APHC010459532011

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

I.A.Nos.2 & 3 of 2024
IN/AND
SECOND APPEAL NO: 1580/2011

Between:

Bonkuru Radha Rani **...APPELLANT**

AND

Kolli Subba Reddy and Others **...RESPONDENT(S)**

Counsel for the Appellant:

1. R RANGANATHAN

Counsel for the Respondent(S):

1. K V R CHOWDARY
2. K NAGA PHANINDRA
3. ANURADHA KOPPARAPU
4. MALLIKARJUNA RAO P
5. SUDHAKARA RAO AMBATI
6. M CHALAPATI RAO
7. K ANANDA RAO
8. VEDULA SRINIVAS
9. C HANUMANTHA RAO

The Court made the following:

Reserved on 15.04.2026
Pronounced on 15.06.2026
Uploaded on 15.06.2026

HONOURABLE SRI JUSTICE V. GOPALA KRISHNA RAO

I.A.Nos.2 & 3 of 2024
IN/AND
SECOND APPEAL No.1580 of 2011

COMMON JUDGMENT:

This second appeal under Section 100 of the Code of Civil Procedure is filed aggrieved by the judgment and decree, dated 23.08.2011, in A.S.No.14 of 2010, on the file of the Senior Civil Judge, Mangalagiri, Guntur District, confirming the judgment and decree, dated 17.02.2010, in O.S.No.116 of 2003, on the file of the Principal Junior Civil Judge, Mangalagiri, Guntur District.

2. The plaintiff initiated action in O.S.No.116 of 2003, on the file of the Principal Junior Civil Judge, Mangalagiri, Guntur District, with a prayer for partition of the plaint schedule properties into five (05) equal shares and to allot one such share to the plaintiff and for possession of the same and for ascertainment of future profits from the plaint schedule property and for costs.

3. The learned Principal Junior Civil Judge, Mangalagiri, Guntur District, dismissed the suit. Felt aggrieved thereby, the unsuccessful plaintiff in the above-said suit filed the aforesaid appeal before the First Appellate Court. The learned Senior Civil Judge, Mangalagiri, Guntur District, dismissed the appeal by confirming the judgment and decree passed by the learned trial Judge. Aggrieved thereby, the plaintiff in O.S.No.116 of 2003 approached this Court by way of second appeal.

4. The appellant herein is the plaintiff and the respondents herein are the defendants in O.S.No.116 of 2003. During the pendency of the second appeal, respondent No.1 herein died and respondent Nos.2 to 5 were brought on record as the legal representatives of the deceased respondent No.1.

5. For the sake of convenience, both parties in the second appeal will be referred to as they are arrayed in O.S.No.116 of 2003 before the trial Court.

6. The case of the plaintiff, in brief, as set out in the plaint averments in O.S.No.116 of 2003, is as follows:

I. The plaintiff, defendant Nos.2 and 3, and one Bhimireddy Sivamma are the children of defendant No.1 and the defendant Nos.4 and 5 are the daughters of the said Bhimireddy Sivamma and the said Bhimireddy Sivamma died. The plaintiff pleaded that the defendant No.1 is the manager and Karta of the Hindu Joint Family consisting of the plaintiff, defendant Nos.2 and 3, and late Bhimireddy Sivamma. The plaintiff further pleaded that the defendant No.1, acting as manager of the joint family, sold away an extent of Ac.5.00 cents of land for joint family necessities and, out of the sale proceeds thereof, purchased item Nos.2, 3, and 4 of the plaint schedule properties in his name. The plaintiff further pleaded that item Nos.1, 5, 6, and 7 of the plaint schedule properties are ancestral properties of the family, since the defendant No.1 purchased item Nos.2, 3, and 4 in his own name utilizing the income and nucleus of the joint family properties, the said properties

also constitute joint family properties belonging to the plaintiff, defendant Nos.2 and 3, and late Bhimireddy Sivamma. The plaintiff further pleaded that all of them were entitled to equal shares in the plaint schedule properties.

II. The plaintiff further pleaded that upon the death of Bhimireddy Sivamma, her share in the joint family properties devolved upon defendant Nos.4 and 5 and, therefore, they are also entitled to shares in the plaint schedule properties. The plaintiff further pleaded that the defendant No.1, as manager of the Hindu Joint Family, had been managing the plaint schedule properties and that all the schedule properties have been in the joint possession and enjoyment of the plaintiff and defendant Nos.1 to 5. The plaintiff further pleaded that the defendant No.1 developed illicit intimacy with defendant No.6 and the said defendant No.6 was already married and had children through her legally wedded husband, Ramireddy. The plaintiff further pleaded that the defendant No.6 has a son by name Venkata Reddy through her husband and that defendant No.7 is the granddaughter of defendant No.6. The plaintiff further pleaded that since the plaint schedule properties are joint family properties in which the plaintiff and defendant Nos.2 to 5 have shares, defendant No.1 has no manner of right to alienate or execute any document in respect of the entire plaint schedule properties in favour of defendant Nos.6 to 8 or any 3rd parties and as such, the plaintiff was constrained to file the present suit seeking

partition and separate possession of his lawful share in the suit schedule properties.

7. The defendant No.1 filed a written statement and the case of the defendant No.1 as per the written statement filed by him is as follows:

I. The defendant No.1 pleaded that he has four daughters, namely, Sivamma, the plaintiff, and defendant Nos.2 and 3 and his eldest daughter, Sivamma, died, and the defendant Nos.4 and 5 are her daughters. The defendant No.1 further pleaded that he performed the marriages of all his daughters and, having no male issues, he continued to maintain the family through agriculture. The defendant No.1 further pleaded that due to his hard work and earnings, he purchased item Nos.2 to 5 and a portion of item No.6 of the plaint schedule properties from out of his self-acquired income. The defendant No.1 further pleaded that item Nos.5 and 7 of the plaint schedule properties are his ancestral properties and apart from the suit schedule properties, he owned other ancestral properties also, out of which he settled an extent of Ac.3.00 cents in favour of defendant No.2 and an extent of Ac.3.30 cents in favour of his wife, Lakshmikanthamma, in D.No.100/4 of Kuragallu Village under registered settlement deeds. The defendant No.1 further pleaded that at the time of marriage of his eldest daughter Sivamma, he gave cash of Rs.1,00,000/- and gold ornaments and after her death, he also performed the marriages of his granddaughters i.e. the defendant Nos.4 and 5.

II. The defendant No.1 further pleaded that on the demand made by the plaintiff and his other daughters in the year 2002, he partitioned and settled certain properties in favour of his daughters and wife. The plaintiff, defendant No.2, and his wife allegedly came forward to have the settlement deeds registered, and accordingly defendant No.1 executed the same. The defendant No.1 further pleaded that he executed a registered settlement deed dated 20.04.2002 in favour of the plaintiff conveying an extent of Ac.2.00 cents in D.Nos.104 and 105 and Ac.1.16½ cents in D.No.111, totaling Ac.3.16½ cents and the defendant No.1 also executed another registered settlement deed dated 22.04.2002 in favour of defendant No.2 for an extent of Ac.3.00 cents and another settlement deed on the same date in favour of his wife Lakshmikanthamma, for an extent of Ac.3.30 cents in D.No.100/4. The defendant No.1 further pleaded that the defendant No.3 requested him to allot item No.1 of the plaint schedule property to her and at the time of execution of the settlement deeds, the plaintiff and her sisters were fully aware that item Nos.2 to 5 of the plaint schedule properties were proposed to be sold for discharging joint family debts incurred towards marriage expenses of his daughters and other legal necessities of the family.

III. The defendant No.1 further pleaded that he sold item Nos.2 to 4 of the plaint schedule properties in favour of defendant No.7 under a registered sale deed dated 14.02.2003. The defendant No.1 further

pleaded that thereafter the plaintiff, his wife, and his daughters began harassing him to convey the remaining properties left for his maintenance, due to which disputes arose between defendant No.1 and his daughters. The defendant No.1 further pleaded that in order to harass him, they forged his signatures with the assistance of certain villagers and after alienating item Nos.2 to 4 of the plaint schedule properties in favour of defendant No.7, defendant No.1 discharged the debts borrowed by him. The defendant No.1 further pleaded that however, the plaintiff and others filed the suits in O.S.No.109 of 2003, O.S.No.122 of 2003, and O.S.No.179 of 2003 and obtained attachment orders over item Nos.1 and 5 of the plaint schedule properties. The defendant No.1 further pleaded that item No.7 of the plaint schedule property is the absolute property of defendant No.6, who has been in possession and enjoyment of the same for more than 20 years, and that she subsequently sold the same to defendant No.8, who is presently in possession and enjoyment thereof. The defendant No.1 further pleaded that he is presently in possession and enjoyment of item Nos.1, 5, and 6 of the plaint schedule properties, which were retained by him for his maintenance. The defendant No.1 further pleaded that since the properties had already been settled and partitioned in favour of his daughters and wife, the present suit is not maintainable and the plaintiff has no right whatsoever to seek partition of his self-acquired properties. Therefore, he prayed for dismissal of the suit with costs.

8. The defendant No.7 filed a written statement and the same was adopted by the defendant No.6. The case of the defendant Nos.6 & 7 as per the written statement filed by the defendant No.7 is as follows:

I. The defendant No.7 pleaded that the plaintiff and the other daughters of defendant No.1 were fully aware of the sale of item Nos.2 to 4 of the plaint schedule properties in favour of defendant No.7 by defendant No.1 and with an intention to avoid payment of proper Court fee on the market value of the sale deed, the plaintiff came forward with false allegations in the plaint. The defendant No.7 further pleaded that item No.7 of the plaint schedule property is the absolute property of defendant No.6, who has been in possession and enjoyment of the same for the last 20 years, and that defendant No.6 subsequently sold the said property to defendant No.8, who is now in possession and enjoyment thereof. The defendant No.7 further pleaded that the defendant Nos.2 to 5 did not contest either the suit or the interlocutory application filed therein, which, clearly indicates that the suit and the interlocutory proceedings are collusive in nature. The defendant No.7 further pleaded that she is a bona fide purchaser for valuable consideration in respect of item Nos.2 to 4 of the plaint schedule properties, having purchased the same from defendant No.1 under a registered sale deed dated 14.02.2003 for a sale consideration of Rs.2,86,200/-. The defendant No.7 further pleaded that ever since the

date of purchase, she has been in possession and enjoyment of the said properties as absolute owner thereof.

II. The defendant No.7 further pleaded that subsequently she executed a gift deed dated 22.02.2003 in favour of defendant No.6, who is her grandmother, conveying an extent of Ac.2.27 cents, since then, both the defendant Nos.6 and 7 have allegedly been in possession and enjoyment of their respective extents covered under the respective documents. The defendant No.7 further pleaded that out of love and affection towards her grandmother viz., defendant No.6, she settled the aforesaid extent of Ac.2.27 cents in her favour. The defendant No.7 further pleaded that the said lands were leased out to one G.Venkateswara Rao of Kaza Village and the Government authorities also recognized their possession and enjoyment and issued pattadar passbooks in favour of defendant Nos.6 and 7. The defendant No.7 further pleaded that the plaintiff, by lodging a false complaint before the police, got a criminal case registered on 22.07.2003 against the father of defendant No.7, namely, Bathula Venkata Reddy, and six others for the offences punishable under Sections 447, 506, and 509 read with Section 34 IPC *vide* Crime No.74 of 2003 before the Mangalagiri Rural Police Station. The defendant No.7 further pleaded that the plaintiff cannot ask for partition of item No.7 of the schedule property as the said property was alienated by the defendant No.7 in favour of one Kolli Nageswaramma by way of a gift deed on 17.05.1984 and the said gift

deed is much prior to the existence of the amended act. Therefore, they prayed for dismissal of the suit with costs

9. The defendant No.8 filed a written statement and the case of the defendant No.8 as per the written statement filed by her is as follows:

I. The defendant No.8 pleaded that one Kolli Nageswaramma is the legally wedded wife of defendant No.1 and out of love and affection, the defendant No.1 executed a deed dated 17.05.1984 in favour of the said Kolli Nageswaramma bequeathing item No.7 of the plaint schedule property to her and delivered possession of the same with absolute rights on the very same day. The defendant No.8 further pleaded that ever since the date of the said transaction, Kolli Nageswaramma had been in possession and enjoyment of item No.7 of the plaint schedule property as absolute owner by paying land revenue to the concerned authorities after mutation of her name in the revenue records. The defendant No.8 further pleaded that Kolli Nageswaramma executed a registered sale deed dated 27.09.2001 in favour of defendant No.8 conveying item No.7 of the plaint schedule property. The defendant No.8 further pleaded that ever since the date of purchase, she has been in possession and enjoyment of the said property with absolute rights and her name has also been mutated in the revenue records.

II. The defendant No.8 further pleaded that after conducting due enquiry, the Mandal Revenue Officer, Mangalagiri, issued pattadar passbook and title deed in respect of item No.7 of the plaint schedule property in

favour of Kolli Nageswaramma prior to the execution of the sale deed in favour of defendant No.8. Thereafter, the Mandal Revenue Officer also issued pattadar passbook and title deed in favour of defendant No.8. The defendant No.8 further pleaded that she purchased item No.7 of the plaint schedule property for a valid sale consideration of Rs.60,000/- and out of the said amount, she paid a sum of Rs.16,629/- directly to Andhra Bank, Kaza Branch, on 27.09.2001 towards discharge of the loan obtained by Kolli Nageswaramma, and the balance amount of Rs.43,371/- was paid to Kolli Nageswaramma in cash on the same day. The defendant No.8 further pleaded that she is a bona fide purchaser for valuable consideration in respect of item No.7 of the plaint schedule property and therefore, she prayed for dismissal of the suit with costs.

10. On the basis of above pleadings, the learned trial Judge framed the following issues for trial:

1) Whether the plaint schedule properties are joint family properties?
2) Whether the plaintiff is entitled for the partition as prayed for?
3) Whether the plaintiff is entitled for mesne profits as prayed for? and
4) To what relief?

On 05.05.2009, the trial Court framed the following additional issues:

1) Whether the court fee paid by the plaintiff is sufficient and adequate?
2) Whether the extent in item No.6 of the plaint schedule property is not correct?

3) Whether item No.7 of the schedule property was the absolute property of 6th defendant?

11. During the course of trial in the trial Court, on behalf of the plaintiff, P.Ws.1 to 6 were examined and Exs.A-1 to A-20 were marked. On behalf of the defendants, D.Ws.1 to 8 were examined and Exs.B-1 to B-27 were marked.

12. 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, dismissed the suit. Felt aggrieved thereby, the unsuccessful plaintiff filed the appeal suit in A.S.No.14 of 2010, before the Senior Civil Judge, Mangalagiri, Guntur District, wherein the following points came up for consideration:

1) Whether the finding of trial Court that the plaintiff is non0suited for partial partition of the plaint schedule properties in the absence of any specific issue in that regard, is sustainable in law?
2) Whether on the basis of alienations of properties in favour of appellant and two others by virtue of Settlement Deeds severance of properties and those properties shall not be construed as joint family property can be inferred?

13. The learned first appellate Judge after hearing the arguments, answered the points, as above, against the plaintiff and dismissed the appeal by confirming the judgment and decree passed by the learned trial Judge. Felt

aggrieved of the same, the unsuccessful plaintiff in O.S.No.116 of 2003 filed the present second appeal before this Court.

14. On hearing both sides' counsel at the time of admission of the second appeal on 09.07.2012, the Composite High Court of Andhra Pradesh at Hyderabad, admitted the second appeal and framed the following substantial questions of law:

1) Whether the Courts below are correct in dismissing the suit on the ground that the suit is only for partition?
2) Whether the plaintiff is entitled to the benefit of amended Section 6 of the Indian Succession Act and entitled to parititon?

15. Heard Sri Ranganathan, learned counsel appearing for the appellant/plaintiff, Sri M.Chalapathi Rao, learned counsel appearing for the respondent No.5, Sri Sudhakar Rao Ambati , learned counsel appearing for the respondent Nos.6 and 7 and Sri K.Nagaphanindra, learned counsel appearing for the respondent No.8.

16. 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."*

17. The undisputed facts are that the plaintiff filed a suit against the defendants claiming for partition of the plaint schedule property into five equal shares and to allot one such share to the plaintiff, it is an admitted fact that defendant No.1 had no male issues. The admitted facts are that the plaintiff, defendant No.2, defendant No.3, and one Bheemireddy Sivamma are the daughters of defendant No.1, and the said Sivamma died and her daughters are defendant Nos.4 and 5, and the relationship between the parties is undisputed.

18. The learned counsel for the appellant would contend that both the Courts below came to the wrong conclusion and dismissed the suit for partition filed by the plaintiff on the ground that the suit for partial partition is not maintainable. The learned counsel for respondent Nos.6 and 7 would

---

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

contend that Item No.1 of the suit schedule property is the ancestral property of defendant No.1 and he has also got other ancestral properties, and the same were allotted in favour of his 2nd daughter Umadevi i.e., defendant No.2 and in favour of his wife, and he performed his elder daughter Sivamma's marriage, and at the time of marriage he gave an amount of Rs.1,00,000/- in cash and also gold ornaments to her. Defendant No.1 further contended that after the death of Sivamma, he performed the marriages of his granddaughters also, and in the year 2002, on demand of the plaintiff and other daughters, defendant No.1 partitioned his property in favour of his living daughters and also allotted an extent of Ac.3.32 cents of land in favour of his wife Lakshmikanthamma. The plaintiff, defendant No.2 and his wife came forward to register the same as settlement deeds and defendant No.1 also agreed to convey the said property by way of settlement deed, and he settled the property situated at Kurakallu village in favour of the plaintiff on 20.04.2002, and he also executed another two (02) settlement deeds in favour of his wife and defendant No.2 on 22.04.2002. It is the admitted case of defendant No.1 that he settled an extent of Ac.3.16½ cents of land in favour of the plaintiff, an extent of Ac.3.00 acres of land in favour of defendant No.2, and an extent of Ac.3.30 cents of land in favour of his wife Lakshmikanthamma under Exs.B-1 to B-3, being the registration extracts of the gift deeds, and those are also ancestral properties acquired along with Item Nos.1, 6 and 7. The execution of gift deeds in favour of the plaintiff, her sister/defendant No.2 and her mother was not pleaded in the plaint. The

extent of Ac.9.46½ cents of coparcenary property, which is in the hands of the coparceners/plaintiff, defendant No.2 and their mother, was intentionally omitted by the plaintiff in the plaint, and the plaintiff sought partition of the plaint schedule property of Ac.11.00 cents and odd, and she suppressed the truth and approached the Court with unclean hands seeking relief of partition. The recitals in Ex.B-1 go to show that defendant No.1 got ancestral property of Ac.11.00 cents in D.No.104 and Ac.10.16 cents in D.No.105, and the total extent is Ac.22.16 cents of Kuragallu village, and the said property was acquired by him through his ancestors. It is undisputed that the avocation of defendant No.1 is cultivation. The aforesaid Ac.9.46½ cents of coparcenary property, which is in the hands of the plaintiff, defendant No.2 and their mother, was not included in the suit for partition. There is no averment in Exs.B-1 to B-3 that defendant No.1 executed the gift deeds with the consent of the other co-sharers. The plaintiff is duty-bound in law to disclose the material facts in terms of Order VI Rule 2 of the Code of Civil Procedure, 1908, that "*omission of a single material fact leads to an incomplete cause of action and in such a case the plaint becomes bad*."

19. It is also important to note that nowhere in the plaint, it was pleaded about the execution of registered settlement deeds in favour of the plaintiff, defendant No.2 and their mother for Ac.9.46½ cents. The plaintiff omitted the aforesaid extent of Ac.9.46½ cents of coparcenary property in the plaint schedule of the present suit for partition, despite having full knowledge about the execution of gift deeds by her father under Exs.B-1 to B-3. Therefore, the

suit for partial partition itself is not maintainable under law. The material on record goes to show that the plaintiff, defendant No.2 and their mother are in possession and enjoyment of an extent of Ac.9.46½ cents of land, which is coparcenary property, and the same was intentionally omitted in the plaint schedule in the present suit by the plaintiff.

20. The contention of defendant No.1 is that out of his hard work and earnings, he acquired Item No.2 of the schedule property to an extent of Ac.3.27 cents from Bamalapati Mahalakshmamma on 19.06.1969, and the same was registered as Document No.3064 of 1969 in the Sub-Registrar Office, Mangalagiri, and he also purchased Item Nos.3 and 4 of the schedule property from Jonnala Subramanyam on 11.06.1971, and he also acquired Item No.5 of the schedule property from Inambaig and another, which is adjacent to Item No.6 of the schedule property, and defendant No.1 also got self-acquired property of 300 square yards of site purchased from Thadipoina Bharathi about 50 or 60 years back. It is the undisputed fact that the avocation of defendant No.1 is cultivation, and there is documentary evidence by way of Ex.B-1, which was executed in favour of the plaintiff. It reveals that defendant No.1 got Ac.22.06 cents of ancestral property, and no evidence was produced by defendant No.1 to show that Item Nos.2 to 6 of the schedule properties were purchased out of his hard earnings. There is a positive evidence to show that the plaint schedule property is joint family property. But, defendant No.1 alienated Item Nos.2 to 4 of the plaint schedule property to defendant No.7 on 14.02.2003. The suit for partition was filed on 18.06.2003. It is also evident

that defendant No.1 executed a gift settlement deed in favour of defendant No.7 in respect of Item No.7 of the plaint schedule property on 17.05.1984, i.e., about 18 years prior to the filing of the suit for partition by the plaintiff, and defendant No.7 in turn sold the property to defendant No.8 on 27.09.2001 under a registered sale deed much prior to the filing of the suit. It is evident that Item No.7 of the plaint schedule property was in the possession of defendant No.7 from 1984 onwards till alienation of the said property in the year 2001, and thereafter in the possession of defendant No.8, and the same was within the knowledge of the plaintiff.

21. It is an admitted fact that as per the document executed by defendant No.1 under Ex.B-1, defendant No.1 got substantial ancestral property of Ac.22.06 cents of land. The plaintiff asserted in the plaint and also in her evidence that from out of the ancestral nucleus, defendant No.1 purchased Item Nos.2 to 6 of the suit schedule property, and no evidence was produced by defendant No.1 to show that he purchased Item Nos.2 to 6 of the schedule property out of his hard earnings. It is the admitted case of defendant No.1 that Item Nos.1 and 7 of the schedule property were obtained from his father. But, for the reasons best known to defendant No.1, he gifted Item No.7 of the schedule property on 17.05.1984 in favour of defendant No.7 by showing defendant No.7 as his 2nd wife. Ex.B-21 reveals the same, and defendant No.7 in turn alienated the said property to defendant No.8 in the year 2001. There is no positive evidence on record to show that Item Nos.2 to 6 were purchased by defendant No.1 out of his hard earnings. In the absence of any

such evidence, it has to be presumed that Item Nos.2 to 6 of the plaint schedule property were purchased by defendant No.1 from out of the ancestral nucleus, in view of the specific recital in Ex.B-1, defendant No.1 got an extent of about Ac.22.00 cents of land from his ancestors. It is the case of defendant No.1 that he got Item Nos.1 and 7 of the schedule property from his father. But, for the reasons best known to him, he transferred Item No.7 of the schedule property by way of gift deed on 17.05.1984 in favour of defendant No.7, and she was in possession of the same till alienation of the said property in the year 2001 in favour of defendant No.8, and from the date of purchase, defendant No.8 has been in possession of Item No.7 of the plaint schedule property.

22. It is the specific case of defendant No.1 that on the demand of the plaintiff and other daughters in the year 2002, he partitioned the property in favour of his living daughters. There is no mention in Exs.B-1 to B-3 that on the demand made by the plaintiff and his daughters, he partitioned the suit schedule property by way of gift settlement deeds. It is evident that no share was allotted to defendant No.3, who is also one of the daughters of defendant No.1, and defendant Nos.4 and 5 are the daughters of his deceased daughter by name Sivamma. It is the specific case of defendant No.1 that he gave cash of Rs.1,00,000/- and gold ornaments to Sivamma at the time of her marriage, and she died after marriage giving birth to two children, who are defendant Nos.4 and 5 herein, at the time of the death of their mother, defendant Nos.4 and 5 were aged about 4 years and 2 years respectively, after the death of

their mother, their father discarded defendant Nos.4 and 5, and they stayed in the house of defendant No.1 at the ages of 4 years and 2 years respectively, and defendant No.1 and his wife educated them and performed their marriages. Defendant Nos.4 and 5, having received summons, remained *ex-parte* in the suit proceedings. The plaintiff also admitted in her cross-examination that defendant Nos.4 and 5 lived in the house of defendant No.1 and pursued their studies there, and defendant No.1 and his wife performed their marriages. Admittedly, there is no evidence on record except the oral statement of defendant No.1 that Exs.B-1 to B-3 settlement deeds were executed pursuant to an oral partition of the properties. Therefore, the alleged defence of oral partition pleaded by defendant No.1 cannot be accepted.

23. As could be seen from the judgments of both the Courts below, both the Courts below came to a concurrent finding that the suit for partial partition is not maintainable. It is an admitted fact that defendant No.1 got Ac.22.06 cents of ancestral property and out of the said ancestral property, he gifted Ac.9.46½ cents in favour of the plaintiff, defendant No.2 and his wife, and the said fact was neither pleaded in the plaint nor disclosed by the plaintiff in her chief-examination affidavit. The fact remains that the said property of Ac.9.46½ cents was intentionally omitted in the suit schedule property of the present suit. It is the admitted case of the plaintiff that her husband is an advocate at Hyderabad, and despite having knowledge, the plaintiff intentionally suppressed Exs.B-1 to B-3 gift deeds in the plaint and her mother was alive during the pendency of the suit as well as during the pendency of

the first appeal. But, for the reasons best known to the plaintiff, her mother was not added as a party to the suit for partition.

24. Learned counsel for appellant placed a case law in ***Devabhaktuni Sithamahalakshmamma Vs. Pamulapati Kotayya and Others***[3]***,*** wherein the High Court of Madras held as follows:

> **"3.** …*It is a power vested in the father under the Hindu Law, which he can exercise subject to the restrictions or limitations imposed on him by the said law. The decided cases have held that the gift must be a reasonable one. The question whether a particular gift is reasonable or not will have to be judged according to the state of the family at the time of the gift, the extent of the family immoveable property, the indebtedness of the family, and the paramount charges which the family was under an obligation to provide for, and after having regard to these circumstances if the gift can be held to be reasonable, such a gift will be binding on the joint family members irrespective of the consent of the members of the family."*

The facts in the aforesaid case law are "subsequent to the execution of the gift deeds by the father, a deed of partition was also executed thereafter, and the plaintiffs based their suit claim on the strength of the said gift deeds, but the said suit claim was disallowed, whereupon a suit was filed seeking declaration of their rights under the said gift deeds." In the present case, after obtaining a registered gift settlement deed for an extent of Ac.3.16 cents of agricultural land, after one (01) year the plaintiff herein is claiming the relief of partition of the plaint schedule property.

25. Learned counsel for appellant relied on a case law in ***B.R.Patil Vs. Tulsa Y.Sawkar & Ors,*** in ***Civil Appeal Nos.2652-2654 of 2013.***

---

[3] **AIR 1936 Madras 825**

In the present case, the plaintiff got ancestral property of Ac.3.16 cents from the defendant No.1 under a registered gift settlement deed, but the same is intentionally omitted by plaintiff in the plaint. In **B.R.*Patil's*** case (*supra*), the Hon'ble Apex Court held as follows:

> **"10.** … *Partition suit should embrace all property – Every suit for a partition should ordinarily embrace all joint properties. But this is not an inelastic rule which admits circumstances of a particular case or the interests of justice so require. Such a suit, however, may be confined to a division of property which is available at the time for an actual division and not merely for a division of status. Ordinarily a suit for partial partition does not lie. But, a suit for partial partition will lie when the portion omitted is not in the possession of coparceners and may consequently be deemed not to be really available for partition, as for instance, where part of the family property is in in the possession of a mortgagee or lessee, or is an impartible Zamindari, or held jointly with strangers to the family who have no interest in the family partition..."*

Here, the plaintiff, as a coparcener, after obtaining a registered gift deed after one (01) year, filed a suit for partition. The defendant No.2 also obtained a gift deed from her father in the same year, and their mother also obtained a registered gift settlement deed for more than Ac.3.00 cents, and the said property of Ac.9.46½ cents is in the possession of the coparceners, and the said property is not included in the plaint schedule. Therefore, the suit for partial partition does not lie.

26. The learned counsel for the appellant placed a case law in ***Mrs.Umadevi Nambiar Vs. Thamarasseri Roman Catholic Diocese Rep.***

By Its Procurator Devssia's Son Rev. Father Joseph Kappil,[4]wherein the Hon'ble Apex Court held as follows:

> ***"15****. It is not always necessary for a plaintiff in a suit for partition to seek the cancellation of the alienations. There are several reasons behind this principle. One is that the alienees as well as the co- sharer are still entitled to sustain the alienation to the extent of the share of the co-sharer. It may also be open to the alienee, in the final decree proceedings, to seek the allotment of the transferred property, to the share of the transferor, so that equities are worked out in a fair manner. Therefore, the High Court was wrong in putting against the appellant, her failure to challenge the alienations."*

In the present case, it is specifically pleaded by the plaintiff in the plaint that the defendant No.1 developed illicit intimacy with the defendant No.6, by that time, she was already married, and she was blessed with children, and the defendant No.6 had a son by name Venkat Reddy through her legally wedded husband, Ram Reddy, and the defendant No.7 is the daughter of the said Venkat Reddy and she is the granddaughter of defendant No.6. But, the plaint is silent with regard to the possession of Item No.7 of the suit schedule property, and it is in the possession of the defendant No.6 since 18 years prior to the filing of the suit. The defendant No.6 also alienated the said property to the defendant No.8 in the year 2001 itself, and the plaintiff purposefully omitted the same in the plaint.

27. Learned counsel for appellant placed a case law in ***Dorairaj Vs. Doraisamy (Died) Through Lrs. & Ors.,*** in ***Civil Appeal Nos.2129-2130 of 2012.*** The facts in the aforesaid case law are different to the instant case.

---

[4] **AIR 2022 Supreme Court 1640**

28. Learned counsel for appellant contended that a finding cannot be recorded without a pleading, without a specific issue, and without evidence. In the present case, the father of the plaintiff/defendant No.1 specifically pleaded in the written statement itself about the gift of the ancestral property of Ac.9.46½ cents by way of three (03) gift settlement deeds in favour of his two daughters, namely, viz., the plaintiff, the defendant No.2, and the mother of the plaintiff and the plaintiff is having knowledge about the same and suppressed the same in the plaint, and the said plea was involved in the trial, and both the parties led evidence about the gift of property of Ac.9.46½ cents. Having knowledge of the same, the plaintiff sought partition of the remaining extent of ancestral property of Ac.11.90 cents. There is a pleading in the written statement of defendant No.1 about the execution of gift deeds under Ex.B-1 to Ex.B-3, and both the parties led evidence. Therefore, the said contention taken by the learned counsel for appellant is unsustainable.

29. In a case of ***Kenchegowda (Since Deceased) by LRs Vs. Siddegowda alias Motegowda***[5], the Hon'ble Apex Court held that "*a suit for partial partition, in the absence of the inclusion of other joint family properties and the impleadment of the other co-sharers, was not warranted in law*". In the present case, the plaintiff, having knowledge about the registered gift deeds in favour of herself, defendant No.2, and their mother for an extent of Ac.9.46½ cents, has not included the same in the suit for partition filed by the plaintiff. Moreover, the mother of the plaintiff, who is in possession of more than

[5] **(1994) 4 SCC 294**

Ac.3.00 cents of coparcenary property, was not added as a party to the suit before the trial Court, and the mother of the plaintiff was alive during the pendency of the suit before the trial Court and during the pendency of the first appeal. But, for the reasons best known to the plaintiff, the mother of the plaintiff is not shown as a party to the suit.

30. In a case of ***Eda Mary (died Per Lr) & Others Vs. Ydela Elzebeth Rani & Others***[6]***,*** the Composite High Court of Andhra Pradesh at Hyderabad, held as follows:

> ***"20****. A suit for a partial partition does not lie is a settled law. The decision of the Hon'ble Supreme Court of India in* ***Kenchegowda (Deceased) by legal representatives v. Siddegowda, MANU/SC/0715/1994 : (1994) 4 SCC 294****, which held that a suit for partial partition in the absence of other co-sharers is not warranted in law is clearly applicable here. This is a rule based on equity and also convenience. Inclusion of all items will not only bring a quietus to the litigation but also help in equitable adjustments/distribution of assets; facilitate the taking of accounts for mesne profits etc. This rule is meant to prevent multiplicity of proceedings which would arise if separate suits are filed for partition of different parts of a joint property or joint family property. This Court therefore holds that the non inclusion of another item of property and the failure to add the widow of David Raju are fatal defects to the suit."*

31. The learned counsel for the respondent Nos.6 and 7 placed a case law in ***Ram Charan Das Vs. Girija Nandini Devi***[7]***.***

The learned counsel for respondent Nos.6 and 7 also placed a case law in ***Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh***[8]***,*** wherein the Hon'ble Apex Court held as follows:

---

[6] **2019 (1) ALT 273**
[7] **AIR 1966 SC 323**

"…..an agreement between all die coparceners is not essential to the disruption of the joint family status, but a definite and unambiguous indication of intention by one member to separate himself from the family and to enjoy his share in severalty will amount in law to a division of status. Chandra v. Gajarabai, ILR 14 Bom 463; Adivi Suravasprakasa Rao v. D.Nidamarty Ganga Raju, ILR 33 Mad 228; Babu Sakharan Powar v. Lahoo Sambhaji Tetfura, AIR 1937 Bom 279; Anant v. Sanker, AIR 1943 PC 196; Merla Samappa v. Chalikani Jagannadha Rao and Others, AIR 1941 PC 48, referred to.

On the question of certain property being joint or not, held following Annal Swami v. Survava Murti, (ILR 1948, Mad 440) that there is no presumption that merely because the family is joint they have joint property. So the person alleging the property to be coparcenary property must prove it. But if it is shown that there was a nucleus of the joint family properly then any acquisition by its aid by a member is joint property. In such an event the person claiming the property to be self-acquired has to prove it to be so."

Admittedly, in the case at hand, the defendant No.1 executed the registered gift settlement deeds under Ex.B-1 to Ex.B-3 in favour of the plaintiff, the defendant No.2, and their mother for more than Ac.9.46½ cents of land. There is no evidence on record to show that, in pursuance of the family arrangement, the defendant No.1 executed Ex.B-1 to Ex.B-3 settlement deeds.

32. Learned counsel for the respondent No.6 and 7 relied on the case law of a Three Judge Bench of the Hon'ble Apex Court in ***Girijanandini Devi Vs. Bijendra Narain Choudary***[9], wherein the Hon'ble Apex Court held as follows:

"In a Hindu undivided family governed by the Mitakshara law, no individual member of that family, while it remains un- divided, can predicate that he has

---

[8] **1969 (1) Supreme Court Cases 386**
[9] **AIR 1967 SC 1124**

a certain definite share in the property of the family. The rights of the coparceners are defined when there is partition. Partition consists in defining the shares of the coparceners in the joint property; actual division of the property by metes and bounds is not necessary to constitute partition. Once the shares are defined, whether by agreement between the parties or otherwise, partition is complete. The parties may thereafter choose to divide the property by metes and bounds, or may continue to live together and enjoy the property in common as before. If they live together, the mode of enjoyment alone remains joint, but not the tenure of the property.

…where the plaintiff sets up a case that a document relied upon by the defendants in support of their case is a fabrication, it is necessary for him either by his original plaint or by amendment therein to formally plead that the document is a fabrication and that unless he does so he is not entitled to ask the Court to try that plea."

In the present case, the registered settlement deeds in respect of the coparcenary property executed by defendant No.1 one (01) year prior to the filing of the suit were not pleaded in the plaint. Moreover, the registered settlement deed executed by defendant No.1 in favour of defendant No.7 about 18 years prior to the filing of the suit was also not pleaded in the plaint, and Item No.7 of the plaint schedule property is in the exclusive possession of defendant No.7 since 18 years, and she sold away the said property in the year 2001 to the defendant No.8, which is also suppressed by the plaintiff in the present case.

33. Learned counsel for the respondent Nos.6 and 7 relied on case law in ***Vineeta Sharma & Ors., Vs. Rakesh Sharma and Ors[10].***

[10] **(2020) 9 Supreme Court Cases 1**

The ratio laid down in the said case law is not in dispute. But, the same is not at all applicable to the present case.

34. Learned counsel for the respondent Nos.6 and 7 placed a case law in ***Bhagwati Prasad Vs. Shri Chandramaul*** [11]**,** wherein the Hon'ble Apex Court held as follows:

> *"If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issue, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and had had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."*

In the present case, the execution of settlement deeds is specifically pleaded by defendant No.1 in the written statement and also in the evidence, and the same was also produced along with documentary evidence. Therefore, it is evident that, on knowing the same, the plaintiff suppressed the

[11] **AIR 1966 Supreme Court 735**

same and omitted the same in the plaint and filed a suit for partition. Therefore, the suit for partial partition is bad in law.

35. Learned counsel for the respondent No.5 placed a case law in ***R.Kupayee and another Vs. Raja Gounder***[12]***,*** wherein the Hon'ble Apex Court held as follows:

> *"On the authority of the judgments referred to above it can safely be held that a father can make a gift of ancestral immovable property within reasonable limits, keeping in view, the total extent of the property held by the family in favour of his daughter at the time of her marriage or even long after her marriage. Question as to whether a particular gift is within reasonable limits or not has to be judged according to the status of the family at the time of making a gift, the extent of the immovable property owned by the family and the extent of property gifted. No hard and fast rule prescribing quantitative limits of such a gift can be laid down. The answer to such a question would vary from family to family. This apart, the question of reasonableness or otherwise of the gift made has to be assessed vis-a-vis the total value of the property held by the family."*

36. Learned counsel for the respondent No.5 placed a case law of the Hon'ble Apex Court in ***Bajaranglal Shivchandrai Ruia Vs. Shashikant N.Ruia and Others***[13]***.***

Learned counsel for the respondent No.5 also placed another case law of the Hon'ble Apex Court in ***Shyam Narayan Prasad Vs. Krishna Prasad***[14] *vide* ***Civil Appeal No.5415 of 2011.***

---

[12] **AIR 2004 Supreme Court 1284**
[13] **AIR 2004 SC 2546**
[14] **AIR 2004 Supreme Court 1284**

37. Learned counsel for the respondent No.5 placed a case law in ***Azgar Barid (D) by LRs. & Others Vs. Mazambi @ Pyaremabi and Others***[15]***,*** wherein the Hon'ble Apex Court held as follows:

> *"**13**. This Court in the case of **Chandramohan Ramchandra Patil and Others v. Bapu Koyappa Patil (Dead) Through LRs and Others ((2003) 3 SCC 552)**, has held thus:*
>
> > *"**14**. Order 41 Rule 4 of the Code enables reversal of the decree by the court in appeal at the instance of one or some of the plaintiffs appealing and it can do so in favour of even non-appealing plaintiffs. As a necessary consequence such reversal of the decree can be against the interest of the defendants vis-à- vis non-appealing plaintiffs. Order 41 Rule 4 has to be read with Order 41 Rule 33. Order 41 Rule 33 empowers the appellate court to do complete justice between the parties by passing such order or decree which ought to have been passed or made although not all the parties affected by the decree had appealed.*
> >
> > ***15**. In our opinion, therefore, the appellate court by invoking Order 41 Rule 4 read with Order 41 Rule 33 of the Code could grant relief even to the non- appealing plaintiffs and make an adverse order against all the defendants and in favour of all the plaintiffs. In such a situation, it is not open to urge on behalf of the defendants that the decree of dismissal of suit passed by the trial court had become final inter se between the non-appealing plaintiffs and the defendants."*

38. Learned counsel for the respondent No.5 placed a case law of the Hon'ble Apex Court in ***Mahbir Prasad Vs. Jage Ram and Others***[16].

Learned counsel for the respondent No.5 placed a case law in ***Chandramohan Ramchandra Patil Vs. Bapu Koyappa Patil***[17]***,*** wherein the Hon'ble Apex Court held as follows:

---

[15] **2022 LIVELAW (SC) 193**
[16] **1971 (1) SCC 265**
[17] **200. (3) SCC 552**

> *"**13**. This Court in the case of **Chandramohan Ramchandra Patil and Others v. Bapu Koyappa Patil (Dead) Through LRs and Others ((2003) 3 SCC 552)**, has held thus:*
>
> > *"…In a suit for partition, plaintiff and defendants are parties of equal status. If the right of partition has been recognised and upheld by the court, merely because only some of the plaintiffs had appealed and not all, the court was not powerless. It could invoke provisions of Order 41 of Rule 4 read with Order 41 of Rule 33 of Code of Civil Procedure. The object of Order 41 of Rule 4 is to enable one of the parties to a suit to obtain relief in appeal when the decree appealed from proceeds on a ground common to him and others. The court in such an appeal may reverse or vary the decree in favour of all the parties who are in the same interest as the appellant."*

In the present case on hand, the plaintiff filed a suit for partition of the plaint schedule property, and the respondent No.5, who is the defendant No.5 in the suit, was major by the time of filing of the suit by the plaintiff. Though she received suit summons, she did not make an appearance in the suit, and she was remained ex-parte in the suit proceedings. After a full-fledged trial, the trial Court dismissed the suit. Aggrieved by the said dismissal of the suit, the plaintiff alone filed the first appeal before the First Appellate Court. No appeal or cross-objections were filed by the defendant No.5, i.e. the respondent No.5 in the second appeal. After receipt of appeal notices from the First Appellate Court, the defendant No.5 failed to contest the first appeal proceedings, and the first appeal was also dismissed by the First Appellate Court. The defendant No.5 remained ex-parte before the trial Court as well as the First Appellate Court. Having accepted the findings of the trial Court and the First Appellate Court, now, the defendant No.5, as respondent in the second appeal, came up with a plea that she is also entitled to a share in the plaint schedule property, being a granddaughter of defendant No.1.

39. The law is well settled that "*in the absence of any pleading, no amount of evidence can be looked into*". As noticed supra, though she received suit summons, she failed to appear before the trial Court as well as before the First Appellate Court, and she remained ex-parte in both the trial Court as well as the First Appellate Court, and after a full-fledged trial, the suit for partition was dismissed by the trial Court, and after hearing the learned counsel for the appellant and the learned counsel for the other respondents, the first appeal was also dismissed on contest by the First Appellate Court. It is the admitted case of the defendant No.1 and the plaintiff that the mother of defendant Nos.4 and 5 died after the birth of defendant Nos.4 and 5, and by that time, defendant Nos.4 and 5 were aged about 4 years and 2 years respectively, and they stayed in the house of defendant No.1, and defendant No.1 and his wife looked after the children, and they performed the marriages of defendant Nos.4 and 5. It is the specific case of defendant No.1 that, by the date of marriage of his elder daughter, i.e. the mother of defendant Nos.4 and 5, he gave cash of Rs.1,00,000/- and gold ornaments, and after the death of his elder daughter, his granddaughters, who were aged about 4 years and 2 years respectively, stayed at his house, and he educated them and performed their marriages. Having accepted the dismissal of the suit by the trial Court and by the First Appellate Court, without producing any defence either before the trial Court or before the First Appellate Court, the defendant No.5 is now contending in the second appeal, as a respondent, that she is entitled to a share in the plaint schedule property. As noticed supra, the suit for partition

filed by the plaintiff was dismissed on the ground that the suit for partial partition is not maintainable and the plaintiff also suppressed the material facts before the trial Court and approached the trial Court with unclean hands, seeking relief of partition of the plaint schedule property. As noticed supra, this Court is of the considered view that the suit for partial partition is not maintainable and by suppressing all the material facts, the plaintiff approached the Civil Court for seeking relief of partition. Therefore, the plaintiff is not entitled to any relief of partition of the plaint schedule property.

40. Learned counsel for the respondent No.5 relied on a case law in ***M/s Kalloomal Tapeswari Prasad (HUF), Kanpur Vs. Commissioner of Income Tax, Kanpur,***[18]wherein the Hon'ble Apex Court held as follows:

> *"...Under Hindu law partition may be either total or partial. A partial partition may be as regards persons who are members of the family or as regards properties which belong to it. Where, there has been a partition, it is presumed that it was a total one both as to the parties and property but when there is a partition between brothers, there is no presumption that there has been partition between one of them and his descendants. It is, however, open to a party who alleges that the partition has been partial either as to persons or as to property to establish it. The decision on that question depends on proof of what the parties intended whether they intended the partition to be partial either as to persons or as to properties or as to both. When there is partial partition as to property, the family ceases to be undivided so far as properties in respect of which such partition has taken place but continues to be undivided with regard to the remaining family property. After such partial partition, the rights of inheritance and alienation differ accordingly as the property in question belongs to the members in their divided or undivided capacity. Partition can be brought about (1) by a father during his lifetime*

[18] **(1982) 1 Supreme Court Cases 447**

between himself and his sons by dividing properties equally amongst them, (2) by agreement or (3) by a suit or arbitration."

41. Learned counsel for the respondent No.5 relied on a case law in ***B.R.Patil Vs. Tulsa Y.Sawkar & Ors.,***[19]wherein the Hon'ble Apex Court held as follows:

> *"**11**. In the facts of this case having noticed the state of the pleadings and the evidence, we are of the view that the interest of justice lies in rejecting the appellant's contention. The appellant has not been able to clearly establish the exact extent or identity of the property available by way of ancestral property. Despite claiming to having documents relating to the properties and admitting to having no difficulty to produce them, he does not produce them. He is unable to even give the boundaries. It is obvious that he does not claim to be in possession of the said properties even if it be as a co-owner on the basis that it is ancestral property. His evidence discloses that in reality and on the ground these properties could not be said to be actually available for the parties to the present suit to lay claims over them. Properties not in the possession of co-sharers/coparceners being omitted cannot result in a suit for the partition of the properties which are in their possession being rejected."*

42. Learned counsel for the respondent No.5 relied on a case law in ***Vikrant Kapila Vs. Pankaja Panda,***[20]wherein the Hon'ble Apex Court held as follows:

> *"**42**. It is contextual to note that in a suit filed for partition, the courts must endeavour to comprehensively adjudicate and decide the right entitlement and share of the parties in the same proceeding and must avoid multiplicity of proceedings or relegating parties to a fresh round of litigation. The partial adjudication in the circumstance of the case is erroneous and ought to have been avoided."*

---

[19] **2022 LiveLaw (SC) 165**
[20] **AIR 2023 (SC) 5579**

43. Learned counsel for the respondent No.5 relied on a case law in ***Vineeta Sharma & Ors., Vs. Rakesh Sharma and Ors***[21]***,*** wherein the Hon'ble Apex Court held as follows:

> *"**137.4**. The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal."*

In the present case, an extent of Ac.9.46½ cents of agricultural land of coparcenary property is in the possession of the coparceners, i.e. the plaintiff, the defendant No.2, and their mother. By the date of filing of the suit, under registered gift settlement deeds, those were executed one (01) year much prior to the filing of the suit by the plaintiff. As stated supra, the plaintiff is having very much knowledge about Ex.B-1 to Ex.B-3 gift deeds and omitted the same intentionally in the plaint, and the said coparcenary property, which is in the possession of the coparceners, i.e. in favour of the plaintiff, the defendant No.2, and their mother, by the date of filing of the suit, the said property is not at all included in the plaint schedule. For the reasons best known to the plaintiff, she is seeking partition of the remaining extent, i.e. an extent of Ac.11.00 cents only, without including the coparcenary property of Ac.9.46½ cents, which is in the possession of the coparceners by the date of

[21] **(2020) 9 Supreme Court Cases 1**

filing of the suit. The defendant No.2 remained silent before the trial Court as well as before the First Appellate Court and she has remained *ex-parte*. The respondent No.5 remained silent in the trial Court and also in the First Appellate Court. Now, she is also contending that she is entitled to a share in the plaint schedule property in a second appeal instituted by the plaintiff. The respondent No.5 has not filed any suit for partition of the plaint schedule property. Therefore, the ratio laid down in the aforesaid case laws is not at all applicable to the present case and the facts in the aforesaid case laws are different from the instant case.

44. On appreciation of the entire evidence on record, the learned trial Judge as well as the learned first appellate Judge arrived at a concurrent finding that the plaintiff is not entitled to the relief of partition of the plaint schedule property. The general rule is that the High Court will not interfere with concurrent findings of the Courts below. But, it is not an absolute rule. Some of the well-recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. The present case does not come within the ambit of the aforesaid exceptions as stated supra.

45. In the case at hand, on appreciation of the entire evidence on record, the learned trial Judge dismissed the suit for partition filed by the plaintiff, and on re-appreciation of the entire evidence on record on all issues decided by the trial Court and after framing the points for consideration as required under

Section 96 of C.P.C., the learned first appellate Judge rightly dismissed the first appeal. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellant did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination.

I.A.Nos.2 & 3 of 2024

The petitioner/respondent No.5 filed the Interlocutory Application vide I.A.No.2 of 2024 under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure, 1908, seeking to amend the suit schedule by including Item Nos.8 to 10 after Item Nos.1 to 7 of the plaint schedule.

The petitioner/respondent No.5 filed the Interlocutory Application vide I.A.No.3 of 2024 under Order 20 Rule 18 and Section 151 of the Code of Civil Procedure, 1908, seeking a preliminary decree of partition of Item Nos.1 to 10 of the suit schedule properties into 25 shares and allotment of 3 shares to the petitioner/respondent No.5 by metes and bounds.

48. The case of the petitioner/respondent No.5 in brief is as follows:

I. The petitioner herein is the 5th respondent in S.A.No.1580 of 2011, before this Court, which was preferred by the plaintiff in the said suit preferred against the judgment and decree dated 23.08.2011 passed in A.S.No.14 of 2010 on the file of the Senior Civil Judge, Mangalagiri, confirming the judgment and decree dated 17.02.2010 passed in

O.S.No.116 of 2003 on the file of the Principal Junior Civil Judge, Mangalagiri. Originally, the appellant herein/plaintiff instituted O.S.No.116 of 2003 against respondent Nos.1 to 8, including the petitioner herein and her sister, seeking partition of the suit schedule properties covering a total extent of Ac.11.19 cents comprising item Nos.1 to 7 into five equal shares and allotment of one such share to her, together with separate possession, mesne profits, and costs and the said suit was dismissed by the trial Court by judgment and decree dated 17.02.2010. Aggrieved thereby, the plaintiff preferred A.S.No.14 of 2010 before the Senior Civil Judge, Mangalagiri, and the said appeal was also dismissed on 23.08.2011. Challenging the concurrent findings of the Courts below, the plaintiff preferred the present Second Appeal before this Court.

II. The petitioner further pleaded that under Section 6 of the Hindu Succession Act, as amended, daughters are also entitled to equal shares in the coparcenary properties as they acquire rights by birth along with the sons. The petitioner herein further pleaded that accordingly, she and the defendant No.4/respondent No.14, being the daughters of late Sivamma, together became entitled to 1/5th share in all the coparcenary properties of the joint family as on the date of filing of the suit. The petitioner further pleaded that upon the death of the defendant No.1/respondent No.1 intestate, the petitioner, the appellant/plaintiff, respondent Nos.2, 3, 4, and 9 became entitled to

succeed to his 1/5th share and consequently, the petitioner herein and the defendant No.4/respondent No.14 together became entitled to 6/25th share in all the coparcenary properties, including item Nos.8 to 10 proposed to be added by way of amendment, each of them being entitled to 3/25th share. The petitioner further pleaded that subsequent to the impleadment of the respondent No.9 in the Second Appeal as legal representative and sharer in the coparcenary properties of the joint family, it has become necessary to amend the plaint schedule by including item Nos.8 to 10 mentioned in the annexure filed along with the petition, so as to enable comprehensive partition of all the coparcenary properties among all the sharers who are parties to the Second Appeal. The petitioner further pleaded that such amendment is necessary to avoid multiplicity of proceedings and to put a quietus to the long-pending litigation between the parties. Hence, the petitioner filed the present interlocutory applications and prayed to permit her for amending the plaint schedule by inclusion of item Nos.8 to 10 after item Nos.1 to 7 of the existing plaint schedule, in the interest of justice.

49. The respondent No.1 filed a counter affidavit and the case of the respondent No.1 as per the counter affidavit filed by the respondent No.1 is as follows:

The respondent No.1 pleaded that after the death of their mother late Sivamma, the father of the petitioner neglected and abandoned the petitioner/respondent No.5 herein and her sister. The respondent No.1 further

pleaded that the petitioner herein and her sister were brought up by respondent No.9 herein, who also performed their marriages out of her own self-acquired properties received from her parents. The respondent No.1 further pleaded that the petitioner herein is being sponsored by 3rd parties who are closely monitoring the litigation and who have allegedly instigated the petitioner to file the present petitions at the eleventh hour with a view to delay the outcome of the proceedings. The respondent No.1 further pleaded that the applications filed by the petitioner are devoid of merits and are liable to be dismissed in the interest of justice.

50. The respondent Nos.6 and 7 also filed counter affidavit and the case of the respondent Nos.6 and 7 as per their counter affidavit is as follows:

I. The respondent Nos.6 and 7 pleaded that the petitioner herein, who was the defendant No.5 in the main suit, was set ex-parte before the trial Court and did not contest the suit either before the trial Court or before the first appellate Court. The respondent Nos.6 and 7 further pleaded that during the pendency of the Second Appeal and when the matter is being heard finally, the petitioner filed the present application solely with an intention to delay the proceedings indefinitely in collusion with the appellant herein, who is close relative to the petitioner. The respondent Nos.6 and 7 further pleaded that defendant No.1 in the suit had three daughters, namely, the plaintiff, defendant Nos.2 and 3, and one late Bhimireddy Sivamma and the petitioner herein, who was the defendant No.5 before the trial Court and the respondent No.5 in the

Second Appeal, has now come forward with the present application seeking amendment. The respondent Nos.6 and 7 further pleaded that Order VI Rule 17 CPC deals with amendment of pleadings and empowers the Court to permit amendment at any stage of the proceedings if such amendment is necessary for determining the real questions in controversy between the parties. However, the proviso thereto specifically mandates that no application for amendment shall be allowed after commencement of the trial unless the Court is satisfied that, despite due diligence, the party could not have raised the matter before commencement of trial. The respondent Nos.6 and 7 further pleaded that the petitioner has neither pleaded nor established the circumstances under which the proposed amendment could not have been sought before the trial Court. The respondent Nos.6 and 7 further pleaded that the present application has been filed after nearly 21 years from the commencement of the trial and, therefore, the petitioner is bound to explain the extraordinary delay, which she has failed to do.

II. The respondent Nos.6 and 7 further pleaded that the respondent No.2 herein, who is the defendant No.2 in the original suit, was gifted an extent of Ac.3.00 cents under Ex.B-2. Thereafter, she alienated an extent of Ac.1.00 cent out of the said property in favour of one Sidda Pandu Ranga Rao, S/o Venkateswarlu, under registered sale deed vide Document No.376 of 2016 dated 12.01.2016 registered in the office of the Sub-Registrar, Mangalagiri. The respondent Nos.6 and 7 further

pleaded that respondent No.2 herein along with her two daughters and son also alienated another extent of Ac.0.50 cents in favour of one N. Madhava Rao and N. Jayaprada under registered sale deed vide Document No.5796 of 2016 dated 20.05.2016. The respondent Nos.6 and 7 further pleaded that after alienating Ac.1.50 cents out of Ac.3.00 cents, the respondent No.2 retained the remaining extent and subsequently surrendered the same in favour of the Andhra Pradesh Capital Region Development Authority (APCRDA), thereby creating third-party rights and interests in respect of the said property. The respondent Nos.6 and 7 further pleaded that the purchasers under the aforesaid registered sale deeds as well as APCRDA, which has acquired interest in the proposed schedule properties, are necessary and proper parties to the proceedings. Since they have not been impleaded, the present application is liable to be dismissed as devoid of merits and for non-joinder of necessary parties.

51. The petitioner/respondent No.5 filed I.A.No.2 of 2024 under Order 6 Rule 17 and Section 151 of the Code of Civil Procedure, 1908, with a prayer to allow the petitioner/respondent No.1 to amend the suit schedule by including Item Nos.8 to 10 mentioned in the schedule properties in the present petition as Item Nos.8 to 10 in the plaint schedule in the suit filed by the plaintiff. The petitioner herein is not a plaintiff in the suit, and she is the defendant No.5 in the suit. After receipt of suit summons and appeal notices, she remained ex-parte in the suit as well as in the first appeal. The second

appeal was filed in the year 2011, and the petitioner herein remained silent from 2003 to 2024, i.e. for more than 20 years, having knowledge about the case proceedings. After completion of 20 years, she came up with the present application in the second appeal seeking amendment in a suit filed by the plaintiff for partition of the plaint schedule properties. The law is well settled that "*in the absence of any pleading before the trial Court, no amount of evidence will be looked into*". The plaintiff also opposed the contents in the present petition, and the plaintiff objected to amendment of the plaint schedule in a suit filed by her by including Item Nos.8 to 10 of the schedule property at the instance of defendant No.5.

52. The learned counsel for petitioner/respondent No.5 placed a case law in ***Mahila Ramkali Devi and Others Vs. nandram (Dead) through legal representatives and Others***[22], wherein the Hon'ble Apex Court held as follows:

> *"**20**. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost."*

[22] **(2015) 13 Supreme Court Cases 132**

53. The learned counsel for petitioner/respondent No.5 placed another case law in ***Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil***[23]***,*** wherein the Hon'ble Apex Court held as follows:

> *"….All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test, therefore, still remains the same; can the amendment be allowed without injustice to the other side, or can it not?"."*

54. In a case of ***Pushpabai & Ors. Vs. Mishribai & Ors.,***[24] wherein the Hon'ble High Court of Madhya Pradesh held as follows:

> *"**11.1** The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In **Notth Eastern Railway Administration Gorakhpur Vs. Bhagwan Das [[(2008) 8 SCC 511**] it was held as under:*
>
> > *"**16**. Insofar as the principles which govern the question of granting or disallowing amendments under Order VI Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order VI Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In **Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil [AIR 1957 SC 363]** which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a)*

[23] **1957 (11) SCR 595**
[24] **2025 latest Caselaw 1109 MP**

> *of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see* ***Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar [(1990) 1 SCC 166.]****"*

55. In the present case, the petitioner herein is defendant No.5 in the suit proceedings. By the date of the suit proceedings in the year 2003, she was a major and, having received notices from the trial Court and the First Appellate Court, she kept quiet and did not make an appearance and remained ex parte before the trial Court as well as before the First Appellate Court. The second appeal was filed by the plaintiff in the year 2011, and the petitioner came up with the present application in the year 2024 seeking to amend the plaint schedule in a suit filed by the plaintiff about 23 years ago before the Civil Court and to add the properties as Item Nos.8 to 10 of the schedule properties, after disposal of suit and appeal on merits by both the Courts.

56. Order 6 Rule 17 of the Code of Civil Procedure, 1908, speaks about the amendment of pleadings. It is also well settled that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In order to justify the said application for amendment, the petitioner has to plead and prove under what circumstances the same was not filed before the trial Court and under what circumstances the said application was filed belatedly after 21

years from the filing of the suit. Admittedly, in the present case, defendant No.5 received suit summons from the trial Court, and she kept quiet and remained ex parte throughout the suit proceedings, and after receipt of appeal notices from the First Appellate Court, she again remained silent, and she was also set ex parte in the first appeal proceedings. Admittedly, the petitioner has not narrated any valid and cogent reasons in support of her contention seeking amendment of the pleadings. In the present case, no pleadings were put forth by defendant No.5 by way of a written statement before the trial Court, and she remained ex-parte before the trial Court. Moreover, defendant No.2 in the original suit was gifted by defendant No.1 an extent of Ac.3.00 cents under Ex.B-2, and she alienated an extent of Ac.1.00 cents during the pendency of the second appeal on 12.01.2016 in favour of Siddha Panduranga Rao, and defendant No.2 and her two daughters and son alienated an extent of Ac.0.50 cents in favour of one N.Madhava Rao under a registered sale deed dated 25.05.2016 during the pendency of the second appeal, and after alienating Ac.1.15 cents out of Ac.3.00 cents, defendant No.2 kept the remaining land with her. Respondent Nos.6 and 7 filed the copies of registered sale deeds along with their counter, the persons who purchased the property under the registered sale deeds during the pendency of the second appeal, and who have an interest in the proposed schedule property, were not made parties. Therefore, on the said ground itself, the application for amendment is devoid of merits. For the aforesaid reasons, I do not find any grounds to allow the present Interlocutory Application vide

I.A.No.2 of 2024, and the same is devoid of merits. Accordingly, I.A.No.2 of 2024 is dismissed.

57. The Interlocutory Application vide I.A.No.3 of 2024 was filed by the petitioner/respondent No.5 under Order 20 Rule 18 r/w Section 151 of the Code of Civil Procedure, 1908, in a second appeal to pass a preliminary decree of partition of Item Nos.1 to 10 of the suit schedule property. In the present case on hand, the plaintiff filed a suit for partition in the year 2003, and no decree of partition was passed by the trial Court, and the suit for partition was dismissed by the trial Court vide its judgment dated 17.02.2010. Aggrieved by the same, the plaintiff filed the first appeal, and the same was dismissed on 23.08.2011 by the First Appellate Court. Therefore, the provision under Order 20 Rule 18 of the Code of Civil Procedure, 1908, is not at all applicable to the present facts of the case.

58. Order 20 Rule 18 of the Code of Civil Procedure, 1908, provides as follows.

> ***Order 20 Rule 18***:
>
> ***Decree in suit for partition of property or separate possession of a share therein***- *Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,-*
>
> *(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;*

> *(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required.*

For the aforesaid reasons, the present application is misconceived, and the petitioner cannot seek a preliminary decree of partition of Item Nos.1 to 10 of the suit schedule properties in a second appeal which was filed by the plaintiff. As noticed supra, the trial Court dismissed the suit for partition filed by the plaintiff, and the First Appellate Court also confirmed the dismissal of the partition suit by the trial Court. The petitioner herein is defendant No.5 in the suit, and having received suit summons and appeal notices from the trial Court and the First Appellate Court, she kept quiet and did not make an appearance, and she remained ex parte throughout the suit and first appeal proceedings, and she did not contest the suit by way of filing a written statement, and she also remained ex parte before the First Appellate Court. The trial Court dismissed the partition suit filed by the plaintiff, and the First Appellate Court also dismissed the partition suit filed by the plaintiff by dismissing the first appeal filed by the plaintiff. In a second appeal, respondent No.5, who is defendant No.5 in the suit proceedings, came up with a petition after the lapse of 21 years from the filing of the suit, i.e., in the year 2024, and filed the present application under Order 20 Rule 18 of the Code of Civil Procedure, which is misconceived, and therefore, there are no merits in the present petition, and the Interlocutory Application vide I.A. No.3 of 2024 is dismissed.

59. In the result, Interlocutory Application Nos.2 and 3 of 2024 in S.A. No.1580 of 2011 and S.A. No.1580 of 2011 are dismissed, confirming the judgment and decree passed by the First Appellate Court.

Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

_____

V. GOPALA KRISHNA RAO, J.

Date: 15.06.2026

SRT