THE HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

A.S.No.183 OF 2021

JUDGMENT:

Aggrieved by the judgment and decree dated 01.06.20201 in O.S.No.71 of 2017 (hereinafter will be referred as 'impugned judgment') passed by the learned Principal District Judge at Nalgonda (hereinafter will be referred as 'trial Court'), the defendant No.1, 3 and 4 preferred the present appeal to set aside the impugned judgment.

2. For the sake of convenience, the parties hereinafter are referred to as they are arrayed before the trial Court.

3. The brief facts of the case, which necessitated the appellants to file the present appeal are that, the plaintiff filed suit for partition and separate possession in respect of suit schedule properties against the defendant Nos.1 to 4. The averments of the plaint in brief are as under:

a) The marriage of the plaintiff was performed about 25 years ago i.e., on 19.03.1992 with one Pakkir Sudhakar Reddy as per Hindu customs and rites prevailing in Reddy Caste. No dowry was paid by the parents of the plaintiff at the time of marriage except promising to give her share in suit schedule 'A'

and 'B' properties. The plaintiff, Defendant Nos.1 and 2 constitute the members of undivided Joint Hindu Family governed by Mithakshara School of Hindu Law. The schedule property is ancestral property of Komatireddy Chandra Reddy, who is the grandfather of the plaintiff and Defendant No.1. After the death of Komatireddy Chandra Reddy, his son Komatireddy Linga Reddy, father of the plaintiff and Defendant No.1became the owner and possessor of the suit schedule property. After the death of Komatireddy Linga Reddy i.e., on 14.01.2009 the plaintiff, Defendant No.1and 2 succeeded to the suit 'A' and 'B' schedule properties and jointly cultivating the suit lands by knowing to one and all of Brahmanvellemla (Kothagudem) village of Narketpally Mandal, Nalgonda District. The Joint Hindu Family consisting of the plaintiff, Defendant Nos.1 and 2 are having the following suit schedule properties in which the plaintiff is having 4/9th share, Defendant No.1is having 4/9th share and Defendant No.2 is having 1/9th share.

b) Item Nos.6 and 7 of Schedule ‘A’ land, Survey No.357, admeasuring Ac.4.16 guntas and Survey No.358, admeasuring Ac.6.04 guntas total extent of Ac.10.20 guntas in the name of Komatireddy Andamma W/o. Komatireddy Linga Reddy, who is

Defendant No.2. In fact, the item nos.6 and 7 lands were purchased and owned by the father of the plaintiff, who is 'kartha' of the Joint Hindu Family, but to take loans and to obtain Government Benefits the item No.6 in Sy.No.357 admeasuring Ac.4.16 guntas and item no.7 in Sy. No 358 admeasuring Ac.6.04 guntas total extent of Ac.10.20.guntas were kept in the name of Defendant No.2 nominally but it is not either the self- acquired property or streedhana property of Defendant No.2, as such, the item nos.6 and 7 land in Survey Nos.357 and 358 admeasuring total extent of Ac. 10.20.guntas is in the joint family property of the plaintiff and Defendant No.1 but not the self-acquired property of Defendant No.2.

c) The item no.1 of schedule 'A' property in Survey No.343, admeasuring Ac.4.00.guntas and item no.2 in Sy.No.360 admeasuring Ac.5.18.guntas item no.3 in Survey No.361 admeasuring Ac.3.29.guntas item no.4 in Survey No.359, admeasuring Ac.6.27.guntas and item no.5 in Survey No.268, admeasuring Ac.0.07.guntas total admeasuring Ac.20.01 guntas dry land situated at Brhamanavellemla (Kothagudem) village, Narketpally Mandal, Nalgonda district was in the name of the father of the plaintiff and Defendant No.1, namely,

Komatireddy Linga Reddy which came from his father Komatireddy Chandra Reddy, as such, it is Joint Hindu Family Property and after his death the above Ac.20.01 guntas fell to the share of the plaintiff, Defendant Nos.1and 2.

d) The plaintiff, defendants are in joint possession and enjoyment of the suit schedule 'A' and 'B' properties, which are being recorded in the names of defendant Nos.1 and 2 in the concerned revenue records. Defendant No.1 transferred item no.2 of the suit schedule 'A' property in Survey No.360, admeasuring Ac.3.00 guntas was managed the Revenue Authorities and recorded in the name of Defendant No.3 namely, Komatireddy Shivaji Reddy without any valid document. Similarly item no.4 in Sy.No.359 admeasuring Ac.4.27 guntas was managed by the revenue authorities and got it mutated in the name of Defendant No.4 Komatireddy Shena and in the same survey number admeasuring Ac.2.00 guntas managed the revenue people and got it recorded in the name of Defendant No.3 K. Shivaji Reddy to avoid the share of the plaintiff. Defendant No.1 is mismanaging the suit Schedule 'A' and 'B' properties. As such, the plaintiff demanded the defendants on 25.02.2017 for partition and separate possession

of the suit schedule properties. But the defendants in collusion with each other are not coming forward for amicable partition with an evil intention to avoid her legitimate shares, as stated supra. The plaintiff also placed the matter before the caste elders, who secured the presence of the defendants on 07.05.2017 and held a panchayath and advised them to allot the legitimate shares of the plaintiff 4/9th share in the suit schedule properties, but the defendants paid deaf ear to the advices of the elders. As her all efforts to get her 4/9th share in the suit schedule properties turned in vain, and the plaintiff is compelled to knock the doors of the Court seeking relief of partition and separate possession of the suit property by meets and bounds among the plaintiff and defendant Nos.1 and 2.

e) It is urged that the plaintiff declares that there are no outstanding dues payable by the Joint Family. Defendant No.2 who is the mother of the plaintiff and defendant No.1 is the maintenance holder and she is old aged women and the plaintiff is undertaking to maintain her mother-Defendant No.2 as such Defendant No.2 is having 1/9th share in the suit schedule 'A' and 'B' properties.

4. In reply to the plaint averments, defendant Nos. 1, 3 and

4 have filed common written statement denying the averments of the plaint and the brief averments of the said written statement are as under:

a) At the time of her marriage the father of D.1 herein has paid Rs.10,00,000/- to the plaintiff towards 'Pasupu Kunkuma' and for betterment of the plaintiff from out of the properties left by late Komatirddy Chandra Reddy although there was no theory of giving any share to the daughter during the year 1992. During the life time of late Komatireddy Linga Reddy, the father of Defendant No.1 and the plaintiff and the husband of Defendant No.2, since there were only two male members viz., Komatireddy Linga Reddy and Defendant No.1, they had partitioned the joint family properties during May, 2001 and in the said partition, item Nos.1 to 5 of the Schedule A properties were allotted to the share of Defendant No.1 and item Nos.6 & 7 were allotted to the share of late Komatireddy Linga Reddy. In order to avoid future complications to be faced by Defendant No.2, after the death of said Komatireddy Linga Reddy, the father of Defendant No.1 got the said lands mutated on the name of Defendant No.2 so that she can enjoy the said properties during her life time and to revert back to Defendant

No.1. The schedule property has been exclusively given to the share of Defendant No.1 subject to maintenance of Defendant No.2.

b) The Defendant No.1 has been cultivating the share of the lands belonging to Defendant No.2, she being the mother of Defendant No.1 and Defendant No.2 has been generous in contributing to the welfare of family of Defendant No.1 apart from appropriating the income to herself. As stated, the allegation that the plaintiff, Defendant Nos.1 and 2 constituted as Joint Hindu Family is not true and hence denied. It is equally false and hence, denied that the plaintiff and Defendant No.1 have 4/9th share each and Defendant No.2 has 1/9th share in the schedule 'A' & 'B' properties. During the partition in the month of May, 2001 the item Nos. 1 to 5 of the Schedule 'A' & the House in Schedule 'B' have been allotted to the share of Defendant No.1, while the item Nos.6 & 7 of Schedule 'A' properties were got mutated on the name of Defendant No.2 which were actually allotted to the share of the father. As set out above, even the said mutation was for the enjoyment of Defendant No.2 till her life time and there after the same would revert back to Defendant No.1 alone. The plaintiff had pocketed

sufficient amounts at the time of her marriage in lieu of her share in the properties, if any. Thus the main allegations of the plaintiff with regard to the joint ownership of the schedule 'A' & 'B' properties, is denied and the plaintiff is put to strict proof of the same.

c) Late Komatireddy Chandra Reddy was the owner and possessor of the said 'A' & 'B' schedule properties and in view of his death, his only son late Komatireddy Linga Reddy inherited the said properties being sole-surviving male member. Thus, the said property in the hands of late Komatireddy Linga Reddy does not amount to ancestral property and consequently the plaintiff cannot claim the same as joint family and ancestral property. The said Komatireddy Linga Reddy being the absolute owner had every right to affect the partition among himself and Defendant No.1 and thus, the plaintiff has no right to question the same. The concept of joint and ancestral property does not apply to the facts of this case. Hence, the plaintiff has no right to claim partition of the schedule properties treating them as joint family properties. The plaintiff never paid any share out of the income from the schedule 'A' & 'B' properties and she is fully aware and conscious of the ownership of Defendant No.1. In

view of the amendment of 2005 to the Hindu Succession Act, the plaintiff is encouraged to file the present suit with all false allegations. The plaintiff has no cause of action to file the present suit. It is also pleaded that the plaint 'A' & 'B' schedule properties have been inherited by late Komatireddy Linga Reddy and his father and he being the sole male-survivor had become the absolute owner of the same and the concept of joint ancestral property does not apply to the properties in the hands of late Komatireddy Linga Reddy. It is also pleaded that in view of the earlier partition, as set out above, Defendant No.1 being the owner of the lands allotted to his share, has transferred some of the items of the suit schedule property in favour of his children and the plaintiff has no right to question the same. The further allegations that the plaintiff has brought the matter to the notice of the caste-elders and they secured the defendants on 07.05.2017 and advised the defendants to give 4/9th share to the plaintiff is not true and in any case the village-elders cannot direct Defendant No.1 to give some properties to the plaintiff. In fact the plaintiff could have given a notice to the defendants ventilating her grievance, if any, but she has straight away filed the present suit with all false allegations.

d) It is obvious that the plaintiff wants to usurp the properties which stand on the name of Defendant No.2 on the assumption that she would maintain Defendant No.2, as if Defendant No.1 is not maintaining his mother Defendant No.2 for all these years. Defendant No.2 is happy in the company of these defendants, who have been looking after Defendant No.2 for all these years. The plaintiff has no cause of action to file the present suit since the said properties are no more ancestral properties as set-out above. The plaintiff is not entitled to any share in the said properties much less 4/9th share in 'A' & 'B' schedule properties. The allegation of the plaintiff in para no.11 of the plaint that no partition has taken place between the parties is set-out above, there was already partition between Defendant No.1 and his father in the month of May, 2001 and the properties have been settled between the father, son and mother as set-out above

e) These defendants are not denying the valuation of the suit schedule properties but since the plaintiff is out of possession of the suit schedule properties and not in possession at any point of time either before or after the death of father, she cannot claim to be in joint possession of the said properties except a

mention joint-ness in the plaint. These defendants deny that the plaintiff is in joint possession of the suit schedule properties at any point of time and hence, she has to pay court fees on the valuation of the suit schedule properties pertaining to her share under Section 34 (1) of the Court Fees Act. Though the plaintiff has rightly stated that she has been valuing the suit U/s. 34 (1) of the Court Fees Act, but has paid a fixed Court Fees of Rs.200/- which is not valid and hence, the suit of the plaintiff is liable to be rejected and dismissed for paying fixed Court fees of Rs.200/- instead of paying Court fees on the market value of her share.

f) The plaintiff has been excluded from the possession of the schedule 'A' & 'B' properties ever since the date of her marriage viz., 19.03.1992 and hence, the suit filed by the plaintiff in the year 2017 is barred by limitation. Except stating that she is in joint possession, the plaintiff never gave any instance of joint possession. The pahanies do not disclose her possession at any point of time. Hence, the suit of the plaintiff is barred by limitation and hence, suit of the plaintiff is liable to be dismissed on this ground alone. Defendant Nos.1, 3 and 4 prays the Court to dismiss the suit with costs.

5. In reply to the plaint averments, Defendant No.2 filed separate written statement sailing with the plaintiff and prayed to decree the suit as prayed for by the plaintiff and admitted the relationship between the parties and that the plaintiff married about 25 years ago on 19.03 1992 with one Pakkir Sudhakar Reddy as per Hindu Customs and Rites while raising the following additional grounds:

a) There is no partition during the month of May, 2001 between her husband Komatireddy Linga Reddy and Defendant No.1. The State Government of Andhra Pradesh amended the Succession Act in the year 1985 and it came into force on 05.09.1985 onwards by creating right to women in the Joint Family Properties of their parents on par with the male persons. There is no written or oral partition during the life time of Komatireddy Linga Reddy, the father of Defendant No.1 between Defendant No.1 and his father Komatireddy Linga Reddy during May, 2001. As there is no written or oral partition between Komatiredy Linga Reddy and Defendant No.1 i.e., his son, there is no question of allotment of item Nos. 1 to 5 of the schedule properties in the name of Defendant No.1 and item Nos.6 and 7 were allotted to the share of late Komatireddy Linga Reddy.

b) To avoid future complications to be faced by Defendant No.2, after the death of Komatireddy Linga Reddy, the father of Defendant No.1 got the item Nos. 6 and 7 of Schedule 'A' lands mutated in the name of Defendant No.2. In fact the joint family properties of item nos.6 and 7 of the schedule-lands kept in the name of Defendant No.2, but it is not the share of Komatireddy Linga Reddy. In fact, the item nos.6 and 7 of the suit schedule lands is the Hindu Joint Family Properties of the plaintiff, Defendant Nos.1 and 2. There is no question of Defendant No.2 enjoying item nos.6 and 7 of the suit schedule lands during her lifetime and to revert back to Defendant No.2. As there is no written or oral partition during the month of May, 2001 between Komatireddy Linga Reddy and his son Defendant No.2, there is no question of B-Schedule house exclusively given to Defendant No.2 in subject to maintenance of Defendant No.2. In fact, there is no oral or written partition during the life time of Komatireddy Linga Reddy and after his death also till today with regard to Schedule 'A' and 'B' properties. In fact all the suit schedule 'A' and 'B' properties belong to the Hindu Joint Family Properties consisting of the plaintiff, Defendant Nos.1 and 2 as per their respective shares. In fact, Defendant No.1 is not maintaining his mother Komatireddy Andamma (Defendant No.2), in fact the

plaintiff is maintaining Defendant No.2 and looking her health and necessities. Hence, it is prayed to decree the suit as prayed for by the plaintiff, in the interests of justice.

6. Based on the rival pleadings, the trial Court has framed the following issues:

> *1. Whether the plaint 'A' & 'B' schedule properties are joint family properties of Komatireddy Chandra Reddy (grandfather of plaintiff & D.1)?*
>
> *2. Whether the plaintiff is entitled to 4/9th share in respect of the plaint 'A' and 'B' schedule properties?*
>
> *3. To what relief and costs?*

7. On behalf of the plaintiff, PWs1 and 2 were examined and got marked Exs.A1 to A49. On behalf of Defendant No.1, he got himself examined as DW2 and whereas on behalf of Defendant No.2 herself examined as DW1 and got marked Exs.B1 to B12 in support of their defence. On considering the oral and documentary evidence adduced on behalf of both the sides, the trial Court has decreed the suit in favour of plaintiffs. Aggrieved by the same, the defendant Nos.1, 3 and 4 have preferred the present appeal to set aside the impugned judgment.

8. Heard both sides and perused the record including the grounds of appeal.

9. The suit filed by the plaintiff is for partition and separate possession in respect of suit schedule properties. The plaintiff is none other than sister and daughter of defendant Nos.1 and 2 respectively and whereas the defendant Nos.3 and 4 are the children of defendant No.1. The relationship between the parties is not in dispute. The suit schedule properties originally belongs to Late Komatireddy Chandra Reddy and after his death the suit schedule properties devolved upon late Komatireddy Linga Reddy, who is the father and husband of defendant Nos.1 and 2 respectively and he died on 14.01.2009. It is the contention of the defendant No.1 that an oral partition took place in the month of May, 2001 between defendant Nos.1 and 2 and father and husband of defendant Nos.1 and 2 respectively i.e., Komatireddy Linga Reddy. On the other hand, the plaintiff and defendant No.2, who is sailing along with plaintiff, denied the same and contended that no oral or written partition took place, much less in the month of May, 2001 as contended by the defendant No.1. The defendant No.1 has not adduced any documentary evidence in support of his contention that the suit schedule properties were partitioned earlier in the month of May, 2001.

10. It is the specific contention of the defendant No.1 that at the time of marriage of plaintiff an amount of Rs.10,00,000/- was given by alienating Ac.2.00 guntas of land. On the other hand, it is the contention of the plaintiff that she was not given dowry at the time of marriage and she was promised that her share in the joint family properties would be given. In the cross examination, the defendant No.1, who was examined DW2, admitted that his father has no bank account, no chit funds transactions/deposits, no liquid cash. In such circumstances, the probability of Komatireddy Linga Reddy giving dowry of Rs.10,00,000/- to the plaintiff is untenable. DW2 deposed that part of the suit properties were inherited by his father and part of the properties were purchased to an extent of Ac.15.00 by his father. On one hand, the defendant No.1 is contending that his father has no liquid cash, no bank account, no chit fund transactions/deposits and on the other hand, he is contending that his father has purchased land to an extent of Ac.15.00 guntas. The defendant No.1 failed to explain as to how his father got purchased the land to an extent of Ac.15.00 guntas without any source.

11. It is the contention of the defendant No.1 that the learned

Trial Court ought to have appreciated that entire suit schedule properties were not acquired by the original ancestor i.e., late Chandra Reddy, therefore, entire suit schedule property is not ancestral property available for partition. The defendant No.1, who was examined as DW2, deposed in his chief examination about purchase of Ac.15.00 guntas of land by his father but in the cross examination he admitted that he has not mentioned in pleadings and chief affidavit about purchase of Ac.15.00 guntas of land by his father. DW2 further admitted he has not mentioned from whom his father purchased Ac.15.00 guntas of land and the details of said purchase. It is settled law that without pleadings, adducing any amount of evidence is a futile exercise. If at all the father of the defendant No.1 has purchased Ac.15.00 guntas of land, then certainly the defendant no.1 would have mentioned the same in his pleadings i.e., written statement. But the defendant No.1 did not whisper about this aspect in his written statement. It appears that in order to defeat the rights of the plaintiff over the suit schedule properties, the defendant No.1 has introduced a new concocted story that part of the suit schedule properties are self acquired properties of his father. In the cross examination of DW1 by the learned counsel for the defendant No.1, it is elicited that DW1

and her husband have acquired Ac.10.00 guntas of land about 18 years ago at Kothagudem Village but she does not know survey number. Thus, there are contradictions and lack of corroboration in the evidence of DWs 1 and 2 with regard to father of DW2 purchasing portion of the suit schedule property.

12. Even for the sake of arguments, if the portion of suit schedule property is self acquired property of father of DW2, the father has the right to gift the property or will it to anyone he wishes and the children do not have any right in objecting the same. However, after the death of the father, if the father dies without a executing any document, the self-acquired property shall be equally distributed amongst his legal heirs. Admittedly, the father of the defendant No.1 died intestate without executing any document in favour his successors. Though the defendant Nos.1, 3 and 4 contended that there was oral partition in the month of May, 2001 between defendant Nos.1 and 2 and father and husband of defendant Nos.1 and 2 respectively, there is no ample evidence to substantiate the same. Thus, the ancestral property as well as the alleged self acquired property of Komatireddy Linga Reddy forming part of suit schedule properties shall be divided among the legal heirs

of deceased Komatireddy Linga Reddy.

13. The defendant No.1 in support of his contention got examined DW3, who is none other than father of the plaintiff. In the cross examination DW3 deposed that the plaintiff got married about 28 years ago and by then the value of the land was Rs.4,000/- to Rs.5,000/- per acre. It is the contention of defendant No.1 that his father has given Rs.10,00,000/- at the time of marriage of plaintiff towards dowry by alienating Ac.2.00 guntas of land. In such case, if the evidence of DW3 that by then the value of the land was Rs.4,000/- to Rs.5,000/- per acre, is taken into consideration, the consideration for alienating Ac.2.00 guntas of land would be Rs.10,000/- but not Rs.10,00,000/-. Though DWs 2 and 3 have deposed that father of plaintiff has given Rs.10,00,000/- towards dowry at the time of marriage of plaintiff, they admitted that there is no paper to show that Rs.10,00,000/- was given to the plaintiff. Though DW3 deposed that there was earlier partition in the month of May, 2001, he admitted that except mutation in ROR register, there is no other document in support of the partition among defendant Nos.1, 2 and Late K. Linga Reddy. Though DW3 claimed that he was present at the time of partition in the year

2001 among Defendant Nos.1 and 2 and late K.Linga Reddy, DW2 admitted that there are no partition lists prepared. If at all the partition was done in the presence of family members or witnesses, certainly the same would have been reduced in writing but there is no such instance in the case on hand. Even for the sake of arguments, if the contention of the defendant No.1 that since dowry of Rs.10,00,000/- was given to plaintiff at the time of marriage the plaintiff is not entitled for any share in the suit schedule properties is accepted, it is to be seen that in **Mrs.Tezinha Martins David v. Mr. Miguel Guarda Rosario Martins @ Michael Rosario Martins**[1] the High Court of Bombay at Goa observed as under:

> *"86. The evidence on record shows that the joint family property was purported to be exclusively usurped by the brothers to exclude the sisters. Merely because one of the sisters deposed in favour of the brothers does not mean that the issue of family arrangement or oral partition was duly proved. There is no evidence about providing a sufficient dowry to the daughters of the house. However, even if it is assumed that some dowry was provided to the daughters, that does not mean that the daughters cease to have any right in the family property. The rights of the daughters could not have been extinguished in the manner in Page 39 of 41 16/03/23 207-SA-89-05.DOC which they have been attempted to be extinguished by the brothers, post the father's demise."*

[1] Second Appeal No.89 of 2005 decided on 16.03.2023

14. In the case on hand, the defendant No.1 failed to adduce any proof to establish that the plaintiff was given dowry of Rs.10,00,000/- at the time of marriage. Thus, in view of the principle laid down in the above said decision, it is clear that merely because dowry was given to the daughter at the time of marriage, it cannot be said that the daughters cease to have any share in the joint family properties. In view of the provisions of the Hindu Succession (Amendment) Act, 2005 and the recent decision of the Honourable Supreme Court in **Vineeta Sharma v. Rakesh Sharma**[2] an unregistered oral partition, without any contemporaneous public document, cannot be accepted as the statutory recognized mode of partition.

15. The mother of the plaintiff and defendant No.1 i.e., defendant No.2 was examined as DW1, who has reiterated the averments of her written statement in the chief examination affidavit. In the cross examination by the learned counsel for the plaintiff, DW1 admitted that after the death of her father-in-law i.e., K. Chanda Reddy, her husband Late K. Linga Reddy got the suit schedule property and her husband died about 10 years ago. She further admitted that herself, plaintiff and

[2] 2020 (5) ALT 1 (SC)

defendant No.1 got the suit schedule property and she is entitled for 1/9th share, plaintiff and defendant No.1 are entitled for 4/9th share each. She further admitted that there is no partition of the properties between the family members after the death of her husband. Though defendant No.1 alleged that his mother i.e., defendant No.2 is living with him and he is maintaining her, the defendant No.2 i.e., DW1 as well as plaintiff/PW1 categorically deposed that Defendant No.1 is not maintaining Komatireddy Andamma (Defendant No.2) and in fact the plaintiff is maintaining Defendant No.2 and looking her health and necessities. Thus, it is clear that the defendant Nos.1, 3 and 4 have approached the Court with unclean hands as they have suppressed the material facts. Though defendant Nos.1, 3 and 4 contended that they along with defendant No.2 are in joint possession and enjoyment of the suit schedule properties, the learned counsel for the defendant No.1 elicited in the cross examination of DW1 that defendant No.2 nor plaintiff never cultivated the suit schedule lands. It is not necessary that in order to establish that the plaintiff is in possession of the property, she has to participate in the cultivation of the lands.

16. The learned counsel for the defendant No.1 contended that the trial Court ought to have appreciated that the plaintiff miserably failed to discharge her initial burden to establish that the suit schedule property is 'Ancestral Joint Hindu Family' and that the plaintiff was a 'coparcener' entitled for a share in the suit schedule property. It is to be observed that so long as a daughter is alive post 2005, she has an equal right as a son in the coparcenary property. Therefore, it is irrelevant whether her father was alive or not or whether she was married or not on the cutoff date of September 9, 2005. It means that even if the daughter was not alive on the date of the amendment, her children could claim her rightful portion. The Honourable Supreme Court made it clear that daughters will have inheritance rights equal to those of sons from the properties of fathers, grandfathers and great-grandfathers right from the codification of the law in 1956. It was further observed that daughters can claim the benefit in the case of intestate succession but not testamentary succession. It is to be seen that just like sons, the amendment also extended the status of the coparcener to a daughter, allowing her to enjoy the same rights as a son. Daughters possess the right of inheritance from birth, so it does not matter whether she is married or not, she

will be entitled to an equal share. Daughters will now be treated at par with sons of coparceners and granted equal coparcenary rights in their father's property upon birth itself.

17. Daughters shall remain coparceners throughout life, irrespective of whether their father is alive or not. Hence, even their marital status will not affect the rights conferred to them by way of amendment, and hence they shall continue to be part of their father's Hindu Undivided Family (HUF) post marriage. The door of alienation of their share of property will be opened for daughters without any ambiguity. Daughters can now seek partition of their father's coparcenary property, claiming their equal share the same as their siblings and other coparceners and they cannot be denied on the basis of an oral family settlement. If a daughter is unable to reap any benefit from an ancestral property and enforce her right, and another male co-owner is reaping the benefits, she can enforce her rights by filing a suit following Amendment of 2005 supported by a Supreme Court judgment on equal right of inheritance for daughters. Apportionment of benefit in the property will be accessible to the daughters distinctly along the other coparceners. According to principle laid down in decision of

Honourable Supreme Court in **Rukhmabai v. Lala Laxmi Narayan**[3] and as per the Mulla's Hindu Law, a family is regarded to be a joint family if it is joint in concerns of food, worship, and estate. Even if a family does not share food and worship, i.e. if they live separately, they are still considered a Joint Hindu family if they share the estate. It is a unit that is represented in all matters by the family's Karta. The existence of joint estate is not an essential requisite to constitute a joint family and a family, which does not own any property, may nevertheless be joint. Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation. Possession of joint family property is not a necessary requisite for the constitution of a joint Hindu family. Hindus get a joint family status by birth, and the joint family property is only an adjunct of the joint family. The trial Court has rightly observed in the impugned judgment that merely because the plaintiff ever since the date of her marriage is residing with her husband at her in-laws' house that is not a disqualification to deny the share of the plaintiff in the coparcenary. After the Hindu Succession Amendment Act,

[3] AIR 1960 SC 335

2005, daughters have also been given unobstructed heritage and their entitlement to get share by birth does not depend upon any other event, only subject to the limitations found in Section 6 of the Hindu Succession Amendment Act, 2005.

18. The defendant No.1 is relying on the documentary evidence in the form of Exs.B1 to B4, which are pattadar passbooks of defendant Nos.1 to 4 respectively. The trial Court observed in the impugned judgment that the transfer of properties i.e., item No.1 to 5 of the suit 'A' schedule property in favour of Defendant Nos.3 and 4, who were the children of Defendant No.1 under Exs.B3 and B4 is of no help and it is only made to defeat the legal claim of the plaintiff and as such the said documents are not the hurdles to decree the suit. It was further observed by the learned trial Court Judge that the other extracts of permanent registers under Exs.B6 to B8 and Form 1-B under Exs.B9 to B12 issued by the Tahsildar, Narketpally Mandal are all the documents obtained for the purpose of the defence in this suit and to defeat the claim of the plaintiff, as such, no reliance can be placed on the said documents and thereby the oral testimony of DWs 1 and 3 along with documentary evidence in the form of Exs.B1 to B12 are not

helpful to Defendant No.1 to succeed in the suit. The above observation of the trial Court in the impugned judgment draws credence in view of the admission made by DW1 in his cross examination that he obtained the documents after filing the suit.

19. As per the contention of the defendant Nos.1, 3 and 4, since Defendant No.1 and his father were the only two male members of the joint family, they partitioned the joint family properties during May, 2001 and in the said partition the item Nos.1 to 5 of the plaint 'A' schedule were allotted to the share of Defendant No.1 and the item nos.6 and 7 were allotted to the share of Linga Reddy (father of Defendant No.1). In order to avoid future complications to be faced by Defendant No.2, after the death of his father, defendant No.1 got mutated the item Nos.6 and 7 of the plaint 'A' schedule property on the name of Defendant No.2 so that she can enjoy the said properties during her life and to revert back to Defendant No.1. Even for the sake of arguments, if the above said contention of defendant Nos.1, 3 and 4 is accepted for a while, once the properties are mutated in the name of defendant No.2, the said properties will become the separate property of defendant No.2 and in such circumstances,

the said properties cannot be reverted to defendant No.1 as per his choice or option. It is up to the defendant No.2 to convey the said property to anyone as per her desire.

20. The learned counsel for the defendant No.1 contended that the trial Court ought to have appreciated that the plaintiff by virtue of her marriage on 19.03.1992 living along with her husband at Nalgonda and her name was never shown in the revenue record as possessor and her name was shown in the revenue record as possessor at any point of time, therefore, the Court fee ought to have been paid under Section 34 (2) of the Court Fee and Suit Valuation Act but under Section 34 (1) of the Court Fee and Suit Valuation Act. The High Court of Delhi in **Sushma Tehlan Dalal v. Shivraj Singh Tehlan & Others**[4] observed as under:

> *"9. In Neelavathi and Ors. v. N. Natarajan and Others, AIR 1980 SC 691, which arose out of a suit for partition, the plaintiff averred in the plaint that they were in joint possession of the property along with the defendants. The plaintiffs had valued their share of the property and paid fixed court fee of Rs 200/- under Section 37(2) of Tamil Nadu Court-Fee and Suits Valuation Act. It was contended by the defendants in that suit that the plaintiff were not in joint possession and, therefore, were required to pay ad valorem Court fee at the market rate. The suit was dismissed on the ground that ad valorem Court fee had not been paid. Allowing the appeals, filed by the plaintiff, Supreme Court held that the question of Court fee was to be considered in the light of allegations made in the plaint and decision of this issue cannot be influenced either by the plea taken in the written*

[4] 2011 (123) DRJ 91

statement or by final decision of the suit on merits. In that case, the plaintiff had stated in the plaint that the defendants had failed to give their share of income and they could not remain in joint possession. It was held that this averment would not mean that the plaintiffs had been excluded from possession of the suit property. During the Course of judgment, Supreme Court, inter alia, observed as under:

> *"It will be seen that the Court-fee is payable under Section 37(1) if the plaintiff is 'excluded' from possession of the property. The plaintiffs who are sisters of the defendants, claimed to be members of the joint family, and prayed for partition alleging that they are in joint possession. Under the proviso to Section 6 of the Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act having at the time of the death an interest in the mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided joint family property' though not in the strict sense of the term. The general principle of law is that in the case of co-owners, the possession of one is law possession of all unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay Court-fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been 'excluded' from joint possession to which they are entitled to in law."*

21. Even in the case on hand, there is no ample evidence to show that the plaintiff was excluded from the possession of the suit schedule properties. In view of the above discussion, it is also clear that the plaintiff is entitled for a share in the suit

schedule property more particularly in view of the decision in **Vineeta Sharma's** case (supra). The plaintiff has clearly stated in the plaint that she is in joint possession of the suit schedule properties. Thus, in view of the principle laid down in the above said decision, it is clear that it is not necessary for the plaintiff to be in actual possession of the suit schedule properties in order to pay fixed court fee of Rs.200/- under Section 34 (2) of the Court Fee and Suit Valuation Act, more particularly, when there is no evidence to show that plaintiff was excluded from the joint possession of the suit schedule property in accordance with law.

22. The learned counsel for the defendant No.1 relied upon a decision in **Commissioner of Income Tax v. P.L. Karuppan Chettiar**[5] and **Additional Commissioner of Income Tax v. M. Karthikeyan**[6], wherein the Honourable Supreme Court observed that after the death of the father intestate, his separate property inherited by and divided between his widow and son and that the properties so inherited by the son has to be treated as his individual and separate properties and income arising therefrom not assessable in the hands of the Hindu

[5] 1993 Supp (1) Supreme Court Cases 580
[6] 1994 Supp (2) Supreme Court Cases 112

Undivided Family. The above said decision was passed based on the decision of **CWT v. Chandrasen**[7], wherein Chandrasen was the only class I heir, as such the inherited property was declared as separate property of Chandrasen. In the case on hand, apart from defendant No.1 the plaintiff is also class I heir of late Komatireddy Linga Reddy. Moreover, in the above said decisions, the properties were partitioned and got separated from the kartha. But in the case on hand, though the defendant No.1 is claiming that the properties were partitioned, there is no evidence at all to establish that the properties were partitioned among defendant Nos.1 and 2 and late Komatireddy Linga Reddy. In such circumstances, the suit schedule properties cannot be considered as separate property of defendant No.1.

23. The learned counsel for the defendant No.1 contended that there is no prohibition to affect a partition otherwise than through an instrument in writing by duly complying with the requirement of law and in support of this contention relied upon a decision in **H. Vasanthi v. A. Santha (dead) through LRs and others**[8]. As can be seen from the facts stated in the above

[7] (1986) 3 SCC 567
[8] 2023 SCC Online SC 998

said decision, partial partition took place under Ex.A3, which is a registered document and the plaintiff therein has not taken any steps to assail the said oral partition. In the case on hand, there is no instance of plaintiff accepting oral partition or settlement. If at all there was any partition, the plaintiff ought to have obtained a share in the said oral partition being one of the coparceners but there is no such instance. The plaintiff discharged her burden in establishing that oral partition or settlement did not take place prior to filing of the suit, more particularly, when the mother of defendant No.1 i.e., DW1 supported the case of the plaintiff that no partition took place in the month of May, 2001 as contended by other defendants.

24. From the above discussion, it is clear that the plaintiff could succeed to establish her case before the trial Court as well as before this appellate Court. On the other hand, the defendant No.1 failed to succeed that the plaintiff is not entitled for a share in the suit schedule properties. Merely because the plaintiff was given dowry at the time of her marriage, it cannot be a ground to deny a share to the plaintiff in the suit schedule properties, which were devolved upon the father of the plaintiff and defendant No.1.

25. In view of the above facts and circumstances, this Court is of the considered view that the trial Court has elaborately considered all the aspects meticulously and arrived to an appropriate conclusion and thereby there are no merits in the appeal to set aside the impugned Judgment. Thus, the appeal is devoid of merits and liable to be dismissed.

26. In the result, this appeal is dismissed. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

JUSTICE M.G. PRIYADARSINI

Date: 07.06.2024

Note: LR copy to be marked.
B/o. AS