

**THE HONOURABLE SMT. JUSTICE P.SREE SUDHA**

**APPEAL SUIT No.233 of 2007**

**AND**

**I.A.No.1 of 2022**

**JUDGMENT:**

This appeal is filed against the Judgment and decree dated 21.02.2006 in O.S.No.09 of 1991 passed by the learned Principal Senior Civil Judge, Kothagudem.

2. One Macha Anasuryamma/plaintiff filed suit in O.S.No.9 of 1991 against one Macha Srinivasa Rao/defendant No.1, who is her son and one Reka Nagarjun Rao/defendant No.2 who is the adopted son, for partition and separate possession of the suit schedule property. As per the Order in I.A.No.113 of 1991, the name of the second defendant was altered as Macha Nagarjun Rao.

3. The brief facts of the suit are that one Macha Komaraiah married the plaintiff/respondent No.1 herein after the death of his first wife namely Macha Yakamma as per the Hindu Customs and rites and he was blessed with a son/defendant No.1 through his first wife. Though, the plaintiff's marriage with Macha Komaraiah was consummated, they were not blessed

with any issues. Her husband brought up defendant No.1, but defendant No.1 has not reciprocated properly. The plaintiff due to close intimacy with one Reka Satyam, orally agreed to adopt his son/defendant No.2 nominally, when he was aged about 10 years, but the adoption was never acted upon and he was attached with his natural parents. A nominal adoption deed was executed at the instance of Reka Satyam, but the adoption is void *ab initio* as contrary to Section 8, 10 & 11 of the Hindu Adoption and Maintenance Act, 1956 and it confers no right, interest or otherwise in the family and properties of plaintiff or plaintiff's husband. As on the date of adoption, the defendant No.1 was alive and he was born through the first wife of plaintiff's husband.

4. The Macha Komaraiah was suffering with T.B, as such plaintiff was dealing with all the business affairs. They have secured item No.1, item No. 2(f) and other items 3 and 4. Her husband had certain properties at Pullur village, Yellandu Mandal forming item Nos. 2(a) to 2(e) of the suit schedule property. She along with her husband acquired other properties except item Nos. 2(a) to 2(e) and thus they are self-acquired properties of plaintiff and her husband. Her husband died on 30.04.1982, leaving behind herself and defendant No.2 as his

legal heirs and successors to the suit schedule property. Before his death, he executed a registered Will deed vide document No.27/1981 dated 18.12.1981. The entire suit schedule properties were bequeathed to the plaintiff, defendant No.1 and some of the properties to defendant No.2, as he is the adopted son. As the adoption is not valid, he is not entitled for any right or interest as per Section 5 of the Hindu Adoption and Maintenance Act, 1956. After the death of her husband, she alienated the property at Sudimella Taluk, Koppurai Village to meet out the family expenses, medical expenses of her husband and outstanding debts, etc.

5. The defendant No.1 got married in the year 1984. At the instance of Reka Satyam, the defendants were causing untold agony and pain to the plaintiff and they are harassing her mentally and psychologically. She accepted to work as 'Karyakartha' in Anganvadi school, Bethampudi village of Tekulapalli Mandal, Khammam District on fixed honorarium from December, 1985. Later, the plaintiff was transferred to Kollapuram Village of Yellandu Mandal in May, 1990. Even then, she was making frequent visits to the suit schedule property and she is in joint possession along with defendant No.1. The defendant No.2 was never in possession of the suit

schedule property at any time. The plaintiff has constructed an R.C.C house in piece meal way. Due to the financial stringency, she did not lay the roof.

6. Recently, the defendants are making efforts to alienate the suit schedule property. In spite of her resistance, defendants are hatching plans to deny her right in the share of the properties. The item No.1 and half of item Nos. 4(a) & (b) of the suit schedule properties were allotted to plaintiff and item No.2 of the suit schedule properties was allotted to defendant No.1 and item No.3 and half of the item Nos. 4(a) & (b) of the suit schedule properties were allotted to defendant No.2, as he is the adopted son. As the adoption of defendant No.2 is void, he is not entitled for the above said properties or any other properties of her husband. As the adoption destroys the rights of the plaintiff and defendant No.1, the said properties in the name of defendant No.2 have to be divided equally between the plaintiff and defendant No.1. Hence, she filed suit for partition. She also sought for cancellation of the registered adoption deed of defendant No.2, as it is void document under Section 11 of the Hindu Adoption and Maintenance Act, 1956. She also stated that cause of action arose when the plaintiff married Macha Komaraiah, on 16.12.1981, when her husband executed the

registered Will deed and in all the dates when defendants made efforts to knock away the properties. Therefore, requested the Court to pass preliminary decree by partitioning the suit schedule property by meets and bounds by allotting item No.1 and half in item No. 4(a) & (b) of the suit schedule property according to the Will deed and also to divide defendant No.2 share to her and to defendant No.1 equally and to pass final decree accordingly.

7. In the written statement filed by the defendant No.1, he stated that plaintiff is not the legally wedded wife of Macha Komaraiah, as their marriage took place during the subsistence of his first marriage with Macha Yakamma i.e., mother of defendant No.1, as such suit itself is not maintainable. He is the son of Macha Komaraiah through his first wife Macha Yakamma. He denied the adoption of defendant No.2 and stated that he has no right over the properties of his father Macha Komaraiah. He also stated that his father was suffering from T.B from long back prior to his death. He also stated that his father got properties at Pulluru village forming item Nos. 2(a) to 2(e) of the suit schedule properties, but he sold away the suit lands during his life time and they are in possession of the purchasers, as such they should be excluded from the schedule

of properties. The purchasers are in possession of the said properties from more than 12 years, as such suit itself is barred by limitation. Moreover, purchasers are not included as defendants, as such the suit is liable to be dismissed for non-joinder of necessary parties. He also denied the Will deed dated 18.12.1981. He stated that he did not know about the execution of the Will till filing of the Suit in January 1991. He stated that his father was originally resident of Pulluru village of Garla Mandal and had ancestral properties and married Yakamma and also blessed with one son i.e, defendant No.1. Later he disposed of rice mill (not included in schedule of properties) and the properties situated at Paloncha and Koppural villages as shown in item Nos.1, 2(f), 3, 4(a) (b) of the suit schedule properties.

8. The defendant No.1 completed his studies at Pulluru Village, Dornakal, Sathupalli and Eluru. While he was studying graduation at Sathupalli, he came to Paloncha to perform the death ceremonies of his father. Then, he came to know about the plaintiff that she was having illegal intimacy with his father even prior to the death of his mother and she died in the year 1976. The plaintiff took away Rs.1,25,000/- in cash and 30 tulas of Gold out of her intimacy with Macha Komaraiah. The

plaintiff colluded with Rekha Satyam, who is the natural father of defendant No.2, concocted the Will and adoption deed by forging signatures of his father who fell unconscious, with an intention to knock away the properties of defendant No.1 who is the sole successor and legal heir of Macha Komaraiah, as such the question of joint possession does not arise and the allotment of item No.1 and half of item No. 4(a) (b) and the allotment of other properties to defendant No.2 and plaintiff through Will deed does not arise. The plaintiff is not entitled to claim half share in the suit schedule property, as she is not a member of the joint Hindu family and also the Court fee paid by her is not valid. Therefore, requested the Court to dismiss the suit.

9. The defendant No.2 filed a separate Written Statement stating that plaintiff is the legally wedded wife of Macha Komaraiah and Macha Komaraiah was blessed with a son through his first wife i.e, defendant No.1. He also stated that plaintiff and her husband were not blessed with any issues. The husband of the plaintiff had close intimacy with Rekha Satyam, as such he agreed to take third son of Rekha Satyam in adoption at the age of 10 years and thus adoption deed was executed and registered before the Sub-Registrar, Kothagudem. The adoption of defendant No.2 was completed by following all

the formalities under Sections 8, 10 and 11 of the Hindu Adoption and Maintenance Act, 1956. The adoption was taken only for the plaintiff. From the date of adoption defendant No.2 was given the status of son in the family of Macha Komaraiah and his status in the family of Rekha Satyam was ceased, as such he is entitled to succeed to the property of his adoptive family. He stated that Macha Komaraiah was suffering from T.B. The plaintiff and her husband jointly acquired properties out of their joint efforts. The Macha Komaraiah died on 30.04.1982, leaving behind plaintiff, defendant No.1 and defendant No.2 as legal heirs and he also executed a registered Will deed vide document No.27/81 dated 06.12.1989. He further stated that plaintiff left the house of Macha Komaraiah after completing his death ceremonies by taking away 30 tulas of Gold and cash of Rs.1,25,000/- and residing at her parent's house at Kollapuram of Yellandu Mandal. She was working as a Teacher in Anganvadi centre at Behampudi village of Tekulapalli Mandal since 1984, as such the entire suit schedule properties are under the possession of the defendants and they are maintaining them peacefully. As the adoption deed was executed and the same was registered, it is valid and he is having every right in the properties of the plaintiff's husband. Therefore, requested the Court to dismiss the suit.



10. The trial Court examined P.Ws.1 to 7 on behalf of the plaintiff and marked Exs.A1 to A12. D.Ws.1 to 6 were examined on behalf of the defendants and marked Ex.B1 & B2 and also Ex.X1. The trial Court framed 11 issues and on appreciation of entire evidence on record decreed the suit in favour of the plaintiff and divided the properties as per the Will deed executed by her husband. Aggrieved by the said Judgment and decree, the defendant No.1 in the suit preferred the present appeal.

11. The learned Counsel for the appellant/defendant No.1 relied upon the following points as stated below and requested the Court to set aside the Judgment and decree passed by the trial Court:

*“1. No explanation as to why a will executed on 16/12/1981 came to be registered on 18/12/1981.*

*2. The scribe of the will is the father of Defendant No.2. He was alive but not examined in the suit.*

*3. The beneficiary of the will was in a position of exercising undue influence & coercion upon the executant.*

*4. The executant of the will was a patwari & contractor.*

*5. The will does not recite minimum details which are expected of in a document relating to immovable properties, that too by a Patwari.*

*(i) No particulars as to the respective date of marriage of the testator, birth of the first son, death of the first wife, marriage with second wife, date of adoption of Defendant No.2 etc. provided in the will.*

(ii) *The details and particulars of the documents under which the title to the property vested with the testator have not been mentioned.*

(iii) *The testator failed to mention the alienations already done by him in respect of some properties by then.*

(iv) *The survey numbers and boundaries of lands in Pullur Village are not mentioned in the Will deed.*

(v) *Not a single document is filed by the plaintiff to show that the suit schedule properties belong to (a) Joint Family, (b) late Macha Kommaraiah during his life time or after death, (c) no document to show as to how and under what interest Macha Kommaraiah acquired the property - mere mention of the property in plaint schedule ipso facto does not establish that the property belongs to joint family or any individual in the family - there has to be prima face evidence of the title and possession of the joint family.*

(vi) *The age of Macha Kommaraiah is stated as 45 years in the Adoption Deed dated 16-11-1981 (Ex. A12) while in the alleged WILL DEED dated 16-12-1981, his age is shown as 51 years (Ex.A1) - There cannot be such disparities in mentioning the age by a person, who has been a contractor and Patwari.*

(vii) *The signatures on the WILL do not tally with each other, there are variations in signatures at each page.*

(viii) *A comparison of the signatures figuring in page No. 1 to 4 of Ex. A1 (dated 16-12-1981) with the signatures figuring in page No. 1 to 5 of Ex. A12 (dated 16-11-1981) would clearly establish that signatures are not of same persons. In the WILL Ex. A1 (dated 16-12-1981) there is no mention of the registered Adopted Deed of Ex. A12, which has happened just one month prior to Ex. A1. If Ex. A1 was to be genuine, it would have certainly mentioned the Executant of registered Adopted Deed dated 16-11-1981.*

(ix) *The non-examination of this scribe would throw any amount of suspicion on the genuineness as in all probability he was not prepared to support the plaintiff at the time of evidence.*

(x) *The WILL executed by a Patwari does not recite as to what are ancestral properties; self-acquired properties, as*

*to the person who is in enjoyment of respective properties and as to how each of the properties was acquired.*

*(xi) There are variations in INK of the signatures of the executant of the WILL, there is difference of INK mentioning of Sy.No. 161/9 at Page No. 2 and persons mentioned in page No. 2 and 3 of Ex. A1 (this is confirmed by PW-7 in his cross examination).*

*(xii) The conditions of the Executant's health are not mentioned in the Ex. A1. PW-7 did not state that he has seen the other attesting witnesses signing before him.*

*(xiii) The alleged WILL surfaced after about 9 years of alleged execution. Defendant No. 1 came to know of the alleged WILL through suit only. Suit was not preceded by a notice and there was no cause of action.*

*(xiv) The Sub-Registrar who registered the WILL has not been examined and no reason has been given why he has not been examined.*

*(xv) Ex. A12 (Adoption Deed) was scribed by a document writer were as it is strange that the WILL Ex.A1 is scribed by the father of defendant no.2 who is neither a document writer nor an advocate strangely an advocate figures as an witness to Ex A1 but had no role in the matter of drafting/preparing a WILL*

*(xvi) In Ex A1 there is no proper gap as between the writings and signatures.*

*(xvii) The eldest son is totally excluded during the process of WILL, neither involved nor informed more particularly notwithstanding the fact that there is a gap of 2days in alleged execution and registration.*

*(xviii) The actual available properties are bequeathed in favor of the plaintiff who at that point of time was living with testator and played an active part in the WILL. Discrepancies in respect of WILL specific (Ex.A-1)*

*(xix) The caption of the WILL NAMA in Telugu at page No. 1, he used different pen and ink.*

*(xx) At page No.2 survey No. 161/9 is in different ink.*

*(xxi) At page No.3 para 4 corrections are made in different ink and pen.*

(xxii) The signature of the Testator (pen used) in page No. 1, 3 and 5 is same, but at page No.2 it is different ink and pen.

(xxiii) The writing in the document is overlapping on the rubber stamp of Stamp Vendor.

(xxiv) The stamp papers for Ex.A-1 purchased on 31-10-1981 executed on 16-12-1981 whereas the stamp papers in respect of Ex. A-12 (adoption deed) were purchased on 16-11-1981, executed and registered on the same day.

(xxv) The signatures in Ex. A-1 differ from page to page.

6. The property which is obtained in the name of Defendant No.2 is also mentioned in the will Ex. A1 as though it is the property of the testator. Kindly see Ex. B2. As per Ex.B2 registered Sale Deed in favour of defendant No.2, the extent of property is Ac. 8.17 gts., but as per WILL, it is Ac. 8.07 gts. In the plaint schedule item No.4(b) the extent is mentioned as Ac. 8.07 gts.

7. The Attesters to the alleged WILL on 16-12-1981 and the attestors at the time of registration on 18-12-1981 are not the same. The following persons attested on 16/12/1981:

i) Sri. B. Ramachandraiah ( PW7)

ii) Sri. M. Komaraiah

iii) Sri. Vasireddy Seshiah ( PW2)

The following persons were witnesses before the Registrar on 18/12/1981:

i) Sri. Shaik Meerasahib ( PW3)

ii) Sri. Vasireddy Seshiah ( PW2)

8. As per pleadings, Defendant No. 1 acted upon the will (Page 40 of plaint pleadings). The present suit was filed on 25/01/1991.

9. The testator died on 30/04/1982. According to the plaintiff, the parties were in possession and enjoyment as per will. (Deposition of PW1 at Page 81).

10. No witness has spoken about the testator being in a sound state of mind, having gone through the contents/read over, having affixed his signature in their presence, understood the nature and effect of the disposition, that he has signed the will in the presence of

*two witnesses who attested his signature in his presence or in the presence of each other. PW7 spoke to partly but his evidence has to be discarded, as he is an interested witness - filed WS on behalf of D-2 supporting the WILL.*

*11. PW2 does not speak of any of the above requirements/ requisites having been satisfied. In his chief examination on page No. 87 of volume 1, he does not speak about having attested the WILL on 18-12- and about signing of the same by the Testator on the said date.*

*12. PW3 speaks of himself and PW7 of having attested the will when as a matter of fact, he is not an attestor of Ex. A1 on 16/12/1981 and PW7 was not an attestor on 18/12/1981.*

*13. In the cross examination PW3 admitted having signed only at the time of registration in the registrar's office.*

*14. PW6 is the wife of M. Komaraiah (witness to the will on*

*16/12/1981). However, she did not depose about her husband's death or to the date of his death. She has spoken about the health of Macha. Komaraiah as good. Her statements are belied by the cross-examination and further she could not have spoken about the health of the testator at the time of executing the will and the presence of the witnesses as admittedly she was not present at the time of the execution. She can only identify the signature of her husband, if he is dead. Any other statement from her cannot be given any credibility.*

*15. PW.7 was examined on 19/01/2005 by which time there is improvement in the statements with reference to the depositions of the previous witnesses. It is admitted by him that he is the Counsel of Defendant in this very suit. He admitted about the difference in the ink in the will. He also admitted that he is related to Macha Komaraiah, the scribe and others. A suggestion is given that the will was prepared at the instance of PW7 & M. Komaraiah which is denied. He is an interested witness and his evidence has to be discarded and disbelieved.*

*16. PW-7 is the Counsel for Defendant No.2 and written statement of defendant No.2 has been filed on 26.09.1991*

*(at Page No. 78 - Volume - 1) through PW-7 as Counsel. Thus he is an interested witness. The participation of PW-7 in the suit proceedings and other circumstances clearly establishes that he is an interested witness. His deposition dated 19.01.2005.*

*17. The mention of three names at the beginning of the WILL at page - 7 without any introduction / reference is totally suspicious.*

*18. One Mr. Ramachandraiah, who is a practicing advocate with sufficient experience, is an alleged witness to the document. If he was really present at the time of execution of Ex. A1 i.e. WILL DEED, he would have certainly advised as to the format and formalities of the WILL that is usually followed while preparing a WILL DEED. Further it is to be noted that he would have been preferred as a scribe instead of Mr. Rekha Satyam.*

*19. The defendant No.2 was set exparte on-07-12-2001 when his counsel, Shri B. Ramchandraiah reported no instruction PW-6 was examined and cross examined on 02-01-2002 and the matter was coming up for further examination. Subsequently there was stay of further proceedings and the matter was being adjourned by the Trial Court. Thereafter PW-7 was examined on 02-01-2005.”*

**I.A.No.1 of 2022:**

12. The learned Counsel for the appellant also filed I.A.No.1 of 2022, before this Court to receive the additional documents as stated below under Exs.B3 to B9:

i) Voter’s list of the year 1977 under R.T.I Act obtained from Telangana State Archives & Research Institute.

ii) Voter’s list of the year 1971 obtained from the office of the District Collector, Khammam under R.T.I Act.

iii) Pay Bill Register of Village Officers for December, 1975 relating to Macha Komaraiah obtained from the office of Tahsildar, Yellandu on 22.06.2022 under R.T.I Act.

iv) Extract of the assessment register pertain to H.No.10-9 at Chakali Bazar, Paloncha for the year 1982 standing in the name of Anasuryamma obtained under R.T.I Act with covering letter dated 23.06.2022 issued by P.I.O., Paloncha Municipality.

v) Letter dated 26.05.2022 issued by the Paloncha Municipality confirming that Macha Komaraiah did not have any house on his name.

vi) Certified copies of Pahanies of Paloncha village relating to the Sy.No.637/AA, 638, 647, 648, 657 and 658 for the year 1978-79, 1979-80, 2005-06 and 2006-07.

vii) Certified copy of the registered sale deed bearing No.56/1979 executed by Logani Venkatamma in favour of Rekha Satyam in respect of property measuring Acs.5 – 00 gts in Sy.No.647 situated at Paloncha in Telugu and English translation.

13. The petitioner in I.A.No.1 of 2022 stated that after the preliminary decree passed by the trial Court, he was advised to get the particulars of the employment and entries relating to plaintiff in the revenue and municipal records and the said

documents were deliberately suppressed by the plaintiff and they are necessary to decide the issues in the suit. It is not possible for this Court to arrive at a just and proper decision without these documents. Moreover, all the documents are Certified Copies of the public documents and the veracity cannot be doubted. He could not file the documents before the trial Court, as he is not aware of the existence of the said documents and entries therein and he was not appraised about the relevancy of those documents, as such he could not file the same before the trial Court. He further stated that he obtained voter's list in extensive search under R.T.I Act, in which the plaintiff was shown as wife of Macha Komaraiah for the years 1971-77. Whereas, his mother was died in the year 1976 and it clearly shows that she was shown as the wife of his father even during the life time of his mother, as such the marriage itself is void and she cannot claim any right in the natural properties of Macha Komaraiah. He also stated that he came to know about the Will only after filing of the suit in the year 1991 i.e, 10 years after its execution. Therefore, requested the Court to receive the documents and mark the same as Exhibits.

14. In the Counter affidavit filed by the respondent No.1/plaintiff, she opposed receiving of the said documents on



the ground that it is for him to obtain documents during the pendency of the suit and file before the trial Court. Until and unless the trial Court refused to receive the documents, he cannot file the same before the appellate Court and he came up with this petition at the belated stage to protract the litigation. He cannot decide the relevancy of the documents and it is not even a ground contemplated under Order 41 rule 27 of C.P.C. Moreover, all the documents are public documents and they were in existence even before the commencement of the trial and he was not aware of the existence of the said documents is not a valid reason to receive the said documents. The petitioner/appellant has not given any cogent reasons for non-filing of the said documents and came up with lame excuses. He did not exercise due diligence to procure all the evidences possible along with the suit, as such additional evidence cannot be permitted at the belated stage of the appeal and the documents filed by him to the present appeal are not required to be considered for pronouncement of the Judgment. The evidence already available on the record is sufficient for adjudicating the matter. It was also contended that all the documents are Certified Copies of the public documents and plaintiff never prevented him from filing the same in O.S.No.09 of 1991. Even the voter's list sought to be marked as Ex.B4 and

B5 are part of public documents, the petitioner/appellant failed to file the same before the trial Court. It is not disputed by her that she married appellant's father, as such the document filed to be marked under Ex.B4 is not necessary for pronouncement of the Judgment. Ex.B5 shows that appellant's father worked as Mali-Patel for the years 1970-78 and it is not necessary for adjudicating the present matter and the said documents are available and accessible to the appellant from 1971 onwards. She clearly mentioned in the plaint that item No.1 is the RCC house "without slab roof" and there was no suppression of the fact, as such the filing of Ex.B6 is not required. The house shown under Ex.B7 was allotted to her in the Will deed executed by her husband, as such it is irrelevant to the present appeal and the said document pertains to the year 1982 i.e., prior to filing of the suit. It is false to say that no land was available in Sy.No.647 as on the date of execution of the Will deed by her husband as shown under Ex.B9 sale deed. There was no diligence on the part of the petitioner/appellant to produce the above documents before the trial Court and in view of the above negligence, he approached this Court at belated stage with this application to receive additional evidence, as such it has to be dismissed with exemplary costs.

15. In reply to the Counter filed by the respondent No.1/plaintiff, the petitioner/appellant stated that even in the Written Statement, he specifically stated that certain properties are not available at all. The burden of proving is upon the plaintiff to establish availability of properties for partition. Though, the plaintiff failed to do so, the trial Court decreed the suit in favour of the plaintiff. The respondent No.1/plaintiff has not disputed the documents or contents of it, but only harping upon the delay. The petitioner/appellant is advised to file the said documents for effective and proper adjudication of the points and arrive to proper conclusion in consideration of the appeal. Therefore, requested the Court to allow the I.A.No.1 of 2022 and to receive the additional documents.

16. The learned Counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ibrahim Uddin***<sup>1</sup> and another in which it was held as follows:

*“ The test to receive the additional documents at the time of appeal is, if the additional evidence is found to have important bearing on main issue, or found to be necessary to remove any lacuna in evidence and for clearing any doubt for pronouncing Judgment and required in interest of Justice, it may be allowed. There*

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<sup>1</sup> (2012) 8 SCC 148

*must be satisfactory reasons for non-production of the evidence in the trial Court for seeking production thereof in appellate Court and it is for the appellate Court to record those reasons while allowing the petition for production of additional evidence.*

*The general principle is that the appellate Court should not travel outside the record of the lower Court and cannot take any evidence in appeal. However, as an exception, Order 41 rule 27 of CPC enables the appellate Court to take additional evidence in exceptional circumstances. The application for taking additional evidence on record at a belated stage cannot be filed as a matter of right.”*

17. Admittedly, all the documents filed by the petitioner/appellant before this Court are public documents. He mainly contended that he is not aware of the existence of the said documents and he was not appraised about the relevancy of the documents, as such he could not file before the trial Court. Whereas, the respondent No.1/plaintiff contended that relevancy cannot be decided by the petitioner and it is not a ground to file the additional documents at the stage of appeal. Moreover, all the documents are in existence prior to the filing of the suit and there is no due diligence on the part of the petitioner. He came up with this petition, only to protract the litigation, as such it cannot be allowed. This Court on considering the arguments of both sides and also the relevant circumstances and nature of documents and the reasons for not

filing the same before the trial Court, finds it just and reasonable to allow the application and to receive the additional documents by duly using the judicial discretion for arriving to the best decision in the appeal.

18. Whenever, the additional documents are filed the appellate Court will remand the matter to the trial Court to give an opportunity to the other side to Cross-examine on the said documents to know the veracity of the said documents. Admittedly, this Case was filed in the year 1991 and the trial Court pronounced its Judgment in the year 2006 and the appeal was preferred in the year 2007. From then onwards, it is pending before this Court for nearly about 16 years. Therefore, in order to avoid further delay in the matter, this Court finds that it is just and reasonable to consider the said documents wherever it is necessary instead of remanding the matter to the trial Court again.

19. In the result, the application filed in I.A.No.1 of 2022, for receiving additional documents is allowed.

20. The main contention of the plaintiff is that she is the legally wedded wife of Macha Komaraiah, as such she is entitled

for partition along with defendant No.1 who is the son of his first wife. In her evidence she has stated that natural mother of defendant No.1/Yakamma died 40 years back. The defendant No.1 was aged about 1 year at the time of her death. She married Macha Komaraiah about 30 years back and her evidence was given in the year 1997. It shows that her marriage with Macha Komaraiah was performed in the year 1967. She stated that defendant No.1 was living with his natural grandparent's after her marriage. She also stated that her husband died in the year 1982 and her marriage was performed about 25 or 26 years back, but she did not know as on the date of marriage, his first wife was living or not. When it was suggested to him that Macha Yakamma died in the year 1976, she stated that her marriage was performed one year after her death. She also stated that she did not remember her date of birth and she cannot say her age as on today, but stated that she studied tenth class during the years 1989-90. It was suggested that her date of birth was mentioned as 15.08.1964 in her Tenth certificate, but it was not filed before the Court. The death Certificate of Macha Yakamma was filed under Ex.B1. As per Ex.B1, she died on 18.03.1976. She also stated that at the time of her marriage, the first defendant was aged about 1

year. It was suggested that the first defendant and herself is of equal age, but she stated she did not know the same.

21. The P.W.4 deposed his evidence before the Court in the year 2001 and in his evidence he stated, that the marriage of Macha Komaraiah with plaintiff was performed about 30 years back at Gollagudem. One Venkataiah purohit performed their marriage, but he is no more and after the marriage both of them residing at Gollagudem.

22. The P.W.5 stated that he knows Macha Komaraiah for the past 35 years and the marriage was performed about 30 years back in the house of Rekha Satyam. He further stated that the sons of Venkataiah are residing at Paloncha. At the time of marriage, Macha Komaraiah was aged about 50 years. He did not know and he never saw the first wife of Macha Komaraiah.

23. The D.W.1 mainly contended that the marriage of plaintiff was performed with his father during the life time of his mother, as such she is not the legally wedded wife. He further stated that his mother was died in the year 1976 and filed death Certificate of his mother under Ex.B1. He denied the suggestion that the marriage of plaintiff with his father was performed in

the year 1977 i.e, after the death of his mother, but he admitted that in the Written Statement he mentioned that his father kept illegal contact with the plaintiff and in the Chief affidavit he stated that his father married the plaintiff during the life time of his mother.

24. The P.W.6 stated that the marriage of plaintiff was performed with Macha Komaraiah about 25 years back at Paloncha village in the house of Mogili Seethamma who is the mother-in-law of Rekha Satyam. She attended the marriage. The plaintiff is the daughter of his junior maternal aunt. As on the date of marriage the Macha Komaraiah has no spouse living. After the marriage, both of them lived in the own house of Macha Komaraiah at Paloncha, but in the Cross-examination she further stated that she did not know whether the first wife of Macha Komaraiah was alive as on the date of marriage between the plaintiff and Macha Komaraiah. She stated that Rekha Satyam is related to her.

25. Though, plaintiff clearly stated that her marriage with Macha Komaraiah was performed, she has not stated the date or year of the marriage either in the plaint or in her evidence. Even the other witnesses have not stated the exact year of the



marriage, but roughly stated that about 25 years or 30 years back their marriage was performed. There is no dispute regarding the marriage, even the defendants No.1 & 2 addressed letters under Exs.A6 & A7 to the plaintiff calling her as mother. The other witnesses also given evasive answers when they subsequently questioned that as on the date of marriage of plaintiff with Macha Komaraiah, whether his first wife Macha Yakamma was alive or not.

26. The adoption deed was executed on 16.11.1981, in which the age of Macha Komaraiah was shown as 45 years and the age of plaintiff was shown as 30 years and in Will deed executed on 16.12.1981 exactly after one month the age of Macha Komaraiah was shown as 51 years and simply stated that plaintiff is the second wife of Macha Komaraiah. Even in the Will deed, though it was stated that she is the second wife of Macha Komaraiah, he has not stated whether he married her after the death of his first wife or not, but simply stated that after the death of his first wife, his son defendant No.1 was surviving and he is also the legal heir to his properties, as such in the entire record there is no evidence to establish whether the plaintiff is the legally wedded wife of Macha Komaraiah or not. In the voter's list filed by the defendant No.1, the name of

Macha Komaraiah and plaintiff was shown as wife and husband. The age of Macha Komaraiah was shown as 42 years and the age of plaintiff was shown as 36 years in the voter's list of the year 1977. So also, both of them shown as wife and husband and the age of Macha Komaraiah was shown as 36 years and the age of plaintiff was shown as 23 years in the voter's list of 1971. Therefore, this clearly shows that the marriage of Macha Komaraiah with plaintiff was performed prior to 1971 or in the year 1971 which is admittedly during the subsistence of marriage with his first wife Yakamma, as she died in the year 1976 and it is not the case of Macha Komaraiah or nobody else that he divorced his first wife during his life time as she lived till 1976 and as the plaintiff was shown as wife of Macha Komaraiah in the voter's list of 1971, it can be safely presumed that her marriage with Macha Komaraiah was performed during the subsistence of the first marriage with Yakamma, as such she is not the legally wedded wife of Macha Komaraiah and thus she is not entitled for any share in the properties of Macha Komaraiah and even as per the Hindu Marriage Act, 1955 bigamy is prohibited, as such she cannot retain the status of legally wedded wife in the year 1977.

27. Though she is not the legally wedded wife of Macha Komaraiah, fact remains that she is the second wife of Macha Komaraiah and stayed with him for considerably long period. Defendant No.1 is bound to maintain his step mother, as it is held that she is not entitled for any property of Macha Komaraiah on the ground that she is not the legally wedded wife. It is the moral obligation on the part of defendant No.1 to take care of her during her life time.

28. Perused the adoption deed and also the Will deed. No doubt, both of them were executed during the life time of Macha Komaraiah along with other witnesses and both the documents were also registered, but there are several suspicious circumstances surrounding the documents. The perusal of the adoption deed shows that there was no performance of 'Homam' in the said document. It was stated that defendant No.2 was taken care from the age of 2 years, but the deed was executed in the year 1981 and mainly the adoption was taken at the instance of plaintiff only. Admittedly, the defendant No.2 is the son of Rekha Satyam, who is the scribe of Will deed, but he was not examined before the Court for the best reasons known to the plaintiff. In fact, when the plaintiff filed suit for partition, she clearly disputed the adoption and also the execution of the

adoption deed and stated that the defendant No.2 is not entitled for any right in the properties, as such the properties allotted to the defendant No.2 in the Will deed shall be distributed between herself and the defendant No.1 only. She also clearly stated that as the first wife son defendant No.1 was surviving, the defendant No.2 is not entitled for any share. She further stated that at the instance of Rekha Satyam, defendants were causing mental agony and harassing her, as such she joined as a Teacher in the Anganwadi School from December, 1985 and transferred to Kollapuram village of Yellandu Mandal in May, 1990, but she was visiting the suit schedule property frequently and she also requested the Court to cancel the registered adoption deed, as it is void under Section 11 of the Hindu Adoption and Maintenance Act, 1956. As there is no giving and taking of the child and the adoption deed was executed prior to the death of Macha Komaraiah and even as per the adoption deed, it was executed at the instance of the plaintiff, but plaintiff herself stated that the defendant No.2 belongs to his natural parents and is never attached to their family, he is not entitled for any share in the suit schedule property and adoption deed has to be cancelled and in fact, when the suit is filed she also mentioned his name as Rekha Nagarjuna Rao and later amended it as Macha Nagarjuna Rao by filing an

Interlocutory Application. Therefore, this Court finds that the adoption deed executed by Macha Komaraiah is not valid and is to be cancelled, as such the defendant No.2 cannot be treated as the adopted son and he has no right in the properties of Macha Komaraiah.

29. Regarding the Will deed executed by Macha Komaraiah one month after the execution of the adoption deed, the Will deed was executed vide document No.27 of 1981 dated 16.12.1981 and the Macha Komaraiah was died on 30.04.1982 i.e, 4 months after the execution of the Will deed. The main contention of the defendant No.1 was that it was executed at the instance of Rekha Satyam, plaintiff and others and he has no knowledge of the execution of the Will deed. Though, it was executed in the year 1981, he came to know about the said document only when the suit was filed in the year 1991 and it was suppressed for 10 long years. The learned Counsel for the respondent No.1 herein argued that it was a registered document and the attestors were examined before the Court, as such the trial Court rightly held that Will is proved and thus it needs no interference. The main contention of the defendant No.1 is that it was not executed by his father in sound and disposing state of mind, as he was suffering from T.B since long

time his signatures were obtained while he was unconscious and thus it was not executed voluntarily. Even the P.W.1 during her Cross-examination stated that her husband died one year after the execution of the Will deed. Since 5 or 6 years prior to his death, he was suffering with T.B, but he was moving till his death. She also stated that as on the date of death of his husband, the defendant No.1 was studying graduation at Sathupally. She also admitted the fact that for about 2 years her husband was in Erragadda Hospital and it is one and half year prior to his death. The scribe of the Will was not examined, though he is the natural father of defendant No.2. Even the perusal of the Will deed shows that initially some properties were allotted to plaintiff and some other properties were allotted defendant No.1 and then some of the properties to defendant No.2 and later in the last paragraph details of certain properties were mentioned. The said properties are to be taken equally by the plaintiff, defendants No.1 & 2 and again details of some other properties at end stated it was given to No.1 & 3 and it shows that there was no clarity to the testator while executing the document regarding allocation of properties.

30. The defendant No.1 mainly contended that the properties allotted to him under item No. 2(a) to 2(e) in the Will deed were

ancestral properties and they were sold away during the life time of his father and with the sale profits, he purchased certain properties in Paloncha Village and even without knowing the said fact the Will was executed. Therefore, it was not executed by his father, but by the plaintiff at her instance just before his death. The argument of the defendant No.1 appears to be true on perusal of the contents of the Will deed and also in view of evidence of P.W.1 in her Cross-examination regarding the health status of her husband just before his death. The plaintiff filed suit for partition. Therefore, the burden lies on her to prove the validity of the documents and to prove its genuineness. Though, she examined attesters, she could not examine the Scribe, even though he is available for the reasons best known to her. As per Section 101 of the Evidence Act, the burden of proving the fact always lies upon the person who always asserts the facts.

31. The learned Counsel for the defendants also relied upon the decision of the Hon'ble Supreme Court in the case of ***Rangammal Vs. Kuppuswami and another***<sup>2</sup> in which it was held as follows:

*“It hardly needs to be highlighted that in a suit for partition, it is expected of the plaintiff to include only*

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<sup>2</sup> (2011) 12 SCC 220

*those properties for partition to which the family has clear title and unambiguously belong to the members of the joint family which is sought to be partitioned and if someone else's property, meaning thereby disputed property is included in the schedule of the suit for partition, and the same is contested by a third party who is allowed to be impleaded by order of the trial Court, obviously it is the plaintiff who will have to first of all discharge the burden of proof for establishing that the disputed property belongs to the joint family which should be partitioned excluding someone who claims that some portion of the joint family property did not belong to the plaintiff's joint family in regard to which decree for partition is sought."*

But, in this case the ancestral properties which were already sold away by Macha Komaraiah during his life time were allotted to defendant No.1 purposefully, though they are not available for partition. As per the decision of the Hon'ble Supreme Court in the case of **Ramesh Verma (Dead) through legal representatives Vs. Lajesh Saxena (Dead) by legal representatives and another**,<sup>3</sup> the propounder had to show that Will was signed by testator, and that testator was in sound and disposing state of mind at the relevant time and he should understand the nature and effect of disposition and put his signature to document on his own free Will. No doubt, the Will deed was signed by Macha Komaraiah and also attested by the witnesses and they were examined before the Court, but it is for

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<sup>3</sup> (2017) 1 SCC 257



the plaintiff to establish that testator was in sound and disposing state of mind and he understood the nature and effect of the document and put his signature to the document on his free Will. Otherwise, the document shall not be used as evidence, when there was any suspicious circumstance. It is for propounder to explain them to the satisfaction of the Court before it can be accepted as genuine. In this case, the plaintiff failed to explain the said circumstances.

32. Admittedly, he was suffering from T.B and Will was executed just four months prior to his death. She herself admitted that he was in hospital from one and half year prior to his death, as such the execution of the Will is shrouded in suspicion and plaintiff failed to give cogent and convincing explanation regarding the suspicious circumstances surrounded in making of the Will. Plaintiff got it executed one month after the execution of the adoption deed, four months prior to his death, it has not seen the light of the day till 1991, though the defendant No.1 attended when his father died in the year 1982. The Will was also attested by an Advocate namely B.Ramachandraiah i.e, P.W.7, in the Cross-examination he stated that Macha Komaraiah, scribe, himself and defendants No.1 & 2 are related to each other. He also admitted that at the

initial stage of the suit, he was Counsel for the second defendant. Even P.W.6 stated that 2 or 3 years prior to the date of execution of the Will, Macha Komaraiah was suffering with T.B disease. Therefore, this Court finds that plaintiff failed to establish that Will deed was executed in a sound and disposing state of mind on his free will and thus it cannot be relied upon.

33. In the result, I.A.No.1 of 2022 filed to receive the additional documents is allowed and the appeal suit is also allowed by setting aside the Judgment of the trial Court in O.S.No.9 of 1991, as the plaintiff/respondent No.1 herein was not the legally wedded wife of Macha Komaraiah, she is not entitled for any share in the properties of Macha Komaraiah and she herself disputed the adoption deed and requested for cancellation. Therefore, the respondent No.2/defendant No.2 herein is also not entitled to claim any right in the properties of Macha Komaraiah and thus he is not entitled for any share. Admittedly, the defendant No.1 is the son of Macha Komaraiah and Macha Yakamma and he is the sole legal heir of the Macha Komaraiah. As the Will deed executed by Macha Komaraiah was not established by the respondent No.1/plaintiff, it cannot be relied upon and appellant/defendant No.1 is entitled to all the properties of his father Macha Komaraiah.

Miscellaneous petitions pending, if any, shall stand closed.

**JUSTICE P.SREE SUDHA**

**DATED: 06.04.2023**

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**THE HONOURABLE SMT. JUSTICE P.SREE SUDHA**

**APPEAL SUIT No. 233 of 2007**

**AND**

**I.A.No.1 of 2022**

**DATED: 06.04.2023**

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