

**\* THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

**+ A.S.NO.708 OF 1997**

% 27.06.2022

# YARLAGADDA BAPAAIAH S/O LAXIAH, DIED  
REP. BY HIS LRs.

.. APPELLANTS

And

\$ YARLAGADDA KUTUMBARAO S/O LAXMIAH, DIED, REP. BY  
HIS  
L.R., DEFENDANT NO.2

..  
RESPONDENTS.

! Counsel for the petitioner : SRI RAVI CHANDRA SEKHAR

Counsel for respondents : 1. SRI D.JAI PAL REDDY

< Gist :

> Head Note :

? Citations:

1. (2020)6 SCC 387
2. 1995 Supp. (2) 428
3. 2007(1) ALT 253
4. 2010(6) ALT 109
5. (1999)3 SCC 422
6. LAWS (APHC) 2006 3 1
7. 2014(5) ALT 678(DB)
8. (1984)3 SCC 447
9. (2010)11 SCC 777
- 10.2015 AIR SCW 777

DATE OF JUDGMENT PRONOUNCED : 27—06—2022

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

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

**THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI****A.S. NO. 708 OF 1997****JUDGMENT**

This appeal is filed against the judgment and decree passed by the court of Subordinate Judge at Sathupalli in O.S.No.27 of 1989 dated 29.08.1996, wherein and whereby the trial court dismissed the suit filed by the plaintiff for partition and separate possession. Thus the unsuccessful plaintiff before the trial court is the appellant herein.

2. Heard Sri G. Ravi Chandra Sekhar, learned counsel for the appellant, and Sri D. Jaipal Reddy, learned counsel for the respondents.

3. For the sake of convenience, parties herein are referred to as per their array in the civil suit.

4. The plaintiff filed suit being O.S.No.27 of 1989 on the file of the Court of the Subordinate Judge, Sathupalli for partition of A-schedule property into two equal shares by *metes and bounds* and to allot one such share to him, and to deliver peaceful and vacant possession of the property.

5. The case of the plaintiff is that he is the younger brother of defendant No.1 and that A-schedule property is the joint family property which was acquired under registered sale deed executed by Smt. Devi Laxmidevamma in favour of the plaintiff and defendant No.1; that defendant No.1 was working as a Teacher and the plaintiff is attending to agricultural works at Kothur; and being the elder brother of the plaintiff, documents were obtained in the name of defendant No.1. However, since all the properties are being enjoyed by the plaintiff and defendant No.1 jointly, they were treated as joint family property. A letter dated 27.05.1956 was addressed by the defendant No.1 to the plaintiff stating that entire properties are joint family properties and that he had agreed to divide the properties and give half share to the plaintiff after a period of two years.

6. It was further stated by the plaintiff that he had been managing the entire joint family properties situated at Ammapalem village by paying land revenue for the entire land and that the produce from the land was being shared equally by plaintiff and defendant No.1, and the plaintiff had been residing in a thatched house constructed in Survey No.240 admeasuring Ac.1-00 at Kothuru village and defendant No.1

was residing at Peddapadu village in a thatched house which was bequeathed by Devi Laxmidevamma. At the time of filing declarations under Andhra Pradesh Land Ceiling of Agricultural Holding Act, defendant No.1 filed a declaration in L.C.C.No.542/STP, wherein he had shown total extent of land i.e., Acs.6-38 guntas of wet land and Acs.46-25 guntas of dry land situated at Ammapalem Village as joint family properties and claimed half share out of the same and excluding remaining half of the property belonging to the plaintiff; and as per the order passed by Land Reforms Tribunal No.II, Khammam, dated 20-10-1976, the defendant No.1 was declared as non-surplus holder.

7. Plaintiff further stated that while things stood thus, defendant No.1 retired from service and wanted to settle at Rayudupalem H/o Ammapalem village. Since Schedule-B and Schedule-C properties are also joint family properties, they were liable for partition. It was also contended by the plaintiff that he alone had been paying land revenue for the land described in B-Schedule due to temporary agreement, and therefore, he is entitled to get share in the said property but defendant No.1 did not cooperate. However, plaintiff also demanded for partition of A-schedule property but defendant

No.1 evaded for partition, and negotiating with one Bandi Laxma Reddy to sell Ac.9-26 guntas of land in Survey No.402, Ac.15-01 gunta in Survey No.401 and Ac.5-38 guntas in Survey No.399 which is in one compact block. It was alleged by the plaintiff that defendant No.1 transferred some of the items of mentioned schedule properties by way of a Gift Settlement Deed dated 28.08.1982 in favour of his daughter/defendant No.2. Therefore, plaintiff contended that in order to evade future complications, he sought for partition of A-schedule property into two equal shares.

8. Defendant No.1 filed written statement denying the material averments, but admitted the relationship between them. He further contended that they did not acquire any property with joint exertions and no property was devolved on them from their ancestors to acquire any property with joint family nucleus. Therefore, the property is a separate property of the defendant No.1 acquired with the amount which he received after retirement from service as a Teacher in the year 1974 and also with his savings. He further contended that the plaintiff is a private employee in a cool drink shop and the defendant No.1 requested him to come to Sathupalli and manage the property and also performed the marriage of the

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plaintiff with his maternal uncle's daughter and allowed him to cultivate 0-04 guntas of land in Survey No.202, Acs.3-00 in Survey No.204(E), Ac.1-00 in Survey No.240, Acs.6-24 guntas in Survey No.232 and Acs.8-16 guntas in Survey No.989 on lease. Thus, the possession of the plaintiff is permissible and not as owner.

9. He further contended that B-schedule property in Survey No.402 admeasuring Acs.9-26 guntas of land is not in the possession of the plaintiff and the defendant No.1 alone is in possession till he settled the same along with the land in Survey No.399 admeasuring Acs.5-38 guntas and Survey No.401 admeasuring Acs.15-01 gunta in favour of his only daughter by gift deed towards *pasupu kumkuma* in August 1982 and since then she has been in possession and enjoyment of the same. Therefore, the properties shown in 'A' and 'B' schedule properties are separate and self acquired properties of defendant No.1 and plaintiff is not entitled for claim in the property.

10. Defendant No.2 filed a separate written statement and supported the written statement filed by the defendant No.1.

11. Based on the above pleadings the trial court framed the following issues:

1. Whether plaint 'A' schedule properties are the self acquired properties of the defendant No.1?
2. Whether the defendant No.1 allowed the plaintiff as a licensee to cultivate the lands bearing Sy.No.202 measuring Ac.0.40 gts., Sy.No.204 measuring Acs.2.00, Sy.No.240 measuring Ac.1.00, Sy.No.232 measuring Acs.6.24 gts. and Sy.No.989 measuring Acs.8.16 gts. out of the plaint 'A' schedule lands?
3. Whether the defendant No.1 settled Sy.No.402 measuring Acs.9.26 gts., Sy.No.399 measuring Acs.5.38 gts. and Sy.No.401 measuring Acs.15.01 gts. in favour of defendant No.2 through gift deed in August, 1982, is true and whether the same is binding on plaintiff?
4. To what relief?

12. Before the trial Court, plaintiff got examined PWs.1 to 6 and got marked Exs.A1 to A14 and on behalf of the defendants, DWs.1 and 2 were examined and Exs.B.1 to B.12 were marked.

13. By order dated 29.08.1996, the Trial Court dismissed the suit O.S.No.27 of 1989 holding that the plaint 'A' schedule property is the self-acquired property of defendant No.1, and that plaintiff is only a lessee of defendant No.1 and that his possession is permissive. It also held that the gift made by defendant No.1 in favour of defendant No.2 as *Pasupu Kumkuma* is true and binding on the plaintiffs.



14. Aggrieved thereby, appellants filed the present appeal.

15. Pending appeal, plaintiff died and his legal representatives were brought on record as appellant Nos.2 to 6 vide order dated 22.6.1999 in C.M.P.No.8536 of 1999.

16. By order dated 02.09.2015, learned single Judge allowed A.S.No.708 of 1997 and set aside the Decree and Judgment dated 29.08.1996 in O.S.No.27 of 1989 passed by the Subordinate Judge, Sathupalli.

17. Defendants filed ASMP.No.2334 of 2015 in A.S.No.708 of 1997 (Re-hear petition) to recall the Decree and Judgment passed by this Court dated 02.09.2015 in A.S.No.708 of 1997 alleging that the matter was looked after by the father of defendant No.2 who died on 27.12.2004 and that she was not aware of the appeal.

18. By order dated 28.07.2016, the said ASMP.No.2334 of 2015 in A.S.No.708 of 1997 was allowed and the learned single Judge recalled the Decree and Judgment dated 02.09.2015 in A.S.No.708 of 1997 on the ground that the death of defendant No.1 took place long prior to hearing the

appeal but not abated and as defendant No.2 is already on record as sole legal heir, the Registry was directed to list the matter before the appropriate Bench dealing with First Appeals as per Roster.

19. Accordingly, the case was listed before this Court, and as per the submissions made by the respondent, the case was heard afresh and judgment was reserved in the appeal suit on 29.04.2022.

20. Along with the above application, Interlocutory Application No.1 of 2016 (ASMP.No.No.615 of 2016) in A.S.No.708 of 1997 was also filed to receive copy of the registered Settlement Deed vide Document No.2248/82 dated 26.08.1982.

21. Submissions of the learned counsel have received due consideration of the Court.

22. Having regard to the facts and circumstances of the case, and the submissions of the learned counsel, the issue that arises for consideration of this court is 'whether the impugned judgment and decree of the trial court warrants any interference?'

23. The main case of the plaintiff is that he is doing agriculture at Kothur, and defendant No.1 is working as Teacher, and that plaint 'A' schedule property was acquired by the plaintiff and defendant No.1; and that they are enjoying the property jointly, treating it as joint family property. In other words, the claim of the plaintiff is that plaint 'A' Schedule property was acquired by the plaintiff and defendant No.1 with their joint exertions and that he is the co-owner, and hence entitled to half-share.

24. Counsel for the appellants vehemently argued that defendant No.1 filed a declaration before the Land Ceiling Authorities in L.C.C.No.542/STP disclosing the entire wet and dry lands possessed by the joint family and the plaintiff is entitled to half share in the entire holdings of joint family and relied on Ex.B-8 declaration filed before the Land Ceiling Authorities, Khammam dated 6.4.1975. Similarly, learned counsel for the appellants drew the attention of this Court on Ex.A-1 / C.C. of the verification declaration of Land Reforms Office dated 19.06.1976 without including the plaintiff as member of joint family and Ex.A-2 / C.C. of verification report of Patwari of the village. This court has perused Ex.A-2, wherein it is specifically stated that the plaintiff is entitled to

half share, and it establishes that the property is the joint family property consisting of defendant No.1 and plaintiff. However, Ex.A.1 / verification reports is of no assistance since declaration was submitted without adding plaintiff No.1 as member of joint family by the defendant No.1 before Land Reforms Authority, Khammam. The contention of defendant No.1 that entire holding of the family is the joint family and the same was accepted, declared that the 1<sup>st</sup> defendant is a non-surplus holder excluding share of the plaintiff.

25. Ex.A3 is the Order passed by the Land Reforms Tribunal dated 20.10.1976, wherein it has been clearly mentioned that the properties covered in Sy.No.202/A, 204 which are wet lands measuring Acs.6-95 guntas and Sy.Nos.232, 989, 399, 401, 402, 240 are dry lands admeasuring Acs.46-69 guntas of Ammapalem. They are ancestral, half share of the declarant excluding his major brother's share works out to  $1.2425/2 = 0.6213$ . It is pertinent to note that when the Land Reforms Tribunal declared defendant No.1 as non-surplus land holder, Ex.A.3 / Order dated 20.10.1976 passed by the said Tribunal had attained finality, and therefore, it would suffice that plaintiff is the joint owner along with defendant No.1. Further, when

defendant No.1 made a declaration before the Land Ceiling Authority, he cannot turn around and contend that the property shown in the declaration as joint family is a separate property. In fact, in Ex.A.1, the deceased plaintiff No.1 was not shown as member of joint family. But in Ex.A.3 / Order dated 20.10.1976, the Land Reforms Tribunal declared defendant No.1 as non-surplus land holder and that he is entitled to half share in the entire holding as disclosed in Exs.A.1 and A.2; and that the said order was not even challenged by defendant No.1 in the appellate forum. Therefore, it is apt to conclude that defendant No.1 is estopped to raise a plea that plaintiff is not the joint owner or co-sharer of the joint properties. Therefore, it is concluded that the plaintiff is the joint owner along with defendant No.1.

26. In similar facts and circumstances in the decision reported in **BHAGWAR SHARAN v. PURUSHOTTAM**<sup>1</sup>, where the plaintiff therein claimed benefit under an instrument, which is a will, cannot subsequently turn around and challenge that document. The Apex Court held that it is a well settled law that a party cannot be permitted to approbate and reprobate at the same time; that this principle is based on

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<sup>1</sup> (2020)6 SCC 387

principle of doctrine of election. The doctrine of election is a facet of law of estoppel and that a party cannot blow and hot and cold at the same time. That any party which takes advantage of any instrument must accept all that is mentioned in the said document; that in respect of will, this doctrine has been held to mean that a person who takes benefit of a portion of the will, cannot challenge the remaining portion of the will. The Apex Court further held that the plaintiff therein having elected to accept the will of H, by filing a previous suit for eviction of the tenant therein claiming that the property concerned had been bequeathed to him by H, cannot turn round and say that the averments made by H therein that the said property was his personal property, are incorrect. The relevant excerpts of the judgment of the Apex Court are as under:

26. It is also not disputed that the plaintiff and Defendants 1 to 3 herein filed suit for eviction of an occupant in which he claimed that the property had been bequeathed to him by Hari Ram. According to the defendants, the plaintiff having accepted the will of Hariram and having taken benefit of the same, cannot turn around and urge that the will is not valid and that the entire property is a joint family property. The plaintiff and Defendants 1 to 3 by accepting the bequest under the will elected to accept the will. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of wills, this doctrine has been held to mean that a person who takes benefit of a portion of the will cannot challenge the remaining portion of the will. In *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem*

*Development Corpn. Ltd. [Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153 : AIR 2013 SC 1241]* , this Court made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one party knowingly accepts the benefits of a contract or conveyance or an order, it is estopped to deny the validity or binding effect on him of such contract or conveyance or order.

27. The doctrine of election is a facet of law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the said document. It would be apposite to refer to the treatise *Equity—A Course of Lectures* by F.W. Maitland, Cambridge University, 1947, wherein the learned author succinctly described principle of election in the following terms:

“The doctrine of election may be thus stated : that he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it....”

This view has been accepted to be the correct view in *Karam Kapahi v. Lal Chand Public Charitable Trust [Karam Kapahi v. Lal Chand Public Charitable Trust, (2010) 4 SCC 753 : (2010) 2 SCC (Civ) 262]* . The plaintiff having elected to accept the will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the property had been bequeathed to him by Hari Ram, cannot now turn around and say that the averments made by Hari Ram that the property was his personal property, is incorrect.

27. The Apex Court in an other decision reported in ***DIGAMBAR ADHAR PATIL V. DEVRAM GIRDHAR PATIL***<sup>2</sup>, had an occasion to consider the evidentiary value of the statement made by a declarant before a statutory Tribunal. The facts of the said case disclose that the appellant therein was a tenant and he claimed rights under Bombay Tenancy

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<sup>2</sup> 1995 Supp.(2) 428

and Agricultural Lands Act, 1948. His application under Section 32-G of the said Act before the Tenancy Tribunal praying to determine the price to be paid to the land owners for the purchase of Acs.8.26 gts. was rejected on the ground that the tenant was already holding land in excess of ceiling limits. The order of the Tenancy Tribunal was reversed by the Bombay High Court. Before the Apex Court, there was a claim on behalf of the minor son of the tenant to an extent of Acs.7.34 gts., and the claim of the tenant's brother, in whose favour there was an alleged partition, under which he was given some land. Reliance was placed on the statement made by the landowner before the Tenancy Tribunal as well as the documentary evidence in support of partition. The Apex Court accepted the oral evidence of the landowner before the Tenancy Tribunal as conclusive, and held that if the land, which fell to the share of the brother of the tenant is excluded, the latter would be within the ceiling area, and entitled to purchase the land from the land owners. Accordingly, the judgment of the High Court was confirmed. The facts further disclose that the statement made by the land owner before the Tenancy Tribunal should be given due weight while determining the rival rights of the owner and the



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tenant. From this judgment of the Apex Court it can be inferred that a party who makes a statement before a Statutory Tribunal, and gets benefit out of such statement in getting his land excluded from his holdings, would not be permitted to turn around at a later stage.

28. Further, defendant No.1 cannot disown his responsibility to give half share in view of the declaration filed before the Land Reforms Tribunal. Defendant No.1 cannot blow hot and cold by pleading legal relationship before the Land Ceiling Authorities and another relationship when the matter comes to a Civil Court. In this context it is pertinent to note that parties are not permitted to raise a plea which runs contrary to the case set up by it or their predecessors in title before the Land Reforms Authority. When a declarant had made a statement before the Tribunal and benefited by the order of the Tribunal, he cannot be permitted to turn around at a later stage. Since plaintiff claimed title / share to the joint family property and did not demur when half-share was computed to the share in the land proceedings, his legal heirs would not be permitted to take a different stand before the authorities under Record of Rights Act. Hence, it is clear that once a party pleads that there exists a joint family before

the Land Reforms Tribunal it is precluded from raising a plea that there was a partition, since parties cannot be allowed to approbate and reprobate basing on the principle of *estoppel*. Also, defendant No.1, having gained advantage of allowing the holding treating the declarant as joint family member, cannot now be permitted to resile from his statement as recorded by the Revenue Divisional Officer in the land ceiling proceedings in order to defeat the right of plaintiff. Hence, the plea of plaintiff that 'A' Schedule property is the self-acquired property of defendant No.1 cannot be accepted at this stage.

29. In the decision reported in **MASHETTY VENKATESHAM AND OTHERS vs. JOINT COLLECTOR AND OTHERS**<sup>3</sup>, a learned single Judge of this court held as under:

In my opinion, *prima facie* the parties cannot be permitted to plead one legal relationship before the land ceiling authorities and another relationship when the matter comes to the civil Court. The fact that defendants 1 and 2 were not parties to the land ceiling proceedings does not make any difference inasmuch as they are claiming through late Janardhan as his legal heirs. Further, they had the benefit of the said plea taken before the land ceiling authorities. If indeed they can be permitted to blow hot and cold, it will become necessary for the Court to consider whether the matter should not be brought to the notice of the District Collector or the concerned land ceiling authorities for resumption of the land in excess of one standard holding. I am, therefore, in disagreement with both the Courts on this question and I hold that as a matter of public policy, the parties cannot be permitted to raise pleas which are contrary to the cases set up

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<sup>3</sup> 2007(1) ALT 253

by them or their predecessors in title before the land ceiling authorities. On that basis, the defendants cannot be permitted to reopen the question of the plaintiffs adoption at this juncture. I, therefore, hold that the plaintiff has made out a prima facie case with regard to his title as an adoptive son of late Janardhan.

30. Learned counsel for the respondents/defendants sought to rely on the judgment of a learned single Judge of this court in **K.BHASKAR RAO v. K.A.RAMA RAO**<sup>4</sup> to contend that statements made by parties for escaping rigors of ceiling or tax laws, are not by themselves decisive of what they stated, and those statements cannot be equated to admissions so as to form basis of a status of a thing. Learned counsel further submitted that in the said judgment, it was further held that plaintiffs cannot base the suit for partition on the mere statement made by defendant before ULC authorities that A and B schedule properties are joint family properties.

31. A perusal of the above judgment relied on by the counsel for the respondents / defendants would disclose that the competent authority under the ULC Act has not accepted the said statement, and finalized the declaration treating those properties as individual properties of defendant therein.

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<sup>4</sup> 2010(6) ALT 109

But in the present case, the competent authority / Tribunal has accepted the declaration filed by the defendant No.1 and passed order dated 20.10.1976 holding that he is a non-surplus land holder, and that he is entitled to half share in the entire holdings, and the said order has also attained finality. Therefore, this judgment relied on by the counsel for the respondents cannot be made applicable to the facts of the present case in all fours.

32. Now coming to Ex.A.4 / letter addressed by defendant No.1 to the plaintiff dated 27.05.1956, it was stated that plaintiff had right over the property and that he is entitled to half-share in the joint property. It is pertinent to note that DW-1 in his cross-examination had clearly admitted his signature and hand writing in Ex.A.4 document and that he agreed to give half share in the suit properties to PW-1 and further stated that PW.1 agitated and went on fast for his half share, and when DW.1 apprehended that PW.1 would die of fasting, in order to save him, he had executed Ex.A-4. He also admitted that differences arose between him and PW.1 as he wanted to sell the land to an extent Acs.9-25 guntas in Sy.No.402, Acs.15-01 guntas in Sy.No.401 and Acs.5-38 guntas in Sy.No.399 to one Bandi Laxma Reddy in 1983, and

a panchayat was also held before the elders to settle dispute between him and PW-1, and later he agreed to give half share in the lands before the elders and executed Ex.A-4 to that effect.

33. Learned counsel for the respondent argued that the Trial Court has elaborately discussed about the validity of Exs.A-1 and A-2 at paragraph No.9 of the judgment and concluded that in Ex.A-1 there are no survey numbers and it is not in conformity with temporary arrangement as alleged by the plaintiff. Further, Ex.A-2 shows that defendant No.1 is the pattedar and possessor over all the suit schedule properties and P.W.1 admitted in the cross-examination about the partition of property.

34. It is pertinent to state that though survey numbers mentioned in Ex.A-1 and A-2 are not in conformity with the survey numbers in the schedule, the order under original of Ex.A-3 clearly declared that defendant No.1 is entitled to half share and plaintiff is entitled to half share therein being the joint owners, and further Ex.A-4 letter addressed by defendant No.1 to the plaintiff reveals consent of defendant No.1 to give half share in all the properties to the plaintiff,

and furthermore plaintiff has clearly stated that defendant No.1 being the elder brother of the plaintiff, the documents are executed in his favour.

35. It is also pertinent to state that in the cross-examination of P.W.1, it is clearly stated that Ex.A-4 was not implemented. Therefore, question of prior partition of the property between defendant No.1 and the plaintiff cannot be taken into consideration.

36. Under these circumstances, this Court is of the considered view that the learned Trial Court without considering Exs.A-3 original order of the Land Reforms Tribunal, and A-4, letter addressed by the defendant No.1, came to wrong conclusion that plaint 'A' schedule properties are the self acquired properties of defendant No.1 alone. Hence the same is required to be interfered with by this court. The issue framed is answered accordingly.

37. In view of the findings arrived at by this Court, the judgments relied on by the learned counsel for the respondents reported in, BABU VERGHESE v. BAR

COUNCIL OF KERALA<sup>5</sup>, SOMAGANI VENKATA SUBBAMMA vs. DISTRICT PANCHAYAT OFFICER, KRISHNA DISTRICT<sup>6</sup>, DASAMMA v. BHARANI MUTUALLY AIDED CO-OPERATIVE HOUSING SOCIETY LTD.,<sup>7</sup> KUPPALA OBUL REDDY v. B.V.NARAYANA REDDY<sup>8</sup>, SAMEER KUMAR PAL v. S.K.AKBAR<sup>9</sup> and SHASIDHAR v. SMT. ASHWINI UMA MATHAD<sup>10</sup> are not applicable to the facts of the present case.

38. Coming to I.A.No.1 of 2016 (ASMP.No.615 of 2016) in A.S.No.708 of 1997 which was filed for receiving the photostat copy of registered settlement deed vide Document No.2248 of 1982 dated 26.08.1982 executed by the deceased defendant No.1 in favour of defendant No.2 is concerned, it is to be seen that this document is referred in the written statement, but however the same has not been filed. At this stage the original document is not filed before this court. Having regard to the facts and circumstances of the case, I do not find any reason to receive the said document at this stage, and the application is accordingly dismissed.

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<sup>5</sup> (1999)3 SCC 422

<sup>6</sup> LAWS (APHC) 2006 3 1

<sup>7</sup> 2014(5) ALT 678(DB)

<sup>8</sup> (1984)3 SCC 447

<sup>9</sup> (2010)11 SCC 777

<sup>10</sup> 2015 AIR SCW 777

39. Having regard to the facts and circumstances of the case and for the foregoing reasons, the appeal is allowed and the judgment and decree passed by the trial court is set aside, and the suit is decreed as prayed for.

40. There shall be no order as to costs.

41. Pending miscellaneous applications, if any, in this appeal shall stand closed.

42. After the judgment was delivered, learned counsel for the respondent/defendant orally sought for leave to appeal to Supreme Court under [Article 132\(1\)](#) read with [Article 134-A](#) of the Constitution of India.

43. Having regard to the facts and circumstances of the case and the submission of the leaned counsel, leave is granted, and the registry is directed to issue certificate as required under [Article 132\(1\)](#) read with [Article 134](#) of the Constitution of India, enabling the respondent/defendant to file civil appeal.

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**M.G.PRIYADARSINI, J**

Date :27.06.2022  
Pgp / Ndr / Avs