 on the file of the Principal District Munsif, Ramachandrapuram against the 1st defendant seeking permanent injunction to protect her properties. However, in spite of injunction order, the 1st defendant demolished the entire house portion in item No.1 of the plaint 'B' schedule property and now became vacant site. Since the 3rd defendant is the tenant of the plaint 'A' schedule property, he is added as a party to the suit. The plaintiffs are in joint and constructive possession of the plaint 'B' schedule properties. Hence, the suit.

The 1st defendant filed his written statement denying the material allegations of the plaint. It is stated that the plaint 'A' schedule lands are the ancestral lands of Sri Namani Pattabhiramaiah, the maternal grandfather, who had three daughters viz., Kodavati Venkamma, Ganni Venkata Ramanamma i.e., the mother the 1st plaintiff and the 1st defendant, and Kodui Seshamma. The said Namani Pattabhiramaiah purchased the plaint 'B' schedule property from their father under the registered sale deed. As the 1st defendant is named after his maternal grandfather – Namani Pattabhiramaiah, out of love and affection, he gave 'B' schedule properties to the 1st defendant during his minority. After the death of the said Pattabhiramaiah, the 1st defendant has been in possession and enjoyment of the 'B' schedule properties by paying necessary taxes, openly and without any objection from anybody and is enjoying the same till date. Neither

Venkata Ramanamma, the mother of the 1st plaintiff and the 1st defendant, nor her sisters exercised any rights or enjoyed the plaint 'B' schedule properties, which is a well-known fact to the plaintiff, his mother and sisters. Thus, Venkata Ramanamma never had any right over the 'B' schedule properties and as such she cannot execute any document with regard to 'B' schedule properties. As the 1st defendant has been enjoying the plaint 'B' schedule properties since 50 years as his own, he acquired rights over the same by adverse possession also. If any registered settlement deed was executed by their mother in respect of the said 'B' schedule properties, it is invalid. Either the 1st defendant or the 1st plaintiff accepted or acted upon the settlement deed, dated 2-4-1947. It is further stated that their mother sold away the plaint 'A' schedule properties to the 2nd defendant for Rs.24,000/- under a registered sale deed, dated 2-4-1981, and delivered possession. This defendant denied the alleged demand for partition and a notice to that effect. The plaintiffs have no right to ask to deliver possession of the half share in the plaint schedule properties. The 3rd defendant used to cultivate the 'A' schedule lands on behalf of their mother by sharing some produce over the land. It is further stated that the 2nd defendant filed O.S.No.50 of 1985 against the 3rd defendant and others for delivery of possession of the plaint 'A' schedule land with profits, which is pending. He denied the alleged lease of plaint 'A' schedule land to the 3rd defendant. It is alleged that the 3rd defendant is the person belonging to the plaintiff and colluded with him. It is stated that the 3rd defendant is not the tenant in respect of plaint 'A' schedule land. He also denied about the demolition of walls. In fact, 1st defendant is the owner of item No.1 of 'B' schedule property and the plaintiffs have no right or claim over the same. It is also stated that they were never in joint and constructive possession of the plaint schedule properties. As the plaintiffs have no right over the suit schedule properties, they have no right to demand for their partition or

to seek delivery of possession of the same.

The 2nd defendant filed written statement and additional written statement, almost on the similar lines of defendant No.1 stating that the plaintiff 'A' schedule land was purchased by her and the same is cultivated by 3rd defendant prior to her purchase. She stated that having purchased the same, she is the absolute owner of the plaintiff 'A' schedule land and therefore she alone is entitled for all the profits realized there from and that the defendant No.3 was never a tenant of the said land. It is also stated that defendant No.3 was a businessman in contract at Visakhapatnam and he left Gangavaram about 6 to 7 years back and he is added as a party in collusion of the plaintiff to support his case. It is stated in the additional written statement that Namani Pattabhi Ramaiah had no sons and after his death, his three daughters inherited their property including the plaintiff 'A' schedule land with a limited right to be enjoyed by them during their life time only. Subsequently, the properties were partitioned among them as per the partition list, dated 16-3-1940. The mother of the 1st defendant, Ganni Venkata Ramanamma was allotted some landed property including the plaintiff schedule lands towards her share. She enjoyed the said property with life interest and was in possession by the time of passing Hindu Succession Act, 1956. Therefore, the right of said Ganni Venkata Ramanamma in the plaintiff schedule land was enlarged and she acquired absolute rights as per the provisions of the said Act and till then, she had only life interest. Thus, by the time of alleged settlement deed, dated 2-4-1947, she had no right of alienation in favour of anybody and the settlement deed is, therefore, inoperative, void and unenforceable, as it should be presumed that no rights were created at all under the said deed. In fact, the said Ganni Venkata Ramanamma sold away the plaintiff 'A' schedule land to this defendant by registered sale deed, dated 2-4-1981, which cannot be questioned by anyone including the plaintiffs.

The 3rd defendant also filed a separate written statement stating that he is in possession and enjoyment of the plaint 'A' schedule land as a cultivating tenant and liable to pay makta only. He was inducted into possession of plaint 'A' schedule land by late Smt.Ganni Venkata Ramanamma in the year 1978-79 and since then he has been in possession and enjoyment of the said lands by paying the agreed annual makta to the said Venkata Ramanamma till her death and thereafter to the plaintiffs. As the said lease is being valid and binding on her successors, he is entitled to continue to cultivate and enjoy the same as a tenant, as his tenancy was never forfeited. Therefore the plaintiffs are not entitled to evict him from the suit schedule land. It is further stated that in view of the false claim made in O.S.No.50 of 1985 by the 2nd defendant, he was constrained to deposit the equivalent value of the makta to the credit of the said suit. As he is not a necessary party to the suit, and has been impleaded as a party vexatiously, the suit is liable to be dismissed against him.

9. On the basis of the above pleadings, the following issues were framed:-

1. Whether the sale deed, dated 2-4-1981, is valid and binding on the plaintiff?
2. Whether the plaintiff is entitled for recovery of Rs.10,000/- from 1st defendant towards the value of the bricks and other materials?
3. Whether the plaintiff is entitled for recovery of Rs.2,000/- from 3rd defendant towards his half share of rent on the plaint 'A' schedule landed property?
4. To what relief?

The following additional issues were also settled:-

- (1) Whether the life interest of Ganni Venkata Ramanamma in the plaint schedule land was enlarged into absolute estate under the provisions of Hindu Succession Act?
- 2) Whether the properties are liable for partition? If so, to what share the plaintiff is entitled?

10. On behalf of the plaintiff, P.Ws.1 to 3 were examined and Ex.A.1 to Ex.A.12 were marked. On behalf of the defendants, D.Ws.1 to 4

were examined and Exs.B.1 to B.40 were marked.

11. By the impugned Judgment and Decree, the learned Subordinate Judge held that Ganni Venkata Ramanamma became the absolute owner of the plaint 'A' and 'B' schedule lands by 1956 by virtue of the Hindu Succession Act, 1956, and as such the settlement deed executed by her on 2-4-1947 holds good and consequently the sale deed, dated 2-4-1981, relied upon by the 2nd defendant is not true, valid and enforceable against the plaintiffs. It was further held that both the plaintiff and the 1st defendant are entitled to half share in the plaint 'A' and 'B' schedule properties.

12. Aggrieved by the said Judgment and Decree, defendants No.1 and 2 therein preferred the appeal contending that the Judgment and Decree is contrary to the evidence on record, that the suit properties are not liable for partition, that the 1st appellant-D.1 had been in exclusive possession and enjoyment of the plaint 'B' schedule property and he has also acquired his right and title over it by virtue of adverse possession. The Court below erred in relying on Ex.A.1, a settlement deed dated 2-4-1947, which is an invalid document. The executant of the said settlement deed had no absolute right over suit schedule properties in 1947, except having a limited interest to enjoy the same during her life time. Insofar as the plaint 'A' schedule properties were concerned, the 2nd appellant – D.2 purchased the same for a valuable consideration under registered sale deed, dated 2-4-1981, and therefore the decree for partition thereof cannot be passed. The Court below has failed to appreciate the case in proper perspective with reference to the provisions of the Hindu Succession Act, 1956 and proceeded to wrong assumptions and hence the appeal.

13. The contention of the sole plaintiff in O.S.No.50 of 1985 is that she purchased the plaint schedule property from the 1st defendant under registered sale deed, dated 2-4-1981. The 2nd defendant is an Uddaraka, who was cultivating the schedule property, under the 1st

defendant with the help of D.3 and D.4. The 1st defendant has filed tenancy cases against the 2nd defendant bearing Nos.19 of 1981 and 18 of 1982, which were subsequently withdrawn in collusion in between the defendants.

14. The 1st defendant in that suit filed a written statement denying the execution of the registered sale deed in favour of the plaintiff. Her contention is that when she was staying with her eldest son – Pattabhi Ramaiah and taking advantage of her old age, her son has engineered the eviction proceedings against the 2nd defendant under Tenancy Act and brought into existence the registered sale deed, dated 2-4-1981, in favour of his own daughter, who is the plaintiff, though it is not supported by consideration and the said sale deed is vitiated by fraud, misrepresentation and undue influence.

15. The 2nd defendant has filed written statement contending that he is cultivating tenant of the plaintiff schedule properties since 1978-79 under the 1st defendant, that the father of the plaintiff – Pattabhiramayya brought into existence the registered sale deed, dated 2-4-1981, which is not binding, that since the 2nd defendant is cultivating tenant and has got a right of pre-emption, the sale deed is not binding and the Civil Court cannot grant the relief.

16. On the basis of the above pleadings, the following issues were framed:-

- 1) Whether this Court has no jurisdiction to entertain the suit?
- 2) Whether the first defendant is a protected tenant?
- 3) Whether the sale deed relied on by the plaintiff is true, valid and enforceable against the 2nd defendant?
- 4) Whether the plaintiff is entitled to any damages for use and occupancy from D.2 and from what date and to what amount?
- 5) Whether the plaintiff is entitled to possession of the schedule land?
- 6) To what relief?

The following additional issues also were framed:-

- 1) Whether the suit has not abated in its entirety, consequent on the death of D.1 since her L.Rs. were not brought on record?
- 2) What is the nature and extent of interest of the 1st defendant in the suit schedule property as on the date of settlement deed, dated 2-4-1947?

17. The learned Subordinate Judge held that the 1st defendant got the plaint schedule properties in the partition in between herself and her two sisters and she had absolute interest over it on 2-4-1947, on the date on which she settled the properties and that she became the absolute owner of the same in 1956 by virtue of Hindu Succession Act, 1956. The Court further held that the registered sale deed, dated 2-4-1981, in favour of the plaintiff said to have been executed by the 1st defendant is not valid and enforceable.

18. Aggrieved by the said Judgment and Decree, the plaintiff preferred A.S.No.2359 of 1993 contending that the trial Court has erred in dismissing the suit by holding that the 2nd defendant is a cultivating tenant and a P.T. without there being any evidence. The Court below erred in disbelieving the registered sale deed, Ex.A.5, under which the appellant-plaintiff purchased the suit schedule property. The said sale deed has been disbelieved based on improper appreciation of the material on record and on irrelevant consideration. The Court below further ought to have seen that the settlement deed is void and it will not have the effect of nullifying the registered sale deed in favour of the appellant-plaintiff. Hence, the appeal.

19. The points that arise for consideration are:-

- 1) Whether the plaint 'A' and 'B' schedule properties are liable to be partitioned equally amongst the two sons/their legal representatives?
- 2) Whether the sale deed, dated 2-4-1981, in respect of the plaint 'A' schedule lands said to have been executed by Ganni Venkata

Ramanamma in favour of the daughter of one of her sons is true, valid and binding on the parties?

- 3) Whether the plaint 'B' schedule properties exclusively belongs to Ganni Pattabhi Ramaiah, one of the sons of Ganni Venkata Ramanamma (D.1 in O.S.No.50 of 1985)?
- 4) Whether the respondent-plaintiff was entitled to recover Rs.10,000/- from the deceased 1st appellant – 1st defendant towards the value of the bricks and other materials and Rs.2,000/- from the non-appellant (D.3) being half share of rent of the plaint 'A' schedule properties?

20. Before proceeding to discuss the points, it would be appropriate to place on record the relationship between the parties, which is not in dispute. N.Pattabhi Ramaiah had three daughters viz., 1) Kodavati Venkamma, 2) Ganni Venkata Ramanamma, who is the mother of the 1st defendant and deceased plaintiff in O.S.No.37 of 1987, and 3) Koduri Seshamma. The plaint 'A' and 'B' schedule properties belonged to the said N.Pattabhi Ramaiah. Ganni Venkata Ramanamma was married to Achuta Ramaiah. They had three sons viz., Ganni Pattabhi Ramaiah, Ganni Satyanarayana, who went on adoption and whose son is the 2nd defendant in O.S.No.50 of 1985, and the third son is Ganni Suryanarayana, who originally filed O.S.No.37 of 1987 and whose wife has continued the said suit and also got herself impleaded as 5th defendant in O.S.No.50 of 1985. Ganni Achuta Ramaiah and Venkata Ramanamma also had two daughters, who are not parties to any of the suits. The plaintiff in O.S.No.50 of 1985 viz., Nagavolu Venkata Ananta Bala Surya Mahalakshmi is the daughter of Ganni Pattabhi Ramaiah.

21. **Points No.1 to 3:-** The plaint 'A' and 'B' schedule properties admittedly belongs to N.Pattabhi Ramaiah, who had no sons and therefore his properties devolved on his three daughters named above. The three daughters of N.Pattabhi Ramaiah are said to have partitioned their properties in or around 1940. In the said partition between the sisters, the plaint 'A' and 'B' schedule properties fell to the share of Ganni Venkata Ramanamma. Admittedly, the father of three

sisters viz., Nemani Pattabhiramayya had no sons. Therefore, there is no dispute so far as the three sisters succeeding to the properties of Nemani Pattabhiramayya is concerned.

22. The parties are referred to as they are arrayed in O.S.No.37 of 1987. The 1st defendant in O.S.No.50 of 1985 is Ganni Venkata Ramanamma. When O.S.No.50 of 1985 was filed on 12-8-1985, Ganni Venkata Ramanamma was alive. Unfortunately, within two months thereafter i.e., in October, 1985, she died. Therefore, in the subsequently instituted suit, O.S.No.37 of 1987, she is not made the party.

23. The surviving plaintiff in O.S.No.37 of 1987 is the daughter-in-law of Ganni Venkata Ramanamma, whereas the 1st defendant is her son. The contention of the plaintiff is that Ganni Venkata Ramanamma, who was the owner and possessor of the plaint 'A' and 'B' schedule properties, has executed settlement deed-Ex.A.1 on 1-4-1947, which was registered on 2-4-1947. Ex.A.1 is the certified copy thereof. In this settlement, Ganni Venkata Ramanamma has settled plaint 'A' schedule properties in favour of her two sons viz., D.1 and the original plaintiff in O.S.No.37 of 1987 whose wife is the 2nd plaintiff. As per settlement deed, Ganni Venkata Ramanamma had settled the vested reminder rights in the plaint 'A' schedule lands in favour of her two sons reserving the life interest for herself and her husband – Atchutaramayya. Atchutaramayya died in 1951 whereas Ganni Venkata Ramanamma died in October, 1985, at the ripe age of nearly 100 years. It is further contended that by virtue of the provisions of the Hindu Succession Act, 1956, the rights reserved by Ganni Venkata Ramanamma have enlarged into absolute rights and she continued to be absolute owner and possessor of the plaint 'A' schedule lands till she died in October, 1985. Since Ganni Venkata Ramanamma has left behind only two sons viz., D.1 herein and the original plaintiff in O.S.No.37 of 1987, both of them are entitled to half share each. Even

as per the settlement deed – Ex.A.1, both of them got half of the plaint schedule lands.

24. On the other hand, the contention of the 1st defendant is that as on 1-4-1947 when Ganni Venkata Ramanamma was alleged to have executed Ex.A.1, she had no rights to do so and in view of her right in the plaint 'A' schedule lands, having enlarged into absolute rights exercising the same, she sold the plaint 'A' schedule lands to D.2, who is no other than the daughter of D.1 under registered sale deed, dated 2-4-1981, the certified copy of which is marked as Ex.A.4. Therefore, according to the 1st defendant, the plaint 'A' schedule lands are not available for partition, inasmuch as, the same have already been sold by Ganni Venkata Ramanamma to the 2nd defendant. With regard to plaint 'B' schedule houses, the contention of the 1st defendant is that the said properties originally belong to his maternal grandfather – Nemani Pattabhiramayya and during his life time itself the plaint 'B' schedule properties were orally gifted by the said Nemani Pattabhiramayya in favour of the 1st defendant out of love and affection and the fact that D.1 has been named after him. Therefore, plaint 'B' schedule properties exclusively belongs to D.1 and are not available for partition.

25. So far as the 3rd son of Ganni Venkata Ramanamma, namely Ganni Satyanarayana is concerned, there is no dispute that he went in adoption and the 3rd defendant is his son. He is not claiming any rights over the plaint 'A' and 'B' schedule properties by virtue of any succession. However, his claim is only with regard to plaint 'A' schedule lands on the ground that he is the cultivating tenant thereon and as per the provisions of Tenancy Act, he has got a right of *pre-emption* and the alleged sale by his landlady Ganni Venkata Ramanamma in favour of D.2 herein, even if it is true, is not valid since the property under cultivation was not offered for sale to him, which is in contravention of the provisions of the Tenancy Act.

26. The learned Counsel appearing for respondents-plaintiffs submits that the endeavour of the 1st defendant herein had been to knock away the entire properties of Ganni Venkata Ramanamma depriving the legitimate rights of the plaintiffs in O.S.No.37 of 1987 and therefore he attempted to feign ignorance about the execution of Ex.A.1, the settlement deed, executed by Ganni Venkata Ramanamma. Even as per the said settlement deed, D.1 and his other brother are equally entitled to half share each in the plaint 'A' schedule lands. With regard to plaint 'B' schedule house properties, by setting up oral gift by Nemanı Pattabhiramayya in his favour, the attempt of D.1 had been to deprive the plaintiffs of their legitimate half share in the plaint 'B' schedule properties.

27. The material pleadings or evidence insofar as the *l/s* is concerned are that of Ganni Venkata Ramanamma and D.1 – Pattabhiramayya.

28. As already stated, Ganni Venkata Ramanamma was alive by the time O.S.No.50 of 1985 was filed by the 2nd defendant for recovery of possession of plaint 'A' schedule lands based on the registered sale deed – Ex.A.4 said to have been executed by Ganni Venkata Ramanamma in her favour. She filed written statement as well in the said suit, though, unfortunately, she died shortly thereafter. In the written statement, Ganni Venkata Ramanamma specifically pleaded that the claim of the 2nd defendant with regard to the sale of the plaint 'A' schedule lands in her favour in 1981 is false and incorrect. She denied having executed the original of Ex.A.4 on 2-4-1981 in favour of the 2nd defendant. She also denied having received any consideration from her. She further pleaded that by the date of the alleged sale deed, Ganni Venkata Ramanamma herself initiated eviction proceedings against the 3rd defendant herein from the plaint 'A' schedule lands, which were pending on the file of the Tenancy Special Officer, Ramachandrapuram, vide A.T.C.Nos.19/1981 and 18/1982.

Therefore, the claim of the 2nd defendant that Ganni Venkata Ramanamma represented to her that the 3rd defendant is only an Uddaraka but not a tenant is absolutely incorrect for the reason that if the 3rd defendant was not a tenant, she would not have initiated proceedings under Tenancy Laws for his eviction. The specific pleading of Ganni Venkata Ramanamma had been that during the year 1981, she was staying with the 1st defendant, who is none other than the father of the 2nd defendant, and who happened to be the eldest son of Ganni Venkata Ramanamma. She was aged about 95 years at that time. At the instance of D.1, she initiated the eviction proceedings against D.3, who is none other than her grandson. During those proceedings, it is contended that D.1, in whose house Ganni Venkata Ramanamma was staying, has obtained her thumb impressions on some papers representing that those papers are required to be filed in the Court where eviction proceedings are pending. Defendant No.1 being the eldest son of Ganni Venkata Ramanamma and the father of the 2nd defendant might have fabricated and concocted the registered sale deed – Ex.A.4 in favour of the 2nd defendant insofar as plaint 'A' schedule lands are concerned. According to Ganni Venkata Ramanamma, the said sale deed is vitiated by fraud, misrepresentation and undue influence.

29. Having set out the above pleadings, unfortunately, Ganni Venkata Ramanamma could not survive long and her evidence is not available. However, it may be stated here that even though Ganni Venkata Ramanamma has set up specific pleadings, the same were not denied by filing any rejoinder by her son Ganni Pattabhiramaiah or her granddaughter, who filed O.S.No.50 of 1985 based on the said sale deed, dated 2-4-1981.

30. As on the date of Ex.A.1, i.e., 2-4-1947 Ganni Venkata Ramanamma has absolute rights over the plaint schedule properties and in exercise thereof, she has executed the settlement deed equally

settling the properties in favour of her two sons viz., D.1 and the deceased 1st plaintiff. She has reserved the limited rights to herself and gave vested reminder to her two sons. However, by virtue of the Hindu Succession Act, 1956, and Section 14 (1) thereof, the limited rights of Ganni Venkata Ramanamma have been enlarged into absolute rights and the significance of Ex.A.1 – the settlement deed in favour of her two sons become insignificant. The fact remains that after 1956, the limited rights of Ganni Venkata Ramanamma were enlarged into absolute rights and therefore the only point that arise for consideration is as to whether the said Ganni Venkata Ramanamma has executed the original of Ex.A.4 in favour of D.2 by and under which she is said to have sold the plaint 'A' schedule properties to her. Insofar as the plaint 'B' schedule properties are concerned, the 1st defendant who pleaded that the said properties were orally gifted to him by his maternal grandfather – Nemani Pattabhiramayya could not establish the same and therefore the plaint 'B' schedule properties which fell to the share of Ganni Venkata Ramanamma in partition in between her three sisters is liable for partition in between her two sons viz., D.1 and the deceased 1st plaintiff.

31. The contention of the 1st defendant that Ganni Venkata Ramanamma has not executed the registered settlement deed – Ex.A.1 on 2-4-1942 cannot be believed in view of the fact that on the same day Ganni Venkata Ramanamma is said to have executed two registered gift deeds, the certified copies of which are Ex.A.11 and Ex.A.12, gifting some other lands in favour of her two sons viz., D.1 and the deceased 1st plaintiff. It is admitted by D.1 that the lands which he and his deceased brother got by virtue of the said gift deeds, Ex.A.11 and Ex.A.12, have been sold away by them. When on the same day, the mother of D.1 and the deceased 1st plaintiff has executed three registered instruments, the beneficiaries in which were the 1st defendant and his deceased brother, the 1st defendant cannot

be heard saying that his mother Ganni Venkata Ramanamma did not execute the settlement deed – Ex.A.1. The 1st defendant cannot approbate or reprobate. On the one hand, he took advantage and benefit of the gift deeds – Ex.A.11 and Ex.A.12, which were executed simultaneously along with Ex.A.1 and on the other, attempted to deny the execution of Ex.A.1, by the very same executant namely Ganni Venkata Ramanamma.

32. The next aspect of the matter is as to whether Ganni Venkata Ramanamma has executed the original of Ex.A.4 – the registered sale deed in favour of the 2nd defendant selling the plaint ‘A’ schedule lands on 2-4-1981 for a consideration of Rs.24,000/-. The material evidence on this aspect is that of D.W.2, who is the 1st defendant and D.W.4 who is the 2nd defendant in whose favour Ex.A.4 was said to have been executed. If the said sale by Ganni Venkata Ramanamma in favour of the 2nd defendant is proved, needless to say that plaint ‘A’ schedule lands cannot be said to be available for partition, inasmuch as, the said sale by Ganni Venkata Ramanamma in favour of D.2 herein is in exercise of her absolute rights over the plaint ‘A’ schedule lands, if not, the said property is liable for partition in between D.1, who is none other than the father of D.2, and the deceased 1st plaintiff.

33. Before advertig to the evidence on record, it may be apposite to place on record even at the cost of repetition, the nature of relationship in between the parties. Admittedly, in the year 1985, Ganni Venkata Ramanamma died at the age of about 95 years. Her husband – Atchuta Ramaiah died in 1951. She had three sons, viz., Patabhiramaiah (D.1) and the deceased plaintiff – Suryanarayananmurthy and the other son – Satyanarayana, who went in adoption. The relationship between the old mother and the eldest son – the 1st defendant do not appear to be as cordial as it should have been. The 1st defendant as D.W.2 admits in his evidence that when his mother – Ganni Venkata Ramanamma died, he did not

attend her funeral since he was in a different village. This speaks volumes about the nature of relationship between the old lady with her eldest son – D.1. D.2 is none other than the daughter of D.1 viz., the granddaughter of Ganni Venkata Ramanamma. D.2 has been working as lecturer in 1981 at Rajahmundry and she was not married at that time. Naturally her affairs, more particularly, with regard to acquisition of immovable properties was being dealt with by her father – D.1. D.3 is the son of Satyanarayana, who was the son of Ganni Venkata Ramanamma, who went in adoption. The plaint 'A' schedule lands have been under cultivation of D.3. For eviction of the said cultivating tenant – D.3/grandson of Ganni Venkata Ramanamma, she filed A.T.C.Nos.19/1981 and 18/1982 under the provisions of Tenancy Act. Subsequently, the said A.T.Cs., have been withdrawn as compromised, and the certified copies of the said orders have been filed. The specific contention of Ganni Venkata Ramanamma is that the said A.T.C.s have been filed at the instigation of her eldest son – D.1 and having realised his designs, she has compromised the A.T.Cs., and got it withdrawn. It is also on record that D.1 had been looking after all the litigations and cases for more than 40 years. Even in the suits that are filed, firstly by his daughter claiming rights over plaint 'A' schedule lands on the basis of Ex.A.4 dated 2-4-1981, and secondly, the suit filed by the deceased plaintiff in which he has been shown as D.1, has been looked after by him. In this background, the contention of D.2 that she purchased the plaint 'A' schedule lands from Ganni Venkata Ramanamma under Ex.A.4 inspite of the fact that D.3 was a cultivating tenant has to be considered. Eventhough, she pretends to be ignorant of the tenancy matters, her father who was for all practical purposes her guardian at the time of Ex.A.4, was certainly in the know of the things and the pendency of A.T.Cs., filed by Ganni Venkata Ramanamma against D.3.

34. As already stated O.S.No.37 of 1987 is comprehensive suit for partition and the findings therein will have bearing on the previously

instituted suit O.S.No.50 of 1985. O.S.No.37 of 1987 was originally filed by one Ganni Suryanarayana Murthy and after his death his wife came on record as the 2nd plaintiff. The 1st and 2nd defendants are father and daughter, and the 1st defendant is the elder brother of the deceased 1st plaintiff. Oral evidence has been adduced on behalf of both the parties.

35. The 2nd plaintiff has been examined as PW-1 and she has reiterated the case set up by her husband. It is in her evidence that the deceased 1st plaintiff (her husband) died on 16.9.1990 intestate and she is only legal heir. Her mother-in-law Ganni Venkata Ramanamma died at the age of about 100 years on 21.10.1985 and her father-in-law Achutha Ramaiah died in 1951. She has traced origin to the title to the suit schedule properties through Nemanı Pattabi Ramaiah, who was the father of her mother-in-law Ganni Venkata Ramanamma. She further deposed that insofar the plaint Schedule-B property is concerned, it originally belongs to her father-in-law Atchutha Ramayya and in the Court auction Nemanı Pattabi Ramaiah i.e., father-in-law of her father-in-law, Atchutha Ramayya, purchased the same, and thereafter gifted to Ganni Venkata Ramanamma, who was one of the three daughters of Nemanı Pattabi Ramaiah. She speaks about the settlement deed dt. 2.4.1947 in respect of plaint A and B Schedule properties, under which the entire property was settled amongst the two sons of Ganni Venkata Ramanamma, namely the deceased 1st plaintiff and the 1st defendant. It is further in her evidence that the 1st defendant, though he was eldest son of Ganni Venkata Ramanamma, never looked after her and even in the old age, Ganni Venkata Ramanamma was living at Kurmapuram with her eldest daughter, by name Vittakuti Venkata Ramanamma. She further deposed that subsequently she brought her mother-in-law and kept in her house and even though the 1st Defendant was resident of the same village, he never looked after the welfare of her mother-in-law. Subsequently,

after the death of her mother-in-law when partition was demanded 1st Defendant refused and hence the legal notice Ex.A.2 dt. 4.2.1986 was issued, which was returned as per the endorsement Ex.A.3. They subsequently came to know that the 1st Defendant obtained a sale deed in respect of the plaint A Schedule lands in favour of his daughter, the 2nd Defendant under original of Ex.A.4 from her mother-in-law Ganni Venkata Ramanamma and when 1st Defendant tried to damage the walls of the house, the 1st plaintiff issued a telegraphic notice under Ex.A.5 to which 1st Defendant replied under Ex.A.6. She further deposed that 2nd Defendant was working as a lecturer at Rajahmundry by the date of Ex.A.4-sale deed and she had no capacity to purchase the land at Gangavaram and her mother-in-law Ganni Venkata Ramanamma had no necessity to sell the property. She further deposed that the 1st Defendant being eldest son made her mother-in-law Ganni Venkata Ramanamma to execute the sale deed, which is a nominal and was obtained since the deceased plaintiff demanded for partition. She further deposed that in the year 1981 when Ex.A.4 is said to have been executed, her mother-in-law Ganni Venkata Ramanamma was aged about 95 years and at that old age she became senile. She further speaks about the fact that the 3rd Defendant was a cultivating tenant in respect of plaint-A schedule lands. She has stated that the plaint B-schedule house belongs to her mother-in-law and was not gifted to the 1st Defendant, as claimed by him. When the 1st Defendant dismantled the joint walls and has completely demolished Items 1 and 2 of the plaint schedule house, she has filed O.S.No.223 of 1986 against the 1st Defendant on the file of Principal District Munsif for injunction, which is pending. This witness was elaborately cross-examined but nothing concrete is elicited from her for disbelieving her evidence in chief insofar as the material aspects are concerned.

36. In support of the case of the plaintiff, P.W.2, who is the sister's husband of both the deceased plaintiff and the 1st defendant has been examined. He corroborates the claim of PW-1 on all aspects. Nothing material has been elicited in her elaborate evidence for inferring that the said witness was either a friend or a foe of either of his two brother-in-laws, namely the 1st plaintiff and the 1st Defendant. His evidence is material insofar as the nature of the relationship of the parties and the suit properties.

37. The other witness examined on behalf of the plaintiff is PW-3, who is a resident of the village Katipalli. He deposed that Ganni Venkata Ramanamma died in the Plaintiff B-schedule house and the deceased 1st plaintiff performed her obsequies. He further deposed about the undisputed fact that the 1st Defendant neither attended the cremation nor performed the obsequies of his mother, Ganni Venkata Ramanamma.

38. Upon careful perusal of the oral evidence of PWs. 1 to 3, the facts that emerge are that the plaintiff A-schedule lands were the properties of Ganni Venkata Ramanamma, which she got from her father and after partition from her sisters. The plaintiff B-schedule house originally belonged to her husband Atchutha Ramayya but in a Court auction her father Nemanji Pattabi Ramaiah has purchased the same and subsequently gifted the very same property to his daughter Ganni Venkata Ramanamma, who was the wife of Atchutha Ramayya. Even prior to Hindu Succession Act came into force Ganni Venkata Ramanamma has settled suit schedule properties in favour of her two sons, namely the deceased 1st plaintiff and the 1st Defendant equally, by reserving life interest into herself and her husband Atchutha Ramayya, who died in 1951. The evidence on record further establishes that Ganni Venkata Ramanamma was possessed of substantial properties and the lands were leased out to 3rd Defendant, who was cultivating the same. At the age of 100 years Ganni Venkata

Ramanamma died in the plaint B schedule house on 21.10.1985 and admittedly it is the deceased 1st plaintiff, who performed the cremation and obsequies and though the 1st Defendant was her eldest son, he did neither attend the cremation nor performed obsequies. The evidence on record further shows that Ganni Venkata Ramanamma had no need or necessity to sell the plaint A-schedule lands in favour of anybody, much less the 2nd Defendant , who is none other than the daughter of the 1st Defendant with whom the relations between the mother and son were not as cordial as they ought to be. Therefore, the alleged sale of the plaint A-schedule lands in favour of 2nd Defendant is surrounded by suspicion and the claim of Ganni Venkata Ramanamma, who has filed her written statement in O.S.No.50 of 1985 is to the effect that her elder son, the 1st Defendant was looking after all her affairs including the eviction proceedings initiated by her in ATC Nos. 19 of 1981 & 18 of 1982 filed against 3rd Defendant . In the process, the 1st Defendant, who was her elder son, has obtained signatures on some papers and the said Ganni Venkata Ramanamma has specifically alleged that the said sale deed is not a valid and genuine document and was brought into existence surreptitiously by her elder son, the 1st Defendant in favour of his own daughter, the 2nd Defendant .

39. Adverting to the evidence that is adduced on behalf of the defendants, the material evidence is that of DW-2, who is the 1st Defendant in the suit, and his daughter DW-4. The evidence of Dw-1, who is 3rd Defendant in the suit, is with regard to his taking on lease the plaint A-schedule lands and is cultivating the same. He is also the paternal grand son of Ganni Venkata Ramanamma, the landlady.

40. The evidence of DW-2, the 1st defendant is on two aspects. First is with regard to Plaintiff A-schedule properties; and with regard to plaint B-schedule properties, as already noticed, his case is that the said

property has been orally gifted to him by his maternal grand father Nemanı Pattabi Ramaiah. For the said purpose, except for producing certain tax receipts, no other documentary evidence is produced. DW-2 has produced Ex.B.2 to B28, which are the tax receipts and demand notices. A perusal of all these tax receipts does not clinchingly show that they are in respect of suit schedule properties. The door number mentioned therein do not tally in all the receipts. That apart, DW-2/1st defendant is not a stranger to the family or to the suit B-schedule property. Even according to the plaintiffs, he has half share in the suit B-schedule property along with the 1st plaintiff. Both of them are the sons of original owner Ganni Venkata Ramanamma. Therefore, merely because some of the tax receipts stand in the name of 1st Defendant/D.W.2, that by itself do not establish his exclusive ownership over the entire plaint B-Schedule property.

41. With regard to plaint A-schedule lands, when according to the plaintiffs, DW-2/1st Defendant along with the deceased 1st plaintiff has equal share, DW-2/1st Defendant contends that the entire plaint A-schedule lands have been purchased by his daughter/2nd Defendant under registered sale deed, the original of Ex.A-4. DW-2/1st Defendant denies knowledge about the execution of Ex.A.1 settlement deed in favour of of himself and his deceased brother by Ganni Venkata Ramanamma on 2.4.1947. But the denial is not worth stating. The material admission in the evidence of DW-2 is that he did not even attend the cremation of his mother Ganni Venkata Ramanamma since he claims to be in a different village. Yet another significant admission from the mouth of DW-2/1st Defendant is that even though his maternal grand father Nemanı Pattabi Ramaiah has orally gifted the plaint B-schedule house in his favour when he was a boy, aged about 15 to 16 years, the said Nemanı Pattabi Ramaiah did not execute any document in his favour on the apprehension that Dw-2/1st Defendant may sell away the said property. This apprehension

on the part of the Nemani Pattabi Ramaiah seems to be well-founded for the reason that on the date of Ex.A-1 settlement deed, two other documents were executed by his mother Ganni Venkata Ramanamma gifting some properties to himself and his deceased brother. Those properties have already been sold away by DW-2/1st Defendant. The evidence of DW-2 does not substantiate his contention with regard to plaint A schedule or B schedule properties.

42. The other relevant evidence is that of DW-4, who is the 2nd defendant in the suit and the daughter of 1st defendant in whose favour the plaint A-schedule lands were purchased. Upon perusing the testimony of DW-4, I have no hesitation in observing that she is not a *bona fide* purchaser and she could not establish satisfactorily that she purchased the plaint A schedule lands for a valid consideration. Her denial about Ex.A-1, the settlement deed cannot be believed for the reason that her own father, the 1st defendant was beneficiary thereunder and when the suit schedule- A lands were purchased in 1981, DW-4/2nd defendant was unmarried girl and she could not have purchased the property without the consent or knowledge of her father/1st defendant. Her further denial that she do not know about the tenancy rights of 3rd defendant, who is none other than her first cousin brother in the suit A-schedule lands cannot be believed. The conduct of 2nd defendant/DW-4, insofar as the delivery of possession of plaint A-schedule lands is concerned, is also improbable. It is in her evidence that she had been depending upon her father/1st defendant for all her property affairs and therefore her ignorance about what happened insofar as the plaint A-schedule properties are concerned and who are having the rights, cannot be accepted as truthful.

43. Another relevant aspect is when the sale transaction is said to have taken place and even thereafter, it is Ganni Venkata Ramanamma, who filed the eviction cases i.e., ATC Nos. 19 of 1981

and 18 of 1982 against the 3rd Defendant and if really the sale deed was executed, the erstwhile owner Ganni Venkata Ramanamma, could not have initiated and continued the proceedings, which ultimately culminated in compromise and in withdrawal and at that point of time it is the father of 2nd Defendant, who was looking after the affairs of his mother Ganni Venkata Ramanamma.

44. Upon perusing the evidence on record, I have no hesitation in holding that D.1 and D.2 miserably failed to prove that Ganni Venkata Ramanamma executed the registered sale deed, the original of Ex.A.4 on 2-4-1981, in favour of D.2 and therefore on the date of her death i.e., 21-10-1985, she died possessed of plaint 'A' schedule lands absolutely and since the only legal representatives left behind by her are the 1st defendant and the deceased 1st plaintiff, both the branches are entitled to half share each in plaint 'A' and 'B' schedule properties. The learned trial Judge upon thoroughly discussing the entire oral and documentary evidence on record has held that the plaintiff is entitled to half share in plaint 'A' and 'B' schedule properties and accordingly decreed the suit disbelieving the sale under Ex.A.4 in favour of D.2 herein and plaintiff in O.S.No.50 of 1985 and that the 2nd defendant is not the owner of the plaint 'A' schedule properties. The finding that the said sale deed is fabricated and concocted has been arrived at on the basis of the voluminous oral and documentary evidence and I see no reason to differ from the said finding of the learned trial Judge. The points are accordingly answered.

45. **Point No.4 :-** The plaintiff in the suit has claimed a sum of Rs.10,000/- from the 1st defendant towards cost of the bricks said to have been taken away by the 1st appellant – 1st defendant. This relief was negatived by the learned trial Judge holding that the plaintiff has not established her claim for recovery of the said amount. No appeal there against has been preferred. Hence, this finding of the Court below warrants no interference. The other relief of the plaintiff was for

a claim of Rs.2,000/- towards the value of the half share of her husband in the rental for the year 1986-86 @ 20 bags per year. This claim was made against the non-appellant – 3rd defendant, who was admittedly a cultivating tenant over the plaint 'A' schedule lands. The learned trial Judge has decreed this claim of the plaintiff against which the 3rd defendant in the suit did not prefer any appeal. Hence, the said finding became final warranting no interference.

46. In view of the foregoing findings, it is held that there are no merits in both the appeals. They are accordingly dismissed with costs confirming the judgment and decree in O.S.No.50 of 1985 and O.S.No.37 of 1987, dt. 25.6.1993. The miscellaneous petitions, if any pending, shall stand disposed of accordingly.

M.S.K.Jaiswal, J

Date: 31st January, 2014

Smr/kv

HON'BLE SRI JUSTICE M.S.K.JAISWAL

A.S.Nos.2323 and 2359 of 1993
(Common Judgment)

Dt. 31st January, 2014

Smr/kv