

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

**PRESENT
THE HONOURABLE SRI JUSTICE M.LAXMAN**

CITY CIVIL COURT APPEAL NO: 249 OF 2004

Appeal under Section 96 of CPC against the Judgment and decree dated 24/06/2004 made in OS No.279 of 2001 on the file of the Court of the XIII Additional Chief Judge (FTC) City Civil Court, Hyderabad.

Between:

R.Satyanarayana, S/o. late R.V.Rama Rao R/o. H.No. 10.4.771/1/A1, Sriramnagar Colony Masab Tank, Hyderabad.

...APPELLANT/ PLAINTIFF

AND

1. R. Lakshmi Narasamma @ Lalitha Devi, W/o. late R.V. Rama Rao R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony, Masab Tank, Hyderabad.
2. R.R. Kumar, S/o. late R.V.Rama Rao Lt.col. in Indian Army R/o. H.No. 16/2, R/o. Gurugovind Singh Marg Dilksha Post, Lucknow-2
3. R.S. Sudhakar, S/o. late Sri R.V. Rama Rao Industrialist R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony, Masab Tank, Hyderabad.
4. R.Veera Swamy, S/o. late Sri R.V.Rama Rao (died) per LRs RR 13 to 15 Lawyer R/o. 3-5-705/1 Opp: Old MLA Quarters lane Narayanaguda, Hyderabad.
5. R.Murali Krishna, S/o. late Sri R.V. Rama Rao Engineer R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
6. R. Anand Kumar, S/o. late Sri R.V. Rama Rao Working in State bank of hyderabad R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
7. R.Ramesh babu, S/o. late Sri R.V. Rama Rao Working in SBH R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
8. R.Appa Rao, S/o. late Sri R.V. Rama Rao Land lord R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
9. The General Manager, Andhra Bank Koti Hyderabad.
(added as per order in I.A.No.318/2003, dated 23/01/2004)
10. G.Vijayalaxmi, W/o. G.S.C. Ranga Rao housewife R/o. Flat No.2 A.K. Enclave Road No.3, Banjara Hills, Hyderabad.
11. Smt V.Meher Prasad Lakshmi, W/o. V. Ram Thirtha Housewife R/o. Flat No. SF-1, Avanthi apartment, Brindavan Colony, Vijayawada.
12. R.Suraya Ra, S/o.late R.V.Rama Rao, Occ: Business, R/o.10-4-771/1/A1, Sriram Nagar Colony, Masab Tank, Hyderabad.
(12th Respondent is impleaded as per the Hon'ble Court order dated 07/11/13 made in CCCAMP-64/11)
13. R.Kalavathi, W/o.late R.Veera Swamy, R/o.3-5-706, Vitalvadi, Hlmayatnagar, Hyderabad.

14. Beeravelli Manguta Reddy, W/o.B.Amarender, R/o 4-99-01, Summer Hill Road, Fordschinn, Melborn, Victoria 3011, Australia.

15. Smt Saritha Dutt, S/o.Satish, R/o.G-3, Sathagiri Apartments, Vittalvadi, Himayath Nagar, Hyderabad.

(RR 13 to 15 are brought on record as LR's of deceased 2nd Respondent as per court order dated 23/07/18 made in IA 1/18)

...RESPONDENTS

For the Appellant : SRI V.V.RAGHAVAN, Advocate

For the Respondent Nos.2, 4 to 8, 10 & 11 : SRI A.L.RAJU, Advocate

For the Respondent No.12 : MS. V.KHATOON, Advocate

For the Respondent Nos.13 to 15 : MS. VASANTHA MUPPANENI, Advocate

The Court delivered the following : JUDGMENT

THE HONOURABLE SRI JUSTICE M.LAXMAN

CITY CIVIL COURT APPEAL No.249 of 2004

JUDGMENT:

1. The present appeal has been filed assailing the judgment and decree dated 24.06.2004 in O.S.No.279 of 2001 on the file of the XIII Additional Chief Judge, City Civil Court, Hyderabad, wherein and whereby, the suit filed by the appellant herein for partition of suit property was dismissed. Aggrieved by the same, the present appeal has been filed.

2. The appellant herein is plaintiff and the respondents herein are defendants in the suit. Aggrieved by the dismissal of the suit, the present appeal is filed at the instance of plaintiff. For the sake of convenience, the parties hereinafter are referred to as they are arrayed in the suit.

3. The case of the plaintiff is that premises bearing municipal Nos.10-4-771/1/A/1, 10-4-771/1/A/5, 10-4-771/A/6 and 10-4-771/1/A/7 admeasuring 1130.80 sq. yards situated at Sriramnagar Colony, Masab Tank, Hyderabad, (hereinafter referred as 'suit property') was

purchased by Late Sri Rama Rao, who is the father of the plaintiff and defendant Nos. 2 to 8 and husband of defendant No.1. Late Rama Rao had two wives and defendant No.1 is his second wife. The suit property was purchased in the name of defendant No.1 and 3 in order to avoid future claims from the children of his first wife. Originally, the said Rama Rao, started his practice as an advocate at Amalapuram; he then shifted to Eluru; subsequently to Guntur and lastly he shifted to Hyderabad. He worked as public prosecutor in the High Court of Andhra Pradesh and has good reputation. He was having ancestral property at Amalapuram and he also acquired house properties in Eluru and Guntur, out of ancestral funds. Rama Rao had six (6) sons and two (2) daughters from his first wife and he had eight (8) sons and two (2) daughters from his second wife.

4. It is the case of plaintiff that his father stopped his practice in the year 1974, as he was unwell. As the eldest brother of plaintiff i.e., defendant No.2 was employed in Indian Army, defendant No.3 who is second eldest son of Rama Rao, was managing the entire family after the their

father fell sick. Defendant No.4 was married and he was staying with his wife in Himayathnagar, Hyderabad. The remaining sons of said Rama Rao, including plaintiff, were of young age and were students. The father of the plaintiff was having ancestral agricultural properties in Amalapuram and other places. Out of joint family property, he acquired houses at Eluru and Guntur. Subsequently, after shifting to Hyderabad, he was staying in Anuradha building in a quarter which was allotted to his eldest son i.e., defendant No.2, who was in Army and prior to that, they also resided in some private houses.

5. The pleadings of plaintiff show that his father settled the claims of his children from his first wife and they were well settled. In order to have a house for his second wife and children, he purchased the suit property in the name of defendant No.1 and 3 through registered sale deed dated 05.05.1975, for sale consideration of Rs.23,000/-. To purchase the land pertaining to suit property said Rama Rao sold his ancestral property at Amalapuram under Exs.A-1 to A-4. Subsequently, a part of said sale price was used by him for construction of ground and first floors. He

also sold House properties situated in Eluru and Guntur under Exs.A-8 and A-9 and lands owned by him, situated in Gollapalem village under Exs.A-5 to A-7 for raising constructions in suit property. After completion of the said constructions, plaintiff along with his parents and defendant Nos. 3 to 5, 8 and 11 shifted to newly constructed house i.e., suit property. For the purpose of constructing second and third floors of the suit property, amounts recovered from one K. Sambasiva Rao and others were utilized, the said amounts were given as loan to said persons by father of plaintiff.

6. The plaintiff further pleaded that subsequently, defendant No.3 gifted a portion of the suit property in favour of defendant Nos. 5 and 7 and they have raised apartment with their own expenses and they are also enjoying the same. The father of plaintiff executed a Will Deed allocating equal shares to all his children in respect of other properties which he held. The suit property is divisible property and the plaintiff filed the present suit for partition claiming $1/9^{\text{th}}$ share over the same.

7. Defendant No.1 is mother of plaintiff and defendant Nos.2 to 8 are brothers of plaintiff. During the pendency of the suit, defendant No.1 died and defendant Nos.10 and 11, who are sisters of plaintiff were brought on record as legal representatives of defendant No.1. Defendant Nos.1, 2 and 4 filed their respective written statements supporting the case of plaintiff. Defendant Nos.3 filed his written statement opposing the plaint, which was supported by the written statements filed by defendant Nos.5 to 7.

8. It is contended by defendant No.1 in her written statement that lands in Gollapalem village to an extent of Ac.25-00 guntas were purchased by her husband in her name. She also claimed that the suit property was purchased by her husband through sale proceeds of his ancestral property at Amalapuram. Further, ground and first floors were constructed with the balance funds from ancestral property, sale proceeds of house properties situated at Eluru and Guntur and sale proceeds of Gollapalem village lands. An amount of Rs.1,40,000/- recovered from K. Sambasiva Rao and others were used for the purpose of meeting the construction expenses with

regard to second and third floors. She further contended that an amount of Rs.30,000/- which pertains to land acquisition proceeds in respect of certain lands was also utilized for raising constructions in suit property.

9. The pleadings of defendant No.1 further reveal that initially, Gollapallem village lands were transferred into the names of plaintiff and defendant No.8 and subsequently, they sold out the same to meet the construction expenses in suit property. She further submitted that defendant No.3 in order to meet his business expenses wanted money from the bank and to help him to establish his business and secure funds, she executed release deed in respect of suit property nominally. According to her, the suit property was purchased for the benefit of her family.

10. The pleadings of defendant No.2 shows that he was working as doctor in Indian Army since 1965 and in the year 1971, he was transferred to Army Medical Unit, Golconda, Hyderabad. Initially, they resided at Golden Thresh-hold at Himayathnagar and later, he was allotted quarter in Anuradha Building. In the year 1976, he was

transferred to Guntur, but the family members continued to reside in the said Anuradha Building till completion of constructions in suit property. He further pleaded that suit property land was purchased from the sale proceeds of ancestral property of their father and constructions were made from the part of sale proceeds of their ancestral properties and house properties owned by their father.

11. The pleadings of defendant No.3 and other defendants opposing the plaintiff show that the suit property was purchased out of savings of defendant No.3 and from the sale proceeds of stridhana property and gold jewellery of defendant No.1 and wife of defendant No.3. Defendant No.3 also claimed that the house at Eluru and Guntur and other properties were self-acquired by his father. The ancestral property of their father was meager and part of sale proceeds of such ancestral properties were utilized for the marriage of defendant No.11 and rest of the amounts were used by defendant No.1 and plaintiff. Further, all the elder sons of defendant No.1 and Rama Rao were married and lived separately. The said Rama Rao

used to secure help from defendant No.4 for his livelihood in his last days.

12. Defendant No.3 further pleaded that his father executed Will Deed in favour of defendant No.1 in respect of his properties and he has not mentioned suit property in the said Will, which shows the suit property is not his property. Defendant No.3 was employed from the year 1967 and he also worked as Branch In-charge in Crompton Greaves Company and he also did some businesses. Out of said savings and contribution from his wife's streedhana, jewellery and gold and streedhana of his mother, he purchased suit property. Further, out of love and affection, defendant No.1 has executed release deed in respect of her $\frac{1}{2}$ share in suit property. Defendant No.3 executed gift deed in favour of defendant Nos.5 and 7 to meet his liabilities.

13. Defendant No.3 further pleaded that plaintiff has married a girl of other caste and started to reside separately in Panjagutta area along with his family. Plaintiff was doing some business with the funds of

defendant No.1 and 3 and such business suffered losses. As the wife of plaintiff was pregnant, defendant No.3 allowed them to live with defendant No.1. Plaintiff took the same as advantage and created the present litigation; hence prayed to dismiss the suit.

14. Defendant Nos. 5 and 7 claimed that the part of property i.e., 361 sq. yards was gifted by defendant No.3 and construction of apartment was made, out of their own funds, which were earned by them through various means. Such property shall be excluded from partition and prayed to dismiss the suit.

15. On the basis of the above pleadings, the trial Court has framed the following issues:

- "1. Whether the plaintiff is entitled for partition of the suit schedule property and allot one such share to the plaintiff by means of a final decree?
2. Whether there was a Will in favour of the 1st defendant executed by late Rama Rao? If so, what is the effect of the Will?
3. Whether the release deed, pleaded in the W.S. of D-1 is only nominal in the circumstances set out there in?
4. Whether the counter-claim of rent by defendant No.3 against the plaintiff is not correct?
5. To what relief?"

16. The plaintiff, in support of his case, examined himself as P.W.1 and relied upon Exs.A-1 to A-10. The defendants, to support their case, examined D.Ws.1 to 3 and got marked Exs.B-1 to B-35.

17. The trial Court on appreciating the evidence on record found that the plaintiff failed to establish that the suit property was purchased out of joint family nucleus for the benefit of coparcener and consequently, the suit was dismissed. Aggrieved by the same, the present appeal is filed by the plaintiff.

18. During the pendency of the present appeal respondent No.12, who is son of first wife of said Rama Rao was impleaded, but there is no contest on his part. Further, defendant No.4/respondent No.4 died and his legal representatives were brought on record as respondent Nos. 13 to 15.

19. Hear both sides.

20. In the light of above submissions, the points emerging for consideration in this appeal are as follows:

- "1. Whether the suit property is available for partition among the plaintiff and defendants?
2. Whether plaintiff is entitled for partition and allocation of his share in suit property as claimant?
3. To what relief ?"

Point Nos.1 and 2:

21. The facts which are not in dispute are that Mr. Rama Rao, originally hails from Amalapuram and he was a practicing advocate. Initially, he started his practice in Amalapuram and he was holding ancestral lands in Amalapuram. Subsequently, he shifted to Eluru and later to Guntur. He practiced in the High Court at Guntur and after formation of erstwhile state of Andhra Pradesh, he shifted his practice to Hyderabad. He also worked as public prosecutor in the erstwhile High Court of Andhra Pradesh at Hyderabad.

22. It is also not in dispute that Mr. Rama Rao had ancestral agricultural properties in Amalapuram and he sold out such properties in the year 1974 under Exs.A-1 to

A-4. It is also not in dispute that he had house properties at Eluru and Guntur, which he sold under Exs.A-9 and A-10. There is also no dispute that the lands in Gollapalem village were sold under Exs.A-5 to A-7 on 11.03.1976. These lands situated in Gollapalem village were purchased in the name of defendant No.1 and later, she transferred them to plaintiff and defendant Nos. 8 and 11. Such property was to an extent of Ac.25.00 guntas.

23. The dispute involved in the present appeal is whether the suit property is self-acquired property of defendant No.3. The plaintiff, defendant Nos.1, 2 and 4 claim that the suit property was purchased for consideration of Rs.23,000/- by Late Rama Rao, with sale proceeds pertaining to land situated in Amalapuram. According to them, such property was ancestral property of Late Rama Rao. The construction of ground and first floors in the suit property were concluded in the year 1978 and the second and third floors were constructed subsequently.

24. It is also not in dispute that the said Rama Rao and defendant No.1 along with their children resided in

Anuradha building, which was the quarter allocated to defendant No.2, who was employed in Indian Army. The said quarter was allotted to him when he was posted to work in Golconda Unit, Hyderabad. During their stay in said Anuradha building, in the year 1974, the lands situated at Amalapuram were sold and suit property land, which was near to Anuradha building, was purchased in the year 1975.

25. It is the case of the plaintiff that suit property land was purchased out of sale proceeds of ancestral properties and constructions were made with sale proceeds of house properties held by Rama Rao, in Eluru and Guntur and also sale proceeds of lands situated at Gollapalem village.

26. It is the case of defendant No.3 that the suit property was purchased out of his own savings, streedhana of his wife and defendant No.1, which also includes sale proceeds obtained from sale of gold and jewellery of his wife. He also claims that Ex.B-2 release deed was executed by his mother i.e., defendant No.1 out of love and affection for nominal price, but defendant No.1 pleadings and evidence

shows that defendant No.3 got executed such release deed for the purpose of obtaining loan over the suit property to establish his business.

27. Defendant No.3 was examined as D.W.2 and in his cross-examination, he admitted that when the property was purchased, there was joint family and he was member of said joint family. It is also clear that on the date of purchase of property, defendant No.3 and 4 were married and other defendants were students and were pursuing their studies.

28. The plaintiff from his evidence and part of evidence of his mother put up a case which demonstrates that there were sale of ancestral property contemporaneous to purchase of suit property land. He also demonstrated that the house properties situated at Eluru and Guntur were also sold out contemporaneously for construction activities which were taken up over suit property. The plaintiff by such evidence claimed that the sale proceeds to suit property were sourced from sale of said properties. The suit property land was purchased in the name of defendant

No.1 and 3, in order to avoid future litigation from children of first wife of said Rama Rao.

29. Defendant No.3 claimed that suit property was purchased out of his own savings since he was employed from the year 1967. Initially, he was working in Shalimar Biscuits Company as Supervisor and subsequently, he worked in Crompton Greaves as Branch in charge and he also did certain businesses. He further claimed that his father-in-law was rich man and his wife was given an amount of Rs.58,000/- apart from gold as streedhana. Therefore, utilizing the said savings, streedhana of his wife and mother (including sale proceeds of gold and jewellery of his wife), he purchased the suit property.

30. The evidence on record shows that when the suit property was purchased, there is a joint family and there is no disruption of joint family. Though, defendant No.2 was staying away from joint family due to employment, he was also part of the said joint family. Defendant No.4 after his marriage started staying with his wife in their house. There was no intention on them to disrupt the joint family.

It is admitted case of the defendant No.3 that there was joint family. Even by date of purchase, other children of Late Ramrao were pursuing their education and they were of very young age.

31. Before proceeding further, it is apt to refer to certain principles relating to acquisition of property by a member of joint family or in the name of one of the coparceners of joint family. The Apex Court in judgments of **D.S. Kashmaish v. L. Balasubramanyam**¹ and **Makhan Singh v. Kulwant Singh**² held as follows:

"The legal Principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

32. The above referred principle makes it clear that there is no presumption of a property being joint family property

¹ (2003) 10 SCC 110

² (2007) 10 SCC 302

only on account of existence of joint Hindu family. The person, who asserts that the property is joint family has to prove such fact. Further, if the person, who is asserting proves that there is joint family nucleus with which the joint family property could be acquired then there would be presumption that the property is joint family property. Then, the onus shifts to other persons, who claim it to be self-acquired property to prove that he purchased such property out of his own funds.

33. The evidence on record shows that there was a joint family, when the suit property land was purchased under Ex.B-1 in the year 1975 and evidence also shows that contemporaneously there was sale of ancestral property at Amalapuram. The document recitals of sale deeds under Exs.A-1 to A4 clearly show that the purpose of sales were to purchase property for the benefit of the family. There were also contemporaneous sales of lands situated at Gollapallem village and house properties in Eluru and Guntur, which stood in the name of the father of plaintiff. The sale proceeds received out of sale of ancestral property was Rs.50,000/- and the value of land of suit property was

Rs.23,000/-, as per Ex.B-1. This evidence is not seriously disputed. From such evidence, it is clear that plaintiff could able to demonstrate that joint family was having sufficient joint nucleus and such joint nucleus was capable of contributing to the consideration for purchase of suit property.

34. On account of above proved evidence, presumption can be raised in favour of plaintiff that the property was purchased for the benefit of joint family. Now, the onus shifts to the defendant No.3, who asserts it as his self-acquisition, to rebut the said presumption. It is not in dispute that suit property was in the name of defendant No.1 and 3. Defendant No.1 supports the claim of plaintiff, but she already executed a release deed dated 17.11.1976 under Ex.B-2 in favour of defendant No.3. She claims that such release deed was executed to facilitate loan to defendant no.3 for the purpose of starting his business. It was a nominal document and there is no transfer of any interest held by her. Defendant No.3 claims that release deed was executed by defendant No.1 out of love and affection and not for the purpose of any loan. Further, the

evidence shows that defendant No.3 obtained loan to commence his business from bank and this property was kept under mortgage. Subsequently, part of loan amount was paid by defendant Nos. 5 and 7. Defendant No.3 executed gift deed in favour of defendant Nos. 5 and 7 and conveyed 361 sq. yards, in their favour. It is also not in dispute that plaintiff and defendant No.8 are still staying in the ground floor of the suit property and their mother was with them, till her death. This shows that they are still in possession of ground floor of suit property.

35. Defendant No.3 further contended that he was employed from the year 1967, he worked as Supervisor in Shalimar Biscuit and also as Branch in charge in Crompton Greaves. Hence, he was having sufficient savings. Further, his wife got Rs.58,000/- towards her streedhana along with gold jewellery, by sale of such jewellery and streedhana, amounts were contributed for purchase of suit property. Defendant No.1 also contributed her streedhana and sale proceeds of her gold jewellery for purchase of suit property.

36. In order to support such claim apart from his evidence, he has relied upon the evidence of D.W.3, who is co-son-in-law of defendant No.3. The evidence of D.W.3 shows that his father-in-law has not paid any amount towards dowry of his first and second daughters' marriage. He further claims that at the time of marriage of defendant No.3 and his wife (fourth daughter of his father-in-law), gold jewelry and cash altogether an amount of Rs.1,00,000/- was given to her. He further claimed that he assisted Late Rama Rao for sale of lands in Amalapuram. He also stated that after marriage, defendant No.3 was doing business in Telangana region by supplying election material purchased from them. In the cross-examination, he has admitted that he does not know sale transaction pertaining to Amalapuram properties and he was not there when the property was sold. He also claimed that Late Rama Rao was a good person and doubted that he received any dowry at the time of marriage of defendant No.3. He further says that he gave an amount of Rs.28,000/- to Late Rama Rao at the time of marriage of defendant No.3 for

purchasing clothes and gold. He did not state about any further amount in his cross-examination.

37. The evidence of D.W.2 (defendant No.3) shows that in the chief examination, he has claimed that he was employed from the year 1967 and in cross examination he states that he was employed from the year 1969. He claimed that he was working as Supervisor in Shalimar Biscuit company and later he also worked as Branch in charge of Crompton Greaves. The evidence of D.W.3 shows that after marriage defendant No.3 was doing business of election material having purchased the same from them.

38. As per the estimate of architect an amount of Rs.42,000/- was estimated for construction of ground and first floors. According to the assessment of defendant No.3 also an amount of Rs.80,000/- was incurred for construction of ground floor. He claimed that Rs.48,000/- was received by his wife towards streedhana during her marriage in the year 1974. This evidence is contrary to evidence of D.W.3, who is co-son-in-law of defendant No.3, wherein he stated that since his father-in-law was not well,

he acted as elder to the marriage of defendant No.3. His evidence shows that he has given an amount of Rs.28,000/- to Late Rama Rao for the purpose of purchasing clothes and gold for the marriage of defendant No.3 and he did not support giving of Rs.48,000/-.

39. The evidence of defendant No.3 shows that whatever he was earning, he spent for his family needs. If such is the case, admittedly no amount is saved by him, so as to purchase suit property land to an extent of 1130.80 sq. yards. Further, meeting expenditure of nearly an amount of Rs.80,000/- for construction of ground floor and further amount for construction of first, second and third floors is not possible with any savings or amount of his wife.

40. The evidence of defendant No.3 further shows that he has obtained loan from bank and loan was accrued. Defendant Nos. 5 and 7 cleared the same after obtaining gift deed in respect of 361 sq. yards in suit property. Defendant Nos.1 and 3 were having equal shares in the suit property before execution of release deed by defendant No.1. The unnatural circumstances is that when a

property is purchased with strreedhana and sale proceeds of jewellery of bride, no prudent bride would agree for purchase of property, in the name of her mother-in-law.

41. The trial Court eschewed the evidence of D.W.1 (defendant No.1) as she died after completion of cross-examination in part. I do not find any provision under the Indian Evidence Act, 1872 or any other provision under Civil Procedure Code empowering the Court to eschew the evidence on account of death of witness. It appears, most of the cross-examination was completed and appreciation of such completed cross-examination cannot be ignored. The claims made in the chief and cross examination touching the claims made in the chief examination can be taken into account. The claims made in the chief-examination might not be relevant evidence for demolishing the case of plaintiff, who was not given full opportunity to cross-examine, the witness. Approach of the Court in completely erasing the evidence of defendant No.1 (D.W.1) is not correct approach.

42. The evidence of D.W.1 also shows that there was joint family and ancestral properties of Late Rama Rao were sold and sale proceeds were utilized for the purpose of purchase of suit property land. She also claimed that the release deed was obtained by defendant No.3 in order to obtain loan to start the business.

43. From the evidence on record, it is clear that plaintiff could able to demonstrate that there is sufficient joint nucleus of joint family, which was capable of meeting the sale consideration for the purchase of suit property. There is also sufficient evidence to indicate that amounts were made available, out of sale proceeds of family ancestral property and self properties of Late Rama Rao, for construction of ground and first floors. There is also evidence that Rs.1,40,000/- was also received from the persons to whom Late Rama Rao has lent money and this money according to them was used to purchase and construct the suit property. Hence, the plaintiff is entitled to draw presumption in his favour that suit property is joint family property and onus is shifted to defendant No.3, to prove that the property was self-acquired. The evidence

of defendant No.3 itself shows his incapacity to purchase property and he failed to prove that he had sufficient money. Defendant No.3 also failed to bring evidence that his wife received streedana amount from his father-in-law and such amount was utilized for purchase of suit property. Therefore, defendant No.3's claim suffers from defect. This was not considered by the trial Court.

44. Plaintiff claims $1/9^{\text{th}}$ share in suit property which was purchased by Late Rama Rao for the benefit of his second wife (defendant No.1) and her children. Hence, daughters cannot be excluded. Though, the son of first wife of said Rama Rao was impleaded in the present appeal, he has not participated in the proceedings and original parties are not in dispute, in this regard. In the light of the fact that claims of children of first wife were settled, the children of the first wife are not proper and necessary parties to the present proceedings. However, daughters of second wife i.e., defendant Nos. 10 and 11 are entitled to share in suit property. During the pendency of the suit, defendant No.1 died and her share must be allotted to her sons and daughters, on account of intestate

death. In the said circumstances, the suit property has to be divided equally among eight (8) sons and two (2) daughters i.e., $1/10^{\text{th}}$ share each. Accordingly, both the points are answered.

45. In the result, the appeal is allowed and judgment and decree dated 24.06.2004 in O.S.No.279 of 2001 on the file of the VIII Additional Chief Judge, City Civil Court, Hyderabad, is set aside. Consequently, the suit is decreed as follows:

- a. Plaintiff is entitled for $1/10^{\text{th}}$ share in the suit property.
- b. The other sons, if died, their legal representatives, and daughters of the Rama Rao are entitled for $1/10^{\text{th}}$ share, each in the suit property.
- c. The part of suit property in which constructions were raised by defendant No.5 to 7 in respect of gift deed executed by the defendant No.3 shall be taken into consideration while working out equity in the final decree proceedings.
- d. There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

//TRUE COPY//

Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR

GB
SECTION OFFICER

- To
1. The XIII Additional Chief Judge, (FTC), City Civil Court, Hyderabad. (with records)
 2. One CC to Sri V.V.Raghavan, Advocate [OPUC]
 3. One CC to Sri A.L.Raju, Advocate [OPUC]
 4. One CC to Ms. Vasantha Muppaneni, Advocate [OPUC]
 5. One CC to Sri V.Khatoon, Advocate [OPUC]
 6. Two CD Copies

Kj.

7/11

HIGH COURT

DATED: 30/11/20 22



JUDGMENT

CCCA.No.249 of 20 14

APPEAL IS ALLOWED.

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H24

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

WEDNESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

**PRESENT
THE HONOURABLE SRI JUSTICE M.LAXMAN**

CITY CIVIL COURT APPEAL NO: 249 OF 2004

Between:

R.Satyanarayana, S/o. late R.V.Rama Rao R/o. H.No. 10.4.771/1/A1, Sriramnagar Colony Masab Tank, Hyderabad.

...APPELLANT/ PLAINTIFF

AND

1. R. Lakshmi Narasamma @ Lalitha Devi, W/o. late R.V. Rama Rao R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony, Masab Tank, Hyderabad.
2. R.R. Kumar, S/o. late R.V.Rama Rao Lt.col. in Indian Army R/o. H.No. 16/2, R/o. Gurugovind Singh Marg Dilksha Post, Lucknow-2
3. R.S. Sudhakar, S/o. late Sri R.V. Rama Rao Industrialist R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony, Masab Tank, Hyderabad.
4. R.Veera Swamy, S/o. late Sri R.V.Rama Rao (died) per LRs RR 13 to 15 Lawyer R/o. 3-5-705/1 Opp: Old MLA Quarters lane Narayanaguda, Hyderabad.
5. R.Murali Krishna, S/o. late Sri R.V. Rama Rao Engineer R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
6. R. Anand Kumar, S/o. late Sri R.V. Rama Rao Working in State bank of hyderabad R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
7. R.Ramesh babu, S/o. late Sri R.V. Rama Rao Working in SBH R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
8. R.Appa Rao, S/o. late Sri R.V. Rama Rao Land lord R/o. H.No. 10.4.771/1/A1 Sriramnagar Colony Masab Tank, Hyderabad.
9. The General Manager, Andhra Bank Koti Hyderabad.
(added as per order in I.A.No.318/2003, dated 23/01/2004)
10. G.Vijayalaxmi, W/o. G.S.C. Ranga Rao housewife R/o. Flat No.2 A.K. Enclave Road No.3, Banjara Hills, Hyderabad.
11. Smt V.Meher Prasad Lakshmi, W/o. V. Ram Thirtha Housewife R/o. Flat No. SF-1, Avanthi apartment, Brindavan Colony, Vijayawada.
12. R.Suraya Ra, S/o.late R.V.Rama Rao, Occ: Business, R/o.10-4-771/1/A/1, Sriram Nagar Colony, Masab Tank, Hyderabad.
(12th Respondent is impleaded as per the Hon'ble Court order dated 07/11/13 made in CCCAMP-64/11)
13. R.Kalavathi, W/o.late R.Veera Swamy, R/o.3-5-706, Vitalvadi, Hlmayatnagar, Hyderabad.
14. Beeravelli Manguta Reddy, W/o.B.Amarender, R/o.4-99-101, Summer Hill Road, Fortscan, Melborn, Victoria 3011, Australia.
15. Smt Saritha Dutt, S/o.Satish, R/o.G-3, Sapthagiri Apartmenrs, Vittalvadi, Himayath Nagar, Hyderabad.
(RR 13 to 15 are brought on record as LRs of deceased 4th Respondent as per court order dated 23/07/18 made in IA 1/18)

...RESPONDENTS

Appeal under Section 96 of CPC against the Judgment and decree of the Court of the XIII Additional Chief Judge (FTC) City Civil Court, Hyderabad in OS No.279 of 2001 dated 24/06/2004.

ORDER: This appeal coming on for hearing and upon perusing the grounds of appeal, the Judgment and decree of the Lower Court and the material papers in the suit and upon hearing the arguments of Sri V.V.Raghavan, Advocate for the Appellant and of Sri A.L.Raju, Advocate for the Respondent Nos 2, 4, 5, 6, 7, 8, 10 and 11 and of Ms. Vasantah Muppaneni, Advocate for the Respondent Nos. 13 to 15 and of Ms. V.Khatoun, Advocate for the Respondent No.12.

This Court while allowing the appeal doth Order and decree as follows :

1. That the Judgment and decree dated 24/06/2004 in OS No.279 of 2001 on the file of the XIII Additional Chief Judge, City Civil Court, Hyderabad be and hereby is set aside.
2. That the plaintiff is entitled for 1/10th share in the suit property.
3. That the other sons, if died, their legal representatives and daughters of the Rama Rao are entitled for 1/10th share each in the suit property.
4. That the part of suit property in which constructions were issued by defendant No.5 to 7 in respect of gift deed executed by the defendant No.3 shall be taken into consideration while working out equity in the final decree and proceedings.
5. That there be no order as to costs in this appeal.

Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR
CD
SECTION OFFICER

//TRUE COPY//

To

1. The XIII Additional Chief Judge, City Civil Court, Hyderabad
2. Two CD Copies

Kj.

fw

HIGH COURT

DATED:30/11/2022

DECREE

CCCA.No.249 of 2014

APPEAL IS ALLOWED.

④
3/2/23
HVL