



**HIGH COURT OF ANDHRA PRADESH**  
**TUESDAY ,THE ELEVENTH DAY OF JULY**  
**TWO THOUSAND AND TWENTY THREE**

**PRESENT**

**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**THE HONOURABLE SRI JUSTICE V SRINIVAS**  
**FIRST APPEAL NO: 1265 OF 2018**

**Between:**

1. MUNIPALLI SUBBRAO (DIED) GUNTUR
6. Munipalli Koteswari w/o. Late Subbarao, Hindu, 62 years, r/o. D.No.3-14-41, Nehru road, Rajakapet, Tenali, Guntur Distric
7. Munipalli Venkata Koteswararao s/o. Late Subbarao, Hindu, 50 years, r/o. D.No.3-14-41, Nehru road, Rajakapet, Tenali, Guntur District
8. Munipalli Srirama Krishna s/o. Late Subbarao, Hindu 47 years, r/o. D.No.3-14-41, Nehru road, Rajakapet, Tenali, Guntur District
10. Pasupuleti Suguna r/o. D.No.4-132, Sannidhi Street, Srikalahasthi, Chittoor District.
11. Munipalli Kiranmai d/o. late Subbarao, Hindu, 27 years, r/o. D.No.3-14-41, Nehru road, Rajakapet, Tenali, Guntur District

**...PETITIONER(S)**

**AND:**

1. MUNIPALLI SIVA SANKARA VARA PRASAD RAO D.No.3-14-41A, Rajakapet, Nehru road, Tenali, Guntur District
2. Nilikonda Venkayamma w/o. Chennakesavulu, Hindu, 73 years, r/o. Door No.6-3-595/4, Venkata Ramana colony, Khairatabad, Hyderabad
3. Gadapa Rajeswari w/o. Apparao, Hindu 71 years, r/o. Door No.11-9-35, 11-9-110(N), Lakshmipuram colony, Road No.2, Kothapet, Dilshuk Nagar, Hyderabad
4. Nilikonda Sakuntala w/o. Siva Rama Krishnaiah, Hindu, 68 years, r/o. Door No.2-56, Pedapalem village, Duggirala Mandal, Guntur District
5. Ponugupati Vijaya Kumari w/o. Siva Sankararao, Hindu, 60 years, r/o. Plot No. 963, 1st floor, Sai Residency, Near Library, Near Peda Vinayakudu, Khairatabad, Hyderabad
9. Pasupuleti Suguna w/o. Bala Subrahmanyam, d/o. late Subbarao, Hindu, 44 years, r/o. D.No.4-132, Sannidhi Street, Srikalahasthi, Chittoor District

**...RESPONDENTS**

**Counsel for the Petitioner(s): SRINIVASA RAO BODDULURI**

**Counsel for the Respondents: N SUBBA RAO**

**The Court made the following: ORDER**



**\* THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU  
AND  
THE HON'BLE SRI JUSTICE V.SRINIVAS**

**+ APPEAL SUIT No.1265 of 2018**

**% Dated: 11-07-2023**

**# Munipalli Subbarao (died) and five others ... Appellants**

**and**

**\$ M.Siva Sankara Vara Prasadarao @ Prasadarao  
and four others ... Respondent**

**! Counsel for the appellants : Sri Bodduluri Srinivas Rao**

**^ Counsel for the respondents : Sri N.Subbarao**

**< GIST :**

**> HEAD NOTE :**

**? Cases referred :**

**<sup>1</sup> (2005) 6 ALD 204**

**<sup>2</sup>AIR 1963 SC 992**

**<sup>3</sup>AIR 1965 SC 271**

**<sup>4</sup>AIR 1923 Madras 337**



**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU  
AND  
THE HON'BLE SRI JUSTICE V.SRINIVAS**

**APPEAL SUIT No.1265 of 2018**

Munipalli Subbarao (died) and five others ... Appellants

and

M.Siva Sankara Vara Prasadarao @ Prasadarao ... Respondents  
and four others

**DATE OF ORDER PRONOUNCED: 11.07.2023**

**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU  
AND  
THE HON'BLE SRI JUSTICE V.SRINIVAS**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wishes to see the fair copy of the Judgment? Yes/No



**THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**  
**AND**  
**THE HON'BLE SRI JUSTICE V.SRINIVAS**  
**APPEAL SUIT No.1265 of 2018**

**JUDGMENT:** *(per Hon'ble Sri Justice V.Srinivas)*

This appeal is directed against the decree and judgment dated 15.03.2018 in O.S.No.64 of 2014 passed by the learned XI Additional District and Sessions Judge, Tenali.

2. The appellants herein are the plaintiffs, and the respondents herein are the defendants. For convenience, the parties herein are referred to as they are arrayed in the trial Court.

3. The above appeal suit was filed for partition of the plaint schedule properties i.e., item Nos.1 to 3 into 12 equal shares and allot 7/12<sup>th</sup> share to the 1<sup>st</sup> appellant and for costs. Since the 1<sup>st</sup> appellant died during pendency of the suit, appellant Nos.2 to 6 are brought on record as his legal representatives.

4. The brief facts of the plaintiffs case are as follows:

- (i) Originally the plaint schedule property, which consists of three items belongs to one Munipalli Venkaiah, who died intestate in the year, 1950 leaving behind his three sons viz. Munipalli Kotaiah, Munipalli Subbaiah and Munipalli



Ramaiah and three daughters viz. Ponugupati Basavamma, Mallampalli Ponchaitramma and Kattavarapu Seetha. All the daughters of Munipalli Venkaiah died long back.

(ii) The first son of M.Venkaiah by name M.Kotaiah died issueless in the year, 1967 and his third son by name M.Ramaiah also died in the year, 2003 leaving behind his children i.e. 1<sup>st</sup> plaintiff and defendants 1 to 5.

(iii) The second son by name M.Subbaiah, his wife Kotilingamma and their daughter by name Venkataratnam were also died in the years 1939, 2008 and 2006 respectively. Since there are no legal heirs, the share of M.Subbaiah devolved upon his brothers, M.Kotaiah and M.Ramaiah equally.

(iv) The first son of M.Ramaiah by name M.Subbarao (1<sup>st</sup> plaintiff) was given in adoption to M.Kotaiah, that though he was given adoption, he is entitled to get 1/12<sup>th</sup> share from out of 6/12<sup>th</sup> share of his natural father, M.Ramaiah, since there was no partition of the plaint schedule properties.

(v) Initially, M.Ramaiah and later M.Prasada Rao being the elder of the family, used to manage the properties. The



1<sup>st</sup> plaintiff, in total, got 7/12<sup>th</sup> share i.e. as adopted son of M.Kotaiah succeeded to 6/12<sup>th</sup> share and 1/12<sup>th</sup> share from out of 6/12<sup>th</sup> share of M.Ramaiah. The defendant Nos.1 to 5 succeeded to 5/12<sup>th</sup> share and each of them got 1/12<sup>th</sup> share of the schedule property.

(vi) The 1<sup>st</sup> plaintiff got issued legal notice on 08-04-2013 for partition of item Nos.1 and 2 of the schedule property, for which the 1<sup>st</sup> respondent sent reply with false allegations. They pray for a decree.

5. The 1<sup>st</sup> defendant filed a written statement with adoption memo of defendant Nos.2 to 5, denying the various averments made in the plaint, stating as follows:

(i) Item Nos.1 and 2 of the schedule property are the self-acquired properties of their paternal grandfather, M.Venkaiah. M.Venkaiah along with his elder son M.Kotaiah executed a registered gift deed dated 26.06.1929 in favour of his second son Subbaiah and third son by name Ramaiah, who is minor, said to be represented by his brother Subbaiah.

(ii) One of the donee's under the above said gift deed by name, M.Subbaiah died in the year 1939 leaving behind



his wife, Kotilingamma and daughter, Venkatarattamma as legal heirs.

(iii) The father of the 1<sup>st</sup> defendant, M.Ramaiah and legal heirs of M.Subbaiah by names Venkatarattamma and Kotilingamma executed two gift deeds to an extent of 300 sq.yards each in item No.1 of the plaint schedule property to Rajeswari and Gadapa Apparao and Neelikonda Venkayamma on 25.04.1977 and 29.12.1977 respectively, which were duly executed, attested, accepted and acted upon by the donees.

(iv) Again, same donors executed another registered gift deed dated 30.12.1977, the remaining extent in item No.1 of the schedule property to the 1<sup>st</sup> defendant. Same was also duly executed, attested, and registered and acted upon.

(v) The 1<sup>st</sup> defendant, Kotilingamma and her daughter Venkatarattamma sold two bits of site to an extent of 235 sq yards of site each on 11.12.95 under two deeds of sale on the western side of the plaint to one Gaddipati Guru Prasadarao and Kavuri Sarath Raju for consideration and they constructed two storied building therein and have been in exclusive possession.



vi. The donees under the document dated 25.04.1977 and 29.12.1977 sold the property covered by those documents to one Patibandla Narendranath through registered sale deeds dated 31-12-2001 and 05-12-2001 for consideration and they delivered possession of the property to the vendee, who in turn sold the said property to one Sajja Sambasivarao's sons through a registered sale deed dated 06-06-2011. Since then, they are in exclusive possession and enjoyment of 600 sq yards covered by those deeds and the same is part and parcel of the schedule property.

vii) In item No.2 of the schedule property, the 1<sup>st</sup> defendant's father and his brother, M.Subbaiah got an extent of 5 1/2 cents. Late M.Subbaiah's share devolved upon his wife and daughter. The daughter of M.Subbaiah predeceased her mother without any issues and his wife only got rights and title in his share. During the lifetime of his wife, she executed a registered Will, dated 05.01.2007 in a sound and disposing state of mind bequeathing her share of property in item No.2 to the 1<sup>st</sup> defendant and after her death, the 1<sup>st</sup> defendant succeeded the property.





viii) The father of the 1<sup>st</sup>defendant, during his lifetime executed a Will dated 31.07.2003 in a sound and disposing state of mind, bequeathing his share in item No.2 of the schedule property, and building therein and item No.3 of the schedule property, which he purchased through a registered sale deed dated 02.10.1940 to the 1<sup>st</sup>defendant.

ix) After the death of his father on 05.08.2003, he became absolute owner of the said properties as per the terms of the Will and since then he is in exclusive possession and enjoyment of the said property. He constructed a shopping complex on the Southern side of 1100 sq. yards of site, which is a part of schedule property in the year, 1997 and the said complex was assessed for house tax from the year 2003-04 by the Municipality and he was paying house tax. The 1<sup>st</sup>defendant, with an intention of constructing a mega shopping complex, demolished the old shopping complex and obtained an approved plan from the U.D.A. Having eye sour to the plaintiffs regarding the same, the 1<sup>st</sup> plaintiff, with the instigation of his family members, filed the suit forcibly.



x) Item No.3 of the plaint schedule property is the self-acquired property of the father of the 1<sup>st</sup> defendant, and it is abutting to the houses. The further averments in the written statement show the existing structures at the time of execution of gift deeds and alienations that were taken place. It was also stated that the suit is barred by time and that **the suit is bad for non-joinder of necessary parties** and that the subject property is not the joint family property.

6. Basing on the above pleadings, the trial Court settled the following issues and additional issues:

1. Whether the schedule properties are the joint family properties of the plaintiff and defendants and available for partition?
2. Whether the plaintiff is entitled to partition and separate possession as prayed for?
3. To what relief?

**Additional issues:**

1. Whether the Will deed, dated 05.01.2007 executed by Munipalli Kotilingamma in respect of her share in item No.2 bequeathing to D.1 is true, valid, and binding on the plaintiffs?
2. Whether the Will deed, dated 31.07.2003 by father of D.1 bequeathing his share in item No.2 and item No.3 to D.1 is true, valid, and binding on plaintiffs?"



7. At the trial, on behalf of the plaintiffs, P.Ws.1 to 3 were examined and Exs.A.1 to A.10 were marked. On behalf of the defendants, D.Ws.1 and 2 were examined and Exs.B.1 to B.23 were marked.

8. Based on the material placed on record and evidence and after due appreciation of oral and documentary evidence, the trial Court dismissed the suit.

9. It is against the decree and judgment; the plaintiffs preferred this appeal.

10. Heard Sri Bodduluri Srinivas Rao, learned counsel for the appellants/plaintiffs and Sri N.Subbarao, learned counsel for the respondents/defendants.

11. Learned counsel for the appellants/plaintiffs submits that the defendants acquired the subject property from their grandfather Munipalli Kotaiah. Thereby, the 1<sup>st</sup> appellant/plaintiff and the respondents/defendants equally entitled the share. He further submits that mere admission by the 1<sup>st</sup> plaintiff does not throw away the rights of the plaintiffs in claiming his right as the properties are not at all partitioned at any point of time rather before or after the death of late



Munipalli Venkaiah and admittedly, he died intestate in the year 1950.

12. He further submits that simply because PW.1 admits that the gift deed dated 26.06.1929 under Ex.B1, the trial Court erred in coming to the conclusion that the 1<sup>st</sup>plaintiff had no right to question Ex.B1. Moreover, there is no relinquishment of the rights of M.Kotaiah under Ex.B1, thereby the said gift deed is not valid and binding on the plaintiffs.

13. Learned counsel for the appellants further submits that as there is no partition, the sales made under Exs.B5 to B8 are not valid and binding on the plaintiffs. He further submits that 'will' dated 31.07.2003 covered under Ex.B11 is a forged and fabricated document, which will not create any right in favour of the plaintiffs and it cannot deny the right of the plaintiffs.

14. Learned counsel for the appellants further submits that the wife of M.Subbaiah by name Kotilingamma had no right to bequeath the properties to the 1<sup>st</sup> defendant and the alleged Will dated 5.01.2007 covered under Ex.B10 is not valid and binding on the 1<sup>st</sup>plaintiff. Exs.B2 to B4 i.e. gift deeds, dated 25.04.1977, 29.12.1977 and 30.12.1977 are fabricated by the respondents colluding among themselves in order to deny the



rights of the plaintiffs. The trial Court failed to consider that the defendants, without having any legal right are enjoying item No.1 of the schedule property.

15. Per contra, learned counsel for the respondents/ defendants submits that the 4<sup>th</sup> plaintiff, the second son of the 1<sup>st</sup> plaintiff, who was examined as PW.1, in his evidence stated that his father was born on 01.01.1943 and Ex.B1-registered gift deed dated 26.06.1929 was executed by M.Venkaiah and M.Kotaiah. Based on the said evidence, it is the submission of learned counsel that long prior to birth of the 1<sup>st</sup> plaintiff by name M.Subba Rao, Ex.B1-gift deed was executed and now the plaintiffs cannot question the said gift deed covered under Ex.B1. Besides, PW.1 admits the contents of the documents filed by the defendants are correct, the contention of the defendants that they got knowledge about Ex.B1 only after filing of written statement only, is absolutely false and in the third para of Ex.A7-reply notice itself also, the 1<sup>st</sup> defendant mentioned about Ex.B1-registered gift deed by M.Venkaiah and M.Kotaiah. He also submits that except for a self-serving statement, no evidence was placed by the plaintiffs showing that the 1<sup>st</sup> plaintiff was given adoption to M.Kotaiah.



16. Learned counsel for the defendants further submits that there are many alienations of the suit schedule property, for better reasons known to the plaintiffs, they did not add the purchasers and the suit is bad for non-joinder of necessary parties, who are essential and having substantial interest over the suit schedule property. There are gift deeds, wills and sale deeds and none of them were questioned by the plaintiffs at any point of time though stated in the written statement itself about gift deeds dated 25.04.1977, 29.12.1977 and donees under those wills sold properties to the Patibandla Narendranath and two sale deeds on 05.12.2001 and 31.12.2001 for consideration and delivered possession also and vendee under the above documents sold to one S.SambasivaRao on 06.06.2011 and they have been in possession and enjoyment. He further submits that gift deeds are of the year 1977 and sale deeds are of the year 2001, the plaintiffs filed the suit more than 12 years i.e.17.07.2013, which is clearly barred by limitation and even on that score also, the suit itself is not maintainable.

17. He further submits that in the written statement they have mentioned in detail about the flow of title to the defendants to their succeeding purchasers and they have been



in peaceful possession and enjoyment of the said property and now without questioning of the same, seeking a decree is misconceived and plaintiffs are not entitled for any relief in the suit and appeal is liable to be dismissed with costs throughout.

18. Against this backdrop, the following points arise for determination:

1. Whether the Will deed dated 31.07.2003 executed by father of the 1<sup>st</sup> defendant bequeathing his share in item Nos.2 and 3 to the 1<sup>st</sup> defendant true, valid, and binding on the plaintiffs?
2. Whether the schedule property is joint family property, if so, whether the plaintiffs are entitled for partition?
3. Whether the Will deed dated 05.01.2007 executed by Munipalli Kotilingamma in respect of her share in item No.2 bequeathing to the 1<sup>st</sup> defendant is true, valid, and binding on the plaintiffs?
4. To what relief ?

19. **POINT Nos.1 and 2:**

It is evident from the pleadings of the plaint and documentary evidence that M.Venkaiah during his life time acquired item Nos.1 and 2 of the subject property and the same was also culled out from the pleadings and evidence of PW.1. So the original owner of the property is M.Venkaiah. Admittedly, said M.Venkaiah died in the year 1950 and by that date, the



Hindu Succession Act is not in force. Even then, if he died intestate, his successors may get equal shares. It is also an undisputed fact that even long prior to the birth of the 1<sup>st</sup> plaintiff, M.Venkaiah executed a registered gift deed on 26.06.1929 in favour of his sons, Subbaiah and Ramaiah and by that time Ramaiah is a minor represented by Subbaiah.

20. So M.Venkaiah alienated his right over item Nos.1. and 2 of the schedule property in favour of Subbaiah and Ramaiah and thereby Kotaiah had no share. In much detail, through said gift deed, he gifted item No.1 of the plaint schedule land and Ac.0.5  $\frac{1}{4}$  cents in item No.2 and joint galli (rasta to an extent of 14 sq.yards) in favour of Subbaiah and Ramaiah with absolute rights. So by virtue of Ex.B1, Subbaiah and Ramaiah became absolute owners.

21. It is settled law that the presumption about the existence of a joint Hindu family does not extend to drawing inference of existence of joint Hindu family properties. The burden is always on the person, who alleges that a particular item is a joint Hindu family property, to prove the same.

22. At this juncture, it is relevant to discuss the nature of property that existed in the schedule property. Item No.1 is an





extent of Ac.0.49 cents of house along with house site; item No.2 is an extent of Ac.0.09 cents of house site with R.C.C. building; and item No.3 is Ac.0.36 cents of vacant land in Gandhinagar, Tenali.

23. It is evident from the evidence of PW.1 that his father constructed a building on the northern side of item No.2, which is in their occupation. His elder brother is in occupation of western side portion of the building and he is in possession of eastern side portion.

24. PW.1 further admits that the 1<sup>st</sup> defendant constructed back side of southern portion, which is in his occupation and they have got constructed a building long back and got electricity connection separately to their respective buildings since 25 to 30 years which shows that there is a separation of status of joint family property, though plaintiffs did not admit gift covered under Ex.B1. But the fact remains that they are living separately.

25. Coming to item No.1 of the schedule property as is mentioned above, it is Ac.0.49 cents. Admittedly, there are two buildings and a vacant site. PW.1 admits that out of Ac.0.49 cents equivalent to 2400 sq.yards, out of which, 235 sq.yards



was purchased by one G.Guru Prasada Rao through a registered sale deed dated 11.12.1995 and another 235 Sq.yards was purchased by K.Sarath Raju through a registered sale deed dated 11.12.1995. From the said admission, it is clear that even in the year 1995 itself, 470 Sq.yards was already sold.

26. In this connection, it is useful to refer Chapter 15 of the Mayne's Hindu Law and usage, reads thus:

*“486: All must be parties to suit: In a partition suit, all the coparceners must be before the court either as plaintiffs or as defendants. Any coparcener or co-sharer who sues for partition of property must the other coparceners or co-sharers defendants because the partition which is made in his favour is a partition against his coparceners or co-sharers. Any decree which gives him a portion of the property takes away all rights which they would otherwise have to that portion, and therefore it is decree against them and in his favour. A decree for partition made in a suit instituted by a member of a joint Hindu family is therefore res judicata as between all who are parties to the suit. Besides the coparceners, the wife, mother, or grandmother, when entitled to shares on partition are necessary parties to the suit as well as the purchaser of a coparcener's interest.*

27. This Court in **Vemuganti Venkata Kalyani Versus Nyayapathi Padmavathamma**<sup>1</sup>, at para-20 it was held that “.....that much before the suit came to be filed, half of the suit schedule property was sold, under Ex.B-11, and deed of settlement executed on the next day, through Ex.B-12. **Substantial rights had accrued to the parties to the said**

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<sup>1</sup> (2005) 6 ALD 204



**document.** Whatever may have been the justification for the plaintiff, in not impleading the purchaser under Ex.B-11, and beneficiary under Ex.B-12, when she filed the suit, she ought to have taken necessary steps, at least, when she came to know about the same, through the written statement filed by the first defendant. **Grant of any relief in favour of the plaintiff, would certainly have its impact on the said persons, and they are necessary parties to the suit. Therefore, the suit is defective, for non-joinder of necessary parties also”.**

28. PW.1 also admits that even at the time of filing of the suit, the buildings are in existence and as per the defendants, soon after purchase of site, Guru Prasada Rao and K.Sarath Raj, constructed buildings therein. The said Guru Prasada Rao and K.Sarath Raj are not parties to the suit.

29. PW.1 further admits in his evidence that in item No.1, 600 sq.yards were again sold to different persons long prior to the suit and admittedly, those vendors are not as parties to the suit.

30. In this case, it is vividly clear that all the necessary parties were not impleaded and the question arises in the suit maintainable? The Apex Court in *Venkata Reddy v. Pethi*



*Reddy*<sup>2</sup>, held that a preliminary decree in a partition suit is not a tentative decree but must, insofar as the matters dealt with by it are concerned, be regarded as conclusive and final, the shares determined in the preliminary decree cannot be altered or modified so as to reduce them during the final decree proceedings. No doubt the shares allotted in a preliminary decree can be altered by granting a higher share to the parties consequent on the death of some of the sharers who are parties to the suit, to avoid multiplicity of proceedings. The decision of the Hon'ble Apex Court in *Kanakarathanammal v. V.S. Loganatha Mudaliar*<sup>3</sup>, in which at para 15, it was held is also very relevant. It was held that "It is unfortunate that the appellant's claim has to be rejected on the ground that she failed to implead her two brothers to her suit, though on the merits we have found that the property claimed by her in her present suit belonged to her mother and she is one of the three heirs on whom the said property devolves by succession under Section 12 of the Act. That, in fact, is the conclusion which the trial Court had reached and yet no action was taken by the appellant to bring the necessary parties on the record. It is true

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<sup>2</sup>AIR 1963 SC 992

<sup>3</sup>AIR 1965 SC 271



that under Order 1 Rule 9 of the Code of Civil Procedure no suit shall be defeated by reason of the mis-joinder or non-joinder of the parties, but there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the suit is bound to be fatal. Even in such cases, the Court can under Order 1 Rule 10, sub-rule 2 direct the necessary parties to be joined, but all this can and **should be done at the stage of trial and that too without prejudice to the said parties' plea of limitation.** Once it is held that the appellant's two brothers are co-heirs with her in respect of the properties left intestate by their mother, the present suit filed by the appellant partakes of the character of a suit for partition and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents....”

31. In *Mohana Velu Mudaliar v. Annamalai Mudaliar*<sup>4</sup>, it was held that if **the defendant takes the objection at a proper time**, it is his right to have all the proper persons joined as plaintiffs and **if after the objection has been raised, the plaintiff proceeds with the suit without taking steps to add the person or persons whose non-joinder has been objected**

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<sup>4</sup>AIR 1923 Madras 337



**and the Court finds that the objection is well founded, the suit must be dismissed.**

32. Thus, under the settled law, which leaves no option to the Court except to dismiss the suit for non-impleading of a necessary party. It is also settled law that “Suit for Partition-Necessary parties, Thumb rule in a suit for partition that all the necessary parties are to be impleaded and all the properties liable for partition are to be included.”

33. But surprisingly, for the first time in the cross examination, they mentioned that they came to know about alienations only in the year 2012. Even if they got knowledge in the year 2012, the same should be questioned in the plaint. But the same was not done, that is against the law. Any relief granted in favour of the plaintiff would certainly have its impact on the said persons.

34. It is the case of the defendant that in the year 1997 itself, 800 sq.yards in the front side of the property in item No.1, the 1<sup>st</sup> defendant constructed a shopping complex and for such shopping complex he has been paying house tax till 2003-04. Thus, in support of these assertions made by the 1<sup>st</sup> defendant, he filed house tax, demand notices covered under Exs.B15 to



B23. No contra evidence is placed against those developments by the plaintiffs to deny the case of the defendants.

35. It is contended by the defendants that the 1<sup>st</sup> defendant demolished the old shopping complex with intent to construct a new building and obtained approved plan from the concerned authorities. For the said contention also, there is no positive or negative reply from the 1<sup>st</sup> plaintiff to deny the case of the defendants. At this juncture, it is relevant to state that the 1<sup>st</sup> plaintiff who has approached the court has to prove and establish his case. In the present case, except the self-serving evidence of the plaintiffs, no material evidence is placed for the defense made by the defendants and confronted to PW.1 also.

36. In that scenario, even the fact that the plaintiffs were aware of alienations and constructions made in item No.1 and to avoid the court fee, they pleaded a false plea of joint possession, is not clearly or categorically denied.

37. Interestingly, PW.1 admits in the cross examination that M.Venkaiah and M.Kotaiah jointly executed registered gift deed under Ex.B1 in favour of M.Subbaiah and M.Ramaiah and gift deed was acted upon in respect of item Nos.1 and 2 of the schedule property. If is the fact admitted by PW.1, the plea of



the 1<sup>st</sup> plaintiff that he was adopted son of M.Kotaiah and M.Kotaiah also got some share cannot be claimed, when there is a registered gift deed dated 26.06.1929, even long prior to birth of the 1<sup>st</sup> plaintiff by name M.Subba Rao. The same is admitted by PW.1, who is the 4<sup>th</sup> plaintiff and now they cannot turn around and say it will not bind them or that is not valid under law.

38. Item No.2 consists of Ac.0.09 cents of house site, there is a building on the western side and in that building they are staying on the northern side and the 1<sup>st</sup> defendant staying on the southern side. PW.1 further admits in the evidence that his father constructed a building on the back side of the northern portion of item No.2, which is in their occupation. It clearly goes to show that the 1<sup>st</sup> plaintiff had taken his share and enjoyed the property but approached this court by filing a partition suit claiming that they are in joint possession of the property. PW.1 further admits that in the building constructed by his father, his elder brother was in occupation of the western portion and he is in possession of eastern portion and the 1<sup>st</sup> defendant constructed back side of southern portion which is in his occupation and they got electricity connection of respect





buildings since 25 to 30 years, which clearly established that the schedule property is not in joint possession of plaintiffs and defendants. Hence, the contention of the plaintiffs that M.Ramaiah i.e. father of the 1<sup>st</sup> plaintiff and the 1<sup>st</sup> defendant alone managed the property on their behalf, is a baseless argument.

39. Coming to item No.3, which is Ac.0.36 cents of land equivalent to 1800 Sq.yards the case is that it is acquired by M.Ramaiah i.e., the father of 1<sup>st</sup> defendant, during his life time and he executed a will on 31.07.2003 bequeathing the said item No.3 in favour of the 1<sup>st</sup> defendant.

40. In this context, plaintiff has examined one V.Venkateswara Rao as PW.2, who said to be father-in-law of PW.1. Though in his chief examination consistently stated about the plaintiffs' case but in cross examination, he categorically stated that he has no personal knowledge about adoption of the 1<sup>st</sup> plaintiff and he did not know the date of birth of the 1<sup>st</sup> plaintiff and he had only knowledge about property through the father of PW.1 by name M.SubbaRao. Except this hearsay evidence, he has no personal knowledge of this matter. Further perusal of testimony



of PW.2 nothing relevant is found to determine the facts in issue in this case.

41. So far as PW.3 by name B.Edukondalu is concerned, he is a photographer by profession and admittedly, PW.1 was running video mixing unit and PW.1 started video mixing unit in the year 2001 and he used to approach video mixing unit for getting the final product through PW.1 by availing his services. He categorically admits that he had no personal knowledge about the events that took place in the family of PW.1 prior to the year 2001 and further admits that he came to know about the particulars of schedule property on information furnished by the 1<sup>st</sup> plaintiff and he did not know what the constructions in the schedule properties are and who are in possession of the properties. Thus, his evidence is also in no way helpful for determination of the facts in issue.

42. From the above, it is very clear that the plaintiffs are unable to establish the schedule properties are joint family properties and available for partition. They are unable to establish that they are entitled for partition and separate possession.



43. On the other hand, the defense of defendants is that, the 'will' dated 05.01.2007 is executed by Kotilingamma in respect of her share in item No.2 in favour of the 1<sup>st</sup> defendant. Hence, the right of Kotilingamma is to be looked into.

44. To trace the right of Kotilingamma, admittedly, M.Venkaiah, who is the original owner had three sons by names M.Kotaiah, M.Subbaiah and M.Ramaiah. M.Kotaiah died in the year 1967 issueless. M.Subbaiah died in the year 1939 leaving behind his wife Kotilingamma and daughter by name Venkataratnam. It is an admitted fact that Kotilingamma died in the year 2008 and her daughter Venkataratnam predeceased her in the year 2006. From the beginning, it is the case of the 1<sup>st</sup> defendant that when M.Venkaiah executed a registered gift deed on 26.06.1929 in favour of M.Subbaiah and Ramaiah and by the date of gift deed as Ramaiah was minor, he was said to be represented by M.Subbaiah because he is elder brother of M.Ramaiah. By virtue of said gift deed, M.Subbaiah and M.Ramaiah got right over the said property, since it is a registered gift deed. By the death of Subbaiah and Venkataratnam, the share fell to Subbaiah devolved upon Kotilingamma.



45. Said Kotilingamma along with her daughter gifted 300 sq.yards in item No.1 of the schedule property to the second daughter of the 1<sup>st</sup> defendant by name Rajeswari and her husband G.Apparao through registered gift deed dated 24.05.1977. The said gift deed was marked as Ex.B2 and it is duly executed, attested, accepted and acted upon by the donee and donor. Delivery of possession of the property to the donee is also there.

46. Likewise, further, Ramaiah and the 1<sup>st</sup> defendant, Kotilingamma, wife of Subbaiah, Venkataratnam D/o Subbaiah jointly executed another registered gift deed to an extent of 300 sq.yards on 29.12.1977 in favour of the first daughter of Ramaiah by name Venkayamma. According to the defendants that gift was also accepted, and acted upon by the donees and donor i.e. the above referred persons have delivered the said extent of 300 sq.yards in item No.1 in favour of Venkayamma i.e. 2<sup>nd</sup> defendant. In order to prove the same, the certified copy of registered gift deed was marked as Ex.B3.

47. When gift deed dated 26.06.1929 is accepted, automatically Kotilingamma as well Venkataratnam had right over the said property because M.Subbaiah died in the year 1939



and his share devolved upon his wife Kotilingamma and daughter-Venkataratnam. Thereby the right of Kotilingamma is traced and source of title is established by virtue of Ex.B1.

48. With regard to the 'will' dated 05.01.2007 executed by Kotilingamma in respect of her share in favour of the 1<sup>st</sup> defendant is concerned, the 1<sup>st</sup> defendant not only examined himself as DW.1 but also examined one S.Kondala Rao said to be attester of ExB10 as DW.2.

49. In para-3 of his affidavit, he stated that on 05.01.2007, on the instructions of Kotilingamma, the document writer prepared the will and put her thumb impression on it and at that time himself and one M.Chandra Sekhar Rao were there and witnessed the same. Later himself and M.Chandra Sekhar Rao signed as attestors, Kotlingamma witnessed their attestation on that will and said will was registered before the Sub-Registrar office on 06.01.2007. He and M.Chandra Sekhar Rao signed on the photograph and finger print form.

50. From the above evidence of DW.2, it is clearly established that on 05.01.2007, the Will was executed and it was registered on 06.01.2007 before the Sub-Registrar, Tenali and he was an attester of the said document and Kotilingamma signed as



identification witness before the Sub-Registrar. DW.2 was examined at length, but nothing is elicited to doubt his testimony nor trustworthiness in evidence before the Court. The evidence of DW.2 coupled with the evidence of DW.1 establishes the source of right title of Kotilingamma and execution of the Will in favour of the 1<sup>st</sup> defendant. Hence, this Court is of the view that the Will dated 05.01.2007 is true, valid and binding on the plaintiffs.

**51. POINT NO.3:**

Another issue raised before the trial Court is that the will dated 31.07.2003 executed by M.Ramaiah bequeathing his share in item No.3 of the plaint schedule (which he purchased through registered sale deed dated 02.10.1940 in favour of the 1<sup>st</sup> defendant) is being questioned by the plaintiffs stating that the said Will is not binding on them. Admittedly, item No.3 was purchased by M.Ramaiah in his own capacity on 02.10.1940 from one Kadapa Basavaiah and his sons and wife Mutamma, which is a registered sale deed and it is not disputed. It is not denied or questioned by the plaintiffs that Ex.B1-gift deed nor Ex.B12-sale deed stands in the name of M.Ramaiah.



52. Thus, M.Ramaiah got share in item No.2 and item No.3 was bequeathed by way of will in favour of the 1<sup>st</sup>defendant on 31.07.2003. Admittedly, in the year 2003, M.Ramaiah died. It is also admitted by PW.1 that M.Venkata Subbamma executed a registered will during her life time on 06.06.1988.

53. It is not in dispute that M.Ramaiah got item No.2 by way of Ex.B1-Will and purchased item No.3 by way of sale deed covered under Ex.B12 and same is bequeathed through a Will in favour of the 1<sup>st</sup> defendant on 31.07.2003 in the presence of S.Kondala Rao and Koteswara Rao.

54. DW.1 in his evidence categorically stated about execution of will of his father in respect of item Nos.1 and 3 in his favour by way of Ex.B1. The evidence of S.Kondala Rao said to be witness to the said will is supporting this. S.Kondala Rao examined as DW.2 categorically stated in his evidence that in a sound and disposing state of mind Ramaiah instructed the writer K.Madhusudhana Rao. Later himself and Koteswara Rao witnessed the will and signed on it. He categorically stated himself and Koteswara Rao, at the direction of Ramaiah signed on the will as attestors and Ramaiah also witnessed their attestation on that will. As already stated above nothing is



found to disbelieve the testimony of DW.2 about his presence and attesting the document covered under Ex.B11. Thus, this Court is of the view that the defendants, who produced the will dated 31.07.2003 covered under Ex.B11 have proved the same.

55. To sum up the case, it is now established that the defendants, who pleaded and proved their case that on 26.06.1929, M.Venkaiah executed a gift deed in favour of Subbaiah and Ramaiah in respect of item Nos.1 and 2. It is also established that Subbaiah died in the year 1939 leaving behind him, his wife Kotilingamma and daughter Venkataratnam. Late M.Subbaiah's share devolved upon his wife and daughter. The daughter of M.Subbaiah (Venkataratnam) predeceased her mother (Kotilingamma) without any issues and **his wife only got rights** and title in his share. It is also found from the evidence placed on record that Kotilingamma after death of Subbaiah executed the 'will' for the property, which was devolved on her through Subbaiah and Ramaiah in favour of the 1<sup>st</sup> defendant.

56. It is also on record that the father of the 1<sup>st</sup> defendant, executed a Will dated 31.07.2003 bequeathing his share in item No.2 of the schedule property and building therein and item





No.3 of the schedule property (he purchased through a registered sale deed dated 02.10.1940) to the 1<sup>st</sup> defendant.

57. It is found that the plaintiffs are unable to establish their right to question gift deed executed by M.Venkaiah in the year 1929. Long after, in the year 1943, the 1<sup>st</sup> plaintiff was born and so he cannot question the same. Likewise, the evidence of DW.1 completely established their right and title over the properties. It is thus clearly established that the plaintiffs have no right to seek partition.

58. **POINT NO.4:**

In view of the foregoing reasons, the plaintiffs could not establish that they are in joint possession of the subject property. The suit is also barred by limitation and is bad for non-joinder of necessary parties. The trial Court, after appreciating the evidence on record in a proper perspective, passed the impugned judgment. Hence, this Court is not inclined to interfere with the impugned judgment and the appeal is liable to be dismissed.

59. Accordingly, the Appeal Suit is dismissed confirming the decree and judgment dated 15.03.2018 in O.S.No.64 of 2014



passed by the learned XI Additional District and Sessions Judge,  
Tenali. There shall be no order as to costs.

60. Interim orders granted earlier if any, stand vacated.

61. Miscellaneous petitions pending if any, stand closed.

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**JUSTICE D.V.S.S.SOMAYAJULU**

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**JUSTICE V.SRINIVAS**

Date: 11.07.2023  
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L.R.Copy to be marked.



THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU  
AND  
THE HON'BLE SRI JUSTICE V.SRINIVAS

**APPEAL SUIT No.1265 of 2018**

DATE: 11.07.2023

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