



**IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATHI**

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**SECOND APPEAL No.477 of 2022**

**Between:**

Bodduboyina Rajagopal, S/o Venkatanarayana,  
aged about 58 years, Hindu, Occ: Teacher, R/o  
D.No.9/208, Sreeram Nagar, Kodur Town and  
Mandal, Kadapa District.

... Appellant / Plaintiff.

**Versus**

Bodduboyina Venkatanarayana, S/o  
B.Gopalaiah, age about 84 years, Hindu, Occ:  
Retired Head Master, R/o Lakshmigariipalli Post  
and Village, Kodur Town and Mandal, Kadapa  
District and 2 others.

... Respondents / Defendants.

DATE OF JUDGMENT PRONOUNCED: **08.11.2022**

**SUBMITTED FOR APPROVAL:**

**HON'BLE SRI JUSTICE SUBBA REDDY SATTI**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be  
marked to Law Reporters / Journals? Yes / No
3. Whether His Lordship wish to  
see the fair copy of the Judgment? Yes / No

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**SUBBA REDDY SATTI, J**



**\* HONOURABLE SRI JUSTICE SUBBA REDDY SATTI**

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and Village, Kodur Town and Mandal, Kadapa  
District and 2 others.

... Respondents / Defendants.

**! Counsel for Appellant** : Sri G.Jagadeeswar

**^ Counsel for Respondents** : ---

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) AIR 1965 SC 271
- 2) 2010 (6) ALT 109 (AP)
- 3) 2012 (1) ALT 356 (AP)
- 4) MANU/TN/2982/2013 = 2014 (2) MNW (C) 168
- 5) 2002 (5) ALT 426 (AP)
- 6) 2012 (6) ALT 113 (AP)
- 7) 2020 (17) SCC 496
- 8) 2019 (1) ALT 273

This Court delivered the following:

**HONOURABLE SRI JUSTICE SUBBA REDDY SATTI****SECOND APPEAL No.477 of 2022****Between:**

Bodduboyina Rajagopal, S/o  
Venkatanarayana, aged about 58 years,  
Hindu, Occ: Teacher, R/o D.No.9/208,  
Sreeram Nagar, Kodur Town and Mandal,  
Kadapa District.

... Appellant / Plaintiff.

**Versus**

Bodduboyina Venkatanarayana, S/o  
B.Gopalaiah, age about 84 years, Hindu, Occ:  
Retired Head Master, R/o Lakshmigariipalli  
Post and Village, Kodur Town and Mandal,  
Kadapa District and 2 others.

... Respondents / Defendants.

Counsel for Appellant : Sri G.Jagadeeswar

Counsel for respondents : ---

**JUDGMENT**

Plaintiff in the suit filed above second appeal aggrieved by the judgment and decree dated 23.02.2022 in A.S.No.16 of 2016 on the file of III Additional District Judge, Rajampet, confirming the judgment and decree dated 28.09.2016 in O.S.No.94 of 2005 on the file of Senior Civil Judge, Rajampet.



2. For the sake of convenience, the parties to this judgment are referred to as per their array in plaint.

3. Suit O.S.No.94 of 2005 was filed for partition of plaint schedule properties into three equal shares and allotment of one share to him or alternatively to direct the defendants 1 to 3 to execute registered document in favour of the plaintiff in respect of plaint B schedule property.

4. In the plaint, it was contended *inter alia* that defendants 1 and 2 are husband and wife, plaintiff and 3<sup>rd</sup> defendant are their sons; that 1<sup>st</sup> defendant's father B.Gopalaiah died about 20 years back leaving behind 1<sup>st</sup> defendant and one Ramakrishna; that there was oral partition of properties owned and possessed by Gopalaiah between 1<sup>st</sup> defendant and his brother Ramakrishna; that plaint schedule properties fell to the share of 1<sup>st</sup> defendant; that 1<sup>st</sup> defendant, retired teacher used to attend agricultural operations personally and also leased out the properties; that 1<sup>st</sup> defendant purchased item Nos.1 to 9, 19 and 20 of schedule properties, out of the income derived from joint family properties; that 1<sup>st</sup> defendant purchased some properties in the name of 2<sup>nd</sup> defendant; that



2<sup>nd</sup> defendant has no source of income to purchase the properties; that plaintiff, defendants 1 and 3 constitute Hindu undivided joint family; that plaintiff demanded defendants 1 and 3 to effect partition and finally, partition was effected on 04.09.2004 dividing the properties among them; that plaint B schedule property fell to the share of plaintiff; however, defendants 1 and 3 convinced the plaintiff to enter into partition deed without effecting the same by way of registered document; that plaintiff issued legal notice on 29.08.2005 to defendants; that 1<sup>st</sup> defendant was also blessed with four daughters and all of them are married and they have no right or share in the schedule properties and thus, filed the suit for partition.

5. Defendants 1 and 2 filed separate written statements. 3<sup>rd</sup> Defendant filed memo adopting the written statement of 1<sup>st</sup> defendant.

6. 1<sup>st</sup> Defendant in the written statement contended *inter alia* that in the partition between himself and his brother Ramakrishna held on 21.10.1975, he got an extent of Ac.1.34½ cents of wet land and Ac.2.35 cents of dry land



situated at Upparapalli of Settigunta; that partition dated 04.09.2004 was not acted upon; that apart from plaintiff and 3<sup>rd</sup> defendant, defendants 1 and 2 blessed with four daughters and they are also entitled to share in the joint family properties; that item Nos.1, 3 to 5, 7 to 9, 19 and 20 are Sridhana properties of 2<sup>nd</sup> defendant; that item Nos.10 to 12, 16, 18, 26 and 27 of plaint A schedule properties are ancestral properties; that 1<sup>st</sup> defendant joined as school teacher in the year 1966 and retired as Head Master in Z.P. High School in 1996; that from his savings, he purchased item Nos.13 to 17; that item No.2 of plaint A schedule property is an assigned land; that 1<sup>st</sup> defendant is a writer and obtained royalty for publishing his books; that as per amendment to Hindu Succession Act, daughters are also entitled to share and thus prayed the Court to dismiss the suit for non-joinder of necessary parties also.

7. 2<sup>nd</sup> Defendant in the written statement contended *inter alia* that item Nos.1, 3 to 5, 7 to 9, 19 and 20 of plaint A schedule are her self-acquired properties; that she purchased item Nos.3 to 5 under a registered sale deed dated 31.10.1984, item Nos.1 and 7 under a registered sale deed



dated 02.07.1983, item No.9 under a registered sale deed dated 24.07.1989, item No.8 under a registered sale deed dated 17.09.1980 and also item No.19 vacant site, item No.20 under a registered sale deed dated 13.08.1979; that plaintiff did not show the house bearing door No.9/208, which is also liable for partition.

8. Basing on the pleadings, trial court framed the following issues:

- (1)** Whether the plaintiff is entitled to preliminary decree as prayed for?
- (2)** Whether suit is bad for non-joinder of four daughters of defendant No.1 and 2 as necessary parties as contended by the defendants?
- (3)** To what relief?

9. During the trial, plaintiff examined himself as P.W.1 and got examined P.Ws.2 and 3. Exs.A-1 to A-7 were marked. On behalf of defendants, 1<sup>st</sup> defendant was examined as D.W.1, 2<sup>nd</sup> defendant as D.W.2 and got examined D.Ws.3 and 4. Exs.B-1 to B-11 were marked.



10. Trial Court recorded the following findings, basing on the evidence available on record:

- Item Nos.1, 3 to 5, 7 to 9, 19 and 20 of plaint A schedule are exclusive properties of 2<sup>nd</sup> defendant.
- No proof or material was produced by the plaintiff to show that said items of property were clubbed in the joint family properties.
- One of the items of property is DKT Patta and the same is not liable for partition.
- Plaintiff did not include house bearing door No.9/208 in the plaint schedule properties. Therefore, plaintiff has not included all the ancestral properties, which are liable for partition.
- Ex.A-7 unregistered partition deed dated 04.09.2004 cannot be received in evidence, except for collateral purpose.
- Marriage of daughters were performed after amendment to Hindu Succession Act in the State of Andhra Pradesh and non-inclusion of daughters is fatal to the case of plaintiff.





Eventually, trial Court dismissed the suit by judgment and decree dated 29.08.2016.

11. Against the said judgment and decree, the plaintiff filed appeal A.S.No.16 of 2016. Lower appellate court being final factfinding Court, after considering oral and documentary evidence as well as legal aspects, dismissed the appeal by judgment and decree dated 23.02.2022. Before the lower appellate Court, it was contended that 1<sup>st</sup> defendant purchased item Nos.1, 3 to 5, 7 to 9, 19 and 20 in the name of 2<sup>nd</sup> defendant and the 2<sup>nd</sup> defendant has no independent source of income; that the evidence of D.W.1 is clear that he purchased the properties out of the income derived from the joint family properties and the Court did not deal with alternative relief in respect of Ex.A-7. And that I.A.No.146 of 2013 filed by 1<sup>st</sup> defendant to add the daughters was dismissed.

12. Lower appellate Court framed the following points for consideration as contemplated under Order 41 Rule 31 CPC.

- (1)** Whether the plaint schedule properties are the ancestral properties of plaintiff, defendants 1 and 3?



- (2)** Whether the suit is bad for non-joinder of necessary parties?
- (3)** Whether the plaintiff is entitled for partition of plaint schedule properties into three equal shares and for allotment of 1/3<sup>rd</sup> share as prayed for?
- (4)** Whether the plaintiff is entitled for alternative to direct the defendants 1 to 3 to execute the registered document in respect of plaint B schedule property?
- (5)** Whether the decree and judgment of the trial Court warrants any interference by way of this appeal or not?
- (6)** To what relief?

13. Lower appellate Court recorded findings that there is no evidence regarding sale deeds in favour of 2<sup>nd</sup> defendant are benami transactions. There is no evidence that joint family property has sufficient income to purchase item Nos.1, 3 to 5, 7 to 9, 19 and 20. Thus, lower appellate Court held that item Nos.1, 3 to 5, 7 to 9, 19 and 20 are self acquired properties of 2<sup>nd</sup> defendant. Lower appellate Court also recorded finding that item Nos.13 to 17 of plaint A schedule properties are to be treated as joint family properties and thus, it came to conclusion that Item Nos.10 to 12, 16, 18, 26, 27 and 13 to 17 are ancestral properties of plaintiff, defendants 1 and 3.



While considering the aspect of non-joinder of necessary parties, lower appellate Court came to conclusion that plaintiff omitted four daughters, who have equal share on par with the plaintiff and thus, the suit is bad for non-joinder of necessary parties. Lower appellate Court came to conclusion that suit for partial partition is not maintainable and eventually, dismissed the suit by judgment and decree dated 23.02.2022. Aggrieved by same, the above second appeal is filed.

14. Sri G.Jagadeeswar, learned counsel for appellant, would submit that lower appellate Court having coming to conclusion that item Nos.10 to 12, 16, 18, 26, 27 and 13 to 17 are ancestral properties, ought to have decreed the suit. He would also submit that non-impleadment of daughters is not fatal to the case of plaintiff. He would submit that properties stood in the name of 2<sup>nd</sup> defendant, mother were purchased by father and those properties were also liable for partition. He would further submit that house bearing door No.9/208 was purchased by the appellant from his personal income and hence, it cannot be held that suit is bad for partial partition.



15. Basing on the pleadings and contentions, the following substantial questions of law arise for consideration:

- (1)** Whether the suit for partition without impleading all the coparceners or sharers is maintainable?
- (2)** Whether the suit for partial partition is maintainable?
- (3)** Whether the plaintiff proved that item Nos.1, 3 to 5, 7 to 9, 19 and 20 are also joint family properties, though stand in the name of 2<sup>nd</sup> defendant, mother?

16. Undisputed facts are that defendants 1 and 2 are husband and wife and they were blessed with plaintiff, 3<sup>rd</sup> defendant and four daughters by name Patchipala Rajeswari, Anandi Rajyalakshmi, Poli Bharathi and Chata Uma Maheswari. The marriages of daughters were performed in the years 1987, 1988, 1989 and 1999 respectively.

17. As per the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005) which came into effect from 09.09.2005, in the absence of any registered partition, daughters are to be treated as coparceners along with sons. Thus, daughters are also entitled to share in the joint family properties.



18. In **Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Ors.**<sup>1</sup>, the Hon'ble Apex Court held thus:

“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 appellant 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. The estate can be represented only when all the three heirs are before the Court.

Under Order I Rule 9 of the Code of Civil Procedure, 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.

It was further held that –

When a specific plea was taken in the trial Court and a clear and specific issue was framed, parties might have applied to add necessary parties while the suit was being tried. If the appellant persisted in proceeding with the suit, it will be too late to allow to rectify the mistake before the Supreme Court.”

19. In **K. Bhaskar Rao Vs. K.A. Rama Rao**<sup>2</sup>, learned single Judge of the composite High Court of Andhra Pradesh held thus:

“22. While the stand of the plaintiff before the trial Court was that it was not necessary, as the sisters were already married and given sufficient share at the time of marriage, in this appeal the appellant has filed an application CMP. No. 2141 of 2005 to implead the sisters as parties. In view of the stand of the plaintiff that no share need to go to them and in spite of pointing out that their presence is necessary in the suit, the plaintiff has

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<sup>1</sup> AIR 1965 SC 271

<sup>2</sup> 2010 (6) ALT 109 (AP)



chosen not to implead them. The defect of non-joinder of necessary parties being fatal, the same cannot be cured by impleading them in appeal. The trial Court, therefore, rightly held that the suit is liable to be dismissed on the ground of non-joinder of necessary parties. I see no reason to take a different view.”

20. In **Avula Jayarami Reddy vs. Yerrabothula Nagarathnamma**<sup>3</sup>, the composite High Court of Andhra Pradesh held thus:

“Suit for partition is bad for non-joinder of necessary parties. If all the parties having share in the joint family properties are not made as parties, the suit is liable to be dismissed.”

21. Thus, as per the expression of Hon’ble Apex Court and High Court all the sharers must be shown as parties to the suit filed for partition. In the suit, by filing written statement, objection was raised regarding maintainability of suit on the ground of non-joinder of necessary parties. Notwithstanding the said contention raised in written statement, for the reasons best known, the plaintiff did not add the sisters as party defendants in the suit. Daughters/sisters are also necessary parties to the suit. It is also pertinent to mention here that 2<sup>nd</sup> defendant filed I.A.No.146 of 2013 under Order I Rule 10 of CPC to implead the daughters, however, the said

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<sup>3</sup> 2012 (1) ALT 356 (AP)



application was dismissed and it became final. Thus, the plaintiff having filed the suit for partition, failed to array all the necessary parties to the suit. In fact, going by the pleadings, plaintiff is aware of non-impleadment of remaining sharers, who are necessary parties to the suit for partition.

22. In **L. Suresh and Ors. Vs. Yasothammal and Ors.**<sup>4</sup>, the Madras High Court held thus:

“All coparceners are necessary parties to the suit for partition. Non-joinder of legal heirs in the suit for partition is fatal. Plaintiff’s suit for partition without impleading the necessary parties having interest and title over the suit schedule property is not maintainable.”

23. In view of the same, suit filed by the plaintiff without arraying the daughters as parties is fatal to the case of plaintiff.

24. Courts below also recorded finding that item Nos.1, 3 to 5, 7 to 9, 19 and 20 stand in the name of 2<sup>nd</sup> defendant. But the plaintiff pleaded that those items were purchased by 1<sup>st</sup> defendant out of the income derived from the joint family properties and the 2<sup>nd</sup> defendant has no independent source of income and she has no capacity to purchase the same.

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<sup>4</sup> MANU/TN/2982/2013 = 2014 (2) MNW (C) 168



25. In **Takkali Appalanaidu Vs. Adari Satyanarayana and**

**Ors.**<sup>5</sup>, it was observed thus:

“There is no presumption that the properties standing in the name of members of joint family belong to joint family. It has to be established by adducing proper evidence. However, in case of property held by a female member in the family, the presumption is that it is her own property and the person objecting has to establish that the property was purchased/acquired from the joint family nucleus.”

26. In **Kakumani Subba Rao Vs. Kakumani**

**Venkateswarlu and Ors.**<sup>6</sup>, it was observed thus:

“The initial burden lies on the party, who asserted that joint family possesses sufficient nucleus with which the property in question may have been acquired. If he showed that the joint family have sufficient nucleus the burden immediately shift to other party to show that the property was not the joint family property, but self-acquired property.”

27. In the case on hand, plaintiff pleaded that properties stood in the name of 2<sup>nd</sup> defendant were purchased by 1<sup>st</sup> defendant in the name of 2<sup>nd</sup> defendant with the joint family funds. However, 2<sup>nd</sup> defendant denied the same. Since the properties stood in the name of 2<sup>nd</sup> defendant, a presumption can be raised that those properties are self-acquired properties of 2<sup>nd</sup> defendant. The onus shifts to plaintiff to

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<sup>5</sup> 2002 (5) ALT 426 (AP) = MANU/AP/0379/2002

<sup>6</sup> 2012 (6) ALT 113 (AP) = MANU/AP/0466/2012





prove that the properties are acquired out of the income derived from joint family properties. However, plaintiff failed to prove that properties were purchased by 1<sup>st</sup> defendant in the name of 2<sup>nd</sup> defendant. The evidence of plaintiff is not clear that out of the income derived from joint family properties, item Nos.1, 3 to 5, 7 to 9, 19 and 20 were purchased. Mere pleading is not sufficient, and the plaintiff must substantiate pleading by placing cogent evidence. However, no evidence was let in in this regard.

28. In **Mangathai Ammal (died) through L.Rs and others Vs. Rajeswari and others**<sup>7</sup>, the Hon'ble Apex Court held thus:

“The properties which were purchased in the name of a female person, whereas it was held that the said sale transaction was not benami transactions, which were purchased in her name. The same can be said to be her self-acquired properties and cannot be said to be joint family properties.”

29. As pointed out *supra*, plaintiff failed to prove that properties were purchased by 1<sup>st</sup> defendant in the name of 2<sup>nd</sup> defendant. Therefore, findings recorded by the trial Court as

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<sup>7</sup> 2020 (17) SCC 496



confirmed by the lower appellate Court do not call for any interference of this Court.

30. Plaintiff filed the suit for partition by not including door No.9/208. According to plaintiff, he purchased said property and in the partition under Ex.A-8, the same was allotted to his share. P.W.1 in fact admitted in the cross examination that he did not show the property as they already partitioned their properties on 04.09.2004 under Ex.A-7.

31. In **Eda Mary Vs. Yedla Elzebeth Rani and Ors.**<sup>8</sup>, the composite High Court of Andhra Pradesh held that suit for partial partition is not maintainable.

32. Though as per the evidence of P.W.1, there was a partition, wherein the said house was allotted to him, no evidence was let in that regard. Ex.A-7 is unregistered partition deed. An unregistered partition deed cannot be looked into for the terms of partition, except to establish the severance of status. Unregistered partition deed though not admissible to prove the terms of partition, can be admitted in evidence for proving the division of status, taking possession

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<sup>8</sup> 2019 (1) ALT 273 = MANU/HY/0478/2018



and nature and character of possession of the shares allotted, being collateral in nature. Plaintiff pleaded in alternative to register the partition deed in accordance with Ex.A-7. As stated *supra*, Ex.A-7 being unregistered is inadmissible in evidence. Even all the sharers are not parties to Ex.A-7. Thus, the plaintiff is not entitled to get any relief basing on Ex.A-7.

33. The findings of facts recorded by the Courts below are basing on appreciation of evidence on record. The Courts below framed necessary issues/points. Evidence was let in and basing on evidence, findings were recorded.

34. This Court while exercising jurisdiction under Section 100 of the CPC must confine to the substantial question of law involved in the appeal. This Court cannot re-appreciate the evidence and interfere with the concurrent findings of the Court below where the Courts below have exercised the discretion judicially. Further the existence of substantial question of law is the *sine qua non* for the exercise of jurisdiction. This Court cannot substitute its own opinion unless the findings of the Court are manifestly perverse and



contrary to the evidence on record. Moreover, unless the appellant establishes that the Courts below mis-read the evidence and misconstrued the documents, the High Court normally will not interfere with the findings of fact recorded by the Courts below.

35. In view of foregoing discussion, the findings recorded by the Courts below are based on appreciation of both oral and documentary evidence. The appellant failed to satisfy this Court about substantial questions of law involved in this case. No question of law much less substantial question of law involved in this second appeal warranting interference of this Court under Sec 100 CPC.

36. Accordingly, the second appeal is dismissed at admission stage. No costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

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**SUBBA REDDY SATTI, J**

8<sup>th</sup> November, 2022

PVD