APHC010681012022

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3397]**
(Special Original Jurisdiction)

MONDAY,THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA KRISHNA RAO

SECOND APPEAL NO: 75/2023

Between:

Smt.kasireddi Parvathamma and Others **...APPELLANT(S)**

AND

Smt Vijaya and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. U RAMANJANEYULU

Counsel for the Respondent(S):

1. GP FOR APPEALS
2. KAMBHAMPATI RAMESH BABU

The Court made the following:

Reserved on 08.05.2026
Pronounced on 15.06.2026
Uploaded on 15.06.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.75 of 2023

JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved by the judgment and decree, dated 03.11.2022, in A.S.No.86 of 2018, on the file of the II Additional District Judge, Madanapalle, reversing the judgment and decree, dated 29.06.2018, in O.S.No.196 of 2010, on the file of the Additional Senior Civil Judge, Madanapalle.

2. The plaintiffs initiated action in O.S.No.196 of 2010, on the file of the Additional Senior Civil Judge,Madanapalle, with a prayer to declare the clauses 3 and 4 of the compromise decree as invalid, illegal and not binding by setting the compromise decree accordingly declaring the rights of the plaintiffs over the same; to divide the entire suit schedule property item Nos.1 to 8 and allot 2/5th share to the 2nd plaintiff and 1/10th share to the 1st plaintiff by separate metes and bounds; to declare that the 1st plaintiff alone is entitled for the pension benefits on the death of late Mr. Ramana Kumar Reddy by directing the defendants 7 and 8 to pay the same to the 1st plaintiff Smt. K.Parvathamma; and for costs of the suit.

3. The learned Additional Senior Civil Judge, Madanapalle, partly decreed the suit with proportionate costs. Felt aggrieved thereby, the unsuccessful defendant Nos.1 to 4 in the above said suit filed the aforesaid appeal before the First Appellate Court. The learned II Additional District Judge,

Madanapalle, partly allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the plaintiffs in O.S.No.196 of 2010 approached this Court by way of second appeal.

4. The appellants herein are the plaintiffs and the respondents herein are the defendants in O.S.No.196 of 2010.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in O.S.No.196 of 2010 before the trial Court.

6. The case of the plaintiffs, in brief, as set out in the plaint averments in O.S.No.196 of 2010, is as follows:

I. The plaintiffs pleaded that the plaintiff No.1 is the legally wedded wife and the plaintiff No.2 is the daughter of late Kasireddi Ramana Kumar Reddy, S/o Venkata Reddy and the defendant No.1 was the kept mistress of the deceased Ramana Kumar Reddy, and the defendant Nos.2 to 4 are the children born through the defendant No.1 to the said Ramana Kumar Reddy. The plaintiffs further pleaded that in view of serious marital disputes between the plaintiff No.1 and late Ramana Kumar Reddy on account of the interference of the defendant No.1 in their matrimonial life, the plaintiffs instituted O.S.No.22 of 1993 on the file of the Senior Civil Judge, Madanapalle, seeking maintenance, and another suit in O.S.No.160 of 1990 on the file of the Senior Civil Judge, Madanapalle, seeking partition and separate possession of the share of the plaintiff No.2. The plaintiffs further pleaded that the trial Court

decreed the said suits on 27.07.1993, and certain reliefs claimed by them were disallowed. Aggrieved thereby, the plaintiffs preferred an appeal before the Composite High Court of Andhra Pradesh *vide* A.S.No.2301 of 1999.

II. The plaintiffs further pleaded that due to severe financial difficulties, starvation, and mental agony, and being apprehensive about the future and marriage prospects of the plaintiff No.2, they were compelled to enter into a compromise before the Composite High Court of Andhra Pradesh in the said appeal and signed the compromise papers without knowing the realities of the same and late Ramana Kumar Reddy paid a sum of Rs.50,000/- and further agreed to pay maintenance at the rate of Rs.1,500/- per month to the plaintiff No.1 during his service and Rs.1,100/- per month after retirement, besides paying a sum of Rs.400/- per month to the plaintiff No.2 till her marriage. The plaintiffs further pleaded that upon coming to know of the death of Ramana Kumar Reddy, they rushed to the village and attended his funeral ceremonies. At that time, defendant Nos.1 to 4 allegedly set up claims over the properties of the deceased while denying the rights of the plaintiffs. The plaintiffs further pleaded that the defendants relied upon certain clauses in the compromise decree, which were heard by the plaintiffs for the first time. The plaintiffs further pleaded that the marital tie between the plaintiff No.1 and late Ramana Kumar Reddy was never dissolved by divorce and late Ramana Kumar Reddy died intestate on 31.03.2010

due to head injuries and as such, the plaintiff No.1, being the legally wedded wife, alone is entitled to receive the pensionary and other retiral benefits payable by the Government.

III. The plaintiffs further pleaded that late Ramana Kumar Reddy failed to discharge his obligations under Clause No.9 of the compromise decree and did not attend the marriage of the plaintiff No.2, which was solemnized in the year 2004. The plaintiffs further pleaded that the plaintiff No.1 had to incur debts amounting to nearly Rs.4,00,000/- for conducting the marriage of the plaintiff No.2, and such debts are still outstanding. The plaintiffs further pleaded that they are entitled to succeed to the estate of late Ramana Kumar Reddy in accordance with the law of succession and that the plaintiff No.2 is also entitled to succeed as a coparcener. The plaintiffs further pleaded that any writing or compromise contrary to statutory rights cannot deprive them of their lawful succession rights. The plaintiffs further pleaded that the plaintiff No.1, being the legally wedded wife of the deceased, is equally entitled to succeed to the estate of late Ramana Kumar Reddy and alone is entitled to claim pensionary and other death benefits. The plaintiffs further pleaded that late Ramana Kumar Reddy constructed the house described as item No.8 of the plaint schedule property out of the income derived from the ancestral properties, but got the same nominally registered in the name of defendant No.5, who is the mother of the defendant No.1, with an intention to defeat the future claims of the

plaintiffs. The plaintiffs further pleaded that they came to know of the said fact only after the death of late Ramana Kumar Reddy and, therefore, item No.8 of the plaint schedule property is also liable to be treated as ancestral property available for partition. Hence the suit.

7. The defendant Nos.1 to 4 filed the written statement and the defendant Nos.8 and 9 also taken same plea in their written statement, which was taken by the defendant Nos.1 to 4 in their written statement. The case of the defendant Nos.1 to 4, 8 and 9, as set out in the written statement filed by the defendant Nos.1 to 4 is as follows:

I. The defendants pleaded that the suit is not maintainable either in law or on facts and is liable to be dismissed. The defendants further pleaded that the defendant No.1 is the legally wedded wife of late Kasireddy Ramana Kumar Reddy and that defendant Nos.2 to 4 are his legitimate children. The defendants further pleaded that the said aspects need not be gone into once again in the present suit, since the evidence relating thereto had already been adduced in O.S.No.160 of 1990 and O.S.No.22 of 1991, which were decided by the Composite High Court of Andhra Pradesh, at Hyderabad on 27.07.1993. The defendants further pleaded that item No.8 of the plaint schedule property is the exclusive self-acquired property of the defendant No.5 and that at no point of time did the said property form part of the estate of late Kasireddy Ramana Kumar Reddy. The defendants further pleaded that the defendant Nos.5 to 7 have been unnecessarily impleaded in the suit and, therefore, the

suit is bad for misjoinder of parties. The defendants further pleaded that the frame of the suit is defective and the Court fee paid by the plaintiffs is also incorrect.

II. The defendants further pleaded that plaintiff No.1 voluntarily and willingly abandoned the matrimonial company of late Kasireddy Ramana Kumar Reddy and left his house along with the plaintiff No.2 on their own accord. The defendants further pleaded that they spent substantial amounts for the medical treatment and care of late K.Ramana Kumar Reddy during his illness out of love, affection, and moral obligation. The defendants further pleaded that late Ramana Kumar Reddy had paid substantial amounts and provided gold ornaments to the plaintiff No.2 at the time of her marriage and that there is no cause of action to file the present suit and there are no bonagides in the suit and as such, the defendants prayed for dismissal of the suit with costs.

8. On the basis of above pledings, the learned trial Judge framed the following issues for trial:

1) Whether the plaintiffs are entitled for declaration that the clauses 3 and 4 of the compromise decree as invalid, illegal and not binding by setting aside the compromise decree?
2) Whether the plaintiffs are entitled for division and separate possession of suit schedule property Items 1 to 8 and allot 2/5th share to 2nd plaintiff and 1/10th share to 1st plaintiff?

3) Whether the 1st plaintiff is alone entitled for the pension benefits of deceased Ramana Kumar Reddy?
4) Whether the Court fee paid is not correct?
5) Whether the suit is barred by law of limitation?
6) Whether the suit is hit by principles of “Respondent-judicata”?
7) Whether the suit is bad for non-joinder of item No.8 of the plaint schedule property? and
8) To what relief?

9. During the course of trial in the trial Court, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A-1 to A-23 were marked. On behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B-1 to B-23 were marked. Exs.X-1 to X-4 were also marked.

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides and on consideration of oral and documentary evidence on record, partly decreed the suit with proportionate costs. Felt aggrieved thereby, the unsuccessful defendant Nos.1 to 4 filed the appeal suit in A.S.No.86 of 2018, before the II Additional District Judge, Madanapalle, wherein the following points came up for consideration:

1) Whether the plaintiffs are entitled to seek the relief of declaring the clauses 3 and 4 of the compromise decree as invalid, illegal and not binding on the plaintiffs, before the trial Court? Or not?

2) Whether 1st defendant Vijaya is succeeded to get pension benefits of late K.Ramanakumar Reddy? Or the plaintiff No.1 is alone entitled to get the pension of late K.Ramanakumar Reddy?
3) Whether the impugned decree and judgment passed by the lower Court warrants interference? Or not?

11. The learned first appellate Judge after hearing the arguments, answered the points and partly allowed the appeal by setting aside the judgment and decree passed by the learned trial Judge. Felt aggrieved of the same, the unsuccessful plaintiffs in O.S.No.196 of 2010 filed the present second appeal before this Court.

12. On hearing both sides' counsel at the time of admission of the second appeal on 06.10.2023, a learned Judge of this Court admitted the second appeal and framed the following substantial questions of law:

1) Whether the 1st defendant, who had living relationship with the deceased Ramana Kumar Reddy, can be treated/upheld as wife of said Ramana Kumar Reddy for getting family pension?
2) Whether the relationship of deceased Ramana Kumar Reddy with the 1st defendant during the subsistence of legally valid marriage with the 1st plaintiff, can be treated as husband and wife?
3) Whether the First Appellate Court is justified in upholding the 1st defendant as wife under Section 64(1)(b) of Employees Provident Funds and Miscellaneous Provisions Act, 1952 (Act No.19 of 1952),

Section 2G of the Employees Provident Fund Scheme, 1952 and Rule 2(v), Rule 25 of A.P. Civil Services (Conduct) Rules, 1964?

4) When the 1st plaintiff sought three (3) distinct reliefs on different causes of action and paid separate Court fees for it and the Court dismissed one relief, can other reliefs be rejected without assigning the reasons?
5) When the terms and conditions of the Compromise Decree dated 28.03.1997 in A.S.No.2301 of 1997 on the file of this Court indicates that those terms and conditions applied, operatable and binds on the plaintiffs during the life time of Ramana Kumar Reddy in respect of immovable properties, can the plaintiffs debarred to claim legitimate share in the property of Ramana Kumar Reddy on his intestate death?
6) Whether the 1st plaintiff being legally wedded wife and the 2nd plaintiff being legitimate daughter are entitled to claim share in the properties of deceased Ramana Kumar Reddy on his intestate death?
7) When the suit is filed on separate causes of action arose after death of Ramana Kumar Reddy and the previous suit in O.S.No.160 of 1990 on the file of Court of Senior Civil Judge, Madanapalle operates resjudicata?
8) Whether the Court below is justified (First Appellate Court/II Additional District Court, Madanapalle) relying the evidence of agent, when he is not specifically authorized?

13. Heard Sri O.Manohar Reddy, learned Senior Counsel, representing Sri U.Ramanjaneyulu, learned Senior Counsel for the appellants, Sri Avinash Amarnath, learned counsel, representing on behalf of the learned Government

Pleader for Appeals appearing for the respondent Nos.6 and 7 and Sri Kambhampati Ramesh Babu, learned counsel for the other respondents.

14. The law is well settled that under Section 100 of CPC, High Court cannot interfere with findings of fact arrived at by first appellate Court, which is final Court of facts, except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.

In the case of ***Bhagwan Sharma v. Bani Ghosh***[1], the Apex Court held as follows:

> "The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature."

In the case of ***Kondira Dagadu Kadam v. Savitribai Sopan Gujar***[2]***,*** the Apex Court held as follows:

> *"The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."*

15. The learned Senior Counsel on behalf of the appellants would contend that plaintiff No.1 being a legally wedded wife of late Ramana Kumar Reddy, plaintiff No.2 being a legitimate daughter of late Ramana Kumar Reddy, are entitled to claim a share in the properties of deceased Ramana Kumar Reddy

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[1] **AIR 1993 SC 398**
[2] **AIR 1999 SC 471**

on his intestate death. Per contra, Sri Kambhampati Ramesh Babu, learned counsel for the respondent Nos.1, 4, 8 and 9, would contend that the appellant No.1 and late Ramana Kumar Reddy got separated and did not lead the conjugal life from 1982 till the death of Ramana Kumar Reddy and late Ramana Kumar Reddy married the respondent No.1 in the year 1984 as per the Hindu Rites and Customs and three (03) children were born out of the said marriage. He would further contend that appellants have filed a suit for partition vide O.S.No.160 of 1990 and a suit for maintenance vide O.S.No.22 of 1991 against late Ramana Kumar Reddy and his mother before the Subordinate Judge at Madanapally and the said suit was disposed of on 27.07.1993 and in A.S.No.2301 of 1993, the appellants entered into a Compromise Decree and as per the Compromise Decree, in exchange for payment of amounts, the appellants unconditionally relinquished their rights in the property and retirement benefits of late Ramana Kumar Reddy.

16. The undisputed facts are that the plaintiff No.1 is a legally wedded wife of late Ramana Kumar Reddy and the plaintiff No.2 is the only daughter of the plaintiff No.1 and Ramana Kumar Reddy and the marriage between the plaintiff No.1 and late Ramana Kumar Reddy was performed on 25.09.1974 and the plaintiff No.2 was born to the plaintiff No.1 and Ramana Kumar Reddy in the year 1977 and the plaintiff No.1 and late Ramana Kumar Reddy did not live together and did not lead conjugal life since 1982 to till the date of demise of Ramana Kumar Reddy in the year 2010, as per the own admissions of the plaintiff No.1. The plaintiffs herein filed suits for partition in O.S.No.160 of

1990 and in O.S.No.22 of 1991 against Ramana Kumar Reddy and his mother before the Subordinate Judge at Madanapally and the said suit was disposed of on contest on 27.07.1993 and in the said suit in the appeal, the appellants herein entered into a compromise with Ramana Kumar Reddy and they received an amount of Rs.50,000/- from Ramana Kumar Reddy and relinquished their rights in the properties and retirement benefits of Ramana Kumar Reddy. Sri O.Manohar Reddy, learned Senior Counsel appearing on behalf of the appellants, contended that the properties shown in the plaint schedule are the ancestral properties and as on the date of the Compromise Decree, the appellant No.2 being a coparcener is entitled to 50% share in the joint family property. He would further contend that the 50% share in the joint family was relinquished in favour of the father and by virtue of the said relinquishment, the share with the father got by virtue of relinquishment becomes his self-acquired property. He would further contend that after the death of the father, the property standing in the name of the father would devolve on the legal heirs under Sections 6 and 8 of the Hindu Succession Act, 1956 and under Section 16 of the Hindu Marriage Act, 1955. He would further contend that the plaintiff No.2 would be entitled to half share in Item Nos.1 to 7 of the schedule property and the remaining share has to be divided between both the plaintiffs and the defendant Nos.2 to 4. He would further contend that unfortunately the First Appellate Court has not taken into consideration the same and no shares were allotted to both the plaintiffs in Item Nos.1 to 7 of the plaint schedule property.

17. As could be seen from the Compromise Decree, Clause No.3 of the Compromise Decree reiterates as under:

> ***3.*** *That the 2nd appellant has relinquished her rights in the properties possessed by the schedule morefully described in the plaint schedule and the respondent shall be entitled to the properties possessed by the family with absolute right and title without any interference by the Appellants and he is at liberty to deal with his properties as he likes.*

18. The contention of the plaintiff is that item Nos.1 to 7 of the schedule properties are the ancestral properties and admittedly, the plaintiff No.1 is not having any right in the Item Nos.1 to 7 of the schedule property as on the date of the Compromise Decree. The plaintiff No.2 being a coparcener, she is having 50% share in the Item Nos.1 to 7 of the plaint schedule property and her father Ramana Kumar Reddy was having the remaining 50% share in Item Nos.1 to 7 of the Schedule property. As per clause No.3 of the Compromise Decree, the plaintiff No.2 received an amount from her father and relinquished her rights in the properties possessed in the schedule and further agreed that her father shall be entitled to the properties possessed by the family with absolute rights and title and without any interference by the appellants herein and that he is at liberty to deal with the properties as he likes. The Compromise Decree passed in A.S.No.2301 of 2003 is undisputed by the appellants. Since the plaintiff No.2 relinquished her total rights in the said properties and she has given liberty to her father to deal with all his properties as he likes, therefore, in view of the relinquishment by the plaintiff No.2, the Item Nos.1 to 7 of the Schedule Properties have become self-acquired properties of Ramana Kumar Reddy and he is having absolute rights in the

said Item Nos.1 to 7 of the plaint schedule property and the said Ramana Kumar Reddy died intestate on 31.03.2010. As noticed supra, the appellant No.1 being the wife of late Ramana Kumar Reddy is not having any right in the plaint schedule property by the date of passing of the Compromise Decree.

19. As could be seen from the evidence on record, the plaintiff No.1 and Ramana Kumar Reddy did not lead the marital life since 1982. It is also the admitted case of the plaintiff No.1 that herself and Ramana Kumar Reddy did not lead the conjugal life since 1982 till the date of death of Ramana Kumar Reddy i.e. on 03.01.2010 and without obtaining divorce from plaintiff No.1, Ramana Kumar Reddy led marital life with the defendant No.1 Smt. Vijaya as wife and husband and gave birth to three (03) children i.e. the defendant Nos.2 to 4 in the suit proceedings before the trial court. As noticed supra, Ramana Kumar Reddy died intestate in the year 2010. Therefore, the legally wedded wife of Ramana Kumar Reddy i.e. the plaintiff No.1 herein, the plaintiff No.2 being the daughter of Ramana Kumar Reddy and the plaintiff No.1, and "*the children of Ramana Kumar Reddy and the defendant No.1"* are having equal rights in Item Nos.1 to 7 of the schedule property. No doubt, clause No.4 in the Compromise Decree says that the plaintiff No.1/appellant No.1 shall not claim any share in the properties of late Ramana Kumar Reddy, but, as on the date of the said Compromise Decree, the plaintiff No.1 herein was not having any rights in the said property. Therefore, the question of relinquishing her rights in the said property does not arise. In view of the

intestate death of her legally wedded husband, she is entitled to 1/5th share in Item Nos.1 to 7 of the properties of Ramana Kumar Reddy on his intestate death. By giving cogent reasons, the trial Court rightly held that the Item No.8 of the schedule property is the self-acquired property of the defendant No.5 and the defendant No.5 purchased the vacant site of Item No.8 of the schedule property under a registered sale deed dated 13.05.1996, i.e. more than twelve (12) years prior to filing of the suit and subsequently, she raised constructions in Item No.8 of the suit schedule property and the present suit for partition was filed in the year 2010.

20. It was contended by the learned counsel for the respondents that Ramana Kumar Reddy married the defendant No.1 in the year 1984. Admittedly, there is no evidence on record to show that Ramana Kumar Reddy married the defendant No.1 and the said defendant No.1 did not enter into the witness box. It is undisputed that Ramana Kumar Reddy had not obtained divorce from his legally wedded wife i.e. the plaintiff No.1 herein. Therefore, the defendant No.1 is not entitled to any share in the property in Item Nos.1 to 7 possessed by Ramana Kumar Reddy on his intestate death.

21. Sri Kambhampati Ramesh Babu, learned counsel for the respondent Nos.1, 4, 8 and 9, would contend that in view of relinquishment of share of plaintiff Nos.1 and 2 in the earlier suit filed for partition, again the plaintiff Nos.1 and 2 are not entitled to file another suit for partition of Item Nos.1 to 7 of the schedule property. As seen from the cause of action mentioned in the present suit proceedings in the plaint itself, it was reiterated that the cause of

action to file the suit arose on 31.03.2010, when Mr. Ramana Kumar Reddy died intestate by leaving the plaint schedule properties and the plaintiffs herein got issued a legal notice to the defendant Nos.6 and 7 and the defendant Nos.6 and 7 failed to give any reply and that the plaintiffs have filed the suit. The cause of action for the present suit arose on 31.03.2010, when the legally wedded husband of the plaintiff No.1 and the natural father of the plaintiff No.2 died intestate. Therefore, in view of the fresh cause of action, the present suit for partition is maintainable.

22. The learned Senior Counsel for the appellants placed a case law of the Hon'ble Apex Court in ***Commissioner of Wealth tax, Kanpur, etc. Appellants Vs. Chander Sen etc. Respondents***[3].

The facts and circumstances in the aforesaid case law are different to the instant case.

23. The learned Senior Counsel for the appellants placed a case law in ***Ganta Appalnaidu Appellants Vs. Ganta Narayanamma and others Respondents***[4]**,** wherein the Composite High Court of Andhra Pradesh held as follows:

> *"S.8 applies to all cases of intestacy of a male Hindu except those to which Section 6 applies. S.6 applies to a male Hindu having at a time of his death an interest in mitakshara coparcenary. Since it contemplates devolution of coparcenary property by survivorship it postulates existence of coparcenary. A coparcenary cannot consist of single individual. Under the proviso to the section where a deceased leaves behind a coparcener and also a female heir*

[3] **AIR 1986 Supreme Court 1753**
[4] **AIR 1972 ANDHRA PRADESH 258**

specified in class I of the Schedule to the Act the succession is not by survivorship but by intestacy."

24. The learned Senior Counsel for the appellants placed a case law in ***Savitri Amma Appellants Vs. Devki Amma and others Respondents***[5]**,** wherein the High Court of Karnataka held as follows:

"Section 6 deals with devolution of coparcenery interest in the case of a male Hindu dying after the Act, undivided in a Mithakshara coparcenery. It does not deal with the devolution by inheritance of the separate property of a Hindu male, which is governed by S. 8, followed by Ss. 9, 10, 11, 12 and 13. Nor does it deal with devolution by inheritance of the property of a female Hindu which is governed by Ss. 15 and 16 of the Act."

25. The learned Senior Counsel for the appellants placed a case law in ***Satyanarain Mahto and other Appellants Vs. Rameshwar Mahto and other Respondents***[6]**,** wherein the High Court of Patna held as follows:

"Where a Hindu father who has separated from all his sons dies leaving behind a widow, two daughters, one son and heirs of two predeceased sons, S.8 and proviso to S.6 would apply to the succession of the coparcenery property the deceased owned. The property has to be divided equally and each set of heirs, has to take 1/6 share."

26. The learned Senior Counsel for the appellants placed a case law in ***Rohit Chauhan Vs. Surinder Singh and Others***[7]**,** wherein the Hon'ble Apex Court held as follows:

"Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. "Coparcenary" is a narrower body than the Joint Hindu family and before commencement of

[5] **AIR 1982 KARNATAKA 67**

[6]

[7] **2013 (9) Supreme Court Cases 419**

Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static."

27. The learned Senior Counsel for the appellants placed a case law of the Hon'ble Apex Court in ***Bharatha Matha and Another Vs. R.Vijaya Renganathan and Others***[8]**.**

The learned Senior Counsel for the appellants placed a case law in ***Sadhineni Rajani and another Vs. Sadhineni Hymavathi and others***[9]**,** wherein the Composite High Court of Andhra Pradesh held as follows:

"Section 8 operates in cases where a Hindu male, not being a member of coparcenary but holding property in his own right, dies. In such an event, the devolution would be through succession in favour of this class-I heirs, and in their absence to class-II heirs, and so on."

28. In the case at hand, it is undisputed that Item Nos.1 to 7 of the schedule properties are ancestral properties. Admittedly, the plaintiff No.1 is not having any right in Item Nos.1 to 7 of the schedule properties as on the date of the Compromise Decree. The plaintiff No.2 being a coparcener, she is having 50% share in Item Nos.1 to 7 of the schedule property and her father Ramana Kumar Reddy was having the remaining 50% share in the plaint schedule property. As per Clause No.3 of the Compromise Decree, the plaintiff No.2 received an amount from her father and also gave a receipt and the plaintiff No.2/daughter authorized her father to deal with the said property as he likes.

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[8] **2010 (11) Supreme Court Cases 483**
[9] **2012 (2) ALD 777**

In view of relinquishment of her total rights in the said property i.e. Item Nos.1 to 7 by the plaintiff No.2, the Item Nos.1 to 7 of the schedule properties have become self-acquired properties of her father Ramana Kumar Reddy and he is having absolute rights in Item Nos.1 to 7 of the schedule properties. It is undisputed that the said Ramana Kumar Reddy died intestate on 31.03.2010, by leaving his legally wedded wife i.e. the plaintiff No.1 and his natural daughter i.e. the plaintiff No.2 and therefore, the plaintiff Nos.1 and 2 are entitled to 1/5th share in Item Nos.1 to 7 of the schedule property. Furthermore, the defendant Nos.2 to 4, who are the children of late Ramana Kumar Reddy, are also entitled to 1/5th share each in Item Nos.1 to 7 of the plaint schedule property.

29. The learned counsel for the respondents placed a case law in ***Elumalai alias Venkatesan and Anr. Vs. M.Kamala and Others***[10]**,** wherein the Hon'ble Apex Court held as follows:

> *"**14**. The property, i.e., 'A' schedule, was not the ancestral property of Shri Chandran. Shri Chandran would have acquired rights over the same only if his father had died intestate. He was, thus, only a heir apparent. Transfer by an heir apparent being mere spes successonis is ineffective to convey any right. By the mere execution of Release Deed, in other words, in the facts of this case, no transfer took place. This is for the simple reason that the transferor, namely, the father of the appellants did not have any right at all which he could transfer or relinquish. However, if his conduct was such that he could be estopped then the execution of the Release Deed would imperil his right and therefore cast an irremovable shadow on the claim of the appellants as well unless we find merit in other submissions of Shri Siddharth Iyer, learned counsel for the appellants."*

[10] **2012 (2) ALD 777**

In the present case, admittedly, the plaintiff No.2 being a coparcener is having equal rights in Item Nos.1 to 7 of the coparcenary property and she is having half share only in the said property and she herself relinquished her total coparcenary rights in the said property by receiving a substantial amount from her father by giving liberty to her father to deal with the said properties as his self-acquired properties and her father died intestate in the year 2010. Therefore, the plaintiff No.1, who is the legally wedded wife of late Ramana Kumar Reddy and the plaintiff No.2, who is the natural daughter of Ramana Kumar Reddy and the plaintiff No.1, are entitled to 1/5th share each in Item Nos.1 to 7 of the plaint schedule property. As stated supra, Item No.8 of the schedule property is in no way concerned with the present suit proceedings and it is the absolute property of the defendant No.5.

30. The learned Senior Counsel for the appellants would contend that the plaintiff No.1 is entitled to the death benefits of the deceased employee i.e. gratuity and other benefits. As could be seen from the Compromise Decree passed in A.S.No.2301 of 2003, the appellant No.1 herein agreed in the said Compromise Decree that she shall not prefer any claim for any amount from her husband and she is also not entitled to make any claim in the provident fund and other family benefits to be received by her husband after his retirement and both the appellants received an amount of Rs.50,000/- towards full satisfaction of their claim in the year 1997 itself.

31. The learned Senior Counsel for the appellants would contend that the marriage between late Ramana Kumar Reddy and the defendant No.1 was

not proved and they are living as wife and husband for a long time and a presumption is drawn that she is a second wife. He would further contend that in view of Section 5 of the Hindu Marriage Act, 1955, the second marriage during the subsistence of the first marriage is void and the widow mentioned in the Family Pension Rules can only be entitled to be treated as the legally wedded wife and that the plaintiff No.1, who is the legally wedded wife alone is entitled to the family pension. Per contra, Sri Kambhampati Ramesh Babu, learned counsel for the respondent Nos.1, 4, 8 and 9, would contend that since 1984 till the date of the death of Ramana Kumar Reddy, the defendant Nos.1 to 4 have taken care of the needs and health of Ramana Kumar Reddy till his demise and he lived in the house of the defendant Nos.1 to 4 and the defendant No.1 is the second wife of late Ramana Kumar Reddy and the First Appellate Court rightly awarded 50% monthly pension to the plaintiff No.1 and the remaining 50% monthly pension to the defendant No.1. The learned Government Pleader for Appeals would contend that Rule 50(8)(c) of the CCS (Pension) Rules, 2021 states that when the deceased Government servant or a pensioner is survived by more widows than one, the family pension shall be paid to the widows in equal shares and on the death or ineligibility of a widow, her share of the family pension shall become payable to her child or children who fulfill the eligibility conditions mentioned in sub-rule 9.

32. The learned Senior Counsel for the appellants placed a case law of the Hon'ble Apex Court in ***Rampyari Bai Vs. Municipal Corporation and Another***[11].

The facts and circumstances in the aforesaid case law are different to the instant case.

33. The learned Senior Counsel for the appellants placed a case law in ***State of Gujarat Through Chief Secretary and Others Vs. Savitri Devi***[12]**,** wherein the Hon'ble Apex Court held as follows:

> *"**6.** The question is whether mother is a dependent. In view of the express definition of the family, mother has not been included as a member of the family to claim any family pension from the Government, much less after the maximum period of ten years. Under these circumstances, in either event, the decree of trial court as affirmed by appellate court and second appeal, are clearly illegal."*

But, the facts and circumstances in the aforesaid case are different to the incident case.

34. The learned Senior Counsel for the appellants placed a case law in ***G.L. Bhatia Vs. Union of India and Another***[13]**,** wherein the Hon'ble Apex Court held as follows:

> *"The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil*

[11] **1987 (Supp) Supreme Court Cases 263**
[12] **(1996) 1 Supreme Court Cases 558**
[13] **(1999) 5 Supreme Court Cases 237**

Services (Pension) Rules (for short "the rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband."

The facts and circumstances in the aforesaid case laws are different to the instant case.

35. The learned Senior Counsel for the appellants placed a case law in ***Smt. Violet Issaac and Others Vs. Union of India and Others***[14]**,** wherein the Hon'ble Apex Court held as follows:

*"**4.** …The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no- other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the 'wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The Family Pension Scheme is in the nature of a welfare scheme framed by the Railway Administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his life time for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition."*

36. The learned Senior Counsel for the appellants placed a case law in ***Nitu Vs. Sheela rani and Others***[15]**,** wherein the Hon'ble Apex Court held as follows:

[14] (**1991) 1 Supreme Court Cases 725**
[15] (**2016) 16 Supreme Court Cases 229**

> *"**17.** It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this Court in the case of **Violet Issaac (Smt.) v. Union of India (1991) 1 SCC 725** and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same in his Will by giving a direction that someone other than the one who is entitled to it, should be given the same."*

37. The learned Senior Counsel for the appellants placed a case law in ***Union of India and another Vs. Lakshmi Suri***[16]**,** wherein a Division Bench of the Composite High Court of Andhra Pradesh at Hyderabad held as follows:

> *"**36.** Sub-clause (i) of clause (a) of sub-rule (7) enables the distribution of family pension in equal shares among widows, only in cases where family pension is payable to more widows than one. The expression used in the rule is "where payable". The question that arises in these cases is whether it is payable at all. It is only if family pension is payable lawfully to someone that the question of paying the same in equal shares under sub0rule (7) would arise. The word "payable" clinches the issue."*

38. The learned Senior Counsel for the appellants placed a case law in ***Pramila Bai Vs. E.Rukmini Bai and another***[17]**,** wherein a Division Bench of the High Court of Telangana at Hyderabad held as follows:

> *"**20.** With regard to the contention of the learned counsel for the appellant about the name of the plaintiff being shown in the service records of late Lakshman Rao as her nominee, a decision of the Division Bench of the Andhra Pradesh High Court in Gettam Israil Vs Gettam Siromani & Ors.3, answers the said contention."*

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[16] **2018 (1) ALD 697 (DB)**
[17] **2018 (1) ALD 697 (DB)**

39. In a case of ***Tulsa Devi Nirola v. Radha Nirola***[18], the Hon'ble Apex Court held as follows:

*"**10**. Rule 35 (5) provides that for the purpose of Rules 36, 37 and 38, family in relation to a government servant means wife or wives, including judicially separated wife. Rule 38 provides for nomination to be made by the government servant in Form 1 or 2 or 3 conferring on one or more persons, the right to receive death come retirement gratuity that may be due to him. In view of the partition deed the deceased while filling his nomination in the prescribed Form under Rule 38 mentioned the name of respondent no.1 only as the sole beneficiary of family pension. We are of the considered opinion that Rule 40(6) is conditional in nature and does not vest an automatic statutory right in appellant no.1 to equal share in the family pension. The family pension would be payable to more than one wife only if the government servant had made a nomination to that effect and which option was open to him under the Pension Rules.*

"40. Family Pension- (6) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares…."

***11**. The Pension Rules therefore recognize the nomination of a wife or wives for the purpose of family pension. True, the family pension did not constitute a part of the estate of the deceased. If the settlement deed had not been executed and acted upon different considerations may have arisen. The right to family pension in more than one wife being conditional in nature and not absolute, in view of nomination in favour of respondent no.1 alone, appellant no 1 in the facts of the case can also be said to have waived her statutory right to pension in lieu of benefits received by her under the settlement deed. The deceased resided exclusively with respondent no.1 and occasionally visited appellant no.1. The deceased was exclusively taken care of by respondent no.1 during his illness including the expenditure incurred on his treatment. In view of the statutory rules, it is not possible to accept the argument that respondent no.1 was nominated only for purpose of receipt of the family pension and per force was required to share it equally with appellant no.1.*

***12**. In Vidhyadhari (supra), this Court accepted the claim of the second wife to receive inter alia pension based on nomination since, like the present case, the deceased was residing with the second wife to the exclusion of the first. The grant of succession certificate to the second wife was held valid. However, to balance equities, this Court granted 1/5th share to the first wife in the properties. We may have also considered*

[18] **2020 SCC OnLine SC 283**

the balancing the equities if the deceased had not executed a settlement deed with regard to his movable and immovable properties and which was accepted and acted upon by the appellant no.1."

40. In the case at hand, the plaintiff No.1, who is the legally wedded wife of Ramana Kumar Reddy admitted in her evidence in cross-examination that she got separated from her husband late Ramana Kumar Reddy in the year 1980 and she had not led any conjugal life with him since then till the death of her husband. It was admitted by the plaintiff No.1 in her evidence that since 1984 till the death of Ramana Kumar Reddy, she did not lead the conjugal life with Ramana Kumar Reddy. There was evidence on record that since 1984 onwards till the death of late Ramana Kumar Reddy, the respondent No.1 herein and her children cared for late Ramana Kumar Reddy and that late Ramana Kumar Reddy faced health issues and the appellants herein did not even visit him and did not take care of him throughout his life from 1984 onwards till the date of his death i.e. in the year 2010, which is approximately twenty-six (26) years. Moreover, the defendant No.1's name was shown as a nominee in the official pension records by late Ramana Kumar Reddy.

41. The material on record clearly reveals that in the Form of Application for Service Pension-Gratuity, the defendant Nos.1 to 4 are shown as the wife and the children of deceased employee late Ramana Kumar Reddy and in Part-II(b) of the sanction of pension orders, the defendant No.1 was shown as a family pension beneficiary by the Pension Sanctioning Authority. Furthermore, in Annexure-I, the joint photograph of Ramana Kumar Reddy and defendant No.1 was affixed by the Head of Office and the same was attested by the

Head of the Office. The signature of the deceased employee and defendant No.1 was taken by the Head of Office as defendant No.1 as a wife of late Ramana Kumar Reddy and identification marks of both the deceased employee and defendant No.1 were also noted. In the Annexure-II Nomination, the defendant No.1 is shown as the wife by the deceased employee in the Nomination Form in the presence of two (02) witnesses, who are his colleagues i.e. junior lecturers in his college and they have attested the Nomination Form, which was countersigned by the Head of Office. Rule 6(a)(i) of the Andhra Pradesh Revised Pension Rules, 1980 reiterates as follows:

> **6(a)(i)** Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

42. In a case of ***Gaddam Ruth Victoria Vs. State of Andhra Pradesh, Rep.by its Principal Secretary and Others***[19], wherein a Division Bench of this Court by referring the case laws of the Hon'ble Apex Court in ***Vidhyadhari v. Sukhrana Bai (2008) 2 SCC 238; Tulsa Devi Nirola v. Radha Nirola 2020 SCC OnLine SC 283; Badshah v. Urmila Badshah Godse (2014) 1 SCC 188,*** a Division Bench of this Court held as follows:

> *"**32**. In view of the aforesaid judgments, we are of the considered view that in such matters, even if it is found that the second wife does not acquire the status of wife, for the marriage having been contracted during the subsistence of the first marriage, still for the service benefits and service claims of the deceased husband, she is entitled for protection. The endeavour of the Courts has always been to balance the equities amongst two wives though the second may not be understood in the strict sense as 'wife', a legally*

[19] **2023 SCC OnLine AP 1690**

wedded. For balancing the equities, the Courts can pass appropriate orders in favour of both the wives.

***33**. In the present case also, we have observed above and have found that the first wife left the deceased Gaddam Danam in 1979, thereafter the deceased Gaddam Danam got the service in 1980, he married the present 5th respondent during the subsistence of the first marriage with the petitioner. There is nothing on record to show any customary divorce. On the other hand, the divorce case was filed in the year 2011, but the same came to end due to the death of Gaddam Danam during its pendency. There is also nothing on record to indicate that during the long years, since 1979 till the death of Gaddam Danam, the first wife ever took care of Gaddam Danam. It was only for the first time in the year 2010 the claim for maintenance was filed just before the retirement of Gaddam Danam, and for enforcement of such claim of maintenance, as was granted, the order of attachment was passed in 2011 which was set aside by this Court, but the amount was directed to be kept in abeyance till passing of fresh orders on matter having been remitted. The three daughters were born out of the wedlock of Danam with the 5th respondent, and even if it be taken that the marriage of 5th respondent is void for the reason of having been solemnized during subsistence of first marriage, the children would be legitimate. The 5th respondent resided with the deceased Gaddam Danam since after her marriage and also attended him during his illness for which the original medical bills were filed. During the lifetime, Gaddam Danam also nominated her, of which there is entry in the service book. Though that is disputed by the petitioner, being suspicious, and even though in that respect an order of the Tribunal in the same O.A, dated 18.03.2016 is there, in which the Tribunal observed that such entry creates an amount of suspicion, but, we are of the view that there is nothing on record to show that the entry in the service record was forged. Merely because the entry was made with different ink etc., and might have been seen with suspicion by the Tribunal in its previous interlocutory order dated 18.03.2016, but in passing the final order, such alleged suspicion did not prevail with the Tribunal. It is settled in law that the suspicion, howsoever strong, it may be, cannot take the place of proof. We are of the view that the entry in the service records, when considered in the light of the undisputed fact that in the family members details submitted by the deceased at the time of his pension proposals, he gave the particulars of the 5th respondent and the three*

daughters, it can be said that the deceased during his lifetime had nominated the 5th respondent in the service records, and such an entry cannot give rise to any suspicion. Filing of the divorce petition by Gaddam Danam against his first wife, in 2011, is also indicative of the fact that he wanted that after his death there may not arise any dispute, for the benefits in favour of the 2nd wife and wanted to secure the interests of the 2nd wife and the children from her, may be because the first wife started litigation against Gaddam Danam for maintenance etc., in the year 2010."

34*. …*

35*. Before we deal with the aforesaid submission of the learned counsel for the petitioner, we would refer to the relevant provisions as hereinafter. We observe that this provision Rule 50 is a beneficial provision in favour of woman with whom the government employee contracts another marriage during subsistence of the first marriage. This provision is therefore required to be construed liberally to achieve its very object of the grant of family pension after the death of the government employee in favour of and to the extent reasonably possible to make available, both the wives, the family pension, and none of them be deprived of the same, in particular to the 2nd wife with whom the deceased government employee solemnized 2nd marriage during subsistence of first marriage. The issue requires coinsideration from the view point of social justice as well.*

36 to 48. *….*

49. In our view, Rule 50 of the Rules, 1980 is with intend to give relief to the woman becoming wife. Under such circumstances, even the wife from the second marriage was made entitled for family pension, as the main object of this rule was to give family pension to the wives i.e., more than one, and for that reason, to clarify the expression 'wife' used in Rule 50 (12) of the Rules, 1980, Circular Memo dated 11.09.1996 was issued providing that irrespective of the personal Laws. The onlything that requires consideration is the permission from the department for second marriage.

50. We have already referred to the judgment of the Hon'ble Apex Court in Vidhyadhari (supra) & Tulsa Devi Nirola (supra) that family pension is not the estate of the deceased. The nominee shall be the sole beneficiary. If the nomination is in favour of the second wife, she would be entitled to the family

> pension and not merely for the purpose of receipt of the family pension. There being nomination in favour of the 5th respondent by the deceased made during his lifetime, as per the pension proposals, as also entry in the service book, the 5th respondent would be entitled to family pension because of the nomination, irrespective of the fact that there was no permission taken from the department by the deceased government employee for second marriage. The point of permission may become relevant, if the 2nd wife also claims family pension, but there is neither permission for 2nd marriage to the government employee nor nomination in favour of 2nd wife.

The facts in the aforesaid cases are similar to the facts of the present case.

43. In the present case, the plaintiff No.1 got separated from her husband in the year 1982 and she did not lead any conjugal life with late Ramana Kumar Reddy from 1982 onwards till the death of Ramana Kumar Reddy in the year 2010 and even, it was admitted by the natural wife of Ramana Kumar Reddy i.e. the plaintiff No.1 that she got separated from late Ramana Kumar Reddy in the year 1982 and she had not led any conjugal life with him since then. Furthermore, there is evidence on record that since 1984 onwards till the death of late Ramana Kumar Reddy, the respondent No.1 and her children i.e. the defendant Nos.2 to 4, cared for late Ramana Kumar Reddy and Ramana Kumar Reddy also faced health issues and the appellants did not even visit late Ramana Kumar Reddy and the Respondent No.1 i.e. the defendant No.1, cared for him throughout from 1984 onwards till the demise of late Ramana Kumar Reddy in the year 2010 i.e. approximately twenty-six (26) years. Moreover, the defendant No.1 herein was also shown as a nominee in the official documents by late Ramana Kumar Reddy and the same was accepted

by the Head of the Office of late Ramana Kumar Reddy. As noticed supra, in all official records, the defendant No.1 was shown as the wife of the deceased employee, which was attested by the Head of the Office. On considering the ratio laid down in the aforesaid case law of the Division Bench of this Court and on considering the relevant material available on record, since, the defendant No.1 led marital life with late Ramana Kumar Reddy for about twenty-six (26) years and they lived as wife and husband and gave birth to three (03) children i.e. the defendant Nos.2 to 4 herein and the plaintiff No.1 deserted the deceased employee from the year 1982 till the death of the deceased employee in the year 2010 and the defendant No.1 only attended to the deceased from 1984 onwards till his death including during the period of his illness and she had taken care of the deceased, this Court is of the considered view that the learned First Appellate Judge rightly held in its judgment that the plaintiff No.1 and the defendant No.1 are equally entitled to receive the monthly family pension of late Ramana Kumar Reddy.

44. On considering the aforesaid circumstances and on considering the ratio laid down in the aforesaid case laws, as noticed supra, this Court is of the considered view that the plaintiff No.1, the plaintiff No.2, the defendant Nos.2 to 4 are entitled to 1/5th share each in Item Nos.1 to 7 of the plaint schedule property and the plaintiff No.1 and the defendant No.1 are equally entitled to receive the monthly family pension of late Ramana Kumar Reddy. Therefore, the monthly family pension of late Ramana Kumar Reddy shall be paid to the plaintiff No.1 and the defendant No.1 herein in equal shares by the

defendant Nos.6 and 7. With the above observations, the second appeal is allowed in part.

45. In the result the second appeal is **partly-allowed.** Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

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V. GOPALA KRISHNA RAO, J.

Date: 15.06.2026

SRT