

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Second Appeal No. 601 OF 2011**

Between:

Chinnannolla Mallaiah (Died) per LRs  
and others.

... Appellants

And

Llolla Ananthamma

... Respondent

DATE OF JUDGMENT PRONOUNCED: 02.07.2024

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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

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**K.SURENDER, J**

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ S.A. No. 601 OF 2011**

% Dated 02.07.2024

# Chinnannolla Mallaiah (Died) per LRs  
and others.

... Appellants

And

\$ Lolla Ananthamma

... Respondent

**! Counsel for the Appellants:** Sri K.V.Bhanu Prasad

**^ Counsel for the Respondent: Mohd.Moin Ahmed Quadri  
T.V.Rajeevan**

**>HEAD NOTE:**

? Cases referred

**THE HON'BLE SRI JUSTICE K.SURENDER****SECOND APPEAL No.601 of 2011****JUDGMENT:**

1. The appellants are defendants in the trial Court, who were unsuccessful in the trial Court and also the appellate Court. Aggrieved by the concurrent findings, the present Second Appeal is filed. Hereafter, the parties will be referred to as in the trial Court.

2. The plaintiff filed suit for partition and separate possession of 1/3<sup>rd</sup> share in Acs.3.33 guntas of agricultural land in Sy.No.345/A claiming that she is having right on 1/3<sup>rd</sup> share in the suit schedule property, which right accrued from her father. The defendants 1 and 2 are brothers of the father of the plaintiff. After filing the suit, written statements were filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants denying the share of the plaintiff stating that the father of the plaintiff died during police action in the year 1949 before Hindu Succession Act, 1956 came into force. Further, the claim of the plaintiff is that her father and defendants 1 and 2, all three brothers had acquired the suit schedule property as joint family property. Further, according to the plaintiff, her father died in the year 1970 and her mother

died prior to that. Since both the parents died, plaintiff was taken care of by her grandmother Lachamma and thereafter, by the 1<sup>st</sup> defendant, who is the paternal uncle.

3. The defendants 1 and 2 claimed that they succeeded the suit schedule property from their father, who is the grandfather of the plaintiff, as such, the plaintiff cannot claim her right since Hindu Succession Act 1956 was not in force at the time of death of the plaintiff's father in 1949. Accordingly, the real facts were suppressed by plaintiff and also the suit undervalued.

4. After filing of written statement by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, petition was filed to implead the defendants Nos.3 and 4. The 3<sup>rd</sup> defendant is the daughter of 1<sup>st</sup> defendant in whose favour the 1<sup>st</sup> defendant executed a gift deed in respect of Acs1.36 ½ guntas out of the suit schedule property. Thereafter, the 3<sup>rd</sup> defendant sold the property in the name of the 4<sup>th</sup> defendant, which is M/s.Punnami Developers Private Limited. The trial Judge by orders dated 11.06.2006 permitted the defendants 3 and 4 to be impleaded.

5. Basing on the pleadings of plaintiff and defendants, the following issues were framed by the trial Court:

1. *Whether the suit schedule land is available for partition?*
2. *Whether the suit is bad for non-joinder of necessary parties?*
3. *Whether the gift document No.603/ 1998 executed by Defendant No.1 in favour of Defendant No.3 is binding on the parties?*
4. *Whether the registered sale deed document No.276/2004 Executed by Defendant No.3 in favour of Defendant No.4 is sham and void document?*
5. *Whether the plaintiff is entitled to the partition and separate possession as prayed for?*
6. *Whether the plaintiff is entitled for preliminary decree against the Defendants as prayed for?*
7. *To what relief?*

6. Having considered both the oral and documentary evidence adduced on either side, the trial Court found that Ex.A1, certified copy of the khasra pahani for the year 1954-55 reflected name of the father of the plaintiff Chinnanolla Pentaiah as the pattadar who was the head of the joint family. Further, under Exs.A2 to A4, which are the pahanies for the year 1960-61, 70-71 and 75-76, the name of the plaintiff's father was recorded as the pattadar. Exs.A1 to A4 were not disputed by the defendants. The name of the first and second defendants were reflected in the pahaies for the year from 1985-1986. Since the name of the father of the plaintiff was reflected till 1970-71, the trial Court found that the father of the

plaintiff must have died during 1970 after the Hindu Succession Act came into force. Since the defendants failed to prove that the father of the plaintiff died in the year 1949 during police action as asserted by them, the trial Court found that the plaintiff was entitled to 1/3<sup>rd</sup> share in the property. Accordingly, trial Court decreed the suit finding that the suit schedule property had to be partitioned by 1/3<sup>rd</sup> in favour of plaintiff. Further, the Gift Settlement Deed No.603 of 1998, dated 26.02.1998 executed by the defendant No.1 in favour of the defendant No.3 was not binding on the plaintiff in respect of her share in the suit schedule property. Similarly, the registered sale deed executed by 3<sup>rd</sup> defendant in favour of 4<sup>th</sup> defendant is valid but will not include the share of the plaintiff.

7. Aggrieved by the said Judgment and Decree in O.S.No.550 of 2003 dated 28.12.2007, the defendant Nos.1 to 3 appealed before the District Court vide A.S.No.32 of 2008 dated 07.12.2011. The District Court framed the following points for consideration in appeal:

*i) Whether this Court is having jurisdiction to entertain the appeal.*

*ii) Whether is there any interference required in the judgment of the lower Court?*

8. Learned 1<sup>st</sup> appellate Court found that it was having jurisdiction to entertain the appeal and correct valuation of property was done for the purpose of Court fee. Further on facts, the first appellate Court found that the findings of the trial Court are correct and needs no interference.

9. Being unsuccessful in both the Courts below, the present Second Appeal was filed.

10. This Court on 13.06.2011 while admitting the appeal passed the following order:

*“Subject to the petitioners herein/the appellants depositing a sum of Rs.50,000/- (rupees fifty thousand only) to the credit of suit OS No.550 of 2003 on the file of Principal Junior Civil Judge, Sanga Reddy, Medak, let there be stay of passing of final decree.*

*Six weeks time is granted for making the said payment and upon such deposit of the amount, the plaintiff-decree holder is entitled to withdraw the same without furnishing any security.”*

11. It is apparent that no substantial question of law was framed at the time of admission, which runs contrary to the scope of Second Appeal, which mandates framing of substantial question of

law at the time of admission and then direct issuance of notice to the respondents. Alternatively, notice before admission also could have been ordered to the respondents, which was not done in the present case. However, since this Court had already admitted the appeal, both the counsel are heard.

12. The following substantial questions of law are urged by the appellant.

*i) Whether the courts below are right in granting preliminary decree in favour of the respondent when the partition was opened admittedly about 50 years back soon after the death of the father of the respondent.*

*ii) Whether the courts below are correct in rejecting the plea of pecuniary jurisdiction by holding that the value of the court fee stated by the plaintiff is of primary importance instead of holding that the valuation of the suit furnished in the plaint is essential to determine the jurisdiction.*

*iii) Whether the courts below are right in misreading the evidence and coming to a wrong conclusion to grant preliminary decree in favour of the respondent.*

*iv) Admittedly when the 4<sup>th</sup> respondent is in possession of the suit land, whether appellate court is justified in believing that the 1<sup>st</sup> respondent is in joint possession and satisfying that, the court fee of Rs.200/- paid there on is correct?*

13. Thereafter, during the course of arguments, memo was filed to consider the following additional substantial questions of law:



*i) Whether the courts below are right in decreeing the suit, when suit as framed and filed for partition is not maintainable as the documents filed by the plaintiff are not supporting her case?*

*ii) Whether it is open to the courts below to ignore, by reason of delay in instituting the suit, the right if any for the plaintiff is extinguished?*

14. Learned Senior Counsel appearing for the appellants would submit that the plaintiff did not claim partition in respect of all the ancestral properties, for the said reason, her claim selectively in the suit schedule property cannot be considered by the Court. The plaintiff ought to have filed a separate suit for cancellation of the gift deed executed by the 1<sup>st</sup> defendant in favour of the 3<sup>rd</sup> defendant. Further, when the plaintiff admitted that there is a gift deed in favour of 3<sup>rd</sup> defendant and subsequent sale deed in favour of 4<sup>th</sup> defendant, that in itself would reflect that the plaintiff was not in joint possession of the subject property.

15. Learned Senior counsel appearing for appellants further argued that under Ex.A1. The father of the plaintiff is shown as purchaser, as such, the question of the property being ancestral property does not arise. Finally, the suit filed before the Court below

is hopelessly barred by limitation under Article 58 of the Limitation Act.

16. It is well settled law that the High Court in Second Appeal cannot examine the correctness of finding on facts by the Court below unless the said findings are inherently improbable or perverse.

17. It is the case of the appellants that the suit property was not ancestral property, but self-acquired. The said argument cannot be accepted since it is not the case of the defendants in the main suit. The contention raised was that the father of the plaintiff died even before the Hindu Succession Act came into force. As such, the plaintiff was not entitled, even though the suit schedule property was ancestral land. The ground of the plaintiff not seeking partition of the properties was not raised by the defendants in the main suit, as such, it cannot be urged before this Court. As rightly found by the Courts below, Exs.A1 to A3 when collectively considered, the father of the plaintiff died around 1970, as such, the plaintiff's entitlement to 1/3<sup>rd</sup> share of the property, cannot be found fault with.

18. There is no necessity of seeking cancellation of the gift deed in favour of the 3<sup>rd</sup> defendant and subsequent alleged sale deed in favour of the 4<sup>th</sup> defendant, as argued by the appellants' counsel. A coparcener has no right to execute gift deed without the consent of the other coparcener.

19. Factual issues and legality of the claims made by either of the parties to the suit, when correctly decided by the trial Court and the first appellate Court, the very same issues cannot be raised in Second Appeal, unless the findings are inherently improbable, contrary to law or perverse. In view of the foregoing discussion, there are no substantial questions involved to be decided in the present appeal. The substantial questions formulated by the appellants are mixed questions of fact and law, which have already been decided correctly by the Courts below.

20. Accordingly, the Second Appeal stands dismissed.

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**K.SURENDER, J**

Date : 02.07.2024

Note: LR copy to be marked.

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